



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 [^{F1}or Part II of the Children (Scotland) Act 1995] 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 [^{F2}councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994]
- (3) ^{F3}
- (4) The functions of local health authorities in respect of their areas under the following enactments—
 - (a) ^{F4} . . .
 - (b) the [^{F5}Mental Health (Scotland) Act 1984] . . . ^{F6, F7} . . .
 - ^{F8}(c)

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.
- (6) ^{F3}

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Textual Amendments

- F1** Words in s. 1(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(2)** (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**))
- F2** Words in s. 1(2) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(2)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F3** S. 1(3)(6) repealed by Local Government (Scotland) Act 1973 (c. 65, SIF 81:2), **Sch. 29**
- F4** S. 1(4)(a) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), **s. 108(7) Sch. 15**; S.I. 1991/828, **art. 3(2)**
- F5** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 14**
- F6** Words repealed by National Health Service (Scotland) Act 1972 (c. 58, SIF 113:2), **Sch. 7 Pt. II**
- F7** Word repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**
- F8** 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**

F92

Textual Amendments

- F9** S. 2 repealed (1.4.1996) by 1994 c. 39, s. 180(2), **Sch. 14**; S.I. 1996/323, art. 4(1)(d), **Sch. 2**

[**F10**3 **F10** **Chief social work officer.**

- (1) For the purposes of their functions under this Act and the enactments mentioned in section 5(1B) of this Act, a local authority shall appoint an officer to be known as the chief social work officer.
- (2) The qualifications of the chief social work officer shall be such as may be prescribed by the Secretary of State.]

Textual Amendments

- F10** S. 3 substituted (1.4.1996) by 1994 c. 39, s. 45; S.I. 1996/323, art. 4(1)(a), **Sch. 1**

4 Provisions relating to performance of functions by local authorities.

Where a function is assigned to a local authority under this Act [**F11** or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984 [**F12** or Part II of the Children (Scotland) Act 1995],] 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

- F11** 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\(3\)](#)
- F12** Words in s. 4 inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)](#), [Sch. 4 para. 15\(3\)](#) (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](#)))

Central Authority

5 Powers of Secretary of State.

(1) Local authorities shall perform their functions under this Act [^{F13}and Part II of the Children (Scotland) Act 1995]under the general guidance of the Secretary of State.

[^{F14}(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 [^{F15}subsection (1B) below]; and a local authority shall comply with any direction made under this subsection.]

[^{F16}(1B) The enactments referred to in subsection (1A) above are—

- (a) this Act as read with sections 1 and 2(1) of the ^{M1}Chronically Sick and Disabled Persons Act 1970 and the ^{M2}Disabled Persons (Services, Consultation and Representation) Act 1986;
- (b) Part IV of the ^{M3}Children and Young Persons (Scotland) Act 1937;
- (c) section 22(2) to (5A), (7) and (8), section 26(2) to (4) and sections 43, 45, 47 and 48 of the ^{M4}National Assistance Act 1948;
- (d) the Disabled Persons (Employment) Act 1958;
- (e) sections 10 to 12 of the ^{M5}Matrimonial Proceedings (Children) Act 1958, and sections 11 and 12 of the ^{M6}Guardianship Act 1973;
- [section 51 of the Criminal Procedure (Scotland) Act 1995;]
- [^{F17}(f) (g) the Children Act 1975;
- (h) the Adoption Act 1976;
- (i) the Adoption (Scotland) Act 1978;
- (j) sections 21 to 23 of the ^{M7}Health and Social Services and Social Security Adjudications Act 1983;
- (k) the Mental Health (Scotland) Act 1984;
- (l) the Foster Children (Scotland) Act 1984;
- (m) sections 38(b) and 235 of the ^{M8}Housing (Scotland) Act 1987;
- (n) the Access to Personal Files Act 1987; ^{F18} . . .
- (o) section 19 and Part X of the ^{M9}Children Act 1989 [^{F19}; and
- (p) Part II of the Children (Scotland) Act 1995.]

[^{F20}(2) The Secretary of State may make regulations in relation to—

- (a) the performance of the functions assigned to local authorities by this Act;

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- (b) the activities of voluntary organisations in so far as those activities are concerned with the like purposes;
 - ^{F21}(c) [the performance of the functions of local authorities under any of the enactments mentioned in paragraphs (b), (d), (e), (g), (h), (i), (l) [^{F22}, (o) and (p)]of subsection (1B) above]
 - (d)]
- ^{F23}(3) Without prejudice to the generality of subsection (2) above, regulations under this section may make such provision as is mentioned in subsection (4) of this section as regards—
- (a) the boarding out of persons other than children by local authorities and voluntary organisations, whether under any enactment or otherwise; and
 - (b) the placing of children under paragraph (a), or the making of arrangements in respect of children under paragraph (c), of section 26(1) of the Children (Scotland) Act 1995, by local authorities.
- (4) The provision referred to in subsection (3) of this section is—
- (a) for the recording—
 - (i) by local authorities and voluntary organisations, of information relating to those with whom persons are so boarded out, or who are willing to have persons so boarded out with them; and
 - (ii) by local authorities, of information relating to those with whom children are so placed or with whom such arrangements are made or who are willing to have children so placed with them or to enter into such arrangements;
 - (b) for securing that—
 - (i) persons are not so boarded out in any household unless it is for the time being approved by such local authority or voluntary organisation as may be prescribed by the regulations; and
 - (ii) children are not so placed or, in accordance with such arrangements, provided with accommodation, in any household unless it is for the time being approved by the local authority placing the child or as the case may be making the arrangements;
 - (c) for securing that, where possible, the person with whom a child is so placed or with whom such arrangements are made is either of the same religious persuasion as the child or gives an undertaking that the child shall be brought up in that persuasion;
 - (d) for securing—
 - (i) that a person who is, and the place in which he is, so boarded out by a local authority or voluntary organisation is supervised and inspected by that authority or organisation; and
 - (ii) that a child who is, and the place in which he is, so placed or, in accordance with such arrangements, provided with accommodation, by a local authority is supervised and inspected by that authority,
 and that he shall be removed from the place in question if his welfare appears to require it.
- (5) In subsections (3) and (4) of this section, “child” has the same meaning as in Chapters 2 and 3 of Part II of the Children (Scotland) Act 1995.]

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Textual Amendments

- F13** Words in s. 5(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(a)** (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**))
- F14** S. 5(1A) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 51**
- F15** Words in s. 5(1A) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(3)(a)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F16** S. 5(1B) added (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(3)(b)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F17** S. 5(1B)(f) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 6(2)**
- F18** Word in s. 5(1B) before para. (o) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(b)(i)**, **Sch. 5** (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**)) and said word expressed to be repealed (1.4.2002) by 2001 asp 8, s. 80(1), **Sch. 4**; S.S.I. 2002/162, **art. 2** (subject to arts. 3-13)
- F19** S. 5(1B)(p) and the preceding “and” added (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(b)(ii)** (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**))
- F20** S. 5(2) substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 49**
- F21** S. 5(2)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(3)(c)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F22** Words in s. 5(2)(c) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(c)** (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**))
- F23** S. 5(3)-(5) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) for s. 5(3) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(d)** (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**))

Marginal Citations

- M1** 1970 c. 44.
M2 1986 c. 33.
M3 1937 c. 37.
M4 1948 c. 29.
M5 1958 c. 40.
M6 1973 c. 29.
M7 1983 c. 41.
M8 1987 c. 26.
M9 1989 c. 41.

