



Social Work (Scotland) Act 1968

1968 CHAPTER 49

PART I

ADMINISTRATION

Performance of their duties by local authorities

1 Local authorities for the administration of the Act.

- (1) It shall be the duty of a local authority to enforce and execute within their area the provisions of this Act with respect to which the duty is not expressly, or by necessary implication, imposed on some other authority.
- (2) The local authorities for the purposes of this Act shall be [^{F1}regional and islands councils.]
- (3)^{F2}
- (4) The functions of local health authorities in respect of their areas under the following enactments—
 - [^{F3}(a) the ^{M1}Nurseries and Child-Minders Regulation Act 1948;]
 - (b) the [^{F4}Mental Health (Scotland) Act 1984] . . . ^{F5}; [^{F6}and]
 - [^{F7}(c) section 27 of the ^{M2}National Health Service (Scotland) Act 1947 (care and after-care of persons who are or have been suffering from illness), other than functions relating to medical, dental or nursing care, or to health visiting,]

are hereby transferred to the local authorities of those areas.

- (5) On the date of the commencement of Part III of this Act the functions of education authorities in relation to the establishments which immediately before that date were approved schools and the children resident therein shall be transferred to the local authorities in whose areas the said children are ordinarily resident or, in the case of children who have no ordinary residence in Scotland, such local authorities as the Secretary of State may determine.

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Changes to legislation: Social Work (Scotland) Act 1968 is up to date with all changes known to be in force on or before 11 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)

(6) F2

Textual Amendments

- F1** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), **Sch. 27 Pt. II para. 183**
- F2** [S. 1\(3\)\(6\)](#) repealed by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), **Sch. 29**
- F3** [S. 1\(4\)\(a\)](#) repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(7), **Sch. 15**
- F4** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 14**
- F5** Words repealed by [National Health Service \(Scotland\) Act 1972 \(c. 58, SIF 113:2\)](#), **Sch. 7 Pt. II**
- F6** Word repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), **Sch. 10**
- F7** [S. 1\(4\)\(c\)](#) repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), **Sch. 10**

Modifications etc. (not altering text)

- C1** [S. 1\(4\)\(c\)](#): [National Health Service \(Scotland\) Act 1947 \(c. 27\)](#), s. 27 continued for the purposes of s. 1(4) by [National Health Service \(Scotland\) Act 1978 \(c. 29, SIF 113:2\)](#), **Sch. 15 para. 15**

Marginal Citations

- M1** 1948 c. 53.
- M2** 1947 c. 27.

2 The social work committee .

- (1) Every local authority shall establish a social work committee for the purposes of their functions under this Act.
- (2) Except as otherwise expressly provided, all matters relating to the performance of their functions under the following enactments—
- (a) this Act [^{F8}as read with sections 1 and 2(1) of the Chronically Sick and Disabled Persons Act ^{M3}1970 and the Disabled Persons (Services, Consultation and Representation) Act 1986],
 - (b) Part IV of the ^{M4}Children and Young Persons (Scotland) Act 1937,
 - [^{F9}(bb) the ^{M5}Disabled Persons (Employment) Act 1958]
 - (c) sections 10 to 12 of the ^{M6}Matrimonial Proceedings (Children) Act 1958, [^{F10}and sections 11 and 12 of the ^{M7}Guardianship Act 1973]
 - (d) [^{F11}the Foster Children (Scotland) Act 1984],
 - (e) the ^{M8}Adoption Act 1958,
 - (f) section 101(1) of the ^{M9}Housing Act 1964, and
 - [^{F12}(ff) section 9(1)(b) of the ^{M10}Housing (Homeless Persons) Act 1977,]
 - (g) the enactments mentioned in subsection (4) of the foregoing section,
 - [^{F13}(h) the ^{M11}Children Act 1975,]
 - [^{F14}(j) the ^{M12}Adoption (Scotland) Act 1978,]
 - [^{F15}(k) section 19 and Part X of the Children Act 1989,]
 - [^{F16}(l) sections 21 to 23 of the Health and Social Services and Social Security Adjudications Act 1983;
 - (m) the Access to Personal Files Act 1987.]

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shall stand referred to the social work committee, and before exercising any of the said functions the authority shall, unless the matter is urgent, consider a report of the social work committee with respect thereto.

(3) ^{F17}

(4) Sections 39 and 40 of the ^{M13}Children Act 1948 (provisions relating to establishment of children’s committee) shall cease to have effect.

Textual Amendments

- F8** Words inserted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\)](#), **s. 12(2)**
- F9** [S. 2\(2\)\(bb\)](#) inserted by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), **Sch. 27 Pt. II para. 184**
- F10** Words added by [Guardianship Act 1973 \(c. 29, SIF 49:10\)](#), **Sch. 5 para. 7**
- F11** Words substituted by [Foster Children \(Scotland\) Act 1984 \(c. 56, SIF 20\)](#), s. 22, **Sch. 2 para. 4**
- F12** [S. 2\(2\)\(ff\)](#) added by [Housing \(Homeless Persons\) Act 1977 \(c. 48, SIF 61\)](#), **s. 20(3)**
- F13** [S. 2\(2\)\(h\)](#) inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 3 para. 48**
- F14** [S. 2\(2\)\(j\)](#) inserted by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 67(2), Sch. 2 paras 3, 5. Sch. 3 para. 8
- F15** [S. 2\(2\)\(k\)](#) inserted (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(5), **Sch. 13 para. 18**
- F16** [S. 2\(2\)\(l\)\(m\)](#) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(2)**
- F17** [S. 2\(3\)](#) repealed by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), **Sch. 29**

Modifications etc. (not altering text)

- C2** [s. 2](#) extended by [Local Government Act \(Scotland\) Act 1975 \(c. 30, SIF 81:2\)](#), **s. 23(2)**
- C3** The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 60, 68, 73, Sch. 9 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.

Marginal Citations

- M3** [1970 c.44\(81:3\)](#).
- M4** [1937 c. 37](#).
- M5** [1958 c. 33](#).
- M6** [1958 c. 40](#).
- M7** [1973 c. 29](#).
- M8** [1958 c. 5 \(7 & 8 Eliz. 2\)](#).
- M9** [1964 c. 56](#).
- M10** [1977 c. 48](#).
- M11** [1975 c. 72](#).
- M12** [1978 c. 28](#).
- M13** [1948 c. 43](#).

3 The director of social work.

(1) For the purposes of their functions under the enactments referred to in section 2(2) of this Act, a local authority shall, in accordance with the provisions of this section, appoint an officer, to be known as the director of social work.

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- (2) The qualifications of the director of social work shall be such as the Secretary of State may prescribe.
- (3) ^{F18}
- (5) The director of social work shall hold his office during the pleasure of the local authority, but he shall not be removed therefrom, or be required to resign as an alternative thereto, except by a resolution of that authority passed by not less than two-thirds of the members present at a meeting of the authority, notice of which specifies as an item of business the consideration of the removal from office of the director of social work or his being required to resign.
- (6) The director of social work of a local authority shall not, except with the consent of the Secretary of State, be employed by that authority in any other capacity.
- (7) A local authority shall secure the provision of adequate staff for assisting the director of social work in the performance of his functions.
- (8) The provisions as to remuneration and tenure of office contained in [^{F19}section 64 of the ^{M14}Local Government (Scotland) Act 1973], so far as these provisions are not inconsistent with any of the foregoing provisions of this section, shall apply to directors of social work and their staffs.
- (9) Section 41 of the ^{M15}Children Act 1948 (children’s officer) shall cease to have effect.

Textual Amendments

F18 S. 3(3)(4) repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), [Sch. 4](#)

F19 Words substituted by virtue of [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#) s. 237(2)

Modifications etc. (not altering text)

C4 The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 60, 68, 73, Sch. 9 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.

Marginal Citations

M14 1973 c. 65.

M15 1948 c. 43.

4 Provisions relating to performance of functions by local authorities.

Where a function is assigned to a local authority under this Act [^{F20}or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984,] and a voluntary organisation or other person, including another local authority, is able to assist in the performance of that function, the local authority may make arrangements with such an organisation or other person for the provision of such assistance as aforesaid.

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Textual Amendments

F20 Words inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 9 para. 10\(3\)](#)

Central Authority

5 Powers of Secretary of State.

(1) Local authorities shall perform their functions under this Act under the general guidance of the Secretary of State.

[^{F21}(1A) Without prejudice to subsection (1) above, the Secretary of State may issue directions to local authorities, either individually or collectively, as to the manner in which they are to exercise any of their functions under this Act or any of the enactments mentioned in section 2(2) of this Act; and a local authority shall comply with any direction made under this subsection.]

[^{F22}(2) The Secretary of State may make regulations in relation to—

- (a) the performance of the functions assigned to local authorities by this Act;
- (b) the activities of voluntary organisations in so far as those activities are concerned with the like purposes;
- (c) the performance of the functions referred to social work committees under section 2(2)(b) to (e) [^{F23}(h) [^{F24}and (j)]] [^{F24}to (k)] of this Act;

[^{F25}(d) the performance of the functions transferred to local authorities by section 1(4) (a) of this Act.]

(3) Without prejudice to the generality of the foregoing subsection, regulations under this section may make provision for the boarding-out of persons by local authorities and voluntary organisations, whether under any enactment or otherwise, and may provide—

- (a) for the recording by local authorities and voluntary organisations of information relating to persons with whom persons are boarded out as aforesaid, and to persons who are willing to have persons boarded out with them;
- (b) for securing that persons shall not be boarded out in any household unless that household is for the time being approved by such local authority or voluntary organisation as may be prescribed by the regulations;
- (c) in the case of a child, for securing that, where possible, the person with whom any child is to be boarded out is either of the same religious persuasion as the child or gives an undertaking that the child shall be brought up in that religious persuasion;
- (d) for securing that persons boarded out as aforesaid, and the places in which they are boarded out, shall be supervised and inspected by a local authority or voluntary organisation, as the case may be, and that those persons shall be removed from those places if their welfare appears to require it.

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Textual Amendments

- F21** S. 5(1A) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 51
- F22** S. 5(2) substituted by Children Act 1975 (c. 72, SIF 49:9, 10), Sch. 3 para. 49
- F23** Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras. 3, 5, Sch. 3 para. 9
- F24** “to (k)” substituted (*prosp.*) for “and (j)” by Children Act 1989 (c. 41, SIF 20), s. 108(2)(5), Sch. 13 para. 19
- F25** S. 5(2)(d) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108(2)(7), Sch. 15

[^{F26}5A Local authority plans for community care services.

- (1) Within such period after the day appointed for the coming into force of this section as the Secretary of State may direct, and in accordance with the provisions of this section, each local authority shall prepare and publish a plan for the provision of community care services in their area.
- (2) Each local authority shall from time to time review any plan prepared by them under subsection (1) above, and shall, in the light of any such review, prepare and publish—
 - (a) any modifications to the plan under review; or
 - (b) if the case requires, a new plan.
- (3) In preparing any plan or carrying out any review under subsection (1) or, as the case may be, subsection (2) above the authority shall consult—
 - (a) any Health Board providing services under the National Health Service (Scotland) Act ^{M16}1978 in the area of the authority;
 - (b) in so far as the plan or, as the case may be, the review may affect or be affected by the provision or availability of housing, every district council in the area of the authority;
 - (c) such voluntary organisations as appear to the authority to represent the interests of persons who use or are likely to use any community care services within the area of the authority or the interests of private carers who, within that area, provide care to persons for whom, in the exercise of their functions under this Act or any of the enactments mentioned in section 2(2) of this Act, the local authority have a power or a duty to provide, or to secure the provision of, a service;
 - (d) such voluntary housing agencies and other bodies as appear to the authority to provide housing or community care services in their area; and
 - (e) such other persons as the Secretary of State may direct.

(4) In this section—

“community care services” means services, other than services for children, which a local authority are under a duty or have a power to provide, or to secure the provision of, under Part II of this Act or section 7 (functions of local authorities), 8 (provision of after-care services) or 11 (training and occupation of the mentally handicapped) of the Mental Health (Scotland) Act 1984; and

“private carer” means a person who is not employed to provide the care in question by any body in the exercise of its functions under any enactment.]

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Textual Amendments

F26 Ss. 5A, 5B inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 52

Marginal Citations

M16 1978 c. 29 (113:2).

5B Complaints procedure.

- (1) Subject to the provisions of this section, the Secretary of State may by order require local authorities to establish a procedure whereby a person, or anyone acting on his behalf, may make representations (including complaints) in relation to the authority's discharge of, or failure to discharge, any of their functions under this Act, or any of the enactments referred to in section 2(2) of this Act, in respect of that person.
- (2) For the purposes of subsection (1) of this section, "person" means any person for whom the local authority have a power or a duty to provide, or to secure the provision of, a service, and whose need or possible need for such a service has (by whatever means) come to the attention of the authority.
- (3) An order under subsection (1) of this section may be commenced at different times in respect of such different classes of person as may be specified in the order.
- (4) In relation to a child, representations may be made by virtue of subsection (1) above by the child, or on his behalf by—
 - (a) his parent;
 - (b) any person having parental rights in respect of him;
 - (c) any local authority foster parent; or
 - (d) any other person appearing to the authority to have a sufficient interest in the child's wellbeing to warrant his making representations on the child's behalf.
- (5) In this section—

"child" means a child under the age of 18 years; and

"parent" and "parental rights" have the same meaning as in section 8 (interpretation) of the Law Reform (Parent and Child) (Scotland) Act 1986.
- (6) A local authority shall comply with any directions given by the Secretary of State as to the procedure to be adopted in considering representations made as mentioned in subsection (1) of this section and as to the taking of such action as may be necessary in consequence of such representations.
- (7) Every local authority shall give such publicity to the procedure established under this section as they consider appropriate.

6 Supervision of establishments providing accommodation for persons and inspection of records etc.

- (1) Any [^{F27}person duly authorised by] the Secretary of State may enter any of the following places for the purpose of making such examinations into the state and management of the place [^{F28}the facilities and services provided therein], and the condition and treatment of the persons in it, as he thinks necessary and for the purpose

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of inspecting any records or registers [^{F29}(in whatever form they are held) relating to the place or to any person for whom services have been or are provided there] by virtue of this Act [^{F30}or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984], that is to say—

- (a) any residential or other establishment provided by a local authority or a voluntary organisation or other person for the purposes of this Act [^{F31}or section 7 or 8 of the said Act of 1984,];
- (b) any place where there is being maintained—
 - (i) a foster child within the meaning of the [^{F32}Foster Children (Scotland) Act 1984],
 - (ii) a protected child within the meaning of [^{F33}section 32 of the ^{M17}Adoption (Scotland) Act 1978];
 - [^{F34}(iii) a child who has been placed for adoption by an adoption agency (within the meaning of section 1 of the [^{F35M18}Adoption Act 1978]);]
- (c) any place where any person is for the time being boarded out by a local authority or a voluntary organisation;
- (d) ^{F36}

(2) Any such [^{F37}person] as aforesaid may at all reasonable times enter the offices of a local authority or of a voluntary organisation for the purpose of inspecting any records or registers relating to any establishment or place mentioned in the foregoing subsection or relating to any persons to whom the authority or organisation has made available advice, guidance or assistance in pursuance of this Act [^{F38}or section 7 or 8 of the said Act of 1984], or who may require such advice, guidance or assistance, and may carry out that inspection.

[^{F39}(2A) Any such person may require the owner of, or any person employed in, the establishment or place in question to furnish him with such information as he may request.

(2B) In exercising the power to inspect records and registers under this section a person—

- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or register in question; and
- (b) may require—
 - (i) the person by whom or on whose behalf the computer is or has been so used; or
 - (ii) any person having charge of or otherwise concerned with the operation of the computer, apparatus or material,
 to give him such reasonable assistance as he may require.

(2C) In exercising the power to inspect places under this section a person—

- (a) may interview any person residing there in private—
 - (i) for the purpose of investigating any complaint as to that place or the services provided there; or
 - (ii) if he has reason to believe that the services being provided there for that person are not satisfactory; and
- (b) may examine any such person in private.

(2D) No person may—

- (a) exercise the power to inspect records or registers under subsection (1) and (2) above so as to inspect medical records; or

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- (b) exercise the power conferred by subsection (2C)(b) above,
unless he is a registered medical practitioner and, in the case of the power conferred by subsection (1) or (2) above, the records or register relate to medical treatment given at the place in question.]
- (3) The power conferred by subsection (1) of this section may be exercised in respect of any place which an [^{F40}authorised person] has reasonable cause to believe to be used as an establishment in respect of which the person carrying on the establishment is registrable under Part IV of this Act.
- (4) [^{F41}A person] who proposes to exercise any power of entry or inspection conferred by this section shall, if so required, produce a duly authenticated document showing his authority to exercise the power.
- (5) Any person who obstructs the exercise of any such power as aforesaid shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F42}level 4 on the standard scale].

Textual Amendments

- F27** Words in s. 6(1) substituted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(4)(a)(i)**; S.I. 1990/2510, art. 2, **Sch.**
- F28** Words in s. 6(1) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 53(2)**; S.I. 1990/2510, art. 2, **Sch.**
- F29** Words in s. 6(1) substituted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 53(3)**; S.I. 1990/2510, art. 2, **Sch.**
- F30** Words in s. 6(1) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(4)(a)(ii)**; S.I. 1990/2510, art. 2, **Sch.**
- F31** Words in s. 6(1)(a) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(4)(b)**; S.I. 1990/2510, art. 2, **Sch.**
- F32** Words substituted by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), s. 22, **Sch. 2 para. 5**
- F33** Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras. 3, 5, **Sch. 3 para. 10(a)**
- F34** S. 6(1)(b)(iii) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 50**
- F35** Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras. 3, 5, **Sch. 3 para. 10(b)**
- F36** S. 6(1)(d) repealed by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), **Sch. 4 Pt. II**
- F37** Words in s.6(2) substituted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(4)(c)(i)**; S.I. 1990/2510, art. 2, **Sch.**
- F38** Words in s. 6(2) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(4)(c)(ii)**; S.I. 1990/2510, art. 2, **Sch.**
- F39** S. 6(2A)–(2D) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 53(4)**; S.I. 1990/2510, art. 2, **Sch.**
- F40** Words in s. 6(3) substituted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(4)(d)**; S.I. 1990/2510, art. 2, **Sch.**
- F41** Words in s. 6(4) substituted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(4)(e)**; S.I. 1990/2510, art. 2, **Sch.**
- F42** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289C(1), **Sch. 7C** (as inserted by Criminal Law Act 1977 (c. 45, SIF 39:1), s. 63(1), Sch. 11 paras. 5, **13**) and s. 289G (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 54**) and by 1995 c. 40, ss. 3, 7(2), **Sch. 1 para. 3(1)**, **Sch. 2 Pt. II** it is provided (1.4.1996) that s. 6(5) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not

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exceeding level 4 on the standard scale instead of a fine of £10 for a first offence and £50 for a second or subsequent offence

Marginal Citations

M17 1978 c. 28.

M18 1978 c. 28.

[^{F43}6A Inquiries.

- (1) The Secretary of State may cause an inquiry to be held into the functions of a local authority under this Act or any of the enactments mentioned in section 2(2) of this Act, except in so far as those functions relate to persons under the age of 18.
- (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 Local Government (Scotland) Act ^{M19}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.]

Textual Amendments

F43 S. 6A inserted(1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 54

Marginal Citations

M19 1973 c. 65 (81:2).

VALID FROM 01/04/1997

[^{F44}6B Local authority inquiries into matters affecting children.

- (1) Without prejudice to section 6A(1) of this Act, a local authority may cause an inquiry to be held into their functions under this Act, or any of the enactments mentioned in section 5(1B) of this Act, in so far as those functions relate to children.
- (2) The local authority may, before an inquiry under this section is commenced, direct that it be held in private; but where no such direction is given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (3) Subsections (2) to (6) of section 210 of the ^{M20}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, so however that, for the purposes of the application, any reference in those subsections to a Minister shall be construed as a reference to the local authority and any reference to an officer of his Department as a reference to an officer of that authority.
- (4) The expenses incurred by a local authority in relation to an inquiry under this section (including such reasonable sum as the authority may determine for the services of any of their officers engaged in the inquiry) shall, unless the authority are of the opinion that those expenses should be defrayed in whole or in part by them, be paid

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by such party to the inquiry as they may direct; and the authority may certify the amount of the expenses so incurred.

- (5) Any sum certified under subsection (4) above and to be defrayed in accordance with a direction under that subsection shall be a debt due by the party directed and shall be recoverable accordingly.
- (6) The local authority may make an award as to the expenses of the parties at the inquiry and as to the parties by whom such expenses shall be paid.]

Textual Amendments

F44 S. 6B inserted (1.4.1997) by 1995 c. 36, s. 100 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, art. 2 (with transitional provisions inserted into S.I. 1996/3201 by art. 3))

Marginal Citations

M20 1973 c.45.

7 F45

Textual Amendments

F45 S. 7 repealed by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), Sch. 4

Research, training courses and financial and other assistance

8 Research.

- (1) The Secretary of State may conduct or assist other persons in conducting research into any matter connected with his functions or the functions of local authorities in relation to social welfare, and with the activities of voluntary organisations connected with those functions.
- (2) Any local authority may conduct or assist other persons in conducting research into any matter connected with their functions in relation to social welfare.
- (3) The Secretary of State and any local authority may make financial assistance available in connection with any research which they may conduct or which they may assist other persons in conducting under the provisions of this section.

9 Training courses and grants for training in social work.

- (1) The Secretary of State may provide courses of training for persons with a view to, or in the course of, their employment or the use of their services for the purposes of this Act.
- (2) The Secretary of State may make grants of such amounts, and subject to such conditions, as he may with the consent of the Treasury determine towards any fees or expenses incurred by persons undergoing training for any of the purposes of this

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Act in circumstances such that it appears to the Secretary of State requisite that the grants should be made, and may defray or contribute towards the cost of maintenance of persons undergoing such training.

- (3) The Secretary of State may make grants of such amounts, and subject to such conditions, as he may with the consent of the Treasury determine towards expenses incurred by any body of persons in providing training as aforesaid.

10 Financial and other assistance to voluntary organisations etc., for social work.

- (1) The Secretary of State may make grants and loans of such amounts, and subject to such conditions, as he may with the consent of the Treasury determine towards expenses incurred by voluntary organisations or other persons engaged in any activity connected

(a) his functions; [^{F46}with—

(b) the functions of local authorities,

under this Act or under the enactments specified in paragraph (a) of section 1(4) and paragraphs (b) to (e) [^{F47}(h) and (j)] of section 2(2) of this Act, in circumstances where it appears to the Secretary of State that such grants or loans should be made.]

- (2) The conditions on which any grants are paid under the foregoing subsection may include conditions for securing the repayment in whole or in part of such grants.

- (3) A local authority may make contributions by way of grant or loan to any voluntary organisation the sole or primary object of which is to promote social welfare.

[^{F48}(3A) In subsection (3) above, “voluntary organisation the sole or primary object of which is to promote social welfare” includes an adoption society approved under Part I of the [^{F49M21}Adoption (Scotland) Act 1978].]

- (4) A local authority may also make available to such a voluntary organisation as aforesaid the use of premises belonging to the authority on such terms as may be agreed, and furniture, vehicles or equipment (whether by way of gift, loan or otherwise) and the services of any staff employed by the authority in connection with the premises or other things belonging to the local authority which the voluntary organisation is permitted to use.

- (5) On the commencement of this Act, the power of the Secretary of State to give financial assistance and of local authorities to give financial and other assistance under [^{F50}section] 65 of the ^{M22}Health Services and Public Health Act 1968 [^{F51}and section 16B of the ^{M23}National Health Service (Scotland) Act 1978] shall cease in so far as any such assistance may be given under this section.

Textual Amendments

F46 Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 51(a)**

F47 Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras. 3, 5, **Sch. 3 para. 11**

F48 S. 10(3A) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 2 para. 51(b)**

F49 Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras 3, 5, **Sch. 3 para. 12**

F50 Word substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 9 Pt. I para. 8 (a)**

F51 Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 9 Pt. I para. 8(b)**

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Marginal Citations

M21 1978 c. 28.

M22 1968 c. 46.

M23 1978 c. 29.

Acquisition of land

11 Acquisition of land.

- (1) A local authority may be authorised by the Secretary of State to purchase compulsorily any land, whether situated in or outside their area for the purposes of any of their functions under this Act.
- (2) The ^{M24}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory purchase of land under this section as if the last foregoing subsection had been in force immediately before the commencement of that Act.

Marginal Citations

M24 1947 c. 42.

