

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

*Amendment 48 has been lodged as a manuscript amendment under Rule 9.10.6. The Presiding Officer has not yet decided under that rule whether amendment 48 may be moved at the meeting of the Parliament on 24 April 2024.*

#### **Before section 1**

**Martin Whitfield**

40 Before section 1, insert—

#### **<PART**

#### **PURPOSE OF THIS ACT**

#### **Purpose of this Act**

The purpose of the changes made by this Act is to promote the wellbeing and rights of children in the children’s hearings system and the criminal justice system.>

#### **Section 1**

**Russell Findlay**

41 Leave out section 1

#### **After section 1**

**Pam Duncan-Glancy**

42 After section 1, insert—

#### **<Children’s hearing: duty to have due regard to effects of trauma on child**

- (1) The 2011 Act is amended as follows.
- (2) After section 7 insert—

#### **“7A Children’s hearing: duty to have due regard to effects of trauma on child**

- (1) This section applies where a children’s hearing is held for the purpose of carrying out functions conferred on a children’s hearing by virtue of this Act or any other enactment.
- (2) The children’s hearing must, in carrying out its functions, have due regard to the need to treat the child to whom the hearing relates in a way that—
  - (a) takes account of the effects of trauma which the child may have experienced, and
  - (b) seeks to avoid, or minimise the risk of, exposing the child to—
    - (i) any recurrence of past trauma, or
    - (ii) further trauma.
- (3) The National Convener must, so far as practicable, ensure that the children’s hearing, in carrying out its functions, has due regard to that need.

- (4) In this section—
  - (a) “children’s hearing” includes a pre-hearing panel,
  - (b) in subsection (2), in so far as it applies to a pre-hearing panel, the reference to the child to whom the hearing relates is to be read as a reference to the child in relation to whom a children’s hearing is to be held.”.
- (3) In section 177 (children’s hearings: procedural rules), in subsection (2), after paragraph (h) insert—
  - “(ha) treating the child to whom a children’s hearing relates in a way that—
    - (i) takes account of the effects of trauma which the child may have experienced, and
    - (ii) seeks to avoid, or minimise the risk of, exposing the child to any recurrence of past trauma or to further trauma.”.
- (4) In schedule 2 (the Children’s Panel), in paragraph 3(3), after “may” insert “—
  - (a) treat the child to whom a children’s hearing relates in a way that—
    - (i) takes account of the effects of trauma which the child may have experienced, and
    - (ii) seeks to avoid, or minimise the risk of, exposing the child to any recurrence of past trauma or to further trauma, and
  - (b)”.>

**Martin Whitfield**

43 After section 1, insert—

**<Welfare of the child**

- (1) The 2011 Act is amended as follows.
- (2) In section 25 (welfare of the child), in subsection (2), after “welfare” insert “and rights”.>

**Martin Whitfield**

44 After section 1, insert—

**<Non-discrimination**

- (1) The 2011 Act is amended as follows.
- (2) After section 26, insert—

**“26A Non-discrimination**

- (1) This section applies where by virtue of this Act a children’s hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.
- (2) The children’s hearing, pre-hearing panel or court must not discriminate against the child on grounds of—
  - (a) the protected characteristics of—
    - (i) age,
    - (ii) disability,

- (iii) gender reassignment,
  - (iv) race,
  - (v) religion or belief,
  - (vi) sex,
  - (vii) sexual orientation,
- within the meaning of the Equality Act 2010,
- (b) socio-economic status.
- (3) This section is without prejudice to any other enactment prohibiting discrimination.”.>

**Martin Whitfield**

45 After section 1, insert—

**<Views of the child: commencement of section 3 of the Children (Scotland) Act 2020**

The Scottish Ministers must make regulations under section 34 of the Children (Scotland) Act 2020 appointing a day for the coming into force of section 3 of that Act, which must be a day no later than 6 months after the day the Bill for this Act receives Royal Assent.>

**Martin Whitfield**

46 After section 1, insert—

**<Multi-agency approach**

- (1) The 2011 Act is amended as follows.
- (2) After section 31 insert—

**“31A Children’s hearing: multi-agency approach**

A children’s hearing must ensure that it takes a multi-agency approach to supporting the child to whom the children’s hearing relates.”.>

**After section 5**

**Martin Whitfield**

47 After section 5, insert—

**<Cases where a compulsory supervision order has not been made**

- (1) The 2011 Act is amended as follows.
- (2) After section 124 insert—

**“124A Cases where a compulsory supervision order has not been made**

- (1) This section applies where the children’s hearing is not satisfied that it is necessary for the protection, guidance, treatment or control of the child to make a compulsory supervision order.
- (2) The children’s hearing must consider, despite this determination—
  - (a) whether any of the conditions in subsection (3) applies, and

