



Social Work (Scotland) Act 1968

1968 CHAPTER 49

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) [^{F1}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 [^{F2}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 ^{M1}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.”

Status: Point in time view as at 12/12/1996. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Social Work (Scotland) Act 1968, Part IV is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F1** 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.](#)
- F2** 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

- M1** [1947 c. 43](#).

[^{F3}59A Grants in respect of secure accommodation for children.

- (1) The Secretary of State may make to a local authority grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in—
- (a) providing;
 - (b) joining with another local authority in providing; or
 - (c) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of secure accommodation . . . ^{F4}]
- (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) ^{F5}

Textual Amendments

- F3** [S. 59A](#) inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [s. 72](#)
- F4** Words repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [Sch. 10 Pt. I](#).
- F5** [S.59A\(3\)](#) repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [Sch. 10 Pt. I](#)

60 Control of residential and other establishments.

- (1) The Secretary of State may make regulations as to the conduct of residential and other establishments and for securing the welfare of persons resident or accommodated in them, and, without prejudice to the generality of those regulations, they may provide—
- (a) for the construction of, and the accommodation provided in, those establishments, and their equipment, maintenance and management;
 - (b) for the classification, treatment and control of persons resident therein or attending thereat;
 - [^{F6}(bb) for the granting of approval by the Secretary of State for the provision and use of accommodation in residential establishments as secure accommodation;]

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- (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;
 - [^{F7}(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 [^{F8}1978];
- and may contain different provisions for different classes of establishments [^{F9}different classes of accommodation in residential and other establishments] and different categories of persons.
- (2) In the foregoing subsection, the expression “treatment” includes training, education and occupation, but does not include medical treatment.
 - (3) Where any regulation made in pursuance of this section provides that this subsection shall have effect in relation to the regulation, any person who contravenes or fails to comply with the regulation or any requirement or direction under it shall be liable on summary conviction to a fine not exceeding [^{F10}level 4 on the standard scale].

Textual Amendments

- F6** 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)
- F7** 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)
- F8** Words substituted by National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), Sch. 16 para. 29(1)
- F9** 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)
- F10** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289C(1), Sch. 7C (as inserted by Criminal Law Act 1977 (c. 45, SIF 39:1), s. 63(1), Sch. 11 paras. 5, 13) and s. 289G (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 54) (and the said Criminal Procedure (Scotland) Act 1975 was repealed (S.) (1.4.1996) by 1995 c. 40, s. 6, Sch. 5), and by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 3(1), Sch. 2 Pt. II it is provided (1.4.1996) that s. 6(5) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 4 on the standard scale instead of a fine of £50

Registration of certain residential and other establishments

61 Restriction on carrying on of establishments.

- [^{F11}(1) The following provisions of this Part of this Act apply to any residential or other establishment the whole or a substantial part of whose function is to provide persons with such personal care or support, whether or not combined with board, and whether for reward or not, as may be required for the purposes of this Act.

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- (1A) For the purposes of subsection (1) above—
 “establishment” does not include
- (a) ^{F12}any establishment controlled or managed by a Government department or by a local authority or, subject to sections 61A and 63B below, required to be registered, or in respect of which a person is required to be registered, with a Government department or a local authority under any other enactment, ^{F13}; or
 - (b) any establishment providing residential accommodation with nursing falling within section 13A of this Act;],
 “personal care” includes the provision of appropriate help with physical and social needs; and
 “support” means counselling or other help provided as part of a planned programme of care.]
- (2) [^{F14}Subject to section 62(8) and (8A) below] An establishment shall not be carried on by any person unless he is for the time being registered in respect of it in a register kept for the purposes of this section by a local authority or, as the case may be, by the Secretary of State.
- (3) Any person who carries on an establishment in contravention of the provisions of subsection (2) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F15}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 [^{F15}level 4 on the standard scale] or to both such imprisonment and such fine.

Textual Amendments

- F11** S. 61(1)(1A) substituted for subsection (1) by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 1(1)
- F12** 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.**
- F13** 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.**
- F14** Words inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 1(2)
- F15** Words in s. 61(3) 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. 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

Modifications etc. (not altering text)

- C1** 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.)

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[^{F16}61A Voluntary registration.

