



# Children (Scotland) Act 2020

## 2020 asp 16

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th August 2020 and received Royal Assent on 1st October 2020**

An Act of the Scottish Parliament to amend the law relating to children; and for connected purposes.

PROSPECTIVE

*Regard to be had to child's views*

### **1 Proceedings under Children (Scotland) Act 1995**

(1) The Children (Scotland) Act 1995 is modified as follows.

(2) In section 6 (views of children)—

(a) in subsection (1)—

(i) after “shall” insert “ comply with subsections (1A) and (1D) ”,

(ii) the words after paragraph (b) are repealed,

(b) after subsection (1) insert—

“(1A) The person must—

(a) give the child an opportunity to express the child's views in—

(i) the manner that the child prefers, or

(ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and

(b) have regard to any views expressed by the child, taking into account the child's age and maturity.

(1B) But the person is not required to comply with subsection (1A) if the person is satisfied that—

(a) the child is not capable of forming a view, or

(b) the location of the child is not known.

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(1C) In considering whether the child is capable of forming a view, the person is to start with the presumption that the child is.

(1D) The person must, so far as is practicable, have regard to the views of any other person who has parental responsibilities or parental rights in relation to the child.”.

(3) In section 11 (court orders relating to parental responsibilities etc.)—

- (a) subsections (7) to (7E) are repealed,
- (b) in subsection (8), the words “, notwithstanding subsection (7) above,” are repealed,
- (c) subsections (9) and (10) are repealed.

(4) After section 11 insert—

**“11ZA Paramourncy of child's welfare, and the non-intervention presumption**

(1) In deciding whether or not to make an order under section 11(1) and what order (if any) to make, the court must regard the welfare of the child concerned as its paramount consideration.

(2) The court must not make an order under section 11(1) unless it considers that it would be better for the child concerned that the order be made than that none should be made at all.

(3) When considering the child's welfare and whether it would be better for the child to make an order than not, the court must have regard to the following matters in particular—

- (a) the need to protect the child from abuse, or the risk of abuse, which affects, or might affect, the child,
- (b) the effect that abuse, or the risk of abuse, might have on the child,
- (c) the ability of a person to care for, or otherwise meet the needs of, the child, where that person has carried out, or might carry out, abuse which affects, or might affect, the child,
- (d) the effect that abuse, or the risk of abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under section 11(1), would have) those responsibilities,
- (e) whether it is, or would be, appropriate for an order to require that two or more persons co-operate with one another with regard to matters affecting the child.

(4) In subsection (3)—

“abuse” includes—

- (a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress,
- (b) abuse of a person other than the child, and
- (c) domestic abuse,

“conduct” includes—

- (a) speech, and

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(b) presence in a particular place or area.

### **11ZB Regard to be had to the child's views**

- (1) In deciding whether or not to make an order under section 11(1) and what order (if any) to make, the court must—
  - (a) give the child concerned an opportunity to express the child's views in—
    - (i) the manner that the child prefers, or
    - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
  - (b) have regard to any views expressed by the child, taking into account the child's age and maturity.
- (2) But the court is not required to comply with subsection (1) if satisfied that—
  - (a) the child is not capable of forming a view, or
  - (b) the location of the child is not known.
- (3) The child is to be presumed to be capable of forming a view unless the contrary is shown.
- (4) Nothing in this section requires a child to be legally represented in any proceedings in which the child's views are sought, if the child does not wish to be.”.
- (5) In section 14 (jurisdiction and choice of law in relation to certain matters), in subsection (4), for “subsection (7) of that section” substitute “ sections 11ZA and 11ZB ”.
- (6) In section 16 (welfare of child and consideration of his views), for subsection (2) substitute—

“(2) In the circumstances mentioned in subsection (4), the sheriff must—

  - (a) give the child concerned an opportunity to express the child's views in—
    - (i) the manner that the child prefers, or
    - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
  - (b) have regard to any views expressed by the child, taking into account the child's age and maturity.

(2A) But the sheriff is not required to comply with subsection (2) if satisfied that—

  - (a) the child is not capable of forming a view, or
  - (b) the location of the child is not known.

(2B) The child is to be presumed to be capable of forming a view unless the contrary is shown.”.
- (7) The italic heading preceding section 11 becomes “ *Court orders relating to parental responsibilities etc.* ”.

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- (8) Before section 12, insert as an italic heading “ *Exercise of court functions relating to children* ”.

## **2 Proceedings under Adoption and Children (Scotland) Act 2007**

- (1) The Adoption and Children (Scotland) Act 2007 is modified as follows.

- (2) In section 14 (considerations applying to the exercise of powers)—

- (a) in subsection (1), for “(4)” substitute “ (4C) ”,
- (b) subsection (4)(b) is repealed,
- (c) after subsection (4) insert—

“(4A) The court or adoption agency must—

- (a) give the child an opportunity to express the child's views in—
  - (i) the manner that the child prefers, or
  - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
- (b) have regard to any views expressed by the child, taking into account the child's age and maturity.

(4B) But the court or adoption agency is not required to comply with subsection (4A) if satisfied that the child is not capable of forming a view.

(4C) The child is to be presumed to be capable of forming a view unless the contrary is shown.”,

- (d) in subsection (6), for “(4)” substitute “ (4C) ”,
- (e) subsection (8) is repealed.

- (3) In section 84 (conditions and considerations application to making of order)—

- (a) for subsection (5)(a) substitute—

“(a) give the child an opportunity to express the child's views in—

- (i) the manner that the child prefers, or
- (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference,”

- (b) for subsection (5)(b)(i) substitute—

“(i) any views expressed by the child, taking into account the child's age and maturity,”,

- (c) after subsection (5) insert—

“(5A) But the court is not required to comply with subsection (5)(a) if satisfied that the child is not capable of forming a view.

(5B) The child is to be presumed to be capable of forming a view unless the contrary is shown.”,

- (d) subsection (6) is repealed.

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### **3 Proceedings under Children's Hearings (Scotland) Act 2011**

- (1) The Children's Hearings (Scotland) Act 2011 is modified as follows.
- (2) In section 27 (views of the child), for subsections (3) and (4) substitute—
  - “(3) The children's hearing, pre-hearing panel or the sheriff must—
    - (a) give the child an opportunity to express the child's views in—
      - (i) the manner that the child prefers, or
      - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
    - (b) have regard to any views expressed by the child, taking into account the child's age and maturity.
  - (4) But the children's hearing, pre-hearing panel or the sheriff is not required to comply with subsection (3) if satisfied that—
    - (a) the child is not capable of forming a view, or
    - (b) the location of the child is not known.
- (4A) The child is to be presumed to be capable of forming a view unless the contrary is shown.”.

VALID FROM 25/10/2021

#### *Vulnerable witnesses and parties*

PROSPECTIVE

### **4 Vulnerable witnesses: prohibition of personal conduct of case**

- (1) The Vulnerable Witnesses (Scotland) Act 2004 is modified as follows.
- (2) In section 11 (interpretation of Part 2), in subsection (5), in the definition of “relevant proceedings”, for “of the 2011 Act (other than section 98 or 99)” substitute “ and section 154 of the 2011 Act ”.
- (3) After section 11 insert—

#### **“11A Deemed vulnerable witnesses: relevant proceedings**

- (1) In relevant proceedings, the court is to consider a person to be a vulnerable witness if it is alleged in the statement of grounds that the person is the victim of any of the following conduct—
  - (a) conduct amounting to—
    - (i) an offence mentioned in schedule 1 of the Criminal Procedure (Scotland) Act 1995,
    - (ii) an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009,
  - (b) domestic abuse,

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(c) being forced into a marriage or civil partnership.

(2) For the purposes of subsection (1)—

(a) “the statement of grounds” means the statement of grounds, within the meaning of section 89(3) of the 2011 Act, that—

- (i) gave rise to the relevant proceedings, or (as the case may be)
- (ii) gave rise to the grounds determination which, in turn, gave rise to the relevant proceedings,

(b) the reference to being forced into a marriage is to be construed in accordance with subsections (4) to (6) of section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011,

(c) the reference to being forced into a civil partnership is to be construed in accordance with the provisions mentioned in paragraph (b), subject to the references in those provisions to marriage being read as references to civil partnership.

