

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Rights of Children

Section 1 – Duties of Scottish Ministers in relation to the rights of children

4. **Section 1** places duties on the Scottish Ministers in relation to the rights of children as set out in the UNCRC and its First and Second Optional Protocols.
5. Subsection (1)(a) places a duty on the Scottish Ministers to keep under consideration whether there are any steps which they could take to give better or further effect to the UNCRC requirements. In effect, this means a requirement on the Scottish Ministers to keep under review their approach to implementation of the UNCRC in the exercise of their functions. Subsection (1)(b) requires the Scottish Ministers to take steps which they believe to be appropriate in consequence of that consideration. Subsection (2) provides that when complying with their duty under subsection 1(a) the Scottish Ministers must take such account as they consider appropriate of any relevant views of children of which they are aware. There is no obligation on Scottish Ministers to actively obtain these views.
6. Subsection (3) places a duty on the Scottish Ministers to promote public awareness and understanding of the rights of children. The term “rights of children” has a different definition to the term “UNCRC requirements” for these purposes. An interpretation of both terms is included at section 4. This provision reflects the purpose behind Article 42 of the UNCRC and introduces into Scots law a new domestic requirement on the Scottish Ministers to raise awareness and understanding of the UNCRC amongst children, those individuals working with children and members of the public. This could involve, for example, targeted work within schools, the development of information materials, the preparation of guidance for professionals and the provision of support to other organisations who have a role in promoting children’s rights in Scotland.
7. Subsection (4) requires the Scottish Ministers to lay a report before the Scottish Parliament every 3 years detailing the steps they have taken in the 3 year period just ended to give better or further effect to the UNCRC requirements and to promote public awareness and understanding of the rights of children. The report must also include details of the steps that the Scottish Ministers intend to take in the current 3 year period in pursuance of those same aims. Subsection (5) places a duty on Scottish Ministers to take appropriate steps to obtain the views of children on what their plans for the 3 year period now starting should be.
8. Subsection (6) defines what is meant by “3 year period”. This is the period of 3 years beginning with the day the section comes into force and each period of 3 years thereafter.

9. Subsection (7) requires the Scottish Ministers to publish the report they have laid before the Scottish Parliament as soon as practicable.

Section 2 – Duties of public authorities in relation to the UNCRC

10. Subsection (1) requires each identified public authority, as listed, or within a description listed, in schedule 1, to publish (in any way they think is appropriate) a report every 3 years setting out the steps it has taken in the 3 year period just ended to give better or further effect within its areas of responsibility to the UNCRC requirements. The public authority may choose to satisfy the duty through, for example, annual reports. The public authority can also satisfy the duty through preparation of a specific report prepared for the purpose of fulfilling this duty, should it choose.
11. Subsection (3) makes clear that two or more of the public authorities to whom the duty applies may satisfy the duty through preparation and publication of a joint report.

Part 2 – Commissioner for Children and Young People In Scotland

Section 5 – Investigations by the Commissioner

12. Section 7 of the Commissioner for Children and Young People (Scotland) Act 2003 (“the 2003 Act”) provides for the Commissioner to undertake an investigation into whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people. Any such investigation must focus on a matter of particular significance to children and young people generally or to particular groups of children and young people, but not to individual children.
13. Subsections (1) and (2) amend sections 7(1) and 7(2) of the 2003 Act in order to allow for the Commissioner to undertake two distinct types of investigation: a “general investigation” which is consistent with the Commissioner’s original investigatory power under section 7 of the 2003 Act; and an “individual investigation” focusing on the extent to which a service provider has had regard to the rights, views and interests of an individual child or young person. This individual investigation is new. The term “service provider” is defined in the 2003 Act and means any person or organisation providing a service to children and young people. This includes the private, public and voluntary sector. Thus any individual who, or organisation or company which, provides services to children or young people can be investigated by the Commissioner. For example, organisations which give advice, provide guidance or provide goods could be investigated. The service in question does not need to be provided exclusively to children or young people. Parents carrying out their parental responsibilities are not service providers. However, the local authorities to whom parental responsibilities have been transferred are treated as service providers.
14. Section 7(2) of the 2003 Act as amended provides that the Commissioner can only carry out a general investigation if the evidence and information collected demonstrates that there is an issue that is significant for children and young people generally or specific groups of children and young people.
15. New section 7(3) of the 2003 Act makes clear that the Commissioner may only undertake either a general or individual investigation if they are satisfied that it would not duplicate the work that is the function of another person. There are a number of bodies already tasked with considering complaints and responding to concerns raised by members of the public in Scotland including the Scottish Public Services Ombudsman, Social Care and Social Work Improvement Scotland (the Care Inspectorate) and the Equality and Human Rights Commission. Each has a particular function and where it is recognised that a complaint falls within the remit of one of these bodies or any other complaint handling body, the Commissioner should not pursue the matter.

16. **Section 5(2)(b)** removes section 7(3)(b) of the 2003 Act. This is the provision that currently prevents the Commissioner from undertaking investigations in relation to individual children.
17. Subsection (2)(c) amends section 7 of the 2003 Act to enable the Commissioner to resolve a matter which could properly form the basis of an individual investigation without the need for a formal investigation. Such a step might be taken by the Commissioner where it is felt that an issue can be addressed satisfactorily without having to exhaust the investigatory process.
18. Subsection (3)(a) replaces section 8(1)(b) of the 2003 Act, removing the requirement for the Commissioner to publish notice of any investigation and terms of reference. Instead, it requires the Commissioner to give notice of an investigation to those individuals who are likely to be affected by it. The change reflects the fact that it will not always be appropriate for details of a planned investigation to be made widely available, particularly where the investigation focuses on sensitive matters relating to an individual child. Subsections (3)(b) and (c) provide for individual investigations to be held in private whilst the presumption is that general investigations will be held in public unless the Commissioner is satisfied that there are grounds for taking evidence in private, as is currently provided for under section 8(2) of the 2003 Act.
19. Subsection (4)(a) amends section 11(1) of the 2003 Act, removing the need for all investigation reports to be laid before the Scottish Parliament. Instead, section 11(1) will require that the Commissioner prepares a report in relation to each investigation. In order to finalise the report, the Commissioner will share its content for consideration and comment with all those persons named within the report or identifiable from it. Should the report be amended as a consequence of this process, a revised version will be made available to all of the above persons.
20. Subsection (4)(c) adds new subsections to section 11 to require the Commissioner to lay before the Scottish Parliament any finalised report relating to a general investigation. The Commissioner will have the power, but not an obligation, to lay before the Scottish Parliament a report relating to an individual investigation.

Section 6 – Requirement to respond to Commissioner’s recommendations

21. Subsection (2) amends section 11 of the 2003 Act, providing the Commissioner with a power to require a response from a service provider to any recommendations made as part of a report linked to either a general investigation or an individual investigation and to identify a time by which that response must be received. Where a report includes a requirement to respond, a copy of the report must also be shared with the service provider on whom the requirement is imposed.
22. Subsection (3) adds a new section 14AA to the 2003 Act. This section sets out the arrangements for publishing a service provider’s response to any recommendations made by the Commissioner. It requires the Commissioner to publish any response made by a service provider in respect of recommendations following a general investigation unless the Commissioner considers publication to be inappropriate. The Commissioner may publish a response to recommendations following an individual investigation. Any published material should not, so far as reasonable and practicable, name or identify any child referred to in it.
23. Where a service provider fails to respond to a requirement, the Commissioner may take steps to publicise this failure.

Part 3 – Children’s Services Planning

Section 7 – Introductory

24. Subsections (1) and (2) are interpretation subsections for this Part. Subsection (1) defines the terms “children’s service” and “related service” and who are “other service providers” and “relevant health boards” for the purposes of Part 3. Subsection (2) defines the persons who may provide a “children’s service” or a “related service” as being local authorities, relevant health boards, any other service provider and the Scottish Ministers (but only in relation to a service provided by them in exercise of their functions under the Prisons (Scotland) Act 1989) i.e. when they are providing children’s or related services through the medium of the Scottish Prison Service.
25. Subsections (3) and (4) provide that the Scottish Ministers may, by order, specify the services which are to be included within, or excluded from, the definition of children’s services or related services for the purposes of this Part. They may also specify matters in relation to those services. Before making such an order the Scottish Ministers must consult with each health board, local authority and where the service is provided by another service provider, that person.
26. Subsection (5) provides that the Scottish Ministers may, by order, modify the definition of “other service provider” in subsection (1) by adding a person, removing an entry or varying an entry.
27. This Part confers certain functions on “a local authority and the relevant health board”. Subsection (6) provides that those are joint functions (i.e. functions that are to be exercised by those persons together).

Section 8 – Requirement to prepare children’s services plan

28. Subsection (1) provides that each local authority and the relevant health board must jointly prepare a Children’s Services Plan for the area of the local authority, in respect of each 3 year period.
29. Subsection (2) defines “3 year period” as that beginning with such date after the coming into force of this section as the Scottish Ministers specify, by order, and each subsequent period of 3 years. It defines “children’s services plan” as a document setting out their plans for the provision of children’s services and related services over that 3 year period.

Section 9 – Aims of children’s services plan

30. Subsections (1) and (2) provide that a children’s services plan should be prepared with a view to achieving the aims of providing children’s services in the area in a way which: best safeguards, supports or promotes the wellbeing of children; ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising; is most integrated from the point of view of the recipients; and constitutes the best use of available resources. “Most integrated” would be where service providers co-operate with each other to ensure that service provision is planned and delivered in a way which best meets the needs of children and families. Also, related services in the area are to be provided in the way which safeguards, supports or promotes the wellbeing of children, so far as this is consistent with the objects and proper delivery of the service concerned.

Section 10 – Children’s services plan: process

31. Subsection (1) provides that in preparing a children’s services plan, the local authority and relevant health board must give the other service providers and the Scottish Ministers an effective opportunity to participate in or contribute to the preparation of the plan. The local authority and relevant health board must also consult with organisations falling within subsection (2) (which represent the interests of persons who use or are

likely to use any children's service or related service in the area; or provide a service in the area which, if it were provided by the local authority, health board, other service provider or the Scottish Ministers, would be a children's service or related service), such social landlords as appear to provide housing in the area of the local authority and other such persons as the Scottish Ministers may, by direction, specify. "Social landlords" has the meaning given by section 165 of the Housing (Scotland) Act 2010.

32. Subsection (4) provides that a direction under subsection (1)(b)(iii) may be revised or revoked.
33. Subsections (5) and (6) require the other service providers and the Scottish Ministers to participate in, or contribute to, the preparation of the children's services plan, and the bodies to be consulted within subsection (1)(b) are to meet any reasonable request of the local authority or health board in participating in, or contributing to, the preparation of the children's services plan. Subsection (7) provides that, as soon as reasonably practicable after the plan has been prepared, the persons who prepared it must send a copy to the Scottish Ministers and each of the other service providers, and publish it (in such a manner as considered appropriate).
34. Subsection (8) provides that, where the Scottish Ministers or any of the other service providers disagree with any aspect of a plan which relates to a service provided by them, they must prepare and publish a notice detailing the matters in relation to which they disagree and a statement of their reasons for disagreeing.

Section 11 – Children's services plan: review

35. Subsection (1) provides that local authorities and the relevant health board in an area must jointly keep the children's services plan under review and as a consequence of that review may prepare a revised plan.
36. Subsection (2) provides that sections 9, 10 and 11(1) apply to a revised children's services plan as they apply to a children's services plan. This means that revised plans must be prepared with a view to securing the aims listed in section 9, must be prepared following the process set out in section 10 and that the revised plan itself must be kept under review and may also be revised in accordance with section 11(1).

Section 12 – Implementation of children's services plan

37. Subsections (1) and (2) provide that, during the period to which the children's services plan relates, the local authority, the relevant health board, the Scottish Ministers and each of the other service providers in an area must, so far as reasonably practicable, provide services in accordance with the children's services plan for that area. Subsection (3) provides that the duty does not apply to the extent the person providing the service considers that doing so would adversely affect the wellbeing of a child or where the service is delivered by the Scottish Ministers or one of the other service providers and they have published a notice of disagreement in line with section 10(8).

Section 13 – Reporting on children's services plan

38. Subsection (1) provides that as soon as is practicable at the end of each year, the local authority and relevant health board must publish, in such manner as they consider appropriate, a joint report on how the provision of children's services and related services in that area during that period have been provided in accordance with the children's services plan and the extent to which the aims specified in section 9(2) have been achieved, and such outcomes in relation to the wellbeing of the children in the area as the Scottish Ministers may, by order, prescribe.
39. Subsection (2) defines "1 year period" as the period of a year beginning on the date on which the children's services plan for the area has begun, in accordance with section 8(1), and each period of a year thereafter.

Section 14 – Assistance in relation to children’s services planning

40. Subsections (1) and (2) provide that any of the other service providers, the Scottish Ministers and persons mentioned in section 10(1)(b) must comply with any reasonable request made of them to provide the local authority or relevant health board with information, advice or assistance, for the purposes of carrying out their functions under this Part.
41. Subsection (3) states that subsection (1) does not apply where the person considers the provision of information, advice or assistance would be incompatible with any duties of that person or unduly prejudices the carrying out of any functions of the person.

Section 15 – Guidance in relation to children’s services planning

42. Subsections (1) and (2) state that local authorities and the relevant health board and each of the other service providers must have regard to any guidance issued by the Scottish Ministers about how to exercise the functions conferred by this Part (other than the function of complying with section 12).
43. Subsection (3) states that before guidance is issued or revised, the Scottish Ministers have to consult with any person to which the guidance relates and such other persons as they consider appropriate.

Section 16 – Directions in relation to children’s services planning

44. Subsections (1) and (2) provide that local authorities, the relevant health board and the other service providers must comply with any direction issued by the Scottish Ministers about the carrying out of the functions conferred by this Part (other than the function of complying with section 12).
45. Subsection (3) provides that, before issuing, revising or revoking a direction, the Scottish Ministers must consult any person to which it relates and such other persons as they consider appropriate.