[^{F24}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.

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- (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 ^{M10}1978 in the area of the authority;
 - ^{F25}(b)
 - (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 [^{F26}5(1B)] 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.]

Textual Amendments

F24 Ss. 5A, 5B inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 52

F25 S. 5A(3)(b) repealed (1.4.1996) by [1994 c. 39, s. 180\(1\)\(2\)](#), [Sch. 13 para. 76\(4\)\(a\)](#), [Sch. 14](#); S.I. 1996/323, art. 4(1)(b)-(d), [Sch. 2](#)

F26 Words in s. 5A(3)(c) substituted (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 76\(4\)\(b\)](#); S.I. 1996/323, art. 4(1)(b)(c)

Marginal Citations

M10 [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 [^{F27}mentioned in section 5(1B)] of this Act, in respect of that person.

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- (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 [^{F28}responsibilities and parental rights (within the meaning of section 1(3) and section 2(4) respectively of the Children (Scotland) Act 1995) in relation to] 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; ^{F29} . . .
- (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.

Textual Amendments

- F27** Words in s. 5B(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(5)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F28** Words in s. 5B(4)(b) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(5)(a)** (with s. 103(1)); S.I. 1996/2203, **art. 3, Sch.** (with transitional provisions in arts. 4-6)
- F29** Words in s. 5B(5) repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), **Sch. 4 para. 15(5)(b), Sch. 5** (with s. 103(1)); S.I. 1996/2203, **art. 3, Sch.** (with transitional provisions in arts. 4-6)

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

- (1) Any [^{F30}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 [^{F31}the facilities and services provided therein], and the condition and treatment of the persons in it, as he thinks necessary and for the purpose of inspecting any records or registers [^{F32}(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 [^{F33}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 [^{F34}or

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- section 7 or 8 of the said Act of 1984 [^{F35} or Part II of the Children (Scotland) Act 1995],];
- (b) any place where there is being maintained—
- (i) a foster child within the meaning of the [^{F36}Foster Children (Scotland) Act 1984],
- ^{F37}(ii)
- [^{F38}(iii) a child who has been placed for adoption by an adoption agency (within the meaning of section 1 of the [^{F39M11}Adoption Act 1978]);]
- (c) any place where any person [^{F40}, other than a child,] is for the time being boarded out by a local authority or a voluntary organisation;
- [^{F41}(cc) any place where a child is for the time being accommodated under paragraph (a) of, or by virtue of paragraph (c) of, section 26(1) of the Children (Scotland) Act 1995.]
- (d) ^{F42}
- (2) Any such [^{F43}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 [^{F44}or section 7 or 8 of the said Act of 1984][^{F45}or Part II of the Children (Scotland) Act 1995], or who may require such advice, guidance or assistance, and may carry out that inspection.
- [^{F46}(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
- (b) exercise the power conferred by subsection (2C)(b) above,

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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 [^{F47} 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) [^{F48} 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 [^{F49} level 4 on the standard scale].

Textual Amendments

- F30** 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.**
- F31** 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.**
- F32** 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.**
- F33** 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.**
- F34** 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.**
- F35** Words in s. 6(1)(a) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(6)(a)(i)** (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**))
- F36** Words substituted by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), s. 22, **Sch. 2 para. 5**
- F37** S. 6(1)(b)(ii) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), **Sch. 4 para. 15(6)(a)(ii)**, **Sch. 5** (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**))
- F38** S. 6(1)(b)(iii) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 50**
- F39** 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)**
- F40** Words in s. 6(1)(c) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(6)(a)(iii)** (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**))
- F41** S. 6(1)(cc) added (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(6)(a)(iv)** (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**))
- F42** S. 6(1)(d) repealed by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), **Sch. 4 Pt. II**
- F43** 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.**

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- F44** 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.**
- F45** Words in s. 6(2) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(6)(b)** (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**))
- F46** 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.**
- F47** 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.**
- F48** 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.**
- F49** 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

Modifications etc. (not altering text)

- C1** S. 6(2A)–(2D)(4) applied (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, **s. 36(5)** (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**))

Marginal Citations

- M11** 1978 c. 28.

[^{F50}6A Inquiries.

[Without prejudice to section 6B(1) of this Act, the Secretary of State may cause an ^{F51}(1) inquiry to be held into—

- (a) the functions of a local authority under this Act or any of the enactments mentioned in section 5(1B) of this Act;
- (b) the functions of an adoption society, within the meaning of section 65 of the ^{M12}Adoption (Scotland) Act 1978;
- (c) the functions of a voluntary organisation in so far as those functions relate to establishments to which sections 61 to 68 of this Act apply;
- (d) the detention of a child under—
 - (i) section 57 of the ^{M13}Children and Young Persons (Scotland) Act 1937; or
 - [section 44 or 208 of the ^{M14}Criminal Procedure (Scotland) Act ^{F52}(ii) 1995;]or
- (e) the functions of the Principal Reporter under Part III of the ^{M15}Local Government (Scotland) Act 1994, the Children (Scotland) Act 1995 or any other enactment.]

(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.

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- (3) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act ^{M16}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

- F50** S. 6A inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 54
- F51** S. 6A(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(7) (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))
- F52** S. 6A(1)(d)(ii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 6(3)

Marginal Citations

- M12** 1978 c.28.
- M13** 1937 c.37.
- M14** 1995 c.40.
- M15** 1994 c.39.
- M16** 1973 c. 65 (81:2).

[^{F53}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 ^{M17}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 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.]

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Textual Amendments

F53 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

M17 1973 c.45.

7

F54

Textual Amendments

F54 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 [^{F55}or Part II of the Children (Scotland) Act 1995].
- (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 Act [^{F55}or Part II of the Children (Scotland) Act 1995] 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.

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Textual Amendments

F55 Words in s. 9(1)(2) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(8)** (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**))

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

- his functions; ^{F56}with—
- the functions of local authorities,

under this Act or under the ^{F57}mentioned in paragraphs (b),(d),(e),(g),(h),(i), ^{F58}[^{F58}(l) and (p)] of section 5(1B) 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.

^{F59}(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 ^{F60M18}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 ^{F61}[section] 65 of the ^{M19}Health Services and Public Health Act 1968 ^{F62}[^{F62}and section 16B of the ^{M20}National Health Service (Scotland) Act 1978] shall cease in so far as any such assistance may be given under this section.

Textual Amendments

F56 Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 51(a)**

F57 By 1994 c. 39, s. 180(1), **Sch. 13 para. 76(7)** and S.I. 1996/323, **art. 4(1)(b)(c)** it is provided (1.4.1996) that for the words from “enactments” to “of this Act” there shall be substituted “mentioned in paragraphs (b), (d), (e), (g), (h), (i) and (l) of section 5(1B) of this Act”

F58 Words in s. 10(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(9)** (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**))

F59 S. 10(3A) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 2 para. 51(b)**

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- F60** Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras 3, 5, **Sch. 3 para. 12**
- F61** 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)
- F62** 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)**

Marginal Citations

- M18** 1978 c. 28.
M19 1968 c. 46.
M20 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 [^{F63}or Part II of the Children (Scotland) Act 1995].
- (2) The ^{M21}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.