(3) The Scottish Ministers may by regulations—

(a) modify the list of conduct in subsection (1) by—

- (i) adding a description of conduct, or
- (ii) modifying or removing a description of conduct added to the list by regulations under this paragraph, and

(b) make any other modifications to this section that appear to the Scottish Ministers to be necessary or expedient in consequence of provision modifying the list.

(4) Regulations under subsection (3) are subject to the affirmative procedure.

**11B Deemed vulnerable witnesses: proceedings concerning order under section 11(1) of the Children (Scotland) Act 1995**

(1) In proceedings to which subsection (2) applies, the court is to consider a person to whom subsection (3) or (4) applies to be a vulnerable witness.

(2) This subsection applies to proceedings, other than relevant proceedings, in which the court is considering whether to make an order under section 11(1) of the Children (Scotland) Act 1995.

(3) This subsection applies to a person if there is in force a non-harassment order, interdict or any similar order or remedy granted by a court prohibiting certain conduct towards the person by a party to the proceedings.

(4) This subsection applies to a person if—

- (a) a relevant offence has been committed against the person and a party to the proceedings has been convicted of committing it, or
- (b) a party to the proceedings is being prosecuted for committing a relevant offence against the person.

(5) For the purposes of subsection (4)—

(a) the following are relevant offences—

- (i) an offence specified in section 288C(2) of the Criminal Procedure (Scotland) Act 1995,
- (ii) an offence specified in section 288DC(1) of that Act,

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- (iii) an offence specified in section 288E(3) of that Act,
  - (iv) an offence under section 1(1) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005,
  - (v) an offence under section 3(1) of that Act,
  - (vi) an offence under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010,
  - (vii) an offence under section 122(1) of the Anti-social Behaviour, Crime and Policing Act 2014,
  - (viii) an offence under section 122(3) of that Act,
  - (ix) an offence which, in the opinion of the court, is the equivalent in the law of England and Wales, Northern Ireland or a member State of the European Union to an offence mentioned in any of the preceding sub-paragraphs,
- (b) a person is to be regarded as being prosecuted for committing an offence if—
- (i) a prosecutor has initiated proceedings against the person in respect of the offence, and
  - (ii) those proceedings have not yet been dismissed or resulted in the conviction or acquittal of the person in respect of the offence.
- (6) The Scottish Ministers may by regulations—
- (a) modify the list of offences in subsection (5)(a) by—
    - (i) adding an offence, or
    - (ii) removing, or modifying the description of, an offence added to the list by regulations under this paragraph, and
  - (b) may make any other modifications to this section that appear to the Scottish Ministers to be necessary or expedient in consequence of provision modifying the list.
- (7) Regulations under subsection (6) are subject to the affirmative procedure.”.
- (4) In section 12 (orders authorising the use of special measures for vulnerable witnesses), after subsection (3), insert—
- “(3A) The court may not make an order under subsection (1)(b) above in relevant proceedings if it is required by section 22C or 22D to consider the special measure described by section 22B to be the most appropriate for the purpose of taking the child witness's evidence (or one of them if the court considers other special measures to be appropriate too).”.
- (5) After section 22A insert—
- “22B Prohibition on personal conduct of case**
- (1) In proceedings to which subsection (2) applies, the special measures which may be authorised by virtue of section 12 or 13 for the purpose of taking the evidence of a vulnerable witness include prohibiting the parties to the proceedings from conducting their own cases in person.
  - (2) The proceedings to which this subsection applies are—
    - (a) relevant proceedings, and



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- (b) proceedings in which the court is considering whether to make an order under section 11(1) of the Children (Scotland) Act 1995.
- (3) The prohibition may be applied to one or more of the parties or all of them.
- (4) The prohibition does not prevent a party to whom it applies from conducting the party's own case in person until the beginning of the first hearing in the proceedings at, or for the purposes of, which a witness is to give evidence.
- (5) Where the special measure described by subsection (1) is to be used the court must—
  - (a) inform the parties to whom the prohibition applies that it applies to them,
  - (b) explain to those parties the effect of the prohibition, and
  - (c) ascertain whether each party to whom the prohibition applies has a solicitor to conduct the party's case.
- (6) If, at any point in the proceedings, the court—
  - (a) ascertains that a party to whom the prohibition applies does not have a solicitor to conduct the party's case, and
  - (b) is not satisfied that the party intends to engage a solicitor to do so, the court must appoint a solicitor to conduct the party's case.
- (7) The court may only appoint a solicitor entered on the register established in accordance with section 7 of the Children (Scotland) Act 2020.
- (8) An appointed solicitor—
  - (a) is to ascertain and act upon the instructions of the party for whom the solicitor has been appointed to act, or
  - (b) in the event that the party gives no instructions, or gives instructions that are inadequate or perverse, is to act in the party's best interests.
- (9) An appointed solicitor—
  - (a) may not be dismissed by the party for whom the solicitor has been appointed to act,
  - (b) may be relieved from the appointment by the court if the court is satisfied that the solicitor is no longer able to act upon the party's instructions or in the party's best interests.
- (10) In this section, references to a party to proceedings do not include—
  - (a) the Principal Reporter,
  - (b) a person appointed to act as a curator ad litem in the proceedings,
  - (c) a safeguarder for a child in the proceedings appointed under the 2011 Act.
- (11) For the avoidance of doubt, the special measure described by this section is a measure for the purpose of taking the evidence of a vulnerable witness, notwithstanding that the measure affects the conduct of the proceedings more widely.

### **22C Requirement to prohibit personal conduct of case**

- (1) Subsection (2) applies in relevant proceedings where—



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- (a) the court is considering what special measure or measures would be most appropriate for the purpose of taking a witness's evidence,
  - (b) because of conduct perpetrated or alleged to have been perpetrated by a party to the proceedings, the witness is deemed to be a vulnerable witness by virtue of section 11A, and
  - (c) that party intends to examine, or cross-examine, the witness.
- (2) The court is to consider that the most appropriate special measure for the purpose of taking the witness's evidence (or one of them) is prohibiting the party referred to in subsection (1) from conducting the party's own case in person in accordance with section 22B.
- (3) If the court is required—
- (a) by this section to consider the special measure described by section 22B to be the most appropriate for the purpose of taking the witness's evidence, and
  - (b) by section 12(3) to consider another special measure to be the most appropriate for the purpose,
- the court is to consider those measures together to be the most appropriate for the purpose.

#### **22D Presumption that personal conduct of case should be prohibited**

- (1) Where a court is considering what special measure or measures would be most appropriate for the purpose of taking a witness's evidence—
- (a) the presumption set out in subsection (2) applies (subject to subsection (4)) in relevant proceedings, and
  - (b) the presumption set out in subsection (5) applies (subject to subsection (6)) in any other proceedings in which the court is considering whether to make an order under section 11(1) of the Children (Scotland) Act 1995.
- (2) The presumption referred to in subsection (1)(a) is that prohibiting each party who intends to examine, or cross-examine, the witness from conducting the party's own case in person, in accordance with section 22B, is the most appropriate special measure for the purpose of taking the witness's evidence (or one of them if the court considers other special measures to be appropriate too).
- (3) In subsection (2), “party” does not include a person mentioned in section 22B(10).
- (4) The presumption set out in subsection (2) is rebutted, in relation to a party, if (and only if) the court is satisfied that—
- (a) applying the special measure described by section 22B to the party would, in the circumstances, give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice, and
  - (b) that risk significantly outweighs any risk of prejudice to the interests of the witness if the special measure is not applied to the party.
- (5) The presumption referred to in subsection (1)(b) is that if—
- (a) the witness is deemed to be a vulnerable witness either—

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- (i) by virtue of section 11B(3) because an order or remedy granted by a court prohibits certain conduct towards the witness by a party to the proceedings, or
  - (ii) by virtue of section 11B(4) because a party to the proceedings committed, or is alleged to have committed, an offence against the witness, and
  - (b) the party in question intends to examine, or cross-examine, the witness,
- prohibiting that party from conducting the party's own case in person, in accordance with section 22B, is the most appropriate special measure for the purpose of taking the witness's evidence (or one of them if the court considers other special measures to be appropriate too).
- (6) The presumption set out in subsection (5) is rebutted if (and only if)—
- (a) the court is satisfied that—
    - (i) the witness has expressed a wish to give evidence without the benefit of the special measure described by section 22B being applied to the party, and
    - (ii) it is appropriate for the witness to do so, or
  - (b) the court is satisfied that—
    - (i) applying the special measure described by section 22B to the party would, in the circumstances, give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice, and
    - (ii) that risk significantly outweighs any risk of prejudice to the interests of the witness if the special measure is not applied to the party.
- (7) If the court is required—
- (a) by this section to consider the special measure described by section 22B to be the most appropriate for the purpose of taking the witness's evidence, and
  - (b) by section 12(3) to consider another special measure to be the most appropriate for the purpose,
- the court is to consider those measures together to be the most appropriate for the purpose.”.

