

*Status: Point in time view as at 25/08/2000.*

*Changes to legislation: There are currently no known outstanding effects for the Children and Young Persons Act 1969, SCHEDULE 4. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### PART I

##### GENERAL

1 For the purposes of subsection (4) of section 1 and subsection (7) of section 7 of this Act, any order under the Act of 1933 committing a child or young person to the care of a fit person other than a local authority, any supervision order under that Act and any order to enter into recognisances in pursuance of section 62(1)(c) of that Act shall be deemed to be such an earlier order as is mentioned in those subsections.

[<sup>F1</sup>1A (1) Where—

- (a) before the date when section 1 of this Act comes into force any child or young person (hereafter in this paragraph referred to as “the relevant infant”) has been brought before a [<sup>F2</sup> youth court] under section 62 of the <sup>M1</sup>Children and Young Persons Act 1933 or has been brought before such a court by virtue of a provision of section 40 or 40A of the <sup>M2</sup>Education Act 1944; and
- (b) immediately before that date that court has neither made any order which it had power to make in respect of the relevant infant under the said section 62 nor dismissed the case,

nothing in paragraph 13 of Schedule 5 to this Act nor in any provision of Schedule 6 thereto shall prevent the proceedings before that court in respect of the relevant infant being continued; but the court shall in those proceedings have power to make any order which it has power to make in proceedings under section 1 of this Act and shall not have power to make any other order, and subsections (3), (4) and (5) of the said section 1 and subsections (10) and (13) of section 2 of this Act shall have effect accordingly with any necessary modifications.

- (2) For the purposes of subsection (12) of the said section 2, any order made in respect of the relevant infant by virtue of sub-paragraph (1) of this paragraph shall be deemed to be made under section 1 of this Act.
- (3) Any record of a finding of the fact that the relevant infant is in need of care or protection made in pursuance of section 5 of the <sup>M3</sup>Children and Young Persons Act 1938 in any such proceedings as are referred to in sub-paragraph (1) of this paragraph shall, notwithstanding the repeal of the said section 5 by this Act, be admissible as evidence of that fact in those proceedings.]

#### Textual Amendments

**F1** Sch. 4 para. 1A inserted by Administration of Justice Act 1970 (c. 31, SIF 37), s. 51(2)

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**F2** Words in Sch. 4 para. 1A substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, Sch. 11, para. 40(2)(g); S.I. 1992/333, art. 2(2), **Sch.2**

**Marginal Citations**

- M1** 1933 c. 12(20).
- M2** 1944 c. 31(41:1).
- M3** 1938 c. 40.

**F3**<sub>2</sub> .....

**Textual Amendments**

**F3** Sch. 4 para. 2 repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(1), Sch. 11, para. 2, **Sch.13**; S.I. 1992/333, art. 2(2), **Sch.2**

**F4**<sub>3</sub> .....

**Textual Amendments**

**F4** Sch. 4 para. 3 repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(1), **Sch.13**; S.I. 1992/333, art. 2(2), **Sch. 2**

**4** ..... **F5**

**Textual Amendments**

**F5** Sch. 4 para. 4 repealed by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154(2), **Sch. 9**

**5** (1) The coming into force of section 7(1) or of an order under section 34(1)(d) of this Act shall not affect any sentence of borstal training passed before the date when the said section 7(1) or the order came into force or any committal for sentence before that date under [<sup>F6</sup>section 37(1) of the <sup>M4</sup>Magistrates' Courts Act 1980]; but a sentence of borstal training shall not be passed on any person (including a person to whom such a committal relates) if on the date of the relevant conviction he had not attained the minimum age which is for the time being specified in section 20(1) of the <sup>M5</sup>Criminal Justice Act 1948.

(2) ..... **F7**

**Textual Amendments**

- F6** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154(2), **Sch. 7 para. 86**
- F7** Sch. 4 para. 5(2) repealed by Powers of Criminal Courts Act 1973 (c. 62, SIF 39:1), **Sch. 6**

**Marginal Citations**

- M4** 1980 c. 43(82).
- M5** 1948 c. 58(39:1).