Textual Amendments

- F63** Words in s. 11(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(10)** (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**))

Marginal Citations

- M21** 1947 c. 42.

PART II

PROMOTION OF SOCIAL WELFARE BY LOCAL AUTHORITIES

Modifications etc. (not altering text)

- C2** 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

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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 ^{F64}, subject to subsections (3) to (5) of this section, be given in kind or in cash to, or in respect of, any relevant person..

- (2) A person is a relevant person for the purposes of this section if, not being less than eighteen years of age, he is] 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.

^{F65}(3A) In determining for the purposes of this section whether to provide assistance by way of residential accommodation to a person, a local authority shall disregard so much of the person's capital as does not exceed the capital limit for the purposes of section 22 of the ^{M22}National Assistance Act 1948.

(3B) For the purposes of subsection (3A) of this section—

- (a) a person's capital shall be calculated in accordance with assessment regulations in the same way as if he were a person for whom accommodation is proposed to be provided under this Act and whose ability to pay falls to be assessed for the purposes of section 22(3) of the National Assistance Act 1948; and
- (b) “the capital limit for the purposes of section 22 of the National Assistance Act 1948” means the amount for the time being prescribed in assessment regulations as the amount which a resident's capital (calculated in accordance with such regulations) must not exceed if he is to be assessed as unable to pay for his accommodation at the standard rate;

and in this subsection “assessment regulations” means regulations made for the purposes of section 22(5) of the National Assistance Act 1948 or section 87(5) of this Act.]

- (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.

^{F66}(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.]

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Textual Amendments

- F64** Words in s. 12(1)(2) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(11)** (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**))
- F65** S. 12(3A)(3B) inserted (11.8.1998) by 1998 c. 19, **ss. 2, 3(2)**
- F66** 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)**

Marginal Citations

- M22** 1948 c. 29.

12 General social welfare services of local authorities. **S**

- (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 ^{F345}, subject to subsections (3) to (5) of this section, be given in kind or in cash to, or in respect of, any relevant person..
 - (2) A person is a relevant person for the purposes of this section if, not being less than eighteen years of age, he is] 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.
- ^{F346}(3A) In determining for the purposes of this section whether to provide assistance by way of residential accommodation to a person, a local authority shall disregard so much of the person's capital as does not exceed the capital limit for the purposes of section 22 of the ^{M58}National Assistance Act 1948.
- (3B) For the purposes of subsection (3A) of this section—
- (a) a person's capital shall be calculated in accordance with assessment regulations in the same way as if he were a person for whom accommodation is proposed to be provided under this Act and whose ability to pay falls to be assessed for the purposes of section 22(3) of the National Assistance Act 1948; and
 - (b) “the capital limit for the purposes of section 22 of the National Assistance Act 1948” means the amount for the time being prescribed in assessment regulations as the amount which a resident's capital (calculated in accordance with such regulations) must not exceed if he is to be assessed as unable to pay for his accommodation at the standard rate;

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and in this subsection “assessment regulations” means regulations made for the purposes of section 22(5) of the National Assistance Act 1948 or section 87(5) of this Act.]

- (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.
- [^{F347}(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

F345 Words in s. 12(1)(2) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(11)** (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**))

F346 S. 12(3A)(3B) inserted (11.8.1998) by 1998 c. 19, **ss. 2, 3(2)**

F347 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)**

Marginal Citations

M58 1948 c. 29.

[^{F67}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—
 - (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

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- (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.
- [Subject to subsection (3B) below, in any case where—
- ^{F68}(3A) (a) a local authority make an assessment of the needs of any person (“the relevant person”) under subsection (1)(a) above, and
- (b) a person (“the carer”) provides or intends to provide a substantial amount of care on a regular basis for the relevant person,
- the carer may request the local authority, before they make their decision under subsection (1)(b) above, to make an assessment of his ability to provide and to continue to provide care for the relevant person; and if he makes such a request, the local authority shall make such an assessment and shall have regard to the results of that assessment in making that decision.
- (3B) No request may be made under subsection (3A) above by a person 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.
- (3C) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (duty of local authority to take into account ability of carers) shall not apply in any case where an assessment is made under subsection (3A) above in respect of a person who provides the care in question for a disabled person.]
- (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 ^{M23}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;

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“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.]
[^{F69}“person” means a natural person.]

Textual Amendments

- F67** 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.](#)
- F68** S. 12A(3A)-(3C) inserted (1.4.1996) by [1995 c. 12, ss. 2\(2\), 5\(2\)](#)
- F69** S. 12A(8): definition of “person” inserted (1.4.1996) by [1995 c. 12, ss. 2\(3\), 5\(2\)](#)

Modifications etc. (not altering text)

- C3** S. 12A(1) power to modify conferred (1.4.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 1\(7\)](#); [S.S.I. 2002/170, art. 2](#)
- C4** S. 12A(1) modified (1.7.2002) by [The Community Care \(Assessment of Needs\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/304\), art. 2\(1\)](#)
- C5** S. 12A(2) power to modify conferred (1.4.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 1\(7\)](#); [S.S.I. 2002/170, art. 2](#)
- C6** S. 12A(2) modified (1.7.2002) by [The Community Care \(Assessment of Needs\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/304\), art. 2\(1\)](#)

Marginal Citations

- M23** [1986 c. 33 \(113:1\)](#).

VALID FROM 01/09/2002

[^{F70}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.

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- (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

F70 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—
 - (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

F70 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

[^{F71}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,

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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.
- (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

F71 S. 12B inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

Modifications etc. (not altering text)

C7 S. 12B(1) restricted (1.4.1997) by S.I. 1997/693, reg. 4(1)

[^{F72}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

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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

F72 S. 12C inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

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

Where, by virtue of [^{F73}section 12 of this Act], 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.

Textual Amendments

F73 Words in s. 13 substituted (1.4.1997) by 1996 c. 30, s. 5; S.I. 1997/756, art. 2

[^{F74} Residential accommodation with nursing.]

Textual Amendments

F74 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 ^{F75}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 ^{M24}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 ^{M25}1984,
- for the provision of accommodation in those premises.

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- (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

F75 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

M24 1938 c. 73 (113:3).

M25 1984 c. 36 (85).

F76 Provision of care and after-care

Textual Amendments

F76 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 ^{F77} **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

F77 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, [^{F78}home help][^{F78}domiciliary services] for households where such [^{F79}help is][^{F79}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 [^{F80}home help is][^{F80}domiciliary services are] being, or can be, provided under this subsection.

- (2) ^{F81}

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(3) **F82**

(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 ^{M26} shall cease to have effect.

Textual Amendments

F78 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)**

F79 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)**

F80 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)**

F81 S. 14(2) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 10 Pt. I**

F82 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)

C8 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

M26 1968 c. 46.