PROSPECTIVE

## **5 Vulnerable witnesses: requirement to consider special measures without application in certain cases**

- (1) The Vulnerable Witnesses (Scotland) Act 2004 is modified as follows.
- (2) In section 12 (orders authorising the use of special measures for vulnerable witnesses), after subsection (6) insert—
- “(6A) If the witness is deemed to be a vulnerable witness by virtue of section 11B—
- (a) before the proof or other hearing at which the witness is to give evidence the court must either—

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- (i) make an order under subsection (6) authorising the use of a special measure for the purpose of taking the witness's evidence, or
  - (ii) make an order that the witness is to give evidence without the benefit of any special measure,
- (b) the court is to do so whether or not a vulnerable witness application is made.”.

PROSPECTIVE

## 6 Hearing to ascertain if case involves vulnerable witnesses

- (1) The Children's Hearings (Scotland) Act 2011 is modified as follows.
- (2) After Part 17 insert—

### “PART 17A

#### PROTECTION FOR VULNERABLE WITNESSES

##### 176A Duty to ascertain whether vulnerable witnesses to give evidence

- (1) In proceedings under Part 10 or section 154, the court must fulfil the duty specified in subsection (2) at a hearing held before the first hearing in which a person is to give evidence.
- (2) The duty is to ascertain whether—
  - (a) any of the parties have cited, or intend to cite, a person who is or may be a vulnerable witness to give evidence at any point during the proceedings, and
  - (b) any party who is or may be a vulnerable witness intends to give evidence at any point during the proceedings (without having been cited as a witness by one of the other parties).
- (3) The hearing at which the court fulfils the duty specified in subsection (2)—
  - (a) is referred to in this Part as the preliminary hearing,
  - (b) need not be a hearing solely for the purpose of fulfilling that duty.
- (4) If—
  - (a) the court ascertains at the preliminary hearing that—
    - (i) a party has cited, or intends to cite, a witness who the court is satisfied is a vulnerable witness, or
    - (ii) a party who the court is satisfied is a vulnerable witness intends to give evidence,
  - (b) no child witness notice in respect of that witness has been lodged with the court, and
  - (c) no vulnerable witness application in respect of that witness has been made to the court,

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the court must also ascertain at the preliminary hearing the party's views as to the special measure or measures (if any) that would be most appropriate for the purpose of taking the witness's evidence.

- (5) Where a party is considering for the purposes of subsection (4) which of the special measures is or are the most appropriate for the purpose of taking the evidence of a witness the party has cited, or intends to cite, section 15(2) of the Vulnerable Witnesses Act applies to the party as it would if the party were considering that matter for the purposes of a child witness notice or (as the case may be) a vulnerable witness application.

#### **176B Power to order special measures without child witness notice**

- (1) This section applies where—
- (a) at a preliminary hearing, the court ascertains that a party has cited, or intends to cite, a witness who the court is satisfied is a child witness, and
  - (b) no child witness notice in respect of that witness has been lodged with the court.
- (2) At the end of the preliminary hearing, the court may make an order in relation to the witness under section 12(1) of the Vulnerable Witnesses Act.
- (3) In making an order by virtue of subsection (2), the court must have regard to any views of the party mentioned in subsection (1) that were ascertained in accordance with section 176A(4).
- (4) If the court makes an order by virtue of subsection (2), the party mentioned in subsection (1) is relieved of the duty under section 12(2) of the Vulnerable Witnesses Act to lodge a child witness notice in respect of the witness in question.

#### **176C Power to order special measures without vulnerable witness application**

- (1) This section applies where—
- (a) at a preliminary hearing under section 176A, the court ascertains that a party has cited, or intends to cite, a witness who the court is satisfied—
    - (i) is a vulnerable witness, but
    - (ii) is not a child witness, and
  - (b) no vulnerable witness application has been made to the court in respect of the witness.
- (2) The court may make an order in relation to the witness under section 12(6) of the Vulnerable Witnesses Act, despite the fact that no vulnerable witness application has been made.
- (3) In making an order by virtue of subsection (2), the court must have regard to any views of the party mentioned in subsection (1) that were ascertained in accordance with section 176A(4).

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## 176D Interpretation of Part

In this Part—

“child witness” has the meaning given by section 11(1)(a) of the Vulnerable Witnesses Act,

“child witness notice” has the meaning given by section 12(2) of the Vulnerable Witnesses Act,

“preliminary hearing” has the meaning given by section 176A(3),

“vulnerable witness” means a person who is a vulnerable witness for the purposes of the Vulnerable Witnesses Act (including any person deemed to be a vulnerable witness by virtue of section 11A of that Act),

“vulnerable witness application” has the meaning given by section 12(6) (a) of the Vulnerable Witnesses Act,

“the Vulnerable Witnesses Act” means the Vulnerable Witnesses (Scotland) Act 2004.”.

## 7 Register of solicitors for section 22B of the Vulnerable Witnesses (Scotland) Act 2004

(1) The Scottish Ministers must—

- (a) establish, and
- (b) (subject to provision made under subsection (2)(c)) maintain,

a register of solicitors who may be appointed by a court under section 22B(6) of the Vulnerable Witnesses (Scotland) Act 2004.

(2) The Scottish Ministers, by regulations—

- (a) must—
  - (i) specify the requirements that a person must satisfy in order to be included, and remain, on the register (which may include requirements as to training and qualifications),
  - (ii) set out the processes for including a person on, and removing a person from, the register (including appeal rights),
- (b) may provide for the remuneration by the Scottish Ministers of solicitors appointed under section 22B(6) of the Vulnerable Witnesses (Scotland) Act 2004, including expenses and outlays (such as counsel's fees),
- (c) may—
  - (i) confer the duty of maintaining the register on a person, and
  - (ii) make such modifications to other enactments as the Scottish Ministers consider appropriate for the purposes of, or in connection with, or for giving full effect to provision made by virtue of sub-paragraph (i).

(3) Before making regulations under subsection (2), the Scottish Ministers must consult—

- (a) the Faculty of Advocates, and
- (b) the Law Society of Scotland.

(4) Regulations under subsection (2)—

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- (a) are subject to the affirmative procedure if, by virtue of paragraph (c)(ii) of that subsection, they add to, replace or omit any part of the text of an Act, but
- (b) otherwise are subject to the negative procedure.

PROSPECTIVE

## 8 Vulnerable parties

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11A insert—

### “11B Vulnerable parties

- (1) In proceedings to which subsection (2) applies—
  - (a) in relation to a party whom the court would be required by section 11B of the Vulnerable Witnesses (Scotland) Act 2004 to consider a vulnerable witness if the party were to give evidence in or for the purposes of the proceedings, the court must—
    - (i) order the use of any special measure that the party requests,
    - (ii) order the use of a special measure that the court considers appropriate and, if the party requested a different special measure, give reasons for not ordering its use, or
    - (iii) give reasons for not ordering the use of any special measure,
  - (b) in relation to any other party, the court may order the use of a special measure if the court considers that—
    - (i) attending or participating in hearings is causing, or is likely to cause, the party distress,
    - (ii) the party's distress is likely to be reduced by the use of the special measure, and
    - (iii) the use of the special measure would not give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice.
- (2) This subsection applies to proceedings, commenced on or after section 8 of the Children (Scotland) Act 2020 comes into force, in which the court is considering, or has considered, whether to make an order under section 11(1).
- (3) An order under subsection (1) may authorise a special measure in relation to the whole of the proceedings or only a part of them.
- (4) A court may vary or revoke an order it made under subsection (1).
- (5) An order under subsection (1) or (4) may be made—
  - (a) at any time, and
  - (b) whether or not a party to the proceedings has applied for one.
- (6) The special measures which may be authorised by virtue of an order under subsection (1) or (4) are—
  - (a) use of a live television link,

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- (b) use of a screen,
- (c) use of a supporter,
- (d) any other measure prescribed by the Scottish Ministers by regulations.

(7) Regulations under subsection (6)(d) are subject to the affirmative procedure.

