CHILDREN (CARE, CARE EXPERIENCE AND SERVICES PLANNING) (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Children (Care, Care Experience and Services Planning) (Scotland) Bill, introduced in the Scottish Parliament on 17 June 2025.

2. The following other accompanying documents are published separately:

- a Financial Memorandum (SP Bill 74–FM);
- a Policy Memorandum (SP Bill 74–PM);
- a Delegated Powers Memorandum (SP Bill 74–DPM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 74–LC).

3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

5. The Bill makes provision in two areas:

- Part 1 relates to the children's care system, and
- Part 2 relates to children's services planning.

6. Part 1 is organised into three Chapters, as follows:

- Chapter 1 makes provision in relation to aftercare and corporate parenting duties in relation to persons who are or have been "looked after", in relation to the creation of rights of access to care experience advocacy services and in relation to guidance in relation to care experience.

- Chapter 2 makes provision in relation to profit limitation in the children's residential care sector, requires fostering services to be charities and provides for the establishment and maintenance of a register of foster carers.
- Chapter 3 makes various changes in relation to children's hearings, including removing the child's obligation to attend children's hearings and revising the processes through which section 67 grounds are accepted or established.

7. Part 2 amends Part 3 of the Children and Young People (Scotland) Act 2014 so that any integration joint board which exists in relation to a local authority area is jointly responsible, along with the local authority and relevant health board, for the planning of children's services in the area.

PART 1 – CHILDREN'S CARE SYSTEM

Chapter 1 – Support etc. for persons in or with experience of children's care system

Aftercare

8. Section 29 of the Children (Scotland) Act 1995 (the "1995 Act") places certain duties on, and gives certain powers to, local authorities in relation to the provision of aftercare to young people that were at one stage looked after (within the meaning of that Act). Section 30 of the 1995 Act gives local authorities power to provide financial assistance to a similar category of young people for the purpose of meeting expenses connected with their education and training.

9. Subsection (1) of section 29 of the 1995 Act requires local authorities (except where they consider that the person's welfare does not require the provision of aftercare) to support, advise and assist (that is, provide aftercare to) persons aged 16, 17 or 18 who were looked after on or after their sixteenth birthday, but are no longer looked after. Paragraph (b) of that subsection confers power for the Scottish Ministers by order to specify additional categories of formerly looked after persons in relation to whom the duty set out in subsection (1) is to apply (although that power has not been exercised).

10. In addition, subsection (2) of section 29 of the 1995 Act permits persons aged 19 to 25 (and who are otherwise a person described in subsection (1)) to apply for aftercare from a local authority.

Section 1 – Aftercare etc. for persons looked after before age 16

11. Subsection (2) of section 1 replaces the existing subsection (2) of section 29 of the 1995 Act (with new subsections (2) and (2ZA)). The existing right of persons aged 19 to 25 and who otherwise fall within subsection (1) of that section to apply to a local authority for aftercare is maintained – see new subsection (2ZA)(a). The change is the addition of new subsection (2ZA)(b), which (read with replacement subsection (2)) extends the right to apply to a local authority for aftercare to persons aged 16 to 25 who were not looked after on or after the person's sixteenth birthday but who were looked after at some point prior to that.

12. A person must also not be of a description specified by order under subsection (1)(b) of section 29 in order to fall within subsection (2ZA)(b). If the power under that subsection is

exercised at any point, formerly looked after persons of the description specified in the order will, while aged 16, 17 or 18, fall within subsection (1) (so the local authority will have a duty to provide aftercare, rather than the person merely having a right to apply for it) and, while aged 19 to 25, will have the right to apply for aftercare by virtue of falling within subsection (2ZA)(a).

13. Subsection (3) of section 1 replaces existing subsection (2) of section 30 of the 1995 Act and similarly extends the power of local authorities to provide assistance under that section to persons aged 16 to 25 who were not looked after on or after their sixteenth birthday but were looked after at some point prior to that.

Section 2 – Aftercare for persons looked after in Northern Ireland

14. Subsection (7) of section 29 of the 1995 Act currently has the effect that subsections (1) and (2) of that section apply in relation to persons looked after in England and Wales as they apply in relation to persons looked after in Scotland. Persons looked after in Northern Ireland are not currently covered by section 29 of the 1995 Act.

15. Section 2(2) replaces subsection (7) of section 29 of the 1995 Act with a new subsection (7) which includes persons looked after in Northern Ireland, so bringing such persons who were so looked after on or after their sixteenth birthday (or who are of a description of formerly looked after person specified in an order made under subsection (1)(b) of section 29) within subsections (1) and new subsections (2) and (2ZA)(a) (as inserted by section 1) of section 29 of the 1995 Act.

16. By virtue of new subsection (7) of section 29 of the 1995 Act applying only in relation to the references to persons being looked after in subsection (1) of that section (and not in relation to the references to persons being looked after in new subsection (2ZA)(b)), persons aged 16 to 25 who were looked after in England, Wales or Northern Ireland at some point prior to (but not on or after) their sixteenth birthday will not have the right to apply to a local authority for aftercare.

Corporate parenting

Section 3 – Corporate parenting duties in relation to persons looked after before age 16

17. Part 9 of the Children and Young People (Scotland) Act 2014 provides for certain public bodies to be "corporate parents" in relation to certain persons with care experience. Specifically, section 57 of that Act currently provides that Part 9 applies in relation to children who are looked after by a local authority and persons aged under 26 who were looked after on or after their sixteenth birthday but are no longer looked after – that is, the same group of young people in relation to whom sections 29 and 30 of the 1995 Act currently apply.

18. Section 3 amends section 57 of the 2014 Act in a broadly similar way to the way in which section 1 amends sections 29 and 30 of the 1995 Act. The effect in section 57 is that the corporate parenting duties in Part 9 of that Act will apply to every formerly looked after child and young person from the time they cease to be looked after until they turn 26.

Advocacy services for care-experienced persons

Section 4 – Advocacy services for care-experienced persons

19. Subsection (1) of section 4 enables the Scottish Ministers to make regulations conferring rights of access to care experience advocacy services. Regulations under section 4(1) are subject to the affirmative procedure by virtue of section 24. Subsection (3) requires the Scottish Ministers to ensure that care experience advocacy services are available to the extent necessary for a right conferred by regulations made under subsection (1) to be exercised by every person who has the right.

20. "Care experience advocacy services" are defined in subsection (2) including the purposes for which such services are to be provided (although regulations under subsection (1) may, by virtue of subsection (4)(b), modify subsection (2) to specify additional purposes for which such services may be provided – or remove or vary existing purposes).

21. Regulations under subsection (1) may also contain provision of the type mentioned in subsection (4)(a), namely provision specifying circumstances in or in relation to which a right created by regulations under subsection (1) is (or is not) exercisable and provision specifying particular descriptions of care-experienced persons by whom such a right is (or is not) to be exercisable. For example, provision of the first type could provide that there is no right of access to care experience advocacy services in circumstances where advocacy services provided for in another enactment are available. Provision of the second type could, for example, provide for a person who was looked after for most of their childhood to have a more extensive right of access to care experience advocacy services, while someone who was looked after for a shorter period might have such a right in more limited circumstances.

22. Subsection (4)(c) states that regulations under subsection (1) may also make further provision in relation to care experience advocacy services, with subsection (5) providing an illustrative list of matters that might be covered (including how care-experienced persons are to be informed about the availability of care experience advocacy services).