PART II

PROMOTION OF SOCIAL WELFARE BY LOCAL AUTHORITIES

Modifications etc. (not altering text)

C5 Pt. II extended with modifications by [Guardianship Act 1973 \(c. 29\), s. 11\(5\)](#)

General

12 General social welfare services of local authorities.

- (1) It shall be the duty of every local authority to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area, and in that behalf to make arrangements and to provide or secure the provision of such facilities (including the provision or arranging for the provision of residential and other establishments) as they may consider suitable and adequate, and such assistance may be given to, or in respect of, the persons specified in the next following subsection in kind or in cash, subject to subsections (3) and (4) of this section.
- (2) The persons specified for the purposes of the foregoing subsection are—
 - (a) a person, being a child under the age of eighteen, requiring assistance in kind, or in exceptional circumstances in cash, where such assistance appears to the local authority likely to diminish the need—
 - (i) to receive him into, or to keep him in, care under this Part of this Act,
or

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- (ii) of his being referred to a children’s hearing under Part III of this Act;
 - (b) a person in need requiring assistance in kind or, in exceptional circumstances constituting an emergency, in cash, where the giving of assistance in either form would avoid the local authority being caused greater expense in the giving of assistance in another form, or where probable aggravation of the person’s need would cause greater expense to the local authority on a later occasion.
- (3) Before giving assistance to, or in respect of, a person in cash under subsection (1) of this section a local authority shall have regard to his eligibility for receiving assistance from any other statutory body and, if he is so eligible, to the availability to him of that assistance in his time of need.
- (4) Assistance given in kind or in cash to, or in respect of, persons under this section may be given unconditionally or subject to such conditions as to the repayment of the assistance, or of its value, whether in whole or in part, as the local authority may consider reasonable having regard to the means of the person receiving the assistance and to the eligibility of the person for assistance from any other statutory body.
- (5) Nothing in the provisions of this section shall affect the performance by a local authority of their functions under any other enactment.
- [^{F52}(6) For the purposes of subsection (2) of this section “person in need” includes a person who is in need of care and attention arising out of drug or alcohol dependency or release from prison or other form of detention.]

Textual Amendments

F52 S. 12(6) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 10\(5\)](#)

VALID FROM 01/04/1993

[^{F53}12A Duty of local authority to assess needs.

- (1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority—
- (a) shall make an assessment of the needs of that person for those services; and
 - (b) having regard to the results of that assessment, shall then decide whether the needs of that person call for the provision of any such services.
- (2) Before deciding, under subsection (1)(b) of this section, that the needs of any person call for the provision of nursing care, a local authority shall consult a medical practitioner.
- (3) If, while they are carrying out their duty under subsection (1) of this section, it appears to a local authority that there may be a need for the provision to any person to whom that subsection applies—
- (a) of any services under the National Health Service (Scotland) Act 1978 by the Health Board—

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- (i) in whose area he is ordinarily resident; or
(ii) in whose area the services to be supplied by the local authority are, or are likely, to be provided; or
- (b) of any services which fall within the functions of a housing authority (within the meaning of section 130 (housing) of the Local Government (Scotland) Act 1973) which is not the local authority carrying out the assessment, the local authority shall so notify that Health Board or housing authority, and shall request information from them as to what services are likely to be made available to that person by that Health Board or housing authority; and, thereafter, in carrying out their said duty, the local authority shall take into account any information received by them in response to that request.
- (4) Where a local authority are making an assessment under this section and it appears to them that the person concerned is a disabled person, they shall—
- (a) proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services Consultation and Representation) Act ^{M25}1986 without his requesting them to do so under that section; and
- (b) inform him that they will be doing so and of his rights under that Act.
- (5) Nothing in this section shall prevent a local authority from providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.
- (6) If, by virtue of subsection (5) of this section, community care services have been provided for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.
- (7) This section is without prejudice to section 3 of the said Act of 1986.
- (8) In this section—
- “community care services” has the same meaning as in section 5A of this Act;
- “disabled person” has the same meaning as in the said Act of 1986; and
- “medical practitioner” means a fully registered person within the meaning of section 55 (interpretation) of the Medical Act 1983.]

Textual Amendments

F53 S. 12A inserted (1.4.1993) by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 55; S.I. 1992/2975, art. 2(2), Sch.

Marginal Citations

M25 1986 c.33 (113:1).

Status: Point in time view as at 01/04/1991. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/09/2002

[^{F54}12AA] Assessment of ability to provide care

- (1) A person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over (“the person cared for”) may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for that person.
- (2) The local authority to whom the request is made shall—
 - (a) comply with the request where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and
 - (b) if they then or subsequently make an assessment under subsection (1)(a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer’s assessment—
 - (i) in the assessment of the person cared for; and
 - (ii) in making their decision under subsection (1)(b) of that section as respects that person.
- (3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—
 - (a) by virtue of a contract of employment or other contract; or
 - (b) as a volunteer for a voluntary organisation.
- (4) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33)(duty of local authority to take into account abilities of carer in deciding whether to provide certain services to disabled person) shall not apply in a case where a local authority make an assessment, by virtue of subsection (2)(a) above, in respect of a carer of a disabled person.
- (5) Subsections (4) to (7) of section 12A of this Act apply to a local authority making an assessment by virtue of subsection (2)(a) of this section as they apply to a local authority making an assessment under subsection (1)(a) of that section.
- (6) In this section, “community care services”, “disabled person” and “person” have the same meanings as in section 12A of this Act.

Textual Amendments

F54 Ss. 12AA, 12AB inserted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 9\(2\); S.S.I. 2002/170, art. 2](#)

VALID FROM 01/09/2002

12AB Duty of local authority to provide information to carer

- (1) Where it appears to a local authority both that—

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(a) a person aged eighteen or over (“the person cared for”) is a person for whom the authority are under a duty or have a power to provide community care services; and

(b) another person (“the carer”) provides, or intends to provide, a substantial amount of care on a regular basis for the person cared for,

the local authority shall notify the carer that he may be entitled under section 12AA of this Act to request an assessment of his ability to provide, or continue to provide, care for the person cared for.

(2) In this section, “community care services” and “person” have the same meanings as in section 12A of this Act.]

Textual Amendments

F54 Ss. 12AA, 12AB inserted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), s. [9\(2\)](#); [S.S.I. 2002/170](#), art. 2

VALID FROM 01/04/1997

^{F55}12B Direct payments in respect of community care services.

(1) Where, as respects a person in need—

(a) a local authority have decided under section 12A of this Act that his needs call for the provision of any service which is a community care service within the meaning of section 5A of this Act, and

(b) the person is of a description which is specified for the purposes of this subsection by regulations,

the authority may, if the person consents, make to him, in respect of his securing the provision of the service, a payment of such amount as, subject to subsection (2) below, they think fit.

(2) If—

(a) an authority pay under subsection (1) above at a rate below their estimate of the reasonable cost of securing the provision of the service concerned, and

(b) the person to whom the payment is made satisfies the authority that his means are insufficient for it to be reasonably practicable for him to make up the difference,

the authority shall so adjust the payment to him under that subsection as to avoid there being a greater difference than that which appears to them to be reasonably practicable for him to make up.

(3) A payment under subsection (1) above shall be subject to the condition that the person to whom it is made shall not secure the provision of the service to which it relates by a person who is of a description specified for the purposes of this subsection by regulations.

(4) Regulations may provide that the power conferred by subsection (1) above shall not be exercisable in relation to the provision of residential accommodation for any person for a period in excess of such period as may be specified in the regulations.

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- (5) If the authority by whom a payment under subsection (1) above is made are not satisfied, in relation to the whole or any part of the payment—
- (a) that it has been used to secure the provision of the service to which it relates, or
 - (b) that the condition imposed by subsection (3) above, or any condition properly imposed by them, has been met in relation to its use,
- they may require the payment or, as the case may be, the part of the payment to be repaid.
- (6) Regulations under this section shall be made by the Secretary of State and may—
- (a) make different provision for different cases; and
 - (b) include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit.]

Textual Amendments

F55 S. 12B inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

Modifications etc. (not altering text)

C6 S. 12B(1) restricted (1.4.1997) by S.I. 1997/693, reg. 4(1)

VALID FROM 01/04/1997

[^{F56}12C Further provisions relating to direct payments.

- (1) Except as provided by subsection (2) below, the fact that a local authority make a payment under section 12B(1) of this Act shall not affect their functions with respect to the provision of the service to which the payment relates.
- (2) Subject to subsection (3) below, where an authority make a payment under section 12B(1) of this Act they shall not be under any obligation to the person to whom it is made with respect to the provision of the service to which it relates as long as they are satisfied that the need which calls for the provision of that service will be met by virtue of the person's own arrangements.
- (3) The fact that an authority make a payment under section 12B(1) of this Act shall not affect their functions under section 12 of this Act in relation to the provision, to the person to whom the payment is made, of assistance, in exceptional circumstances constituting an emergency, in cash in respect of the service to which the payment under section 12B(1) relates.]

Textual Amendments

F56 S. 12C inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

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13 Power of local authorities to assist persons in need in disposal of produce of their work.

Where, by virtue of the last foregoing section, a local authority make arrangements or provide or secure the provision of facilities for the engagement of persons in need (whether under a contract of service or otherwise) in suitable work, that local authority may assist such persons in disposing of the produce of their work.

VALID FROM 01/04/1993

[^{F57} Residential accommodation with nursing.]

Textual Amendments

F57 S. 13A and crossheading inserted (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 56; S.I. 1992/2975, art. 2(2), Sch.

13A ^{F58}Residential accommodation with nursing.

- (1) Without prejudice to section 12 of this Act, a local authority shall make such arrangements as they consider appropriate and adequate for the provision of suitable residential accommodation where nursing is provided for persons who appear to them to be in need of such accommodation by reason of infirmity, age, illness or mental disorder, dependency on drugs or alcohol or being substantially handicapped by any deformity or disability.
- (2) The arrangements made by virtue of subsection (1) above shall be made with a voluntary or other organisation or other person, being an organisation or person managing premises which are—
 - (a) a nursing home within the meaning of section 10(2)(a) of the Nursing Homes Registration (Scotland) Act ^{M26}1938 in respect of which that organisation or person is registered or exempt from registration under that Act; or
 - (b) a private hospital registered under section 12 of the Mental Health (Scotland) Act ^{M27}1984,for the provision of accommodation in those premises.
- (3) The provisions of section 6 of this Act apply in relation to premises where accommodation is provided for the purposes of this section as they apply in relation to establishments provided for the purposes of this Act.

Textual Amendments

F58 S. 13A and crossheading inserted (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 56; S.I. 1992/2975, art. 2(2), Sch.

Marginal Citations

M26 1938 c. 73 (113:3).
M27 1984 c. 36 (85).

Status: Point in time view as at 01/04/1991. This version of this Act contains provisions that are not valid for this point in time.

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F59 Provision of care and after-care

Textual Amendments

F59 S. 13B and crossheading inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\)](#), s. 56; S.I. 1990/2510, art. 2, [Sch.](#)

[13B] ^{F60} Provision of care and after-care

- (1) Subject to subsection (2) below, a local authority may, with the approval of the Secretary of State, and shall, if and to the extent that the Secretary of State so directs, make arrangements for the purpose of the prevention of illness, the care of persons suffering from illness and the after-care of such persons.
- (2) The arrangements which may be made under subsection (1) above do not include arrangements in respect of medical, dental or nursing care, or health visiting.]

Textual Amendments

F60 S.13B and crossheading inserted (1.4.1991) by [National Health Service and Community care Act 1990 \(c.19, SIF 113:2\)](#), s. 56; S.I. 1990/2510, art. 2, [Sch.](#)

Home help

14 Home help and laundry facilities.

- (1) It shall be the duty of every local authority to provide on such scale as is adequate for the needs of their area, or to arrange for the provision on such a scale as is so adequate of, [^{F61}home help][^{F61}domiciliary services] for households where such [^{F62}help is][^{F62}services are] required owing to the presence, or the proposed presence, of a person in need or a person who is an expectant mother or lying-in, and every such authority shall have power to provide or arrange for the provision of laundry facilities for households for which [^{F63}home help is][^{F63}domiciliary services are] being, or can be, provided under this subsection.
- (2) ^{F64}
- (3) ^{F65}
- (4) On the coming into operation of the provisions of this and the last two foregoing sections, the provisions of sections 13, 44 and 45 of the Health Services and Public Health Act 1968 ^{M28} shall cease to have effect.

Textual Amendments

F61 Words “domiciliary services” substituted (1.4.1991) for “home help” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 10\(6\)\(a\)](#)

F62 Words “services are” substituted (1.4.1991) for “help is” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 10\(6\)\(b\)](#)

F63 Words “domiciliary services are” substituted (1.4.1991) for “home help is” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 10\(6\)\(c\)](#)

Status: Point in time view as at 01/04/1991. This version of this Act contains provisions that are not valid for this point in time.

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F64 S. 14(2) repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), **Sch. 10 Pt. I**

F65 S. 14(3) repealed by [National Health Service \(Scotland\) Act 1972 \(c. 58, SIF 113:3\)](#), **Sch. 7 Pt. II**

Modifications etc. (not altering text)

C7 The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 60, 68, 73, Sch. 9 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.

Marginal Citations

M28 [1968 c. 46](#).

Special provisions as to the care of children in need

15 Duty of local authority to provide for orphans, deserted children, etc.

- (1) Without prejudice to the generality of the foregoing provisions of this Part of this Act, where it appears to a local authority with respect to a child in their area appearing to them to be under the age of seventeen—
 - (a) that he has neither parent nor guardian or has been and remains abandoned by his parent or guardian or is lost; or
 - (b) that his parent or guardian is, for the time being or permanently, prevented by reason of illness or mental disorder or bodily disease or infirmity or other incapacity or any other circumstances from providing for his proper accommodation, maintenance and upbringing; and
 - (c) in either case, that the intervention of the local authority under this section is necessary in the interests of the welfare of the child,it shall be the duty of the local authority to receive the child into their care under this section.
- (2) Where a local authority have received a child into their care under this section, it shall, subject to the provisions of this Part of this Act, be their duty to keep the child in their care so long as the welfare of the child appears to them to require it and the child has not attained the age of eighteen.
- (3) If, at the time when a child is received into the care of a local authority under this section, the whereabouts of any parent or guardian of his are unknown, it shall be the duty of the local authority to take all reasonable steps to discover them; and nothing in this section shall authorise a local authority to keep a child in their care under this section if any parent or guardian desires to take over the care of the child, and the local authority shall, in all cases where it appears to them consistent with the welfare of the child so to do, endeavour to secure that the care of the child is taken over either—
 - (a) by a parent or guardian of his, or
 - (b) by a relative or friend of his, being, where possible, a person of the same religious persuasion as the child or who gives an undertaking that the child will be brought up in that religious persuasion.

[^{F66}(3A) Subsection (8) (penalty for taking away a child in care etc.) of section 17 of this Act shall apply to a child in the care of a local authority under this section, [^{F67}whether or not a] resolution is in force under section 16 of this Act with respect to the child, if

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he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away:

Provided that that subsection shall not by virtue of this subsection apply in relation to an act done—

(a) with the consent of the local authority, or
 [by a parent or guardian of the child in relation to whom no resolution under
^{F68}(b) section 16 of this Act is in effect with respect to the child and who has given the local authority not less than 28 days' notice in writing of his intention to do it.]

(3B) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (3A) of this section by substituting a different period for the period of 28 days or of six months mentioned in that sub-section (or for the period which by a previous order under this subsection, was substituted for that period).]

(4) Where a local authority receive a child into their care under this section who is then ordinarily resident in the area of another local authority, that other local authority may within three months after the determination (whether by agreement between the authorities or under section 86 of this Act) of the ordinary residence of the child, or with the concurrence of the first-mentioned authority at any subsequent time, take over the care of the child; and a local authority shall not exercise their right to take over the care of a child under this subsection unless they are satisfied that the taking-over will not be detrimental to his welfare.

(5) Where under the last foregoing subsection a local authority take over the care of a child from another local authority, that other authority shall where possible inform the parent of the child that the care of the child has been so taken over.

Textual Amendments

F66 S. 15(3A)(3B) inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), s. 73

F67 Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [Sch. 2 para. 4\(a\)](#)

F68 S. 15(3A) proviso (b) substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [Sch. 2 para. 4\(b\)](#)

Modifications etc. (not altering text)

C8 S. 15 extent by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), ss. [34\(3\)](#), [67\(2\)](#)

C9 S. 15 extended by [Foster Children \(Scotland\) Act 1984 \(c. 56, SIF 20\)](#), ss. [12\(5\)](#), [23](#)

^{F69}16 Resolution by local authority in respect of assumption and vesting of parental rights and powers.

(1) Subject to the provisions of this Part of this Act, a local authority may resolve—

- (a) that there shall vest in them the relevant parental rights and powers with respect to any child who is in their care under section 15 of this Act; or
- (b) that there shall vest in a voluntary organisation which is an incorporated body, or a trust within the meaning of section 2(a) of the ^{M29}Trusts (Scotland) Act

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- 1921, the relevant parental rights and powers with respect to any child who is in the care of that organisation,
- if it appears to the local authority—
- (i) that the parents of the child are dead and that he has no guardian; or
 - (ii) that there exists in respect of a parent or guardian of the child (the said parent or guardian being hereafter in this Part of this Act referred to as the person on whose account the resolution was passed) any of the circumstances specified in subsection (2) of this section; or
 - (iii) that a resolution under this subsection is in force in terms of sub-paragraph (ii) above in relation to one parent of the child and that parent is, or is likely to become, a member of the household comprising the child and his other parent; or
 - (iv) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation or partly the one and partly the other.
- (2) The circumstances referred to in sub-paragraph (ii) of subsection (1) of this section are that the person on whose account the resolution was passed—
- (a) has abandoned the child; or
 - (b) suffers from some permanent disability rendering him incapable of caring for the child; or
 - (c) while not falling within paragraph (b) of this subsection, suffers from a mental disorder (within the meaning of the ^{F70M30}Mental Health (Scotland) Act 1984) which renders him unfit to have the care of the child; or
 - (d) is of such habits or mode of life as to be unfit to have the care of the child; or
 - (e) has so persistently failed without reasonable cause to discharge the obligations of a parent or guardian as to be unfit to have the care of the child.
- (3) In this section “the relevant parental rights and powers” means all the rights and powers in relation to the child (other than the right to consent or refuse to consent to the making of an application under ^{F71}section 18 or 55 of the Adoption Act 1976 or under section 18 or 49 of the ^{M31}Adoption (Scotland) Act 1978] and the right to agree or refuse to agree to the making of an adoption order)—
- (a) where the resolution was passed by virtue of circumstances specified in sub-paragraph (i) of subsection (1) of this section, which the deceased parents would have if they were still living;
 - (b) where the resolution was passed by virtue of circumstances specified in sub-paragraph (ii) of that subsection, of the person on whose account the resolution was passed;
 - (c) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iii) of that subsection, of the parent other than the one on whose account the previous resolution was passed;
 - (d) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iv) of that subsection, of the parents or guardian of the child.
- (4) A local authority shall not pass a resolution under paragraph (b) of subsection (1) of this section unless—
- (a) it is satisfied that the child is not in the care of any local authority under any enactment; and
 - (b) it is satisfied that it is necessary in the interests of the welfare of the child for the parental rights and powers to be vested in the voluntary organisation; and

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- (c) the child is living in the area of the local authority either in a residential establishment or with foster parents with whom he has been boarded out by the voluntary organisation in whose care he is; and
 - (d) that organisation has requested the local authority to pass the resolution.
- (5) In the case of a resolution passed under sub-section (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof, . . . ^{F72} the local authority, if [^{F73}the whereabouts of the person whose parental rights and powers have under the resolution vested in the local authority or in the voluntary organisation as the case may be] are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.
- (6) Every notice served by a local authority under subsection (5) of this section shall inform the person on whom the notice is served of his right to object to the resolution and of the effect of any objection made by him.
- (7) If, not later than one month after notice is served on a person under subsection (5) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (8) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.
- (8) Where a counter-notice has been served on a local authority under subsection (7) of this section, the authority may, not later than fourteen days after the receipt by them of the counter-notice, make a summary application in respect thereto to the sheriff having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the application; and the sheriff may, on the hearing of the application, order that the resolution shall not lapse by reason of the service of the counter-notice:
- Provided that the sheriff shall not so order unless satisfied—
- (a) that it is in the interests of the child to do so; and
 - (b) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out; and
 - (c) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded.
- (9) While a resolution passed under subsection (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof is in force with respect to a child, that part of subsection (3) of section 15 of this Act from the words “and nothing in this section shall authorise” onwards shall not apply in relation to the person who, but for the resolution, would have the relevant parental rights and powers in relation to the child.
- (10) Any notice under this section (including a counter-notice) may be served by post, but a notice served by a local authority under subsection (5) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.
- (11) A resolution under this section shall cease to have effect if—
- (a) the child becomes the subject of an adoption order within the meaning of [^{F74}section 38 of the ^{M32}Adoption (Scotland) Act 1978]; or
 - (b) an order in respect of the child is made under [^{F71}section 18 or 55 of the Adoption Act 1976 or under section 18 or 49 of the Adoption (Scotland) Act 1978]; or

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- [a tutor or curator to the child is appointed under the Law Reform (Parent and Child) (Scotland) Act 1986; or]
- ^{F75}(c) (d) it is a resolution under paragraph (b) of subsection (1) of this section and a resolution is passed under subsection (1) of section 16A of this Act in respect of the child [^{F76}; or]
- ^{F76}(e) [an event mentioned in paragraph (a) or (b) of section 25(1) of the Child Abduction and Custody Act 1985 occurs with respect to the child.]
- (12) If the whereabouts of any parent or guardian of a child have remained unknown for twelve months, and throughout that period the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation, or partly the one and partly the other, then for the purposes of this section that parent or guardian shall be deemed to have abandoned the child.
- (13) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend sub-paragraph (iv) of subsection (1) of this section to substitute a different period for the period of three years mentioned in that sub-paragraph (or for the period which, by a previous order under this subsection, was substituted for that period).]

Textual Amendments

- F69** S. 16 substituted by Children Act 1975 (c. 72, SIF 49:9,10), s. 74
- F70** Words in s. 16(2)(c) substituted by virtue of Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), Sch. 3 para. 15 where the substitution is expressed to relate to words in s. 16(3)
- F71** Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras. 3, 5, Sch. 3 para. 13
- F72** Words repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 7(1)(a)
- F73** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 7(1)(b)
- F74** Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras. 3, 5, Sch. 3 para. 14
- F75** S. 16(11)(c) substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), Sch. 1 para. 9
- F76** S. 16(11)(e) and the word “; or” preceding it inserted by Child Abduction and Custody Act 1985 (c. 60, SIF 20), Pt. III, ss. 25(6), 29(2)

Modifications etc. (not altering text)

- C10** S. 16 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)
- C11** S. 16(8) restricted by Child Abduction and Custody Act 1985 (c. 60, SIF 20), Pt. I, ss. 9(d), 20(2)(d), 29(2), Sch. 1 art. 16

Marginal Citations

- M29** 1921 c. 58.
- M30** 1984 c. 36
- M31** 1978 c. 28.
- M32** 1978 c. 28.

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[^{F77}16A Duty of local authority to assume parental rights and powers vested in a voluntary organisation.

- (1) If it appears to a local authority, having regard to the interests of the welfare of a child living within their area, the parental rights and powers in respect of whom are by virtue of a resolution under section 16(1)(b) of this Act (hereafter in this section referred to as “the earlier resolution”) vested in a voluntary organisation, that it is necessary that the said parental rights and powers should no longer be vested in the organisation, the local authority shall resolve that the said parental rights and powers shall vest in them; and the said parental rights and powers shall so vest from the date of the resolution under this subsection.
- (2) The local authority shall, within seven days of passing a resolution under subsection (1) of this section, by notice in writing inform—
 - (a) the organisation who but for that resolution; and
 - (b) any person, in so far as that person’s whereabouts are known to them, who, but for that resolution and the earlier resolution, would have the parental rights and powers in respect of the child, of the passing thereof.
- (3) On a summary application being made for the determining of a resolution under subsection (1) of this section by a person who but for that resolution and the earlier resolution would have the parental rights and powers in respect of the child, the sheriff having jurisdiction where the applicant resides may order that—
 - (a) the resolution under subsection (1) of this section shall continue to have effect; or
 - (b) the resolution under subsection (1) of this section shall cease to have effect and that the earlier resolution shall again take effect; or
 - (c) the resolution under subsection (1) of this section shall cease to have effect and that the parental rights and powers in respect of the child shall again vest in the applicant; or
 - (d) the resolution under subsection (1) of this section shall continue to have effect, but that either for a fixed period or until the sheriff, or if the order so provides, the local authority, otherwise directs, the local authority shall allow the care of the child to be taken over by, and the child to be under the control of, the applicant.
- (4) In hearing an application under subsection (3) of this section the sheriff may consider whether there was any ground for the making of the earlier resolution, and if he is satisfied that there was no ground for the making of that earlier resolution he shall make an order under subsection (3)(c) of this section.
- (5) In this section “the parental rights and powers” means all the rights and powers in relation to the child which in accordance with the earlier resolution were vested in the voluntary organisation.
- (6) While a resolution under subsection (1) of this section is in force with respect to a child, the child shall be deemed to have been received into and to be in the care of the local authority by virtue of section 15 of this Act, and subsections (2) to (5) of that section shall apply accordingly; except that where the earlier resolution was passed by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) of subsection (1) of section 16 of this Act, that part of subsection (3) of section 15 of this Act from the words “and nothing in this section shall authorise” onwards shall not apply in relation

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to the person who but for the earlier resolution and the resolution under subsection (1) of this section, would have the parental rights and powers in relation to the child.