(8) In considering whether attending or participating in hearings is causing, or is likely to cause, a person distress, the court must take into account—

- (a) the nature and circumstances of any matters raised, or likely to be raised, in the proceedings,
- (b) the relationship (if any) between the person and any other party to the proceedings,
- (c) the person's age and maturity,
- (d) any behaviour towards the person on the part of—
  - (i) any other party to the proceedings,
  - (ii) members of the family or associates of any other party,
  - (iii) any other person who is likely to be a party to the proceedings or a witness in the proceedings, and
- (e) such other matters as appear to the court to be relevant, including—
  - (i) the social and cultural background and ethnic origins of the person,
  - (ii) the person's sexual orientation,
  - (iii) the domestic and employment circumstances of the person,
  - (iv) any religious beliefs or political opinions of the person,
  - (v) any physical disability or other physical impairment which the person has.

### **11C Special measures under section 11B**

(1) If a court orders the use of a live television link, the court must make such arrangements as seem to it appropriate to enable the vulnerable party to watch and hear the proceedings by means of such a link.

(2) If a court orders the use of a screen, a screen must be used to conceal the vulnerable party from the sight of the other parties to the proceedings.

(3) If a court—

- (a) orders the use of—
  - (i) a live television link, or
  - (ii) a screen, and
- (b) considers it necessary or appropriate for the other parties to be able, during the proceedings, to—
  - (i) hear the vulnerable party,
  - (ii) watch the vulnerable party, or
  - (iii) both,

the court must make such arrangements as seem to it appropriate to enable the other parties to do so.

(4) Where—



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(a) a court has ordered the use of a live television link or a screen in proceedings in a sheriff court, but

(b) the court lacks accommodation or equipment necessary to enable the measure to be used,

the sheriff may by order transfer all or any part of the proceedings to any sheriff court in the same sheriffdom which has such accommodation or equipment available.

(5) If a court orders the use of a supporter, another person (“the supporter”) nominated by or on behalf of the vulnerable party may be present alongside the vulnerable party for the purpose of providing support during the proceedings.

(6) The supporter—

(a) must not prompt or otherwise seek to influence the vulnerable party in the course of a hearing,

(b) may not act as the supporter, within the meaning of subsection (5), while the vulnerable party is giving evidence,

(c) may not act as the supporter, if the supporter is to give evidence in the proceedings, at any time before giving evidence.

(7) Subsection (6)(b) does not preclude the same person from being both—

(a) a supporter within the meaning of subsection (5), and

(b) a supporter within the meaning of section 22 of the Vulnerable Witnesses (Scotland) Act 2004.

(8) In this section—

(a) references to a measure being ordered are to its being ordered under section 11B,

(b) “vulnerable party” means the party for whose benefit the court ordered the use of the measure in question.”.

VALID FROM 25/10/2021

### *Register for child welfare reporters*

## **9 Establishment of register**

(1) The Children (Scotland) Act 1995 is modified as follows.

(2) After section 101 insert—

### **“101A Register for child welfare reporters**

(1) A court may only appoint as a child welfare reporter a person who is included on the register maintained in accordance with subsection (2).

(2) The Scottish Ministers must establish and maintain a register of persons who may be appointed to act as a child welfare reporter.

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- (3) The Scottish Ministers may by regulations make provision for or in connection with—
- (a) the requirements that a person must satisfy in order to be included, and remain, on the register (including requirements as to training and qualifications),
  - (b) the processes for including a person on, and removing a person from, the register (including appeal rights),
  - (c) the process for how, and by whom, a registered person is to be selected as the appointed child welfare reporter in a case,
  - (d) the remuneration by the Scottish Ministers of child welfare reporters, including expenses and outlays,
  - (e) the operation and management of the register.
- (4) Before making, revising or revoking regulations under subsection (3), the Scottish Ministers must consult persons with lived experience of—
- (a) domestic abuse,
  - (b) court-ordered contact.
- (5) Regulations under subsection (3) are subject to the negative procedure.”.

VALID FROM 26/07/2021

### Contact

VALID FROM 25/10/2021

## 10 Regulation of provision of contact services

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) In section 11 (court orders relating to parental responsibilities etc.)—
- (a) in subsection (2)(d), at end insert “ (see subsection (14)) ”,
  - (b) after subsection (13) insert—
- “(14) Where the court makes a contact order which requires any contact to take place within Scotland at a contact centre, the court may only require that contact to take place through a regulated contact service as defined in section 101C.”.
- (3) After section 101B (which is inserted by section 17(3) of this Act) insert—

### “101C Contact services: regulation

- (1) The Scottish Ministers may by regulations make provision about the regulation of a contact service provided in relation to the requirements of a contact order.
- (2) Regulations under subsection (1) may in particular—

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- (a) make provision for the minimum standards to be met by contact service providers, including qualifications and training of staff,
  - (b) make provision for the registration of contact service providers that meet those minimum standards and, for those that do not, the refusal of registration or removal from the register (including appeal rights),
  - (c) make provision for minimum standards to be met by contact centres (including standards in respect of accommodation),
  - (d) make provision for the registration of contact centres that meet those minimum standards and, for those that do not, the refusal of registration or removal from the register (including appeal rights),
  - (e) make provision about the conditions on which a regulated contact service provider may, in accordance with the regulations, provide a contact service at a place that is not registered as a contact centre (including conditions about the minimum standards for accommodation at a place if it is to be used for that purpose),
  - (f) appoint a person or persons for the purposes of administering the registration of contact service providers and contact centres,
  - (g) confer functions on the appointed person or persons,
  - (h) determine the fees payable in connection with the registration of a contact service provider or contact centre.
- (3) Functions conferred by virtue of subsection (2)(g) may include—
- (a) inspecting contact centres, regulated contact service providers and contact service providers applying for registration,
  - (b) having risk assessments of contact centres undertaken by persons trained in undertaking such assessments,
  - (c) issuing reports on the inspection of contact centres, regulated contact service providers and contact service providers applying for registration,
  - (d) issuing reports on any failure, or possible failure, by a contact service provider to comply with the provider's duties under the Equality Act 2010, and in particular any duty to make reasonable adjustments to premises in order to facilitate their use by disabled people,
  - (e) refusing to register contact service providers and contact centres, and removing from a register regulated contact service providers and contact centres, that do not meet the minimum standards.
- (4) Regulations under subsection (1)—
- (a) may make such modifications to other enactments as the Scottish Ministers consider appropriate for the purposes of, or in connection with, or for giving full effect to the regulations,
  - (b) are subject to the affirmative procedure.
- (5) In this section—
- “contact centre” means a place that is used for the provision of a contact service,
  - “contact service” means the facilitation of contact between a child and a person with whom the child is not, or will not be, living (including the handover of the child to that person),

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“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament,

“regulated contact service” means a contact service that—

(a) is provided by a regulated contact service provider, and

(b) is either—

(i) provided at a place that is registered as a contact centre in accordance with regulations under subsection (1), or

(ii) provided in circumstances in which the provider may, in accordance with regulations under subsection (1), provide the service at a place that is not registered as a contact centre,

“regulated contact service provider” means an organisation that is registered in accordance with regulations under subsection (1) to provide contact services.”.

PROSPECTIVE

## 11 Referrals by solicitors to contact services

(1) The Children (Scotland) Act 1995 is modified as follows.

(2) After section 101C (which is inserted by section 10(3) of this Act) insert—

### “101D Contact services: referrals by solicitors

(1) A solicitor must not—

(a) refer a person to a contact service that is not a regulated contact service, or

(b) allow another person to do so on the solicitor's behalf.

(2) If a solicitor fails to comply with subsection (1), that failure may be treated as professional misconduct or unsatisfactory professional conduct.

(3) In this section, “contact service” and “regulated contact service” have the meanings given in section 101C(5).”.

PROSPECTIVE

## 12 Arrangements for contact services

(1) The Children (Scotland) Act 1995 is modified as follows.

(2) After section 101D (which is inserted by section 11(2) of this Act) insert—

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### **“101E Contact services: arrangements by Scottish Ministers**

The Scottish Ministers may enter into an arrangement with a person for the provision of services to facilitate contact between children and other individuals.”.