23. Subsection (6) defines "care-experienced persons" for the purposes of section 4. Such persons include children who are or have been looked after or subject to a kinship care order, as well as adults who were looked after or subject to a kinship care order at any point in their childhood. "Child", "looked after" and "kinship care order" are defined in section 7. The Scottish Ministers may, by regulations subject to the affirmative procedure (again by virtue of section 24), specify additional types of care or support, receipt of which during childhood will mean that a person is "care-experienced" for the purposes of section 4.

24. The Scottish Ministers must consult the persons mentioned in subsection (7) before making regulations under section 4.

Guidance in relation to care experience

Section 5 – Guidance in relation to care experience

25. Subsection (1) of section 5 requires the Scottish Ministers to issue guidance for the purposes stated in that subsection, namely promoting understanding by public authorities and

others exercising functions of a public nature (for example, persons delivering services on behalf of local authorities on a contractual basis) of care-experienced persons and their experiences. Subsection (2) provides an illustrative list of more detailed matters which the guidance may cover, including best practice in using language in a way that avoids stigmatising care experience.

26. Subsection (3) requires public authorities to have regard to the guidance when exercising their functions in relation to persons who are or may be care-experienced. Public authorities must also ensure that arrangements that they enter into with other persons, which involve the other persons exercising functions of a public nature, require those persons to also have regard to the guidance when exercising those functions in relation to persons who are or may be care-experienced. Subsection (4) requires public authorities to take appropriate steps to make persons in relation to whom they exercise functions aware of the guidance.

27. Subsection (6) defines persons who are care-experienced for the purposes of section 6. The definition includes children who are or have been looked after or subject to a kinship care order, as well as adults who were looked after by a local authority or subject to a kinship care order at any point during their childhood. "Child", "looked after" and "kinship care order" are defined in section 7. But the guidance may itself expand the definition of care-experienced person for the purposes of section 5, to include persons cared for or supported in other circumstances during their childhood.

28. Some statutory functions in relation to care-experienced persons are exercisable only in relation to particular descriptions of care-experienced persons (often, persons who were looked after by a local authority while a child) and subsection (5) ensures that public authorities which exercise such functions can take proper account of that fact when having regard, under subsection (3), to the guidance and making people aware, under subsection (4), of the guidance (so as, for example, to avoid misleading people about the particular categories of care-experienced persons in relation to whom the public authority exercises functions).

29. Subsection (7) defines "public authority" and "function".

Section 6 – Guidance in relation to care experience: further provision

30. Section 6 makes further provision in relation to a number of matters relating to guidance under subsection (5), including the consultation that must be carried out before guidance is issued (or revised) and publishing the guidance.

Section 7 – Interpretation

31. Section 7 defines a number of terms which are used in sections 4 to 6 of the Bill. (Most of the other provisions of the Bill insert text into existing Acts – the interpretation of such text is subject to the relevant interpretation provisions of the Act into which the text is being inserted rather than this section.)

Chapter 2 – Provision of children's care services

Requirements on certain care providers

32. Part 5 of the Public Services Reform (Scotland) Act 2010 (the "2010 Act") requires certain care providers, including providers of residential care and fostering services, to be registered under that Part in order to be able to provide care. Failure to comply with requirements imposed by that Part (or by regulations made under it) may lead to cancellation of registration. Providing a care service while unregistered is an offence under section 80 of that Act.

33. Regulations under section 78(2) of the 2010 Act are subject to the affirmative procedure by virtue of subsection (2) of section 104 of the 2010 Act and can make different provision for different purposes by virtue of subsection (1)(c) of that section.

Section 8 – Children's residential care services: profit limitation

34. Section 8 amends Part 5 of the 2010 Act by inserting new sections 78E to 78G into it.

35. Subsection (1)(a) of new section 78E requires the Scottish Ministers to exercise the power to make regulations conferred by section 78(2) of the 2010 Act to impose an "initial information requirement" on persons providing a care home service (defined in paragraph 2 of schedule 12 of the 2010 Act) which is provided wholly or mainly in relation to children and on persons providing a school accommodation service (defined in paragraph 3 of schedule 12 of the 2010 Act) (see subsection (3) of new section 78E).

36. Subsection (4) of new section 78E states that the initial information requirement is a requirement to provide to the Scottish Ministers such financial and other information of a type specified in the regulations (for example, information as to a company's structure) as is required for the purpose of assessing the level of profit being made by persons providing care services of the types mentioned in subsection (3) of new section 78E. The assessment of the level of profit is with a view to determining whether a "profit limitation requirement" should be imposed by virtue of subsection (1)(b) of new section 78E and, if so, how the requirement should be expressed. The time period which the information required by virtue of the initial information requirement is to relate to is also to be specified in the regulations (see subsection (1)(a) of new section 78E).

37. An initial information requirement can be imposed on a type of person mentioned in new section 78E(3) only if no profit limitation requirement is in place in relation to that type of person (subsection (2) of new section 78E). Suppose, for example, that an initial information requirement imposed on care home services of the type mentioned in subsection (3)(a)(i) of new section 78E requires the provision of financial and other information for the period 2025 to 2028. On the basis of that information, the Scottish Ministers proceed to impose a profit limitation requirement on providers of services of that type. Imposition of a profit limitation requirement will be accompanied by the imposition of a "continuing information requirement", which will be used to assess whether the level of profit permitted by the profit limitation requirement should be adjusted – or the profit limitation requirement removed (as well as monitoring compliance with the profit limitation requirement), so the initial information requirement is not needed while a profit limitation requirement is in place. Meantime, though, a further initial information requirement could be imposed on providers of school accommodation services for the period 2028 to 2031. In

addition, if a profit limitation requirement is removed after being made, a further initial information requirement can be imposed to continue monitoring the level of profit being made in the children's residential care sector in order to assess whether a profit limitation requirement should be reimposed at any time.

38. Subsections (6) and (7) define "profit limitation requirement" and "continuing information requirement" (with subsection (8) setting out the purposes for which a continuing information requirement may require information to be provided). A profit limitation requirement is a requirement that the level of profit made by a type of person falling within subsection (3) of section 78E (from the provision of the services mentioned in that subsection) in relation to whom the requirement applies is not to exceed a level specified in (or determined in accordance with) the regulations referred to in subsection (1)(b) of section 78E which impose the requirement. The regulations may also specify how the level of profit being made is to be assessed.

39. New section 78F sets out a number of conditions as to the imposition (or modification) of a profit limitation requirement. Such a requirement may be imposed only if the Scottish Ministers are satisfied that it is necessary to do so, having regard to the public interest in the services mentioned in section 78E(3) being provided on terms which represent value for money and after having regard to the information supplied by virtue of an initial or continuing information requirement – so a profit limitation requirement can only be imposed after the necessary information is collected via imposition of an initial information requirement. In addition, the Scottish Ministers must have regard to the wellbeing of looked after children, the interests of local authorities and the interests of the providers of the services mentioned in section 78E(3).

40. The Scottish Ministers must also consult the persons mentioned in subsection (11) of new section 78E before imposing (or modifying) an initial information requirement, a profit limitation requirement or a continuing information requirement.

41. New section 78G of the 2010 Act allows regulations under section 78(2) to make provision as to the payment of monetary penalties for failure to comply with an initial information requirement, a profit limitation requirement or a continuing information requirement. Such regulations may also make provision as to the Scottish Ministers providing information to the Social Care and Social Work Improvement Scotland (referred to in the 2010 Act as "SCSWIS", but more generally known as the "Care Inspectorate"). This would enable the Care Inspectorate to take steps in relation to the cancellation of the registration of a provider who has failed to comply with an initial information requirement, a profit limitation requirement or a continuing information requirement.