- (b) if so, whether the child should be the subject of monitoring and review.
- (3) The conditions are that the child—
  - (a) has experienced trauma,
  - (b) has been subject to or witnessed domestic abuse,
  - (c) has been exposed to violence,
  - (d) has been a victim of crime, abuse or harm,
  - (e) has mental health issues,
  - (f) has a learning disability,
  - (g) is at risk due to the child’s history or particular vulnerability.
- (4) The children’s hearing must determine—
  - (a) whether the child should be subject to monitoring and review, and
  - (b) if so, determine the frequency of that monitoring and review.
- (5) In making a decision under subsection (4), the Principal Reporter may obtain any report, from any person, which the children’s hearing considers necessary.”.>

**After section 6A**

**Ruth Maguire**

**48** After section 6A insert—

**<Support for victims in the children’s hearings system: review and report**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each review period—
  - (a) review the operation of support services provided, by virtue of regulations under section 179D(1) of the 2011 Act, to persons mentioned in section 179D(2) of that Act, and
  - (b) prepare a report on the provision of such support services to those persons.
- (2) The review must in particular—
  - (a) assess the effectiveness of support services by reference to, among other things, the number of, and feedback from, persons to whom those services are provided,
  - (b) identify the steps (if any) that the Scottish Ministers consider should be taken as a result of that assessment.
- (3) In carrying out the review, the Scottish Ministers must consult—
  - (a) the National Convener of Children’s Hearings Scotland,
  - (b) the Principal Reporter,
  - (c) the single point of contact established or specified by virtue of section 179D(2A) of the 2011 Act,
  - (d) each local authority,
  - (e) persons who are providing support services to persons in relation to offences perpetrated against or in respect of those persons,

- (f) such other persons as the Scottish Ministers consider appropriate.
- (4) The report prepared under subsection (1)(b) must be—
  - (a) laid before the Scottish Parliament, and
  - (b) published in such manner as the Scottish Ministers consider appropriate.
- (5) In this section—
  - “review period” means the period of 2 years beginning with the day on which regulations under section 179D(1) of the 2011 Act first come into force and each subsequent period of 2 years,
  - “support services” has the same meaning as in section 179D(6) of the 2011 Act.>

#### **After section 6C**

#### **Martin Whitfield**

**49** After section 6C, insert—

**<Request by children’s hearing to dispense with publishing restrictions**

- (1) The 2011 Act is amended as follows.
- (2) In section 182 (publishing restrictions), after subsection (4) insert—
  - “(4B) The chairing member of a children’s hearing may request that the Scottish Ministers exercise their power under subsection (4) where the chairing member considers it would be in the interests of justice to do so.”.>

#### **Section 7**

#### **Russell Findlay**

**50** In section 7, page 10, line 28, leave out, <18> and insert <16>

#### **Russell Findlay**

**51** In section 7, page 10, line 35, leave out <18> and insert <16>

#### **Russell Findlay**

**52** In section 7, page 11, line 2, leave out <18> and insert <16>

#### **Russell Findlay**

**53** In section 7, page 11, line 4, leave out <19> and insert <17>

#### **After section 7**

#### **Pam Duncan-Glancy**

**54** After section 7, insert—

**<Legal aid and advice**

- (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 28B (children’s legal aid), after subsection (3)(d) insert—
  - “(da) proceedings before a children’s hearing arranged on the basis that—
    - (i) the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence), and
    - (ii) the offence that the child has committed is one that a constable is required under guidance issued by the Lord Advocate to jointly report to the Principal Reporter and the Crown Office and Procurator Fiscal Service,”.
- (3) In section 28C (circumstances where children’s legal aid automatically available)—
  - (a) after subsection (1)(d) insert—
    - “(da) a children’s hearing is arranged in relation to a child on the basis that—
      - (i) the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence), and
      - (ii) the offence that the child has committed is one that a constable is required under guidance issued by the Lord Advocate to jointly report to the Principal Reporter and the Crown Office and Procurator Fiscal Service,”.
  - (b) in subsection (2), in paragraph (b), for “or (d)” substitute “, (d) or (da)”,
  - (c) after subsection (3) insert—
    - “(4) In this section, “constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012.”.>

**Pam Duncan-Glancy**

55 After section 7, insert—

**<Legal aid and advice**

- (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 28B (children’s legal aid), after subsection (3)(d) insert—
  - “(da) proceedings before a children’s hearing arranged on the basis that the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence),”.
- (3) In section 28C (circumstances where children’s legal aid automatically available)—
  - (a) after subsection (1)(d) insert—
    - “(da) a children’s hearing is arranged in relation to a child on the basis that the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence),”.
  - (b) in subsection (2), in paragraph (b), for “or (d)” substitute “, (d) or (da)”.>