## **13 Promotion of contact between looked after children and siblings**

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) In section 17 (duty of local authority to child looked after by them)—
  - (a) in subsection (1)—
    - (i) the “and” following paragraph (b) is repealed,
    - (ii) after paragraph (c) insert “; and
    - (d) take such steps to promote, on a regular basis, personal relations and direct contact between the child and any person mentioned in subsection (1A) as appear to them to be appropriate having regard to their duty to the child under paragraph (a).”,
  - (b) after subsection (1) insert—
 

“(1A) The persons referred to in subsection (1)(d) are—

    - (a) a sibling of the child, and
    - (b) any other person with whom the child has lived and with whom the child has an ongoing relationship with the character of a relationship between siblings.

(1B) For the purposes of subsection (1A), two people are siblings if they have at least one parent in common.”,
  - (c) in subsection (3)—
    - (i) the “and” following paragraph (c) is repealed,
    - (ii) after paragraph (c) insert—
 

“(ca) any person mentioned in subsection (1A); and”.

## **14 Duty to consider contact when making etc. compulsory supervision order**

- (1) The Children's Hearings (Scotland) Act 2011 is modified as follows.
- (2) In section 29A (duty to consider including contact direction), after subsection (2), insert—
 

“(3) In considering whether to include a measure of the type mentioned in section 83(2)(g), the children's hearing or, as the case may be, the sheriff must in particular consider the inclusion of a measure regulating contact between the child and any person mentioned in subsection (4) with whom the child does not reside.
- (4) The persons referred to in subsection (3) are—
  - (a) a relevant person in relation to the child,
  - (b) a sibling of the child,

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(c) any other person with whom the child has resided and with whom the child has an ongoing relationship with the character of a relationship between siblings.

(5) For the purposes of subsection (4), two people are siblings if they have at least one parent in common.”

*Further provision about orders under section 11(1) of the Children (Scotland) Act 1995*

## 15 Clarification of order-making power

(1) The Children (Scotland) Act 1995 is modified as follows.

(2) In section 11 (court orders relating to parental responsibilities etc.), after subsection (2) insert—

“(2A) An order doing any of the things mentioned in subsection (2) is to be regarded as an order in relation to at least one of the matters mentioned in subsection (1).”

### Commencement Information

**II** S. 15 in force at 17.1.2021 by S.S.I. 2020/412, reg. 2(1)(a) (with reg. 3)

PROSPECTIVE

## 16 Factors to be considered before making order

(1) The Children (Scotland) Act 1995 is amended as follows.

(2) In section 11ZA (paramountcy of child's welfare, and the non-intervention presumption) (which is inserted by section 1(4) of this Act), in subsection (3) after paragraph (e) insert—

“(f) the effect that the order the court is deciding whether or not to make might have on—

(i) the involvement of the child's parents in bringing the child up, and

(ii) the child's important relationships with other people.”

VALID FROM 25/10/2021

## 17 Curators ad litem

(1) The Children (Scotland) Act 1995 is modified as follows.

(2) After section 11C (which is inserted by section 8(2) of this Act) insert—

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### **“11D Appointment of curator ad litem**

- (1) Where a court is considering making an order under section 11(1), the court—
    - (a) may only appoint a person to act as curator ad litem to a child if the court is satisfied that it is necessary to do so to protect the child's interests,
    - (b) may only appoint a person who is included on the register maintained in accordance with section 101B,
    - (c) is to give reasons for the appointment.
  - (2) Where, in the course of considering making an order under section 11(1), a court has appointed a curator ad litem, the court must—
    - (a) decide whether to continue the appointment every 6 months, and
    - (b) if it decides to continue the appointment, give reasons for the decision.
  - (3) Subsection (2) does not apply in relation to a curator ad litem appointed before section 17 of the Children (Scotland) Act 2020 comes into force.”.
- (3) After section 101A (which is inserted by section 9(2) of this Act) insert—

### **“101B Register of curators ad litem for the purposes of section 11D**

- (1) The Scottish Ministers must establish and maintain a register of persons who may be appointed to act as a curator ad litem in accordance with section 11D.
- (2) The Scottish Ministers may by regulations make provision for or in connection with—
  - (a) the requirements that a person must satisfy in order to be included, and remain, on the register (including requirements as to training and qualifications),
  - (b) the processes for including a person on, and removing a person from, the register (including appeal rights),
  - (c) the process for how, and by whom, a registered person is to be selected as the appointed curator ad litem in a case,
  - (d) the remuneration by the Scottish Ministers of curators ad litem appointed in accordance with section 11D, including expenses and outlays (such as counsel's fees),
  - (e) the operation and management of the register.
- (3) Regulations under subsection (2) are subject to the negative procedure.”.

PROSPECTIVE

## **18 Duty to consider child's best interests when allowing access to information**

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11D (which is inserted by section 17(2) of this Act) insert—



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### **“11E Duty to consider child's best interests when allowing access to information**

- (1) Where the court—
  - (a) is considering making an order under section 11(1), and
  - (b) has to decide whether a person should have access to anything in which private information about a child is recorded,in making that decision it must comply with subsections (2) and (3) in relation to that child.
- (2) The court must regard the best interests of the child as a primary consideration.
- (3) The court must—
  - (a) give the child an opportunity to express the child's views in—
    - (i) the manner that the child prefers, or
    - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
  - (b) have regard to any views expressed by the child, taking into account the child's age and maturity.
- (4) But the court is not required to comply with subsection (3) if satisfied that—
  - (a) the child is not capable of forming a view, or
  - (b) the location of the child is not known.
- (5) The child is to be presumed to be capable of forming a view unless the contrary is shown.
- (6) In this section, “private information” means information in which the child could have a reasonable expectation of privacy.”.

PROSPECTIVE

## **19 Local authority reporters**

- (1) The Matrimonial Proceedings (Children) Act 1958 is modified as follows.
- (2) In section 11 (reports as to arrangements for future care and upbringing of children), after subsection (1A) insert—

“(1B) Where—

  - (a) the court is considering whether to make an order under section 11(1) of the Children (Scotland) Act 1995, and
  - (b) a local authority is appointed under subsection (1) to investigate and report to the court,

the person that the local authority assigns to perform that task on its behalf must be a child welfare reporter.

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(1C) In subsection (1B), “a child welfare reporter” means a person included on the register maintained in accordance with section 101A of the Children (Scotland) Act 1995.”.

PROSPECTIVE

## 20 Explanation of decisions to the child

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11E (which is inserted by section 18(2) of this Act) insert—

### “11F Explanation of court decisions to the child

- (1) This section applies when—
  - (a) the court decides whether or not to make an order under section 11(1),
  - (b) the court decides to vary or discharge an order made under section 11(1),
  - (c) the court—
    - (i) decides to decline to vary or discharge an order made under section 11(1), and
    - (ii) considers it appropriate to explain that decision to the child concerned.
- (2) The court must ensure that the decision is explained to the child concerned in a way that the child can understand.
- (3) But the court is not required to comply with subsection (2) if satisfied that—
  - (a) the child would not be capable of understanding an explanation however given,
  - (b) it is not in the best interests of the child to give an explanation, or
  - (c) the location of the child is not known.
- (4) The court may fulfil its duty under subsection (2) by—
  - (a) giving the explanation to the child itself, or
  - (b) arranging for it to be given by a child welfare reporter (see section 101A).
- (5) In this section, references to a decision include an interim decision.
- (6) The Scottish Ministers may by regulations modify subsection (4)(b) to—
  - (a) add a description of a person,
  - (b) vary a description of a person,
  - (c) remove a description of a person.
- (7) Regulations under subsection (6) are subject to the affirmative procedure.”.

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PROSPECTIVE

**21 Duty to ensure availability of child advocacy services**

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 100 insert—

**“100A Duty to ensure availability of child advocacy services**

- (1) The Scottish Ministers must make such provision as they consider necessary and sufficient to ensure that all children concerned in relevant proceedings have access to appropriate child advocacy services.
- (2) In this section—
  - “child advocacy services” means services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in relevant proceedings,
  - “relevant proceedings” means proceedings in which the court is considering making an order under section 11(1).”.

PROSPECTIVE

**22 Failure to obey order**

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11F (which is inserted by section 20(2) of this Act) insert—

**“11G Duty to investigate failure to obey order under section 11**

- (1) This section applies where a court is considering whether to—
  - (a) find a person in contempt of court for failing to obey an order under section 11, or
  - (b) vary or discharge an order under section 11 on the basis (solely or partly) that a person has failed to obey it.
- (2) If it is satisfied that the person has failed to obey the order, the court must—
  - (a) seek to establish the reasons for that failure, and
  - (b) in so doing—
    - (i) give the child concerned an opportunity to express the child's views in—
      - (A) the manner that the child prefers, or
      - (B) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
    - (ii) have regard to any views expressed by the child, taking into account the child's age and maturity.