Section 9 – Fostering services to be charities

42. Currently, section 59(3) of the 2010 Act requires fostering services (as defined in paragraph 9 of schedule 12 of that Act, and subject also to subsection (4) of section 59, which makes special provision in relation to the provision of such services by local authorities) to be voluntary organisations. "Voluntary organisation" is defined in section 105 of the 2010 Act to mean a body (other than a public or local authority) the activities of which are not carried on for profit. This includes, but is not restricted to, charities.

43. Subsection (2) of section 9 amends section 59(3) of the 2010 Act to require fostering services to be charities (the existing requirement for adoption services – as defined in paragraph 8 of schedule 12 of the 2010 Act – to be voluntary organisations is restated without change). Subsection (3)(a) of section 9 inserts a definition of "charity" into section 105 of the 2010 Act, while subsection (3)(b) inserts a power for Scottish Ministers to add further descriptions of person who are to fall within the definition of "charity" by regulations. Subsection (4) of section 9 amends section 104 of the 2010 Act to provide that such regulations are subject to the affirmative procedure.

44. Failure by a fostering service to comply with the requirement to be a charity could ultimately lead to cancellation of the fostering service's registration under Part 5 of the 2010 Act. The regulation-making power conferred by section 78(2) of the 2010 Act could also be used to impose additional requirements in relation to the requirement for fostering services to be charities (for example, a requirement for a fostering service to notify the Care Inspectorate (see paragraph 41 above) if the Office of the Scottish Charity Regulator (OSCR) directs the fostering service under section 30(1)(a) of the Charities and Trustee Investment (Scotland) Act 2005 to take steps that OSCR considers necessary for the purpose of the fostering service meeting the charity test set out in section 7 of that Act).

45. Subsection (3)(a)(ii) of section 9 also amends the existing definition of "voluntary organisation" in section 105 of the 2010 Act so as to make clear that that definition continues to include charities (for the purpose of the continuing application of the requirement in section 59(3)(a) of the 2010 Act in relation to adoption agencies).

Register of foster carers

Section 10 – Register of foster carers

46. Section 10 inserts new sections 30A to 30G, which make provision in relation to a register of foster carers, into the 1995 Act.

47. Section 26(1)(a) of that Act enables local authorities to accommodate children who are looked after by them with foster carers ("looked after" being defined in section 17 of that Act). See also the Looked After Children (Scotland) Regulations 2009 (S.S.I. 2009/210) (the "2009 Regulations").

48. Under subsection (1) of new section 30A, the Scottish Ministers may make arrangements for the establishment and maintenance of a register of foster carers for the purposes stated in paragraphs (a) and (b) of that subsection. "Foster carer" is defined in new section 30G (with reference to the 2009 Regulations). Subsection (2) sets out information which the register is, in relation to each foster carer, to include. The Scottish Ministers may specify additional information in relation to foster carers and members of their household which is to be included in the register (by regulations made under subsection (2)(f)). Regulations under subsection (3) may require that certain information in relation to persons who have been considered for approval as a foster carer but not approved be included in the register. Regulations under both subsections are subject to the affirmative procedure (see section 30F). Information for inclusion in the register is to be provided by the fostering services which approved (or did not approve) the person as a foster carer. "Fostering service" is defined in section 30G.

49. Section 30B permits the Scottish Ministers to make further provision in relation to the register of foster carers and the arrangements made under section 30A(1) by regulations (again, subject to the affirmative procedure by virtue of section 30F). Subsection (2) of section 30B provides an illustrative list of matters which may be covered in such regulations. For example, provision of the type mentioned in subsection (2)(a) might provide that foster carers who are only approved under the 2009 Regulations to care for a particular child do not need to be included in the register, while provision of the type mentioned in subsection (2)(b) might be used to specify that information about training and development undertaken by foster carers which requires to be included in the register by virtue of regulations made under section 30A(2)(f) should be updated (for example) annually, with information about the foster care that the foster carer is providing being required to be updated more frequently (section 103(3)(a) of the 1995 Act enables regulations made under that Act to make different provision for different cases).

50. Section 30C makes provision in relation to the disclosure of information from the register of foster carers, which under subsection (1) is not to be open to public inspection or search. The Scottish Ministers may, by regulations (again subject to the affirmative procedure under section 30F), authorise disclosures for certain purposes, subject to any conditions specified in the regulations. Unauthorised disclosure is an offence under subsection (4) (the associated penalties being set out in subsection (6)).

51. Section 30D makes additional provision for the purpose of enabling a person other than the Scottish Ministers to carry out certain functions in relation to the register. See also the definition of "relevant person" in section 30G.

52. Section 30E enables the Scottish Ministers to provide, by regulations subject to the affirmative procedure under section 30F, for the register of foster carers to be operated on a pilot basis for a period of time specified in the regulations. The pilot may involve only certain types of fostering service (for example, those which operate in a particular geographical area) or may involve all fostering services but only in relation to certain matters (or both). Subsections (3) and (4) make provision in relation to the provision of information about the pilot to the Scottish Parliament, both before and after the pilot takes place.

Chapter 3 – Children's hearings

53. References in paragraphs 54 to 119 below to the "2011 Act" are to the Children's Hearings (Scotland) Act 2011.

Composition etc. of Children's Panel, children's hearings and pre-hearing panels

Section 11 – Single member children's hearings and pre-hearing panels

54. Currently, all children's hearings and pre-hearing panels must consist of three members of the Children's Panel (see section 5 of the 2011 Act in relation to children's hearings and section 79(2)(a) of that Act in relation to pre-hearing panels, plus section 4 of that Act for the Children's Panel).

55. Section 11 makes various amendments to the 2011 Act to allow children's hearings and pre-hearing panels, in certain circumstances, to consist of only one member of the Children's Panel, who must be a member appointed to the Children's Panel as a chairing member.

56. Chairing members currently exist and are referred to in the 2011 Act in the context of the current three member children's hearings and pre-hearing panels – see, for example, section 90(1), which requires the chairing member to put the section 67 grounds specified in the statement of grounds prepared by the Principal Reporter to the child and each relevant person in relation to the child. However, they are not separately appointed as such. In order to facilitate the introduction of single member children's hearings and pre-hearing panels, however, and also to clarify the power to appoint to the Children's Panel specialist members with particular qualifications, section 11(2) and (17) amend section 4 and schedule 2 of the 2011 Act respectively to formally provide for the separate categories of ordinary members, chairing members and specialist members of the Children's Panel.

57. Section 11(3) amends section 5 of the 2011 Act to allow the National Convener of Children's Hearings Scotland, the officer created by section 1 of the 2011 Act ("the National Convener") to appoint a single member children's hearing in circumstances in which that is permitted by the 2011 Act (or any other enactment).

58. Section 11(9) adds a new section 89A into Part 9 of the 2011 Act, which permits certain grounds hearings (principally, those arranged by the Principal Reporter under new section 69C of the 2011 Act, inserted by section 14(5), for the purpose of considering the statement of grounds – see paragraph 67 below) to consist of a single (chairing) member of the Children's Panel. New subsections (1A) and (1B) of section 91 of the 2011 Act, inserted by section 11(10)(b), ensure that a grounds hearing that consists of only one member of the Children's Panel cannot go on to make a decision on whether to make a compulsory supervision order in relation to the child – such a decision must always be made by a children's hearing consisting of three members of the Children's Panel.

59. The other circumstances in which a single member children's hearing may be appointed are certain circumstances where the hearing is making (or extending) an interim compulsory supervision order (or making an interim variation of a compulsory supervision order) – see section 11(13), which amends section 96 of the 2011 Act, and also subsection (2) of new section 95A of the 2011 Act, as inserted by section 14(18).

