



# Children Act 1975

## 1975 CHAPTER 72

### PART V

#### MISCELLANEOUS AND SUPPLEMENTAL

95—97 .....<sup>F1</sup>

#### Textual Amendments

**F1** Ss. 95–97 repealed (E.W.) by Foster Children Act 1980 (c. 6, SIF 20), **Sch. 3** and (S.) by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), **Sch. 3**

98 .....<sup>F2</sup>

#### Textual Amendments

**F2** S. 98 repealed by Child Care Act 1980 (c. 5, SIF 20), **Sch. 6**

#### *Inquiries*

### 99 **Inquiries in Scotland.**

- (1) In Scotland the Secretary of State may cause an inquiry to be held into any matter relating to—
- (a) the functions of a local authority under the <sup>M1</sup>Social Work (Scotland) Act 1968 in so far as the matter relates to children;
  - (b) the functions of a local authority under the enactments specified in [<sup>F3</sup>paragraph (a) of section 1(4) and] paragraphs (b) to (e) and (h) [<sup>F4</sup>to k] of section 2(2) of the <sup>M2</sup>Social Work (Scotland) Act 1968;

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- (c) the functions of an adoption society;
  - (d) the functions of a voluntary organisation in so far as those functions relate to establishments to which sections 61 to 68 of the <sup>M3</sup>Social Work (Scotland) Act 1968 apply and in so far as the matter relates to children; or
  - (e) the detention of a child under—
    - (i) section 57 or 58A of the <sup>M4</sup>Children and Young Persons (Scotland) Act 1937; or
    - (ii) section 206 or 413 of the <sup>M5</sup>Criminal Procedure (Scotland) Act 1975.
- (2) The Secretary of State may, before an inquiry is commenced, direct that it shall be held in private, but where no such direction has been given, the person holding the inquiry may if he thinks fit hold it or any part of it in private.
- (3) Subsections (2) to (8) of section 210 of the <sup>M6</sup>Local Government (Scotland) Act 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (4) In this section “functions” includes powers and duties exercisable otherwise than by virtue of any enactment.

#### Textual Amendments

- F3** Words repealed (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 66, 67(2), Sch. 9 para. 16, **Sch. 10**
- F4** “to (k)” inserted (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 66, 67(2), **Sch. 9 para. 16**

#### Marginal Citations

- M1** 1968 c. 49(81:3).
- M2** 1968 c. 49(81:3).
- M3** 1968 c. 49(81:3).
- M4** 1937 c. 37(20).
- M5** 1975 c. 21(39:1).
- M6** 1973 c. 65(81:2).

### Supplemental

#### 100 Courts.

- (1) In this Act “authorised court”, as respects an application for an order relating to a child, shall be construed as follows.
- (2) If [<sup>F5</sup>in the case of an application for any order other than an order under Part II of this Act] the child is in England or Wales when the application is made, the following are authorised courts—
- (a) the High Court;
  - (b) the county court within whose district the child is and, in the case of an application under section 14, any county court within whose district a parent or guardian of the child is;