- (1) Any grant-aided school or independent school within the meaning of section 135(1) of the Education (Scotland) Act ^{M2}1980 (which defines terms used in that Act) which performs functions such as are described in section 61(1) above may, but shall not be required to, apply for registration under this Part of this Act in accordance with the provisions of this section.
- (2) Where an application for registration of a grant-aided school or independent school is granted, the establishment shall be entered in the register kept for the purposes of section 61(2) above by the local authority or, as the case may be, the Secretary of State.
- (3) Any certificate of registration granted in respect of an establishment to which this section applies shall relate to the whole of the establishment, excepting any part thereof which is used exclusively for educational purposes.
- (4) The provisions of this Part of this Act shall apply to establishments to which this section applies subject to the following—
 - (a) section 61(2) and (3) shall not apply;
 - (b) section 62(8) and (8A) shall not apply;
 - (c) section 65 shall not apply;
 - (d) the provisions of section 67(1) shall apply only where the person carrying on the establishment has been registered; and
 - (e) section 67(2) shall not apply.]

Textual Amendments

F16 S. 61A inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 2(1)

Marginal Citations

M2 1980 c.44(41:2).

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

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- (b) that for reasons connected with situation, construction, state of repair, accommodation, staffing or equipment, the establishment or any premises used in connection therewith are not fit to be used for an establishment of such a description as aforesaid; or
 - (c) that the way in which it is proposed to conduct the establishment is such as not to provide services or facilities reasonably required by persons resorting to such an establishment.
- [^{F17}(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.]
- [^{F18}(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.]

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(6) If any [^{F19}condition, new condition or variation of condition imposed by or under subsection (5) or (5A) above or section 63A(7) below] is not complied with, the person carrying on the establishment shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [^{F20}level 4 on the standard scale] or, in the case of a second or subsequent conviction, to a fine not exceeding [^{F20}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.

[^{F21}(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 [^{F22}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.

[^{F23}(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

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proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

- (10) The registers kept for the purposes of this section shall be available for inspection at all reasonable times, and a person inspecting any such register shall be entitled to make copies of entries therein.

Textual Amendments

- F17** 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)
- F18** S. 62(5)(5A) substituted for s. 62(5) by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(2)
- F19** Words substituted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(3)
- F20** 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
- F21** S. 62(6A)(6B) inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(4)
- F22** 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)
- F23** S. 62(8A) inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 3(5)

Modifications etc. (not altering text)

- C2** S. 62(6): Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289(E) (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39(1)), s. 54) (liability on first and subsequent convictions) applies (S.)

VALID FROM 01/04/1997

^{F24}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

- F24** 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))

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63 Special provisions for registration by Secretary of State.

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

[^{F25}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—

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- (i) an appeal having been brought, or
 - (ii) an appeal which has been intimated having been proceeded with,
- and in either of the cases mentioned in paragraph (b) above the registration shall be subject to the conditions proposed in the notice sent to the applicant under subsection (3) above.
- (6) Where an appeal under subsection (4) above relates to the proposed imposition of new conditions or of a variation of existing conditions, the new conditions or variation shall not take effect until—
- (a) the appeal has been determined; or
 - (b) the time for bringing an appeal has elapsed without—
 - (i) an appeal having been brought, or
 - (ii) an appeal which has been intimated having been proceeded with.
- (7) On any appeal under subsection (4) above the tribunal may confirm or vary any condition, new condition or variation of a condition against which the appeal is brought.]

Textual Amendments

F25 S. 63A inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 4

[^{F26}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 ^{M3}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 ^{M4}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.]

Status: Point in time view as at 12/12/1996. This version of this part contains provisions that are not valid for this point in time.

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Textual Amendments

F26 S. 63B inserted after s. 63 by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\)](#), s. 5(1)

Marginal Citations

M3 1938 c.73(113:3).

M4 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.

^{F27}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.

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- (2) This section applies to any establishment such as is mentioned in section 61(1) of this Act which is a residential establishment other than any establishment—
- (a) the whole or a substantial part of whose function is to accommodate children for the purposes of this Act; or
 - (b) such as is mentioned in section 61A above.
- (3) The Secretary of State may prescribe—
- (a) the maximum fees which may be imposed by local authorities under this section; and
 - (b) the times at which fees may be charged.
- (4) Subject to subsection 3(a) above, a local authority shall have regard to their reasonable expenses in carrying out their functions under this Part of this Act in fixing fees under this section:
- Provided that where it appears to the authority to be appropriate they may charge a nominal fee, or remit the fee altogether.
- (5) Where an application for registration in respect of an establishment has been made to a local authority before the coming into force of this section no fee shall be payable in respect of that registration.]