**Pam Duncan-Glancy**

56 After section 7, insert—

**<Legal aid and advice**

- (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 28C (circumstances where children’s legal aid automatically available), after subsection (3) insert—
  - “(4) Regulations under subsection (3) must, in particular, provide for children’s legal aid to be automatically available for proceedings before a children’s hearing arranged on the basis that the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence).”>

**Pam Duncan-Glancy**

57 After section 7, insert—

**<The Children’s Panel: training**

- (1) The 2011 Act is amended as follows.
- (2) In schedule 2 (the Children’s Panel)—
  - (a) in paragraph 3(3)—
    - (i) the words from “how panel members” to the end become paragraph (a),
    - (ii) after that paragraph insert “,
      - “(b) child development,
      - (c) children’s rights,
      - (d) domestic abuse,
      - (e) trauma-informed practice.”,
  - (b) after paragraph 3(4) insert—
    - “(5) For the purposes of sub-paragraph (3)(e), “trauma-informed practice” is a means of operating that—
      - (a) recognises that a person may have experienced trauma,
      - (b) understands the effects which trauma may have on the person, and
      - (c) involves adapting processes and practices, based on that understanding of the effects of trauma, to seek to avoid, or minimise the risk of, exposing the person to—
        - (i) any recurrence of past trauma, or
        - (ii) further trauma.”>

**Martin Whitfield**

58 After section 7, insert—

**<Children’s hearings: procedural rules**

- (1) The 2011 Act is amended as follows.

(2) In section 177 (children’s hearings: procedural rules)—

(a) in subsection (2) after paragraph (h) insert—

“(ha) obtaining the views of the person affected by the offence or behaviour of the child to whom a children’s hearing relates.”.>

### **Section 8**

**Russell Findlay**

**59** Leave out section 8

### **Section 9**

**Russell Findlay**

**60** Leave out section 9

### **Section 10**

**Russell Findlay**

**61** Leave out section 10

### **Section 11**

**Russell Findlay**

**62** Leave out section 11

### **Section 14**

**Martin Whitfield**

**63** In section 14, page 28, line 11, after <proceedings),> insert—

<( ) in subsection (6), after “welfare” insert “and rights”,  
( )>

**Martin Whitfield**

**64** In section 14, page 28, line 11, after <proceedings),> insert—

<( ) in subsection (6), after second “child” insert “as the primary considerations”,  
( )>

**Martin Whitfield**

**65** In section 14, page 28, line 12, after <particular,> insert <(a)>



**Martin Whitfield**

- 66 In section 14, page 28, line 15, after <steps> insert <,  
<(b) give the child an opportunity to express the child’s views in—  
(i) the manner that the child prefers, or  
(ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and  
(c) have regard to any views expressed by the child, taking into account the child's age and maturity>

**Martin Whitfield**

- 67 In section 14, page 28, line 15, at end insert—  
<“(7A) But the court is not required to comply with subsection (7)(b) or (c) if the court is satisfied that the child is not capable of forming a view.  
(7B) The child is to be presumed to be capable of forming a view unless the contrary is shown.”>.

**Section 15**

**Russell Findlay**

- 68 In section 15, page 30, line 38, at end insert—  
<(1EA) Where the court remits a case as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a), the Principal Reporter must give any person against whom a prescribed offence has been perpetrated an opportunity to make a personal statement.  
(1EB) For the purposes of subsection (1EA)—  
(a) a “personal statement” means a statement as to the way in which, and degree to which, that offence has affected and, as the case may be, continues to affect, that person,  
(b) “prescribed offence” means an offence prescribed under section 14(2) of the Criminal Justice (Scotland) Act 2003.>

