

Children (Care and Justice) (Scotland) Bill — Stage 3

After section 5

Roz McCall

2 After section 5, insert—

<Compulsory supervision orders: breach

- (1) The 2011 Act is amended as follows.
- (2) After section 171 insert—

“PART 16A

BREACH OF COMPULSORY SUPERVISION ORDERS

171A Breach of compulsory supervision orders

- (1) A child subject to a compulsory supervision order who knowingly and without reasonable excuse fails to comply with a measure mentioned in subsection (2) commits an offence.
- (2) The measures are—
 - (a) a movement restriction condition, within the meaning of section 84,
 - (b) a prohibition mentioned in section 83(2)(ca),
 - (c) a prohibition mentioned in section 83(2)(cb).
- (3) The child is liable on summary conviction to a fine not exceeding level 3 on the standard scale, to detention in secure accommodation for a period not exceeding 60 days, or to both.”.>

Section 6

Willie Rennie

3 In section 6, page 7, line 1, after <(3)> insert <and the further information mentioned in subsection (3A)>

Willie Rennie

4 In section 6, page 7, line 2, after <(3)> insert <and the further information mentioned in subsection (3A)>

Willie Rennie

5 In section 6, page 7, line 25, at end insert—

- <(d) other information necessary to assist safety planning by or in relation to the person who made the request or, where the person is a relevant person, the child in relation to whom that person is a relevant person.>

Willie Rennie

6 In section 6, page 7, line 25, at end insert—

<(3A) The further information referred to in subsection (1)(a)(ii) and (b) is—

- (a) where a compulsory supervision order has been made in respect of the child, or such an order which is already in force in respect of the child has been varied or continued—
 - (i) information as to whether the order is subsequently varied or continued to include, vary or remove a measure such as is mentioned in subsection (3)(b)(i) or (ii),
 - (ii) information as to whether the order is subsequently terminated,
- (b) where other changes relating to the child's case occur, information necessary to assist safety planning by or in relation to the person who made the request or, where the person is a relevant person, the child in relation to whom that person is a relevant person.>

Willie Rennie

7 In section 6, page 7, line 26, at end insert—

<(5) In this section and in section 179C, references to a compulsory supervision order include references to an interim compulsory supervision order.>

Section 6A

Willie Rennie

8 In section 6A, page 8, line 17, at end insert—

<(2A) Regulations under subsection (1) must, for the purposes of the provision of support services to persons mentioned in subsection (2), establish or specify a person as a single point of contact for those persons.>

Willie Rennie

9 In section 6A, page 8, line 19, leave out <to be provided by support services> and insert <services that may be provided>

Willie Rennie

10 In section 6A, page 8, leave out lines 20 to 22

Willie Rennie

11 In section 6A, page 8, line 23, leave out <persons> and insert <the person>

Willie Rennie

12 In section 6A, page 8, line 24, after <information> insert <(including relevant information)>

Willie Rennie

- 13 In section 6A, page 8, line 24, leave out <persons> and insert <the person>

Willie Rennie

- 14 In section 6A, page 8, line 24, after <services,> insert <including that information is to be provided in a way that is accessible to the person receiving it,>

Willie Rennie

- 15 In section 6A, page 8, line 24, at end insert—
 <(da) the sharing of information with the person providing support services by other persons, including the National Convener, the Principal Reporter, CHS, SCRA, the chief constable of the Police Service of Scotland and local authorities,>

Willie Rennie

- 16 In section 6A, page 8, line 25, leave out <persons> and insert <the person>

Willie Rennie

- 17 In section 6A, page 8, line 27, at end insert—
 <(3A) Regulations under subsection (1) may also modify sections 179A to 179C to provide for—
 (a) information mentioned in section 179B(1) to be provided to persons mentioned in subsection (2) without the need for those persons to make a request under section 179A(3) (including the circumstances in which such persons may opt out of receiving such information),
 (b) such information to be given by the Principal Reporter to the person providing support services (either at the same time as, or instead of, to persons mentioned in subsection (2)),
 (c) the circumstances in which such information is to be provided to persons mentioned in subsection (2) by the person providing support services rather than by the Principal Reporter.>

Willie Rennie

- 18 In section 6A, page 8, line 28, leave out <making regulations under subsection (1),> and insert <laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament,>