Textual Amendments

F27 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 to be so registered, with them may, notwithstanding that the time for any appeal under the last foregoing section has not expired or that such an appeal is pending, forthwith remove from the establishment all or any of the persons for whom accommodation is being provided therein; or, in the case of an establishment in respect of which the person carrying it on is registered with him or ought to be so registered, the Secretary of State may in the like circumstances require the local authority in whose area the establishment is situated so to act, and the local authority shall comply with that requirement.
- (2) In any case of urgent necessity the Secretary of State may exercise the power conferred on him by the foregoing subsection in respect of any establishment.
- (3) For the performance of the functions of a local authority under subsection (1) of this section, any person authorised in that behalf by the authority may, on producing, if so required, a duly authenticated document showing his authority to do so, enter any premises in which the establishment in question is being carried on.
- (4) Any person who ^{F28}—

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- (a)] obstructs the exercise of a power conferred by the last foregoing subsection [F29]; or—
 - (b) re-occupies the premises for the purpose of carrying on the establishment without any appeal under section 64 above having been decided in his favour,]
- shall be liable on summary conviction to a fine not exceeding [F30]level 4 on the standard scale] in the case of a first offence or [F30]level 4 on the standard scale] in the case of a second or any subsequent offence.

Textual Amendments

- F28** “-(a)” inserted by [Registered Establishments \(Scotland\) Act 1987 \(c. 40, SIF 81:3\), s. 7\(1\)\(a\)](#)
- F29** [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\(1\)\(b\)](#)
- F30** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289C\(1\), Sch. 7C](#) (as inserted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\), s. 63\(1\), Sch. 11 paras. 5, 13](#)) and s. 289G (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 54](#)) (and the said Criminal Procedure (Scotland) Act 1975 was repealed (S.) (1.4.1996) by [1995 c. 40, s. 6, Sch. 5](#)) and by [1995 c. 40, ss. 3, 7\(2\), Sch. 1 para. 3\(1\), Sch. 2 Pt. II](#) it is provided (1.4.1996) that s. 6(5) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 4 on the standard scale instead of a fine of £10 for a first offence and £50 for a second or subsequent offence

66 Duty to furnish particulars of establishments.

- (1) Subject to the next following subsection, it shall be the duty of the person in charge of an establishment to send to the local authority or, as the case may be, the Secretary of State such particulars of the establishment and the persons accommodated or to 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 [F31]level

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1 on the standard scale] and to a further fine not exceeding two pounds in respect of each day during which the failure continues after conviction.

Textual Amendments

- F31** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G** (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 54**)

67 Inspection of establishments by local authorities.

- (1) Any [^{F32}duly authorised officer of][^{F32}person duly authorised by] a local authority may in the area of that authority enter any establishment where the person carrying on the establishment is registrable under section 62 of this Act for the purpose of making such examinations into the state and management of the place, and the condition and treatment of the persons in it, as he thinks necessary, and for the purpose of inspecting any records or registers [^{F33}required to be kept therein by virtue of this Part of this Act][^{F33}(in whatever form they are held) relating to the place or to any person for whom services have been or are provided there by virtue of this Act or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984], and the provisions of subsections (2) [^{F34}to 2D], (4) and (5) of section 6 of this Act shall apply in relation to [^{F35}an officer][^{F35}a person] acting in pursuance of this section as they apply in relation to [^{F36}an officer of][^{F36}a person authorised by] the Secretary of State acting in pursuance of that section.
- (2) Any such [^{F37}officer][^{F37}person] as aforesaid may at all reasonable times exercise the like powers of entry and inspection conferred on him by the foregoing subsection in respect of any place in the area of the local authority which is used or which that [^{F37}officer][^{F37}person] has reasonable cause to believe is being used as an establishment in respect of which the person carrying it on is registrable under section 62 of this Act.

Textual Amendments

- F32** Words commencing “person” substituted (1.4.1991) for words commencing “duly authorised” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(9)(a)**
- F33** Words commencing “(in whatever” substituted (1.4.1991) for words commencing “required” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(9)(b)**
- F34** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(9)(c)**
- F35** Words “a person” substituted (1.4.1991) for “an officer” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(9)(d)**
- F36** Words “a person authorised by” substituted (1.4.1991) for “an officer of” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(9)(e)**
- F37** Word “person” substituted (1.4.1991) for “officer” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 10(10)**

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

- (1) It shall be the duty of local authorities from time to time to cause persons in establishments in their area to be visited in the interests of the well-being of the

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persons, and any person authorised in that behalf by a local authority may on producing if so required a duly authenticated document showing his authority to do so, enter any establishment in the area of the authority for the purpose of visiting the persons in the establishment.

(2) Any person authorised in that behalf by a local authority may, on producing, if so required, such a document as aforesaid, enter any establishment outside the area of the authority for the purpose of visiting children in the establishment who are [^{F38}being 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 [^{F39}level 3 on the standard scale] in the case of a first offence or [^{F39}level 3 on the standard scale] in the case of a second or any subsequent offence.

[^{F40}(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

- F38** 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**))
- F39** 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**)
- F40** 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**))

Status:

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Changes to legislation:

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