Special provisions as to the care of children in need

F83 **15**

Textual Amendments

F83 S. 15 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

F84 **16**

Textual Amendments

F84 S. 16 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 4); 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**))

F85 **16A**

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Textual Amendments

F85 S. 16A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F86 **17**

Textual Amendments

F86 S. 17 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); 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**))

F87 **17A**

Textual Amendments

F87 S. 17A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); 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**))

F88 **17B**

Textual Amendments

F88 S. 17B repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); 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**))

F89 **17C**

Textual Amendments

F89 S. 17C repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

F90 **17D**

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Textual Amendments

F90 S. 17D repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); 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**))

^{F91} **17E**

Textual Amendments

F91 S. 17E repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); 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**))

^{F92} **18**

Textual Amendments

F92 S. 18 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

^{F93} **18A**

Textual Amendments

F93 S. 18A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

19 ^{F94}

Textual Amendments

F94 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)**

^{F95} **20**

Textual Amendments

F95 S. 20 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); 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**))

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F96 **20A**

Textual Amendments

F96 S. 20A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

F97 **21**

Textual Amendments

F97 S. 21 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

F98 **22**

Textual Amendments

F98 S. 22 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

F99 **23**

Textual Amendments

F99 S. 23 repealed (1.4.1997) by 1995 c. 36, ss. 28, 105(5), **Sch. 5** (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**))

F100 **24**

Textual Amendments

F100 S. 24 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

F101 **25**

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Textual Amendments

F101 S. 25 repealed (1.4.1997) by 1995 c. 36, ss. 30(4), 105(5), **Sch. 5** (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**))

F102 **25A**

Textual Amendments

F102 S. 25A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

F103 **26**

Textual Amendments

F103 S. 26 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

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

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
 - [^{F104}(aa) making available to any children’s hearing such reports relating to persons aged 16 and 17 years in relation to the commission of an offence, as the hearing may require for the disposal of a case;]
 - [^{F105}(ab) making available to any procurator fiscal or the Lord Advocate such reports as the procurator fiscal or the Lord Advocate may request in relation to persons who are charged with an offence;]
 - (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.

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- [^{F106}(and) without prejudice to sub-paragraphs (i) and (ii) above, persons in the area who are subject to a community service order under [^{F107}section 238 of the Criminal Procedure (Scotland) Act 1995] or a probation order which includes a requirement that the offender shall perform unpaid work][^{F108}; and]
- [^{F108}(iv) without prejudice to paragraphs (i) to (iii) above, persons in their area who are subject to supervised attendance orders under [^{F109}section 235 of the said Act of 1995]. . .
- [^{F110}(v) without prejudice to sub-paragraphs (i) to (iv) above, persons in their area who are subject to a supervision and treatment order made under section 57(2)(d) of the Criminal Procedure (Scotland) Act 1995;
- [^{F111}(vi) persons in their area aged 16 and 17 years who are subject to a supervision requirement imposed in relation to the commission of any offence by that person;
- [^{F112}(vii) persons in their area who are charged with, but not prosecuted for, any offence and are referred to the local authority by the procurator fiscal or the Lord Advocate; and]
- [^{F113}(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 [^{F114}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 [^{F114}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;
- [^{F115}(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 having jurisdiction in their areas to [^{F116}a committee or sub-committee of such authorities];
- (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 [^{F114}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 [^{F114}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.

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- (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 ^{M27}Criminal Justice (Scotland) Act 1949 (administrative provisions as to probation) shall cease to have effect.

Textual Amendments

- F104** S. 27(1)(aa) inserted after paragraph (a) (1.8.1997) by 1997 c. 48, s. 32(a); S.I. 1997/1712, art. 3, **Sch.**
- F105** S. 27(1)(ab) inserted after paragraph (a) (1.8.1997) by 1997 c. 48, s. 32(b); S.I. 1997/1712, art. 3, **Sch.**
- F106** 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)**
- F107** Words in s. 27(1)(b)(iii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 6(4)(b)**
- F108** 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**
- F109** Words in s. 27(1)(b)(iv) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 6(4)(c)**
- F110** S. 27(1)(b)(v) inserted after sub-paragraph (iv) of paragraph (b) (1.8.1997) by 1997 c. 48, s. 32(c); S.I. 1997/1712, art. 3, **Sch.**
- F111** S. 27(1)(b)(vi) inserted after sub-paragraph (iv) of paragraph (b) (1.8.1997) by 1997 c. 48, s. 32(d); S.I. 1997/1712, art. 3, **Sch.**
- F112** S. 27(1)(b)(vii) inserted after sub-paragraph (iv) of paragraph (b) (1.8.1997) by 1997 c. 48, s. 32(e); S.I. 1997/1712, art. 3, **Sch.**
- F113** 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**
- F114** 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**
- F115** 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**
- F116** Words in s. 27(3)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(9)**; S.I. 1996/323, art. 4(1)(b)(c)

Modifications etc. (not altering text)

- C9** 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

- M27** 1949 c. 94.

[^{F117}27A Grants in respect of community service facilities

[The Secretary of State may make to a local authority grants of such amount and subject ^{F118}(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 ^{F119}(a)

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- (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

- F117** S. 27A inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 9
- F118** 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
- F119** 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

[^{F120}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 ^{F121}(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 [^{F122}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

- F120** S. 27B inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 79
- F121** 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
- F122** 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 [F123 or was a child being looked after by,], 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 . . . F124

- [F125(3) In subsection (1) of this section, the reference 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

F123 Words in s. 28(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(12)(a)** (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**))

F124 Words repealed by **Social Security Act 1986 (c. 50, SIF 113:1)**, ss. 86, 88, **Sch. 11**

F125 S. 28(3) added (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(12)(b)** (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**))

Modifications etc. (not altering text)

C10 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 [F126—

- (a) a person, other than a child, in the care of the authority or receiving assistance from the authority; or
- (b) a child who is being looked after by the authority,

in respect] of travelling, subsistence or other expenses incurred by the parent, relative or other person in visiting the person [F127 or child], if it appears to the authority that the parent, relative or other person would not otherwise be able to visit [F128 him] 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 [F129—

- (a) a person, other than a child, who had been in the care of the authority or receiving assistance from the authority; or
- (b) a child who had been looked after by the authority,

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for] the purpose of that parent, relative or other person attending the funeral of the person.

[^{F130}(3) In subsections (1) and (2) above, references to a child looked after by a local authority shall be construed as is mentioned in subsection (3) of section 28 of this Act.]

Textual Amendments

- F126** Words in s. 29(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(13)(a)(i) (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))
- F127** Words in s. 29(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(13)(a)(ii) (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))
- F128** Word in s. 29(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(13)(a)(iii) (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))
- F129** Words in s. 29(2) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(13)(b) (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))
- F130** S. 29(3) added (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(13)(c) (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))

Modifications etc. (not altering text)

- C11** 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)

[^{F131}PART III

CHILDREN IN NEED OF COMPULSORY MEASURES OF CARE]

Textual Amendments

- F131** Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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))

Modifications etc. (not altering text)

- C12** Pt. III extended by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 168, 296(3), 364

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Textual Amendments
F132 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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))

31 Restriction on prosecution of children for offences.

- ^{F133}(1)
- (2) ^{F134}
- (3) Part IV of the ^{M28}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 S. 31(1) repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5
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 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 by art. 3))

Marginal Citations
M28 1937 c. 37.