Natalie Don

- 19 In section 6A, page 8, line 30, leave out <SCRA> and insert <the Principal Reporter>

Natalie Don

- 20 In section 6A, page 8, line 31, leave out <CHS> and insert <the National Convener>

Willie Rennie

- 21 In section 6A, page 8, line 35, leave out <negative> and insert <affirmative>

Willie Rennie

- 22 In section 6A, page 8, leave out lines 36 and 37 and insert—

<(6) In this section—

“relevant information” includes—

(a) information about—

- (i) the children’s hearings system (including about the interaction of that system with the criminal justice system),
- (ii) the action that can be taken by a children’s hearing (including about the measures that can be included in a compulsory supervision order),
- (iii) the process for reviewing actions taken by a children’s hearing (including the process for reviewing and enforcing compulsory supervision orders), and

(b) where regulations under subsection (1) make provision mentioned in subsection (3A) (b) or (c), information requested under section 179A(3),

“support services” (other than in subsection (4)(c)) includes the provision of relevant information to persons mentioned in subsection (2) and otherwise has the meaning given in regulations under subsection (1).>

Section 6B

Willie Rennie

- 23 Leave out section 6B

After section 6B

Roz McCall

- 24 After section 6B, insert—

<Review of rights of victims in children’s hearings system

- (1) The Scottish Ministers must, no later than 3 months after the day of Royal Assent, prepare and publish a report on a review of the rights of victims in the children’s hearings system.
- (2) The report under subsection (1) must set out the steps the Scottish Ministers will take to ensure that the rights of victims in the children’s hearings system are protected.
- (3) The rights mentioned in subsection (2) must include the right of the victim, in relation to proceedings under the 2011 Act, to—
 - (a) be treated in a respectful and non-discriminatory manner,
 - (b) obtain appropriate and relevant information,
 - (c) have information provided in a way that can be understood by the victim,

- (d) effectively participate in the proceedings where appropriate,
 - (e) receive appropriate support during and after the proceedings,
 - (f) be protected from further victimisation, intimidation and retaliation during and after the proceedings,
 - (g) receive compensation for loss or expenses incurred due to the victim being involved in the proceedings,
 - (h) make a complaint about the victim's treatment.
- (4) The Scottish Ministers must lay the report under subsection (1) before the Scottish Parliament.
- (5) For the purposes of this section, "victim" means—
- (a) a person against whom an offence appears to have been committed by a child who is the subject of proceedings under the 2011 Act,
 - (b) a person who appears to have been harmed by the action or behaviour of a child who is the subject of proceedings under the 2011 Act. >

Section 6C

Natalie Don

- 25 Leave out section 6C

Section 12

Natalie Don

- 26 Leave out section 12

Section 13

Natalie Don

- 27 Leave out section 13

Section 23

Natalie Don

- 28 In section 23, page 41, line 22, leave out from <means> to end of line 27 and insert <has the meaning given by section 105(1).>

After section 23

Roz McCall

- 29 After section 23, insert—

<Separation of children in residential accommodation

- (1) The 2010 Act is amended as follows.

(2) In section 78 (regulations: care services), after subsection (2) insert—

“(2A) Regulations under subsection (2) must impose a requirement on any care service providing accommodation for children in a residential establishment to keep children who are in that establishment because of having committed an offence in separate accommodation from those children who are in the establishment for another reason.

(2B) For the purposes of subsection (2B), “residential establishment” means an establishment (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, the Criminal Procedure (Scotland) Act 1995 or the Children’s Hearings (Scotland) Act 2011.”.>

Section 24

Natalie Don

30 In section 24, page 43, line 9, leave out <residential accommodation> and insert <a residential establishment>

Natalie Don

31 In section 24, page 43, line 13, leave out from first <by> to end of line 15 and insert <under the law in England and Wales or, as the case may be, in Northern Ireland by virtue of—

- (i) an order made by a court in England and Wales or in Northern Ireland,
- (ii) any provision made by or under an Act of Parliament, an Act of Senedd Cymru, or Northern Ireland legislation (as defined by section 98(1) of the Northern Ireland Act 1998), whenever passed or made;”.>

Natalie Don

32 In section 24, page 43, line 15, at end insert—

<() after the definition of “relative” insert—

““residential establishment” means an establishment (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, the Criminal Procedure (Scotland) Act 1995 or the Children’s Hearings (Scotland) Act 2011;”.>

After section 25A

Michael Marra

33 After section 25A, insert—

<Review of cross-border placements

- (1) The Scottish Ministers must, no later than one year after the day of Royal Assent, undertake a review of cross-border placements.