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- (3) But the court is not required to comply with subsection (2)(b) if satisfied that—
  - (a) the child is not capable of forming a view, or
  - (b) the location of the child is not known.
- (4) The child is to be presumed to be capable of forming a view unless the contrary is shown.
- (5) The court may appoint a child welfare reporter to investigate and report to the court on the person's failure (or alleged failure) to obey the order (see section 101A).
- (6) References in this section to an order include an interim order.
- (7) The Scottish Ministers may by regulations modify subsection (5) to—
  - (a) add a description of person,
  - (b) vary a description of person,
  - (c) remove a description of person.
- (8) Regulations under subsection (7) are subject to the affirmative procedure.”.

#### *Alternative dispute resolution*

### **23 Funding for alternative dispute resolution**

- (1) The Scottish Ministers must—
  - (a) set up a scheme to make assistance available so that individuals can meet the costs of alternative dispute resolution procedures in relation to a dispute of the kind described in subsection (2), or
  - (b) arrange for assistance to be made available from the Scottish Legal Aid Fund so that individuals can meet those costs.
- (2) The kind of dispute referred to in subsection (1) is a dispute that—
  - (a) is about any of the matters mentioned in section 11(1) of the Children (Scotland) Act 1995, and
  - (b) either—
    - (i) has resulted in an order being sought under that section, or
    - (ii) is likely to do so if it is not resolved through an alternative dispute resolution procedure.
- (3) Entitlement to the assistance that is to be made available by virtue of subsection (1) may be made to depend on an individual satisfying any eligibility conditions that the Scottish Ministers consider appropriate.
- (4) But any eligibility conditions relating to an individual's financial circumstances may not render an individual ineligible for assistance if the individual's circumstances are such that the individual could not be refused civil legal aid under section 15 of the Legal Aid (Scotland) Act 1986.
- (5) Any scheme set up, or arrangement made, in accordance with subsection (1), must be framed so that assistance under it is only available to meet the costs of alternative dispute resolution procedures that ensure regard is had to children's views to at least

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the same extent as a court would be required to have regard to them by section 11ZB of the Children (Scotland) Act 1995.

- (6) Having fulfilled their duty under subsection (1), the Scottish Ministers must lay before the Scottish Parliament a statement explaining how they have done so.
- (7) If, at the end of a period described by subsection (8), the Scottish Ministers have not fulfilled their duty under subsection (1), they must lay before the Scottish Parliament a statement explaining why not and stating when they expect to fulfil it.
- (8) For the purposes of subsection (7)—
  - (a) the first period begins on Royal Assent,
  - (b) after that, a new period begins with the last day of the previous period,
  - (c) each period ends with the day falling 6 months after it began,
  - (d) if the previous period ended on the 29th, 30th or 31st of a month and the month falling 6 months later has no such day, the period ends on the last day of that month.
- (9) The Scottish Ministers may by regulations make any provision that they consider necessary or appropriate for the purpose of fulfilling their duty under subsection (1).
- (10) Regulations under subsection (9) may—
  - (a) make different provision for different purposes or areas,
  - (b) modify any enactment.
- (11) Regulations under subsection (9) are subject to the affirmative procedure.

#### Commencement Information

**I2** S. 23 in force at 17.1.2021 by S.S.I. 2020/412, reg. 2(1)(b)

## 24 Pilot scheme for mandatory alternative dispute resolution meetings

- (1) The Scottish Ministers must arrange a pilot scheme under which a court, in proceedings to which the scheme applies, may only make an order under section 11(1) of the Children (Scotland) Act 1995—
  - (a) where the parties to the proceedings have attended a meeting at which the options available to resolve the dispute giving rise to the proceedings are explained, or
  - (b) if the terms of the scheme allow, where the court has decided on cause shown that it would not be appropriate to require the parties to attend such a meeting.
- (2) The terms of the pilot scheme are to be determined by the Scottish Ministers, but the scheme—
  - (a) must be time limited, and
  - (b) must not apply to proceedings in which there is a proven or alleged history of abuse between some or all of the parties.
- (3) Having fulfilled their duty under subsection (1), the Scottish Ministers must lay before the Scottish Parliament a statement—
  - (a) describing the pilot scheme,

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- (b) if the application of the scheme is subject to exceptions (other than an exception required by subsection (2)(b)), an explanation of why the Scottish Ministers consider those exceptions to be appropriate, and
- (c) how the Scottish Ministers intend to evaluate—
  - (i) the scheme's outcomes for—
    - (A) the children in respect of whom the making of an order under section 11(1) of the Children (Scotland) Act 1995 was considered in proceedings to which the scheme applies,
    - (B) the parties to proceedings to which the scheme applies, and
  - (ii) where the scheme has led to a dispute being resolved without an order under section 11(1) of the Children (Scotland) Act 1995 being made, whether regard was had to the child's views in the resolution of the dispute to at least the same extent as a court would have had regard to the child's views when making such an order.
- (4) If, at the end of a period described by subsection (5), the Scottish Ministers have not fulfilled their duty under subsection (1), they must lay before the Scottish Parliament a statement explaining why not and stating when they expect to fulfil it.
- (5) For the purposes of subsection (4)—
  - (a) the first period begins on Royal Assent,
  - (b) after that, a new period begins with the last day of the previous period,
  - (c) each period ends with the day falling 6 months after it began,
  - (d) if the previous period ended on the 29th, 30th or 31st of a month and the month falling 6 months later has no such day, the period ends on the last day of that month.
- (6) The Scottish Ministers may by regulations make any provision that they consider necessary or appropriate for the purpose of fulfilling their duty under subsection (1).
- (7) Regulations under subsection (6) may—
  - (a) make different provision for different purposes or areas,
  - (b) modify any enactment.
- (8) Regulations under subsection (6) are subject to the affirmative procedure.
- (9) As soon as practicable after the pilot scheme ends, the Scottish Ministers must lay before the Scottish Parliament a report setting out—
  - (a) their findings about—
    - (i) the scheme's outcomes for the persons mentioned in subsection (3)(c)(i),
    - (ii) whether, in cases where the scheme has led to a dispute being resolved without an order under section 11(1) of the Children (Scotland) Act 1995 being made, regard was had to children's views in the resolution of those disputes to at least the same extent as a court would have had regard to their views when making such an order, and
  - (b) what (if anything) they intend to do in light of those findings.

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**Commencement Information**

**I3** S. 24 in force at 17.1.2021 by S.S.I. 2020/412, reg. 2(1)(c)

*Status:* Point in time view as at 17/01/2021. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Children (Scotland) Act 2020. (See end of Document for details)

VALID FROM 26/07/2021

### *Children's hearings*

## **25 Opportunity to participate in hearing**

(1) The Children's Hearings (Scotland) Act 2011 is modified as follows.

(2) In section 79 (referral of certain matters for pre-hearing determination)—

(a) after subsection (2)(b) insert—

“(ba) must, if requested to do so by an individual, refer for determination by a pre-hearing panel the matter of whether the individual meets the criteria specified in rules under section 177 to be afforded the rights mentioned in subsection (5ZA) in relation to the children's hearing,

(bb) must refer for determination by a pre-hearing panel the matter of whether subsection (2) of section 132A applies to an individual if—

(i) the individual has requested a review of a compulsory supervision order under that section, and

(ii) the Principal Reporter is not satisfied that the subsection applies to the individual.”

(b) after subsection (4) insert—

“(5ZA) The rights referred to in subsection (2)(ba) are the following rights, as provided for in rules under section 177 and subject to such conditions and limitations as the rules specify—

(a) the right to be notified of the hearing,

(b) the right to provide a report or other document to the hearing,

(c) the right to be provided with documents specified in the rules,

(d) authorisation to attend the hearing,

(e) the right to be represented at the hearing.”

(3) After section 81A insert—

### **“81B Determination of claim that opportunity to participate not afforded**

(1) Subsection (2) applies where the Principal Reporter has referred to a meeting of a pre-hearing panel the matter of whether subsection (2) of section 132A applies to an individual, or individuals, who have requested a review of a compulsory supervision order under that section.