- (7) Subsection (11)(a), (b) and (c) of section 16, subsections (3) and (4) to (9) of section 17 and subsections (1), (2), (4) and (4A) of section 18 of this Act shall apply to a resolution under this section as they apply to a resolution under section 16(1)(a) of this Act.
- (8) A notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.]

Textual Amendments

F77 S. 16A inserted by Children Act 1975 (c. 72 SIF 49:9,10), s. 75

Modifications etc. (not altering text)

C12 S. 16A applied by (Criminal Procedure (Scotland) Act 1975 (c. 21 SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41 SIF 39:1), s. 59(3)

C13 S. 16A(3) restricted by Child Abduction and Custody Act 1985 (c. 60, SIF 20), Pt. I, ss. 9(d), 20(2)(d), 29(2), Sch. 1 art. 16

17 Effect of assumption by local authority of parental rights.

(1) ^{F78}

(3) A resolution under [^{F79}section 16(1)(a)] of this Act shall not prevent the local authority from allowing, either for a fixed period or until the local authority [^{F80}, in whom are vested in accordance with the resolution the parental rights and powers in respect of a child,] otherwise determine, the care of the child to be taken over by, and the child to be under the control of, a parent, guardian, relative or friend in any case where it appears to the authority to be for the benefit of the child.

[^{F81}(3A) A resolution under section 16(1)(b) of this Act shall not prevent the voluntary organisation, in whom are vested in accordance with the resolution the parental rights and powers in respect of a child, from allowing, either for a fixed period or until the voluntary organisation otherwise determine, the care of the child to be taken over by, and the child to be under the control of, a parent, guardian, relative or friend in any case where it appears to the voluntary organisation to be for the benefit of the child.]

(4) Where a resolution under [^{F82}section 16(1)(a)] of this Act is in force in respect of a child and the child has ceased to be in the care of the local authority by whom the resolution was passed, then (without prejudice to the provisions of section 15 of this Act if those provisions apply) the local authority by whom the resolution was passed shall have power to receive the child back into their care in any circumstances in which it appears to them that their intervention under this subsection is necessary in the interests of the welfare of the child.

(5) Where a local authority receive a child into their care under the last foregoing subsection, the provisions of this Act, except subsection (4) of section 15 thereof, shall apply as if the child had been received into their care under the said section 15.

(6) A resolution under [^{F83}section 16 of this Act] shall not relieve any person from any liability to maintain, or contribute to the maintenance of, the child.

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(7) A resolution under the said section 16 shall not authorise a local authority [^{F84}or a voluntary organisation] to cause a child to be brought up in any religious persuasion other than that in which he would have been brought up but for the resolution.

(8) Any person who—

- (a) knowingly assists or induces or persistently attempts to induce n a child [^{F85}, in respect of when a resolution under section 16 of this Act is in effect,] to run away, or
- (b) without lawful authority takes away such a child, or
- (c) knowingly harbours or conceals such a child who has run away or who has been taken away or prevents him from returning,

shall be liable on summary conviction to a fine not exceeding [^{F86}level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(9) [^{F87}Where—

- (a) a local authority have, in accordance with subsection (3) of this section; or
- (b) a voluntary organisation have, in accordance with subsection (3A) of this section,

allowed] any person to take over the care of a child with respect to whom a resolution under the said section 16 is in force and have by notice in writing required that person to return the child at a time specified in the notice (which, if that person has been allowed to take over the care of the child for a fixed period, shall not be earlier than the end of that period) any person who harbours or conceals the child after that time or prevents him from returning as required by the notice shall be liable on summary conviction to a fine not exceeding [^{F88}level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

[^{F89}(10) Where an offence under subsection (8) or (9) of this section has been or is believed to have been committed, a constable, or any person authorised by any court or by any justice of the peace, may take and return the child to the local authority or voluntary organisation in whom are vested the parental rights and powers relating to the child.]

Textual Amendments

- F78** S. 17(1)(2) repealed by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 4 Pt. V**
- F79** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(a)**
- F80** Words inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(a)**
- F81** S. 17(3A) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(b)**
- F82** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(c)**
- F83** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(d)**
- F84** Words inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52 (e)**
- F85** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(f)(i)**
- F86** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(f)** and by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G** (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 54**)
- F87** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(g)(i)**
- F88** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(g)(ii)** and by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G** (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 54**)
- F89** S. 17(10) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **s. 76**

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Modifications etc. (not altering text)

C14 Ss. 17, 17A, 17B, 17C applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **s. 413(3)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(3)**

17A [^{F90}**Termination of access to child subject to resolution under section 16.**

- (1) A local authority or voluntary organisation may not terminate arrangements for access to a child who is the subject of a resolution under section 16 of this Act by his parent or guardian or refuse to make such arrangements unless they have first given the parent or guardian notice of termination or refusal in a form prescribed by order made by the Secretary of State.
- (2) A notice under this section shall contain a statement that the parent or guardian has a right to apply to the sheriff for an order under section 17B of this Act.
- (3) A notice terminating access shall state that access will be terminated as from the date of service of the notice.
- (4) A local authority or voluntary organisation are not to be taken to terminate arrangements for access for the purposes of this section in a case where they propose to substitute new arrangements for access for existing arrangements.
- (5) A local authority or voluntary organisation are not to be taken to refuse to make arrangements for access for the purposes of this section in a case where they postpone access for such reasonable period as appears to them to be necessary to enable them to consider what arrangements for access (if any) are to be made.
- (6) A notice under this section may be served on a parent or guardian either by delivering it to him or by leaving it at his proper address or by sending it by post.
- (7) For the purposes of this section, and of section 7 of the ^{M33}Interpretation Act 1978 in its application to this section, the proper address of a person shall be his last known address.

Textual Amendments

F90 Ss. 17A-17E inserted (30.1.1984) by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), **s. 7(2)**

Modifications etc. (not altering text)

C15 Ss. 17, 17A, 17B, 17C applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **s. 413(3)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(3)**

Marginal Citations

M33 1978 c. 30.

17B Access Orders

- (1) A parent or guardian on whom a notice under section 17A of this Act is served may apply by way of summary application to the sheriff (in the case of a local authority, the sheriff having jurisdiction in their area) for an order under this section (hereinafter referred to as an “access order”).

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- (2) An access order shall be an order requiring the authority or organisation to allow the child's parent or guardian access to the child subject to such conditions as the order may specify with regard to commencement, frequency, duration or place of access or to any other matter for which it appears to the sheriff that provision ought to be made in connection with the requirement to allow access.
- (3) Where an access order has been made—
 - (a) the parent or guardian named in the order; or
 - (b) the local authority or voluntary organisation may apply by way of summary application to the sheriff for the variation or discharge of the order.

Modifications etc. (not altering text)

C16 Ss. 17, 17A, 17B, 17C applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **s. 413(3)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(3)**

17C Emergency order.

- (1) The sheriff may make an order under this subsection where he is satisfied that continued access to a child by his parent or guardian in accordance with the terms of an access order will put the child's welfare seriously at risk.
- (2) Subject to subsection (3) below, an order under subsection (1) of this section shall be an order suspending the operation of the access order for 7 days beginning with the date of the order under subsection (1) of this section, or for such shorter period beginning with that date as may be specified in that order.
- (3) If during the period for which the operation of the access order is suspended the local authority or voluntary organisation make an application for its variation or discharge to the sheriff, its operation shall be suspended until the date on which the application to vary or discharge it is determined or abandoned.

Modifications etc. (not altering text)

C17 Ss. 17, 17A, 17B, 17C applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **S. 413(3)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(3)**

17D Safeguarding of interest of child.

—A court to which an application for an access order or any other application under section 17B or 17C of this Act or any appeal relating thereto is made shall regard the welfare of the child as the first and paramount consideration in determining the matter.

17E Code of practice.

- (1) The Secretary of State shall prepare, and from time to time revise, a code of practice with regard to access to children who are in care or who are subject to a supervision requirement under section 44 of this Act.
- (2) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.

Status: Point in time view as at 01/04/1991. This version of this Act contains provisions that are not valid for this point in time.

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- (3) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.
- (4) No resolution shall be passed by either House of Parliament under subsection (3) above in respect of a code or alteration after the expiration of the period of forty days beginning with the day on which a copy of the code or alteration was laid before that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (5) The Secretary of State shall publish the code as for the time being in force.

18 Duration and rescission of resolutions under section 16.

- (1) Subject to the provisions of this Part of this Act, a resolution under section 16 of this Act shall continue in force until the child with respect to whom it was passed attains the age of eighteen.
- (2) A resolution under the said [F91section 16(1)(a)] may be rescinded by resolution of the local authority if it appears to them that the rescinding of the resolution will be for the benefit of the child.
- (3) On a summary application for the determining of a resolution being made—
 - (a) in the case of a resolution passed by virtue of [F92sub-paragraph (i)] of subsection (1) of the said section 16, by a person claiming to be a parent or guardian of the child;
 - [F93(b) in the case of a resolution passed by virtue of circumstances specified in sub-paragraph (ii), (iii), or (iv) of subsection (1) of the said section 16, by the person who, but for the resolution, would have the parental rights and powers in relation to the child,]

the sheriff, having jurisdiction where the applicant resides, if satisfied that there was no ground for the making of the resolution or that the resolution should in the interests of the child be determined, may by order determine the resolution, and the resolution shall thereupon cease to have effect:

Provided that, if the sheriff thinks fit, he may, in lieu of determining the resolution, order that, either for a fixed period or until he, or, if the order so provides, the local authority, otherwise direct, the local authority [F94, and any voluntary organisation having parental rights and powers with respect to the child,] shall allow the care of the child to be taken over by, and the child to be under the control of, the applicant.

- (4) A court may entertain an application under [F95the Law Reform (Parent and Child) (Scotland) Act 1986] to appoint a [F95tutor or curator] of an infant notwithstanding that, by virtue of a resolution under section 16 of this Act, a local authority [F96or voluntary organisation] have parental rights with respect to him; . . . F97

[F98(4A) A court may entertain an application under—

- (a) [F99section 12 of the M34Adoption (Scotland) Act 1978] for an adoption order in respect of a child;

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- (b) [^{F100}section 18 of the said Act of 1978] for an order declaring a child free for adoption;
- (c) [^{F101}section 49 of the said Act of 1978] for an order vesting the parental rights and duties relating to a child;

notwithstanding that, by virtue of a resolution under section 16 of this Act, a local authority or a voluntary organisation have parental rights with respect to him.]

Textual Amendments

- F91** Words substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 3 para. 53(a)**
- F92** Words substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 3 para. 53 (b)(i)**
- F93** [S. 18\(3\)\(b\)](#) substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 3 para. 53(b)(ii)**
- F94** Words inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 3 para. 53(b)(iii)**
- F95** Words substituted by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), s. 10(1), **Sch. 1 para. 9(2)**
- F96** Words inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 3 para. 53(c)**
- F97** Words repealed by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 4 Pt V**
- F98** [S. 18\(4A\)](#) inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **ss. 77**
- F99** Words substituted by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 67(2), Sch. 2 paras. 3, 5, **Sch. 3 para. 15**
- F100** Words in [s. 18\(4A\)\(b\)](#) substituted by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), Sch. 2 paras. 3, 5, **Sch. 3 para. 15**
- F101** Words in [s. 18\(4A\)\(c\)](#) substituted by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), Sch. 2 paras 3, 5 Sch. 3 para. 15

Modifications etc. (not altering text)

- C18** [S. 18](#) applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **s. 413(3)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(3)**
- C19** [S. 18\(3\)](#) restricted by [Child Abduction and Custody Act 1985 \(c. 60, SIF 20\)](#), **Pt. I**, **ss. 9(d), 20(2)(d)**, 29(2), Sch. 1 art. 16

Marginal Citations

- M34** [1978 c. 28.](#)

[^{F102}18A Safeguarding of interests of children in proceedings relating to the assumption of parental rights.

- (1) In any proceedings under section 16(8), 16A(3) [^{F103}, 17B, 17C] or 18(3) of this Act, the sheriff—
 - (a) shall consider whether it is necessary to appoint a person for the purpose of safe-guarding the interests of the child in the proceedings; and
 - (b) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (a) above.
- (2) The power to make rules under section 32 of the ^{M35}Sheriff Courts (Scotland) Act 1971 shall include power to make rules providing for—
 - (a) the procedure in relation to the disposal of matters arising under this section;
 - (b) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.]

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Textual Amendments

F102 S. 18A inserted by Children Act 1975 (c. 72, SIF 49:9, 10), ss. 78, 108(2)

F103 Words inserted (30.1.1984) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113: 3), s. 7(3)

Marginal Citations

M35 1971 c. 58.

19 F104

Textual Amendments

F104 S. 19 repealed by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), s. 22, Sch. 3 and expressed to be repealed (1.4.1997) by 1995 c. 36, s. 105(5), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(7)

20 **Duty of local authority to further the best interests of a child in their care and to afford opportunity for his proper development.**

[^{F105}(1) Where a child is in the care of a local authority under any enactment [^{F106}or of a voluntary organisation, they] shall, in reaching any decision relating to the child, give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.]

(2) In providing for a child in their care as aforesaid, [^{F107}they] shall make such use of facilities and services available for children in the care of their own parents as appears to the local authority [^{F108}or voluntary organisation] reasonable in his case.

(3) Where a local authority [^{F109}or voluntary organisation] allow the care of a child to be taken over under [^{F110}sections 17(3), 17(3A)] or 18(3) of this Act, their duties in respect of the child under this section shall not be affected by that take-over.

Textual Amendments

F105 S. 20(1) substituted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 79

F106 Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(a)

F107 Word substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(b)

F108 Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(b)

F109 Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(c)

F110 Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(c)

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Modifications etc. (not altering text)

C20 S. 20 applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), s. 413(3) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), s. 59(3)

[^{F111}20A Review of case of child in care.

- (1) Without prejudice to their general duty under section 20(1) of this Act, it shall be the duty of a local authority who have at any time had a child in their care throughout the preceding six months and have not during that period held a review of his case, to review his case as soon as is practicable after the expiration of that period and, if a supervision requirement is in force with respect to him, the local authority shall consider in the course of the review whether to refer his case to their reporter for review of that requirement by a children's hearing.
- (2) The Secretary of State may by regulations—
 - (a) amend subsection (1) of this section by—
 - (i) substituting a different period for the period of six months mentioned in that subsection (or for any period which, by previous regulations under this sub-section, was substituted for that period);
 - (ii) specifying different periods in respect of the first review under that subsection occurring after a child has been taken into care, and in respect of subsequent such reviews;
 - (b) make provision as to the manner in which cases are to be reviewed under this section;
 - (c) make provision as to the considerations to which the local authority are to have regard in reviewing cases under this section.]

Textual Amendments

F111 S. 20A inserted by [Children Act 1975 \(c. 72, SIF 49:1, 10\)](#), s. 80

Modifications etc. (not altering text)

C21 S. 20A applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), s. 413(3) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), s. 59(3)

C22 S. 20A extended by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), s. 413(6) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), s. 59(1)

21 Mode of provision of accommodation and maintenance.

- (1) Subject to the provisions of this section, a local authority shall discharge their duty to provide accommodation and maintenance for a child in their care—
 - (a) by boarding him out on such terms as to payment by the authority and otherwise as the authority may, subject to the provisions of this Act and regulations thereunder, determine; or
 - (b) by maintaining the child in a residential establishment.
- (2) Nothing in the foregoing subsection shall be construed as preventing a local authority from making use, in the case of any child, of any such facilities and services as are referred to in subsection (2) of [^{F112}section 20 of this Act], and for that

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purpose arranging for his accommodation and maintenance in any suitable manner not specified in the last foregoing subsection.

- (3) Arrangements may be made by a local authority under this section for boarding out a child in England or Wales or for maintaining him in any accommodation in England or Wales which a local authority in those countries is authorised to use for that purpose by virtue of [F113[F114]section 21 of the Child Care Act 1980][F114]section 23 of the Children Act 1989.]

Textual Amendments

F112 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), ss. 23, 59, **Sch. 2 para. 9**

F113 Words substituted by Child Care Act 1980 (c. 5, SIF 20), **Sch. 5 para. 21**

F114 “section 23 of the Children Act 1989” substituted (*prosp.*) for “section 21 of the Child Care Act 1980” by Children Act 1989 (c. 41, SIF 20), s. 108(2)(5), **Sch. 13 para. 20**

22 Removal of children in residential establishments.

Notwithstanding any agreement made in connection with the placing of a child in a residential establishment under this Part of this Act by a local authority, the authority may at any time, and shall if required so to do by . . . F115 the person responsible for the establishment, remove the child from the establishment.

Textual Amendments

F115 Words repealed by Local Government (Scotland) Act 1973 (c. 65, SIF 81:2), **Sch. 29**

23 Power of local authorities and voluntary organisations to arrange for emigration of children.

- (1) A local authority or a voluntary organisation may, with the consent of the Secretary of State, arrange or assist in arranging the emigration of any child in their care.
- (2) The Secretary of State shall not give his consent under this section unless he is satisfied that emigration would benefit the child, and that suitable arrangements have been or will be made for the child’s reception and welfare in the country to which he is going, that the parent of the child has been consulted or that it is not practicable to consult him, and that the child consents:

Provided that where a child is too young to form or express a proper opinion on the matter, the Secretary of State may consent to his emigration notwithstanding that the child is unable to consent thereto in any case where the child is to emigrate in company with a parent [F116]relative or friend] of his, or is to emigrate for the purpose of joining a parent, relative or friend.

Textual Amendments

F116 Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 2 para. 6**

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24 Financial assistance towards expenses of maintenance, education or training of persons over school age .

(1) Without prejudice to the provisions of section 12 of this Act a local authority may make contributions to the cost of the accommodation and maintenance of any person—

- (a) who is over school age but has not attained the age of twenty-one; and
- (b) who is, or has at any time after ceasing to be of school age been, in the care of a local authority,

in any place near the place where he may be employed, or seeking employment, or in receipt of education or training.

(2) A local authority may make grants to persons who are over school age, but have not attained the age of twenty-one, and who at or after the time when they ceased to be of school age were in the care of a local authority, to enable them to meet expenses connected with their receiving suitable education or training.

(3) Where a person—

- (a) is engaged in a course of education or training at the time when he attains the age of twenty-one; or
- (b) having previously been engaged in a course of education or training which has been interrupted by any circumstances, resumes the course as soon as practicable,

then if a local authority are at the said time, or were at the time when the course was interrupted, as the case may be, making any contributions or grants in respect of him under any of the foregoing provisions of this section, their powers under those provisions shall continue with respect to him until the completion of the course.

Modifications etc. (not altering text)

C23 Ss. 24–26 applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), s. 413(3) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), s. 59(3)

25 Power of local authority to guarantee indentures and other deeds of apprenticeship etc., of persons in their care.

While a person is in the care of a local authority by virtue of any enactment, the local authority may undertake any obligation by way of guarantee under any indentures or other deed of apprenticeship or articles of clerkship entered into by that person; and where the local authority have undertaken any such obligation under any such deed or articles they may at any time (whether or not the person concerned is still in their care) undertake the like obligation under any such deed or articles supplemental thereto.

Modifications etc. (not altering text)

C24 Ss. 24–26 applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), s. 413(3) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), s. 59(3)

[^{F117}25A Restriction on removal of child from care of voluntary organisation.

(1) Section 17(8) of this Act shall apply in relation to a child who is not in the care of a local authority under section 15 of this Act but who is in the care of a voluntary

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organisation, as it applies by virtue of subsection (3A) of the said section 15 to a child in the care of a local authority except that, in the case of a child who is not in the care of a local authority, references in subsection (3A) to a local authority shall be construed as references to the voluntary organisation in whose care the child is.

- (2) For the purposes of this section, a child is in the care of a voluntary organisation if the voluntary organisation is providing accommodation for the child in a residential establishment or has boarded out the child.]

Textual Amendments

F117 S. 25A inserted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 81

Modifications etc. (not altering text)

C25 Ss. 24–26 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)

26 After-care of children formerly in care of local authorities or voluntary organisations.

- (1) Where it comes to the knowledge of a local authority that there is in their area any child over school age who at the time when he ceased to be of that age or at any subsequent time was, but is no longer,—
- (a) in the care of a local authority, or
 - (b) in the care of a voluntary organisation,

then, unless the authority are satisfied that the welfare of the child does not require it, they shall be under a duty so long as he has not attained the age of eighteen to advise, guide or assist him:

Provided that where in a case falling within paragraph (b) of this subsection the local authority are satisfied that the voluntary organisation have the necessary facilities, the local authority may make arrangements whereby, while the arrangements continue in force, he shall be advised, guided or assisted by the voluntary organisation instead of by the local authority.

- (2) Where a child over school age—
- (a) ceases to be in the care of a local authority under section 15 of this Act and proposes to reside in the area of another local authority, or
 - (b) ceases to be in the care of a voluntary organisation,
- the authority or organisation shall inform the local authority for the area in which the child proposes to reside.
- (3) Where it comes to the knowledge of a local authority or a voluntary organisation that a child whom they have been advising, guiding or assisting in pursuance of this section proposes to transfer or has transferred his residence to the area of another local authority, the first-mentioned local authority or, as the case may be, the voluntary organisation shall inform the other local authority.

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Modifications etc. (not altering text)

C26 S. 24-26 applied by **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3)** as substituted by **Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)**

Supervision and care of persons put on probation or released from prisons etc.

[^{F118}27 Supervision and care of persons put on probation or released from prisons etc.

- (1) It shall be a function of every local authority under this Part of this Act to provide a service for the following purposes, that is to say—
- (a) making available to any court such social background reports and other reports relating to persons appearing before the court which the court may require for the disposal of a case
 - (b) the supervision of, and the provision of advice, guidance and assistance for—
 - (i) persons in their area who are under supervision by order of a court made in exercise of its criminal jurisdiction by virtue of any enactment, and
 - (ii) persons in their area who, following on release from prison or any other form of detention, are required to be under supervision under any enactment or by the terms of an order or licence of the Secretary of State or of a condition or requirement imposed in pursuance of any enactment.
 - ^{F119}(and) without prejudice to sub-paragraphs (i) and (ii) above, persons in the area who are subject to a community service order under the ^{M36}Community Service by Offenders (Scotland) Act 1978 or a probation order which includes a requirement that the offender shall perform unpaid work][^{F120}, and]
 - ^{F120}(iv) without prejudice to paragraphs (i) to (iii) above, persons in their area who are subject to supervised attendance orders under section 62 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.] [^{F121}, and]
 - ^{F121}(c) the provision of advice, guidance and assistance for persons in their area who, within 12 months of their release from prison or any other form of detention, request such advice, guidance or assistance.]
- (2) For the purposes of the foregoing subsection every local authority shall, after consultation with the sheriffs having jurisdiction in their area, prepare a scheme (hereinafter referred to as a [^{F122}probation, community service and supervised attendance scheme]) and submit it by such date, as he may require, to the Secretary of State for his approval.
- (3) A [^{F122}probation, community service and supervised attendance scheme] shall make provision with regard to the following matters—
- (a) the manner in which any report requested by the court from the local authority is to be prepared and submitted to the court;
 - ^{F123}(aa) the matters to be included in such a report;
 - (b) arrangements for the attendance of officers of the local authority at the court;
 - (c) arrangements for the co-operation of the local authorities with the courts, and such arrangements may include the appointment of one or more sheriffs

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- having jurisdiction in their areas to the social work committee and to any sub-committee thereof;
- (d) arrangements for the keeping of adequate records and statistics regarding the performance of functions under this section; and
- (e) such other matters as the local authority considers relevant to the service to be provided.
- (4) The Secretary of State may approve a [^{F122}probation, community service and supervised attendance scheme] with or without modifications.
- (5) A local authority may apply to the Secretary of State for the revision of a [^{F122}probation, community service and supervised attendance scheme] and, if the Secretary of State so requires, shall prepare and submit to the Secretary of State for his approval a revised scheme or a modification of an existing scheme.
- (6) Any function required by any enactment to be performed by a probation officer shall, after the coming into operation of this Part of this Act, be performed by an officer of the appropriate local authority.
- (7) Section 11 of and Schedule 3 to the ^{M37}Criminal Justice (Scotland) Act 1949 (administrative provisions as to probation) shall cease to have effect.]

Textual Amendments

- F118** Word and s. 27(1)(b)(iii) added by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [Sch. 2 para. 1\(a\)](#)
- F119** Word and s. 27(1)(b)(iii) added by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [Sch. 2 para. 1\(a\)](#)
- F120** S. 27(1)(b)(iv) and the word “; and” immediately preceding it inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), s. 62(5), [Sch. 6 para. 8\(a\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F121** S. 27(1)(c) and the word “; and” immediately preceding it added (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(4\)\(a\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F122** Words in s. 27(4) substituted (1.4.1991) by virtue of [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), s. 62(5), [Sch. 6 para. 8\(b\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F123** S. 27(3)(aa) inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(4\)\(b\)](#); S.I. 1991/850, [art. 3](#), Schedule

Modifications etc. (not altering text)

- C27** The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 60, 68, 73, Sch. 9 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.

Marginal Citations

- M36** 1978 c. 49.
M37 1949 c. 94.

[^{F124}27A Grants in respect of community service facilities

Status: Point in time view as at 01/04/1991. This version of this Act contains provisions that are not valid for this point in time.