60. Section 11(4) inserts new section 5A into the 2011 Act. New section 5A makes the new provision needed to allow the National Convener to appoint pre-hearing panels which consist of only one (chairing) member of the Children's Panel (and replaces the existing provision made by section 79(2)(a) and (6) of the 2011 Act in relation to pre-hearing panels). The 2011 Act confers certain functions on pre-hearing panels (see section 79 in particular). Rules made under section 177 of the 2011 Act may also specify matters which may be considered by pre-hearing panels. Section 11 does not amend the 2011 Act to specify particular pre-hearing panel functions which may be carried out by single member panels; rather, functions which may be carried out in this way will be specified by rules made by virtue of new section 177(2)(aa) of the 2011 Act, as inserted by section 11(15)(a). (In contrast, there is no provision for rules made under section 177(2) to specify additional cases in which a single member children's hearings may exercise functions

conferred on children's hearings.) Section 11(15)(b) amends section 177(4) of the 2011 Act so that rules made under new section 177(2)(aa) are subject to the affirmative procedure.

61. Whether a single member children's hearing (or pre-hearing panel) should, in a particular case, be used in the circumstances in which such use is permitted will be a matter for the National Convener to decide. Even where single member children's hearings or pre-hearing panels may be constituted, the National Convener will always have the option to instead constitute a three member hearing or panel.

62. Section 6 of the 2011 Act makes more detailed provision about the selection, by the National Convener, of members of children's hearings and pre-hearing panels (providing, for example, that a children's hearing which consists of three members of the Children's Panel should, so far as practicable, include both male and female members of the Panel). Section 11(5) amends section 6 so that it continues to apply only in respect of children's hearings (and pre-hearing panels) which consist of three members of the Children's Panel (and also to require the inclusion of at least one chairing member, now that they are a separate category of member of the Panel). New subsection (4B) of section 6 of the 2011 Act requires the National Convener to have regard, when selecting members for a children's hearing or pre-hearing panel which will consist of three members, to the desirability of consistency of membership in cases where a single member children's hearing or pre-hearing panel has previously dealt with a child's case. (See also new section 5A(2) of the 2011 Act, which replaces the current section 79(6) of the 2011 Act, with regard to consistency of membership between pre-hearing panels and children's hearings.)

63. New section 6A of the 2011 Act (inserted by section 11(7)) makes further provision as to single member children's hearings and pre-hearing panels. In particular, subsection (3) requires the National Convener to ensure, so far as practicable, that the chairing members selected as the member of a single member children's hearing or pre-hearing panel lives or works in the area of the local authority which is the relevant local authority for the child to whom the hearing or panel will relate (see section 201 of the 2011 Act for the meaning of "relevant local authority").

64. Other provisions of section 11 make additional amendments to the 2011 Act that are consequential on the changes discussed above.

Section 12 – Remuneration of Children's Panel members

65. Currently, paragraph 4 of schedule 2 of the 2011 Act restricts the payments which may be made to members (and potential members) of the Children's Panel to allowances.

66. Section 12 amends paragraph 4 of that schedule so that members of the Children's Panel may also be paid remuneration.

Child's attendance at children's hearings and hearings before sheriff

Section 13 – Child's attendance at children's hearings and hearings before sheriff

67. Currently, the default position in the 2011 Act is that a child should attend each time a children's hearing is considering their case – see section 73(2). The same default position applies in relation to proceedings before the sheriff under Part 10 of the 2011 Act – see section 103(2). In

both cases, however, the child may be excused from doing so. In this connection, sections 73(3) and 103(3) set out conditions which must apply in order for the child to be excused from attending.

68. Section 13 removes the child's obligation to attend children's hearings and proceedings before the sheriff under Part 10 of the 2011 Act, although the child will still have a right to attend such hearings and proceedings (see sections 78(1)(a) and 103(4)). In addition, children's hearings and the sheriff will be able to require the child's attendance where this is necessary for a fair hearing or to assist the hearing or the sheriff in making any decision in relation to a child. In deciding whether to require the child's attendance, the children's hearing or the sheriff must have regard to whether attendance would place the child's health, safety or development at risk and whether the child would be able to understand what will happen at the children's hearing or the proceedings before the sheriff. But the need for the children's hearing or sheriff to see the child for the reasons stated above ultimately override these other factors. The amendments to sections 73 and 103 of the 2011 Act needed to effect these changes are set out in section 13(2) and (10).

69. Currently, a pre-hearing panel may decide whether a child should be excused from attending a children's hearing (see section 79(3)(a) and (4) of the 2011 Act). Section 13(5) amends section 79 so that a pre-hearing panel will be able to decide whether to require the child to attend a children's hearing, subject to same rules as set out in the paragraph above. In addition, however, children's hearings which defer decisions to a subsequent children's hearing are specifically empowered, when directing the Principal Reporter to arrange the subsequent children's hearing, to require the child to attend the subsequent hearing – see the amendments made to sections 95, 120 and 139 of the 2011 Act by subsections (8)(b), (15) and (20) of section 13 (subject in each case to the need for the child's attendance to be necessary, after having regard to the factors mentioned in the paragraph above, for a fair hearing or to assist the children's hearing in making a decision in relation to the child).

70. Other provisions of section 13 make amendments to other provisions of the 2011 Act consequential on the removal of the child's obligation to attend children's hearings and proceedings before the sheriff under Part 10.

71. See also the changes made in relation to grounds hearings by section 14 in order to accommodate the fact that the child is no longer obliged to attend.

Grounds hearings

Section 14 – Role of Principal Reporter and grounds hearing

72. Currently, where the Principal Reporter determines under section 66(2) of the 2011 Act that it is necessary for a compulsory supervision order to be made in relation to a child, the next steps are for the Principal Reporter to arrange a children's hearing under section 69(2) of that Act and prepare a statement of grounds under section 89 of that Act. At the children's hearing arranged under section 69(2) (a "grounds hearing"), the chairing member of the hearing must, under section 90 of the 2011 Act, explain each section 67 ground specified in the statement of grounds to the child and each relevant person in relation to the child (except where the child or relevant person would not be capable of understanding the explanation – see section 94(3) of the 2011 Act) and ask them whether they accept the ground and the supporting facts in relation to the ground. The

grounds hearing (which, currently, will always consist of three members of the Children's Panel) will then proceed:

- if sufficient grounds are accepted by both the child and each relevant person in relation to the child, to decide whether to make a compulsory supervision order in relation to the child (or to defer that decision to a subsequent children's hearing, making an interim compulsory supervision order in doing so if necessary) (see sections 91 and 92 of the 2011 Act),
- if the grounds accepted by both the child and each relevant person in relation to the child are not sufficient to proceed as mentioned above, or if a ground is not accepted by the child and each relevant person in relation to the child, to decide whether to refer the case to the sheriff in order to decide whether the ground is established or to discharge the referral to the children's hearing in respect of the ground (see section 93 of the 2011 Act), or
- if the grounds hearing has not explained a ground to the child or a relevant person in relation to the child due to a lack of capacity to understand as mentioned above, or if the child or a relevant person in relation to the child has not understood an explanation given in accordance with section 90, to refer the case to the sheriff to determine whether a ground is established (section 94).

73. Where the case is referred to the sheriff, an interim compulsory supervision order may be made if necessary. Referral to the sheriff will, following proceedings under Part 10 of the 2011 Act, result in a determination as to whether each ground referred is established or not. If a ground is established, or if the ground(s) referred to the sheriff are found not to be established but other grounds were established at the grounds hearing, the case will be referred back to a children's hearing to determine whether to make a compulsory supervision order in relation to the child. Otherwise, the child's referral to the children's hearing will be discharged. (See section 108 of the 2011 Act.)