^{F135}**32**

Textual Amendments
F135 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

^{F136}**33**

Textual Amendments
F136 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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

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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**))

F137 **34**

Textual Amendments

F137 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by **art.3**))

F138 **34A**

Textual Amendments

F138 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

F139 **35**

Textual Amendments

F139 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by **art. 3**))

F140 **36**

Textual Amendments

F140 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by **art. 3**))

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F141 **36A**

Textual Amendments
F141 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 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))

F142 **37**

Textual Amendments
F142 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art.3))

F143 **38**

Textual Amendments
F143 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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))

F144 **39**

Textual Amendments
F144 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

F145 **40**

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Textual Amendments

F145 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

F146 **41**

Textual Amendments

F146 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

F147 **42**

Textual Amendments

F147 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

F148 **43**

Textual Amendments

F148 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

F149 **44**

Textual Amendments

F149 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para.

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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 by **art. 3**))

F150 **45**

Textual Amendments

F150 Pt. III (ss. 30-58G except s. 31(1)(3) and **Sch. 2** amendments provided for in s. 31(3)) 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 by **art. 3**))

F151 **46**

Textual Amendments

F151 Pt. III (ss. 30-58G except s. 31(1)(3) and **Sch. 2** amendments provided for in s. 31(3)) 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 by **art. 3**))

F152 **47**

Textual Amendments

F152 Pt. III (ss. 30-58G except s. 31(1)(3) and **Sch. 2** amendments provided for in s. 31(3)) 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 by **art. 3**))

F153 **48**

Textual Amendments

F153 Pt. III (ss. 30-58G except s. 31(1)(3) and **Sch. 2** amendments provided for in s. 31(3)) repealed (12.12.1996 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 by **art. 3**))

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F154 **49**

Textual Amendments

F154 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by **art. 3**))

F155 **50**

Textual Amendments

F155 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by **art. 3**))

F156 **51**

Textual Amendments

F156 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by **art. 3**))

F157 **52**

Textual Amendments

F157 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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**))

53 F158

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Textual Amendments

F158 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](#)))

F159 **54**

Textual Amendments

F159 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3](#)))

F160 **55**

Textual Amendments

F160 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3](#)))

F161 **56**

Textual Amendments

F161 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) repealed (12.12.1996 for certain purposes and otherwise *prosp.*) 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 by art. 3](#)))

F162 **57**

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Textual Amendments

F162 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

F163 **58**

Textual Amendments

F163 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art.3))

F164 **58A**

Textual Amendments

F164 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) 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 by art. 3))

F165 **58B**

Textual Amendments

F165 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) repealed (12.12.1996 and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(14), Sch. 5 (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))

F166 **58C**

Textual Amendments

F166 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) repealed (12.12.1996 and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(14), Sch. 5 (with s.

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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**))

F167 **58D**

Textual Amendments

F167 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) repealed (12.12.1996 and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(14), **Sch. 5** (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**))

F168 **58E**

Textual Amendments

F168 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) repealed (12.12.1996 and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(14), **Sch. 5** (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**))

F169 **58F**

Textual Amendments

F169 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) repealed (12.12.1996 and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(14), **Sch. 5** (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**))

F170 **58G**

Textual Amendments

F170 Pt. III (ss. 30-58G except s. 31(1)(3) and Sch. 2 amendments provided for in s. 31(3)) repealed (12.12.1996 and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(14), **Sch. 5** (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, **art. 3**))

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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) [^{F171}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 [^{F172}or under Part II of the Children (Scotland) Act 1995,] 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 ^{M29}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

F171 Words in s. 59 inserted (1.4.1993) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 10\(7\)](#); S.I. 1992/2975, art. 2(2), [Sch.](#)

F172 Words in s. 59(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)](#), [Sch. 4 para. 15\(15\)](#) (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](#)))

Marginal Citations

M29 1947 c. 43.

[^{F173}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

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- (c) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of secure accommodation . . . ^{F174}]
- (2) The conditions subject to which grants are made under subsection (1) of this section may include conditions for securing the repayment in whole or in part of such grants.
- (3) ^{F175}

Textual Amendments

F173 S. 59A inserted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 72

F174 Words repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 10 Pt. I.

F175 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 [^{F176}, including any establishments such as are mentioned in paragraphs (c) to (e) of section 61(1) of this Act,] 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;
 - ^{F177}(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;
 - ^{F178}(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 [^{F179}1978];
- and may contain different provisions for different classes of establishments [^{F180}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.

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- (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 [^{F181}level 4 on the standard scale].

Textual Amendments

- F176** Words in s. 60(1) inserted (9.7.1998) by 1998 c. 25, s. 1(2)
- F177** 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)
- F178** 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)
- F179** Words substituted by National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), Sch. 16 para. 29(1)
- F180** 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)
- F181** 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 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

Registration of certain residential and other establishments

61 Restriction on carrying on of establishments.

[^{F182}In so far as the context admits, the following provisions of this Part of this Act apply—

- ^{F183}(1) (a) except in the case mentioned in paragraph (b) below, to any residential or other establishment the whole or a substantial part of whose functions 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 or of the Children (Scotland) Act 1995;
- (b) in the case of a residential establishment which is a grant-aided or independent school (as respectively defined in section 135(1) of the ^{M30}Education (Scotland) Act 1980), to that establishment if any part of its functions are as described in paragraph (a) above.]
- [^{F184}(c) to any establishment the whole or a substantial part of whose functions is to provide persons with accommodation and personal care or support otherwise than for the purposes of this Act or Part II of the ^{M31}Children (Scotland) Act 1995, whether or not combined with board, and whether for reward or not;
- (d) to any grant-aided or independent school if—
- (i) it provides residential accommodation; and
- (ii) any part of its functions relates to such personal care or support as is described in paragraph (c) above;
- (e) to any other establishment a substantial part of whose functions is made up of activities falling within paragraphs (a) and (c) above.]

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

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- “establishment” does not include
- (a) ^{F185}any establishment controlled or managed by a Government department or by a local authority or, subject to [^{F186}section] 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, [^{F187}; or
 - (b) any establishment providing residential accommodation with nursing falling within section 13A of this Act;], [^{F188}but an establishment is not excluded for those purposes by paragraph (a) above by reason only of its being registrable by the Registrar of Independent Schools in Scotland;]
- “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) [^{F189}Subject to [^{F190}sections 61A(1) and 62(8) and (8A) of this Act]] 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 [^{F191}level 4 on the standard scale] and in the case of a second or subsequent conviction to imprisonment for a term not exceeding three months or to a fine not exceeding [^{F191}level 4 on the standard scale] or to both such imprisonment and such fine.