**Section 16**

**Russell Findlay**

- 69 In section 16, page 32, line 2, leave out <children> and insert <persons>

**Russell Findlay**

- 70 In section 16, page 32, line 5, leave out <children> and insert <persons>

## Section 17

### Russell Findlay

71 In section 17, page 32, line 22, leave out <18> and insert <16>

### Russell Findlay

72 In section 17, page 33, leave out line 2

### Russell Findlay

73 In section 17, page 33, line 5, leave out subsection (4)

### Russell Findlay

74 In section 17, page 33, line 12, leave out <child> and insert <person under 18 years of age>

### Russell Findlay

75 In section 17, page 33, line 16, leave out <a child> and insert <the person>

### Russell Findlay

76 In section 17, page 33, line 17, leave out <a child> and insert <the person>

### Russell Findlay

77 In section 17, page 33, line 20, leave out <children> and insert <persons>

### Russell Findlay

78 In section 17, page 33, line 22, leave out <children> and insert <persons>

### Russell Findlay

79 In section 17, page 33, line 34, leave out <18> and insert <16>

## After section 21

### Martin Whitfield

80 After section 21, insert—

*<Reporting duty: restorative justice for children>*

#### **Reporting duty: restorative justice for children**

- (1) Within one year of Royal Assent, the Scottish Ministers must carry out a review of current initiatives, including guidance, to support the referral to restorative justice services of children who have, or are alleged to have, committed an offence.
- (2) 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.
- (3) The report under subsection (2) must set out the steps (if any) that the Scottish Ministers plan to take in consequence of the review.
- (4) In this section, “restorative justice services” has the same meaning as in section 5 of the Victims and Witnesses (Scotland) Act 2014.>

**Martin Whitfield**

**81** After section 21, insert—

*<Reporting duty: children who have committed an offence*

**Reporting duty: children who have committed an offence**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting period, prepare and publish a report setting out—
  - (a) the steps that have been taken—
    - (i) to support the use of alternatives to the detention of children who plead guilty to, or are found guilty of, an offence,
    - (ii) to support the rehabilitation and reintegration into the community of children who plead guilty to, or are found guilty of, an offence,
  - (b) the standards against which success of the steps taken is measured,
  - (c) the data and other information that will be collected to demonstrate success,
  - (d) the outcome of the steps taken.
- (2) For the purposes of subsection (1), a reporting period is—
  - (a) the period of one year beginning with the day of Royal Assent,
  - (b) each subsequent period of one year.
- (3) In this section, “rehabilitation” means the elimination or reduction of future offending.>

**After section 23**

**Martin Whitfield**

**82** After section 23, insert—

**<Provision of services to children in secure accommodation**

A secure accommodation service must ensure that any child detained in its establishment is provided with the appropriate care, education and support as mentioned in paragraph 6(b) of schedule 12 (care services: definitions) of the 2010 Act, including—

- (a) advocacy support services,
- (b) emotional and mental health support,
- (c) health care,
- (d) support to maintain contact with the child’s family,
- (e) transition and aftercare support.>

## Section 26

### Russell Findlay

- 83 In section 26, page 45, line 24, leave out subsection (3)

## After section 27

### Ruth Maguire

- 84 After section 27, insert—

#### <PART

#### REVIEW OF RIGHTS OF CHILDREN

#### **Review of rights of children involved in children’s hearings or criminal proceedings**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each review period—
  - (a) undertake a review of the protection of the rights of children who are involved in children’s hearings or criminal proceedings as—
    - (i) a child by whom an offence has been, or is alleged to have been, committed,
    - (ii) a child who has, or appears to have, acted in the way mentioned in section 179A(1)(a)(ii) of the 2011 Act,
    - (iii) a child against or in respect of whom an offence has been, or is alleged to have been, committed,
    - (iv) a child who has been, or appears to have been, harmed by the action or behaviour of a child as mentioned in section 179A(1)(a)(ii) of the 2011 Act,
  - (b) prepare a report on that review.
- (2) The report must, in particular, set out what steps (if any) the Scottish Ministers intend to take as a result of the findings of the review.
- (3) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—
  - (a) publish the report, and
  - (b) lay the report before the Scottish Parliament.
- (4) For the purposes of this section, “review period” means—
  - (a) the period of 3 years beginning with the day of Royal Assent,
  - (b) each subsequent period of 3 years.>

### Martin Whitfield

- 85 After section 27, insert—

**<PART**

REVIEW OF INFORMATION COLLECTION

**Scottish Ministers to review information collection**

- (1) Within six months of Royal Assent, the Scottish Ministers must carry out a review of the information that is required to be collected in order to monitor the operation and impact of this Act and the methodology for doing so.
- (2) The review must, in particular, consider the information to be collected on the characteristics of, and outcomes for, children—
  - (a) referred to a children’s hearing,
  - (b) who plead guilty to, or are found guilty of, an offence.
- (3) For the purposes of subsection (2), the characteristics are—
  - (a) age,
  - (b) disability,
  - (c) gender reassignment
  - (d) race,
  - (e) religion or belief,
  - (f) sex,
  - (g) sexual orientation.
- (4) The Scottish Ministers must, as soon as reasonably practicable after completing the review, publish a report on that review.
- (5) The report must set out—
  - (a) the information to be collected to monitor the operation and impact of the Act, and
  - (b) the methodology for doing so.>