Section 17 – Children’s services plan: default powers of Scottish Ministers

46. This section applies where the Scottish Ministers consider that local authorities and relevant health boards are either not carrying out one of their functions conferred on them by this Part (other than the function of complying with section 12) or, in carrying out such a function, are not complying with their duty to have regard to guidance issued under section 15(1).
47. Subsection (2) provides a power for the Scottish Ministers to issue directions stating that the function is to be carried out in a particular way or that the function is to be carried out instead by such of the persons mentioned in subsection (3) as the Scottish Ministers consider appropriate.
48. Subsection (3) explains that persons referred to in subsection (2)(b) are the local authority, the relevant health board or another local authority or health board. Subsection (4) states that a direction under subsection (2)(b) may include such provision as the Scottish Ministers consider appropriate as to the making by a local authority or relevant health board in an area, which is not to be carrying out the function, of payment to a person who is to carry out the function by virtue of the direction.
49. Subsection (5) states that before issuing, revising or revoking a direction under subsection (2) the Scottish Ministers must consult with the local authority and relevant health board whose failure is to be, or is, the subject of the direction, and such other persons as they consider appropriate.
50. Subsection (6) requires that any direction given under subsection (2) must be complied with by the person to whom it is addressed.

Part 4 – Provision of named persons

Section 19 – Named person service

51. Subsections (1) and (5) define “named person service” as meaning the service of making available an individual from within named person service providers who carry out the functions in order to promote, support or safeguard the wellbeing of the child or young person. They will do this through a number of activities, including: advising, informing or supporting the child or young person or their parent; helping them to access a service or support; or discussing or raising a matter about that child or young person with a service provider or relevant authority.
52. Subsections (2) and (3) provide that individuals can only be identified for the named person service if they are an employee of the service provider, or are either a person, or employee of a person, who carries out functions on behalf of the service provider. Individuals must also satisfy such requirements as to qualifications, training and experience as the Scottish Ministers may specify by order.
53. Subsection (4) provides that the named person function cannot be carried out by a parent of the child or young person. Subsection (6) provides that the named person functions are not to be exercised in relation to a matter arising at a time when a child or young person is subject to service law as a member of the reserve forces. But this does not prevent the named person functions from being exercised in relation to other aspects of the life of the child or young person.
54. Subsections (7) and (8) state that the named person functions are carried out on behalf of the service provider and the responsibility for carrying out the named person function lies with the service provider and not with the individual named person. So any legal action in respect of failure would lie against the service provider and not the named person.

Section 20 – Named person service in relation to pre-school child

55. Subsections (1) and (2) provide that it is the duty of the health board to make arrangements to provide a named person for each pre-school child in its area and defines “pre-school child” as a child who has not started primary school either because they are not old enough or the education authority has allowed the child to delay starting at primary school.
56. Subsection (3) explains that for the purposes of this section, school age should be taken to be that determined by the relevant education authority by reference to the school commencement dates fixed by it. Attendance at primary school does not include attendance at a nursery class based in a school, and relevant education authority means that of the area where the child lives.

Section 21 – Named person service in relation to children not falling within section 20

57. Subsections (1), (2) and (3) state that an education authority must make arrangements to provide a named person service for each child living in its area unless: they are a pre-school child (as defined in section 20); they attend a school managed by a different local authority or attend a grant-aided school or independent school; they are kept in secure accommodation; or they are in legal custody (as defined at subsection (3) or subject to temporary release from custody. The duty to provide a named person does not apply to a child who is a member of any of the regular forces.
58. Subsection (5) provides that, during any period when a child is a pupil at a public school managed by a different authority from the one in which they reside, the different authority must make arrangements to provide the named person service for that child. Subsection (6) provides that at any time when the child attends a grant-aided school,

independent school or is kept in secure accommodation, that establishment must provide the named person service for the child. Subsection (7) provides that, during any period when a child is in legal custody or subject to temporary release from such custody, the Scottish Ministers must make arrangements to provide the named person service for the child.

Section 22 – Continuation of named person service in relation to certain young people

59. This section provides that, where a young person attends a public school, the education authority must make arrangements to provide the named person service to that young person. Where the young person attends a grand-aided or independent school, the directing authority of the establishment, as defined in section 32, must make arrangements to provide the named person service. “Young person” is defined as anyone who has reached the age of 18 but still attends school.

Section 23 – Communication in relation to movement of children and young people

60. This section provides that where a service provider no longer provides named person service in relation to a child, they must provide the new service provider, or the person it considers will be the new service provider, with information it holds that is likely to be relevant in the exercise of any functions of the service provider under this Part, or the future exercise of the named person functions in relation to the child or young person, if it ought to be provided for that purpose and unless this information prejudices the conduct of a criminal investigation or the prosecution of an offence.
61. Subsection (4) provides that, when establishing whether information ought to be shared, the outgoing service provider is, so far as reasonably practicable, required to ascertain and have regard to the views of the child or young person. In having regard to the views of a child, the outgoing service provider is to take account of their age and maturity (subsection (5)).
62. Subsection (6) provides that the outgoing service provider can only decide that information ought to be shared, for the purpose of section 23(3)(b), if the likely benefit to a child or young person’s wellbeing in doing so outweighs any likely adverse effect on their wellbeing.
63. Subsection (7) makes it clear that section 23 does not permit or require the sharing of information in breach of any legal prohibition or restriction on the disclosure of information, except a duty of confidentiality.

Section 24 – Duty to communicate information about role of named persons

64. Subsection (1) provides that a service provider, as defined in section 32, must publish, in such a manner as it considers appropriate, information about the operation of the named person service provided by it, including: details of how the named person functions are exercised; how to contact named persons in their area or establishment; how the service provider exercises its functions under Part 4; and any other matters they consider appropriate.
65. Subsection (2) states that service providers must provide the child or young person for whom they are providing the named person, and their parents, with details of how to contact named persons in their area as soon as is reasonably practicable after they become the service provider for the child, and as soon as is reasonably practicable after there is any change in those arrangements.

Section 25 – Duty to help named person

66. This section provides that where it appears to a service provider that another service provider or relevant authority could, by doing something, help in the exercise of any

of their functions as provider of a named person, the other service provider or relevant authority must comply with a request for help. This could entail the relevant authority providing assessments or analysis, chronologies of significant events or any other information which would assist the named person in assessing the overall needs of the child and determining how they can be met. This duty to comply with a request applies unless the request is incompatible with any of its own duties or unduly prejudices the exercise of any of its functions. Schedule 2 contains a list of relevant authorities.

Section 26 – Information sharing

67. Subsections (1) and (2) provide that a service provider or relevant authority (as listed in schedule 2) must provide to the service provider in relation to a child or young person information which it holds if it considers that: it is likely to be relevant to the exercise of the named person functions; it ought to be provided for that purpose; and its provision would not prejudice the conduct of any criminal investigation or the prosecution of any offence.
68. Subsections (3) and (4) provide that a service provider in relation to a child or young person must provide, to a service provider or relevant authority, any information which it holds that is likely to be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person. This applies where the service provider in relation to the child or young person considers that the information ought to be provided for that purpose and where its provision would not prejudice the conduct of any criminal investigation.
69. Subsection (5) requires that, in establishing whether information ought to be shared, the information holder is, so far as reasonably practicable, required to ascertain and have regard to the views of the child or young person. In having regard to the views of a child, the information holder is to take account of their age and maturity (subsection (6)). Subsection (7) provides that the information holder can only decide that information ought to be shared, for the purpose of subsection (2)(b) or (4)(b), if the likely benefit to the child or young person's wellbeing in doing so outweighs any likely adverse effect on their wellbeing.
70. Subsections (8) and (9) provide that the named person service provider may provide to a service provider or relevant authority any information they hold which is necessary or expedient to help them carry out their named person role.
71. Subsection (11) makes it clear that section 26 does not permit or require the sharing of information in breach of any legal prohibition or restriction on the disclosure of information, except a duty of confidentiality.

Section 27 – Disclosure of information

72. **Section 27** applies where a person (“the recipient”) receives information in accordance with Part 4 of the Act which has been provided in breach of a duty of confidentiality and where the recipient has been made known of this breach. The recipient is not then to provide that information to anyone else (a third party), unless they are permitted or required to provide that same information to the third party by virtue of any enactment (including Part 4) or any rule of law.

Section 28 – Guidance in relation to named person service

73. **Section 28** provides that all persons listed in subsection (2) must have regard to any guidance issued by the Scottish Ministers about exercising functions under Part 4.
74. Subsection (3) provides that before issuing or revising guidance, the Scottish Ministers must consult with any person to which it relates and such other persons as they consider appropriate.

Section 29 – Directions in relation to named person service

75. This section provides that all persons listed in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by Part 4. Before issuing, revising or revoking a direction, the Scottish Ministers must consult the any person to which it relates and such other persons as they consider appropriate.

Section 30 – Complaints in relation to Part 4

76. **Section 30(1)** provides that the Scottish Ministers may, by order, make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under Part 4. Subsection (2) details the matters which may be included in any such order. Subsection (3) provides that any order made under subsection (1) may modify any enactment.

Section 31 – Relevant authorities

77. **Section 31(1)** provides that the persons listed in schedule 2 are “relevant authorities” for the purposes of Part 4 (subject to subsection (3)). Subsection (2) allows the Scottish Ministers to modify schedule 2 by order. Subsection (3) provides that the Commissioner for Children and Young People in Scotland and a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005 are not relevant authorities for the purposes of section 29 – they are therefore not subject to the duty to comply with directions issued under that section. Subsection (4) provides that an order under subsection (2) which adds a person to schedule 2, may modify this section so as to provide that the person is not a relevant authority for the purposes of section 29 – this similarly allows the duty to comply with directions to be disapplied if required.

Part 5 – Child’s plan

Section 33 – Child’s plan: requirement

78. Subsections (1) to (5) provide that a child requires a child’s plan where the responsible authority (as determined under sections 36 and 37) considers that the child has a wellbeing need and that need is not capable of being met, or fully met, by taking action other than targeted intervention, and the need is capable of being met, at least to some extent, by one or more targeted interventions. A child has a wellbeing need if the child’s wellbeing is being, or is at risk of being, adversely affected by any matter. “Targeted intervention” means the provision of a service, by a health board or local authority or a grant aided or independent school, provided by a relevant authority (either directly or through a third party) which is directed at meeting the needs of children whose needs cannot be met, or fully met, by the services which are generally provided to all children by that body.
79. Subsections (6) and (7) provide that in deciding whether a child requires a child’s plan, the responsible authority is, so far as reasonably practicable, to ascertain and have regard to the views of the child, their parent(s), any persons as the Scottish Ministers may by order specify, and any other persons as it considers appropriate. In having regard to the views of the child, the responsible authority is to take account their age and maturity. The responsible authority must also consult the child’s named person where that individual is not employed by them.
80. Subsections (8) and (9) provide that if a child already has a plan, or if the child is a member of any of the regular forces, then subsection (1) does not apply. Where a child already has a plan, section 39 would apply, meaning that the question would then become one of plan review. “Regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

Section 34 – Content of a child’s plan

81. Subsection (1) provides that a child’s plan must include a statement of: the child’s wellbeing need; any targeted intervention(s) which requires to be provided in relation to the child to address the wellbeing need; details of the relevant authority which is tasked with providing any targeted intervention; details of how the intervention is to be provided; and the outcome which the intervention is intended to achieve. A child’s plan may contain a targeted intervention only where the relevant authority tasked with delivering the intervention agrees to its inclusion. If the relevant authority is not in agreement and is not leading on the preparation of the plan, it must provide the person preparing the plan with its reasons for not agreeing to provide an intervention.
82. Subsection (4) provides that the Scottish Ministers may, by order, make provision as to any other information which is, or is not, to be contained in child’s plans and the form of those plans.

Section 35 – Preparation of a child’s plan

83. Subsections (1) and (3) have the effect that where a child requires a child’s plan, the responsible authority should prepare the plan unless the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare the plan. Subsection (2) provides that where required a plan should always be prepared as soon as is reasonably practicable. Subsection (5) creates an exception for where there are no targeted interventions to be included because a relevant authority has not agreed to them in the terms of section 34(2).
84. Subsection (4) provides that where a relevant authority declines to give its agreement to prepare a plan, the relevant authority must provide a statement of its reasons for declining.
85. Subsection (6) provides that in preparing a child’s plan, an authority must consult the child’s named person where that individual is not employed by the authority. Furthermore, the authority must, so far as reasonably practicable, ascertain and have regard to the views of the child, their parent(s), any other persons as specified by order by the Scottish Ministers and any other persons as it considers appropriate. In having regard to the views of the child, the authority is to take account of the child’s age and maturity. Subsections (8) and (9) provide that the Scottish Ministers may, by order, make further provision as to the preparation of child’s plans, including provisions requiring or permitting a copy of the plan to be given to a particular person or persons within a particular description, in the circumstances described in the order or where the authority considers it appropriate.

Section 36 – Responsible authority: general

86. Subsection (1)(a) provides that for the purposes of this Part the responsible authority for a pre-school child is the health board for the area where the child lives. Subsection (1)(b) provides that the responsible authority for a child who is not a pre-school child is the local authority for the area where the child lives. Subsection (2) provides that subsection (1) is subject to special cases outlined in section 37.
87. Subsection (3) defines “pre-school child” as a child who has not started primary school and, if the child is of school age, has not started school because the education authority has consented to this being delayed.
88. Subsection (4) provides that for the purposes of this section, the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant education authority; the references to attendance at primary school do not include attendance at nursery classes based in a primary school; and the references to relevant education authority are to the education authority for the area where the child resides.

Section 37 – Responsible authority: special cases

89. As noted above, section 37 makes provision about who the responsible authority is in relation to special cases. Subsection (1) provides that where a pre-school child resides in the area of a health board, by virtue of a placement by another health board or local authority, the health board for the area in which the child resides immediately before that placement is the responsible authority in relation to the child. “Pre-school child” has the meaning given by section 36(3).
90. Subsection (2) provides that where the child is at a public school managed by a local authority other than the one for the area in which the child lives, that other authority is the responsible authority in relation to the child.
91. Subsection (3) provides that where the child is a pupil at a grant-aided or independent school, the directing authority of that school is the responsible authority in relation to that child.
92. Subsection (4) provides that subsection (3) does not apply where the child is a pupil at a grant aided or independent school by virtue of a placement by a local authority.
93. Subsection (5) provides that where a child’s residence is displaced by virtue of their falling within any of the categories set out in subsection (6), the local authority for the area in which they would normally reside is the responsible authority in relation to the child. Subsection (6) specifies these categories as: where, in pursuance of a local authority’s duties under the Education (Scotland) Act 1980, a child is a pupil at a grant-aided or independent school and resides in accommodation provided for the purpose of attending that school; where the child is placed in a residential establishment by virtue of Chapter 1 of Part 2 of the Children (Scotland) Act 1995; where the child resides at a residential establishment by virtue of an order under the Children’s Hearing (Scotland) Act 2011; or where the child is detained in residential accommodation in pursuance of an order under the Criminal Procedure (Scotland) Act 1995.
94. Subsection (7) provides that the Scottish Ministers may, by order (subject to affirmative procedure), modify this section so as to make further or different provision as to the circumstances in which section 36(1) does not apply in relation to a child.