Textual Amendments

- F182** S. 61(1)(1A) substituted for subsection (1) by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\), s. 1\(1\)](#)
- F183** S. 61(1) substituted (1.4.1997) by [1995 c. 36, s. 34\(2\)\(a\)](#) (with s. 103(1)); S.I. 1996/3201, [art. 3\(7\)](#)
- F184** S. 61(1)(c)-(e) inserted (9.7.1998) by [1998 c. 25, s. 1\(1\)](#)
- F185** Word in s. 61(1A) inserted (1.4.1993) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 10\(8\)\(a\)](#); S.I. 1992/2975, [art. 2 \(2\)](#), Sch.
- F186** S. 61(1A): words in the definition of “establishment” substituted (1.4.1997) by [1995 c. 36, s. 34\(2\)\(b\)\(i\)](#) (with ss. 90, 103(1)); S.I. 1996/3201, [art. 3\(7\)](#)
- F187** Words in s. 61(1A) inserted (1.4.1993) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), ss. 66\(1\), Sch. 9 para. 10\(8\)\(b\)](#); S.I. 1992/2975, [art. 2 \(2\)](#), Sch.
- F188** S. 61(1A): words in the definition of “establishment” added (1.4.1997) by [1995 c. 36, s. 34\(2\)\(b\)\(ii\)](#) (with ss. 90, 103(1)); S.I. 1996/3201, [art. 3\(7\)](#)
- F189** Words inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\), s. 1\(2\)](#)
- F190** Words in s. 61(1A) substituted (1.4.1997) by [1995 c. 36, s.34\(2\)\(c\)](#) (with ss. 90, 103(1)); S.I. 1996/3201, [art. 3\(7\)](#)
- F191** 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. 61(3) 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

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Modifications etc. (not altering text)

C13 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.)

Marginal Citations

M30 1980 c.44.

M31 1995 c.36.

[^{F192}61A Voluntary registration.

- (1) A grant-aided or independent school, which—
 - (a) is not a school such as is described in paragraph (b) or (d) of section 61(1) of this Act; and
 - (b) does not provide such personal care or support as is described in paragraphs (a) or (c) of that section as the whole or a substantial part of its functions,] may be carried on by a person without his being registered in respect of it as mentioned in subsection (2) of that section; but he may if he wishes apply in accordance with section 62, or as the case may be 63, of this Act for such registration.
- (2) Sections 62(8) and (8A) and 65 of this Act shall not apply in relation to establishments as respects which registration has been by virtue of subsection (1) above.

Textual Amendments

F192 S. 61A substituted (1.4.1997) by 1995 c. 36, s. 34(3) (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))

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

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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.

[^{F193}(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
 (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.]

[^{F194}(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 [^{F195}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

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carrying on the establishment shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [^{F196}level 4 on the standard scale] or, in the case of a second or subsequent conviction, to a fine not exceeding [^{F196}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.

[^{F197}(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 in complying with this subsection the person carrying on the establishment shall be liable on summary conviction to a fine not exceeding [^{F198}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.

[^{F199}(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

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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

- F193** 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)
- F194** S. 62(5)(5A) substituted for s. 62(5) by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(2)
- F195** Words substituted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(3)
- F196** 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
- F197** S. 62(6A)(6B) inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(4)
- F198** 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)
- F199** S. 62(8A) inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(5)

Modifications etc. (not altering text)

- C14** 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.)

[^{F200} 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

- F200** 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.

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- (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.

[^{F201}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 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.

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- (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

F201 S. 63A inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 4

[^{F202} 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 ^{M32}1938 (which relates to the registration of nursing homes) in respect of an establishment 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 ^{M33}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

F202 S. 63B inserted after s. 63 by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 5(1)

Marginal Citations

M32 1938 c.73(113:3).

Status: Point in time view as at 11/08/1998. This version of this Act contains provisions that are not valid for this point in time.

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M33 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.
- (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.

[^{F203} 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.

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- (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

F203 S. 64A inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 6(1)

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 ^{F204}(by virtue of subsections (2) and (3)) of section 61 of this Act] 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 ^{F204}(by virtue of the said subsections (2) and (3))] 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 ^{F205}—
- (a) obstructs the exercise of a power conferred by the last foregoing subsection ^{F206}; 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,]

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shall be liable on summary conviction to a fine not exceeding [^{F207}level 4 on the standard scale] in the case of a first offence or [^{F207}level 4 on the standard scale] in the case of a second or any subsequent offence.

Textual Amendments

- F204** Words in s. 65(1) inserted (1.4.1997) by 1995 c. 36, s. 34(5)(a)(b) (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))
- F205** “-(a)” inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 7(1)(a)
- F206** 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)
- F207** 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 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 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 [^{F208}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.

Status: Point in time view as at 11/08/1998. 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 31 May 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)

Textual Amendments

F208 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**)

[^{F209}67 Entry to examine state and management of establishments etc.

- (1) A person duly authorised by a local authority may in the area of that authority, at all reasonable times, enter, for a relevant purpose—
- (a) any establishment as regards which a person is registered, or ought (by virtue of subsections (2) and (3) of section 61 of this Act) to be registered, under section 62 of this Act; or
 - (b) any place which the person so authorised has reasonable cause to believe is being used as such an establishment,
- and subsections (2A) to (2D), (4) and (5) of section 6 of this Act shall apply in respect of a person so authorised as they apply in respect of a person duly authorised under subsection (1) of that section.
- (2) “Relevant purpose” in subsection (1) above means—
- (a) the purpose of making such examinations into the state and management of the establishment or place, and the condition and treatment of the persons in it, as the person so authorised thinks necessary; or
 - (b) the purpose of inspecting any records, or registers (in whatever form they are held) relating to the place, or to any person for whom, under or by virtue of this Act, section 7 (functions of local authorities) or 8 (provision of after-care services) of the ^{M34}Mental Health (Scotland) Act 1984, or Part II of the ^{M35}Children (Scotland) Act 1995, services are being or have been provided in the place.]

Textual Amendments

F209 [S. 67](#) substituted (1.4.1997) by [1995 c. 36, s. 34\(6\)](#) (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](#)))

Marginal Citations

M34 [1984 c.36.](#)

M35 [1995 c.36.](#)

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

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of the authority for the purpose of visiting children in the establishment who are [F210being looked after by the authority] 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 [F211level 3 on the standard scale] in the case of a first offence or [F211level 3 on the standard scale] in the case of a second or any subsequent offence.

- [F212(4) In subsection (2) of this section, the reference to children being looked after by a local authority shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.]

Textual Amendments

F210 Words in s. 68(2) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(16)(a)** (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**))

F211 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**)

F212 S. 68(4) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(16)(b)** (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**))

F213 PART V

Textual Amendments

F213 Pt. V (ss. 69-77) repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (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**))

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 [F259is being looked after by a local authority] or a supervision requirement to which this Part of this Act applies has been made in respect of him, contributions in respect of the child (hereinafter in this Part of this Act referred to as the “maintainable child”) shall be payable—
- while the maintainable child is under sixteen years of age, by [F260any natural person who has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to him];
 - if he is over sixteen years of age . . . F261, by the maintainable child himself.

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[^{F262}(2) This Part of this Act applies to any supervision requirement which, under paragraph (a) of section 70(3) of the Children (Scotland) Act 1995, requires the child concerned to reside in a place or places other than his own home.]