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- (c) any other county court prescribed by rules made under [<sup>F6</sup>section 75 of the <sup>M7</sup>County Courts Act 1984][<sup>F7</sup>section 9(3) of the 1958 Act or section 40 of the <sup>M8</sup>Matrimonial and Family Proceedings Act 1984];
  - (d) a magistrates' court within whose area the child is and, in the case of an application under section 14, a magistrates' court within whose area a parent or guardian of the child is.
- (3) If the child is in Scotland when the application is made, the following are authorised courts—
- (a) the Court of Session;
  - (b) the sheriff court of the sheriffdom within which the child is.
- (4) . . . . . <sup>F8</sup>
- [<sup>F9</sup>(6) In the case of an order under section 25, paragraph (d) of subsection (2) does not apply.]
- [<sup>F10</sup>(7) In the case of an application for an order under Part II of this Act, the following are authorised courts—
- (a) the High Court,
  - (b) for the purposes of such applications under the said Part II as are prescribed by rules made under section 75 of the <sup>M9</sup>County Courts Act 1984, any county courts so prescribed in relation to those applications;
  - (c) for the purposes of such applications under the said Part II as are prescribed by rules made under section 144 of the <sup>M10</sup>Magistrates' Courts Act 1980, any magistrates' court so prescribed in relation to those applications.]
- (8) Subsection (2) does not apply in the case of an application under section 30 . . . <sup>F11</sup> but for the purposes of such an application the following are authorised courts—
- (a) if there is pending in respect of the child an application for an adoption order or an order under section 14 or a custodianship order, the court in which that application is pending;
  - (b) in any other case, the High Court, the county court within whose district the applicant lives and the magistrates' court within whose area the applicant lives.
- [<sup>F12</sup>(9) Subsections (3) and (8) do not apply in the case of an application under section 30 in Scotland but for the purposes of such an application the following are authorised courts—
- (a) if there is pending in respect of the child an application for—
    - (i) an adoption order; or
    - (ii) an order under section 14,the court in which that application is pending;
  - (b) in any other case—
    - (i) the Court of Session;
    - (ii) the sheriff court of the sheriffdom within which the applicant resides.]
- [<sup>F13</sup>(10) Any court to which the proceedings on an application are transferred under any enactment is, as regards the transferred proceedings, an authorised court if it is not an authorised court under the preceding provisions of this section.]

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### Textual Amendments

- F5** Words inserted by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), s. 68(1), **Sch. 1 para. 20(2)**
- F6** Words substituted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), **Sch. 2 para. 56**
- F7** Words from “section 9(3)” to “Matrimonial and Family Proceedings Act 1984” substituted (prosp.) for words from “section 75” to “Act 1984” by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 47(1)(c), **Sch. 1 para. 19(a)**
- F8** S. 100(4)(5) repealed (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), **Sch. 4** and (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, Sch. 2 para. 3, **Sch. 4**
- F9** S. 100(6) repealed (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), **Sch. 4**
- F10** S. 100(7) substituted by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), s. 68(1), **Sch. 1 para. 20(3)**
- F11** Words repealed by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), s. 68(1)(2), Sch. 1 para. 20(4), **Sch. 2**
- F12** S. 100(9) repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, Sch. 2 para. 3, **Sch. 4**
- F13** S. 100(10) inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), s. 46(1), **Sch. 1 para. 19(b)**

### Marginal Citations

- M7** [1984 c. 28\(34\)](#).
- M8** [1984 c. 42\(49:3\)](#).
- M9** [1984 c. 28\(34\)](#).
- M10** [1980 c. 5\(20\)](#).

## 101 Appeals etc.

[<sup>F14</sup>(1) Where any application has been made under this Act [<sup>F15</sup>or the relevant adoption provisions] to a county court, the High Court may, at the instance of any party to the application, order the application to be removed to the High Court and there proceeded with on such terms as to costs as it thinks proper.]

(2) Subject to subsection (3), where on an application to a magistrates’ court under this Act [<sup>F16</sup>or the relevant adoption provisions] the court makes or refuses to make an order, an appeal shall lie to the High Court.

(3) Where an application is made to a magistrates’ court under this Act [<sup>F16</sup>or the relevant adoption provisions], and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates’ court shall refuse to make an order, and in that case no appeal shall lie to the High Court.

[<sup>F17</sup>(4) Any order made on an appeal under subsection (2) from a decision of a magistrates’ court on an application under Part II (other than an order directing that an application shall be re-heard by a magistrates’ court) shall for the purposes of the enforcement of the order and for the purposes of sections 35, 35A and 36 be treated as if it were an order of the magistrates’ court from which the appeal was brought and not of the High Court.]

[<sup>F18</sup>(5) In this section “the relevant adoption provisions” means sections 34, 34A and 35(2) of the <sup>M11</sup>Adoption Act 1958.]