Section 38 – Delivery of a child’s plan

95. This section requires that a relevant authority which is to provide a targeted intervention (either directly or through a third party) in terms of a child’s plan is to provide it, so far as reasonably practicable, in accordance with the plan. This does not apply where the responsible authority considers that to do so would adversely affect the wellbeing of the child (subsection (2)).

Section 39 – Child’s plan: management

96. Subsection (1) provides that the managing authority of a child’s plan must keep under review: whether the wellbeing need of the child stated in the plan is still accurate; whether the targeted intervention(s) or manner of provision of those interventions is still appropriate; whether the outcome of the plan has been achieved; and whether the management of the plan should transfer to another authority. In reviewing a child’s plan, subsections (2), (3) and (4) state that the managing authority is to consult each relevant authority which is providing a targeted intervention contained in the plan (either directly or through a third party), the responsible authority (where that authority is neither the managing authority nor providing a targeted intervention) and the child’s named person where that individual is not employed by the managing authority. The managing authority must also, so far as is reasonably practicable, ascertain and have regard to the views of the child, their parents, such other persons as the Scottish Ministers may specify by order, and any other person that the managing authority considers

appropriate. In having regard to the child's views, the managing authority is to take account of their age and maturity.

97. In consequence of this review, the managing authority may, under subsection (5) (a) amend the plan so as to revise the wellbeing need of the child, any targeted intervention(s), or manner of the provision of targeted intervention(s) which require to be provided, or the outcome which the plan is intended to achieve. The managing authority may also transfer the management of the plan to a relevant authority or end the plan (subsections (5)(b) and (c)).
98. Subsection (6) provides that the Scottish Ministers may make, by order, provision about: the management of the child's plan, including when and how a child's plan is to be reviewed in accordance with subsection (1); who is to be the managing authority of the plan; when and to whom the management of the plan is to or may be transferred under subsection (5)(b); when and how a new targeted intervention may be included in a child's plan; and the keeping, disclosure and destruction of child's plans.
99. Subsection (7) provides that the managing authority of a child's plan is the authority which prepared it, or where the management of the plan has been transferred, the person to whom it was transferred. This is subject to any different provision made by order as mentioned above.

Section 40 – Assistance in relation to child's plan

100. Subsections (1) and (2) provide that a relevant authority or a listed authority (see section 44) must comply with any reasonable request made of them to provide a person exercising a function under this Part with information, advice and assistance.
101. Subsection (3) provides that subsection (1) does not apply where the authority or person to whom the request is made considers that the provision of such information, advice or assistance would be incompatible with any of their duties or would unduly prejudice the exercise of any of their functions.
102. Subsection (4) provides that subsection (1) does not permit or require the sharing of information in breach of any legal prohibition or restriction linked to the sharing of such information, other than a breach of a duty of confidentiality.
103. Subsections (5) and (6) apply where a person ("the recipient") receives information in accordance with section 40(1), which has been provided in breach of a duty of confidentiality and where the recipient has been made known of this breach. The recipient is not then to provide that information to anyone else (a third party) unless they are permitted or required to provide that same information to the third party by virtue of any enactment (including Part 5) or any rule of law.

Section 41 – Guidance on child's plans

104. Subsection (1) and (2) provide that relevant authorities and listed authorities must have regard to any guidance issued by the Scottish Ministers about the exercise of functions under Part 5 (other than the function of complying with section 38). Before issuing or revising guidance, the Scottish Ministers must consult any person to which it relates, and such other persons as they consider appropriate.

Section 42 – Directions in relation to child's plans

105. Subsections (1) and (2) provide that relevant authorities and listed authorities must comply with any direction issued by the Scottish Ministers about the exercise of the functions conferred by Part 5 (other than the function of complying with section 38). Before issuing, revising or revoking a direction, the Scottish Ministers must consult any person to which it relates, and such other persons as they consider appropriate.

Section 43 – Complaints in relation to Part 5

106. This section provides that the Scottish Ministers may, by order, make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under Part 5. Subsection (2) details the matters which may be included in any such order. Subsection (3) provides that any order made under subsection (1) may modify any enactment.

Section 44 – Listed Authorities

107. **Section 44(1)** provides that the persons listed in schedule 3 are “listed authorities” for the purposes of Part 5 (subject to subsections (3) and (4)). Subsection (2) allows the Scottish Ministers to modify schedule 3 by order. Subsection (3) provides that the Scottish Ministers are not a listed authority for the purposes of sections 41 and 42. Subsection (4) provides that the Commissioner for Children and Young People in Scotland and a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005 are not listed authorities for the purposes of section 42 – they are therefore not subject to the duty to comply with directions issued under that section. Subsection (5) provides that an order under subsection (2) which adds a person to schedule 3 may modify this section so as to provide that the person is not a listed authority for the purposes of section 42 – this similarly allows the duty to comply with directions to be disapplied if required.

Section 45– Interpretation of Part 5

108. This is an interpretation section for this Part. It includes the definition of “directing authority”. When used generally, this means the managers of each grant-aided school and the proprietor of each independent school. When used in relation to a grant-aided school, it means the managers of the school, and in relation to an independent school, it means the proprietor of the school. It also defines “relevant authority” as any health board, local authority or directing authority.

Part 6 – Early Learning and Childcare

Section 46 – Early learning and childcare

109. Section 1(1) of the 1980 Act imposes a duty on every education authority to secure that there is adequate and efficient provision of school education made for their area. Section 46 defines “early learning and childcare” as a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, with regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting. The phrase “of a kind which is suitable in the ordinary case for children who are under school age” is consistent with its use in the 1980 Act. Guidance issued by the Scottish Ministers under section 34 of the Standards in Scotland’s Schools Act 2000 (“the 2000 Act”) (which is amended by paragraph 7 of schedule 5) together with national guidance will be used to provide more detail as to what those types of interactions and experiences will encapsulate.

Section 47 – Duty to secure provision of early learning and childcare

110. Subsection (1) provides that an education authority must, in pursuance of its duty under section 1(1) of the 1980 Act, secure that the mandatory amount of early learning and childcare (as defined in section 46) is made available for each eligible pre-school child belonging to its area. Section 23(3) of the 1980 Act provides that a pupil receiving school education is deemed to belong to the area where the pupil’s parent is ordinarily residing. This is subject to any regulations made by the Scottish Ministers.
111. Subsection (2) defines “eligible pre-school child”. It means a child who is under school age, has not started primary school and either falls within subsection (3) or is within

such age range, or is of such other description, as the Scottish Ministers may by order specify.

112. [Section 97\(3\)](#) of this Act provides that “school age” has the same meaning as it has in the 1980 Act. Section 31 of the 1980 Act defines a person as being of “school age” if they have attained the age of 5 but not 16 years. Section 31 is however qualified by section 32(3) of the 1980 Act which provides that a child who does not attain the age of 5 on a school commencement date (defined in section 32(1)) shall for the purposes of section 31 be deemed not to have attained that age until the school commencement date following his or her 5th birthday.
113. Subsection (3) provides that, subject to subsection (4), a child is also an eligible pre-school child if the child is aged 2 or over, and is, or has been at any time since their 2nd birthday, looked after by a local authority (“looked after” is defined in section 97(2)), the subject of a kinship care order or a child falling within section 71(3)(f) (those with a parent appointed guardian).
114. “Kinship care order” is defined in subsection (6) as having the meaning given by section 72(1) and includes court appointed guardians. Subsection (4) introduces an order making power enabling the Scottish Ministers to prescribe the circumstances when those children who derive entitlement to early learning and childcare by virtue of section 47(3) are to no longer fall within that section and thus no longer be entitled to early learning and childcare. An order under section 47(2)(c)(ii) and (4) is subject to affirmative resolution procedure in accordance with section 99(2).
115. It is anticipated that an order made under section 47(2)(c)(ii) will include provision akin to that made in the Provision of [School Education for Children under School Age \(Prescribed Children\) \(Scotland\) Order 2002 \(SSI 2002/90\)](#) made under section 1(1A) of the 1980 Act (which order making power is to be removed from the 1980 Act by paragraph 2(2)(a) and (b) of schedule 5), so for example to set out that eligibility for early learning and childcare starts from the first term following the child’s 3rd birthday; or the 15% of 2 year olds from workless or job seeking households, or the 27% of 2 year olds whose parents are on certain welfare benefits. That Order also sets out when children cease to be eligible for early learning and childcare.
116. [Section 47\(4\)](#) ensures that equivalent provision can be made about when those who derive entitlement to early learning and childcare by virtue of section 47(3) cease to be eligible for early learning and childcare. Subsection (5) provides that an order under section 47(2)(c)(ii) may sub-delegate the function of determining the eligibility criteria to an education authority so for example the order might provide that a child is an eligible pre-school child only if the education authority is satisfied as to any matter relating to the child which is specified in the order.

Section 48 – Mandatory amount of early learning and childcare

117. Subsection (1) defines the mandatory amount of early learning and childcare for the purposes of section 47(1) as 600 hours in each year for which a child is an eligible pre-school child and a *pro rata* amount for each part of a year for which a child is so eligible.
118. Subsection (2) provides that the Scottish Ministers may, by order, modify the mandatory amount of early learning and childcare in subsection (1) for eligible pre-school children so as to vary the amount of early learning and childcare which is to be made available. Under subsection (3) the order is capable of making different provision for different types of eligible pre-school children (for example different amounts for children of different ages). Such an order is subject to affirmative procedure by virtue of section 99(2).

Section 49 – Looked after 2 year olds: alternative arrangements to meet wellbeing needs

119. **Section 49** enables an authority to make alternative provision of education and care in order to meet the wellbeing needs of children. Subsection (1) provides that where an authority's duty under section 47(1) applies in relation to a child only by virtue of the child falling within section 47(3)(a) and the authority, after assessing the child's needs considers that making alternative arrangements in relation to the child's education and care would better safeguard or promote the child's wellbeing, then subsection (2) applies. It is important to note the "only" in subsection (1): it means that if section 47(1) applies to the child for an additional reason, such as the child falling within an age range or other description prescribed under section 47(2)(c)(ii), then the child ceases to be one in respect of whom section 49(2) applies.
120. Subsection (2) provides that in relation to these children the authority need not comply with its duty under section 47(1) in relation to the child but must make alternative arrangements in relation to the child's education and care as it considers appropriate for the purposes of safeguarding or promoting the child's wellbeing. The power for the authority to make alternative arrangements by virtue of section 47(1) and (2) continues to apply notwithstanding that the 2 year old child ceases to be looked after so as to ensure continuity in the education and care of the child. However, under subsection (3), alternative arrangements cannot continue to be made if a parent of the child objects to those alternative arrangements being made.
121. Subsection (4) provides that the authority may, at any time, review any alternative arrangements it makes in relation to a child in pursuance of subsection (2)(b) and must do so on becoming aware of any significant change in the child's circumstances. It may, following such a review, alter those arrangements.
122. Subsection (5) provides that the authority must seek to ensure that a record of the outcome of any assessment of a child's needs that it undertakes in pursuance of subsection (1)(b) and any alternative arrangements that it makes in relation to the child's education and care in pursuance of subsection (2)(b) is included in any child's plan which is prepared under Part 5.

Section 50 – Duty to consult and plan on delivery of early learning and childcare

123. Subsection (1)(a) provides that an education authority must consult such persons as appear to it to be representative of parents of children under school age in its area about how it should make early learning and childcare available. Subsection (1)(b) provides that the education authority must have regard to the views expressed in that consultation and having done so prepare and publish a plan for how it intends to make early learning and childcare available. Such consultation must be carried out every 2 years although subsection (2) enables the Scottish Ministers to vary the regularity of that consultation by order subject to negative resolution procedure. Guidance issued by the Scottish Ministers under section 34 of the 2000 Act (as amended by paragraph 7 of schedule 5) will be used to set out more detail about how it is expected the consultation will be carried out and in relation to the preparation of the requisite plans for how early learning and childcare will be delivered.

Section 51– Method of delivery of early learning and childcare

124. Subsection (1) provides that an education authority must ensure that it makes early learning and childcare available by way of sessions which are provided during at least 38 weeks of every calendar year, and which are at least 2.5 hours but no more than 8 hours in duration. This is the minimum framework for delivering early learning and childcare.

125. Subsection (2) provides that the Scottish Ministers may by order modify subsection (1) so as to vary the minimum framework for delivering early learning and childcare. Such an order is subject to affirmative procedure by virtue of section 99(2).

Section 52 – Flexibility in way in which early learning and childcare is made available

126. This section provides that in exercising functions under sections 50 (duty to consult and plan on delivery of early learning and childcare) and 51 (method of delivery of early learning and childcare), an education authority must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available is flexible enough to allow parents an appropriate degree of choice when deciding how to access the services.

Section 53 – Interpretation of Part 6

127. This section is an interpretation section for this Part which explains that the expression “early learning and childcare” has the meaning given by section 46, “eligible pre-school child” has the meaning given by section 47(2) and “parent” has the meaning given by the 1980 Act. Other interpretation provisions relevant to this Part are contained in section 97.

Part 7 – Power to Provide School Education for Pre-School Children

Section 54 - Duty to consult and plan in relation to power to provide school education for pre-school children

128. **Section 54** inserts subsections (2B), (2C) and 2(D) into section 1 of the the 1980 Act. Section 1(1C) of the 1980 Act gives power to education authorities to provide school education for pre-school children (i.e. early learning and childcare) in addition to the mandatory provision required in terms of section 1(1A) of the 1980 Act as amended by Part 6 of this Act.
129. Subsection (2B) requires education authorities to consult parents of pre-school children in their area at least once every two years about whether and if so how they should provide such education in exercise of their power under section 1(1C) of the 1980 Act and, having had regard to those views, prepare and publish plans in relation to that. Subsection (2C) enables the Scottish Ministers by order to vary the regularity within which such consultation and planning should happen and such an order is subject to negative procedure in terms of subsection (2D).