[^{F263}(2A) No contributions shall be payable under subsection (1)(a) of this section by a contributor during a period when he is in receipt [^{F264}of income support [^{F265}, an income based jobseeker’s allowance (payable under the Jobseekers Act 1995)] 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

F259 Words in s. 78(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(17)(a)(i)** (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**))

F260 Words in s. 78(1)(a) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(17)(a)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3, Sch.** (subject to arts. 4-7)

F261 Words repealed by **Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 10 Pt. I**

F262 S. 78(2) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(17)(b)** (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**))

F263 S. 78(2A) inserted by **Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 19(6)(b)**

F264 Words substituted by **Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 para. 41(1)**

F265 Words in s. 78(2A) inserted (7.10.1996) by 1995 c. 18, s. 41(4), **Sch. 2 para. 1; S.I. 1996/2208, art. 2(b)**

Modifications etc. (not altering text)

C20 S. 78 excluded by **Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 31(3)**

[^{F266}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 [^{F267}looked after by them]; or
- (b) such other contribution as they consider reasonable in the circumstances.]

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Textual Amendments

- F266** S. 78A inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [s. 19\(7\)](#)
- F267** Words in s. 78A(2)(a) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)](#), [Sch. 4 para. 15\(18\)](#) (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](#)))

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 [^{F268}looked after by] 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 [^{F269}looking after] the child.

Textual Amendments

- F268** Words in s. 79(1) (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)](#), [Sch. 4 para. 15\(19\)\(a\)](#) (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](#)))
- F269** Words in s. 79(2) (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)](#), [Sch. 4 para. 15\(19\)\(b\)](#) (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](#)))

80 Enforcement of duty to make contributions.

- (1) Where a child becomes a maintainable child by virtue of being [^{F270}looked after by a local authority], 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) ^{F271}
- (4) Subject to the following provisions of this section, a contribution order in respect of a maintainable child shall remain in force [^{F272}throughout the period during which he is looked after by a local authority]

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- (5) No contribution shall be payable, by virtue of a contribution order by a contributor who [^{F273} being a natural person, has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to the maintainable child], 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 [^{F274} looking after] the child.

Textual Amendments

- F270** Words in s. 80(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(20)(a)** (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**))
- F271** S. 80(2)(3) repealed by *Debtors (Scotland) Act 1987 (c. 18, SIF 45:2)*, s. 108(3), **Sch. 8**
- F272** Words in s. 80(4) substituted for s. 80(4)(a)(b) (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(20)(b)** (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**))
- F273** Words in s. 80(5) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(20)(c)** (with s. 103(1)); S.I. 1996/2203, **art. 3, Sch.** (subject to arts. 4-7)
- F274** Words in s. 80(7) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(20)(d)** (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**))

81 Provisions as to decrees for aliment.

- (1) ^{F275}
- (2) [^{F276}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 [^{F277} person liable under the decree] is for the time being residing may, at any time, order the payments under the decree . . . ^{F278} 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) ^{F279} 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;

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- (b) where the ^{F280}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 ^{F280}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

- F275** S. 81(1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), Sch. 2
- F276** 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)
- F277** 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)
- F278** 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
- F279** Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), Sch. 2
- F280** 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 ^{F281}looking after] 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.
- (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.

Textual Amendments

- F281** Words in s. 82(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(21) (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))

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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 [^{F282}looking after] the child.

Textual Amendments

F282 Words in s. 83(2) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(22)** (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**))

[^{F283}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

F283 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 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

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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 F284

Textual Amendments

F284 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 [F285, or under section 25 of the Children (Scotland) Act 1995,] 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 [F286, or under or by virtue of Part II of the said Act of 1995, 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 another local authority taking over, under section 25(4) of that Act, the provision of accommodation for him,] 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, [F287 or]

[F287(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 [F288 forming part of the hospital and specialist services] provided under [F289 sections 2 and 3 of the M40 National Health Service Act 1977] or [F290 Part II of the M41 National Health Service (Scotland) Act 1978] [F291 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 F292 . . . the M42 Children and Young Persons (Scotland) Act 1937 by a local authority or education authority [F293 or placed with local authority foster parents under the Children Act 1989] [F294 or provided with

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accommodation under paragraph (a) of, or by virtue of paragraph (c) of, section 26(1) of the Children (Scotland) Act 1995] shall be disregarded.

Textual Amendments

- F285** Words in s. 86(1)(a) inserted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(24)(a)(i)** (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**))
- F286** Words in s. 86(1)(b) substituted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(24)(a)(ii)** (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**))
- F287** 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)**
- F288** Words repealed (S.) by National Health Service (Scotland) Act 1972 (c. 58, SIF 113:3), **Sch. 7 Pt. II**
- F289** Words substituted by National Health Service Act 1977 (c. 49, SIF 113:2), **Sch. 15 para. 48**
- F290** Words substituted by National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), **Sch. 16 para. 29(2)**
- F291** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(12)**
- F292** Words in s. 86(3) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15**; S.I. 1991/828, **art. 3(2)**
- F293** Words in s. 86(3) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 23**; S.I. 1991/828, **art. 3(2)**
- F294** Words in s. 86(3) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(24)(b)** (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**))

Marginal Citations

- M40** 1977 c. 49.
M41 1978 c. 29.
M42 1937 c. 37.

[^{F295}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 ^{M43}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 ^{M44}1984; and
 - (d) such other premises as the Secretary of State may by regulations prescribe.

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- (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.
- (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

F295 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)

C21 S. 86A(1) restricted (1.4.1993) by S.I. 1993/477, regs. 4-9.

Marginal Citations

M43 1938 c. 73(113:3).

M44 1984 c. 36(85).

87 Charges that may be made for services and accommodation.

[^{F296}(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 [^{F297}or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984][^{F298}or under or by virtue of Part II of the Children (Scotland) Act 1995] 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 [^{F299}or section 7 or 8 of the said Act of 1984][^{F298}or under or by virtue of Part II of the Children (Scotland) Act 1995]; 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 [^{F300}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 [^{F300}or section 7 of the said Act of 1984] shall be regarded as accommodation provided under Part III of the ^{M45}National Assistance Act 1948, and [^{F301}sections 22(2) to (8)] and 26(2) to (4) [^{F302}as amended by [^{F303}the Schedule to the Housing (Homeless Persons) Act 1977, paragraph 2(1) of Schedule 4 to the Social Security Act 1980,]

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section 20 of the ^{M46}Health and Social Services and Social Security Adjudications Act 1983 [^{F304}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 [^{F305}(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.

- (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 [^{F306}or any other person or body] for the provision of accommodation under this Act [^{F307}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) ^{F308}

Textual Amendments

- F296** S. 87(1)(1A) substituted for s. 87(1) by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\), s. 18](#)
- F297** 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\(13\)\(a\)](#)
- F298** Words in s. 87(1)(1A) inserted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\), Sch. 4 para. 15\(25\)](#) (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](#)))
- F299** 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\(13\)\(b\)](#)
- F300** 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\(13\)\(c\)](#)
- F301** Words substituted by [Social Security Act 1980 \(c. 30, SIF 113:1\), Sch. 4 para. 5\(1\)](#)
- F302** Words inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\), s. 20\(2\)](#)
- F303** Words inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\), ss. 86, 88, Sch. 10 para. 41\(2\)\(a\)](#)
- F304** Words inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\), ss. 86, 88, Sch. 10 para. 41\(2\)\(b\)](#)
- F305** Words substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\), ss. 86, 88, Sch. 10 para. 41\(2\)\(c\)](#)
- F306** 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\(13\)\(d\)](#)
- F307** 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\(13\)\(e\)](#)
- F308** S. 87(6) repealed by [Social Security Act 1980 \(c. 30, SIF 113:1\), Sch. 5 Pt. II](#)

Modifications etc. (not altering text)

- C22** S. 87(2): power to modify conferred (S.) (1.4.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 2; S.S.I. 2002/170, art. 2](#)

Status: Point in time view as at 11/08/1998. This version of this Act contains provisions that are not valid for this point in time.
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C23 S. 87(3): power to modify conferred (S.) (1.4.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 2](#); [S.S.I. 2002/170](#), [art. 2](#)

Marginal Citations

M45 1948 c. 29.