**Martin Whitfield**

**86** After section 27, insert—

**<PART**

REPORTING REQUIREMENTS

**Report on outcomes for children**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting period, prepare and publish a report on the outcomes for children—
  - (a) referred to a children’s hearing,
  - (b) who plead guilty to, or are found guilty of, an offence.
- (2) A report under subsection (1) must, in particular, include information on—
  - (a) the characteristics of the children mentioned in subsection (1)(a) or (b),
  - (b) the provision of social work services to children mentioned in subsection 1(a) or (b),
  - (c) the number of children referred to a children’s hearing on the ground that they have committed an offence who go on to commit further offences,

- (d) the number of children who plead guilty to, or are found guilty of, an offence who go on to commit further offences,
  - (e) the outcomes for children subject to a compulsory supervision order with a movement restriction condition,
  - (f) the outcomes for children subject to a compulsory supervision order with a secure accommodation authorisation,
  - (g) the outcomes for children detained in secure accommodation after pleading guilty to, or being found guilty of, an offence.
- (3) For the purposes of subsection (2)(a), the characteristics are—
- (a) age,
  - (b) disability,
  - (c) gender reassignment,
  - (d) race,
  - (e) religion or belief,
  - (f) sex,
  - (g) sexual orientation.
- (4) For the purposes of subsection (1), a reporting period is—
- (a) the period of one year beginning with the day on which the report under section (*Scottish Ministers to review information collection*) is published,
  - (b) each subsequent period of one year.
- (5) In this section—
- “compulsory supervision order” has the meaning given by section 83 of the 2011 Act,
  - “movement restriction condition” has the meaning given by section 84 of the 2011 Act,
  - “secure accommodation” has the meaning given by section 202(1) of the 2011 Act,
  - “secure accommodation authorisation” has the meaning given by section 85 of the 2011 Act,
  - “social work services” has the meaning given by section 48 of the 2010 Act.>

**Pam Duncan-Glancy**

87 After section 27, insert—

**<PART**

REVIEW OF ACT

**Review of Act**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each review period—
- (a) undertake a review of the operation of this Act, and
  - (b) prepare a report on that review.

- (2) The report must, in particular, set out—
  - (a) whether sufficient resources are in place for the effective implementation of the Act,
  - (b) what steps (if any) the Scottish Ministers intend to take as a result of the findings of the review.
- (3) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—
  - (a) publish the report, and
  - (b) lay the report before the Scottish Parliament.
- (4) For the purposes of this section, “review period” means—
  - (a) the period of one year beginning with the day of Royal Assent,
  - (b) each subsequent period of one year.>

### **Section 31**

#### **Pam Duncan-Glancy**

**88** In section 31, page 46, line 18, at end insert—

- <(2A) The Scottish Ministers may not lay before the Scottish Parliament regulations under subsection (2) until they—
  - (a) undertake a review of whether there are sufficient resources in place for the effective implementation of this Act in—
    - (i) the children’s hearings system,
    - (ii) children’s social work,
    - (iii) secure accommodation,
  - (b) prepare a report on that review, and
  - (c) no later than 6 months after the day of Royal Assent, lay the report before the Scottish Parliament.
- (2B) The report prepared under subsection (2A)(b) must, in particular, set out what steps (if any) the Scottish Ministers intend to take as a result of the findings of the review.>

#### **Pam Duncan-Glancy**

**89** In section 31, page 46, line 18, at end insert—

- <(2A) The Scottish Ministers may not lay before the Scottish Parliament regulations under subsection (2) until the end of the period of one month beginning with the day on which they comply with subsection (2B).
- (2B) The Scottish Ministers must lay before the Scottish Parliament a report setting out why they consider that there are a sufficient number of members of the Children’s Panel for the other provisions of this Act to come into force.>

### **Schedule**

#### **Russell Findlay**

**90** In the schedule, page 47, leave out paragraphs 1 to 4

**Russell Findlay**

91 In the schedule, page 48, leave out paragraph 5A

**Russell Findlay**

92 In the schedule, page 48, leave out lines 33 to 34

**Long Title**

**Russell Findlay**

93 In the long title, page 1, line 1, leave out from <to bring> to <and> in line 2

**Russell Findlay**

94 In the long title, page 1, line 4, leave out <18> and insert <16>

**Russell Findlay**

95 In the long title, page 1, line 5, leave out from <treating> to <and>

**Russell Findlay**

96 In the long title, page 1, line 6, leave out <that system> and insert <the criminal justice system>

**Russell Findlay**

97 In the long title, page 1, line 14, leave out from <to change> to <orders;> in line 15