**6** ..... **F8**

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### Textual Amendments

**F8** Sch. 4 para. 6 repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 16](#)

- 7 (1) Every approved school order in force on the specified day shall cease to have effect at the end of that day; and after that day—
- (a) no person shall be detained by virtue of section 73 or section 82 of the Act of 1933 or an order under paragraph 2 of Schedule 2 to the said Act of 1961 or be subject to supervision in pursuance of that Schedule; and
  - (b) no person who has attained the age of nineteen shall be detained by virtue of a warrant under section 15 of the said Act of 1961.
- (2) A person who has not attained the age of nineteen on the specified day and who, but for sub-paragraph (1) of this paragraph, would after that day have been the subject of an approved school order or liable to be detained or subject to supervision as mentioned in that sub-paragraph shall be deemed from the end of that day—
- (a) to be the subject of a care order made by the court which made the approved school order in question on the same day as that order and committing him to the care of the local authority named in the approved school order in pursuance of section 70(2) of the Act of 1933 or, if no authority is so named, of a local authority nominated in relation to him by the Secretary of State; and
  - (b) in the case where he would have been subject to supervision as aforesaid, to have been allowed by the said local authority to be under the charge and control of the person last nominated in relation to him in pursuance of paragraph 1(1) of Schedule 2 to the said Act of 1961;
- but nothing in this paragraph shall be construed as affecting the validity of a warrant under the said section 15 in relation to a person who has not attained the age of nineteen.
- In relation to a person in respect of whom two or more approved school orders would have been in force after the specified day but for sub-paragraph (1) of this paragraph, references to such an order in paragraph (a) of this sub-paragraph are to the later or latest of the orders.
- (3) The Secretary of State may from time to time nominate another local authority in the place of a local authority nominated by him in pursuance of the preceding sub-paragraph or this sub-paragraph.
- (4) A person who is the subject of a care order by virtue of sub-paragraph (2) of this paragraph and who was unlawfully absent on the specified day from an approved school in which he was then required to be shall, until the local authority to whose care he is committed by the order direct otherwise, be deemed for the purposes of section 32 of this Act to be duly required by the authority to live after that day in the premises which on that day constituted the school.
- (5) A person who on the specified day is the subject of an approved school order or subject to supervision in pursuance of the said Schedule 2 or eligible for assistance under paragraph 7 of that Schedule and is not the subject of a care order from the end of that day by virtue of sub-paragraph (2) of this paragraph shall be deemed for the purposes of section 20 of the <sup>M6</sup>Children Act 1948 and section 58 of the Act of 1963 (which authorise local authorities to provide assistance for persons formerly in care) to have been in the care of a local authority under the Children Act 1948 on that day,

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notwithstanding that he may then have attained the age of eighteen; and in relation to such a person the reference in the said section 58 to the local authority shall be construed as a reference to any local authority.

- (6) If an order under section 88 of the Act of 1933 is in force at the end of the specified day in respect of payments under an affiliation order made for the maintenance of a person who is deemed by virtue of this paragraph to be subject to a care order after that day, the order under that section shall after that day be deemed to have been made, by virtue of the care order, under that section as modified by this Act.
- (7) [<sup>F9</sup>A restriction direction which was given under section 49 of the <sup>M7</sup>Mental Health Act 1983] in respect of a person detained by virtue of an approved school order and which is in force at the end of the specified day shall cease to have effect at the end of that day.
- (8) References to an approved school order in this paragraph, except in sub-paragraph (2) (a), include references to an order of the competent authority under subsection (1) of section 83 of the Act of 1933 and such an order as is mentioned in subsection (3) of that section; and in relation to those orders this paragraph shall have effect, as if for sub-paragraph (2)(a) there were substituted the following—
- “(a) to be the subject of a care order made by a court in England on the date when the order for his detention in a school was made under the relevant law mentioned in section 83 of the Act of 1933 and committing him to the care of a local authority nominated in relation to him by the Secretary of State; and”
- (9) In this paragraph “the specified day” means the day specified for the purposes of section 7(5) of this Act.

#### Textual Amendments

**F9** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), [Sch. 4 para. 26\(e\)](#)

#### Marginal Citations

**M6** [1948 c. 43](#).

**M7** [1983 c. 20\(85\)](#).

- 8 (1) An order under the Act of 1933 committing a child or young person to the care of a local authority as a fit person and in force on the date when section 7(6) of this Act comes into force shall be deemed on and after that date to be a care order committing him to the care of that authority.
- (2) Sub-paragraph (6) of the preceding paragraph shall have effect for the purposes of this paragraph as if for references to that paragraph and the specified day there were substituted respectively references to this paragraph and the day preceding the date mentioned in the preceding sub-paragraph.
- 9 Except as provided by paragraph 1 of this Schedule and this paragraph, nothing in this Act affects—
- (a) an order under the Act of 1933 committing a child or young person to the care of a fit person other than a local authority and in force on the date when section 7(6) of this Act comes into force; or
- (b) the operation of any enactment in relation to such an order;

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but where an application for the variation or revocation of the order is considered on or after that date by a [<sup>F10</sup>youth court] in pursuance of section 84(6) of the Act of 1933, the court shall have power (to the exclusion of its powers under the said section 84(6)) to refuse the application or to revoke the order and, where it revokes the order, to make a care order in respect of the child or young person in question.