74. This process means that:

- even where the Principal Reporter is aware that the grounds are unlikely to be accepted by the child or a relevant person in relation to the child at the grounds hearing, a grounds hearing must still be held before the case can be referred to the sheriff, and
- even where there is no possibility of the child (or a relevant person in relation to the child) understanding a ground (for example, because the child is very young), a grounds hearing must still be held before the case can be referred to the sheriff. In particular, referral to the sheriff is necessary even where the child is very young and all of the relevant persons in relation to the child accept all of the grounds (although section 106 of the 2011 Act does permit the sheriff to dispense with a full hearing in such cases).

75. Section 14 makes a number of changes to this overall process, with changes of particular significance being made by section 14(5) and section 14(12).

76. **Firstly**, new sections 69A to 69G of the 2011 Act, inserted by section 14(5), set out a new process following a determination by the Principal Reporter under section 66(2) that it is necessary for a compulsory supervision order to be made in relation to a child. Instead of immediately

arranging a children's hearing to consider the statement of grounds (now prepared under section 69(1A) of the 2011 Act, with the existing section 89 being repealed – see subsections (3)(b) and (11) of section 14), the Principal Reporter has a range of options to consider, as follows:

- **section 69B**: if the Principal Reporter considers that each section 67 ground specified in the statement of grounds is likely, at a grounds hearing, to be accepted (if each relevant person in relation to the child has capacity to understand an explanation of each ground under section 90) by each such person and (if the child has such capacity) the child, the Principal Reporter must arrange a children's hearing for the purpose of considering (provided the grounds are actually accepted at the grounds hearing) whether to make a compulsory supervision order in relation to the child. By virtue of new section 89A of the 2011 Act (inserted by section 11(9) – see paragraph 58 above), a children's hearing arranged under section 69B must consist of three members of the Children's Panel (as, if the Principal Reporter's view is correct, the grounds hearing should be able to move quickly on from acceptance of grounds to a decision on whether a compulsory supervision order needs to be made in respect of the child – a matter which must be dealt with by a three member hearing).
- **section 69C**: if the Principal Reporter considers that it is possible that at least one of the section 67 grounds specified in the statement of grounds will be accepted (if each relevant person in relation to the child has capacity to understand an explanation of each ground under section 90) by each such person and (if the child has such capacity) the child, the Principal Reporter must arrange a children's hearing, either for the purpose of considering (provided sufficient grounds are actually accepted at the grounds hearing) whether to make a compulsory supervision order in relation to the child or for the purpose of considering the statement of grounds. In the former case, the children's hearing must consist of three members of the Children's Panel (and may proceed to decide on whether to make a compulsory supervision order in relation to the child). But in the latter case, the children's hearing may consist of either one member or three members of the Children's Panel (again, see section 89A) – and, if it consists of only one member, cannot proceed to make the decision on whether to make a compulsory supervision order in relation to the child, even if sufficient grounds are accepted (see section 91(1A) and (1B) (inserted by section 11(10)(b) – see paragraph 58 above). These options are also available where the Principal Reporter is unable to form a view as to the likelihood of the persons mentioned above accepting the grounds (see section 69C(2)(b)(ii)) or as to the capacity of a relevant person to understand an explanation of each ground (section 69C(3)).
- **section 69D**: if the Principal Reporter considers that it is unlikely that one or more of the section 67 grounds would be accepted (if each relevant person in relation to the child has capacity to understand an explanation of each ground under section 90) by each such person and (if the child has such capacity) the child, the Principal Reporter must make an application directly to the sheriff to determine whether any of the grounds are established.
- **section 69E**: if the Principal Reporter considers that a relevant person in relation to the child does not have capacity to understand an explanation of each section 67 ground specified in the statement of grounds under section 90, the Principal Reporter again must make an application directly to the sheriff to determine whether any of the grounds are established.

77. Where the Principal Reporter proceeds under section 69D or 69E, therefore, no grounds hearing is necessary. Instead, the question of whether any of the section 67 grounds specified in the statement of grounds are established will be determined by the sheriff under Part 10 of the 2011 Act. If any grounds are so established, the case will be referred to a children's hearing under section 108 (and, if not, the referral will be discharged under that section).

78. New section 71A of the 2011 Act (inserted by section 14(7)) requires the Principal Reporter, where proceeding under section 69D or 69E, to arrange a children's hearing for the purpose of deciding whether to make an interim compulsory supervision order in relation to the child if the Principal Reporter considers that the nature of the child's circumstances are such that for the protection, support, guidance, treatment or control of the child it may be necessary as a matter of urgency to make such an order. New section 95A of the 2011 Act (inserted by section 14(18)) permits the children's hearing arranged under section 71A to make an interim compulsory supervision order if it considers that the making of such an order is necessary, as outlined above. A children's hearing arranged under section 71A may consist of either three members of the Children's Panel or one such member.

79. Section 69A obliges the Principal Reporter (subject to subsection (8) of the section) to endeavour to engage with the child and each relevant person in relation to the child prior to deciding which of sections 69B to 69E to proceed under. Subsections (3)(a), (4), (5) and (6) of section 69A provide more detail on what that engagement, if it takes place, is to cover, while subsection (7) provides that, where the Principal Reporter becomes aware that the child intends to make use of children's advocacy services (see section 122 of the 2011 Act), the Principal Reporter must inform that advocacy worker of when and where the children's hearing arranged under section 69B or 69C, or the hearing before the sheriff by virtue of section 69D or 69E, will take place.

80. Information obtained as a result of section 69A, together with other information held by the Principal Reporter, may be used to prepare the report required under section 69G. The report will, in particular, provide information for use by the children's hearing or sheriff in cases where the child does not intend to attend the children's hearing arranged under section 69B or 69C or the hearing before the sheriff by virtue of section 69D or 69E.

81. New section 69F contains provision currently included in sections 69(3) and 72 of the 2011 Act, which relate to the particular case where the Principal Reporter's determination under section 66(2) of the 2011 Act arises from the Principal Reporter receiving information under section 53 of the Criminal Justice (Scotland) Act 2016 and the child is, at the time that information is received, being kept in a place of safety under section 65(2)(b) of the 2011 Act. In this case, a children's hearing must be arranged to take place no later the third day after the receipt of information (as is the case currently).

82. New section 71B of the 2011 Act (inserted by section 14(7)) ensures that the new procedures set out in sections 69A to 69G also apply where the possibility of new 67 grounds applying arise in relation to a child who is already subject to a compulsory supervision order (but with references to a compulsory supervision order being made or not made being read as references to the existing compulsory supervision order being reviewed or not reviewed). Equivalent

provision is already made in relation to Parts 9 and 10 of the 2011 Act by sections 97 and 118 of the 2011 Act respectively.

83. **Secondly**, section 14(12) inserts new sections 89B and 89C into Part 9 of the 2011 Act and replaces the existing section 90 with replacement section 90 and new section 90A. Under section 89B, a grounds hearing starts (whether or not the child is in attendance – the child's obligation to attend unless excused having been removed by the amendments to the 2011 Act made by section 13) with consideration of the child's capacity to understand an explanation of each section 67 ground specified in the statement of grounds. This is already the starting point for grounds hearings in practice as, although current section 90(1) of the 2011 Act provides for grounds hearings to open with the grounds being explained to the child and each relevant person in relation to the child, section 94(3) provides that this need not be done if the child or relevant person would not be capable of understanding such an explanation.