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- [The Secretary of State may make to a local authority grants of such amount and subject ^{F125}(1)] to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in providing a service
- [for the purposes mentioned in section 27(1) of this Act; and ^{F126}(a)
- (b) for such other similar purposes as the Secretary of State may prescribe.
- (2) Before exercising his power under subsection (1)(b) above the Secretary of State shall consult local authorities and such other bodies as he considers appropriate.]]

Textual Amendments

- F124** S. 27A inserted by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [s. 9](#)
- F125** In s. 27A “(1)” inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(5\)\(a\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F126** S. 27A(1)(a)(b)(2) substituted (1.4.1991) for words by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(5\)\(b\)](#); S.I. 1991/850, [art. 3](#), Schedule

^{F127}27B Grants in respect of hostel accommodation for persons under supervision.

- [The Secretary of State may make to a local authority grants of such amount and subject ^{F128}(1)] to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority under this Act in—
- (a) providing; or
- (b) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of,
- residential accommodation wholly or mainly for the persons mentioned in ^{F129}subsection (2) below.
- (2) The persons referred to in subsection (1) above are—
- (a) persons mentioned in section 27(1)(b)(i) and (ii) of this Act;
- (b) persons who have been charged with an offence and are on bail;
- (c) persons who have been released from prison or any other form of detention but do not fall within section 27(1)(b)(ii) of this Act; and
- (d) such other classes of persons as the Secretary of State may prescribe.
- (3) Before exercising his power under subsection (2)(d) above the Secretary of State shall consult local authorities and such other persons as he considers appropriate.]]

Textual Amendments

- F127** S. 27B inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 79](#)
- F128** In s. 27B “(1)” inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(6\)\(a\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F129** S. 27B(2)(3) and the words “subsection (2) below.” preceding them substituted (1.4.1991) for words by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(6\)\(b\)](#); S.I. 1991/850, [art. 3](#), Schedule

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Ancillary

28 Burial or cremation of the dead.

- (1) A local authority may cause to be buried or cremated the body of any deceased person who immediately before his death was in the care of, or receiving assistance from, the authority:

Provided that the authority shall not cause the body to be cremated where cremation is not in accordance with the practice of the person's religious persuasion.

- (2) An authority may recover from the estate of the deceased person or from any person who was liable to maintain the deceased person immediately before his death expenses incurred under subsection (1) of this section . . . ^{F130}

Textual Amendments

F130 Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), ss. 86, 88, [Sch. 11](#)

Modifications etc. (not altering text)

C28 [S. 28](#) applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), [s. 413\(3\)](#) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [s. 59\(3\)](#)

29 Power of local authority to defray expenses of parent, etc., visiting persons or attending funerals.

- (1) A local authority may make payments to any parent, relative or other person connected with a person in their care, or receiving assistance from them, in respect of travelling, subsistence or other expenses incurred by the parent, relative or other person in visiting the person, if it appears to the authority that the parent, relative or other person would not otherwise be able to visit the person without undue hardship and that the circumstances warrant the making of the payments.

- (2) A local authority may make the like payments and in the like circumstances to any parent, relative or other person connected with a person who was in their care, or was receiving assistance from them, for the purpose of that parent, relative or other person attending the funeral of the person.

Modifications etc. (not altering text)

C29 [S. 29](#) applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), [s. 413\(3\)](#) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [s. 59\(3\)](#)

PART III

CHILDREN IN NEED OF COMPULSORY MEASURES OF CARE

Modifications etc. (not altering text)

C30 Pt. III extended by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 168, 296\(3\), 364](#)

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30 Definition of child and parent for Part III.

(1) Except where otherwise expressly provided, a child for the purposes of this Part of this Act means—

- (a) a child who has not attained the age of sixteen years;
- (b) a child over the age of sixteen years who has not attained the age of eighteen years and in respect of whom a supervision requirement of a children’s hearing is in force under this Part of this Act;
- (c) a child whose case has been referred to a children’s hearing in pursuance of Part V of this Act.

[^{F131}and for the purposes of the application of this Part of this Act to a person who has failed to attend school regularly without reasonable excuse includes a person who is over the age of sixteen years but who is not over school age.]

(2) For the said purposes the expression “parent” includes a guardian.

[^{F132}(3) Where a child attains the age of sixteen years after the date on which a children’s hearing first sit to consider his case, but before the date of the conclusion of the proceedings on his case, the provisions of this Part of this Act and of statutory instrument made thereunder shall continue to apply to him in relation to that case as if he had not attained that age.]

Textual Amendments

F131 Words added by Education (Scotland) Act 1969 (c. 49), **Sch. 2 Pt. II para. 5** (that 1969 Act has been repealed by Education (Scotland) Act 1980 (c. 44, SIF 41:2), **Sch. 5**)

F132 S. 30(3) added by Social Work (Scotland) Act 1972 (c. 24, SIF 81:3), **s. 1**

Modifications etc. (not altering text)

C31 S. 30(2) modified (22.8.1996) by S.I. 1996/2203, **art. 5A** (which art. 5A was inserted (19.1.1997) by S.I. 1997/137, **art. 2**)

31 Restriction on prosecution of children for offences.

(1) No child [^{F133}under the age of sixteen years] shall be prosecuted for any offence except on the instructions of the Lord Advocate, or at his instance; and no court, other than the High Court of Justiciary and the sheriff court, shall have jurisdiction over a child [^{F133}under the age of sixteen years] for an offence.

(2) ^{F134}

(3) Part IV of the ^{M38}Children and Young Persons (Scotland) Act 1937 shall have effect subject to the amendments set out in Schedule 2 to this Act.

Textual Amendments

F133 Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 2 para. 7**

F134 S. 31(2) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 10 Pt. I**

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Marginal Citations

M38 1937 c. 37.

32 Children in need of compulsory measures of care.

- (1) A child may be in need of compulsory measures of care within the meaning of this Part of this Act if any of the conditions mentioned in the next following subsection is satisfied with respect to him.
- (2) The conditions referred to in subsection (1) of this section are that—
- (a) he is beyond the control of his parent; or
 - [^{F135}(b) he is falling into bad associations or is exposed to moral danger; or
 - (c) lack of parental care is likely to cause him unnecessary suffering or seriously to impair his health or development; or]
 - (d) any of the offences mentioned in Schedule 1 to the [^{F136M39}Criminal Procedure (Scotland) Act 1975] has been committed in respect of him or in respect of a child who is a member of the same household; or
 - [^{F137}(dd) the child is, or is likely to become, a member of the same household as a person who has committed any of the offences mentioned in Schedule 1 to the ^{M40}Criminal Procedure (Scotland) Act 1975; or]
 - (e) the child, being a female, is a member of the same household as a female in respect of whom an offence which constitutes the crime of incest has been committed by a member of that household; or
 - (f) he has failed to attend school regularly without reasonable excuse; or
 - (g) he has committed an offence; or
 - [^{F138}(gg) he has misused a volatile substance by deliberately inhaling, other than for medicinal purposes, that substance’s vapour; or]
 - (h) he is a child whose case has been referred to a children’s hearing in pursuance of Part V of this Act.
 - [^{F139}(i) he is in the care of local authority and his behaviour is such that special measures are needed for his adequate care and control.]
- (3) For the purposes of this Part of this Act “care” includes protection, control, guidance and treatment.

Textual Amendments

F135 S. 32(2)(b)(c) substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 54(a)**

F136 Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 54(b)**

F137 S. 32(2)(dd) inserted by Children Act 1975 (c. 72, SIF 49:1, 10), **Sch. 3 para. 54(c)**

F138 S. 32(2)(gg) inserted by Solvent Abuse (Scotland) Act 1983 (c. 33, SIF 81:3), **s. 1**

F139 S. 32(2)(i) inserted (30.1.1984) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **s. 8(1)**

Marginal Citations

M39 1975 c. 21.

M40 1975 c. 21.

Status: Point in time view as at 01/04/1991. This version of this Act contains provisions that are not valid for this point in time.

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33 Formation of children’s panels.

- (1) A panel (to be called “the children’s panel”) shall be formed for every local authority area for the purposes of this Part of this Act.
- (2) Schedule 3 to this Act shall have effect with respect to the number, qualifications, appointment and tenure of office of members of a children’s panel.
- (3) A local authority shall cause to be published a list of the names and addresses of members of the children’s panel for their area, and that list shall be open for public inspection at all reasonable times at the offices of the director of social work of the local authority, and at any place where an electors list for the locality is exhibited.

34 Children’s hearings.

- (1) Sittings of members of the children’s panel, hereinafter referred to as children’s hearings, shall be constituted from the panel in accordance with the provisions of this section to perform, in respect of children who may require compulsory measures of care, the functions assigned to those hearings by this Part of this Act.
- (2) A children’s hearing shall consist of a chairman and two other members and shall have both a man and a woman among the members.
- (3) It shall be the duty of a local authority to provide suitable accommodation and facilities dissociated from criminal courts and police stations for children’s hearings for their area, and such accommodation and facilities may be provided in the area of another local authority.

[^{F140}34A Safeguarding of interests of children before children’s hearings etc.

- (1) In any proceedings—
 - (a) before a children’s hearing;
 - (b) before the sheriff on an application under section 42(2)(c) of this Act;
 - (c) before the sheriff on an appeal under section 49 or 51 of this Act,
 the chairman (in the case of proceedings referred to in paragraph (a) above) or the sheriff (in any other case)—
 - (i) shall consider whether it is necessary for the purpose of safeguarding the interests of the child in the proceedings, because there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child and those of his parent, to appoint a person to act for that purpose; and
 - (ii) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (i) above.
- (2) The power to make rules under—
 - (a) section 35(4) of this Act,
 - (b) section 32 of the ^{M41}Sheriff Courts (Scotland) Act 1971,
 shall include power to make rules providing for—
 - (i) the procedure in relation to the disposal of matters arising under this section;
 - (ii) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.

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- (3) The expenses of a person appointed under subsection (1) of this section shall—
- (a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and
 - (b) except in so far as otherwise defrayed in terms of regulations made under section 103(2) of the ^{M42}Children Act 1975,
- be borne by the local authority for whose area the children’s panel from which the relevant children’s hearing has been constituted is formed.
- (4) For the purposes of subsection (3) of this section, “relevant children’s hearing” means—
- (a) in the case of proceedings referred to in subsection (1)(a) of this section, the children’s hearing;
 - (b) in the case of proceedings referred to in subsection (1)(b) of this section, the children’s hearing who have directed the application;
 - (c) in the case of proceedings referred to in subsection (1)(c) of this section, the children’s hearing whose decision is being appealed against.]

Textual Amendments

F140 S. 34A inserted by Children Act 1975 (c. 72, SIF 49:9, 10), ss. 66, 108(2)

Marginal Citations

M41 1971 c. 58.

M42 1975 c. 72.

35 Provisions as to time, place, privacy and notification of children’s hearings.

- (1) Any children’s hearing shall be conducted in private, and, subject to the provisions of any rules made under this section, no person other than a person whose presence is necessary for the proper consideration of the case which is being heard, or whose presence is permitted by the chairman, shall be present.
- (2) The chairman shall take all reasonable steps to ensure that the number of persons present at a children’s hearing at any one time is kept to a minimum.
- (3) Nothing in the foregoing provisions of this section, or in any rules made thereunder, shall operate to prevent a member of the Council on Tribunals, or of the Scottish Committee of that Council, attending any children’s hearing, or shall authorise the exclusion of bona fide representatives of a newspaper or news agency.
- (4) The Secretary of State may make rules for the constituting and arranging of children’s hearings and for regulating the procedure of those hearings.
- (5) Without prejudice to the generality of the last foregoing subsection, rules under that subsection may make provision with respect to—
- (a) notification of the time and place of a children’s hearing to the child and his parent [^{F141}and to such other persons as may be prescribed;]
 - (b) the statement of the grounds for the referral of the case to a children’s hearing and the rights of the child and his parent to dispute the said grounds;
 - (c) the right to appeal to the sheriff against a decision of a children’s hearing and the notification of the procedure before him;

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- (d) the right of the child and his parent to be represented at the children’s hearing;
- (e) the entitlement of the child and his parent to the refund of such expenses as may be prescribed in connection with the children’s hearing and any proceedings arising therefrom;
- (f) persons whose presence shall be permitted at a children’s hearing;
- (g) the continuation of a children’s hearing for further investigation of a case before that hearing and the number and duration of such continuations.

Textual Amendments

F141 Words inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 3 para. 55**

36 The reporter and deputies.

- (1) For the purpose of arranging children’s hearings and for the performance of such other functions in relation to the children’s panel or to children’s hearings as may be assigned to him by this Part of this Act, a local authority shall, . . . ^{F142}, appoint an officer, whole-time or part-time, to be known as the reporter, and such other officers as deputies of the reporter as may be required.
- [^{F143}(2) The qualifications of a reporter shall be such as the Secretary of State may prescribe.]
- (3) ^{F144}
- (4) A reporter may not be removed from office by a local authority or be required to resign except with the consent of the Secretary of State.
- (5) A reporter of a local authority shall not, except with the consent of the Secretary of State, be employed by that or any other local authority in any capacity other than that of a reporter.
- (6) A local authority shall secure the provision of adequate staff for assisting the reporter in the performance of his functions.
- (7) ^{F144}
- (8) The Secretary of State may make rules in relation to the duties of the reporter.

Textual Amendments

F142 Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), **Sch. 29**

F143 S. 36(2) substituted by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), **Sch. 27 Pt. II para. 185(b)**

F144 S. 36(3)(7) repealed by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), **Sch. 29**

[^{F145}36A Power of reporters to conduct proceedings before a sheriff.

The Secretary of State and the Lord Advocate may, by regulations—

- (a) empower officers or any officer or class of officers appointed under section 36 of this Act, whether or not they are advocates or solicitors, to conduct before a sheriff—

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- (i) any proceedings which, under this Act are heard by the sheriff in chambers;
 - (ii) any application under section 37 or 40 of this Act in relation to a warrant;
- (b) prescribe such requirements as they think fit as to qualifications, training or experience necessary for any officer to be so empowered.]

Textual Amendments

F145 S. 36A inserted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 82

37 Reports of cases of children who may require compulsory measures of care and the interim detention of such children in places of safety.

- (1) Where any person has reasonable cause to believe that a child may be in need of compulsory measures of care he may give to the reporter such information about the child as he may have been able to discover.
- [^{F146}(1A) Where a local authority receive information suggesting that a child may be in need of compulsory measures of care, they shall—
- (a) cause enquiries to be made into the case unless they are satisfied that such enquiries are unnecessary; and
 - (b) if it appears to them that the child may be in need of compulsory measures of care, give to the reporter such information about the child as they may have been able to discover.]
- [^{F147}(2) A constable or any person authorised by any court or by any justice of the peace may take to a place of safety any child—
- (a) in respect of whom any of the offences mentioned in Schedule 1 to the ^{M43}Criminal Procedure (Scotland) Act 1975 has been or is believed to have been committed; or
 - (b) who is a member of the same household as a child in respect of whom such an offence has been or is believed to have been committed; or
 - (c) who is, or is likely to become, a member of the same household as a person who has committed or is believed to have committed such an offence; or
 - (d) in respect of whom an offence under section 21(1) of the Children and Young Persons (Scotland) Act 1937 has been or is believed to have been committed; or
 - (e) who is likely to be caused unnecessary suffering or serious impairment of health because there is, or is believed to be, in respect of the child a lack of parental care,
- and any child so taken to a place of safety or any child who has taken refuge in a place of safety may be detained there until arrangements can be made for him to be brought before a children’s hearing under the following provisions of this Part of this Act; and, where a child is so detained, the constable or the person authorised as aforesaid or the occupier of the place of safety shall forthwith inform the reporter of the case.]
- (3) A child shall not continue to be detained under the last foregoing subsection—
- (a) where the reporter considers the child does not require compulsory measures of care, or

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- (b) after the day on which a children’s hearing first sit to consider his case in pursuance of the next following subsection, or
 - (c) for a period exceeding seven days.
- (4) Where a child has been detained in a place of safety under subsection (2) of this section or under ^{F148}[section 14(1), 296(3) or 323(1) of the said Act of 1975], and the reporter considers that the child may be in need of compulsory measures of care, he shall, wherever practicable, arrange a children’s hearing to sit not later than in the course of the first lawful day after the commencement of the child’s detention to consider the case under this Part of this Act, and, if that hearing are unable to dispose of the case and are satisfied that his further detention is necessary in his own interest, or have reason to believe that he will run away during the investigation of his case, they may issue a warrant requiring the child to be detained in any place of safety for such a period not exceeding twenty-one days as may be necessary.
- (5) On cause shown a warrant authorising detention under the last foregoing subsection may be renewed ^{F149}[by a children’s hearing], on one occasion only, for the period mentioned in that subsection on the application of the reporter.
- ^{F150}(5A) Where a warrant has been renewed under subsection (5) of this section but it appears to the reporter—
- (a) that the children’s hearing will not be able to dispose of the child’s case before the expiry of the period of detention required by the warrant as renewed; and
 - (b) that further detention of the child is necessary in the child’s own interest,
- the reporter may apply to the sheriff for a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary and the sheriff may issue such a warrant if he is satisfied that such detention is necessary in the child’s own interest.
- (5B) On cause shown a warrant authorising detention under subsection (5A)
- of this section may be renewed by the sheriff on one occasion only, for the period mentioned in that subsection on the application of the reporter.]
- (6) In this section any reference to a justice of the peace includes a reference to a sheriff and to a magistrate.

Textual Amendments

F146 S. 37(1A) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 83(a)

F147 S. 37(2) substituted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 83(b)

F148 Words substituted by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 461(1), **Sch. 9 para. 42**

F149 Words inserted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 83(c)

F150 S. 37(5A)(5B) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 83(d)

Marginal Citations

M43 1975 c. 21.

38 Initial investigation of cases by reporter.

- (1) Where a reporter receives information from any source of a case which may require a children’s hearing to be arranged he shall, after making such initial investigation as

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he may think necessary, proceed with the case in accordance with the provisions of the next following section.

(2) Paragraph (b)

of section 17(1) of the ^{M44}Police (Scotland) Act 1967 shall, in relation to a child to whom this Part of this Act applies, have effect as if that paragraph imposed a requirement on constables of a police force to make the reports required thereby to the appropriate reporter in addition to the appropriate prosecutor.

Marginal Citations

M44 1967 c. 77.

39 Action on initial investigation by reporter.

- (1) Where the reporter decides that no further action on the case is required, he shall, where he considers this to be the proper course, so inform the child and his parent and the person who brought the case to his notice, or any of those persons.
- (2) Where the reporter considers it to be the proper course, he shall refer the case to the local authority with a view of their making arrangements for the advice, guidance and assistance of the child and his family in accordance with Part II of this Act.
- (3) Where it appears to the reporter that the child is in need of compulsory measures of care, he shall arrange a children's hearing to whom the case shall stand referred for consideration and determination.
- (4) Where the reporter has arranged a children's hearing in pursuance of the last foregoing subsection, he shall request from the local authority ; a report on the child and his social background and it shall be the duty of the authority to supply the report which may contain information from any such person as the reporter or the local authority may think fit.
- (5) Where the reporter has decided that no further action on the case is required, or has taken action in pursuance of subsection (2) of A this section, he shall not thereafter take action under subsection (3) of this section in relation to the same facts.

40 Attendance of child at children's hearing.

- (1) Where a child has been notified by virtue of section 35 of this Act that his case has been referred to a children's hearing, he shall be under an obligation to attend that hearing in accordance with the notification.
- (2) Without prejudice to the provisions of section 42(1) of this Act, where a children's hearing are satisfied in a case concerned with an offence mentioned in [^{F151}Schedule 1 to the ^{M45}Criminal Procedure (Scotland) Act 1975] that the attendance of a child is not necessary for the just hearing of that case, or in any case where they are satisfied that it would be detrimental to the interest of the child to be present at the hearing of his case, the case, in whole or in part, may be considered in the absence of the child.

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- (3) The reporter shall be responsible for securing the attendance of a child at the hearing of his case before a children’s hearing and at any subsequent hearing to which the case is continued.
- (4) For the purpose of the last foregoing subsection, or where a child fails to attend at any hearing of his case, a children’s hearing may, at the instance of the reporter on cause shown, or, as the case may be, of their own motion, issue a warrant for the apprehension of the child if satisfied of the necessity for such a course, and any warrant so issued shall be authority for bringing him before a children’s hearing and for his detention in a place of safety.
- (5) A child shall not continue to be detained under the last foregoing subsection—
- (a) after the day on which a children’s hearing first sit to consider his case in pursuance of the next following subsection, or
 - (b) for a period exceeding seven days.
- (6) Where a child is apprehended in pursuance of subsection (4) of this section, and he cannot immediately be brought before a children’s hearing, the reporter shall, wherever practicable, arrange a children’s hearing to sit not later than in the course of the first lawful day after the apprehension of the child.
- [^{F152}(7) Where a children’s hearing before whom a child is brought are unable to dispose of his case and—
- (a) have reason to believe that the child may not attend at any hearing of his case, or at any proceedings arising from the case or may fail to comply with a requirement under section 43(4) of this Act; or
 - (b) are satisfied that detention of the child is necessary in his own interest,
- they may issue a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary.]
- [^{F153}(8) On cause shown a warrant authorising detention under subsection (7) of this section may be renewed by a children’s hearing on one occasion only, for the period mentioned in that subsection, on the application of the reporter.]
- [^{F154}(8A) Where a warrant has been renewed under subsection (8) of this section but it appears to the reporter—
- (a) that the children’s hearing will not be able to dispose of the child’s case before the expiry of the period of detention required by the warrant as renewed; and
 - (b) that further detention of the child is necessary in the child’s own interest,
- the reporter may apply to the sheriff for a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary, and the sheriff may issue such a warrant if he is satisfied that such detention is necessary in the child’s own interest.
- (8B) On cause shown, a warrant authorising detention under subsection (8A) of this section may be renewed by the sheriff on one occasion only, for the period mentioned in that subsection, on the application of the reporter.]
- (9) A warrant of apprehension issued under this Part of this Act may be executed in like manner as a warrant of apprehension of an accused person issued by a court of summary jurisdiction, and any enactment relating to the execution of a warrant

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of apprehension issued by a court of summary jurisdiction shall, with any necessary modifications, apply in relation to the execution of a warrant of apprehension issued under this Part of this Act as it applies to a warrant of apprehension issued by a court of summary jurisdiction.

Textual Amendments

F151 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 460(1)(b)**

F152 [S. 40\(7\)](#) substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **s. 84(a)**

F153 [S. 40\(8\)](#) substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **s. 84(b)**

F154 [S. 40\(8A\)\(8B\)](#) inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **s. 84(c)**

Marginal Citations

M45 [1975 c. 21](#).

41 Attendance of parent at children’s hearing.

- (1) A parent of a child shall have a right to attend at all stages of a children’s hearing who are considering the case of his child.
- (2) When a child’s case is being considered by a children’s hearing his parent shall attend at all stages of the hearing unless the children’s hearing are satisfied that it would be unreasonable to require his attendance or that his attendance would be unnecessary to the consideration of the case.
- (3) Any person who fails to comply with the provisions of the foregoing subsection shall be guilty of an offence and shall on summary conviction be liable to a fine not exceeding [^{F155}level 3 on the standard scale].

Textual Amendments

F155 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G** (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 54**)

42 Conduct of children’s hearing and application to sheriff for findings.

- (1) Subject to the provisions of subsections (7)
and (8) of this section, at the commencement of a children’s hearing, and before proceeding to the consideration of the case, it shall be the duty of the chairman to explain to the child and his parent the grounds stated by the reporter for the referral of the case for the purpose of ascertaining whether these grounds are accepted in whole or in part by the child and his parent.
- (2) Thereafter—
 - (a) where the child and his parent accept the grounds stated by the reporter for the referral the hearing shall proceed;
 - (b) where the child and his parent accept those grounds in part and the children’s hearing consider it proper so to do the hearing may proceed in respect of the grounds so accepted; and
 - (c) in any other case, unless they decide to discharge the referral, the children’s hearing shall direct the reporter to make application to the sheriff for a finding

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as to whether such grounds for the referral, as are not accepted by the child or his parent, are established having regard to the provisions of section 32 of this Act.

[^{F156}(2A) Where the ground for referral is that the child is in need of compulsory measures of care because he has committed an offence, the sheriff to whom an application under subsection (2)(c) above shall be made shall be the sheriff who would have jurisdiction if the child were being prosecuted for that offence.]

(3) It shall be the duty of the chairman of a children's hearing who have made a direction under the last foregoing subsection to explain to the child and his parent the purpose for which the application to the sheriff is being made, and to inform the child that he is under an obligation to attend the hearing of the application, and where a child fails to attend at the hearing of the application the sheriff may issue a warrant for the apprehension of the child; and any warrant so issued shall be authority for bringing him before the sheriff and for his detention in a place of safety until the sheriff can hear the application, but a child shall not be detained under this subsection [^{F157}after whichever is the earlier of the following—

- (a) the expiry of 14 days beginning with the day on which he was first detained;
- (b) the disposal of the application by the sheriff.]