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#### Textual Amendments

- F14** S. 101(1) repealed (E.W.) by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(3), 47, **Sch. 3**
- F15** Words inserted (E.W.) by virtue of Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3) Schs. 1, 2 para. 49 and Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 27(a)(i)**
- F16** Words inserted (E.W.) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 27(a)(ii)**
- F17** S. 101(4) added (E.W.) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 71, **Sch. 1**
- F18** S. 101(5) added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 27(b)**

#### Marginal Citations

- M11** 1958 c. 5(49:11).

### 102 Evidence of agreement and consent.

- (1) Any agreement or consent which is required by . . . <sup>F19</sup> Part II to be given to the making of any order or application for an order may be given in writing, and, if the document signifying the agreement or consent is—
- (a) . . . . . <sup>F20</sup>
- (b) in the case of an application made under Part II, witnessed in accordance with rules of court,
- it shall be admissible in evidence without further proof of the signature of the person by whom it was executed.
- (2) A document signifying such agreement or consent which purports to be witnessed in accordance with rules or, as the case may be, with rules of court shall be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.
- (3) In the application of this section to Scotland—
- (a) for “made under Part II” there is substituted “to which Part II applies”;
- (b) for “admissible in evidence” there is substituted “sufficient evidence”; and
- (c) for “rules of court” there is substituted “act of sederunt”.

#### Textual Amendments

- F19** Words repealed (S.) by virtue of Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 66, Sch. 2 para. 3, **Sch. 4** and (E.W.) by Adoption Act 1976 (c. 36, SIF 49:11), s. 74(2), **Sch. 4**
- F20** S. 102(1)(a) repealed (E.W.) by Adoption Act 1976 (c. 36, SIF 49:11), s. 74(2), **Sch. 4** and (S.) by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 66, Sch. 2 para. 3, **Sch. 4**

### 103 Panel for guardians ad litem and reporting officers.

- (1) The Secretary of State may by regulations make provision for the establishment of [<sup>F21</sup>one or more panels] of persons from whom—

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- (a) guardians ad litem and reporting officers may in accordance with rules or rules of court be appointed for the purposes of—
- [<sup>F22X1</sup>(i) section 65 of the <sup>M12</sup>Adoption Act 1976;]
- [<sup>F23X1</sup>(i) section 58 of the <sup>M13</sup>Adoption (Scotland) Act 1978.]
- (ii) section 32B of the <sup>M14</sup>Children and Young Persons Act 1969;
- [<sup>F24</sup>(iii) section 7 of the <sup>M15</sup>Child Care Act 1980]
- [<sup>F25</sup>(iv) section 12F of the <sup>M16</sup>Child Care Act 1980;]
- (b) persons may be appointed for the purposes of section 18A or 34A of the <sup>M17</sup>Social Work (Scotland) Act 1968.
- [<sup>F26</sup>(2) Regulations under subsection (1) may provide—
- (a) for the defrayment by local authorities of expenses incurred by members of a panel established by virtue of that subsection; and
- (b) for the payment by local authorities of fees and allowances for members of such a panel.]
- (3) In relation to Scotland, the reference in subsection (1) to guardians ad litem shall be construed as a reference to curators ad litem.

#### Editorial Information

- X1** S. 103(1)(a)(i) commencing “section 65” substituted (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), **Sch. 3 para. 22** and para. (i) commencing “section 58” substituted (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, **Sch. 3 para. 17**

#### Textual Amendments

- F21** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, **Sch. 2 para. 28(a)**
- F22** S. 103(1)(a)(i) substituted (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), **Sch. 3 para. 22**
- F23** S. 103(1)(a)(i) substituted (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49: 11\)](#), s. 66, **Sch. 3 para. 17**
- F24** S. 103(1)(a)(iii) substituted (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 89(2), **Sch. 5 para. 37**
- F25** S. 103(1)(a)(iv) added by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 6, **Sch. 1, Pt. II, para. 4**
- F26** S. 103(2) substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, **Sch. 2 para. 28(b)**

#### Marginal Citations

- M12** 1976 c. 36(49:11).
- M13** 1978 c. 28(49:11).
- M14** 1969 c. 54(20).
- M15** 1980 c. 5(20).
- M16** 1980 c. 5(20).
- M17** 1968 c. 49(81:3).