84. The point of difference is that, currently, the child or a relevant person lacking capacity to understand a ground will (unless the referral in relation to the ground is discharged under section 94(2)(b) of the 2011 Act) automatically result in an application to the sheriff to determine whether the ground is established. Section 89B provides for a different possibility, namely that, if satisfied that the child would not be capable of understanding an explanation of a ground, the grounds hearing may, if it considers it appropriate, proceed on the basis of the view of each relevant person as to acceptance (or otherwise) of each ground only. That is, the children's hearing will, in cases where the child lacks capacity but sufficient grounds are accepted by each relevant person in relation the child, be able to proceed to decide on whether to make a compulsory supervision order in relation to the child, without an application to the sheriff being required. (The ability to proceed *immediately* to decide on whether to make a compulsory supervision order will depend, however, on whether the grounds hearing consists of three members of the Children's Panel or only one such member – see new subsections (1A) and (1B) of section 91 of the 2011 Act, as inserted by section 11(10).)

85. An application to the sheriff under section 93 of the 2011 Act will still (unless the referral is discharged under subsection (2)(b) of that section) be required in a case where the child lacks capacity to understand an explanation of a ground but the ground is not accepted by each relevant person. In addition, the grounds hearings retains an ability under section 94 of the 2011 Act (as amended by section 14(15)(a)) to require that an application be made to the sheriff for a determination as to whether the ground is established if it does not consider it appropriate to proceed only on the basis of the views of each relevant person in relation to the child as to acceptance (or otherwise) of a ground (or to discharge the referral in relation to the ground). See also new section 94A of the 2011 Act (see paragraphs 94 and 95 below).

86. The power under subsection (4) of new section 89B to proceed only on the basis of the views of each relevant person in relation to the child also applies where the child is not in attendance and the grounds hearing is satisfied on the basis of information before it (for example, the Principal Reporter's report under new section 69G) that that child, despite potentially having capacity to understand an explanation of a ground, has not in fact understood such an explanation given by the Principal Reporter.

87. If the grounds hearing is not satisfied as mentioned in section 89B(3) (that is, if the grounds hearing considers that the child does have capacity to understand an explanation of a ground or has understood such an explanation or if there is an element of doubt on these points), section 89B(5) provides that the grounds hearing must proceed in accordance with new section 89C where the child is not in attendance or replacement section 90 where the child is in attendance.

88. New section 89C of the 2011 Act allows each section 67 ground to be taken for the purposes of the Act to be accepted (or not accepted) by the child, despite the child not being in attendance at the grounds hearing (the child's obligation to attend having been removed by the amendments of the 2011 Act made by section 13). Such acceptance (or non-acceptance) will, together with the views of each relevant person in relation to the child obtained under section 90(4)(b), determine whether the grounds hearing proceeds under section 91 or 93 (or 94). The grounds hearing must be satisfied on the basis of the information available to it (for example, the Principal Reporter's report under section 69G) that the child either accepts or does not accept the ground in order to proceed in this way. If the grounds hearing is not so satisfied it must (subject to section 73) require the child to attend a rearranged grounds hearing, which will proceed under section 90.

89. Where the grounds hearing is required to proceed by section 89B(5)(b) (due to the child being in attendance at the grounds hearing) or where the child is in attendance following a requirement under section 89C(8), section 90(3) of the 2011 Act requires the chairing member to explain each relevant ground to the child and ask whether the child accepts each relevant ground. Section 90(9) defines "relevant ground" for this purpose – it includes each section 67 ground specified in the statement of grounds, other than grounds in relation to which the grounds hearing is satisfied as mentioned in section 89B(3) or which are already accepted or not accepted by virtue of section 89C. The child's acceptance or otherwise of each relevant ground will, together with the views of each relevant person in relation to the child, determine whether the grounds hearing proceeds under section 91 or 93 (or 94). The exception to this is where the grounds hearing is satisfied, following a ground having been explained to the child under section 90(3), that the child has not in fact understood the explanation of the ground. In this case, the grounds hearing again has the option, if it considers it appropriate, to proceed only on the basis of the views of each relevant person in relation to the child (see subsections (7) and (8) of replacement section 90). Where the grounds hearing considers that this course of action is not appropriate, it must either require an application to be made to the sheriff to determine whether the ground is established or discharge the referral in relation to the ground (see section 94 of the 2011 Act, as amended by section 14(15)(a)). Again, see also new section 94A of the 2011 Act (see paragraphs 94 and 95 below).

90. The grounds hearing must also (as at present) explain each section 67 ground specified in the statement of grounds to each relevant person in relation to the child – see replacement section 90(4). Section 90(5) contains, in relation to relevant persons, the provision previously contained in section 94(3) (under which no explanation need be given if a relevant person would not be capable of understanding a ground) (section 94(3) of the 2011 Act is repealed by section 14(15)(b)).

91. Section 90(2) permits the grounds hearings to discuss the statement of grounds and the Principal Reporter's report under section 69G with the child and each relevant person in relation to the child before explaining the grounds under section 90(3) and (4). Such a discussion is likely to be particularly relevant in cases where the grounds hearing has been arranged under section 69C

for the purpose of considering the statement of grounds (due to the Principal Reporter considering that acceptance of the grounds is only a possibility or there being some other uncertainty). Section 90(6) allows the chairing member to explain the grounds to the child and each relevant person in relation to the child in such terms as the grounds hearing considers appropriate to the child or relevant person. That is, the explanation need not involve the statement of grounds being read *verbatim*.

92. New sections 90A and section 89C(3) and (4)(a) of the 2011 Act (all inserted by section 14(12)) make provision as to what is to happen in cases where only some of the supporting facts in relation to a section 67 ground specified in the statement of grounds are accepted by the child or a relevant person in relation to the child.

93. Section 14(13) and (14) make consequential amendments to sections 91 and 93 of the 2011 Act in relation to what constitutes acceptance (or otherwise) of the grounds in light of the various changes discussed in the paragraphs above.

94. Section 14(16) inserts a new section 94A into the 2011 Act. Section 94A applies where the ground hearing decides to proceed as mentioned in section 89B(4) or 90(8) (that is, to proceed on the basis of the views of each relevant person in relation to the child as to acceptance or otherwise of a ground, the grounds hearing considering either that the child would not be capable of understanding, or has in fact not understood, an explanation of the ground).

95. The child, a relevant person in relation to the child or a safeguarder appointed in relation to the child may request the grounds hearing to require the Principal Reporter to make an application to the sheriff to determine whether the ground is established. Such a request must be complied with. But the request may only be made up to the point at which proceedings move on to the question of whether a compulsory supervision order should be made in relation to the child. An application under section 94A falls to be considered under Part 10 of the 2011 Act in the normal way, with the case being referred back to a children's hearing under section 108 for a decision on the making of a compulsory supervision order if the ground referred is established (or if the ground is not established but one or more other grounds were accepted at the grounds hearing). (Otherwise, the referral of the child to the children's hearing is discharged.)

96. Subsections (19) to (29) of section 14 make amendments to Parts 10, 11, 13 and 20 of the 2011 Act which are necessary in consequence of the other changes made to the Act by section 14 (in particular, to reflect applications to the sheriff made under new sections 69D, 69E and 94A).

Relevant persons

97. The children's hearing system as set out in the 2011 Act includes a central role for "relevant persons" in relation to the child. For example, section 90 of the 2011 Act requires the section 67 grounds set out in the statement of grounds prepared by the Principal Reporter in relation to the child to be put to each relevant person in relation to the child. Section 200 of the 2011 Act defines "relevant person". In addition to the persons listed there, the power under section 200(1)(g) has been exercised to add to the list – see The Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013 (S.S.I. 2013/193).