(4) An application under subsection (2) of this section shall be heard by the sheriff in chambers within twenty-eight days of the lodging of the application and, without prejudice to their right to legal representation, a child or his parent may be represented at any diet fixed by the sheriff for the hearing of the application.

(5) Where a sheriff decides that none of the grounds in respect of which the application has been made has been established for the referral of a case to a children's hearing, he shall dismiss the application and discharge the referral in respect of those grounds.

(6) [^{F158}Subject to subsection (6A) of this section,] Where the sheriff is satisfied on the evidence before him that any of the grounds in respect of which the application has been made has been established

[^{F159}(a)] he shall remit the case to the reporter to make arrangements for a children's hearing for consideration and determination of the case [^{F160}; and

(b) if he is satisfied that detention of the child is necessary in his own interest or has reason to believe that the child will run away before the children's hearing sit to consider the case, he may issue a warrant requiring the detention of the child until the children's hearing sit to consider the case, but a child shall not be detained under this subsection after whichever is the earlier of the following—

- (i) the expiry of 3 days beginning with the day on which he was first detained;
- (ii) the consideration of his case by the children's hearing.]

, and where a ground for the referral of the case is the condition referred to in section 32(2)(g) of this Act, the sheriff in hearing the application shall apply to the evidence relating to that ground the standard of proof required in criminal procedure.

[^{F161}(6A) Notwithstanding the provisions of subsection (2)(c) of this section, where, in the course of the proceedings before the sheriff, the child and his parent accept any of the grounds in respect of which the application has been made, the sheriff may dispense with the hearing of evidence relating to that ground unless he is satisfied that in all the circumstances such evidence should be heard, and deem that ground to have been established for the purposes of this section.]

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- (7) Where a children’s hearing are satisfied that the child for any reason is not capable of understanding the explanation of the grounds of referral required by subsection (1) of this section, or in the course of, or at the conclusion of that explanation, it appears not to be understood by the child, the hearing shall, unless they decide to discharge the referral, direct the reporter to make application to the sheriff for a finding as to whether any of the grounds for the referral have been established, and the provisions of this section relating to an application to the sheriff under subsection (2)(c) thereof shall apply as they apply to an application under that subsection [F162 except that where any of the grounds for the referral are accepted by the child’s parent, whether or not accepted by the child, then, notwithstanding subsection (6A) of this section, the sheriff may dispense with the hearing of evidence relating to that ground if he is satisfied that in all the circumstances it would be reasonable to do so.]
- (8) The acceptance by a parent of the grounds of referral shall not be a requirement to proceeding with a case under this section where the parent is not present.

Textual Amendments

- F156** S. 42(2A) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 21**
- F157** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **s. 25(1)**
- F158** Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 2 para 8(a)**
- F159** “(a)” inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **s. 25(2)(a)**
- F160** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **s. 25(2)(b)**
- F161** S. 42(6A) inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 2 para.8(b)**
- F162** Words added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 2 para. 8(c)**

Modifications etc. (not altering text)

- C32** S. 42 extended by Rehabilitation of Offenders Act 1974 (c. 53, SIF 39:1), **s. 3**

43 Discharge of referral and power of children’s hearing to order further investigation after consideration of the facts.

- (1) When a children’s hearing have considered the grounds for the referral of a case, accepted or established under the last foregoing section, the report obtained under section 39(4) of this Act and such other relevant information as may be available to them, they shall proceed in accordance with the subsequent provisions of this section to consider on what course they should decide in the best interests of the child.
- (2) Where a children’s hearing decide that no further action is required they shall discharge the referral.
- (3) Where a children’s hearing consider that further investigation in relation to a child and his history is necessary to complete their consideration of his case they may continue the case to a subsequent hearing.

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- (4) For the purpose of such an investigation as aforesaid, a children's hearing may require a child to attend or reside at any clinic, hospital or establishment during a period not exceeding twenty-one days.
- (5) Where a child fails to fulfil a requirement made in pursuance of the last foregoing subsection it shall be the duty of the reporter to arrange a children's hearing to consider the issue of a warrant for his detention under section 40 of this Act.

44 Disposal of case by children's hearing other than by discharge of referral.

- (1) Subject to the provisions of this Part of this Act a children's hearing, where, after the consideration of his case, they decide that a child is in need of compulsory measures of care, may make a requirement, in this Act referred to as a supervision requirement, requiring him—
 - (a) to submit to supervision in accordance with such conditions as they may impose; or
 - (b) to reside in a residential establishment named in the requirement and be subject to such conditions as they may impose;

and a condition imposed by virtue of head (a) of this subsection may be a condition as to the place where the child is to reside, being a place other than a residential establishment, and the place may be a place in England or Wales where arrangements have been made in that behalf.

[^{F163}(1A) A supervision requirement imposing a condition as to the place where a child is to reside in England or Wales shall be a like authority as in Scotland for the person in charge of the place to restrict the child's liberty to such an extent as that person may consider appropriate having regard to the terms of the supervision requirement.]

- (2) In making a supervision requirement requiring a child to reside in a residential establishment a children's hearing shall have regard to the religious persuasion of the child.
- (3) Without prejudice to the provisions of this Part of this Act relating to the review of supervision requirements, a children's hearing may, where they are satisfied that such a course is proper, postpone the operation of a supervision requirement, but otherwise a supervision requirement shall have effect as from the date it is made.
- (4) Where it appears to a children's hearing that the functions of the education authority under section 63 of the ^{M46}Education (Scotland) Act 1962 (ascertainment of children suffering from disability) may require to be exercised, they shall, in addition to any other course which they may take under this section, send a report to that effect to the education authority concerned.
- (5) It shall be the duty of the local authority to give effect to a supervision requirement made by a children's hearing for their area, and a child who is subject to such a supervision requirement shall, for the purposes of sections 16 to 18, 20 [^{F164}20A], 24 to 26, 28 and 29 of this Act [^{F165}and section 18 of the Adoption (Scotland) Act 1978 (which, amongst other things, provides that an application by an adoption agency to dispense with parental agreement to the freeing of a child for adoption is competent only where the child is in the care of the agency).], be in their care:

Provided that where the performance of a function under any of the said sections in relation to the child requires, or would be facilitated by, the variation or discharge

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of the supervision requirement, the local authority shall recommend a review of the requirement under this Part of this Act.

- (6) In any case of urgent necessity in the interests of the child, or of the other children in a place, a director of social work may direct that a child who is required to reside in that place under this section be transferred to another place.
- (7) Any child transferred under the last foregoing subsection shall have his case reviewed by a children's hearing within seven days of his transfer, in accordance with the following provisions of this Act.
- (8) A supervision requirement shall be in such form as the Secretary of State may prescribe.

Textual Amendments

F163 S. 44(1A) inserted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), **Sch. 5 para. 57**

F164 Words inserted (prosp.) by Children Act 1975 (c. 72, SIF: 9, 10), s. 108(2), **Sch. 3 para. 56**

F165 Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **s. 28**

Modifications etc. (not altering text)

C33 Reference in s. 44(4) to "section 63 of the Education (Scotland) Act 1962" to be construed as reference to Education (Scotland) Act 1980 (c. 44, SIF 41:2), **s. 60**; Interpretation Act 1978 (c. 30, SIF 115:1), **s. 17(2)(a)** and Education (Scotland) Act 1980 (c. 44, SIF 41:2), **Sch. 3 para. 1**

C34 S. 44(6)(7) extended by S.I. 1983/1912, **reg. 6(3)**

Marginal Citations

M46 1962 c. 47.

45 Rules as respects transmission of information and conveyance of children to residential establishments etc.

The Secretary of State may make rules providing for the transmission of information regarding children who are the subject of supervision requirements to the persons who are to be in charge of them, for the temporary accommodation, where necessary, of such children, and for the conveyance of such children to residential establishments and to other places where they may be required to reside.

46 Children to whom Part IV of the Mental Health (Scotland) Act 1960 may apply.

- (1) Where a children's hearing are of the opinion, after considering the case of any child, that an application for admission to hospital or a guardianship application under ^[F166]Part V of the Mental Health (Scotland) Act 1984] should be made to the sheriff in respect of the child, they shall make a report to that effect to the mental health officer concerned.
- (2) Nothing in the provisions of the foregoing subsection shall affect the saving for arrangements for the voluntary treatment of mental disorder contained in ^[F167]section 17(2) of the said Act of 1984].

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Textual Amendments

F166 Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 16\(a\)](#)

F167 Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 16\(b\)](#)

47 Duration of supervision requirements and their variation.

- (1) No child shall continue to be subject to a supervision requirement for any time longer than is necessary in his interest; and where they consider that such a requirement in respect of a child should cease to have effect or should be varied, the local authority shall refer his case to their reporter for review of that requirement by a children's hearing and, if the hearing think proper, they may terminate the requirement, or continue or vary the requirement, and in the last event they may make any such supervision requirement as may be made under section 44 of this Act.
- (2) A supervision requirement shall cease to have effect in respect of a child when he attains the age of eighteen years and accordingly, within a period of three months ending on the day on which such a requirement will cease to have effect under this subsection, the local authority concerned shall refer the case to the reporter so that a children's hearing may advise whether the child still requires supervision or guidance, and in the event of the hearing so advising, the local authority shall provide such supervision or guidance as he is prepared to accept.
- (3) Unless the context otherwise requires, any reference in this section and in the following provisions of this Act to a supervision requirement shall be construed as a reference to a supervision requirement which is for the time being in force in respect of a child.

48 Review of requirement of children's hearing.

- (1) A supervision requirement shall be subject to review by a children's hearing in accordance with the following provisions of this section.
 - (2) A supervision requirement shall be reviewed by a children's hearing where a local authority so recommends.
 - (3) No supervision requirement shall remain in force without review for a period extending beyond one year, and where a supervision requirement is not reviewed within the period of one year from the making or continuing of the requirement it shall cease to have effect at the expiration of that period.
 - (4) At any time after the expiration of any of the following periods, that is to say—
 - (a) a period of three months from the date of the making of a supervision requirement; or
 - (b) a period of three months from the date of a review of a supervision requirement where such a review varies a previous requirement; or
 - (c) a period of six months from the date of a review of a supervision requirement which is continued by that review,
 a child or his parent may require a review of the requirement.
- [^{F168}(4A) If a supervision requirement has not been reviewed under this section during the period of nine months following the date when it was made or last reviewed (whichever is the later), the reporter may arrange for it to be reviewed.]

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- (5) It shall be the duty of the reporter to ensure that any review required by this section is duly made and to make any necessary arrangements arising therefrom.
- (6) Section 44 of this Act shall apply in relation to the disposal of a case by a children's hearing under this section as it applies to the disposal of a case under that section.

Textual Amendments

F168 S. 48(4A) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), s. 29

48 Review of requirement of children's hearing. **S**

- (1) A supervision requirement shall be subject to review by a children's hearing in accordance with the following provisions of this section.
- (2) A supervision requirement shall be reviewed by a children's hearing where a local authority so recommends.
- (3) No supervision requirement shall remain in force without review for a period extending beyond one year, and where a supervision requirement is not reviewed within the period of one year from the making or continuing of the requirement it shall cease to have effect at the expiration of that period.
- (4) At any time after the expiration of any of the following periods, that is to say—
 - (a) a period of three months from the date of the making of a supervision requirement; or
 - (b) a period of three months from the date of a review of a supervision requirement where such a review varies a previous requirement; or
 - (c) a period of six months from the date of a review of a supervision requirement which is continued by that review,a child or his parent may require a review of the requirement.
- [^{F309}(4A) If a supervision requirement has not been reviewed under this section during the period of nine months following the date when it was made or last reviewed (whichever is the later), the reporter may arrange for it to be reviewed.]
- (5) It shall be the duty of the reporter to ensure that any review required by this section is duly made and to make any necessary arrangements arising therefrom.
- (6) Section 44 of this Act shall apply in relation to the disposal of a case by a children's hearing under this section as it applies to the disposal of a case under that section.

Textual Amendments

F309 S. 48(4A) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), s. 29

49 Appeal against decision of a children's hearing.

- (1) A child or his parent or both may, within a period of three weeks beginning with the date of any decision of a children's hearing, appeal to the sheriff in chambers against

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that decision, and the child or his parent or both shall be heard by the sheriff as to the reasons for the appeal.

- (2) In any such appeal it shall be the duty of the reporter to ensure that all reports and statements available to the hearing along with the reports of their proceedings and the reasons for their decision are lodged with the sheriff clerk.
- (3) [^{F169}The reporter, whether or not he is conducting the proceedings before the sheriff, may be examined by the sheriff; and the sheriff may examine] the authors or compilers of any reports or statements, and may call for any further report which he considers may assist him in deciding the appeal.
- (4) Where the sheriff decides that an appeal under this section has failed, he shall confirm the decision of the children’s hearing.
- (5) Where the sheriff is satisfied that the decision of the children’s hearing is not justified in all the circumstances of the case he shall allow the appeal, and—
 - (a) where the appeal is against the issue of a warrant for detention he shall recall the warrant, and
 - (b) in any other case, he may, as he thinks fit, remit the case with the reasons for his decision to the children’s hearing for reconsideration of their decision or discharge the child from any further hearing or other proceedings in relation to the grounds for the referral of the case.
- (6) Where the sheriff is satisfied that an appeal under this section against the decision of a children’s hearing at a review is frivolous, he may order that no appeal against a decision to continue the supervision requirement, which was the subject of that appeal, made on a subsequent review shall lie until the expiration of a period of twelve months beginning with the date of the order.
- (7) An appeal under this section in respect of the issue of a warrant by a children’s hearing shall be disposed of within three days of the lodging of the appeal, and failing such disposal the warrant shall forthwith cease to have effect.
- (8) Where a child or his parent appeals under this section against a decision of a children’s hearing in relation to a supervision requirement, the child or his parent may make application to a children’s hearing for the suspension of the requirement appealed against, and it shall be the duty of the reporter forthwith to arrange a children’s hearing to consider the application, and thereafter the hearing may grant or refuse the application.

Textual Amendments

F169 Words substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 57](#)

50 Appeal to Court of Session.

- (1) Subject to the provisions of this section, an appeal shall lie to the Court of Session, by way of stated case on a point of law or in respect of any irregularity in the conduct of the case, at the instance of a child or his parent or both or of a reporter acting on behalf of a children’s hearing, from any decision of the sheriff under this Part of this Act, and no other or further appeal shall be competent.

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- (2) An application to the sheriff to state a case for the purpose of the foregoing subsection shall be made within a period of twenty-eight days beginning with the date of his decision.
- (3) On deciding the appeal the Court of Session shall remit the case to the sheriff for disposal in accordance with such directions as the Court may give.
- (4) No appeal shall lie under this section in respect of a decision of a children’s hearing imposing a supervision requirement where the sole ground of the objection to that requirement is that the treatment prescribed thereby is inappropriate for the child.

51 Reconsideration by hearing after appeal, and subsequent appeal.

- (1) Where the sheriff, by virtue of either of the last two foregoing sections, has remitted a case to a children’s hearing for reconsideration of their decision the reporter shall arrange a children’s hearing for that purpose.
- (2) A child or his parent may, within a period of seven days beginning with the date of the decision of a children’s hearing on a case remitted as aforesaid, appeal against the decision, and the provisions of subsections (2) to (8) of section 49 of this Act shall apply to such an appeal as they apply to an appeal under subsection (1) of the said section.

52 Power of Secretary of State to terminate a supervision requirement.

Where, having regard to all the circumstances of a case and the interests of a child, the Secretary of State is satisfied that a supervision requirement in force in respect of the child should be terminated, he may by order terminate the requirement.

53 **F170**

Textual Amendments

F170 S. 53 repealed by [Legal Aid \(Scotland\) Act 1986 \(c. 47, SIF 77:2\)](#), ss. 43, 45, [Sch. 5](#) and Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) expressed to be repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)\(5\), Sch. 4 para. 15\(14\), Sch. 5](#) (with savings in [ss. 103\(1\), 105\(3\), Sch. 3 para. 8](#)); [S.I. 1996/3201, art. 3\(6\)\(7\)](#) (which said art. 3(7) was substituted (7.3.1997) by [S.I. 1997/744, art. 2](#) (with transitional provisions inserted into [S.I. 1996/3201, art. 3](#)))

54 Transfer of case to another children’s hearing.

- (1) Where a children’s hearing are satisfied, in a case being heard before them, that the case could be better considered by a children’s hearing for the area of another local authority, they may at any time during the course of the hearing request the reporter to arrange with the reporter of the other local authority, should he so agree, for a children’s hearing to dispose of the case.
- (2) Where a case has been transferred in pursuance of the last foregoing subsection, the grounds of referral accepted or established for the case shall not require to be further

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accepted or established for the purpose of the children’s hearing to which the case has been transferred.

55 Presumption and determination of age.

Where a person is brought before a children’s hearing they shall make inquiry as to his age, and, if it appears to the hearing that the person is a child, they shall proceed with the case, and no decision or requirement of the hearing shall be invalidated by any subsequent proof that the age of that person has not been correctly stated to the hearing, and the age presumed or declared by the hearing to be the age of the person so brought before them shall, for the purposes of this Part of this Act, be deemed to be the true age of that person, and, where it appears to the hearing that the person so brought before them has attained the age of sixteen years, that person shall, for the purposes of this Part of this Act, be deemed not to be a child except as the Act otherwise provides.

56 Reference and remit of children’s cases by courts to children’s hearings.

- (1) ^{F171}
- (5) Where a court has remitted a case of a child or person [^{F172}under section 173 or 372 or 373 of the ^{M47}Criminal Procedure (Scotland) Act 1975], a certificate signed by the clerk of the court stating that the child or person has pleaded guilty to, or has been found guilty of, the offence to which the remit relates shall be conclusive evidence for the purpose of the remit that that offence has been committed by the child or person.
- (6) ^{F171}

Textual Amendments

F171 Ss. 56(1)–(4)(6), 57(1) repealed by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **Sch. 10 Pt. I**

F172 Words substituted by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 461(1), **Sch. 9 para. 43**

Marginal Citations

M47 1975 c. 21.

57 Reference and remit of cases of certain young persons by courts to children’s hearings.

- (1) ^{F173}
- (2) Where a court has remitted a case under [^{F174}section 373 of the ^{M48}Criminal Procedure (Scotland) Act 1975] the provisions of this Part of this Act shall apply to that person as if he were a child.

Textual Amendments

F173 Ss. 56(1)–(4)(6), 57(1) repealed by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **Sch. 10 Pt. I**

F174 Words substituted by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 461(1), **Sch. 9 para. 44**

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Marginal Citations

M48 1975 c. 21.

58 Prohibition of publication of proceedings.

- (1) Subject to the provisions of this section, no report of any proceedings in any children’s hearing, or of any proceedings before the sheriff under section 42 of this Act, or of any appeal under this Part of this Act, which is made in a newspaper or a sound or television [^{F175}programme included in a programme service (within the meaning of the Broadcasting Act 1990)] shall—
 - (a) reveal the name, address or school; or
 - (b) include any particulars calculated to lead to the identification, of any child in any way concerned in a hearing and no picture shall be published in any newspaper or television [^{F176}programme included in such a programme service] as being or including a picture of a child concerned as aforesaid.
- (2) Any person guilty of any offence against this section shall on summary conviction be liable to a fine not exceeding [^{F177}level 4 on the standard scale] in respect of each offence.
- (3) The Secretary of State may in any case, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of subsection (1) of this section to such extent as may be specified in the order.
- (4) This section shall extend to England and Wales.

Textual Amendments

- F175** Words substituted by virtue of Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 203(1), **Sch. 20 para. 12(a)**
- F176** Words substituted by virtue of Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 203(1), **Sch. 20 para. 12(b)**
- F177** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38, 46** and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G** (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 54**)

[^{F178}58A Residence in secure accommodation.

- (1) A child who is made subject to a supervision requirement under this Act may not be placed or kept in secure accommodation, except under the provisions of this Act.
- (2) In this Act, “secure accommodation” means accommodation provided in a residential establishment in accordance with regulations made under section 60(1) of this Act for the purpose of restricting the liberty of children.
- (3) Where a children’s hearing decide, in accordance with section 44 of this Act, that a child is in need of compulsory measures of care, and they are satisfied that either—
 - (a) he has a history of absconding, and—
 - (i) he is likely to abscond unless he is kept in secure accommodation; and
 - (ii) if he absconds, it is likely that his physical, mental or moral welfare will be at risk; or

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(b) he is likely to injure himself or other persons unless he is kept in secure accommodation,

they may make it a condition of a supervision requirement under subsection (1)(b) of the said section 44 that the child shall be liable to be placed and kept in secure accommodation in the named residential establishment at such times as the person in charge of that establishment, with the agreement of the director of social work of the local authority required to give effect to the supervision requirement, considers it necessary that he do so.

(4) The Secretary of State shall have power by regulations to make provision with respect to the placing in secure accommodation of any child—

(a) who is subject to a supervision requirement imposed under section 44 of this Act but not subject to a condition imposed under subsection (3) of this section; or

(b) who is not subject to such a supervision requirement but who is being cared for by a local authority or voluntary organisation in pursuance of such enactments as may be specified in the regulations,

and such regulations shall specify the circumstances which require to pertain before a child may be so placed under regulations made under this subsection and may specify different circumstances for different cases or classes of case.]

Textual Amendments

F178 Ss. 58A—58G inserted (30.1.1984) by [Health and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 8(4)

58B Time limits on keeping without reference to children’s hearing.

(1) The Secretary of State shall by regulations prescribe—

(a) the maximum period during which a child may be kept under this Act in secure accommodation without the authority of a children’s hearing or of the sheriff;

(b) the period within which the case of a child placed under this Act in secure accommodation shall be referred to the reporter and different periods may be prescribed in respect of different cases or classes of case.

(2) The Secretary of State shall by regulations make provision to enable a child who has been placed in secure accommodation under section 58(A)(4) of this Act or his parent to require that the child’s case be brought before a children’s hearing within a shorter period than would otherwise apply under regulations made under subsection (1)(a) of this section.

(3) Where, in any case, a [^{F179}children’s] hearing direct the reporter to make application to the sheriff for a finding under section 42(2)(c) of this Act (finding that grounds for referral are established), they shall have power, if they are satisfied with regard to the criteria specified in paragraph (a) or (b) of section 58A(3) of this Act, to [^{F180}order that, pending the determination of his case in accordance with section 42(5) or (6) of this Act, the child shall be liable to be placed and kept in secure accommodation in a named residential establishment at such times as the person in charge of that establishment with the agreement of the director of social work of the local authority for the area of the children’s hearing, considers necessary.]

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Textual Amendments

F179 Word substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), ss. 23, 59, **Sch. 2 para. 10**

F180 Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), s. 26(a)

58C Review of secure accommodation condition.

(1) A condition imposed under section 58A(3)

of this Act, requiring a child to reside in secure accommodation, shall be subject to review by a children's hearing at such time as the local authority recommends and otherwise at such times and in accordance with such provisions as the Secretary of State shall by regulations prescribe.

(2) A condition to which this section applies shall be reviewed when the supervision requirement is being reviewed, and may be reviewed separately from that review.

(3) A condition to which this section applies shall cease to have effect at the expiry of the period of three months after it was made, unless it has been reviewed and the condition has been ordered to continue.

(4) A condition which is continued on review shall cease to have effect at the expiry of the period of—

(a) nine months after it is first reviewed;

(b) twelve months after the second or any subsequent review,

unless it has been reviewed and the condition has been ordered to continue.

(5) Sections 44 and 48(5)

of this Act shall apply to the review of conditions made under section 58A(3) of this Act as they apply to the review of supervision requirements.

(6) The Secretary of State may from time to time make regulations to vary the periods specified in this section.

Modifications etc. (not altering text)

C35 [S. 58C\(4\)](#) amended by [S.I. 1983/1912, art. 12\(3\)](#) as substituted by [S.I. 1988/841, art. 8](#)

58D Sheriff's power to direct condition to cease to have effect.

Where under section 49(5) of this Act (appeal against decision of children's hearing) the sheriff is satisfied in a case in which there is in force a condition under section 58A(3) of this Act that the decision of the children's hearing is not justified in all the circumstances of the case he shall direct that the condition shall cease to have effect.

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58E Warrants to detain in secure accommodation.

- (1) Where the sheriff or a children’s hearing issues a warrant under any of sections 37, 40 and 42 of this Act (detention in a place of safety), he or they may, if satisfied with regard to the criteria specified in paragraph (a) or (b) of section 58A(3) of this Act, ^[F181]order that the child shall be liable to be placed and kept in secure accommodation in a named residential establishment at such times as the person in charge of that establishment, with the agreement of the director of social work of the local authority, considers necessary. The local authority referred to in this subsection is, in the case of a warrant issued or renewed by the sheriff, the local authority for the area of the children’s hearing which was dealing with the child in respect of whom the warrant was issued and, in the case of a warrant issued or renewed by a children’s hearing, the local authority for the area of that children’s hearing.]
- (2) For the purposes of this section, the Secretary of State may make regulations amending, varying or disapplying any of the criteria specified in the said paragraphs (a) and (b) of section 58A(3) of this Act except in relation to a warrant under section 37 of this Act.

Textual Amendments

F181 Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\), s. 26\(b\)](#)

58F Procedures for placing in secure accommodation.