## 104 Savings for powers of High Court.

Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians, or otherwise in respect of children.

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## 105 Periodic review of Act.

The Secretary of State shall, within three years of the first of the dates appointed by order by the Secretary of State under section 108(2) and, thereafter, every five years lay before Parliament a report on the operation of those sections of the Act which are in force at that time [<sup>F27</sup>(including such sections as have been repealed by and re-enacted in the <sup>M18</sup>Adoption (Scotland) Act 1978)]; and the Secretary of State shall institute such research as is necessary to provide the information for these reports.

### Textual Amendments

**F27** Words inserted (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66(2), [Sch. 3 para. 18](#)

### Marginal Citations

**M18** [1978 c. 28\(49:11\)](#).

## 106 Regulations and orders.

- (1) Where a power to make regulations or orders is exercisable by the Secretary of State by virtue of this Act, regulations or orders made in the exercise of that power shall be made by statutory instrument and may—
  - (a) make different provision in relation to different cases or classes of case, and
  - (b) exclude certain cases or classes of case.
- (2) A statutory instrument containing regulations made by the Secretary of State under section 103 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred on the Secretary of State by this Act to make orders includes a power to vary or revoke an order so made.

## 107 Interpretation.

- (1) In this Act, unless the context otherwise requires—
  - [<sup>F28</sup> “adoption order” means an order under section 8(1);]
  - [<sup>F28</sup> “adoption society” has the same meaning as in the [<sup>F29</sup>1958 Act][<sup>F29M19</sup>Adoption (Scotland) Act 1978];]
  - .....<sup>F30</sup>
  - “area”, in relation to a magistrates’ court, means the commission area (within the meaning of section 1 of the <sup>M20</sup>Administration of Justice Act 1973) for which the court is appointed;
  - “authorised court” shall be construed in accordance with section 100;
  - .....<sup>F30</sup>
  - .....<sup>F30</sup>
  - .....<sup>F30</sup>
  - “child”, except where used to express a relationship, means a person who has not attained the age of 18;
  - .....<sup>F30</sup>
  - .....<sup>F30</sup>
  - .....<sup>F30</sup>
  - .....<sup>F30</sup>
  - “guardian” means—

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- (a) a person appointed by deed or will in accordance with the provisions of the <sup>M21M22</sup>Guardianship of Infants Act 1886 and 1925 or the <sup>M23</sup>Guardianship of Minors Act 1971 or by a court of competent jurisdiction to be the guardian of the child, and
- (b) ..... <sup>F31</sup>  
 “home” shall be construed in accordance with section 87(3);  
 “local authority” means in relation to England and Wales the council of a county . . . <sup>F32</sup> a metropolitan district, a London borough or the Common Council of the City of London;  
 “notice” means a notice in writing;  
 “relative” has the same meaning as in the 1958 Act;  
 “rules” means, in England and Wales, rules made under section 9(3) of the 1958 Act or made by virtue of section 9(4) of the 1958 Act under section 15 of the Justices of the <sup>M24</sup>Peace Act 1949;  
 “the 1958 Act” means the <sup>M25</sup>Adoption Act 1958;  
 ..... <sup>F30</sup>  
 “voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit.
- (2) In this Act, in relation to Scotland, unless the context otherwise requires—  
 “actual custody” means care and possession;  
 “legal custody” means custody;  
 “local authority” means a regional or islands council; and  
 “rules” means rules made by act of sederunt.
- (2A) ..... <sup>F33</sup>
- (3) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.
- (4) In this Act, except where otherwise indicated—  
 (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and  
 (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and  
 (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

#### Textual Amendments

- F28** Definitions repealed (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), [Sch. 4](#)
- F29** Words “Adoption (Scotland) Act 1978” substituted (S.) for words “1958 Act” by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66(2), [Sch. 3 para. 19](#)
- F30** Definitions repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, [Sch. 2 para. 3](#), [Sch. 4](#) and (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), [Sch. 4](#)
- F31** Para. (b) in the definition of “guardian” repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, [Sch. 2 para. 3](#), [Sch. 4](#) and repealed (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), [Sch. 4](#)
- F32** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102(2), [Sch. 17](#)



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**F33** S. 107(2A) repealed by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), Sch. 2 para. 3, Sch. 3

#### Marginal Citations

- M19 1978 c. 28(49:11).
- M20 1973 c. 15(82).
- M21 1886 c. 27(49:10).
- M22 1925 c. 45(49:10).
- M23 1971 c. 3(49:9).
- M24 1949 c. 101(82).
- M25 1958 c. 5(49:11).