M46 1983 c. 41.

F309 **88**

Textual Amendments

F309 S. 88 repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)\(5\)](#), [Sch. 4 para. 15\(26\)](#), [Sch. 5](#) (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](#)))

89 **F310**

Textual Amendments

F310 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 ^{F311} ^{F312}, 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

F311 Words in s. 90(1) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)\(5\)](#), [Sch. 4 para. 15\(27\)](#), [Sch. 5](#) (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](#)))

F312 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—

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- (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.

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 ^{M47}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 ^{M48}Local Government (Scotland) Act 1966.

Marginal Citations

- M47** 1966 c. 51.
M48 1966 c. 51.

[^{F313}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 ^{M49}1984, in relation to persons suffering from mental illness.]

Textual Amendments

- F313** S. 92A inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 58

Marginal Citations

- M49** 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 ^{M50}Children and Young Persons Act 1933,

“approved school order” has the meaning assigned to it by section 107(1) of the ^{M51}Children and Young Persons Act 1933,

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“constable” means a constable of a police force within the meaning of the ^{M52}Police (Scotland) Act 1967,

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

^{F316}“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 [^{F317}or of Part II of the Children (Scotland) Act 1995,] whether for reward or not,

“functions” shall include powers and duties,
^{F318}
.
.

“hospital” means—

(a) any hospital vested in the Secretary of State under the ^{M53}National Health Service (Scotland) Act [^{F319}1978],

^{F320}(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 [^{F321}Mental Health (Scotland) Act 1984], and

(c) any State hospital, within the meaning of [^{F321}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,

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

“mental disorder” has the meaning assigned to it by [^{F322}section 1(2) of the Mental Health (Scotland) Act 1984],

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“mental health officer” means an officer of a local authority appointed to act as a mental health officer for the purposes of the [F323said Act of 1984],

[F324“parent” means either parent or both parents, except that where the child was born out of wedlock and the parents have not subsequently married each other it means the natural mother but not the natural 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) F325
- (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,

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.....

[F327“prescribed” means—

- (a) in [F328section 3] prescribed by regulations,
- F329(b)
- (c) in sections [F33027A, 27B,] 62(2), [F33164A(3),] 66(1) and (2), 94, paragraphs 2(2) and (3), 4(3) and (4) of Schedule 7, prescribed by order,

[F332and “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 [F333section 2 of the M54Powers 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 M55Probation 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 [F334or of Part II of the Children (Scotland) Act 1995], whether for reward or not,

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.....

“supervision order”, in relation to an order imposed by a court in England or Wales, [F336means a supervision order under the Children and Young Persons Act 1969 Act or the Children Act 1989], and in relation to an order imposed by a court in Northern Ireland [F337means a supervision order under the Children and Young Persons Act (Northern Ireland) 1968 or the Children (Northern Ireland) Order 1995],

“supervision requirement” has the meaning assigned to it by [F338section 70(1) of the Children (Scotland) Act 1995],

[F339“training school” has the meaning assigned to it by section 180(1) of the Children and Young Persons Act (Northern Ireland) 1968;]

“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,

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“welfare authority” means a welfare authority constituted under the ^{M56}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

- F314** S. 94(1): definition of “children's panel” and “children's hearing” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(a), **Sch. 5** (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**))
- F315** S. 94(1): definition of “compulsory measures of care” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(b), **Sch. 5** (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**))
- F316** 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)**
- F317** S. 94(1): words in the definition of “establishment” inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(c)** (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**))
- F318** S. 94(1): definition of “guardian” repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(d), **Sch. 5**; S.I. 1996/2203, art. 3(3), **Sch.**, Table (with arts. 4-7)
- F319** Words substituted by National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), **Sch. 16 para. 29(3)**
- F320** 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)**
- F321** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 17(a)**
- F322** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 17(b)**
- F323** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 17(c)**
- F324** S. 94(1): definition of “parent” substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(e)** (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch.** (with arts. 4-7)
- F325** Para (c) repealed by Housing (Homeless Persons) Act 1977 (c. 48, SIF:61), **Sch.**
- F326** S. 94(1): definition of “place of safety” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(f), **Sch. 5** (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**))
- F327** Definition inserted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), **Sch. 5 para. 64(1)**
- F328** S.94(1): words in the definition of “prescribed” in para. (a) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(g)(i)** (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**))

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- F329** S. 94(1): para. (b) in the definition of “prescribed” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(g)(ii), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (S.) (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F330** 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. 3 Sch.**
- F331** “64A(3),” inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 6(2)(a)
- F332** Words inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 6(2)(b)
- F333** Words substituted by Powers of Criminal Courts Act 1973 (c. 62, SIF 39:1), s. 56(1), **Sch. 5 para. 30**
- F334** S. 94(1): words in the definition of “residential establishment” inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(h)** (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**))
- F335** S. 94(1): definition of “school age” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(i), **Sch. 5** (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**))
- F336** Words in s. 94(1) substituted (14. 10. 1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 36**; S.I. 1991/1883, **art. 3 Sch.**
- F337** S. 94(1): words in the definition of “supervision order” substituted (4.11.1996) by S.I. 1995/756, **art. 5(6)**; S.R. 1996/297, **art. 3**
- F338** S. 94(1): words in the definition of “supervision requirement” (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(j)** (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**))
- F339** S. 94(1): definition of “training school” substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(k)** (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**))

Marginal Citations

- M50** 1933 c. 12.
M51 1933 c. 12.
M52 1967 c. 77.
M53 1978 c. 29.
M54 1973 c. 62.
M55 1950 c. 7 (N.I.)
M56 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,

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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 31 May 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)

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)

C24 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 F340

Textual Amendments

F340 S. 96 repealed by Northern Ireland Constitution Act 1973 (c. 36, SIF 29:3), Sch. 6 Pt. I

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—

F341
...
F341
...
sections 86 and 87
F341
...
[^{F342}section 98(3) and Schedule 2 paragraphs 7 and 13]
Schedule 8
Part II of Schedule 9.

^{F343}(2)

^{F343}(3)

(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

F341 Words in s. 97 repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(29)(a), Sch. 5 (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))

F342 Words inserted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), Sch. 5 para. 65

F343 S. 97(2)(3) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(29)(b), Sch. 5 (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))

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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.
- [^{F344}(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 ^{M57}Children and Young Persons Act 1969.]

Textual Amendments

F344 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

M57 1969 c. 54.

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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