(2) The pre-hearing panel must discharge the children's hearing that is to be arranged as a result of the request if—

(a) there is no reason for the children's hearing to be arranged besides the request from the individual, or individuals, in question, and



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- (b) the pre-hearing panel determines—
  - (i) that section 132A(2) does not apply to the individual, or
  - (ii) where its application to more than one individual is in question, that it applies to none of them.”.
  
- (4) In section 132 (right of child or relevant person to require review)—
  - (a) after subsection (3) insert—
    - “(3A) An individual who is entitled to do so by subsection (6) may by giving notice to the Principal Reporter require a review of the order.”,
  - (b) after subsection (5) insert—
    - “(6) An individual is entitled to require a review under subsection (3A) if—
      - (a) the Principal Reporter was satisfied at the relevant time, or
      - (b) a pre-hearing panel or children's hearing determined,
 that the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing that most recently made a decision in respect of the order (whether that was a decision to make, vary or continue it).
  - (7) Where a children's hearing is arranged as a result (solely or partly) of an individual requiring a review under subsection (3A), the individual is to be treated as an individual whom a pre-hearing panel has determined meets the criteria to be afforded an opportunity to participate in relation to the children's hearing.
  - (8) For the purposes of subsections (6) and (7)—
    - (a) “the criteria to be afforded an opportunity to participate” means the criteria specified in rules under section 177 to be afforded the rights mentioned in section 79(5ZA) in relation to a children's hearing,
    - (b) “the relevant time” means—
      - (i) the time when the children's hearing referred to in subsection (6) began, or
      - (ii) if more than one children's hearing is to be regarded as a single children's hearing by virtue of paragraph (c), the time when any one of them began,
    - (c) if the children's hearing that most recently made a decision in respect of the order was a subsequent children's hearing arranged as a result of an earlier children's hearing deferring making a decision, they are to be regarded as a single children's hearing.”,
  - (c) the title of the section becomes “ **Right to require review: child, relevant person and person afforded opportunity to participate** ”.
  
- (5) After section 132 insert—

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### **“132A Right of person not afforded opportunity to participate to require review**

- (1) The Principal Reporter must initiate a review of a compulsory supervision order in relation to a child if requested to do so by an individual who claims to be an individual to whom subsection (2) applies.
- (2) This subsection applies to an individual if—
  - (a) the individual did not attend the children's hearing that most recently made a decision in respect of the order (whether that was a decision to make, vary or continue it), and
  - (b) either—
    - (i) the conditions in subsection (3) are met, or
    - (ii) the conditions in subsection (4) are met.
- (3) The conditions referred to in subsection (2)(b)(i) are—
  - (a) neither a pre-hearing panel nor a children's hearing made a determination about whether the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing referred to in subsection (2)(a),
  - (b) it is more likely than not that had a pre-hearing panel or children's hearing made a determination about that matter at the relevant time, it would have determined that the individual met those criteria in relation to the children's hearing, and
  - (c) the individual was not afforded the rights mentioned in section 79(5ZA) in relation to the children's hearing as the Principal Reporter either did not consider whether, or was not satisfied that, the individual met those criteria in relation to the children's hearing.
- (4) The conditions referred to in subsection (2)(b)(ii) are—
  - (a) the Principal Reporter was satisfied at the relevant time, or a pre-hearing panel or children's hearing determined, that the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing referred to in subsection (2)(a), and
  - (b) the individual was not able to participate properly in the children's hearing's decision making as a result of—
    - (i) a material failure to treat the individual, or any representative of the individual, in accordance with the rules, or
    - (ii) exceptional circumstances.
- (5) For the purposes of this section—
  - (a) “the criteria to be afforded an opportunity to participate” means the criteria specified in the rules to be afforded the rights mentioned in section 79(5ZA) in relation to a children's hearing,
  - (b) “the relevant time” means—
    - (i) the time when the children's hearing referred to in subsection (2)(a) began, or

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- (ii) if more than one children's hearing is to be regarded as a single children's hearing by virtue of paragraph (d), the time when any one of them began,
- (c) “the rules” means rules under section 177,
- (d) if the children's hearing referred to in subsection (2)(a) was a subsequent children's hearing arranged as a result of an earlier children's hearing deferring making a decision, they are to be regarded as a single children's hearing.”.

## **26 Appeal against relevant person decision**

(1) The Children's Hearings (Scotland) Act 2011 is modified by subsections (2) and (3).

(2) In section 160 (appeal to sheriff against relevant person determination) in subsection (4) for paragraph (b) substitute—

“(b) where the determination is of one of the following kinds, make an order deeming the individual to be a relevant person in relation to the child—

(i) a determination of a pre-hearing panel or children's hearing under section 81 that the individual is not to be deemed a relevant person in relation to the child,

(ii) a determination of a pre-hearing panel or children's hearing under section 81A that the person is no longer to be deemed a relevant person in relation to the child.”.

(3) In section 164 (which provides for an appeal against a sheriff's relevant person decision)—

(a) in subsection (1), for the words from “a determination” to the end substitute “—

(a) a decision of the sheriff in an appeal against a determination of a pre-hearing panel or children's hearing that an individual—

(i) is or is not to be deemed a relevant person in relation to a child,

(ii) is to continue to be deemed, or is no longer to be deemed, a relevant person in relation to a child,

(b) a decision of the sheriff in an appeal against a determination of a review under section 142(2) that an individual is to continue to be deemed, or is no longer to be deemed, a relevant person in relation to a child.”,

(b) in subsection (3), after paragraph (d) insert—

“(e) the Principal Reporter.”,

(c) after subsection (3) insert—

“(3A) Despite subsection (1), the Principal Reporter may not appeal against a decision by the sheriff confirming a determination of a children's hearing.”.

(4) The Legal Aid (Scotland) Act 1986 is modified by subsection (5).

(5) In section 28F (availability of children's legal aid: appeals relating to deemed relevant person)—

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- (a) in subsection (1)(d)(i), after “not to be deemed” insert “ , or is no longer to be deemed, ”,
- (b) in subsection (1)(d)(ii), after “to be deemed” insert “ , or is to continue to be deemed, ”,
- (c) in subsection (1)(e), after “not to be deemed” insert “ , or is no longer to be deemed, ”.

PROSPECTIVE

## 27 Appeals to Sheriff Appeal Court and Court of Session

- (1) The Children's Hearings (Scotland) Act 2011 is modified as follows.
  - (2) The italic heading preceding section 163 becomes “ *Appeals to Sheriff Appeal Court and Court of Session* ”.
  - (3) In section 163 (appeals to sheriff principal and Court of Session: children's hearings etc.)—
    - (a) in subsection (1), for “sheriff principal or the Court of Session” substitute “ Sheriff Appeal Court ”,
    - (b) for subsection (2) substitute—
      - “(2) A person mentioned in subsection (3) may appeal to the Court of Session against a Sheriff Appeal Court's decision in an appeal under subsection (1) only—
        - (a) with the permission of the Sheriff Appeal Court, or
        - (b) if that Court has refused permission, with the permission of the Court of Session.
    - (2A) The Sheriff Appeal Court or the Court of Session may grant permission under subsection (2) only if the Court considers that—
      - (a) the appeal would raise an important point of principle or practice, or
      - (b) there is some other compelling reason for the Court of Session to hear the appeal.
    - (2B) The Sheriff Appeal Court's decision in an appeal under subsection (1) may not be appealed against under section 113 of the Courts Reform (Scotland) Act 2014.”,
  - (c) in subsection (4)(b), for “sheriff principal's” substitute “Sheriff Appeal Court's”,
  - (d) in subsection (6)(b), for “sheriff principal's” substitute “Sheriff Appeal Court's”,
  - (e) in subsection (10), for “sheriff principal or the Court of Session” substitute “ Sheriff Appeal Court ”,
  - (f) in subsection (11) the words “(1) or” are repealed,
  - (g) the section's title becomes “ **Appeals to Sheriff Appeal Court and Court of Session: children's hearings etc.** ”.
- (4) In section 164 (appeals to sheriff principal and Court of Session: relevant persons)—