Part 8 – Day Care and Out of School Care

Section 55 - Duty to consult and plan in relation to day care and out of school care

130. **Section 55** inserts new subsections (1A), (1B), (3A), (3B), (3C) and (3D) into section 27 of the Children (Scotland) Act 1995 (“the 1995 Act”). Section 27(1) of the 1995 Act requires local authorities to provide day care for pre-school children who are in need and gives local authorities power to provide day care for pre-school children who are not in need. Section 27(3) of the 1995 Act requires local authorities to provide out of school care for school aged children who are in need and gives local authorities power to provide out of school care for school aged children who are not in need.
131. Subsections (1A) and (3A) requires local authorities at least once every 2 years to consult such persons who are representative of parents of pre-school and school aged children in need about how they should provide day care and out of school care for such children; and, having had regard to the views expressed, prepare and publish plans in relation to their duty to provide day care to pre-school children in need and out of school care to school aged children in need.

132. Subsections (1B) and (3B) requires local authorities at least once every 2 years to consult such persons who are representative of parents of pre-school children and school aged children about whether and if so how they should provide day care and out of school care; and, having had regard to the views expressed, prepare and publish plans in relation to their powers to provide day care to pre-school children who are not in need and out of school care to school aged children who are not in need.
133. Subsection (3C) enables the Scottish Ministers by order to vary the regularity within which such consultation and planning in relation to day care and out of school care provided under section 27 of the 1995 Act should happen and such an order is subject to negative procedure in terms of subsection (3D).

Part 9 – Corporate Parenting

Section 56 – Corporate parents

134. This Part of the Act gives effect to a concept of “corporate parenting”. This concept involves placing new duties on certain public bodies to act in particular ways in support of certain children and young people. The public bodies are called “corporate parents” and the duties are “corporate parenting responsibilities”.
135. Subsection (1) of this section provides that those people listed, or included within a description which is listed, in schedule 4 are “corporate parents” (subject to subsections (3) and (4)).
136. Subsection (2) provides that the Scottish Ministers can, by order, modify schedule 4 by adding a person or description of persons, removing an entry or changing an entry. Such an order is subject to affirmative procedure by virtue of section 99(2) (subordinate legislation). Subsection (5) provides that an order under subsection (2) which adds a person, or a description of persons, to schedule 3, may modify this section so as to provide that the person is not a corporate parent for the purposes of section 64 (directions).
137. Although the Scottish Ministers are corporate parents, there is an exception for them in relation to certain of the provisions (see subsection (3)). This is because of their special position in relation to some of the duties. Also, subsection (4) provides that the Commissioner for Children and Young People in Scotland and “post-16 education bodies” are not corporate parents for the purposes of section 64.
138. Subsection (6) provides that references in this Part to the “corporate parenting responsibilities” of a corporate parent are to the duties conferred on that corporate parent by section 58(1). (These duties may end up being slightly different in relation to different corporate parents: see section 58).

Section 57 – Application of Part: children and young people

139. The children and young people in relation to whom corporate parenting responsibilities apply are set out in this section. They are children who are looked after by a local authority in accordance with section 17(6) of the 1995 Act and young people who are under 26 and were, on their 16th birthday, or at any subsequent time, but are no longer, looked after by a local authority. This Part also applies to a young person who is at least the age of 16 but under 26 and is not of the description in subsection (1)(b)(ii) but is of other such description of formerly looked after person as the Scottish Ministers may specify by order. Such an order is subject to affirmative procedure by virtue of section 99(2).

Section 58 – Corporate parenting responsibilities

140. As noted above, this section sets out the corporate parenting responsibilities. Subsection (1) provides that it is the duty of every corporate parent (where consistent with their

other functions): to be alert to matters which could adversely affect the wellbeing of children and young people to whom this Part applies; to assess the needs of those children and young people for support and services it provides; to promote the interests of those children and young people; to seek to provide those children and young people with opportunities to participate in activities designed to advance their wellbeing; to take such action as it considers appropriate to help those children and young people to access those opportunities and to make use of services, and access the support, which it provides; and to take any other action it considers appropriate to improve the way in which it carries out its functions in relation to those children and young people.

141. Subsection (2)(a) provides that the Scottish Ministers may, by order, modify subsection (1) so as to confer, remove or vary a duty on corporate parents. By virtue of subsection (2)(b) such an order may also provide that subsection (1) is to be read, in relation to a particular corporate parent or particular descriptions of corporate parents, with a modification conferring, removing or varying a duty. The effect of this is that the power may be used to apply different duties to different corporate parents. Orders under subsection (2) are subject to affirmative procedure by virtue of section 99(2).

Section 59 – Planning by corporate parents

142. Subsection (1) provides that corporate parents must prepare a plan for how they propose exercising their corporate parenting responsibilities and must keep this plan under review.
143. Subsection (2) provides that before preparing or revising this plan, corporate parents must consult with other corporate parents and persons as they consider appropriate.
144. Subsection (3) provides that corporate parents must publish their plan, or revised plan, in such manner as they consider appropriate (and, in particular, that plans may be published together with, or as a part of, any other plan or document).

Section 60 – Collaborative working among corporate parents

145. Subsection (1) provides that corporate parents must collaborate with each other, in so far as is reasonably practicable, when undertaking their corporate parenting responsibilities or any other functions under this Part, where they consider that doing so would safeguard or promote the wellbeing of children or young people which this Part applies to.
146. Subsection (2) gives examples of what that collaboration may include, namely sharing information, providing advice or assistance, co-ordinating activities, sharing responsibility for action, funding activities jointly and exercising these functions jointly (for example, by publishing a joint plan or joint report).

Section 61 – Reports by corporate parents

147. Subsection (1) provides that a corporate parent must report on how it has exercised its corporate parenting responsibilities, planning and collaborating functions in pursuance of sections 59 and 60, and its other functions under this Part.
148. Subsection (2) states that these reports may, in particular, include information about standards of performance, and the outcomes achieved in pursuance of this Part.
149. Subsection (3) provides that reports are to be published in such manner as the corporate parent considers appropriate (and, in particular, that reports may be published together with, or as part of, any other report or document).

Section 62 – Duty to provide information to Scottish Ministers

150. Subsection (1) states that a corporate parent must provide the Scottish Ministers with such information they require about how it is: exercising its corporate parenting

responsibilities; planning, collaborating or reporting in pursuance of sections 59, 60 or 61; or otherwise exercising functions under this Part.

151. Subsection (2) states that information which is required may include information about standards of performance, and the outcomes achieved in pursuance of this Part.

Section 63 – Guidance on corporate parenting

152. Subsection (1) provides that a corporate parent must have regard to any guidance about corporate parenting issued by the Scottish Ministers.

153. Subsection (2) states that guidance may include advice or information about how corporate parents should: exercise their corporate parenting responsibilities; promote awareness of their corporate parenting responsibilities; plan, collaborate or report in pursuance of sections 59, 60 and 61; and otherwise exercise their functions under this Part. Guidance may also include information about the outcomes which corporate parents should seek to achieve in exercising their functions.

154. Subsection (3) provides that before issuing guidance the Scottish Ministers must consult with the corporate parents to which guidance relates and such other persons as they consider appropriate.

Section 64 – Directions to corporate parents

155. Subsection (1) provides that corporate parents have to comply with any direction issued by the Scottish Ministers about their corporate parenting responsibilities, their planning or collaborating or reporting functions in pursuance of sections 59, 60 and 61 or their functions under this Part. Section 59 requires a corporate parent to prepare and review a plan for how it proposes to exercise its corporate parenting responsibilities. Section 60 requires corporate parents to work collaboratively when exercising their corporate parent responsibilities or other functions under this Part. Section 61 requires a corporate parent to report on how it has exercised its corporate parenting responsibilities, collaborating functions and its other functions under this Part.

156. Subsection (2) provides that before issuing, revising, or revoking directions, Scottish Ministers must consult with any corporate parent to which it relates and such other persons as they consider appropriate.

Section 65 – Reports by Scottish Ministers

157. Subsection (1) provides that the Scottish Ministers must, as soon as practicable, after the end of each 3 year period, lay before the Scottish Parliament a report on how they have exercised their corporate parenting responsibilities during that period.

158. Subsection (2) states that “3 year period” means the period of 3 years beginning with the day on which this section comes into force, and each subsequent 3 years.

Part 10 – Aftercare

Section 66 – Provision of aftercare to young people

159. Subsection (2) of this section amends section 29 of the Children (Scotland) Act 1995 (“the 1995 Act”) which 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. Subsection (3) of this section amends section 30 of the 1995 Act which gives local authorities the power to provide financial assistance to a similar category of young people for the purpose of meeting expenses connected with their education and training.

160. Subsection (2)(a) amends section 29(1) of the 1995 Act to provide that a local authority shall, unless they are satisfied that their welfare does not require it, advise, guide and

assist any person in their area who is at least sixteen but not nineteen years of age and who either was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by the local authority; or is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order. Subsection (2)(b) inserts a new subsection (1A) into section 29 to provide that such orders will be subject to the affirmative procedure. Section 29(1) previously placed local authorities under a duty to provide aftercare support to those persons in their area who were over school age but not yet nineteen years of age who, at the time they ceased to be of school age or at any subsequent time, were but are no longer, looked after.

161. Subsection (2)(c) amends section 29(2) to provide that a person who is at least nineteen and who is otherwise a person as described in section 29(1) (as amended) may apply to their local authority for advice, assistance and support up to the age of twenty-six. This provision increases the upper age limit for aftercare support from twenty-one up to the age to twenty-six.
162. Subsection (2)(f) inserts new subsections (5A) and (5B) into section 29. New subsection (5A) provides that, after carrying out an assessment under section 29(5) in pursuance of an application made by a person under section 29(2), the local authority must, if satisfied that the person has eligible needs and that these cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs. The local authority may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person's welfare. New subsection (5B) provides that a local authority can continue to provide advice, guidance and assistance after a person reaches the age of twenty-six, but they are not required to do so.
163. Subsection (2)(h) inserts new subsections (8) and (9) into section 29 to provide that the Scottish Ministers may, by order subject to affirmative procedure, specify types of care, attention and support that constitute "eligible needs" for the purposes of new subsection (5A)(a). It also inserts new subsection (10) into section 29 to provide that if a local authority becomes aware that a person who is being provided with advice, guidance or assistance by them under this section has died, the authority must as soon as reasonably practicable notify the Scottish Ministers and Social Care and Social Work Improvement Scotland.
164. Subsection (3)(a) amends section 30(2) of the 1995 Act to alter the definition of who is a "relevant person" for the purposes of a local authority's power in section 30(1) to provide such persons with financial assistance towards education or training. As amended, a person is a relevant person if he is at least sixteen years of age but not yet twenty-six years of age (increased from twenty-one) and either (was on his sixteenth birthday or at any subsequent time) but is no longer looked after by the local authority; or is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order. Subsection (3)(a) also inserts a new subsection (2A) into section 30 to provide that such orders will be subject to the affirmative procedure. Subsection (3)(b) repeals subsections (3) and (4) of section 30 of the 1995 Act as they are now obsolete.

Part 11 – Continuing Care

Section 67 – Continuing Care: looked after children

165. Subsection (1) of section 67 inserts a new section 26A after section 26 of the Children (Scotland) Act 1995. This new section details the provision of continuing care to those who cease to be looked after children. Subsection (4) of new section 26A defines "continuing care" as meaning the same accommodation and other assistance as was being provided for the person by the local authority immediately before they ceased being looked after.

*These notes relate to the Children and Young People (Scotland) Act 2014 (asp 8)
which received Royal Assent on 27 March 2014*

166. Subsection (1) of new section 26A provides that this section only applies where an eligible person ceases to be looked after by a local authority. Subsection (2) defines an “eligible person” as a person who is at least sixteen years of age and is not yet such higher age as may be specified. By virtue of new section 26A(12), “specified” means specified by order made by the Scottish Ministers which will be subject to affirmative procedure (see new subsection (11)(b)).
167. Subsection (3) of new section 26A provides that, subject to subsection (5), the local authority must provide the person with continuing care. Subsection (6) provides that this duty lasts, subject to subsection (7), until the expiry of such period as may be specified by order made by Scottish Ministers (subject to affirmative procedure by virtue of subsection (11)(b)).
168. Subsection (5) of new section 26A provides that the duty to provide continuing care does not apply if the accommodation the person was in immediately before ceasing to be looked after was secure accommodation; was a care placement and the carer has indicated to the authority that they are unable or unwilling to continue to provide the placement; or the local authority considers that providing the care would significantly adversely affect the welfare of the person.
169. Subsection (7) of new section 26A provides that the duty to provide continuing care ceases if: the person leaves the accommodation of the person’s own volition; the accommodation ceases to be available; or the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person. Subsection (8) provides that the situations in which accommodation ceases to be available include: in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement; in the case of a residential establishment provided by the local authority, where the authority closes the establishment; or in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.
170. Subsection (9) of new section 26A provides that the Scottish Ministers may, by order: make provision about when or how a local authority is to consider whether providing or continuing to provide the care would significantly adversely affect the person’s welfare; modify subsection (5) so as to add, remove or vary a situation in which the duty to provide continuing care does not apply; or modify subsection (7) or (8) so as to add, remove or vary a situation in which the duty to provide continuing care ceases.
171. Subsection (10) of new section 26A provides that, if a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify the Scottish Ministers and Social Care and Social Work Improvement Scotland.
172. Subsection (11) provides that an order made under this section may make different provision for different purposes and is subject to the affirmative procedure. Before making an order under this section, the Scottish Ministers must consult each local authority and such other persons as they consider appropriate.
173. Subsection (2) of section 67 amends section 29 of the 1995 Act by adding a new subsection (2A) which provides that subsections (1) and (2) of section 29 do not apply to a person during any period when they are being provided with continuing care under new section 26A. This means that a person receiving continuing care under new section 26A cannot also receive aftercare support under section 29 of the 1995 Act at the same time. However, if the duty to provide continuing care to that person ceases for one of the reasons set out in new section 26A(7) of the 1995 Act that person will then be able to apply for aftercare support under section 29 of the 1995 Act as amended by section 60 of the Act.

Part 12 – Services in Relation to Children at Risk of Becoming Looked After, etc.