- (2) A review under subsection (1) must, in particular, consider—
- (a) the number of cross-border placements,
 - (b) the provision of services to children subject to cross-border placements.
- (3) The Scottish Ministers must, as soon as reasonably practicable after completing the review under subsection (1)—
- (a) prepare and publish a report on that review,
 - (b) lay the report before the Scottish Parliament.
- (4) In this section—
- “cross-border placement” means the placement of a child in a residential establishment in Scotland where—
- (a) the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and
 - (b) the placement is authorised under the law in England and Wales or, as the case may be, in Northern Ireland by virtue of—
 - (i) an order made by a court in England and Wales or in Northern Ireland,
 - (ii) any provision made by or under an Act of Parliament, an Act of Senedd Cymru, or Northern Ireland legislation (as defined by section 98(1) of the Northern Ireland Act 1998), whenever passed or made,
- “residential establishment” means an establishment (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, the 1995 Act or the 2011 Act. >

After section 27

Natalie Don

34 After section 27, insert—

<PART

UNCRC COMPATIBILITY ISSUES IN CRIMINAL PROCEEDINGS

UNCRC compatibility issues in relation to decisions to prosecute children

- (1) The 1995 Act is amended as follows.
- (2) After section 288B insert—

“288BZAUNCRC compatibility issue in relation to decision to prosecute child: restriction on judicial remedies

- (1) This section applies where—
 - (a) by virtue of section 7(1)(b) of the UNCRC Incorporation Act, a UNCRC compatibility issue has arisen—
 - (i) in criminal proceedings brought against a person who is a child, or who was a child at the time the proceedings were brought,

- (ii) otherwise than in connection with an appeal against conviction or an appeal against both conviction and sentence,
 - (b) in determining the UNCRC compatibility issue, a court finds that the prosecutor, by bringing criminal proceedings against the person, has acted in a way which is made unlawful by section 6(1) of the UNCRC Incorporation Act, and
 - (c) by reason only of the finding mentioned in subsection (1)(b), a court is considering—
 - (i) deserting the proceedings *pro loco et tempore* or *simpliciter*, or
 - (ii) dismissing the indictment or (as the case may be) the complaint or any part of it.
- (2) Despite section 8(1) of the UNCRC Incorporation Act, a court—
 - (a) may not—
 - (i) desert the proceedings *pro loco et tempore* or *simpliciter*, except on the motion of the prosecutor, or
 - (ii) dismiss the indictment or (as the case may be) the complaint or any part of it, but
 - (b) must instead—
 - (i) give the prosecutor an opportunity to reconsider the bringing of criminal proceedings against the person in a way which is compatible with the UNCRC requirements,
 - (ii) adjourn or continue the proceedings to another diet to allow such reconsideration, and
 - (iii) following any such reconsideration, decide whether the bringing of criminal proceedings against the person is compatible with the UNCRC requirements.
- (3) But a court is not required to act in accordance with subsection (2) if—
 - (a) it considers that there is no reasonable prospect of the bringing of criminal proceedings against the person being reconsidered in a way which is compatible with the UNCRC requirements,
 - (b) it considers that there are exceptional circumstances which justify not doing so, or
 - (c) it decides under subsection (2)(b)(iii) that the bringing of criminal proceedings against the person is incompatible with the UNCRC requirements.
- (4) Subsection (5) applies where—
 - (a) the court adjourns or continues the proceedings in accordance with subsection (2)(b)(ii), or
 - (b) by virtue of subsection (3), the court decides to desert the proceedings *pro loco et tempore*.