- (1) The Secretary of State may by regulations make provision for the procedures to be applied in the placing of children in secure accommodation, and without prejudice to the foregoing generality may make provision for the referral of cases to a children’s hearing for review.
- (2) Regulations under this section may specify the duties of the reporter in relation to the placing of children in secure accommodation.
- (3) Regulations under this section may make provision for the parent of a child being informed of the placing of the child in secure accommodation.

58G Transitional provisions.

Regulations made under sections 58A to 58F of this Act may include such transitional provisions as the Secretary of State may consider necessary, including provisions varying the application of any provision in those sections for a transitional period, either generally, or in relation to specified classes of cases.

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PART IV

RESIDENTIAL AND OTHER ESTABLISHMENTS

Provision of residential and other establishments

59 Provision of residential and other establishments by local authorities, and maximum period for repayment of sums borrowed for such provision.

- (1) [^{F182}Subject to section 13A of this Act,] It shall be the duty of a local authority to provide and maintain such residential and other establishments as may be required for their functions under this Act, or arrange for the provision of such establishments.
- (2) For the purpose of discharging their duty under the foregoing subsection a local authority may—
 - (a) themselves provide such establishments as aforesaid; or
 - (b) join with another local authority in providing those establishments; or
 - (c) secure the provision of such establishments by voluntary organisations or other persons including other local authorities.
- (3) The maximum period for the repayment of sums borrowed by a local authority for the purposes of this section shall be such period not exceeding sixty years as may be sanctioned by the Secretary of State; and accordingly in Schedule 6 to the ^{M49}Local Government (Scotland) Act 1947, at the end, there shall be added the following entry, that is to say—

“Section 59 of the Social Work (Scotland) Act 1968. Such period not exceeding sixty years as may be sanctioned by the Secretary of State.”

Textual Amendments

F182 Words inserted (*prosp.*) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), ss. 66(1), 67(2), [Sch. 9 para. 10\(7\)](#)

Marginal Citations

M49 1947 c. 43.

[^{F183}59A Grants in respect of secure accommodation for children.

- (1) The Secretary of State may make to a local authority grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in—
 - (a) providing;
 - (b) joining with another local authority in providing; or
 - (c) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of secure accommodation . . . ^{F184}]
- (2) The conditions subject to which grants are made under subsection (1)

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of this section may include conditions for securing the repayment in whole or in part of such grants.

(3) F185

Textual Amendments

F183 S. 59A inserted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 72

F184 Words repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 10 Pt. I.

F185 S.59A(3) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 10 Pt. I

60 Control of residential and other establishments.

- (1) The Secretary of State may make regulations as to the conduct of residential and other establishments and for securing the welfare of persons resident or accommodated in them, and, without prejudice to the generality of those regulations, they may provide—
- (a) for the construction of, and the accommodation provided in, those establishments, and their equipment, maintenance and management;
 - (b) for the classification, treatment and control of persons resident therein or attending thereat;
 - [^{F186}(bb) for the granting of approval by the Secretary of State for the provision and use of accommodation in residential establishments as secure accommodation;]
 - (c) for the inspection of those establishments and the visiting of persons from time to time by visitors appointed in accordance with the regulations;
 - (d) for notice to be given to the Secretary of State or the local authority with which the person carrying on any such establishment is registered under any enactment of any change of the person in charge of the establishment;
 - (e) for requirements, in the case of children, as to the facilities which are to be given for them to receive a religious upbringing appropriate to the persuasion to which they belong;
 - [^{F187}(ee) for prescribing the minimum age below which a child's liberty shall not be restricted in secure accommodation except with the Secretary of State's consent;]
 - (f) for making available in any of those establishments any service authorised by the National Health Service (Scotland) Act [^{F188}1978];
- and may contain different provisions for different classes of establishments [^{F189}different classes of accommodation in residential and other establishments] and different categories of persons.
- (2) In the foregoing subsection, the expression “treatment” includes training, education and occupation, but does not include medical treatment.
- (3) Where any regulation made in pursuance of this section provides that this subsection shall have effect in relation to the regulation, any person who contravenes or fails to comply with the regulation or any requirement or direction under it shall be liable on summary conviction to a fine not exceeding [^{F190}level 4 on the standard scale].

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Textual Amendments

- F186** S. 60(1)(bb) inserted (30.1.1984) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 8(3)(a)
- F187** S. 60(1)(ee) inserted (30.1.1984) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 8(3)(b)
- F188** Words substituted by National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), Sch. 16 para. 29(1)
- F189** Words inserted (30.1.1984) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 8(3)(c)
- F190** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289C(1), Sch. 7C (as inserted by Criminal Law Act 1977 (c. 45, SIF 39:1), s. 63(1), Sch. 11 paras. 5, 13) and s. 289G (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 54) (and the said Criminal Procedure (Scotland) Act 1975 was repealed (S.) (1.4.1996) by 1995 c. 40, s. 6, Sch. 5), and by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 3(1), Sch. 2 Pt. II it is provided (1.4.1996) that s. 6(5) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 4 on the standard scale instead of a fine of £50

Registration of certain residential and other establishments

61 Restriction on carrying on of establishments.

[^{F191}(1) The following provisions of this Part of this Act apply to any residential or other establishment the whole or a substantial part of whose function is to provide persons with such personal care or support, whether or not combined with board, and whether for reward or not, as may be required for the purposes of this Act.

(1A) For the purposes of subsection (1) above—

“establishment” does not include

- (a) ^{F192}any establishment controlled or managed by a Government department or by a local authority or, subject to sections 61A and 63B below, required to be registered, or in respect of which a person is required to be registered, with a Government department or a local authority under any other enactment, [^{F193}; or
- (b) any establishment providing residential accommodation with nursing falling within section 13A of this Act;]

“personal care” includes the provision of appropriate help with physical and social needs; and

“support” means counselling or other help provided as part of a planned programme of care.]

(2) [^{F194}Subject to section 62(8) and (8A) below] An establishment shall not be carried on by any person unless he is for the time being registered in respect of it in a register kept for the purposes of this section by a local authority or, as the case may be, by the Secretary of State.

(3) Any person who carries on an establishment in contravention of the provisions of subsection (2) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F195}level 4 on the standard scale] and in the case of a second or subsequent conviction to imprisonment for a term not exceeding three

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months or to a fine not exceeding [^{F195}level 4 on the standard scale] or to both such imprisonment and such fine.

Textual Amendments

- F191** S. 61(1)(1A) substituted for subsection (1) by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 1(1)
- F192** “(a)” inserted (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 66(1), 67(2), Sch. 9 para. 10(8)(a)
- F193** Words inserted (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 66(1), 67(2), Sch. 9 para. 10(8)(b)
- F194** Words inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 1(2)
- F195** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289C(1), Sch. 7C (as inserted by Criminal Law Act 1977 (c. 45, SIF 39:1), s. 63(1), Sch. 11 paras. 5, 13) and s. 289G (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 54)

Modifications etc. (not altering text)

- C36** S. 61(3): Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289E (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 54) (liability on first and subsequent convictions) applies (S.)

[^{F196}61A Voluntary registration.

- (1) Any grant-aided school or independent school within the meaning of section 135(1) of the Education (Scotland) Act ^{M50}1980 (which defines terms used in that Act) which performs functions such as are described in section 61(1) above may, but shall not be required to, apply for registration under this Part of this Act in accordance with the provisions of this section.
- (2) Where an application for registration of a grant-aided school or independent school is granted, the establishment shall be entered in the register kept for the purposes of section 61(2) above by the local authority or, as the case may be, the Secretary of State.
- (3) Any certificate of registration granted in respect of an establishment to which this section applies shall relate to the whole of the establishment, excepting any part thereof which is used exclusively for educational purposes.
- (4) The provisions of this Part of this Act shall apply to establishments to which this section applies subject to the following—
 - (a) section 61(2) and (3) shall not apply;
 - (b) section 62(8) and (8A) shall not apply;
 - (c) section 65 shall not apply;
 - (d) the provisions of section 67(1) shall apply only where the person carrying on the establishment has been registered; and
 - (e) section 67(2) shall not apply.]

Textual Amendments

- F196** S. 61A inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 2(1)

Marginal Citations

- M50** 1980 c.44(41:2).

Status: Point in time view as at 01/04/1991. This version of this Act contains provisions that are not valid for this point in time.

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62 Registration.

- (1) Subject to the next following section, an application for registration in respect of an establishment under this section shall be made by the person intending to carry on the establishment to the local authority in the area of which the establishment is situated.
- (2) The application shall be in such form and shall include information about such matters as may be prescribed by the Secretary of State, and the Secretary of State may prescribe different requirements for the applications for different classes of establishments.
- (3) Subject to the provisions of this section, the local authority shall, on receipt of an application under subsection (1) of this section, register the applicant in respect of the establishment named in the application and issue to him a certificate of registration:

Provided that the local authority may refuse to register the applicant if they are satisfied—

- (a) that he or any person employed or proposed to be employed by him in the management of the establishment or any part thereof is not a fit person, whether by reason of age or otherwise, to carry on or to be so employed at an establishment of such a description as the establishment named in the application; or
- (b) that for reasons connected with situation, construction, state of repair, accommodation, staffing or equipment, the establishment or any premises used in connection therewith are not fit to be used for an establishment of such a description as aforesaid; or
- (c) that the way in which it is proposed to conduct the establishment is such as not to provide services or facilities reasonably required by persons resorting to such an establishment.

[^{F197}(4) Without prejudice to subsection (2) of this section, where the person registered in respect of an establishment proposes to employ a manager, that is, a person engaged to run the establishment from day to day, he shall

- (a) include in the application for registration a note of the proposed manager's name; and
- (b) inform the authority, within 28 days in either case, of—
 - (i) the departure of the manager presently employed, or
 - (ii) the employment of a new manager.

(4A) Where any person registered in respect of an establishment employs a manager at the date when this enactment comes into force, he shall within 28 days of that date inform the local authority of the manager's name.

(4B) Where any person registered in respect of an establishment intends to cease to carry on the establishment, he shall give the local authority at least 28 day's notice of that fact.

(4C) The local authority may at any time cancel the registration of a person in respect of an establishment—

- (a) on any ground which would entitle them to refuse an application for the registration of that person in respect of an establishment; or
- (b) on the ground that that person—
 - (i) has failed to notify the authority of a change in manager under subsection (4) above, or

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- (ii) has been convicted of an offence against this section or against any regulations under this Part of this Act relating to the conduct of an establishment; or
 - (c) on the ground that any other person has been convicted of such an offence as is mentioned in subparagraph (b)(ii) above in respect of that establishment; or
 - (d) on the ground that the annual fee for the continuation of registration has not been paid on the due date.]
- [^{F198}(5) It shall be a condition of the registration of any person in respect of an establishment that he shall comply with such reasonable conditions with regard to the proper operation of the establishment as the local authority may impose, and such conditions shall include conditions as to—
- (a) the maximum number of persons (excluding persons carrying on or employed in the establishment and their families) who may be accommodated at any one time in the establishment, and
 - (b) the categories of persons who may be admitted to the establishment.
- (5A) The local authority may, at their own instance or at that of the person registered in respect of the establishment, at any time—
- (a) impose any new condition with regard to the operation of the establishment; or
 - (b) vary any condition imposed under subsection (5) or paragraph (a) above.]
- (6) If any [^{F199}condition, new condition or variation of condition imposed by or under subsection (5) or (5A) above or section 63A(7) below] is not complied with, the person carrying on the establishment shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [^{F200}level 4 on the standard scale] or, in the case of a second or subsequent conviction, to a fine not exceeding [^{F200}level 4 on the standard scale] or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment, and without prejudice to the foregoing provision the power of the local authority to cancel registration under subsection (4) of this section shall include power to cancel the registration on the ground that any such condition has not been complied with.
- [^{F201}(6A) The certificate of registration issued under this section in respect of any premises shall include the following information—
- (a) the name of the person registered in respect of the establishment;
 - (b) the name of any manager appointed by the person mentioned in paragraph (a) above;
 - (c) the address of the premises at which the establishment is to be carried on;
 - (d) the maximum number of persons who may be accommodated in the establishment under subsection (5)(a) above;
 - (e) the categories of persons who may be admitted to the establishment under subsection (5)(b) above,
- and where any material change occurs in any of the information mentioned in this subsection the local authority shall issue a new certificate.
- (6B) Where an establishment to which the provisions of this Part of this Act apply is being carried on on the date when this enactment comes into force the local authority shall, within 60 days of that date, issue to the person carrying on that establishment a new certificate including the information mentioned in subsection (6A) above.]
- (7) The certificate of registration under this section issued in respect of any establishment shall be kept affixed in a conspicuous place in the establishment; and if default is made

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in complying with this subsection the person carrying on the establishment shall be liable on summary conviction to a fine not exceeding [^{F202}level 1 on the standard scale] and to a further fine not exceeding two pounds in respect of each day during which the offence continues after conviction.

- (8) Notwithstanding anything in subsection (1) of this section, where the person registered under this section in respect of an establishment dies, his executor or his widow or any other member of his family may for a period not exceeding four weeks from his death, or such longer period as the local authority may sanction, carry on the establishment without being registered in respect thereof.
- [^{F203}(8A) Notwithstanding anything in subsection (1) of this section, where for any reason the person registered in respect of an establishment ceases to be so registered, the local authority may allow another person to carry on the establishment for such period not exceeding 60 days as the authority may sanction, and subject to such conditions as the authority think appropriate.]
- (9) Where an offence against this or the last foregoing section or any regulations under this Part of this Act relating to establishments has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.
- (10) The registers kept for the purposes of this section shall be available for inspection at all reasonable times, and a person inspecting any such register shall be entitled to make copies of entries therein.

Textual Amendments

- F197** S. 62(4)(4A)(4B)(4C) substituted for s. 62(4) by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(1)
- F198** S. 62(5)(5A) substituted for s. 62(5) by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(2)
- F199** Words substituted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(3)
- F200** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289C(1), Sch. 7C (as inserted by Criminal Law Act 1977 (c. 45, SIF 39:1), s. 63(1), Sch. 11 paras. 5, 13) and s. 289G (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 54) (and the said Criminal Procedure (Scotland) Act 1975 was repealed (S.) (1.4.1996) by 1995 c. 40, s. 6, Sch. 5), and by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 3(1), Sch. 2 Pt. II it is provided (1.4.1996) that s. 6(5) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 4 on the standard scale instead of a fine of £50 for a first offence and £100 for a second or subsequent offence
- F201** S. 62(6A)(6B) inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(4)
- F202** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289F, 289G (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 54)
- F203** S. 62(8A) inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(5)

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Modifications etc. (not altering text)

C37 S. 62(6): *Criminal Procedure (Scotland) Act 1975* (c. 21, SIF 39:1), s. 289(E) (as inserted by *Criminal Justice Act 1982* (c. 48, SIF 39(1)), s. 54) (liability on first and subsequent convictions) applies (S.)

VALID FROM 01/04/1997

[^{F204} 62A Certificate of registration as respects grant-aided or independent school.

A certificate of registration granted under section 62 of this Act as respects an establishment which is a grant-aided, or independent, school shall relate to the whole of the establishment except so much as is used exclusively for educational purposes.]

Textual Amendments

F204 S. 62A inserted (1.4.1997) by 1995 c. 36, s. 34(4) (with ss. 90, 103(1)); S.I. 1996/3201, art. 3(7) (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, art. 2 (with transitional provisions inserted into S.I. 1996/3201 by art. 3))

63 Special provisions for registration by Secretary of State.

- (1) The Secretary of State may direct that applications for registration in respect of any establishment or any class of establishment shall be made to him and accordingly the provisions of the last foregoing section shall apply in relation to any such registration and to an application therefor with the substitution for any reference to a local authority of a reference to the Secretary of State.
- (2) Where in pursuance of this section the Secretary of State registers a person in respect of an establishment, or cancels such a registration, he shall notify the local authority in whose area the establishment is situated.
- (3) The Secretary of State may direct that persons registered with him in respect of any establishment or class of establishment under this section shall cease to be so registered and shall be registered by the appropriate local authority under this Part of this Act.

[^{F205} 63A Appeals against conditions imposed on registration or subsequently.

- (1) Not less than fourteen days before determining—
 - (a) the conditions intended to be imposed under section 62(5) above in respect of the registration of any person in respect of an establishment; or
 - (b) any new condition or variation of an existing condition intended to be imposed under section 62(5A) above,

the Secretary of State or, as the case may be, the local authority shall send by recorded delivery service to the applicant or the person registered, as the case may be, notice of their intention.

- (2) Every notice under subsection (1) above shall contain an intimation that if within fourteen days after the receipt of the notice the applicant or, as the case may be, the

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person registered informs the authority or the Secretary of State in writing of his desire—

- (a) to show cause, in person or by a representative, why the proposed conditions, new conditions or variation of existing conditions should not be imposed;
- (b) to make representations as to what conditions, new conditions or variation of conditions should be imposed in substitution for those proposed,

the authority or the Secretary of State shall, before carrying out their intention, afford him an opportunity so to do.

- (3) The local authority or the Secretary of State, after giving the applicant or the person registered, as the case may be, an opportunity of being heard by them, shall send a notice to him by recorded delivery service informing him of what conditions, new conditions or variation of conditions they have decided to impose.
- (4) A person aggrieved by a notice of a local authority or of the Secretary of State under subsection (3) above may appeal to an appeal tribunal established by Schedule 5 to this Act, and any such appeal shall be brought within twenty-one days of the date of that notice.
- (5) Where an appeal under subsection (4) above relates to the imposition of conditions on the initial registration of a person in respect of an establishment, the registration shall not take effect until—
 - (a) the appeal has been determined; or
 - (b) the time for bringing an appeal has elapsed without—
 - (i) an appeal having been brought, or
 - (ii) an appeal which has been intimated having been proceeded with,and in either of the cases mentioned in paragraph (b) above the registration shall be subject to the conditions proposed in the notice sent to the applicant under subsection (3) above.
- (6) Where an appeal under subsection (4) above relates to the proposed imposition of new conditions or of a variation of existing conditions, the new conditions or variation shall not take effect until—
 - (a) the appeal has been determined; or
 - (b) the time for bringing an appeal has elapsed without—
 - (i) an appeal having been brought, or
 - (ii) an appeal which has been intimated having been proceeded with.
- (7) On any appeal under subsection (4) above the tribunal may confirm or vary any condition, new condition or variation of a condition against which the appeal is brought.]

Textual Amendments

F205 S. 63A inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 4

[^{F206} 63B Special provisions for jointly registrable establishments.

- (1) Subject to the provisions of this section, where a person registered or intending to be registered under section 1 of the Nursing Homes Registration (Scotland) Act ^{M51}1938 (which relates to the registration of nursing homes) in respect of an establishment

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intends that that establishment should also carry out functions in respect of which registration is required under this Act, the provisions of this Part of this Act shall apply in relation to the registration of that person for the purpose of carrying out those functions in that establishment.

- (2) In this Part of this Act “jointly registrable establishment” means an establishment required to be registered under both this Part of this Act and the said Act of ^{M52}1938.
- (3) Any certificate of registration issued by a local authority to such a person as is described in subsection (1) above shall relate to the whole of the establishment, excepting any part thereof which is used exclusively for the purpose of carrying out functions under the said Act of 1938.
- (4) Where a local authority cancel the registration of a jointly registrable establishment under section 62(4) above they shall inform the Health Board responsible under the 1938 Act for the registration of that establishment of the fact of and the reasons for the cancellation.
- (5) Any person who, on the date when this enactment comes into force, is carrying on a jointly registrable establishment which is not registered under this Part of this Act shall within 3 months of that date apply for such registration.
- (6) No fee shall be chargeable by a local authority under section 64A below in respect of any application made by virtue of subsection (5) above.]

Textual Amendments

F206 S. 63B inserted after s. 63 by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 5(1)

Marginal Citations

M51 1938 c.73(113:3).

M52 1938 c.73(113:3).

64 Appeals against refusal or cancellation of registration.

- (1) Not less than fourteen days before refusing an application for registration or cancelling any registration under this Part of this Act, the local authority or, as the case may be, the Secretary of State shall send by recorded delivery service to the applicant or to the person registered, as the case may be, notice of their intention.
- (2) Every such notice shall state the grounds on which the local authority or the Secretary of State intend to refuse or cancel the registration and shall contain an intimation that if within fourteen days after the receipt of the notice the applicant or person registered, as the case may be, informs the authority or the Secretary of State in writing of his desire to show cause, in person or by a representative, why the registration should not be refused or cancelled, as the case may be, the authority or the Secretary of State shall, before carrying out their intention, afford him an opportunity so to do.
- (3) If the local authority or the Secretary of State, after giving the applicant or person registered, as the case may be, an opportunity of being heard by them, decide to refuse the application for registration, or to cancel the registration, they shall send a notice to that effect by recorded delivery service to the applicant or person registered, as the case may be.

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- (4) A person aggrieved by a notice of a local authority or of the Secretary of State refusing an application for registration under this Part of this Act or cancelling any registration thereunder may appeal to an appeal tribunal established by Schedule 5 to this Act; and the cancellation of any registration shall not take effect until the expiration of the time within which an appeal may be brought under this subsection or, where such an appeal is brought, before the determination of the appeal.
- (5) Any appeal under this section shall be brought within twenty-one days from the date of the notice to which the appeal relates.

[^{F207}64A Registration fees.

- (1) Subject to the provisions of this section, a local authority shall impose fees in respect of—
 - (a) an application for registration made by any person in respect of the carrying on of any establishment to which this section applies;
 - (b) the annual continuation of any such registration;
 - (c) an application made by the person registered in respect of the establishment for a variation in any condition imposed under section 62(5) or (5A) of this Act; and
 - (d) the issuing of a new certificate following any change in the information mentioned in section 62(6A) above made at the instance of or resulting from an application by the person registered in respect of the establishment.
- (2) This section applies to any establishment such as is mentioned in section 61(1) of this Act which is a residential establishment other than any establishment—
 - (a) the whole or a substantial part of whose function is to accommodate children for the purposes of this Act; or
 - (b) such as is mentioned in section 61A above.
- (3) The Secretary of State may prescribe—
 - (a) the maximum fees which may be imposed by local authorities under this section; and
 - (b) the times at which fees may be charged.
- (4) Subject to subsection 3(a) above, a local authority shall have regard to their reasonable expenses in carrying out their functions under this Part of this Act in fixing fees under this section:

Provided that where it appears to the authority to be appropriate they may charge a nominal fee, or remit the fee altogether.

- (5) Where an application for registration in respect of an establishment has been made to a local authority before the coming into force of this section no fee shall be payable in respect of that registration.]

Textual Amendments

F207 S. 64A inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 6(1)

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65 Removal of persons from establishments.

(1) Where—

- (a) an establishment is carried on in contravention of section 61 of this Act; or
- (b) notice of intention to cancel the registration in respect of an establishment has been given in pursuance of the last foregoing section;

a local authority where the person carrying on the establishment is registered, or ought to be so registered, with them may, notwithstanding that the time for any appeal under the last foregoing section has not expired or that such an appeal is pending, forthwith remove from the establishment all or any of the persons for whom accommodation is being provided therein; or, in the case of an establishment in respect of which the person carrying it on is registered with him or ought to be so registered, the Secretary of State may in the like circumstances require the local authority in whose area the establishment is situated so to act, and the local authority shall comply with that requirement.

(2) In any case of urgent necessity the Secretary of State may exercise the power conferred on him by the foregoing subsection in respect of any establishment.

(3) For the performance of the functions of a local authority under subsection (1) of this section, any person authorised in that behalf by the authority may, on producing, if so required, a duly authenticated document showing his authority to do so, enter any premises in which the establishment in question is being carried on.

(4) Any person who ^{F208}—

- (a) obstructs the exercise of a power conferred by the last foregoing subsection ^{F209}; or—
- (b) re-occupies the premises for the purpose of carrying on the establishment without any appeal under section 64 above having been decided in his favour,]

shall be liable on summary conviction to a fine not exceeding ^{F210}level 4 on the standard scale] in the case of a first offence or ^{F210}level 4 on the standard scale] in the case of a second or any subsequent offence.

Textual Amendments

F208 “-(a)” inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 7(1)(a)

F209 S. 65(4)(b) and the word “; or—” immediately preceding it inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 7(1)(b)

F210 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289C(1), Sch. 7C (as inserted by Criminal Law Act 1977 (c. 45, SIF 39:1), s. 63(1), Sch. 11 paras. 5, 13) and s. 289G (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 54) (and the said Criminal Procedure (Scotland) Act 1975 was repealed (S.) (1.4.1996) by 1995 c. 40, s. 6, Sch. 5) and by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 3(1), Sch. 2 Pt. II it is provided (1.4.1996) that s. 6(5) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 4 on the standard scale instead of a fine of £10 for a first offence and £50 for a second or subsequent offence

66 Duty to furnish particulars of establishments.

- (1) Subject to the next following subsection, it shall be the duty of the person in charge of an establishment to send to the local authority or, as the case may be, the Secretary of State such particulars of the establishment and the persons accommodated or to

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be accommodated therein as the Secretary of State may from time to time prescribe, and the Secretary of State may prescribe different particulars for different classes of establishments.