**Textual Amendments**

**F10** Words in Sch. 4 para. 9 substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, Sch. 11, para. 40(2)(g); S.I. 1992/333, art. 2(2), Sch. 2.

10 ..... <sup>F11</sup>

**Textual Amendments**

**F11** Sch. 4 para. 10 repealed by Foster Children Act 1980 (c. 6, SIF 20), Sch. 3

11 Notwithstanding anything in section 20(3) or 21(1) of this Act, an order which is a care order by virtue of paragraph 8 of this Schedule and a care order made by virtue of paragraph 9 of this Schedule shall, unless previously revoked, cease to have effect when the child or young person in question attains the age of eighteen.

12 (1) Where a supervision order under the Children and Young Persons Acts 1933 to 1963 is in force on the date when this paragraph comes into force or where an order under section 52 of the Act of 1963 (whether made before, on or after that date) falls to be treated by virtue of subsection (3) of that section as a supervision order under the Act of 1933, the order and, in relation to the order, any enactment amended or repealed by this Act shall, subject to the following provisions of this paragraph, have effect as if this Act had not been passed; and the order may be altered or revoked accordingly.

(2) A [<sup>F12</sup>youth court] before which the person to whom such a supervision order relates is brought after the date aforesaid in pursuance of subsection (1) of section 66 of this Act of 1933 shall not have power to make such an order as is mentioned in that subsection in respect of him but shall instead have power to revoke the supervision order and make a care order in respect of him on being satisfied that he is unlikely to receive the care or control he needs unless the court makes a care order; and section 6(1) of the Act of 1963 shall not apply in a case where the court exercises its power under this sub-paragraph.

<sup>F13</sup>(3) .....

(4) References to a supervision order in sub-paragraphs (2) and (3) of this paragraph include references to an order under the said section 52.

**Textual Amendments**

**F12** Words in Sch. 4 para. 12(2) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 100, Sch. 11, para. 40(2)(g); S.I. 1992/333, art. 2(2), Sch. 2.

**F13** Sch. 4 para. 12(3) repealed (25.8.2000) by 2000 c. 6, ss. 165(4), 168(1), Sch. 12 Pt. I (with Sch. 11 paras. 1, 2)

13 ..... <sup>F14</sup>

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**Textual Amendments**

**F14** Sch. 4 para. 13 repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), **Sch. 10 Pt. I**

14 If immediately before the coming into force of section 49 of this Act any person has, under section 3(3) of the Children Act 1948, the care and control of a child (within the meaning of that Act) with respect to whom a resolution under section 2 of that Act is in force, then after the coming into force of that section the child shall again be in the care of the local authority by whom the resolution was passed but shall be deemed to have been allowed by that authority, under section 13(2) of that Act (as substituted by the said section 49), to be under the charge and control of that person, on the same terms as were applicable under the said section 3(3).

15 It shall be lawful for a person detained in any place in pursuance of section 27 of the <sup>M8</sup>Criminal Justice Act 1948 at the time when paragraph 24 of Schedule 5 to this Act comes into force to be detained there thereafter, until he is next delivered thence in due course of law, as if that paragraph had not come into force.

**Marginal Citations**

**M8** 1948 c. 58(39:1).

16 ..... <sup>F15</sup>

**Textual Amendments**

**F15** Sch. 4 para. 16 repealed by [Foster Children Act 1980 \(c. 6, SIF 20\)](#), **Sch. 3**

17 Nothing in Schedule 6 to this Act affects the operation of section 15(3) of the <sup>M9</sup>Adoption Act 1958 in relation to a fit person order made under the <sup>M10</sup>Children and Young Persons (Scotland) Act 1937.

**Marginal Citations**

**M9** 1958 c. 5 (7 & 8 Eliz. 2)(49:11).

**M10** 1937 c. 37(20).

18 Nothing in any provision of Schedule 6 to this Act affects any order which, immediately before the coming into force of that provision, is in force by virtue of any enactment repealed by that provision.