### 108 Amendments, repeals, commencement and transitory provisions.

- (1) Subject to the following provisions of this section
  - (a) the enactments specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential on the preceding provisions of this Act), and
  - (b) the enactments specified in Schedule 4 are repealed to the extent shown in column 3 of that Schedule.
- (2) This Act, except the provisions specified in subsections (3) and (4), shall come into force on such date as the Secretary of State may by order appoint and different dates may be appointed for, or for different purposes of, different provisions.
- (3) Sections 71, 72 and 82, this section, section 109 and paragraph 57 of Schedule 3 shall come into force on the passing of this Act.
- (4) The following provisions of this Act shall come into force on 1st January 1976—
  - (a) sections 3, 8(9) and (10), 13, 59, 83 to 91, 94, 98, 99, 100 and 103 to 107;
  - (b) Schedules 1 and 2;
  - (c) in Schedule 3, paragraphs 1, 2, 3, 4, 6, 8, 9, 13(6), 15, 17, 18, 19, 20, 21(1) (2) and (4), 22 to 25, 27(b), 29, 33, 34(b), 35, 36(b), 38, 39(c) (d) and (e), 40, 43, 48, 49, 51(a), 52(f)(ii) and (g)(ii), 54, 55, 58 to 63, 65 to 70, 75(3), 77, 78, 81 and 83;
  - (d) Parts I, II and III of Schedule 4.
- <sup>F34</sup>(5) Until the date appointed under subsection (2) or sections 4 to 7, in this Act and in the 1958 Act “adoption agency” means a local authority or a registered adoption society within the meaning of the 1958 Act.
- (6) Until the date so appointed for section 12, section 5(1) of the 1958 Act shall, in relation to an application made after 31st December 1975 for an adoption order, have effect with the addition at the end of paragraph (b) of the following words
  - (c) has seriously ill-treated the child and that (whether because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of that person is unlikely.”]
- (7) Until the date so appointed for section 18, section 21A of the <sup>M26</sup>Children and Young Persons Act 1969 shall have effect as if for references to section 25 there were substituted references to section 53 of the 1958 Act.
- (8) An order under subsection (2) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions

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thereby brought into force, including such adaptations of those provisions or any provision of this Act then in force or any provision of the 1958 Act as appear to him to be necessary or expedient in consequence of the partial operation of this Act.

#### Textual Amendments

**F34** S. 108(5)(6) repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66(3), Sch. 2 para. 3, Sch. 4

#### Modifications etc. (not altering text)

- C1** The text of ss. 48(3)(4), 64, 66, 68, 70, 71, 73–84, 90, 92, 108(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.
- C2** Power of appointment conferred by s. 108(2) partly exercised; 1976/1744; 1977/227, 1036; 1978/1433, 1440; 1980/1475; 1981/1792; 1982/33; 1983/86; 107, 1946; 1984/554, 1702; 1985/779, 1557, 1987/1242

#### Marginal Citations

**M26** 1969 c. 54.

### 109 Short title and extent.

- (1) This Act may be cited as the Children Act 1975.
- (2) This Act, except—
- (a) section 68;
  - (b) paragraphs 10, 11 . . . <sup>F35</sup> of Schedule 3;
  - (c) <sup>F35</sup> does not extend to Northern Ireland.
- (3) . . . . . <sup>F36</sup>

#### Textual Amendments

**F35** Words and para. (c) repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(8), Sch. 9

**F36** S. 109(3) repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:31\)](#), Sch. 10 Pt. I

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