- (2) A person in charge of an establishment shall comply with the provisions of the foregoing subsection—
 - (a) within three months from the date on which the establishment was first carried on; and
 - (b) in every year (other than the year in which the establishment was first carried on) before such date as may be prescribed.
- (3) Where the Secretary of State varies the prescribed particulars to be furnished under subsection (1) of this section as respects establishments, then—
 - (a) the person in charge of an establishment shall send the prescribed particulars to the local authority or, as the case may be, to the Secretary of State within three months from the date of the variation; and
 - (b) as respects an establishment which was first carried on before, but not more than three months before, the date of the variation, paragraph (a) of the foregoing subsection shall not apply; and
 - (c) paragraph (b) of the foregoing subsection shall not apply as respects the year in which the variation is made.
- (4) A person who fails to furnish particulars in accordance with the foregoing provisions of this section shall be liable on summary conviction to a fine not exceeding [^{F211}level 1 on the standard scale] and to a further fine not exceeding two pounds in respect of each day during which the failure continues after conviction.

Textual Amendments

F211 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G** (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 54**)

67 Inspection of establishments by local authorities.

- (1) Any [^{F212}duly authorised officer of][^{F212}person duly authorised by] a local authority may in the area of that authority enter any establishment where the person carrying on the establishment is registrable under section 62 of this Act for the purpose of making such examinations into the state and management of the place, and the condition and treatment of the persons in it, as he thinks necessary, and for the purpose of inspecting any records or registers [^{F213}required to be kept therein by virtue of this Part of this Act][^{F213}(in whatever form they are held) relating to the place or to any person for whom services have been or are provided there by virtue of this Act or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984], and the provisions of subsections (2) [^{F214}to 2D], (4) and (5) of section 6 of this Act shall apply in relation to [^{F215}an officer][^{F215}a person] acting in pursuance of this section as they apply in relation to [^{F216}an officer of][^{F216}a person authorised by] the Secretary of State acting in pursuance of that section.
- (2) Any such [^{F217}officer][^{F217}person] as aforesaid may at all reasonable times exercise the like powers of entry and inspection conferred on him by the foregoing subsection in respect of any place in the area of the local authority which is used or which that [^{F217}officer][^{F217}person] has reasonable cause to believe is being used as an

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establishment in respect of which the person carrying it on is registrable under section 62 of this Act.

Textual Amendments

- F212** Words commencing “person” substituted (1.4.1991) for words commencing “duly authorised” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 10\(9\)\(a\)](#)
- F213** Words commencing “(in whatever” substituted (1.4.1991) for words commencing “required” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 10\(9\)\(b\)](#)
- F214** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 10\(9\)\(c\)](#)
- F215** Words “a person” substituted (1.4.1991) for “an officer” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 10\(9\)\(d\)](#)
- F216** Words “a person authorised by” substituted (1.4.1991) for “an officer of” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 10\(9\)\(e\)](#)
- F217** Word “person” substituted (1.4.1991) for “officer” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 10\(10\)](#)

68 Visiting of persons in establishments on behalf of local authorities.

- (1) It shall be the duty of local authorities from time to time to cause persons in establishments in their area to be visited in the interests of the well-being of the persons, and any person authorised in that behalf by a local authority may on producing if so required a duly authenticated document showing his authority to do so, enter any establishment in the area of the authority for the purpose of visiting the persons in the establishment.
- (2) Any person authorised in that behalf by a local authority may, on producing, if so required, such a document as aforesaid, enter any establishment outside the area of the authority for the purpose of visiting children in the establishment who are in the care or under the supervision of the authority under Part II or Part III of this Act or persons who are receiving assistance from the authority under this Act.
- (3) Any person who obstructs the exercise of a power conferred by this section shall be liable on summary conviction to a fine not exceeding [^{F218}level 3 on the standard scale] in the case of a first offence or [^{F218}level 3 on the standard scale] in the case of a second or any subsequent offence.

Textual Amendments

- F218** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), ss. 289E—289G](#) (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 54](#))

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PART V

RETURN AND REMOVAL OF CHILDREN WITHIN UNITED KINGDOM

Absence without leave

69 Abscondment from a place of safety, or from the control of a person imposed by a supervision requirement.

(1) If a child—

- (a) absconds from a place of safety in which he has been detained by virtue of this Act, or
- (b) absconds from the control of a person under which he has been placed by a supervision requirement or by virtue of rules made by the Secretary of State under section 45 of this Act,

he may be arrested without a warrant in any part of the United Kingdom or the Channel Islands [^{F219}; and a court, if satisfied that there are reasonable grounds for believing that the child is within any premises, may grant a search warrant authorising a constable to search those premises for the child.]

(2) A child arrested in pursuance of this section shall be brought back—

- (a) in a case falling within paragraph (a) of subsection (1), to the place of safety,
- (b) in a case falling within paragraph (b) of that subsection, to the person under whose control he has been placed.

(3) If, in the case of a child required to be brought back in pursuance of the last foregoing subsection—

- (a) the occupier of the place of safety, or
- (b) the person under whose control he has been placed,

is unwilling or unable to receive him, the child shall be detained in a place of safety until the reporter has considered, in pursuance of section 37 of this Act, whether the child may be in need of compulsory measures of care, or as the case may be, until he can be brought before a children's hearing for the consideration of his case or for a review of the supervision requirement to which he is subject.

(4) A children's hearing arranged for the purposes of the last foregoing subsection shall meet within a period of seven days from the date of the commencement of the detention of the child, and no child shall be detained under that subsection after the hearing have met or beyond that period.

[^{F220}(5) In this and the next following section any reference—

- (a) to a child absconding includes a reference to his being unlawfully taken away;
- (b) to a child absconding from a place or from the control of a person includes a reference to his absconding while being taken to, or awaiting being taken to, that place or that person as the case may be.]

Textual Amendments

F219 Words added by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 58\(a\)](#)

F220 [S. 69\(5\)](#) substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 58\(b\)](#)

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70 Abscondment from residential establishments.

If a child who is required by a supervision requirement to reside in a residential establishment—

- (a) absconds from the establishment in which he resides; or
- (b) absconds from any hospital or other institution in which he is temporarily residing; or
- (c) being absent on leave from the residential establishment, either runs away from the person in whose charge he is or fails to return to the establishment at the end of his leave;

he may be arrested without a warrant in any part of the United Kingdom or the Channel Islands and brought back—

- (i) in a case falling within paragraph (b) to the place from which he absconded; or
- (ii) where he has run away from the person mentioned in paragraph (c), to that person; or
- (iii) in any case, to the residential establishment [F221; and a court, if satisfied that there are reasonable grounds for believing that the child is within any premises, may grant a search warrant authorising a constable to search those premises for the child.]

Textual Amendments

F221 Words added by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 59](#)

71 Harboursing.

Any person who knowingly—

- (a) assists or induces or persistently attempts to induce a child so to act as to be liable to be brought back in pursuance of either of the two last foregoing sections, or
- (b) harbours or conceals a child so liable or prevents him from returning to a place or person mentioned in either of those sections,

shall be liable on summary conviction to a fine not exceeding [F222]level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

Textual Amendments

F222 Words substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 60](#) and by virtue of (E.W.) [Criminal Justice Act 1982 \(c.48, SIF 39:1\)](#), [s. 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#) (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 54](#))

Modifications etc. (not altering text)

- C38** [S. 71](#) excluded (E.W.) (14.10 1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), [ss. 51\(5\)\(6\)\(7\)\(b\)](#), 108(2); [S.I.1991/828](#), [art.3\(2\)](#)
- C39** [S. 71](#) restricted (N.I.) (4.11.1996) by [S.I. 1995/755 \(N.I. 2\)](#), [art. 70\(6\)\(7\)\(c\)](#); [S.R. 1996/297](#), [art. 2\(2\)](#)

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Transfer

72 Supervision of children moving to England or Wales or Northern Ireland.

- (1) Where a children’s hearing are satisfied that a child in respect of whom a supervision requirement under section 44(1)(a) of this Act is in force proposes to reside or is residing in England or Wales or in Northern Ireland they may either—
- discharge the supervision requirement; or
 - send notification of the requirement to a juvenile court acting for the petty sessions area in which the child proposes to reside or is residing.
- [^{F223}(1A) The juvenile court in England or Wales to which notification of a supervision requirement is sent under this section may make a supervision order in respect of the person to whom the notification relates but, notwithstanding anything in section 76(1) of this Act, shall not include in the order a requirement authorised by section 12 of the ^{M53}Children and Young Persons Act 1969 unless that person is before the court when the supervision order is made; and in relation to a supervision order made by virtue of this subsection—
- section 15 of that Act shall have effect as if subsection (2) were omitted; and
 - section 17 of that Act shall have effect as if in paragraph (a) the references to three years and the date on which the order was originally made were respectively references to one year and the date on which the said notification was sent and as if in paragraph (b) the words from “the order was” to “and” were omitted.]
- (2) The juvenile court [^{F224}in Northern Ireland] to which notification of a supervision requirement is sent under this section may make in respect of the child subject to that requirement a supervision order placing him under the supervision of a probation officer for a period not exceeding one year beginning with the day on which the notification was sent; and the provisions . . . ^{F225} of the ^{M54}Children and Young Persons Act (Northern Ireland) 1950 shall apply to any such order as those provisions . . . ^{F225} apply . . . ^{F225} to a supervision order within the meaning of section 63(1)(d) of the said Act of 1950.
- (3) Where a case is disposed of by a juvenile court in pursuance of this section in respect of a child subject to a supervision requirement, the requirement shall cease to have effect.
- (4) In this section “petty sessions area” [^{F226}in relation to England and Wales, has the same meaning as in the said Act of 1969] and in relation to Northern Ireland means “petty sessions district” within the meaning of Part III of the [^{F227M55}Magistrates’ Courts (Northern Ireland) Order 1981].

Textual Amendments

F223 S. 72(1A) inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 58\(1\)](#)

F224 Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 58\(2\)](#)

F225 Words repealed by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(d), [Sch. 6](#)

F226 Words substituted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 58\(3\)](#)

F227 Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), [Sch. 6 para. 14](#)

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Marginal Citations

M53 1969 c. 54.

M54 1950 c. 5 (N.I.)

M55 1981/1675 (N.I. 26).

73 Supervision of children moving to Scotland.

(1) Where a juvenile court in England or Wales or in Northern Ireland is satisfied that a child in respect of whom a probation order or a supervision order is in force proposes to reside or is residing in Scotland, the court may either—

- (a) discharge the probation order or supervision order; or
- (b) send notification of that order to the reporter of the local authority for the area in which the child proposes to reside or is residing;

and on the receipt of such a notification it shall be the duty of the reporter

[^{F228}(i) in the case of a supervision order made by virtue of [^{F229}sections 189(4) and 390(4) of the ^{M56}Criminal Procedure (Scotland) Act 1975] to notify the appropriate court and to transmit to that court all documents and certified copies of documents relating to the case which the reporter has received by virtue of section 76 of this Act;

(ii) in any other case.]

to arrange a children’s hearing for the consideration and determination of the case under Part III of this Act.

[^{F230}In this subsection “the appropriate court” means the sheriff having jurisdiction in the area in which the child proposes to reside or is residing or, where the original probation order was imposed by the High Court of Justiciary, that Court.]

[^{F231}(1A) Where a court in England or Wales is satisfied that a child in respect of whom the court proposes to make a supervision order is residing or proposes to reside in Scotland, the court may make the order notwithstanding anything in subsection (1) of section 18 of the ^{M57}Children and Young Persons Act 1969 (which relates to residence of the supervised person in England or Wales); and where the court makes a supervision order by virtue of this subsection—

- (a) the areas to be named in the order in pursuance of subsection (2)(a) of the said section 18 shall be those in which the court is sitting;
- (b) the order may require the supervised person to comply with directions of the supervisor with respect to his departure to Scotland, and any such requirement shall, for the purposes of sections 15 and 16 of that Act (which relate to the variation and discharge of supervision orders), be deemed to be included in the order in pursuance of section 12(2) of that Act; and
- (c) the court shall send notification of the order as mentioned in paragraph (b) of the foregoing subsection and the provisions of that subsection relating to the duty of the reporter shall apply accordingly.]

(2) For the purposes of a children’s hearing arranged in pursuance of the foregoing [^{F232}provisions of this section] the notification by a . . . ^{F233}court of a probation order or supervision order shall be conclusive evidence of the existence of that order in relation to the child.

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- (3) When a children’s hearing have disposed of a case referred to them under this section the probation order or the supervision order in respect of the child shall cease to have effect.

Textual Amendments

- F228** S. 73(1)(i)(ii) inserted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), **Sch. 5 para. 59(1)**
- F229** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 460(1)(b)**
- F230** Definition inserted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), **Sch. 5 para. 59(1)**
- F231** S. 73(1A) inserted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), **Sch. 5 para. 59(2)**
- F232** Words substituted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), **Sch. 5 para. 59(3)**
- F233** Words repealed by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(d), **Sch. 6**

Modifications etc. (not altering text)

- C40** S. 73(1) extended (E.W.) (S.) by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 189(6), 390(6)** (which said ss. 189(6), 390(6) ceased to have effect (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3 Pt. II para. 7(4)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**)

Marginal Citations

- M56** 1975 c. 21.
M57 1969 c. 54.

74 Parent of a child in a residential establishment under a supervision requirement moving to England or Wales or Northern Ireland.

- (1) Where a children’s hearing are satisfied that the parent of a child who is required to reside in a residential establishment under a supervision requirement made under section 44(1)(b) of this Act proposes to reside or is residing in England or Wales or in Northern Ireland they shall review the requirement, and on such review they may as they think proper—
- discharge the supervision requirement;
 - continue the supervision requirement;
 - vary the supervision requirement by making a supervision requirement under subsection (1)(a) of the said section 44 and send notification of that requirement in accordance with section 72(1)(b) of this Act; or
 - make a report on the case to the Secretary of State with a recommendation for the transfer of the child in accordance with the following provisions of this section.
- (2) If the Secretary of State is for any reason unable to accept a recommendation for the transfer of a child made under paragraph (d) of subsection (1) of this section, he may refer the matter back to the children’s hearing for their reconsideration of the case, or himself discharge the supervision requirement.
- (3) Where such a recommendation is made and is not dealt with under subsection (2) of this section, the Secretary of State may make an order transferring the child to the care of the managers of a school . . . ^{F234} in Northern Ireland, being . . . ^{F234}, a training school

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within the meaning of the ^{M58}Children and Young Persons Act (Northern Ireland) 1950 or, . . . ^{F234}, committing him to the care of the local authority or, as the case may be, of the welfare authority in whose area the parent of the child proposes to reside or is residing.

- (4) The provisions of . . . ^{F234} the said Act of 1950 shall apply to any order under this section transferring a child to the care of the managers of . . . ^{F234} a training school as if it were . . . ^{F234} a training school order made by a court on the date on which the supervision requirement was originally made under section 44 of this Act in respect of the child:

Provided that—

- (a) notwithstanding anything in . . . ^{F234} section 75 of the said Act of 1950, the order under this section shall not be authority for his detention in . . . ^{F234} a training school after he has attained the age of eighteen years,
- (b) the contributions to be made in respect of him under . . . ^{F234} section 126 of the said Act of 1950 shall be made by such council as may be named in the order under this section, being the council within whose district his parent proposes to reside or is residing at the time of the order.
- (5) The provisions . . . ^{F234}, of the said Act of 1950 shall apply to any order under this section committing a child to the care . . . ^{F234}, of a welfare authority as if it were an order made by a court under . . . ^{F234} that Act.
- [^{F235}(6) An order under this section committing a child to the care of a local authority shall have effect as if it were a care order under the [^{F236}Children and Young Persons Act 1969, but as if sections 20(2) and 21(5) of that Act and in section 20(3) of that Act paragraph (a) and the words “in any other case” in paragraph (b) were omitted][^{F236}Children Act 1989, but as if section 31(8) were omitted].]

Textual Amendments

F234 Words repealed by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(d), [Sch. 6](#)

F235 [S. 74\(6\)](#) inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 60](#)

F236 Words “Children Act 1989, but as if section 31(8) were omitted” substituted (*prosp.*) for words commencing “Children and Young Persons Act 1969” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2) (5), [Sch. 13 para. 21](#)

Marginal Citations

M58 [1950 c. 5 \(N.I.\)](#)

75 Parent of a child subject to an approved school order or a committal order moving to Scotland.

- (1) Where . . . ^{F237}[^{F238}the Secretary of State] is satisfied that the parent of a child who is subject to an . . . ^{F237} training school order [^{F239}or an order under section 74(3) of this Act relating to a training school] proposes to reside or is residing in Scotland, he may refer the case to the reporter of the local authority of the area in which the parent of the child is proposing to reside or is residing and if the case is so referred the reporter shall arrange a children’s hearing for the consideration and determination of the case under Part III of this Act.

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- (2) Where a child has been committed to the care of a local authority in England or Wales [^{F240}by a care order (other than an interim order) within the meaning of the [^{F241}Children and Young Persons Act 1969][^{F241}Children Act 1989] or an order under section 74(3) of this Act], or committed to the care of a welfare authority in Northern Ireland under Part III of the ^{M59}Children and Young Persons Act (Northern Ireland) 1950 or Part I of the ^{M60}Education Act (Northern Ireland) 1947 [^{F242}or the said section 74(3)] and that authority are satisfied that the parent of the child proposes to reside or is residing in Scotland, the authority may make the like reference of the case as mentioned in the foregoing subsection and the reporter shall arrange a children’s hearing accordingly.
- (3) Any reference under subsection (1) or subsection (2) of this section shall include particulars of the . . . ^{F237} training school order [^{F243}or order under the said section 74(3) relating to a training school] or, as the case may be, of the order committing the child to the care of the local or welfare authority; and for the purposes of any children’s hearing arranged pursuant to the reference those particulars shall be conclusive evidence of the existence of that order in relation to the child.
- (4) When a children’s hearing have disposed of a case referred to them under this section the order [^{F244}under the said section 74(3) or] of the court in England or Wales or in Northern Ireland in respect of the child shall cease to have effect.

Textual Amendments

- F237** Words repealed by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(d), [Sch. 6](#)
- F238** Words substituted by virtue of [S.I. 1973/2163](#), [arts. 2\(1\)](#), 11(5)
- F239** Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 61\(1\)](#)
- F240** Words substituted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 61\(2\)](#)
- F241** “Children Act 1989” substituted (*prosp.*) for “Children and Young Persons Act 1969” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(5), [Sch. 13 para. 22](#)
- F242** Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 61\(2\)](#)
- F243** Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 61\(3\)](#)
- F244** Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 61\(4\)](#)

Modifications etc. (not altering text)

- C41** [S. 75\(2\)](#) extended by [Local Authority Social Services Act 1970 \(c. 42, SIF 81:3\)](#), s. 2(1), [Sch. 1](#)

Marginal Citations

- M59** 1950 c. 5 (N.I.)
M60 1947 c. 3 (N.I.)

76 Procedure.

- (1) A children’s hearing or . . . ^{F245} court, in exercising any jurisdiction under this Part of this Act in respect of a child, may proceed in the absence of the child or his parent or both.

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- (2) It shall be the duty of the reporter at any children’s hearing arranged for the purposes of section 72 of this Act and of the clerk to any . . . ^{F245} court referring a case to a reporter for the purposes of section 73 of this Act to ensure that all documents relating to the case or certified copies thereof are transmitted to the . . . ^{F245} court or, as the case may be, to the reporter to which the case stands referred.
- (3) Where a child is to be transferred from a residential establishment in Scotland to any place in England or Wales or in Northern Ireland under this Part of this Act, it shall be the duty of the local authority responsible for the child to ensure the transfer of the child to that place.
- (4) Where a children’s hearing is arranged under this Part of this Act in respect of a child subject to an . . . ^{F245} training school order [^{F246} or order under section 74(3) of this Act relating to a training school] or committed to the care of a local authority in England or Wales or of a welfare authority in Northern Ireland, it shall be the duty of the managers . . . ^{F245} of the training school or, as the case may be, of that local or welfare authority to ensure the transfer of the child to the place notified to them by the reporter.

Textual Amendments
F245 Words repealed by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(d), [Sch. 6](#)
F246 Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 62](#)

Modifications etc. (not altering text)
C42 [S. 76\(4\)](#) extended by [Local Authority Social Services Act 1970 \(c. 42, SIF 81:3\)](#), s. 2(1), [Sch. 1](#)

77 Meaning of child for the purposes of this Part of this Act.

- (1) “Child” in this Part of this Act means—
 - (a) for the purpose of sections 69 to 71, a child within the meaning of Part III of this Act,
 - (b) ^{F247}
 - (c) for any other purpose, a person under eighteen.
- (2) “Parent” in this Part of this Act includes a guardian.

Textual Amendments
F247 [S. 77\(1\)\(b\)](#) repealed by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), [ss. 72\(4\), 73\(4\)\(d\)](#), [Sch. 6](#)

PART VI

CONTRIBUTIONS IN RESPECT OF CHILDREN IN CARE ETC.

78 Duty to make contributions in respect of children in care etc.

- (1) Where a child has been received into care under Part II of this Act or a supervision requirement to which this Part of this Act applies has been made in respect of him,

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contributions in respect of the child (hereinafter in this Part of this Act referred to as the “maintainable child”) shall be payable—

- (a) while the maintainable child is under sixteen years of age, by his father and mother;
- (b) if he is over sixteen years of age . . . ^{F248}, by the maintainable child himself.

(2) Supervision requirements to which this Part of this Act applies are requirements made under paragraph (a) of section 44(1) of this Act which impose a condition of residence on a child, other than a condition that he resides at his own home, and requirements made under paragraph (b) of the said section 44(1).

[^{F249}(2A) No contributions shall be payable under subsection (1)(a) of this section by a contributor during a period when he is in receipt [^{F250}of income support or family credit.]]

(3) In this Part of this Act “contributor” means a person liable to make contributions by virtue of subsection (1) of this section in respect of a maintainable child.

Textual Amendments

F248 Words repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [Sch. 10 Pt. I](#)

F249 [S. 78\(2A\)](#) inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [s. 19\(6\)\(b\)](#)

F250 Words substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), [s. 86\(1\)](#), [Sch. 10 para. 41\(1\)](#)

Modifications etc. (not altering text)

C43 [S. 78](#) excluded by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), [s. 31\(3\)](#)

[^{F251}78A Recovery of contributions.

(1) Section 87 of this Act (charges for services and accommodation)

shall not apply to the provision of services (including accommodation) under this Act in respect of maintainable children, and the provisions of this section shall apply thereto.

(2) A local authority providing such services may recover from a contributor a contribution (if any) of such amount as is reasonable and, subject to that, may recover—

- (a) a standard contribution determined by them in respect of maintainable children who are in their care or under their supervision; or
- (b) such other contribution as they consider reasonable in the circumstances.]

Textual Amendments

F251 [S. 78A](#) inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [s. 19\(7\)](#)

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79 Recipients of contributions.

- (1) Subject to the provisions of the following subsection, contributions payable under the last foregoing section shall be payable to the local authority within whose area the contributor is residing, and shall, in the case of contributions paid in respect of a maintainable child in the care or under the supervision of a local authority, other than the authority to whom the contributions are payable as aforesaid, be paid over by the last-mentioned authority to that other authority, but subject to such deductions in respect of services rendered by the local authority to whom the contributions were payable as may be agreed between the authorities concerned or as, in default of agreement, may be determined by the Secretary of State.
- (2) Where a contributor is for the time being residing in England or Wales or Northern Ireland contributions payable by him under the last foregoing section shall be payable to the local authority having the care or supervision of the child.

80 Enforcement of duty to make contributions.

- (1) Where a child becomes a maintainable child by virtue of being received into care by a local authority under Part II of this Act or by virtue of a supervision requirement, any court of summary jurisdiction, having jurisdiction in the place where the contributor is for the time being residing, may, on the application of the local authority, at any time make an order on any contributor, hereinafter in this Act referred to as a contribution order, for weekly contributions in respect of the child of such amount as the court thinks proper.
- (2) ^{F252}
- (4) Subject to the following provisions of this section, a contribution order in respect of a maintainable child shall remain in force—
 - (a) if the child is in the care of a local authority under Part II of this Act, so long as he remains in their care under that Part;
 - (b) if the child is a maintainable child by virtue of a supervision requirement, so long as that requirement is in force.
- (5) No contribution shall be payable, by virtue of a contribution order by a contributor who is the maintainable child's father or mother, in respect of any period after the maintainable child becomes sixteen.
- (6) A contribution order may be revoked or varied by any court of summary jurisdiction having jurisdiction in the place where the contributor is for the time being residing and shall be enforceable in like manner as a decree for aliment.
- (7) Where a contributor resides in England or Wales or Northern Ireland this section shall have effect as if for any reference to a court of summary jurisdiction having jurisdiction in a place where the contributor is for the time being residing there were substituted a reference to a court of summary jurisdiction having jurisdiction in any place within the area of the local authority having the care or supervision of the child.

Textual Amendments

F252 S. 80(2)(3) repealed by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108(3), [Sch. 8](#)

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81 Provisions as to decrees for aliment.