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## <sup>X1</sup>PART II

### INTERIM PROVISIONS PENDING COMMENCEMENT OF <sup>M11</sup>PROVISIONS OF SOCIAL WORK (SCOTLAND) ACT 1968

#### Editorial Information

- X1** The text of Sch. 4 Pt. II (paras. 19-24), which is spent, 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

- M11** 1968 c. 49

- 19 Where a court in England or Wales by which a child or young person is found guilty of an offence is satisfied that he resides or will reside in Scotland, the court shall have power, without prejudice to its other powers and notwithstanding anything in section 7(2) of this Act, to make a probation order in respect of him in accordance with sections 3 and 9 of the <sup>M12</sup>Criminal Justice Act 1948.

#### Marginal Citations

- M12** 1948 c. 58

- 20 In section 51(1) of the Act of 1963, for the words “principal Act” there shall be substituted the words “Children and Young Persons Act 1969 in proceedings under section 1 of that Act.”
- 21 In section 51(2) of the Act of 1963, for the words from “proposes” to “this Act” there shall be substituted “, or a supervision order under the Children and Young Persons Act 1969 has been made in proceedings under section 1 of that Act, proposes to reside or is residing in Scotland” and for the words “specified in the supervision order” there shall be substituted the words “ for which the supervision order would have continued in force if it had been allowed to continue in force until it ceased to have effect by the effluxion of time.”
- 22 Where a [<sup>F16</sup>youth court] in England or Wales is satisfied that a person who has not attained the age of eighteen and in respect of whom a supervision order made by virtue of section 7(7)(b) of this Act or section 7A(4) of the <sup>M13</sup>Criminal Justice (Scotland) Act 1949 is in force resides or will reside in Scotland, the court may discharge the order and exercise the like powers to make a probation order in accordance with sections 3 and 9 of the Criminal Justice Act 1948 in respect of him as if in the proceedings it had duly found him guilty of the offence in consequence of which the supervision order was made and section 7(2) of this Act had not been passed; but a probation order made by virtue of this paragraph shall not continue in force after the date on which the discharged supervision order would have ceased to have effect by the effluxion of time.

#### Textual Amendments

- F16** Words in Sch. 4 para. 22 substituted (E.W.)(1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, Sch. 11, para. 40(2)(g); S.I. 1992/333, art. 2(2), Sch. 2.

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### Marginal Citations

**M13** 1949 c. 94

- 23 (1) Where it appears to the local authority to whose care a person is committed by a care order that his parent or guardian resides or will reside in Scotland and that it is appropriate to transfer him to the care of the managers of an approved school in Scotland, the authority shall make a report on the case to the Secretary of State; and thereupon the Secretary of State may, if he thinks fit, make an order transferring the person in question to the care of the managers of such a school.
- (2) The provisions of the Children and Young Persons (Scotland) Acts 1937 to 1963 shall apply to an order made under this paragraph as if it were an approved school order made by a <sup>F17</sup>youth court] in Scotland on the date on which the care order in question was originally made; but notwithstanding anything in section 75 of the said Act of 1937 such an order shall cease to have effect on the date when the care order in question would have ceased to have effect by the effluxion of time and the contributions to be made under section 94 of the said Act of 1937 in respect of the person to whom the order under this paragraph relates shall be made by the authority nominated for the purpose in the order under this paragraph, being the education authority within whose area it appears to the Secretary of State at the time that order is made that his parent or guardian resides or will reside.
- (3) When a person is received into the care of the managers of an approved school in pursuance of an order under this paragraph, the care order in question shall cease to have effect.

### Textual Amendments

**F17** Words in [Sch. 4 para. 23](#) substituted (E.W.) (1.10.1992) for the words "juvenile court" by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), ss. 100, 102(2), [Sch. 11 para. 40\(2\)\(g\)](#); S.I. 1992/333, art. 2(2), [Sch. 2](#)

- 24 If it appears to the Secretary of State that the parent or guardian of a person who has not attained the age of nineteen and is the subject of an approved school order in force under the <sup>M14</sup>Children and Young Persons (Scotland) Act 1937, or such other order as is mentioned in subsection (1) or subsection (3) of section 87 of that Act, resides or will reside in the area of a local authority in England or Wales, the Secretary of State may make an order committing that person to the care of that authority; and an order under this paragraph shall have effect as if it were a care order made on the date on which the approved school or other order was made, but as if sections 20(2) and 21(5) of this Act were omitted.

### Marginal Citations

**M14** 1937 c. 37



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