Section 68 – Provision of relevant services to parents and others

174. Subsection (1) of section 68 provides that a local authority must make arrangements to secure that relevant services as described by the Scottish Ministers, by order, are made available for each eligible child residing in its area, a qualifying person in relation to such a child, each eligible pregnant woman residing in its area and a qualifying person in relation to such a woman.
175. Subsection (2) defines a “relevant service” as a service comprising, or comprising any combination of: providing information about a matter; advising or counselling about a matter; and taking other action to facilitate the addressing of a matter by a person.
176. Subsection (3) defines an “eligible child” as a child who the authority considers to be at risk of becoming looked after or who falls within such other description as the Scottish Ministers may specify by order. Subsection (4) defines a “qualifying person” in relation to an eligible child as a person: who is related to the child; who has any parental rights or responsibilities in relation to the child; or with whom the child is or has been living.
177. Subsection (5) defines an “eligible pregnant woman” as a pregnant woman who the authority considers is going to give birth to a child who will be an eligible child. Subsection (6) defines a “qualifying person” in relation to an eligible pregnant woman as a person: who is the father of the child to whom the pregnant woman is to give birth; who is married to, in a civil partnership with or otherwise related to the pregnant woman; with whom the pregnant woman is living; or who does not fall within any of these descriptions but who the authority considers will, when the pregnant woman gives birth to the child, become a qualifying person in relation to the child.
178. Subsection (7) explains that the references in this section to a person who is related to another person includes a person who is married to or in a civil partnership with a person who is related to the other person, or a person who is related to the other person by the half blood.

Section 69 – Relevant services: further provision

179. Section 69(1) provides that the Scottish Ministers may make, by order, provision about: when or how relevant services specified in an order under section 68(1) are to be provided; when or how a local authority is to consider whether a child falls within paragraphs (a) and (b) of section 68(3) (a child at risk of becoming looked after or falling within such other description as the Scottish Ministers specify by order); when or how a local authority is to review whether a child continues to fall within paragraphs (a) and (b) of section 68(3), and such other matters about the provision of relevant services specified in an order under section 68(1) as the Scottish Ministers consider appropriate.
180. Subsection (2) provides that an order under subsection (1)(d) may include provision about circumstances in which relevant services specified in an order under section 68(1) may be provided subject to conditions (including conditions as to payment), and the consequences of such conditions not being met.

Part 13 – Support for Kinship Care

Section 71 – Assistance in relation to kinship care orders

181. Subsections (1) and (2) of section 71 provide that local authorities must make arrangements to ensure that kinship care assistance, which is assistance of such description as specified by the Scottish Ministers by order, is made available to those persons, living in its area, specified in subsection (3). Those persons specified in subsection (3) are: a person applying for, or considering applying for, a kinship care order in relation to an eligible child who has not attained the age of 16 years; an eligible

child who has not attained the age of 16 years who is the subject of a kinship care order; a person in whose favour a kinship care order in relation to an eligible child who has not attained the age of 16 years subsists; a child who is 16 years old where, immediately before attaining the age of 16, the child was the subject of a kinship care order and where the child is still eligible; a person who is a guardian by virtue of an appointment under section 7 of the Children (Scotland) Act 1995 of an eligible child who has not attained the age of 16 years (but this is subject to subsection (4) which provides that this does not include a parent who is a guardian of an eligible child), and an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.

182. Subsection (5) defines an “eligible child” as a child who the local authority considers to be at risk of becoming looked after, or who falls within such other description as the Scottish Ministers may by order specify.

Section 72 – Orders which are kinship care orders

183. A kinship care order is not a new, or separate, form of court order. “Kinship care order” is a label used in the Act to describe certain forms of existing court order granted in certain circumstances. Subsection (1) of section 72 explains that for the purposes of section 71, a “kinship care order” is an order under section 11(1) of the 1995 Act which gives a qualifying person the right to have the child living with that person or to otherwise regulate the child’s residence; a residence order which has the effect of the child living with or predominately living with a qualifying person; or an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.
184. Subsection (2) provides that a “qualifying person” means a person who, at the time the order is made, is related to a child, is a friend or acquaintance of someone related to a child or who has another relationship to, or connection with, a child, as specified by order by the Scottish Ministers. An acquaintance is someone who is known slightly to the relative, where the relationship does not necessarily have the same depth or intimacy as a friendship, for example a neighbour. It will be for the court to decide on a case by case basis whether to grant the orders referred to in section 72(1) in the usual way for the particular order concerned; it will not be for the court to determine whether the order so granted constitutes a “kinship care order”.
185. Subsection (3) provides that a parent is not a “qualifying person” for the purposes of subsection (1). In subsection (2) where it refers to a person who is related to a child, subsection (4) provides that this includes someone married to or in a civil partnership with a person who is related to the child, or a person who is related to the child by half blood.

Section 73 – Kinship care assistance: further provision

186. Subsection (1) of section 73 provides that the kinship care assistance which the Scottish Ministers may specify in an order under section 71(1) includes: the provision of counselling, advice or information about any matter; financial support (or support in kind) of any description; and any service provided by a local authority on a subsidised basis.
187. Subsection (2) provides that the assistance specified by such an order may include assistance which a person was entitled to from, or being provided with by, a local authority, immediately prior to a person becoming entitled to assistance under section 71(1). This allows for a person to continue to receive assistance (which is of a description of assistance specified by Ministers by order under section 71(1)) which they received from a local authority prior to their becoming eligible.
188. Subsection (3) provides that the Scottish Ministers may, by order, make provision about: when or how kinship care assistance is to be provided; when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 71(5) (at risk of becoming looked after or falling within such other description as the Scottish

Ministers specify by order); when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 71(5); and such other matters about the provision of kinship care assistance specified in an order under section 71(1) as the Scottish Ministers consider appropriate.

189. Subsection (4) provides that an order under subsection (3)(d) may include provision about circumstances in which a local authority may provide kinship care assistance specified in an order under section 71(2) subject to conditions (including conditions as to payment for the assistance or the repayment of financial support) and consequences of such conditions not being met (including the recovery of any financial support provided).

Part 14 – Adoption Register

Section 75 – Scotland’s Adoption Register

190. This section amends the Adoption and Children (Scotland) Act 2007 by inserting a new Chapter 1A into Part 1.

Section 13A – Scotland’s Adoption Register

191. Subsection (1) provides that the Scottish Ministers must make arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register (“the Register”) for the purposes of facilitating adoption.
192. Subsection (2) provides that the Scottish Ministers may, by regulations, prescribe information relating to adoption which is, or types of information relating to adoption which are, to be included in the Register. This may include information relating to: children who adoption agencies consider should be placed for adoption; persons considered by adoption agencies as suitable to have a child placed with them for adoption; matters relating to such children or persons which arise after information about them is included in the Register; children outwith Scotland who may be suitable for adoption; or prospective adopters outwith Scotland. It provides that the Scottish Ministers may, by regulations, provide for how information is to be retained in the Register and make such further provision in relation to the Register as they consider appropriate.
193. Subsection (3) provides that the Register is not to be open to public inspection or search. The information on the Register cannot be accessed or searched by anyone other than the Scottish Ministers, or the Registration organisation on behalf of the Scottish Ministers.
194. Subsection (4) provides that information is to be kept in the Register in any form the Scottish Ministers consider appropriate.

Section 13B – Registration organisation

195. Subsection (1) provides that arrangements made by the Scottish Ministers under the previous section may, in particular: authorise an organisation to perform the Scottish Ministers’ functions in respect of the Register (other than functions of making subordinate legislation) and provide for payments to be made by the Scottish Ministers to an organisation so authorised. Section 13B(2) requires Scottish Ministers to publish arrangements under section 13A(1) so far as they authorise an organisation to perform the functions of Scottish Ministers in respect of the Register.
196. Subsection (3) provides that an organisation authorised in pursuance of subsection (1) must perform functions delegated to it in accordance with any directions (general or specific) given by the Scottish Ministers.

Section 13C – Supply of information for the Register

197. Subsection (1) provides that an adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about children who it considers ought to be placed for adoption or persons who were included in the Register as such children; and persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons. Subsection (2) provides that regulations made under section 13A(2) may: provide that information is to be provided to a registration organisation in pursuance of subsection (1) instead of to the Scottish Ministers; provide for how and by when that information is to be provided; prescribe circumstances in which an adoption agency, despite the requirement to provide information in subsection (1) is not to disclose information of the type prescribed for the purposes of that subsection.

Section 13D – Disclosure of information

198. Subsection (1) provides that it is an offence to disclose any information derived from the Register other than in accordance with the regulations under section 13A(2). Subsection (2)(a) provides that the regulations under section 13A(2) may authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register to an adoption agency for the purposes of helping it to find someone with whom it would be appropriate to place a child for whom the agency is acting, or to find a child who is appropriate for adoption by someone for whom the agency is acting. Subsection (2)(b) provides that regulations may authorise the Scottish Ministers or registration organisation to disclose this information: to any person (whether or not established or operating in Scotland) specified in the regulations, for any purpose connected with the performance of functions by the Scottish Ministers or a registration organisation in pursuance of this Chapter; for the purpose of enabling the information to be entered in a register which is maintained in respect of England, Wales or Northern Ireland and which contains information about children who are suitable for adoption or prospective adopters; for the purpose of enabling or assisting that person to perform any functions which relate to adoption; for use for statistical or research purposes; or for any other purpose relating to adoption.
199. Subsection (3) provides that regulations made under section 13A(2) may set out terms and conditions on which information may be disclosed in pursuance of this section; specify steps to be taken by an adoption agency in respect of information received in pursuance of subsection (2); and authorise an adoption agency to disclose information derived from the Register for purposes relating to adoption.
200. Subsection (4) provides that subsection (1) (the offence provision) does not apply to a disclosure of information by or with the authority of the Scottish Ministers.
201. Subsection (5) provides that a person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

Section 13E – Fees and other payments

202. This section provides that regulations made under section 13A(2) may prescribe: a fee which is to be paid by an adoption agency when providing information in pursuance of section 13C(1); a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of section 13D(2), (3)(c) or (4); and such other fees to be paid by adoption agencies, or payments to be made by them, in relation to the Register as the Scottish Ministers consider appropriate.

Section 13F – Use of an organisation as agency for payments

203. Subsection (1) provides that the Scottish Ministers may by regulations authorise a registration organisation or any other person to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.
204. Subsection (2) provides that a registration organisation or other person authorised under subsection (1) is to perform the functions exercisable under subsection (1) in accordance with any directions given by the Scottish Ministers.

Section 13G - Supplementary

205. Section 13G provides that nothing authorised or required to be done by virtue of this new Chapter of the 2007 Act constitutes an offence under section 72(2) or 75(1) of that Act. Section 72(2) of the 2007 Act provides it is an offence to make, agree or offer to make, receive or agree to receive, or attempt to obtain certain payments in relation to the adoption of a child. Section 75(1) of the 2007 Act provides that it is an offence to make arrangements for the adoption of a child or to place a child for adoption (this does not apply to adoption agencies).

Part 15 - School Closure Proposals, etc

Section 77 – Restriction on closure proposals

206. **Section 77** inserts a new section 2A (restriction on closure proposals) after section 2 of the 2010 Act. Section 2A(3) provides that, following a decision not to implement a closure proposal, an education authority would not be able to publish a proposal paper under section 4(4) of the 2010 Act for the same school within 5 years (beginning with the day on which the decision not to implement a closure proposal is made) unless there had been a significant change in the school’s circumstances.
207. Subsection (2) of section 2A makes it clear what is meant by “a decision not to implement a closure proposal”, which is a decision taken by an education authority not to implement the proposal after it has published a consultation report on the proposal, or a decision by a School Closure Review Panel to refuse consent to the proposal.

Section 78 – Financial implications of closure proposals

208. **Section 78** amends section 4 of the 2010 Act (proposal paper), adding a new subsection (2A) which requires education authorities, as part of the proposal paper prepared under that section, to provide information about the financial implications of a proposal, where the proposal paper relates to a school closure. This will ensure that school closure consultations prepared by education authorities contain financial information. Further detail on the type and level of financial information required to be provided by education authorities in their proposal paper can be set out in statutory guidance issued under section 19 of the 2010 Act.

Section 79 – Correction of proposal paper

209. **Section 79(2)** amends section 5(2) of the 2010 Act (correction of paper) by inserting new paragraph (aa) which requires an education authority to inform a person who notifies it of an alleged omission of relevant information or an alleged inaccuracy in a proposal paper, of its determination under paragraph (a) of section 5(2) (whether the authority considers that relevant information has been omitted or there has in fact been an inaccuracy) and the reasons for that determination. It amends section 5(2)(b) to require the authority to inform the notifier as to the action (if any), it is taking under new subsection (4) and of the reasons why it is, or is not, taking such action. It also inserts a new paragraph (c) into section 5(2) to require the authority to invite the notifier to make representations to the authority if the notifier disagrees with the authority’s

determination under paragraph (a) or its decision as to whether to take action under subsection (4).

210. **Section 79(3)** inserts new subsections (2A) and (2B) into section 5 to provide that where the notifier makes any such representations, the authority may make a fresh determination or a fresh decision as to whether to take action under new subsection (4), and to require the authority to inform the notifier if it takes either of those steps.
211. **Section 79(4)** substitutes new subsections (3) to (6) of section 5 which provide that where an authority has been notified of an alleged omission or inaccuracy, and the authority determines that there has in its opinion been an omission or that there has in fact been an inaccuracy, where that omission or inaccuracy relates to a material consideration relevant to the education authority's decision as to implementation of the proposal, it **must** take the action mentioned in subsection (5)(a) or (b). Where the omission or inaccuracy does not relate to such a material consideration, the authority **may** take the action mentioned in subsection (5)(a) or (b) or take no further action (except by virtue of section 10(3) of the 2010 Act which requires an authority to include information in the consultation report as to any omissions, alleged omissions or inaccuracies or alleged inaccuracies in the proposal paper).
212. The actions mentioned in subsections (5)(a) and (b) are, in (a) for the authority to publish a corrected proposal paper to give revised notice in accordance with section 6, and to send a copy of the corrected paper to HMIE, or alternatively in (b) for the authority to issue a notice to the relevant consultees and HMIE, to provide the omitted information or, as the case may be, correct the inaccuracy, and if the authority considers it appropriate, to extend the consultation period by such period as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction.
213. New subsection (6) provides that where an authority issues a notice mentioned in subsection (5)(b) after the end of the consultation period, the notice may specify such further period during which representations may be made on the proposal as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction, and any such further period is to be treated as part of the consultation period for the purposes of sections 8, 9 and 10.
214. **Section 79(5)** makes minor modifications to section 10 of the 2010 Act (content of the report) to require the authority to include details of any alleged omission or inaccuracy in its consultation report, a statement of action taken in respect of an alleged omission or inaccuracy, or, if no action has been taken, a statement of this fact and why. It also inserts a new paragraph (c) into section 10(3) to provide that the authority must also include information in relation to any representations made to the authority in pursuance of section 5(2)(c) (representations by the notifier of an alleged omission or inaccuracy if they disagree with the authority's determination in relation to the alleged inaccuracy or omission) in the report.

