

Status: Point in time view as at 30/12/2005.

Changes to legislation: Children (Scotland) Act 1995, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 105(3).

TRANSITIONAL PROVISIONS AND SAVINGS

- 1 Where, immediately before the day appointed for the coming into force of section 25 of this Act, a child is by virtue of section 15 of the 1968 Act (duty of local authority to provide for orphans, deserted children etc.) in the care of a local authority, the child shall on and after that day be treated as if he had been provided with accommodation under (and within the meaning of) subsection (1) of the said section 25.
- 2 Sections 29 and 30 of this Act shall apply in respect of a person who, at the time when he ceased to be of school age (as defined in section 31 of the ^{M1}Education (Scotland) Act 1980) or at any subsequent time, was—
- (a) in the care of a local authority by virtue of the said section 15 or of section 16 of the 1968 Act (assumption of parental rights and powers); or
 - (b) subject to a supervision requirement (within the meaning of section 44(1) of the 1968 Act),
- as they apply in respect of a person who at such time was looked after (within the meaning of Part II of this Act) by a local authority.

Marginal Citations

M1 1980 c.44.

- 3 Where the parental rights in respect of a child have, by a resolution under the said section 16 or under section 16A of the 1968 Act (duty of local authority in cases of necessity to assume parental rights and powers vested in a voluntary organisation), vested in a local authority and immediately before the day appointed for the coming into force of section 86 of this Act those rights remain so vested, the resolution shall on and after that day have effect as if it were a parental responsibilities order transferring the appropriate parental rights and responsibilities (as defined in subsection (3) of the said section 86) relating to the child to the authority; and any access order made under section 17B of the 1968 Act in relation to the child (with any order made under section 17C of that Act as respects the access order) being (in either case) an order which immediately before that day remains undischarged, shall on and after that day have effect as if it were an order made under section 88(3) of this Act as respects the child.
- 4 Where the parental rights in respect of a child have, by a resolution under the said section 16, vested in a voluntary organisation (as defined in section 93 of this Act) and immediately before the day mentioned in paragraph 3 above those rights remain so vested, the resolution shall, notwithstanding the repeal by this Act of the said section 16, continue to have effect until one of the following occurs—
- (a) the child attains the age of eighteen years;

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- (b) the resolution is rescinded by the local authority because it appears to them that their doing so would promote the child’s welfare;
- (c) the period of six months commencing with that day expires;
- (d) an order is made by virtue of section 11(2)(b), or under section 86(1), of this Act in relation to the child;
- (e) an order is made under section 12 (adoption order) or 18 (order freeing for adoption) of the ^{M2}1978 c. 21. Adoption (Scotland) Act 1978 in relation to the child.

Marginal Citations

M2 1978 c.21.

5 Where the circumstance by virtue of which a resolution under the said section 16 ceases to have effect is that mentioned in sub-paragraph (c) of paragraph 4 above, the appropriate parental rights and responsibilities (defined as mentioned in paragraph 3 above) in relation to the child shall transfer forthwith to the local authority in whose area he resides; and for the purposes of sections 86(6) and 87 to 89 of this Act the transfer shall be deemed effected by a parental responsibilities order applied for by that authority.

6 While a resolution continues to have effect by virtue of paragraph 4 above, sections 17(3A) and (6) to (10), 17A, 17B, 17D, 17E and 20(3) of the 1968 Act (together with the code of practice last published under subsection (5) of the said section 17E) shall continue to have effect in relation to the child in question notwithstanding the repeal by this Act of those sections.

7 Where an order made under—

- (a) section 10 (power of court in actions of divorce etc. to commit care of child to local authority) or 12 (power of court to provide for supervision of child) of the ^{M3}Matrimonial Proceedings (Children) Act 1958;
- (b) section 11 of the ^{M4}Guardianship Act 1973 (orders relating to care and custody of children); or
- (c) section 26 of the ^{M5}Adoption (Scotland) Act 1978 (provision for supervision or care where adoption order refused),

committed the care of the child to, or as the case may be placed the child under the supervision of, a local authority and immediately before the repeal by this Act of the section in question (the “relevant repeal”) that order remained undischarged, the order shall continue to have effect notwithstanding the relevant repeal until one of the following occurs—

- (i) the period of six months commencing with the date of the relevant repeal expires;
- (ii) the Court of Session direct, or the sheriff directs, that the order be discharged; or
- (iii) there is an event in consequence of which, but for the provisions (apart from this paragraph) of this Act, the order would have fallen to be discharged.