98. The 2011 Act further provides for certain individuals who do not fall within the section 200 definition to be deemed to be relevant persons in relation to the child – see section 81 of the 2011 Act. "Deemed" relevant person status can then be removed, in certain circumstances, under section 81A of the 2011 Act.

Section 15 – Powers to exclude persons from children's hearing

99. This central role for "relevant persons" is, however, subject to section 76 of the 2011 Act, under which a relevant person in relation to a child can be temporarily excluded from a children's hearing for certain reasons. Section 15(2) amends section 76 so as to slightly expand the circumstances in which a relevant person can be so excluded (see new subsection (2)(a) of section 76 of the 2011 Act, as inserted by section 15(2)(b)(ii)) and also so as to allow a decision on whether to exclude a relevant person from a children's hearing to be made in advance of the hearing by a pre-hearing panel (see new subsection (1) of section 76 of the 2011 Act, as inserted by section 15(2)(a) and also the amendment of section 79(3) of the 2011 Act made by section 15(4)). The child and any relevant person in relation to a child also have a right to attend any pre-hearing panel and so the power to exclude a relevant person for the reasons set out in section 76 is also extended to those panels.

100. Section 77 of the 2011 Act makes equivalent provision to that contained in section 76 (in relation to relevant persons) in relation to representatives of relevant persons. Section 15(3) accordingly makes equivalent changes to that section as are described above in relation to section 76 of the 2011 Act.

Section 16 – Removal of relevant person status

101. As mentioned above, "deemed" relevant person status can be removed from an individual (in certain circumstances). Currently, however, the 2011 Act does not include any specific procedure to remove relevant person status from a person who is such a person by virtue of section 200, even if the exercise by that person of the rights that relevant person status affords the person are causing serious harm to the child, in a way that cannot be mitigated by the children's hearing (such as by ensuring that the child and the relevant person do not both have to be present at the hearing at exactly the same time).

102. Section 16(2) inserts new sections 128A and 128B into the 2011 Act. These sections provide a new procedure through which relevant person status can, in certain circumstances, be removed from a person who is a relevant person under section 200 of the 2011 Act.

103. Subsection (1) of new section 128A sets out when the new procedure can be used, which is any time between a referral first being made in relation to a child by the Principal Reporter (to either a children's hearing or to sheriff under section 69D or 69E (as inserted by section 14 of the Bill)) and that referral being discharged or a compulsory supervision order made in relation to the child ceasing to have effect (for which see subsection (7)). The procedure can be initiated in a number of ways. The child, another relevant person in relation to the child or a safeguarder appointed in relation to the child can, under subsection (2)(a) request the Principal Reporter refer the issue mentioned in subsection (3) to a children's hearing. The Principal Reporter must comply with such a request. Alternatively, the Principal Reporter can refer the issue to a children's hearing

on the Principal Reporter's own initiative (subsection (2)(b)) or a children's hearing can consider the issue on its own initiative (subsection (5)).

104. The issue that the children's hearing then has to consider is whether the relevant person in relation to the child (who cannot be a "deemed" relevant person) should cease to be such a person. Subsection (5) of new section 128A sets out the test that the children's hearing is to apply in considering the issue. Where the children's hearing is satisfied that the test is met, it must direct the Principal Reporter to make an application to the sheriff to determine the issue (subsection (6) of new section 128A).

105. New section 128B deals with the sheriff's consideration of an application made under section 128A(6). By virtue of subsection (2), the application must be heard and disposed of within 3 days of the application being made. By virtue of subsection (3), the child may be required to attend the hearing and the child and each relevant person in relation to the child (who will at this point include the person to whom the application relates) may be represented at the hearing by another person.

106. Subsection (4) sets out the test which the sheriff is to apply in considering the application (which is the same as the test to be applied by the children's hearing under section 128A(5)). Where the sheriff is satisfied that the test is met, they must make an order that the relevant person to whom the application under section 128A is no longer such a person, for the purposes of Parts 7 to 14, 15, 17 and 18 of the 2011 Act (essentially, all purposes relating to the child's interaction with the children's hearing system, other than appeals under new sections 164A and 164B, as inserted by section 16(3)). The removal of relevant person status does not apply forever, but only until the referral or compulsory supervision order mentioned in section 128A(1) is discharged or ceases to have effect. This means, for example, that if a compulsory supervision order is made in relation to a child when the child is aged 8 and a relevant person in relation to the child has their status as such removed while that order has effect, the person would once again be a relevant person in relation to the child (subject to them still falling within section 200 of the 2011 Act) if that order ceased to have effect and the child was referred back into the children's hearing system at the age of 14. Where a person's status as a relevant person is removed, the sheriff may also specify steps that are to be taken by subsequent children's hearings in relation to the child to minimise the impact of this change on the rights of the person who has ceased to be a relevant person.

107. Where the sheriff is not satisfied as mentioned in new section 128B(4), the application under section 128A must be dismissed (with the effect that the relevant person in relation to the child to whom the application related remains a relevant person). The sheriff may, however, specify steps that subsequent children's hearings are to take to minimise the problem which gave rise to the application under section 128A (see subsection (5)(b) of section 128B).

108. Section 15(3) inserts new sections 164A and 164B into the 2011 Act. Section 164A allows the sheriff's decision under section 128B to be appealed to the Sheriff Appeal Court, while section 164B permits the decision of the Sheriff Appeals Court under section 164A, in limited circumstances, to be further appealed to the Court of Session.

Other changes

Section 17 – Tests for referral to Principal Reporter and making of compulsory supervision order or interim compulsory supervision order

109. Section 17 amends the 2011 Act in two ways:

- first, subsections (2) to (4) amend, respectively, sections 60, 61 and 64 so as to change the second part of the test that triggers the duty (or, in the case of section 64, the power) to provide information about a child to the Principal Reporter from "it might be necessary for a compulsory supervision order to be made in relation to the child" to "it is likely to be necessary to make a compulsory supervision order in relation to the child". A similar change is made in section 66(1)(b) (which sets out when the Principal Reporter may, on their own initiative, decide to make a determination under section 66(2)).
- secondly, it amends a number of provisions to add the word "support", with the effect that the current phrase "protection, guidance, treatment or control" becomes "protection, support, guidance, treatment or control". This phrase appears in the 2011 Act in two contexts. First, it forms part of the test set out in the sections referred to in the bullet-point above (for example, in section 60, the first part of the test which triggers the duty to pass information to the Principal Reporter, as amended by section 17(6) and (7), is that a local authority considers that the child is in need of protection, support, guidance, treatment or control). Secondly, it is part of the test for the making (or continuation, variation or interim variation) of a compulsory supervision order and for the making (or extension or extension and variation) of an interim compulsory supervision order.

Section 18 – Information about referral, availability of children's advocacy services etc.

110. Part 6 of the 2011 Act makes provision for information about a child to be passed to the Principal Reporter in certain circumstances. Provision of such information triggers the requirement under section 66(2) of that Act for the Principal Reporter to investigate whether a section 67 ground applies, and whether a compulsory supervision order may need to be made, in relation to the child. The Principal Reporter can also initiate such an investigation themselves under section 66(1)(b) of the 2011 Act.

111. Section 18 amends sections 60, 61 and 64 of the 2011 Act with the effect that where a local authority, a police constable or a health board pass information about a child to the Principal Reporter under those sections, they must also provide the child with information about what will happen next, about the children's hearing system generally and about the availability of children's advocacy services to assist in supporting and representing the child (see section 122 of the 2011 Act). But these duties do not apply where, as may sometimes be the case, the local authority, police constable or health board has not informed the child about the passing of information to the Principal Reporter.