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- (a) in subsection (1), for “sheriff principal or the Court of Session” substitute “Sheriff Appeal Court”,
  - (b) for subsection (2) substitute—
    - “(2) A person mentioned in subsection (3) may appeal to the Court of Session against a Sheriff Appeal Court's decision in an appeal under subsection (1) only—
      - (a) with the permission of the Sheriff Appeal Court, or
      - (b) if that Court has refused permission, with the permission of the Court of Session.
    - (2A) The Sheriff Appeal Court or the Court of Session may grant permission under subsection (2) only if the Court considers that—
      - (a) the appeal would raise an important point of principle or practice, or
      - (b) there is some other compelling reason for the Court of Session to hear the appeal.
    - (2B) The Sheriff Appeal Court's decision in an appeal under subsection (1) may not be appealed against under section 113 of the Courts Reform (Scotland) Act 2014.”,
  - (c) in subsection (6), for “sheriff principal or the Court of Session” substitute “Sheriff Appeal Court”,
  - (d) in subsection (7), the words “(1) or” are repealed,
  - (e) the section's title becomes “ **Appeals to Sheriff Appeal Court and Court of Session: relevant persons** ”.
- (5) In section 165 (appeals to sheriff principal and Court of Session: contact and permanence orders)—
- (a) in subsection (1), for “sheriff principal or the Court of Session” substitute “Sheriff Appeal Court”,
  - (b) for subsection (2) substitute—
    - “(2) A person mentioned in subsection (3) may appeal to the Court of Session against a Sheriff Appeal Court's decision in an appeal under subsection (1) only—
      - (a) with the permission of the Sheriff Appeal Court, or
      - (b) if that Court has refused permission, with the permission of the Court of Session.
    - (2A) The Sheriff Appeal Court or the Court of Session may grant permission under subsection (2) only if the Court considers that—
      - (a) the appeal would raise an important point of principle or practice, or
      - (b) there is some other compelling reason for the Court of Session to hear the appeal.
    - (2B) The Sheriff Appeal Court's decision in an appeal under subsection (1) may not be appealed against under section 113 of the Courts Reform (Scotland) Act 2014.”,
  - (c) in subsection (6), for “sheriff principal or the Court of Session” substitute “Sheriff Appeal Court”,

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- (d) in subsection (7), the words “(1) or” are repealed,
  - (e) the section's title becomes “ **Appeals to Sheriff Appeal Court and Court of Session: contact and permanence orders** ”.
- (6) In section 167 (appeals to sheriff principal: section 166)—
- (a) in subsection (1), for “sheriff principal” substitute “ Sheriff Appeal Court ”,
  - (b) in subsection (2), for “sheriff principal” substitute “ Sheriff Appeal Court ”,
  - (c) in subsection (6), for “sheriff principal” substitute “ Sheriff Appeal Court ”,
  - (d) the section's title becomes “ **Appeals to Sheriff Appeal Court: section 166** ”.
- (7) In section 182 (publishing restrictions), in subsection (9), in paragraph (a)(iv) of the definition of “protected information”, for “sheriff principal” substitute “ Sheriff Appeal Court ”.

PROSPECTIVE

*Miscellaneous provisions*

**28 Conferral of parental responsibilities and parental rights: births registered outwith UK**

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 4A insert—

**“4B Conferral of parental responsibilities and parental rights where birth is registered outwith the United Kingdom**

- (1) The Scottish Ministers may by regulations make provision for the conferral of parental responsibilities and parental rights on the following persons—
  - (a) a father who has not acquired those responsibilities and rights under section 3(1)(b), 4 or 11, or
  - (b) a second female parent who has not acquired those responsibilities and rights under section 3(1)(c) or (d), 4A or 11.
- (2) Regulations under subsection (1) may only make provision for the conferral of parental responsibilities and parental rights on a person in a case where—
  - (a) the child's birth is registered outwith the United Kingdom,
  - (b) the person acquired parental duties, rights or responsibilities in relation to the child through a process specified in the regulations, and
  - (c) the mother of the child has consented to that person acquiring those duties, rights or responsibilities.
- (3) Regulations under subsection (1) are subject to the negative procedure.”

**29 Extension to sheriff of enforcement powers under Family Law Act 1986**

- (1) The Family Law Act 1986 is modified by subsections (2) and (3).

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(2) After section 29 insert—

**“29A Enforcement: special Scottish rule**

- (1) For the purposes of its enforcement, a Part 1 order that is registered in the Court of Session under section 27 is to be regarded as also registered under that section in every sheriff court.
- (2) A sheriff may entertain an application for the enforcement of a Part 1 order if the sheriff would have jurisdiction under Chapter 3 of this Part to make a Part 1 order in respect of the child concerned.
- (3) In reading Chapter 3 of this Part for the purposes of subsection (2)—
  - (a) sections 11 and 13 are to be ignored, and
  - (b) any reference to the date of the application is to be read as a reference to the date of the application for the enforcement of the Part 1 order.”.
- (3) In section 31(2) (dismissal of enforcement proceedings), after “Court of Session” insert “ or sheriff court ”,
- (4) The Courts Reform (Scotland) Act 2014 is modified by subsection (5).
- (5) In section 43(3)(c) (jurisdiction over persons etc.), after “Part 1” insert “ and section 29A ”.

**30 Delay in proceedings likely to prejudice child's welfare**

- (1) The Children (Scotland) Act 1995 is modified by subsections (2) and (3).
- (2) In section 11ZA (paramountcy of child's welfare, and the non-intervention presumption) (which is inserted by section 1(4) of this Act), after subsection (2) insert—
 

“(2A) When considering the child's welfare, the court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.”.
- (3) In section 16 (welfare of child and consideration of his views), after subsection (1) insert—
 

“(1A) When considering the child's welfare, the court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.”.
- (4) The Adoption and Children (Scotland) Act 2007 is modified by subsection (5).
- (5) In section 14 (considerations applying to the exercise of powers), after subsection (3) insert—
 

“(3A) When considering the child's welfare, the court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.”.
- (6) The Children's Hearings (Scotland) Act 2011 is modified by subsection (7).
- (7) In section 25 (welfare of the child), after subsection (2) insert—
 

“(3) The children's hearing, pre-hearing panel or court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.”.



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### Final provisions

PROSPECTIVE

#### 31 Review of children's ability to participate

- (1) The Scottish Ministers must review the ability of children to effectively participate in the making of decisions in relation to which one of the following enactments requires that the child be given an opportunity to express a view and that regard be had to any view expressed—
  - (a) sections 11ZB(1), 11E(3), 11G(2)(b) and 16(2) of the Children (Scotland) Act 1995,
  - (b) sections 14(4A) and 84(5) of the Adoption and Children (Scotland) Act 2007,
  - (c) section 27(3) of the Children's Hearings (Scotland) Act 2011.
- (2) The review must, in particular, consider the resources required to ensure effective participation by children in the making of the decisions.
- (3) The review must be completed no later than 5 years after the date of Royal Assent.
- (4) As soon as practicable after completing the review, the Scottish Ministers must—
  - (a) make a report of the review publicly available, and
  - (b) lay a copy of the report before the Scottish Parliament.
- (5) The report must set out—
  - (a) the steps, if any, that the Scottish Ministers propose to take in light of the review,
  - (b) a proposed timetable for taking the steps, and
  - (c) if any of the steps are not to be taken in the parliamentary session during which the copy of the report is laid before the Parliament, an explanation of why the Ministers do not propose to take those steps before that session ends.
- (6) In subsection (5)(c), “parliamentary session” has the meaning given in section 19(1) of the Interests of Members of the Scottish Parliament Act 2006.

#### 32 Power to replace descriptions with actual dates

- (1) The Scottish Ministers may by regulations amend—
  - (a) section 11B(2) of the Children (Scotland) Act 1995 (“the 1995 Act”), and
  - (b) section 11D(3) of the 1995 Act,so that, instead of referring to the day on which the relevant amending section comes into force, they specify the date on which the relevant amending section actually came into force.
- (2) The relevant amending section—
  - (a) in relation to section 11B(2) of the 1995 Act is section 8 of this Act,
  - (b) in relation to section 11D(3) of the 1995 Act is section 17 of this Act.

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### **33 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may—
  - (a) make different provision for different purposes,
  - (b) modify any enactment (including this Act).
- (3) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but
  - (b) otherwise are subject to the negative procedure.

### **34 Commencement**

- (1) The following provisions come into force on the day after Royal Assent: this section and sections 32, 33 and 35.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section—
  - (a) may make different provision for different purposes,
  - (b) may include transitional, transitory or saving provision.

### **35 Short title**

The short title of this Act is the Children (Scotland) Act 2020.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Children (Scotland) Act 2020.