Section 80 – Special provision for rural school closure proposals

215. **Section 80** inserts a number of new sections into the 2010 Act (sections 11A, 12A and a substituted section 13) which impose additional requirements on education authorities in terms of the process to be followed for rural school closure proposals. It also makes consequential amendments to section 12 of the 2010 Act (Factors for rural school closure proposals).
216. Subsection (1) of section 80 inserts a new section 11A (Presumption against rural school closure) into the 2010 Act. Section 11A(1) provides that section 11A only applies to closure proposals for rural schools (which are those designated as such under section 14 of the 2010 Act). Section 11A(2) prevents an education authority from making a decision to implement a closure proposal unless it has complied with the additional requirements that apply to rural schools in sections 12, 12A and 13, and

having so complied, unless it is also satisfied that such a closure proposal is the most appropriate response to the reasons for formulating the proposal (which it is required to identify under section 12A(2)(a)). Section 11A(3) requires the authority to publish on its website notice of its decision as to implementation of the proposal, and where it decides to implement the proposal (wholly or partly), the reasons why it is satisfied that such implementation is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).

217. Subsection (2)(a) amends section 12 of the 2010 Act (Factors for rural school closure proposals). It repeals subsection (3)(a), which provided for “any viable alternatives to the closure proposal” to be one of the factors to which an education authority must have special regard in proposing a rural school closure (new sections 12A and 13 to the 2010 Act make new provision requiring education authorities to consider alternatives to the closure proposal).
218. Subsections (2)(b) and (c) amend section 12(4) and (5) to provide that for the purpose of sections 12A(2)(c)(ii) and 13(5)(b)(iii) and of sections 12A(2)(c)(iii) and 13(5)(b)(iii), the effect on the community and the effect caused by any different travelling arrangements of any reasonable alternatives to the closure proposal which an education authority identifies or which are identified by consultees in their written representations on a closure proposal, must be assessed by reference to the factors specified in section 12(4) and (5).
219. These sections (sections 12A(2)(c)(ii) and (iii) and section 13(5)(b)(ii) and (iii)) require an education authority to assess, both when formulating a closure proposal and when carrying out a review of the proposal under section 9(1) respectively, the likely effect on the community and the likely effect caused by any different travelling arrangements, in relation to the closure proposal and reasonable alternatives to the proposal identified before and during the consultation process.
220. Subsection (3) of section 80 inserts a new section 12A (Preliminary requirements in relation to rural school closure) into the 2010 Act. This new provision outlines preliminary steps that an education authority must take before it can publish a proposal paper for the closure of a rural school.
221. Section 12A(2) requires the education authority to identify its reasons for the closure proposal (12A(2)(a)) and consider whether there are any reasonable alternatives to the proposal which could respond to those reasons (12A(2)(b)). For the proposal and each and any alternatives identified, the education authority is required to assess the likely educational benefits, the likely effect on the local community and the likely effect of different travelling arrangements (12A(2)(c)). Section 12A(3) provides that reasonable alternatives to the closure proposal may be steps or actions that could be taken which would not result in the school or part of the school closing. However, they are not limited to this and could also include alternative steps or actions that could be taken which would result in the school or part of the school closing.
222. Section 12A(4) places a duty on the education authority not to publish a proposal paper unless, following the consideration required under section 12A(2), it considers that implementation of the proposal is the most appropriate response to the reasons for the proposal.
223. Subsection (4) of section 80 substitutes a new section 13 (additional consultation requirements) into the 2010 Act. The new section 13 imposes more comprehensive and additional requirements on education authorities in consulting on a rural school closure proposal.
224. Section 13(2)(a) to (f) lists the additional information or explanations an education authority must include in a proposal paper for the closure of a rural school, over and above the information specified in section 4 of the 2010 Act. This requires the education authority to inform consultees of the reasons why the proposal is being made, the steps

the education authority has taken (if any) to address those reasons (and if no such steps have been taken, why not), and any reasonable alternatives to the closure proposal identified by the authority, and it requires the authority to explain to the consultees their assessment under section 12A(2)(c) of the educational benefit, the effect on the community and effect of different travelling arrangements that would result from the proposal and any alternatives identified, and to explain the reasons why the authority considered, in light of that assessment, that implementation of the proposal would be the most appropriate response to the reasons for the proposal.

225. **Section 13(3)** provides that for rural school closure proposals, the notice an education authority must give to relevant consultees under section 6(1) of the 2010 Act must additionally summarise the alternatives to the closure proposal identified in the proposal paper and state that written representations can be made on those alternatives and that written representations can suggest other alternatives.
226. **Section 13(4)** provides that references to written representations in sections 8(4)(c), 9(4) and 10(2)(a) of the 2010 Act also include written representations regarding the alternatives to the proposal set out in the consultation paper.
227. **Section 13(5)** imposes additional assessment requirements on an education authority in terms of the review it must carry out of the proposal under section 9(1) of the 2010 Act (the review which follows the authority's receipt of HMIE's report after public consultation on the proposal). It is required, for rural school closure proposals, that the authority must carry out a further assessment in relation to the educational benefit, community effect and effect on travelling arrangements of the proposal and reasonable alternatives set out in the proposal paper following the receipt of the HMIE report, and that it must also carry out an assessment of any reasonable alternatives suggested by consultees in their written representations (section 13(5)(a) and (b)).
228. **Section 13(6)** provides that the consultation report the authority prepares under section 9(2) of the 2010 Act must additionally explain the assessments it makes under section 13(5)(a) and (b) and how these differ (if at all) from the authority's assessment carried out before consultation (under section 12A(2)(c)). It must also explain whether and, if so, the reasons why the authority considers that implementation of the proposal (wholly or partly) would be the most appropriate response to the reasons for the proposal.
229. Subsection (5) of section 80 amends section 1 of the 2010 Act (overview of key requirements), inserting a new subsection (4A) which makes it clear that in the case of rural school closure proposals, the key requirements an education authority must comply with in formulating a closure proposal in relation to a rural school include complying with the preliminary and additional requirements set out in new sections 12A and 13.

Section 81 – Call-in of closure proposals

230. **Section 81** amends the provisions in the 2010 Act regarding call-in and determination of school closure proposals. It inserts new sections 17A, 17B, 17C and 17D and schedule 2A into the 2010 Act which make new provision for a proposal which has been called-in by the Scottish Ministers under section 15 of the Act to be referred to the Convener of School Closure Review Panels for determination by a Panel. There is also detailed provision in relation to the appointment and role and functions of the Convener and the School Closure Review Panels.
231. Subsection (1)(a) amends section 15 of the 2010 Act to provide that when an authority notifies Ministers of its decision to implement a rural school closure proposal, it must give them a copy of the notice it publishes on its website under section 11A(3) (setting out why it is satisfied that implementation is the most appropriate response to the reasons for formulating the proposal). Subsection (1)(b) inserts a new subsection (2A) into section 15 which requires the authority, at the same time as it notifies Ministers of

the decision under subsection (2)(a) to implement a closure proposal, to publish on its website notice of the fact that the Ministers have been so notified and of the opportunity for making representations to the Ministers in connection with subsection (4) of section 15, including the date on which the 3 week period referred to in that subsection is to end.

232. Subsection (1)(c) amends section 15(3), 15(4) and 15(6) of the 2010 Act to amend the period for the Scottish Ministers to issue a call-in notice to the education authority. This is amended from 6 weeks to 8 weeks and has the effect of giving the Scottish Ministers an additional 2 weeks to consider whether to issue a call-in notice.
233. Subsection (1)(d) repeals section 15(5) of the 2010 Act, which provided that a call-in notice issued by the Scottish Ministers under section 15(3) has the effect of remitting the closure proposal to the Scottish Ministers. New section 17A to the 2010 Act, put in by subsection (4), makes new provision for closure proposals which have been called-in by the Scottish Ministers.
234. Subsection (2) repeals section 16 of the 2010 Act, which provided for the Scottish Ministers to determine closure proposals which had been called-in. Subsection (3)(a) makes a consequential repeal of section 17(3)(b) of the 2010 Act which refers to the Scottish Ministers' consideration of the matter of consent under section 16(2).
235. Subsection (3)(b) adds a new subsection (3A) following section 17(3) of the 2010 Act. This places a duty on HMIE to provide the Scottish Ministers with any advice that they reasonably require in considering whether to issue a call-in notice. This advice is to concern the educational aspects of a closure proposal.
236. Subsection (4) inserts 4 new sections into the 2010 Act, sections 17A, 17B, 17C and 17D.
237. New section 17A(1) and (2) (Referral to the Convener of the School Closure Review Panels) of the 2010 Act provides that a school closure proposal which has been called-in by the Scottish Ministers must be referred to the Convener of the School Closure Review Panels. Section 17A(3) provides that the Convener has a period of 7 days to constitute a School Closure Review Panel which is to consider the case that has been referred to the Convener.
238. Section 17A(4) prevents an education authority from implementing a closure proposal which has been referred to the Convener unless the School Closure Review Panel reviewing the proposal grants consent to it and either the period during which that decision may be appealed to the sheriff has expired or an appeal has been abandoned or the sheriff has confirmed the Panel's decision to consent to the proposal. Section 17A(5) puts a new schedule 2A into the 2010 Act which makes further provision about the Convener and School Closure Review Panels including provision for the appointment of the Convener and Panel members.
239. New section 17B (Review by Panel) of the 2010 Act provides for the review that a School Closure Review Panel is required to carry out when it is constituted under section 17A(3). Section 17B(1) requires the Panel to consider both: whether the education authority has failed to comply with the requirements imposed on the authority under the 2010 Act and whether the education authority has failed to take proper account of a material consideration relevant to its decision. These are the same issues which the Scottish Ministers are required to consider under section 17(2) of the 2010 Act in considering whether to call-in a closure proposal (although Ministers only have to consider if the authority *may* have failed to comply with the requirements imposed on the authority under the 2010 Act or to take proper account of a material consideration).
240. New sections 17B(2), (3) and (4) relate to providing information and advice that a School Closure Review Panel reasonably requires in conducting its review of closure proposal. Section 17B(2) places a duty on the education authority to provide information to the Panel. Section 17B(3) places a duty on HMIE to provide a Panel

with advice that it reasonably requires in conducting its review of closure proposal. This advice is concerning the educational aspects of a closure proposal. Section 17B(4) provides a power for a School Closure Review Panel to request information or advice from any other person for the purpose of its review. This could include experts providing information or advice on issues that are relevant to the proposals, or those who made representations regarding the proposal.

241. New section 17B(5) provides a power for the Scottish Ministers to make provision in regulations as to the procedures to be followed by a School Closure Review Panel in carrying out a review under section 17B(1). This power, which is subject to the negative procedure, ensures that Ministers can specify procedures for the Panels to follow in carrying out their review of a school closure proposal once called-in by Ministers.
242. New section 17C(1) (Decision following review) sets out the decisions available to a School Closure Review Panel following a review of a school closure proposal. Section 17C(2) requires the Panel to give reasons for its decision. In addition to the options currently available to Ministers under section 16 of the 2010 Act (which is repealed by section 81(2)) - to consent, consent with conditions or refuse consent to a school closure proposal - the Panel has the option to refuse consent to the proposal and remit it back to the education authority to reconsider and make a fresh decision as to implementation (section 17C(1)(b)).
243. Section 17C(3) provides that in the case of remitting the proposal back to the authority, the Panel may specify which steps under the 2010 Act must be taken again before the authority can take a fresh decision on the proposal. The grounds on which a Panel may refuse consent to a proposal or to remit a proposal back to the education authority are set out in 17C(4). Section 17C(4) also provides that the Panel may refuse to consent to a proposal for either or both of the grounds or reasons set out in paragraphs (a) or (b), and this is irrespective of the grounds on which Ministers called in the proposal.
244. Sections 17C(5) and (6) provide time limits for a Panel to make its decision. A Panel is required to make a decision within 8 weeks of being constituted, unless it has issued a notice that a further period is required and, in such a case, this further period is to be no longer than 16 weeks in total from when the Panel was constituted.
245. Section 17C(8) provides that any conditions set by a Panel as part of its consent to a proposal are binding on an education authority.
246. New section 17D (Appeal against decision of the Panel) provides that a decision of a School Closure Review Panel may be appealed to the sheriff by the education authority or a relevant consultee in relation to the closure proposal. An appeal can only be made on a point of law, must be made by summary application and must be made within 14 days of the Panel's decision. Section 17D(3) provides that the sheriff may confirm the Panel's decision or quash the decision and refer the matter back to the Panel, and section 17D(4) provides that this decision by the sheriff is final and is not subject to further appeal.
247. Subsection (5) of section 81 inserts a new schedule 2A (School Closure Review Panels) into the 2010 Act.
248. [Paragraph 1](#) of schedule 2A makes provision for the establishment of the office of the Convener of the School Closure Review Panels, for the appointment by the Scottish Ministers of a person to hold that office, and for the status of the office-holder. It also provides that the Convener may delegate his or her functions, and for Ministers to appoint a person to act as Convener if the office is vacant or the office holder is unable to perform their functions for whatever reason. Paragraph 1(9) provides a regulation making power that allows Ministers to make provision for or about eligibility for and disqualification from appointment, tenure and removal from office and about the payment of salary etc. to the Convener, and these regulations are subject to negative procedure.

249. **Paragraph 2** makes provision for the appointment of persons eligible to serve as members of the School Closure Review Panel, for the appointment of those persons to individual Panels, for the Convener to make arrangements to train those persons appointed and for a regulation making power to allow Ministers to make provision about eligibility for and disqualification from appointment, tenure, removal from office, payment of expenses and fees etc. to Panel members.
250. **Paragraph 3** allows Ministers to provide such property, staff and services to the Convener as they think necessary or expedient in connection with the exercise of the Convener's functions (including the payment of grants to allow the Convener to employ staff etc.) and requires the Convener to provide a Panel with such staff and services the Convener thinks necessary or expedient in connection with the exercise of the Panel's functions.
251. **Paragraphs 4 and 5** allow Ministers to issue directions to the Convener as to the exercise of the Convener's functions and require the Convener to prepare an annual report on the exercise of their functions and of the Panel's functions during the year and for this to be submitted to Ministers.
252. Subsections (6), (7), (8) and (9) of section 81 make consequential and technical amendments to various other provisions of the 2010 Act, including requiring the Convener and School Closure Review Panels to have regard to guidance issued by the Scottish Ministers.
253. Subsections (10), (11) and (12) of section 81 amend the Scottish Public Services Ombudsman Act 2002, the Freedom of Information (Scotland) Act 2002 and the Public Appointments and Public Bodies etc. (Scotland) Act 2003 to add the Convener to the list of authorities which are respectively subject to investigation by the Ombudsman, subject to Freedom of Information requests and whose appointments are subject to the Public Appointments Code of Practice.