112. Section 18 also amends section 66 of the 2011 Act to impose an equivalent duty on the Principal Reporter when they are required to make a determination in relation to a child under subsection (2) of that section (including where they initiate the making of such a determination themselves).

Section 19 – Period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect

113. The 2011 Act empowers a children's hearing (or the sheriff) to make an interim compulsory supervision order in a number of circumstances. Section 86 of the 2011 Act defines "interim compulsory supervision order" and includes provision as to when such an order expires. Except where one of the events mentioned in section 86(3)(a) to (c) happens first, the order will expire 22 days after it is made (or extended or extended and varied).

114. Where the test for the making of an interim compulsory supervision order includes the requirement that the nature of child's circumstances is such that it is necessary as a matter of urgency for an interim compulsory supervision order to be made, the "backstop" for expiry of the order will continue to be 22 days since the making of the order. But section 19(2) amends section 86(3) of the 2011 Act so that, where the test for making the order does not include reference to urgency, the "backstop" will instead be 44 days since the making (or the extension or extension and variation) of the order.

115. Sections 97 and 118 of the 2011 Act provide for Parts 9 and 10 of the Act (which include most of the powers to make interim compulsory supervision orders) to apply in cases where a child is already subject to a compulsory supervision order. In particular, sections 97(5) and 118(3) of the 2011 Act provide that, in this circumstance, reference to interim compulsory supervision orders are instead to be read as references to interim variations of the existing compulsory supervision order. Section 140 of the 2011 Act defines "interim variation of compulsory supervision order" and, in line with section 86, includes provision as to when such variations expire. Section 19(3) amends section 140 in the same way as described above in relation to section 86 – the "backstop" of 22 days from the day the order is varied is retained where the variation needed to be made as a matter of urgency, while in other cases it is extended to 44 days.

Section 20 – Making of further interim compulsory supervision orders

116. A children's hearing may, where it directs the Principal Reporter to make an application to the sheriff under section 93 of the 2011 Act for a determination as to whether a section 67 ground is established, make an interim compulsory supervision order (see section 93(5)). Section 93(5) also applies where an application is made to the sheriff under section 94 or under new section 94A (inserted by section 14(16)). Two further interim compulsory supervision orders may (if still necessary) be made by a children's hearing under section 96(3) in the period before the sheriff hears the application. Should those orders still not cover the period up to the hearing, the Principal Reporter may apply to the sheriff for an extension of the interim compulsory supervision order then in force under section 98 – although section 98 refers that order being made under section 93(5), rather than under 96(3). Section 20 makes some minor, technical changes to both sections 96 and 98 of the 2011 Act in order to improve the congruence between the two in this respect.

Section 21 – Principal Reporter's power to initiate review of compulsory supervision order

117. Part 13 of the 2011 Act sets out a number of circumstances in which a compulsory supervision order in relation to a child must be reviewed. In particular, the Principal Reporter must initiate such a review if the compulsory supervision order will expire within 3 months and the order would not otherwise be reviewed before its expiry (section 133 of the 2011 Act).

118. Section 21 inserts a new section 133A into the 2011 Act, which confers on the Principal Reporter an additional power to initiate a review of a compulsory supervision order. This power may be exercised where the Principal Reporter has, in the period since the last children's hearing held in relation to the child, become aware of new information which suggests that the compulsory supervision order ought to be terminated or varied (provided that a review has not already been set in motion by one of the other provisions which trigger a review). The new power may not be exercised, however, where the Principal Reporter considers that a new section 67 ground applies in relation to the child (that will instead result in a new grounds hearing being arranged – see new section 71B of the 2011 Act, inserted by section 14(7), and existing sections 97 and 118 of the 2011 Act).

119. Following initiation of a review under section 133A, the Principal Reporter must arrange a children's hearing for the purpose of carrying out the review under section 137 of the 2011 Act. That children's hearing has power to terminate, vary or continue the compulsory supervision order (see section 138 of the 2011 Act).

PART 2 – CHILDREN'S SERVICES PLANNING

Section 22 – Children's services planning

120. Part 3 of the Children and Young People (Scotland) Act 2014 makes provision for the planning of children's services.

121. Currently, the principal functions relating to children's services planning are conferred jointly on local authorities and health boards – for example, the duty to prepare a children's services plan for a local authority area under section 8 of that Act. But certain other bodies, referred to as "other service providers", also have functions in relation to children's services planning. For example, when preparing a children's services plan, the local authority and health board must consult the other service providers. And the other service providers are required, so far as practicable, to provide services in the local authority in accordance with the children's services plan for the area.

122. An integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014 is, currently, an "other service provider" for the purposes of children's services planning.

123. Section 22 of the Bill changes this, so that functions relating to children's services planning which currently require to be carried out jointly by the local authority and the health board that covers that area will in future be required to be carried out jointly by the local authority, the health board that covers that area and any integration joint board covering the area. (Part 1 of the Public Bodies (Joint Working) (Scotland) Act 2014 provides for a number of different integration models, so there will not always be an integration joint board for a particular local authority area.)

124. Subsection (2)(a) of section 22 amends section 7(1) of the Children and Young People (Scotland) Act 2014 to introduce a new label for the local authority, health board and any integration joint board when acting jointly under Part 3 of that Act: "lead children's services planning bodies". Subsection (2)(b) removes integration joint boards from the definition of "other

service provider". Subsections (2)(b) to (d) and (3) to (12) of section 22 replace the current references to local authorities and health boards (acting jointly) with references to the lead children's services planning bodies and make other consequential changes in order to effect the change described in the paragraph above.

PART 3 – FINAL PROVISIONS

Section 23 – Ancillary provision

125. Section 23 enables the Scottish Ministers to make ancillary provision, by regulations, to give full effect to the Act that will result from the Bill (if enacted) or any provision made under it. This includes power to modify other enactments (including the Act itself).

126. Regulations under section 23 that amend the text of primary legislation are subject to the affirmative procedure. Otherwise, regulations under section 23 are subject to the negative procedure (see section 24).

Section 24 – Regulation-making powers

127. Section 24 makes provision in relation to the regulation-making powers that sections 4, 23 and 25 of the Bill confer on the Scottish Ministers, including the Parliamentary procedure (if any) to which such powers are subject. Negative procedure is defined in section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010, while affirmative procedure is defined in section 29 of that Act.

128. A number of other provisions in the Bill insert into existing Acts provisions which confer power to make regulations on the Scottish Ministers. Such regulation-making powers are subject to the procedures set out in the existing Act into which they are inserted.

Section 25 – Commencement

129. Subsection (1) of section 25 provides for Part 3 to come into force on the day after Royal Assent. All other provisions will require to be commenced by regulations made by the Scottish Ministers under subsection (2) of section 25. Regulations under subsection (2) may provide for different provisions to come into force on different dates (section 24(1)). Such regulations may also include transitional, transitory or saving provision. Commencement regulations are not subject to any Parliamentary procedure.

Section 26 – Short title

130. Section 26 provides that, if enacted (in 2026), the short title of the Act which will result from the Bill will be "Children (Care, Care Experience and Services Planning) (Scotland) Act 2026".

CROWN APPLICATION

131. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, this Bill applies to the Crown in the same way as it applies to everyone else. However, where the Bill amends an existing enactment, it makes no change to the application of the enactment to the Crown.

This document relates to the Children (Care, Care Experience and Services Planning) (Scotland) Bill (SP Bill 74) as introduced in the Scottish Parliament on 17 June 2025

CHILDREN (CARE, CARE EXPERIENCE AND SERVICES PLANNING) (SCOTLAND) BILL

EXPLANATORY NOTES

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: www.parliament.scot/documents