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Marginal Citations

M3 1958 c.40.

M4 1973 c.29.

M5 1978 c.21.

- 8
- (1) Where relevant proceedings in relation to a child have been commenced and on the relevant date have not been concluded, the provisions of Part III of the 1968 Act shall continue to apply to those proceedings until the proceedings are concluded, notwithstanding the repeal of any of those provisions by this Act.
 - (2) For the purposes of this paragraph, “relevant proceedings” means any proceedings at a children’s hearing under Part III of the 1968 Act, any application to the sheriff under that Part for a warrant or under section 42(2)(c) of that Act to establish any ground of referral, and any appeal under section 49 or 50 of that Act; and a reference to the commencement, or to the conclusion, of such proceedings shall be construed in accordance with sub-paragraph (3) or, as the case may be, (4) below.
 - (3) Relevant proceedings are commenced when one of the following occurs—
 - (a) a children’s hearing is arranged under section 37(4) or section 39(3) of the 1968 Act;
 - (b) an application under section 42(2)(c) of that Act is lodged;
 - (c) an appeal to the sheriff under section 49 of that Act is lodged;
 - (d) an application under section 50(2) of that Act is made.
 - (4) Relevant proceedings are concluded when one of the following occurs—
 - (a) the sheriff discharges the referral under section 42(5) of the 1968 Act;
 - (b) a children’s hearing discharge the referral under section 43(2) of that Act;
 - (c) the period of three weeks after a children’s hearing make a supervision requirement under section 44 of that Act or on remission to them under section 49(5) of that Act, expires provided that no appeal has been lodged within that period against that decision under section 49 of that Act;
 - (d) subject, as respects a decision under section 49(5)(b) of that Act, to head (c) above, the period of twenty eight days after the sheriff has disposed of an appeal under section 49(4), (5) or (6) of that Act expires provided that no application has been made within that period to him to state a case under section 50(2) of that Act;
 - (e) the period of twenty eight days after the sheriff has disposed of a case remitted to him under section 50(3) expires provided that no further application under the said section 50(2) has been made.
- 9
- Where a child has been taken to a place of safety, or is being detained in such a place, in accordance with section 37(2) of the 1968 Act before the relevant date, and the first lawful day for the purposes of subsection (4) of that section is on or after that date, the child’s case shall be proceeded with as if that day had been before the relevant date.
- 10
- (1) Where on the relevant date a child is subject to a supervision requirement imposed under section 44 of the 1968 Act, he shall be treated as if the requirement had been imposed under section 70 of this Act; and in calculating any period of time for the purposes of section 73 of this Act, that requirement shall be deemed to have been imposed on the day on which the requirement was imposed under the said section 44 or, as the case may be, was last reviewed or varied under the said Act of 1968.

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- (2) Where any relevant proceedings are concluded as mentioned in paragraph 8(4)(c) above, a supervision requirement imposed under section 44 of the 1968 Act shall have effect as if it were made under section 70 of this Act.
- (3) Where before the relevant date, or in any relevant proceedings, the sheriff has in relation to a supervision requirement made an order under section 49(6) of the 1968 Act, that order shall have effect in relation to the supervision requirement deemed to have been made under section 70 of this Act as it would have had effect in relation to the supervision requirement made under section 44 of the 1968 Act.
- 11 In this Schedule—
- “the 1968 Act” means the ^{M6}Social Work (Scotland) Act 1968;
 - “the relevant date” means the date on which the repeal of Part III of the 1968 Act by this Act takes effect; and
 - “relevant proceedings” shall be construed in accordance with paragraph 8(2) above.

Marginal Citations

M6 1968 c.49.

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