Part 16 – Children's Hearings

Section 82 – Safeguarders: exceptions to duty to prepare report on appointment

254. This section amends section 33 of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act") which deals with the functions of safeguarders. Section 33(1) of the 2011 Act requires any safeguarder appointed by a children's hearing by virtue of section 30, on appointment, to prepare a report for the hearing. Following amendment, section 33 of the 2011 Act will provide that a report does not require to be prepared by a safeguarder if the children's hearing is arranged under any of the following sections of the 2011 Act: section 45 (review by children's hearing where child in place of safety), section 46 (review by children's hearing where order prevents removal of child), section 50 (children's hearing to provide advice to sheriff in relation to application), section 96 (children's hearing to consider need for further interim compulsory supervision order), section 126 (review of contact direction), or section 158 (compulsory supervision order: suspension pending appeal).

Section 83 – Maximum period of child protection order

255. **Section 83** amends section 54 of the 2011 Act (termination of child protection order after maximum of 8 working days). Following amendment, section 54 of the 2011 Act will provide that if, following the making of a child protection order under section 37 of the 2011 Act, a children's hearing does not take place within the period of 8 working days beginning on the day after the day on which a child is removed under the child protection order to a place of safety or within the period of 8 working days beginning on the day after the day on which the order was made, the child protection order automatically terminates.

Section 84 – Power to determine that deeming of person as relevant person to end

256. **Section 84** amends section 79 of the 2011 Act (referral of certain matters for pre-hearing determination) and adds a new section 81A into the 2011 Act. Following amendment, the 2011 Act will provide for a pre-hearing panel to determine whether an individual previously deemed for the purposes of the 2011 Act to be a “relevant person” in relation to a child should continue to be deemed a “relevant person” in relation to the child. The amendments at paragraph 12(2), (3) and (7) of schedule 5 are consequential on these substantive provisions. The amendment to section 160 of the 2011 Act at paragraph 12(8) of schedule 5 makes provision for appeal to the sheriff against a determination of the pre-hearing panel.

Section 85 – Grounds hearing: non-acceptance of facts supporting ground

257. **Section 85** amends section 90 of the 2011 Act (grounds to be put to child and relevant person). Following amendment, section 90(1)(a) requires the chairing member of a children’s hearing arranged under section 69(2) or 95(2) of the 2011 Act (known as the “grounds hearing”) to explain to the child and each relevant person each ground for referral to the children’s hearing (known as a “section 67 ground”) as set out in the statement of grounds prepared by the Principal Reporter under section 89 of the 2011 Act and all the facts supporting each section 67 ground set out in the statement of grounds. Existing section 90(1)(b) requires the chairing member to ask the child and each relevant person whether they accept that each section 67 ground applies in relation to the child. New section 90(1A) requires the chairing member to ask the child and each relevant person whether, in relation to each section 67 ground that that person accepts, each of the supporting facts is also accepted. New section 90(1B) provides that where the child or relevant person does not accept all of the supporting facts in relation to a section 67 ground which they have accepted, the ground is taken, for the purposes of the 2011 Act, to be accepted only if the grounds hearing considers that the person has accepted sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child and it is appropriate to proceed in relation to the ground on the basis only of those supporting facts which are accepted. New section 90(1C) provides that where a ground is taken to be accepted by virtue of section 90(1B), the grounds hearing is required to amend the statement of grounds to delete any supporting facts which are not accepted. The amendments at paragraph 12(4), (5), (6) and (9) of schedule 5 are consequential on these substantive amendments.

Section 86 – Failure of child to attend grounds hearing: power to make interim order

258. **Section 86** amends section 95 of the 2011 Act (child fails to attend grounds hearing). Following amendment, new section 95(3) and (4) will give power to a children’s hearing arranged under section 69(2) or 95(2) (known as a “grounds hearing”) to make an interim compulsory supervision order (ICSO) where a child fails to attend that hearing and was not excused from attending the hearing and the hearing, as a result, has required the Principal Reporter to arrange another grounds hearing. New section 95(4) provides that this power is available if the hearing considers that the nature of the child’s circumstances is such that for their protection, guidance, treatment or control it is necessary that an ICSO be made as a matter of urgency. New section 95(5) provides that an ICSO made under section 95(4) may not include a requirement that the implementation authority arrange a specified medical or other examination of the child.

Section 87 – Limit on number of further interim compulsory supervision orders

259. **Section 87** amends section 96 of the 2011 Act (children’s hearing to consider need for further interim compulsory supervision order) so that a children’s hearing may only make a maximum of 3 interim compulsory supervision orders (ICSOs) in respect of a child in relation to one reference to the hearing. If a further ICSO is required beyond that, an application must be made to the sheriff under section 98 of the 2011 Act.

Section 88 – Area support teams: establishment

260. **Section 88** amends paragraphs 12 and 13 of schedule 1 of the the 2011 Act. Schedule 1 of the 2011 Act makes further provision about the National Convener of Children’s Hearings Scotland (CHS) and about CHS itself – such as provision relating to appointment and functions, etc. Paragraph 12 of the schedule provides for the establishment and membership of area support teams (ASTs) which are to carry out for their areas, the selection of children’s hearing members and paragraph 13 applies when the National Convener first establishes an AST under paragraph 12 and is a transitional provision dealing with the transfer of members from a Children’s Panel Advisory Committee to an AST. Paragraph 14 makes provision for the functions of ASTs.
261. **Section 88(2)(a)** provides that the National Convener must keep the designation of areas under paragraph 12(1) under review and that the National Convener may revoke or make a new designation at any time. The National Convener will be required to ensure, when revoking or making new designations, that each local authority will fall within a designated area under paragraph 12(1). Where a designation is revoked, this will have the effect of dissolving the area support team that was established as a consequence of the designation. New paragraph 12(3C) requires the National Convener to consult with the affected local authority before revoking or making a designation. This means that the National Convener must ensure that when exercising the power to make and revoke designations of ASTs, there will always be an AST in relation to each local authority area and therefore that there will not be a time when a local authority no longer has an AST as a result of a revocation.
262. New paragraph 12(3D) provides that in sub-paragraph 3C “affected local authority” means in the case of making a designation the local authority whose area falls with the area proposed to be designated and, in the case of a revocation of a designation, each constituent local authority for the area support team established as a consequence of the designation.
263. On making or revoking a designation under paragraph 12(1) and 12(3B), the National Convener must notify each affected constituent local authority.
264. **Section 88(2)(b)** amends paragraph 13 of schedule 1 to the 2011 Act so that paragraph 13 applies where the National Convener establishes an area support team under paragraph 12(1) and where the area of the area support team consists of or includes a new area.
265. **Paragraph 13(b)(iv)** amends paragraph 13(7) to provide that “new area” means an area which has never previously been the area (or part of the area) of an area support team.
266. **Section 88(3)** provides that an area support team established before this section comes into force continues in existence as if it were established under paragraph 12(1) as amended by this section.

Section 89 – Area support teams: administrative support by local authorities

267. This section amends paragraph 14 of schedule 1 to the 2011 Act to provide that each constituent local authority (of an area support team, as established by the National Convener in terms of schedule 1, paragraph 12 of the 2011 Act) must provide an area support team with such administrative support as the National Convener considers appropriate. “Administrative support” is defined as staff, property or other services which the National Convener considers are required to facilitate the carrying out by an area support team of its functions.

Part 17 – Other Reforms

Detention of children in secure accommodation

Section 91 – Appeal against detention of child in secure accommodation

268. This section amends the Criminal Procedure (Scotland) Act 1995 (“the CPSA”) to insert a new provision, section 44A. This new section provides that a child or relevant person(s) in relation to the child, or the child and one or more relevant persons jointly or 2 or more relevant persons jointly, may appeal to the sheriff against a local authority decision to detain the child in secure accommodation following an order having been made to detain the child in residential accommodation under section 44 of the CPSA. New section 44A(3) provides that an appeal hearing under this new section cannot be held in open court. New section 44A(4) provides that the sheriff may either confirm the decision to detain the child in secure accommodation or quash the decision and direct the local authority to move the child to residential accommodation which is not secure accommodation instead.
269. New section 44A(5) allows the Scottish Ministers by regulations to make further provisions about appeals. These regulations, which are subject to affirmative procedure, may specify the period within which appeals should be made, make provision about the hearing of evidence during an appeal and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.
270. “Relevant person” is defined as any person who is a relevant person in relation to the child for the purposes of the Children’s Hearings (Scotland) Act 2011, including any person who is deemed to be a relevant person in relation to the child by virtue of sections 81(3), 160(4)(b) or 164(6) of the 2011 Act.
271. This new procedure reflects appeal rights in the 2011 Act. Section 151 of that Act sets out the ways in which secure accommodation authorisations are implemented where a children’s hearing makes a relevant order or warrant (including a compulsory supervision order) in relation to a child and section 162 of that Act provides for an appeal to the sheriff against a decision to implement a secure accommodation authorisation, including by one or more relevant persons in relation to a child.
272. Secure accommodation in this section has the meaning assigned to it in Part II of the Children (Scotland) Act 1995.

Children’s legal aid

Section 92 – Power of Scottish Ministers to modify circumstances in which children’s legal aid to be made available

273. This section inserts a new section 28LA into the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Section 28L of the 1986 Act allows Scottish Ministers to make children’s legal aid available by regulations for specified children’s hearings under the 2011 Act to specified persons. The purpose of section 28LA is to allow Scottish Ministers to make similar regulations in respect of court proceedings under the 2011 Act. Those regulations would be subject to affirmative procedure.
274. The same tests would apply to similar circumstances whether children’s legal aid is provided by means of section 28LA or another section of the Act. In relation to court proceedings, the eligibility tests for a person (other than a child) are whether it is reasonable and whether undue hardship would occur if state-funded representation is not provided. In relation to court proceedings where the person is a child, the eligibility tests are reasonableness, undue hardship, and whether it is in the best interests of that child for children’s legal aid to be made available. If the court proceedings are an appeal, the person (whether or not they are a child) must satisfy an additional test of substantial grounds for making or responding to that appeal.

Provision of school meals

Section 93 – Provision of free school lunches

275. This section amends section 53 of the 1980 Act” to (i) impose a duty on education authorities to provide certain pupils (prescribed by regulations) with school lunches free of charge; and (ii) give education authorities the power to provide school lunches free of charge to pupils who satisfy such conditions as the authority thinks fit.
276. Subsections (2) to (5) remove the provisions which currently require authorities to charge for school lunches and remove the current limit on the authority’s power to provide only food and drink which is not a school lunch free of charge. Subsection (2) repeals section 53(2) of the 1980 Act with the effect that there is no longer a requirement on education authorities to charge pupils for a school lunch. Instead they have the power to provide school lunches free of charge.
277. Subsection (3) inserts “which the authority are required to provide by virtue of subsection (3)” onto the end of section 53(2A) of the 1980 Act. As section 53(2B) of the 1980 Act gives local authorities the power to provide any food or drink free of charge or charge pupils for any food or drink, including school lunches, the effect of this insertion is to make it clear that subsection (2B) only applies to a school lunch which is not provided pursuant to section 53(3); the provisions which confer eligibility for free school lunches and which the authority is under a duty to provide free of charge.
278. Subsection (4) removes the limitation on authorities as to the time of day when they provide food or drink free of charge from section 53(2C)(b) of the 1980 Act, ensuring that can food or drink can be provided free of charge at any time of the day.
279. Subsection (5) removes reference to subsection (2) from section 53(2D) of the 1980 Act consequential on the repeal of section 53(2) of the 1980 Act by section 93(2) which removes the obligation on authorities to charge for school lunches.
280. The purpose of subsection (6) is to insert a new subsection (3)(c) into section 53 of the 1980 Act. Section 53(3) contains the provisions which confer eligibility for free school lunches which the authority is under a duty to provide free of charge. The effect of the new subsection is to introduce a further enabling power so that the Scottish Ministers may prescribe the description of pupils (whether that be by reference to their yearly stage of education or such other description) to whom education authorities are obliged to provide free school lunches.

Licensing of child performances

Section 94 – Extension of licensing of child performances to children under 14

281. This section repeals section 38 of the Children and Young Persons Act 1963 (“the 1963 Act”). It has the effect of removing restrictions in that section which limit children under the age of 14 from being granted a performance licence under section 37 of the 1963 Act, except where the child is dancing in a ballet or acting and the part can only be taken by a child of that age, or where the performance is wholly or mainly musical or consists only of opera and ballet.

Wellbeing

Section 95 – Consideration of wellbeing in exercising certain functions

282. This section inserts a new section 23A after section 23 of the Children (Scotland) Act 1995.
283. Subsection (1) of the new section 23A applies where a local authority is exercising a function under or by the virtue of section 17, 22 or 26A of the 1995 Act.

284. Subsection (2) provides that the local authority must have regard to the general principle that their functions in relation to children and young people should be exercised in a way which is designed to promote, safeguard and support their wellbeing.
285. Subsection (3) provides that for the purposes of the previous subsection the local authority is to assess the wellbeing of a child or young person by referring to the extent to which the wellbeing indicators in section 96(2) are or would be satisfied in relation to them.
286. Subsection (4) provides that a local authority is to have regard to the guidance issued under section 96(3) of the Children and Young People (Scotland) Act 2014 when assessing the wellbeing of the child or young person.
287. Subsection (5) defines “the 2014 Act” as the Children and Young People (Scotland) Act 2014.

Part 18 - General

Section 96 – Assessment of wellbeing

288. Subsection (1) applies where a person is to assess whether the wellbeing of a child or young person is being, or would be, promoted, safeguarded, supported, or adversely affected.
289. Subsection (2) provides that the person should assess the wellbeing of the child or young person by reference to the extent to which the child or young person would be safe, healthy, achieving, nurtured, active, respected, responsible and included (these concepts being known in practice as “the SHANARRI indicators”).
290. Subsection (3) provides that the Scottish Ministers must issue guidance on how the wellbeing indicators listed in subsection (2) are to be used to assess the wellbeing of a child or young person.
291. Subsections (4) and (5) provide that the Scottish Ministers must consult with local authorities, health boards and any other persons they think appropriate before a person issues or revises guidance and that, in measuring the wellbeing of a child or young person, they must have regard to the guidance issued in subsection (3).
292. Subsections (6) and (7) provide that Scottish Ministers can, by order, modify the list of wellbeing indicators in subsection (2) and before making an order must consult with each local authority, health board and any other people they think are appropriate.