- (5) Before adjourning or continuing the proceedings or (as the case may be) deserting the proceedings *pro loco et tempore*, the court must give the prosecutor an opportunity—
- (a) in solemn proceedings, to make an application under section 65(3) or (5) for an extension of any of the following periods which apply in respect of the proceedings—
 - (i) the periods of 11 months and 12 months mentioned in section 65(1), including those periods as extended under section 65(3), on appeal under section 65(8) or under section 74(4)(c),
 - (ii) the periods of 80 days, 110 days and 140 days mentioned in section 65(4), including those periods as extended under section 65(5) or on appeal under section 65(8),
 - (b) in summary proceedings in respect of which the period of 40 days mentioned in section 147(1) applies, to make an application under section 147(2) for an extension of that period, including that period as extended under section 147(2) or on appeal under section 147(3).
- (6) For the purposes of subsection (1)(a)(i), the proceedings are taken to be brought—
- (a) in solemn proceedings, on the date on which the indictment is served,
 - (b) in summary proceedings—
 - (i) in a case where a warrant to apprehend or cite the accused is granted, on the date on which the warrant is granted, or
 - (ii) in any other case, on the date on which the complaint is served.
- (7) In this section—
- “prosecutor” does not include a private prosecutor,
 - “the UNCRC requirements” has the meaning given in section 1(2) of the UNCRC Incorporation Act,
 - “UNCRC compatibility issue” means a question of the kind mentioned in section 288AB(1)(b),
 - “UNCRC Incorporation Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.”.
- (3) The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is amended as follows.
- (4) In section 8 (judicial remedies), after subsection (5) insert—
- “(6) Section 288BZA of the Criminal Procedure (Scotland) Act 1995 modifies the court’s power under subsection (1) in relation to certain UNCRC compatibility issues in criminal proceedings.”.>

Roz McCall

35 After section 27, insert—

<PART

REPORTING REQUIREMENTS

Report on the operation of this Act

- (1) The Scottish Ministers must, in respect of each reporting period, undertake a review of the operation of this Act.
- (2) A review under subsection (1) must include an assessment of whether sufficient resources were in place for the effective implementation of the Act during the reporting period.
- (3) The Scottish Ministers must, as soon as reasonably practicable after completing the review under subsection (1)—
 - (a) prepare a report on that review, and
 - (b) lay the report before the Scottish Parliament.
- (4) A report under subsection (3) must set out—
 - (a) information on the matters considered by the Scottish Ministers when making the assessment mentioned in subsection (2),
 - (b) the steps the Scottish Ministers will take in light of that assessment to ensure that sufficient resources are (or continue to be) in place for the effective implementation of the Act during the next reporting period.
- (5) The information mentioned in subsection (4)(a) must, in particular, include information for the reporting period on—
 - (a) the occupancy levels in secure accommodation,
 - (b) the number of children’s social workers employed by local authorities,
 - (c) the number of members of the Children’s Panel.
- (6) In this section—
 - “reporting period” means—
 - (a) the period of one year beginning with the day of Royal Assent,
 - (b) each subsequent period of one year,
 - “secure accommodation” has the meaning given in section 202(1) of the 2011 Act.>

Section 31

Natalie Don

36 In section 31, page 46, line 16, at end insert—

- <() Section (*UNCRC compatibility issues in relation to decisions to prosecute children*) comes into force on whichever is the later of—
- (a) the day after Royal Assent,
 - (b) 16 July 2024.>

Schedule

Natalie Don

37 In the schedule, page 47, line 11, at end insert—

<PART

AGE OF CRIMINAL RESPONSIBILITY

Age of Criminal Responsibility (Scotland) Act 2019

- (1) The Age of Criminal Responsibility (Scotland) Act 2019 is amended as follows.
- (2) In section 39 (limitation on police questioning of certain children), in subsection (3), the definition of “child” is repealed.
- (3) In section 58 (limitation on taking prints and samples from children under 12), subsection (6)(b) is repealed.
- (4) In section 76 (interpretation of Part 4), the definition of “child” is repealed.
- (5) In section 80 (interpretation), in the definition of “child”, for “16 years of age (except where provided otherwise: see section 39(3))” substitute “18 years of age”.>

Natalie Don

38 In the Long Title, page 1, line 6, leave out from <the extension> to <phase,> in line 7

Natalie Don

39 In the Long Title, page 1, line 16, after <plans;> insert <to make provision about UNCRC compatibility issues in relation to decisions to prosecute children;>