- (1) ^{F253}
- (2) [^{F254}Where a decree for aliment of a maintainable child is in force], on the application of the local authority concerned, any court of summary jurisdiction having jurisdiction in the place where the [^{F255}person liable under the decree] is for the time being residing may, at any time, order the payments under the decree . . . ^{F256} to be paid to the local authority who are from time to time entitled under either of the last two foregoing sections to receive contributions in respect of the child.
- (3) ^{F257} where an order made under this section in respect to a decree for aliment is in force any sums received under the decree for aliment shall be applied in like manner as if they were contributions received under a contribution order.
- (4) (a) In this section the local authority concerned means the local authority which may make application for a contribution order in respect of a child under the last foregoing section;
- (b) where the [^{F258}person liable to pay aliment for a child under a decree] is resident in England or Wales or Northern Ireland, subsection (2) of this section shall have effect as if for the reference to a court of summary jurisdiction having jurisdiction in the place where [^{F258}that person] is for the time being residing, there were substituted a reference to a court of summary jurisdiction having jurisdiction in any place within the area of the local authority concerned.

Textual Amendments

F253 S. 81(1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), Sch. 2

F254 Words substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), Sch. 1 para. 9(3)(a)

F255 Words substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), Sch. 1 para. 9(3)(b)

F256 Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), Sch. 1 para. 9(3)(c), Sch. 2

F257 Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), Sch. 2

F258 Words substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), Sch. 1 para. 9(4)

82 Recovery of arrears of contributions.

- (1) Where, by virtue of an order or decree made under either of the last two foregoing sections, any sum is payable to a local authority, the local authority in whose area the person liable under the order or decree is for the time being residing, or, as the case may be, the local authority having the care or supervision of the child to whom the order or decree relates, shall be entitled to receive and give a discharge for, and, if necessary, enforce payment of, any arrears accrued due under the order or decree, notwithstanding that those arrears may have accrued at a time when he was not resident in that area or, as the case may be, when the authority were not entitled to sums payable under the order or decree.

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- (2) In any proceedings under either of the last two foregoing sections, a certificate purporting to be signed by the clerk to a local authority for the time being entitled to receive contributions, or by some other officer of the authority duly authorised in that behalf, and stating that any sum due to the authority under an order or decree is overdue and unpaid, shall be sufficient evidence of the facts stated therein.

83 Variation of trusts.

- (1) Where a child is by virtue of a supervision requirement removed from the care of any person and that person is entitled under any trust to receive any sum of money in respect of the maintenance of the child, on the application of the local authority concerned any court of summary jurisdiction, having jurisdiction in the place where that person is for the time being residing, may at any time order the whole or any part of the sums so payable under the trust to be paid to the local authority, to be applied by the authority for the benefit of the child in such manner as, having regard to the terms of the trust, the court may direct.
- (2) Where the person in whose care a child has been residing is for the time being residing in England or Wales or Northern Ireland the foregoing subsection shall have effect as if for the reference to a court having jurisdiction in the place where that person is residing there were substituted a reference to a court of summary jurisdiction having jurisdiction in any place within the area of the local authority having the care or supervision of the child.

VALID FROM 12/12/1996

[^{F259} 83A References in this Part of this Act to child being looked after.

In this Part of this Act, references to a child being looked after by a local authority shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.]

Textual Amendments

F259 S. 83A inserted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(23) (with s. 103(1)); S.I. 1996/3201, art. 3(6)(7) (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, art. 2 (with transitional provisions inserted into S.I. 1996/3201 by art. 3))

PART VII

MISCELLANEOUS AND GENERAL

General

84 Transfer of assets and liabilities.

Where any functions are transferred to a local authority by virtue of this Act all property, rights, liabilities and obligations relating to the performance of those

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functions which immediately before the date of transfer were the property, rights, liabilities and obligations of the body or person from which the functions are transferred shall on that date be transferred to and vest in the local authority or, as the case may be, the local authorities to which the functions have been transferred, and the provisions of Schedule 6 to this Act shall have effect for the purposes of this section.

85 F260

Textual Amendments

F260 S. 85 repealed by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), Sch. 4 Pt. I

86 Adjustments between authority providing accommodation etc., and authority of area of residence.

(1) Any expenditure which apart from this section would fall to be borne by a local authority—

- (a) in the provision under this Act of accommodation for a person ordinarily resident in the area of another local authority, or
- (b) in the provision under Part II of this Act of services and facilities for a person ordinarily so resident (including, in the case of a child, any expenses incurred after he has ceased to be a child, and, in the event of his care being taken over by virtue of section 15(4) of this Act including also any travelling or other expenses incurred in connection with the taking over), or
- (c) for the conveyance of a person ordinarily resident as aforesaid, or
- (d) in administering a supervision requirement in respect of a person ordinarily resident as aforesaid, [F261 or]

[F261(e) in the provision of accommodation, services or facilities for persons ordinarily so resident under section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984;]

shall be recoverable from the other local authority, and in this subsection any reference to another local authority includes a reference to a local authority in England or Wales.

(2) Any question arising under this section as to the ordinary residence of a person shall be determined by the Secretary of State, and the Secretary of State may determine that a person has no ordinary residence.

(3) In determining for the purposes of subsection (1) of this section the ordinary residence of any person or child, any period during which he was a patient in a hospital [F262 forming part of the hospital and specialist services] provided under [F263 sections 2 and 3 of the M61 National Health Service Act 1977] or [F264 Part II of the M62 National Health Service (Scotland) Act 1978] [F265 or in a hospital managed by a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or section 12A of the National Health Service (Scotland) Act 1978] or, in the case of a child, any period during which he resided in any place as an inmate of a school or other institution, or in accordance with the requirements of a supervision requirement, supervision order or probation order or the conditions of a recognizance, or while boarded out under this Act or under [F266 the [F267M63 Child Care Act 1980] or] the M64 Children and Young Persons (Scotland) Act 1937 by a local authority or

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education authority [^{F268}or placed with local authority foster parents under the Children Act 1989] shall be disregarded.

Textual Amendments

- F261** S. 86(1)(e) and the word “or” immediately preceding it inserted (1.4.1991) by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(11)**
- F262** Words repealed (S.) by **National Health Service (Scotland) Act 1972** (c. 58, SIF 113:3), **Sch. 7 Pt. II**
- F263** Words substituted by **National Health Service Act 1977** (c. 49, SIF 113:2), **Sch. 15 para. 48**
- F264** Words substituted by **National Health Service (Scotland) Act 1978** (c. 29, SIF 113:2), **Sch. 16 para. 29(2)**
- F265** Words inserted by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(12)**
- F266** Words repealed (*prosp.*) by **Children Act 1989** (c. 41, SIF 20), s. 108(2)(5)(7), Sch. 13 para. 23, **Sch. 15**
- F267** Words substituted by **Child Care Act 1980** (c. 5, SIF 20), **Sch. 5 para. 22**
- F268** Words inserted (*prosp.*) by **Children Act 1989** (c. 41, SIF 20), s. 108(2)(5), **Sch. 13 para. 23**

Marginal Citations

- M61** 1977 c. 49.
- M62** 1978 c. 29.
- M63** 1980 c. 5.
- M64** 1937 c. 37.

VALID FROM 01/04/1993

[^{F269}86A Exclusion of powers to provide accommodation in certain cases.

- (1) Subject to subsection (3) below, no accommodation may be provided under this Act for any person who, immediately before the date on which this section comes into force, was ordinarily resident in relevant premises.
- (2) In subsection (1) above “relevant premises” means—
 - (a) any establishment in respect of which a person is registered under section 62 of this Act;
 - (b) any nursing home within the meaning of the Nursing Homes Registration (Scotland) Act ^{M65}1938 in respect of which a person is registered or exempt from registration under that Act;
 - (c) any private hospital registered under section 12 of the Mental Health (Scotland) Act ^{M66}1984; and
 - (d) such other premises as the Secretary of State may by regulations prescribe.
- (3) The Secretary of State may by regulations provide that in such cases and subject to such conditions as may be prescribed subsection (1) above shall not apply in relation to such classes of persons as may be prescribed in the regulations.
- (4) The Secretary of State shall by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in any premises for the purposes of subsection (1) above.

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(5) This section does not affect the validity of any contract made before the date on which this section comes into force for the provision of accommodation on or after that date or anything done in pursuance of such a contract.]

Textual Amendments

F269 S. 86A inserted (S.) (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 57; S.I. 1992/2975, art. 2(2), Sch.

Modifications etc. (not altering text)

C44 S. 86A(1) restricted (1.4.1993) by S.I. 1993/477, regs. 4-9.

Marginal Citations

M65 1938 c. 73(113:3).

M66 1984 c. 36(85).

87 Charges that may be made for services and accommodation.

[^{F270}(1) Subject to sections 78 and 78A of this Act (contributions in respect of maintainable children) and to the following provisions of this section, a local authority providing a service under this Act [^{F271}or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984] may recover such charge (if any) for it as they consider reasonable.

(1A) If a person—

- (a) avails himself of a service provided under this Act [^{F272}or section 7 or 8 of the said Act of 1984]; and
- (b) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it,

the authority shall not require him to pay more for it than it appears to them that it is practicable for him to pay.]

(2) Persons, other than maintainable children, for whom accommodation is provided under this Act [^{F273}or section 7 of the said Act of 1984], shall be required to pay for that accommodation in accordance with the subsequent provisions of this section.

(3) Subject to the following provisions of this section, accommodation provided under this Act [^{F273}or section 7 of the said Act of 1984] shall be regarded as accommodation provided under Part III of the ^{M67}National Assistance Act 1948, and [^{F274}sections 22(2) to (8)] and 26(2) to (4) [^{F275}as amended by [^{F276}the Schedule to the Housing (Homeless Persons) Act 1977, paragraph 2(1) of Schedule 4 to the Social Security Act 1980,] section 20 of the ^{M68}Health and Social Services and Social Security Adjudications Act 1983 [^{F277}and paragraph 32 of Schedule 10 to the Social Security Act 1986]]] (charges for accommodation and provision of accommodation in premises maintained by voluntary organisations) and sections 42 [^{F278}(as amended by paragraphs of Schedule 1 to the Law Reform (Parent and Child) (Scotland) Act 1986) and 43] of the said Act of 1948 (which make provision for the mutual maintenance of wives and husbands and the maintenance of their children by recovery of assistance from persons liable for maintenance and for affiliation orders, etc.) shall apply accordingly.

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- (4) In the application of the said section 22, for any reference to the Minister there shall be substituted a reference to the Secretary of State, and in the application of the said section 26, any references to arrangements under a scheme for the provision of accommodation shall be construed as references to arrangements made by a local authority with a voluntary organisation [^{F279}or any other person or body] for the provision of accommodation under this Act [^{F280}or section 7 of the said Act of 1984].
- (5) The Secretary of State may, with the consent of the Treasury, make regulations for modifying or adjusting the rates at which payments under this section are made, where such a course appears to him to be justified, and any such regulations may provide for the waiving of any such payment in whole or in part in such circumstances as may be specified in the regulations.
- (6) ^{F281}

Textual Amendments

- F270** S. 87(1) substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **s. 18**
- F271** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(a)**
- F272** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(b)**
- F273** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(c)**
- F274** Words substituted by Social Security Act 1980 (c. 30, SIF 113:1), **Sch. 4 para. 5(1)**
- F275** Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **s. 20(2)**
- F276** Words inserted by Social Security Act 1986 (c. 50, SIF 113:1), ss. 86, 88, **Sch. 10 para. 41(2)(a)**
- F277** Words inserted by Social Security Act 1986 (c. 50, SIF 113:1), ss. 86, 88, **Sch. 10 para. 41(2)(b)**
- F278** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), ss. 86, 88, **Sch. 10 para. 41(2)(c)**
- F279** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(d)**
- F280** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(c)**
- F281** S. 87(6) repealed by Social Security Act 1980 (c. 30, SIF 113:1), **Sch. 5 Pt. II**

Marginal Citations

- M67** 1948 c. 29.
M68 1983 c. 41.

88 Duty of parents to notify change of address.

- (1) Where—
- a child is received into the care of a local authority under Part II of this Act; or
 - he is subject to a supervision requirement,
- the parents of the child shall keep the local authority responsible for the supervision or care of the child informed of the parents' address.
- (2) The parent of a child to whom the foregoing subsection relates and who knowingly fails to comply with the requirements of that subsection shall be liable on summary

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conviction to a fine of [^{F282}level 1 on the standard scale] but in any proceedings under this section it shall be a defence that the accused was at the material time residing at the same address as the other parent and had reasonable cause to believe that the other parent kept the local authority responsible for the supervision or the care of the child informed of the address of both parents.

- (3) A [^{F283}person] who is making any payment to a local authority by virtue of any order or decree under Part VI of this Act shall be regarded as a parent for the purposes of this section.

Textual Amendments

F282 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289F, 289G (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 54)

F283 Word substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), Sch. 1 para. 9(5)

89 ^{F284}

Textual Amendments

F284 S. 89 repealed by Tribunals and Inquiries Act 1971 (c. 62, SIF 127), Sch. 4 Pt. I

90 Orders, regulations etc.

- (1) Any power to make regulations or orders (other than orders under sections 52 and 58 and Part V of this Act), . . . ^{F285}, or to make rules conferred on the Secretary of State by this Act shall be exercisable by statutory instrument.
- (2) Any statutory instrument made in the exercise of any power to make regulations conferred by this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred by this Act to make orders shall include a power, exercisable in the like manner and subject to the same conditions, to vary or revoke any such order.

Textual Amendments

F285 Words repealed by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c)(d), Sch. 5 para. 63, Sch. 6

91 Expenses.

There shall be defrayed out of moneys provided by Parliament—

- (a) any sums required for the payment of grants under this Act or any other expenses of the Secretary of State under this Act, and
- (b) any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.

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92 Effect of Act on rate support grant.

- (1) The Secretary of State shall have power, by an order made in the like manner and subject to the like provisions as a rate support grant order, to vary the provisions of any rate support grant order made before the commencement of this Act for a grant period ending after the commencement of this Act.
- (2) Any order made by virtue of this section may be made for all or any of the years comprised in the said rate support grant period, as may be specified in the order, and in respect of the year or years so specified shall increase the annual aggregate amount of the rate support grants to such extent as may appear to the Secretary of State to be appropriate having regard to any additional expenditure incurred or likely to be incurred by councils of counties or of large burghs in consequence of the passing of this Act.
- (3) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by section 4 of the ^{M69}Local Government (Scotland) Act 1966 (which confers power to vary rate support grant orders in consequence of unforeseen increases in the level of prices, costs or remuneration).
- (4) In this section the expressions “rate support grant order” and “grant period” have the meanings respectively assigned to them by subsection (1) and subsection (3) of section 3 of the ^{M70}Local Government (Scotland) Act 1966.

Marginal Citations

M69 1966 c. 51.

M70 1966 c. 51.

[^{F286}92A Powers of the Secretary of State to make grants.

The Secretary of State may, with the approval of the Treasury, make grants out of money provided by Parliament towards any expenses of local authorities in respect of their functions under—

- (a) Part II of this Act; and
 - (b) sections 7 and 8 of the Mental Health (Scotland) Act ^{M71}1984,
- in relation to persons suffering from mental illness.]

Textual Amendments

F286 S. 92A inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 58

Marginal Citations

M71 1984 c. 36(85).

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Supplementary

93 Transitional provisions.

The transitional provisions set out in Schedule 7 to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.

94 Interpretation.

(1) In this Act, except where otherwise expressly provided or the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—

“approved school” means a school approved by the Secretary of State under section 79 of the ^{M72}Children and Young Persons Act 1933,

“approved school order” has the meaning assigned to it by section 107(1) of the ^{M73}Children and Young Persons Act 1933,

“children’s panel” and “children’s hearing” have the meanings respectively assigned to them by sections 33(1) and 34(1) of this Act,

“compulsory measures of care” means, in relation to a child, such measure of care as may be imposed upon him by a children’s hearing,

“constable” means a constable of a police force within the meaning of the ^{M74}Police (Scotland) Act 1967,

“contributor” and “contribution order” have the meanings respectively assigned to them by sections 78 and 80 of this Act,

[^{F287}“domiciliary services” means any services, being services provided in the home, which appear to a local authority to be necessary for the purpose of enabling a person to maintain as independent an existence as is practicable in his home;]

“establishment” means an establishment managed by a local authority, voluntary organisation or any other person, which provides non-residential accommodation for the purposes of this Act, whether for reward or not,

“functions” shall include powers and duties,

“guardian” means a person appointed by deed or will or by order of a court of competent jurisdiction to be [^{F288}the tutor, curator or guardian,] of a child, or in relation to a child includes any person who, in the opinion of the court or children’s hearing having cognizance of any case in relation to the child or in which the child is concerned, has for the time being the [^{F288}custody or charge] of or control over the child,

“hospital” means—

(a) any hospital vested in the Secretary of State under the ^{M75}National Health Service (Scotland) Act [^{F289}1978],

[^{F290}(aa) any hospital managed by a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978;]

(b) any private hospital registered under the [^{F291}Mental Health (Scotland) Act 1984], and

(c) any State hospital, within the meaning of [^{F291}Part VIII of the said Act of 1984],

“local authority”, in relation to Scotland, has the meaning assigned to it by section 1(2) of this Act,

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“maintainable child” has the meaning assigned to it by section 78 of this Act,

“mental disorder” has the meaning assigned to it by [F292]section 1(2) of the Mental Health (Scotland) Act 1984],

“mental health officer” means an officer of a local authority appointed to act as a mental health officer for the purposes of the [F293]said Act of 1984],

“parent” means either or both parents and,—

- (a) F294
- (b) in relation to a child who is illegitimate, means his mother to the exclusion of his father,

“performance”, in relation to functions, includes the exercise of powers as well as the performance of duties, and “perform” shall be construed accordingly,

“persons in need” means persons who,

- (a) are in need of care and attention arising out of infirmity, youth or age; or
- (b) suffer from illness or mental disorder or are substantially handicapped by any deformity or disability; or
- (c) F295
- (d) being persons prescribed by the Secretary of State who have asked for assistance, are, in the opinion of a local authority, persons to whom the authority may appropriately make available the services and facilities provided by them under this Act,

“place of safety” means any residential or other establishment provided by a local authority, a police station, or any hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive a child,

[F296]“prescribed” means—

- (a) in [F297]sections 3 and 36,] prescribed by regulations,
- (b) in section 44, prescribed by rules, and
- (c) in sections [F298]27A, 27B,] 62(2), [F299]64A(3),] 66(1) and (2), 94, paragraphs 2(2) and (3), 4(3) and (4) of Schedule 7, prescribed by order,

[F300]and “prescribe” shall be construed accordingly.]]

“probation order”, in relation to an order imposed by a court in England or Wales, has the meaning assigned to it by [F301]section 2 of the M76Powers of Criminal Courts Act 1973], and in relation to such an order, imposed by a court in Northern Ireland, has the same meaning as in the M77Probation Act (Northern Ireland) 1950,

“residential establishment” means an establishment managed by a local authority, voluntary organisation or any other person, which provides residential accommodation for the purposes of this Act, whether for reward or not,

[F302]“school age” shall be construed in accordance with section [F303]31 of the M78Education (Scotland) Act 1980]],

“supervision order”, in relation to an order imposed by a court in England or Wales, has the meaning assigned to it by section 5 of the M79Children and Young Persons Act 1963 [F304]and includes a supervision order within the meaning of the M80Children and Young Persons Act 1969] , and in relation to an order imposed by a court in Northern Ireland has the meaning assigned to it by section 63(1)(d) of the Children and Young Persons Act (Northern Ireland) 1950,

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“supervision requirement” has the meaning assigned to it by section 44(1) of this Act,

“training school” means a school approved by the Ministry of Home Affairs for Northern Ireland under section 106 of the ^{M81}Children and Young Persons Act (Northern Ireland) 1950,

“training school order” means an order made by a court in Northern Ireland sending a child or young person to a training school,

“voluntary organisation” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority,

“welfare authority” means a welfare authority constituted under the ^{M82}Public Health and Local Government (Administrative Provisions) Act (Northern Ireland) 1946.

- (2) Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied by or under any other enactment including this Act.
- (3) Without prejudice to the last foregoing subsection, any reference in this Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act and re-enacting the said enactment with or without modifications.

Textual Amendments

- F287** Definition inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(14)(a)**
- F288** Words substituted by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), s. 10(1), **Sch. 1 para. 9(6)**
- F289** Words substituted by [National Health Service \(Scotland\) Act 1978 \(c. 29, SIF 113:2\)](#), **Sch. 16 para. 29(3)**
- F290** Para. (aa) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(14)(b)**
- F291** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 17(a)**
- F292** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 17(b)**
- F293** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 17(c)**
- F294** Para. (a) repealed by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 4 Pt. I**
- F295** Para (c) repealed by [Housing \(Homeless Persons\) Act 1977 \(c. 48, SIF:61\)](#), **Sch.**
- F296** Definition inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), **Sch. 5 para. 64(1)**
- F297** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), **Sch. 27 Pt. II para. 186**
- F298** Words in s. 94(1) inserted (01. 04. 1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), s. 61(7); S.I. 1991/850, **art. 3Sch.**
- F299** “64A(3),” inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 6(2)(a)
- F300** Words inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 6(2)(b)
- F301** Words substituted by [Powers of Criminal Courts Act 1973 \(c. 62, SIF 39:1\)](#), s. 56(1), **Sch. 5 para. 30**
- F302** Definition substituted by [Education \(Scotland\) Act 1976 \(c. 20\)](#), **Sch. 1 para. 14**
- F303** Words substituted by [Education \(Scotland\) Act 1980 \(c. 44, SIF 41:2\)](#), **Sch. 4 para. 5**
- F304** Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), **Sch. 5 para. 64(2)**

Status: Point in time view as at 01/04/1991. This version of this Act contains provisions that are not valid for this point in time.
Changes to legislation: Social Work (Scotland) Act 1968 is up to date with all changes known to be in force on or before 11 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)

Marginal Citations	
M72	1933 c. 12.
M73	1933 c. 12.
M74	1967 c. 77.
M75	1978 c. 29.
M76	1973 c. 62.
M77	1950 c. 7 (N.I.)
M78	1980 c. 44.
M79	1963 c. 37.
M80	1969 c. 54.
M81	1950 c. 5 (N.I.)
M82	1946 c. 19 (N.I.)

95 Minor and consequential amendments, repeals and savings.

- (1) The enactments described in Schedule 8 to this Act shall have effect subject to the amendments therein specified, being minor amendments and amendments consequential on the foregoing provisions of this Act.
- (2) The enactments described in Schedule 9 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Subject to any expression in this Act to the contrary, in so far as any appointment, agreement or any provision in a regulation or order made or any notice, direction, consent, approval, warrant or certificate given under any enactment repealed by this Act or registration effected, or deemed to have been effected, proceedings instituted or other thing done under any such enactment could have been made, passed, given, granted, effected, instituted or done under a corresponding provision of this Act, it shall not be invalidated by this repeal, but shall have effect as if it had been made, passed, given, granted, effected, instituted or done to that corresponding provision and may be amended, varied, revoked or enforced accordingly, and, in the case of any legal proceedings, may be continued and appealed against as if this Act had not been passed.

Modifications etc. (not altering text)	
C45	The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 59A, 60, 68, 73, Sch. 9 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.

96 **F305**

Textual Amendments	
F305	S. 96 repealed by Northern Ireland Constitution Act 1973 (c. 36, SIF 29:3) , Sch. 6 Pt. I

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97 Extension of certain provisions of Act to England and Wales, Northern Ireland and the Channel Islands.

- (1) The following provisions of this Act shall extend to England and Wales, that is to say—
 - [^{F306}section 44(1) (except head (b) and (1A))]
 - section 58
 - sections 86 and 87
 - Part V
 - [^{F306}section 98(3) and Schedule 2 paragraphs 7 and 13]
 - Schedule 8
 - Part II of Schedule 9.
- (2) The following provisions of this Act shall extend to Northern Ireland, that is to say—
 - Part V . . . ^{F307}
 - Schedule 8.
- (3) The following provisions of this Act shall extend to the Channel Islands, that is to say sections 69 to 71.
- (4) Save as aforesaid, and except in so far as it relates to the interpretation or commencement of the provisions, this Act shall extend only to Scotland.

Textual Amendments

F306 Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 65](#)

F307 Words repealed by [Northern Ireland Constitution Act 1973 \(c. 36, SIF 29:3\)](#), [Sch. 6 Pt. I](#)

98 Commencement.

- (1) This Act (except this section) shall come into operation on such date as the Secretary of State may by order appoint.
- (2) Different dates may be appointed by order under this section for different purposes of this Act; and any reference in any provision of this Act to the commencement of this Act shall, unless otherwise provided by any such order, be construed as a reference to the date on which that provision comes into operation.
- [^{F308}(3) An order under this section may make such transitional provisions as appear to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or of any provision of this Act then in force as appear to the Secretary of State necessary or expedient for the purposes or in consequence of the operation of any provision of this Act before the coming into force of any other provision of this Act or of the ^{M83}Children and Young Persons Act 1969.]

Textual Amendments

F308 [S. 98\(3\)](#) inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c), [Sch. 5 para. 66](#)

Marginal Citations

M83 [1969 c. 54.](#)

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99 Short title.

This Act may be cited as the Social Work (Scotland) Act 1968.

Status:

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Changes to legislation:

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