Section 98 – Modification of enactments

293. This section introduces schedule 5 which contains minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act.

Section 99 – Subordinate legislation

294. Subsection (1) provides that any power of the Scottish Ministers to make an order or regulations includes powers to make different provision for different purposes and such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.
295. Subsection (2) states that an order made under the following sections is subject to the affirmative procedure – sections 3(2), 7(5), 30(1), 31(2), 37(7), 43(1), 44(2), 47(2)(c) (ii), 47(4), 48(2), 51(2), 56(2), 57(2)(b), 58(2), 68(3)(b), 71(5)(b) and 96(6).
296. Subsection (3) provides that an order made under section 101 containing provisions which add to, replace or omit any part of the text of this or any other Act is subject to affirmative procedure.

*These notes relate to the Children and Young People (Scotland) Act 2014 (asp 8)
which received Royal Assent on 27 March 2014*

297. Subsection (4) provides that other orders made under this Act, and any regulations made under this Act, are subject to negative procedure.
298. Subsection (5) provides that this section does not apply to an order made under section 102(3).

Section 100 – Guidance and directions

299. This section provides that any guidance or directions issued by the Scottish Ministers in exercise of their powers under the Act can be issued either generally or for particular purposes and different guidance or directions can be issued to different persons or otherwise for different purposes. Subsection (2) requires the Scottish Ministers to publish (in a manner they consider appropriate) any guidance or directions issued by them under the Act. Subsection (3) makes clear that the requirement to publish includes a requirement to publish any revised guidance and revised or revoked directions.

Section 101 – Ancillary provision

300. This section allows the Scottish Ministers, by order, to make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act. Such an order may also make such transitional, transitory or savings provision as Scottish Ministers consider appropriate for the purposes of, or in connection with, the coming into force of any provision.

Section 102 – Commencement

301. This section provides for this Part (except for sections 96, 97 and 98) to come into force on the day after Royal Assent and for the other provisions of the Act to be commenced by order made by the Scottish Ministers. Such an order may include transitional, transitory or savings provision. Subsections (2) to (5) of section 47 come into force on the day after Royal Assent thereby enabling laying of secondary legislation on the definition of children eligible for early learning and childcare at the earliest possible opportunity.

Section 103 – Short title

302. This section states the short title of the Act as being the Children and Young People (Scotland) Act 2014.

Schedule 1 – Authorities to which section 2 applies

303. **Schedule 1** lists the authorities to which the duty in section 2 of the Act (duties of public authorities in relation to the UNCRC) applies. Schedule 1 is introduced by section 3. The persons included in this schedule are those persons who it is considered are likely to, in the course of their function, engage directly with children and young people, and as such should be taking steps to secure better or further effect, within the area of its responsibility, of the UNCRC requirements.

Schedule 2 – Relevant authorities

304. **Schedule 2** lists relevant authorities for the purposes of Part 4 (Named Persons) of the Act. The persons included in this schedule are those persons who it is considered are likely to, in the course of their function, engage directly with children, families and adults.

Schedule 3 – Listed Authorities

305. **Schedule 3** contains listed authorities for the purposes of Part 5, who must comply with any reasonable request made of them to provide a person exercising Child's Plan

functions under Part 5 with information, advice or assistance for that purpose. The persons included in this schedule are those persons who it is considered are likely to, in the course of their functions, engage directly with children, families and adults.

Schedule 4 – Corporate parents

306. **Schedule 4** lists the persons who are “corporate parents” for the purposes of Part 9 (corporate parenting) of the Act and is introduced by section 56. The persons included in this schedule are those bodies who it is considered are likely to, in the course of exercising their functions, engage directly with looked after children.

Schedule 5 – Modification of enactments

307. **Schedule 5** makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act. Schedule 5 is introduced by section 98.
308. **Paragraph 1** amends the Social Work (Scotland) Act 1968 (the 1968 Act). Section 5(1) of the 1968 Act provides that local authorities shall perform their functions under certain enactments under the general guidance of the Scottish Ministers. Further, section 5(1A) enables the Scottish Ministers to issue directions to local authorities (either individually or collectively) as to the manner in which they are to exercise their functions under the enactments mentioned in subsection (1B); and a local authority is required to comply with any direction made.
309. **Paragraph 1(a)(i)** and (ii) of schedule 5 amend section 5 of the 1968 Act so as to bring the provisions relating to early learning and childcare (Part 6), services in relation to children at risk of becoming looked after etc (Part 12) and support for kinship care (Part 13) within the ambit of section 5(1) of the 1968 Act; the effect will be that local authorities must perform their functions in relation to early learning and childcare in so far as they apply to children falling within section 47(3)(a) of the Act (that is looked after 2 year olds), and in relation to the provision of support to kinship carers and the provision of services to those eligible to receive it under the general guidance of the Scottish Ministers. Paragraph 1(b) amends section 5(1B) of the 1968 Act so as to include the provisions on early learning and childcare in so far as they relate to looked after 2 year olds within subsection (1B) of the 1968 Act; the effect being that the Scottish Ministers will be able to issue directions to local authorities as to the manner in which they exercise their functions in relation to early learning and childcare for looked after 2 year olds. Paragraph 1(c) inserts a definition of looked after children into section 5 of the 1968 Act.
310. **Paragraph 2** amends the Education (Scotland) Act 1980 (the 1980 Act) in consequence of the provisions on early learning and childcare in Part 6 of the Act. Paragraph 2(2)(a) amends section 1(1A) of the 1980 Act so as to provide that the duty to provide adequate and effective provision of school education conferred on education authorities under section 1(1) of the 1980 Act, in relation to children who are under school age, is to be exercisable only to the extent required by section 47(1). Under the current law, the duty to provide adequate and effective school education in relation to children who are under school age is exercisable only in respect of children described in an order made under subsection (1A) of section 1 of the 1980 Act.
311. **Paragraph 2(2)(b)** removes subsections (1B) and (4A) from section 1 of the 1980 Act; those provisions set out that an order made under subsection (1A) could set out the amount of school education which children described in the order are to be provided with (subsection (1B)) and that such an order was subject to negative procedure (subsection (4A)).
312. Section 1(5)(a)(i) of the 1980 Act defines school education in relation to pupils who are under school age. Paragraph 2(2)(c) of schedule 5 replaces that definition with the concept of early learning and childcare which has the meaning given in Part 6 of the

Act (see the definition of “early learning and childcare” inserted into section 135 of the 1980 Act by paragraph 2(6)(a) of schedule 5).

313. [Paragraph 2\(6\)](#) amends section 135 of the 1980 Act which is an interpretation section. Paragraph 2(6)(a) inserts a definition of “early learning and childcare” which has the same meaning as in Part 6. Paragraph 2(6)(b) substitutes the definitions of “nursery school” and “nursery classes” and replaces the current definition (which gives them the same meaning in section 1(5)(a)(i) of the 1980 Act) with a definition which states that they are schools and classes which provide early learning and childcare.
314. [Paragraphs 2\(3\) to \(5\)](#) make a number of amendments to the 1980 Act in consequence of the changes made by section 93 (provision of school lunches) of this Act. Section 53A of the 1980 Act places a duty on an education authority to ensure that, through the promotion of school lunches, children who are entitled to free school lunches take up those lunches. Further, section 53A(2) requires an education authority to take reasonable steps to ensure that every pupil who is entitled to free school lunches, by virtue of section 53(3) (i.e. because they, or their parent, are in receipt of certain benefits), receives those school lunches. Paragraph 2(3) which substitutes “53” for 53(3) in section 53A(2) ensures that this duty also applies to free school lunches provided by virtue of section 95 of this Act.
315. Section 53B of the 1980 Act imposes a duty on education authorities to take reasonable steps to protect the identity of pupils receiving free school lunches. Paragraph 2(4)(a)(ii) and (c) which substitute “53” for 53(3) in both subsections (1) and (5)(b) of section 53B ensures that this duty applies to free school lunches provided by virtue of section 93 of this Act; that is by virtue of children being entitled because they are prescribed by regulations made by the Scottish Ministers; or by virtue of free school lunches being provided by an education authority under its power to provide food or drink (including school lunches) free of charge.
316. As section 93 means that free school lunches may be provided to more pupils than those who receive, or whose parents receive, certain benefits, there may be circumstances where the potential stigma associated with free school lunches will not arise, for example in the implementation of the policy to provide free school lunches to primary 1 to 3 children in Scotland. In such cases it will be neither necessary, nor possible, to protect the identity of pupils receiving free school lunches and therefore it would be inappropriate to impose that duty on education authorities. Therefore, paragraph 2(4)(a)(i) and (b) amend section 53B of the 1980 Act by inserting a new subsection (1A) to enable Ministers to prescribe, through regulations, circumstances when the duty to protect identity will not apply. Education authorities will not therefore need to take steps to protect the identity of pupils taking free school lunches when there is no risk of stigma and therefore no benefit to the pupils in doing so.
317. [Paragraph 2\(5\)](#) amends section 133 of the 1980 Act to provide that any regulations made under section 53(3)(c) (power of Ministers to prescribe children who are to be eligible for free school lunches) will be subject to affirmative procedure.
318. [Paragraph 3](#) amends the Legal Aid (Scotland) Act 1986. Specifically, it amends sections 28F(1)(b) to provide that children's legal aid is available in relation to the changes made by section 84 of this Act, and it amends section 37(2) of the 1986 Act to provide that affirmative procedure applies to the powers of Scottish Ministers under the new section 28LA of the 1986 Act (inserted by section 92 of this Act).
319. [Paragraph 4](#) amends the Children (Scotland) Act 1995 (“the 1995 Act”). Paragraph 4(2) repeals section 19 (local authority plans for services for children) of the 1995 Act in consequence of the provisions in Part 3 of the Act relating to children’s services planning. Paragraph 4(3) amends section 20 (publication of information about services for children) of the 1995 Act to substitute a new subsection (2) which defines “relevant services” for the purposes of that section which means services provided by a local authority under or by virtue of Part II of the 1995 Act, the Children’s Hearings

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(Scotland) Act 2011, Part 9 or 10 of the Children and Young People (Scotland) Act 2014 or any of the enactments mentioned in section 5(1B)(a) to (n), (r) or (t) of the 1968 Act. A further connected amendment is made in paragraphs 5 and 9 of schedule 5 and is explained below.

320. [Paragraph 4\(4\)](#) amends section 44 of the 1995 Act to prevent a person publishing information which would identify a child, their address or school only in respect of proceedings before a sheriff on an application for an exclusion order under section 76(1) of the 1995 Act. This is connected to the amendment made in paragraph 12 of schedule 5 which is explained below.
321. [Paragraph 5](#) makes minor drafting amendments to the Criminal Procedure (Scotland) Act 1995.
322. [Paragraph 6](#) repeals paragraph 11 of section 37 of the Education (Scotland) Act 1996 in consequence of the repeal of section 38 of the Children & Young Persons Act 1963 which is achieved through section 94 of this Act.
323. [Paragraph 7](#) amends the Standards in Scotland's Schools Act 2000 (the 2000 Act) in consequence of the provisions on early learning and childcare in Part 6 of the Act. Section 34 of the 2000 Act contains a power for the Scottish Ministers to issue guidance to education authorities as respects the discharge of their functions under the 1980 Act and education authorities must in discharging those functions have regard to such guidance. Paragraph 7(a) and (b) of schedule 5 amend section 34 to enable guidance to be issued by the Scottish Ministers to local authorities about their functions in relation to the provision of early learning and childcare under Part 6 of the Act.
324. [Paragraph 8](#) amends section 73(2)(a) of the Regulation of Care (Scotland) Act 2001 in consequence of the provision made at 60 of the Act relating to the provision of aftercare to young people. Section 73(2) is a power for the Scottish Ministers to make regulations to specify the manner in which assistance may be provided under subsections (1) and (2) of section 29 of the Children (Scotland) Act 1995. Section 73(2)(a) is amended so that this power may be exercised in relation to assistance provided under new subsections (5A) and (5B) which are inserted by section 60 of the Act.
325. [Paragraph 9](#) amends the Mental Health (Care and Treatment) (Scotland) Act 2003 so as to make a change to the definition of "relevant services" consequential on the repeal of section 19 of the Children (Scotland) Act 1995 by paragraph 4(2) of schedule 5 explained above.
326. [Paragraph 10](#) amends the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) in consequence of the provisions on early learning and childcare in Part 6 of the Act. Paragraph 10(2), (3) and (4)(a) amends sections 1(3), 5(3)(a) and 29(1) of the 2004 Act respectively so as to replace the concept of "prescribed pre-school child" (as under current law such children are prescribed under an order section 1(1A) and (1C) of the 1980 Act) with the concept of "eligible pre-school child" as defined in section 43(2) of the Act. Paragraph 10(4)(b) of schedule 5 removes the definition of "prescribed pre-school child" in consequence of the other amendments made by paragraph 8. It should be noted that an "eligible pre-school child" for the purposes of the early learning and childcare provisions in Part 6 of the Act will fall squarely within the definition of "pre-school child" in the 2000 Act and other enactments which refer to that concept.
327. [Paragraph 11](#) amends the Adoption and Children (Scotland) Act 2007 to provide that any orders or regulations made under section 13A(2) or 13E(1) respectively, are not to be made unless a draft of the instrument has been laid before and approved by resolution of the Scottish Parliament (affirmative procedure instruments).
328. [Paragraph 12](#) amends sections 80(1), 81, 142 and 160 of the Children's Hearings (Scotland) Act 2011 in consequence of the changes made by section 84 (power to determine that deeming of person as relevant person to end) of this Act. It also amends

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sections 94(3), 105, 106 and 202(1) of the 2011 Act in consequence of the changes made by section 85 (grounds hearing: non-acceptance of facts supporting ground) of this Act. Further, it amends schedule 6 (repeals) of the Children's Hearings (Scotland) Act 2011 (the 2011 Act) to omit the repeal of section 44 of the Children (Scotland) Act 1995 (prohibition of publication of proceedings at children's hearing) from the list of repealed provisions in that Act. Section 44, whilst broadly replaced by provision made at section 182 of the 2011 Act, requires to be retained in relation to proceedings for exclusion orders under section 76(1) of the 1995 Act. Paragraph 4(4) of schedule 5 makes amendments to section 44 of the 1995 Act to limit its effect in this regard.