



# Children Act 1975

## 1975 CHAPTER 72

### PART I

1—32. ....<sup>F1</sup>

#### Textual Amendments

- F1** Pt. I (Ss. 1–32) repealed (S.) by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 66, Sch. 2 para. 3(5), **Sch. 4** and repealed (E.W.) by Adoption Act 1976 (c. 36, SIF 49:11), s. 74(2), **Sch. 4**

### PART II

#### CUSTODY

#### Modifications etc. (not altering text)

- C1** Pt. II (Ss. 33–55) modified (E.W.) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), ss. 8(3), 12, **Sch. 1**
- C2** Pt II (Ss. 33–55) amended (E.W.) by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. **2(1)(e)**

#### *Custodianship orders*

### 33 Custodianship orders.

- (1) An authorised court may on the application of one or more persons qualified under subsection (3) make an order vesting the legal custody of a child in the applicant or, as the case may be, in one or more of the applicants . . .<sup>F2</sup>

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- (2) An order under subsection (1) may be referred to as a custodianship order, and the person in whom legal custody of the child is vested under the order may be referred to as the custodian of the child.
- (3) The persons qualified to apply for a custodianship order are—
- (a) a relative or step-parent of the child—
    - (i) who applies with the consent of a person having legal custody of the child, and
    - (ii) with whom the child has had his home for the three months preceding the making of the application;
  - (b) any person—
    - (i) who applies with the consent of a person having legal custody of the child, and
    - (ii) with whom the child has had his home for a period or periods before the making of the application which amount to at least twelve months and include the three months preceding the making of the application;
  - (c) any person with whom the child has had his home for a period or periods before the making of the application which amount to at least three years and include the three months preceding the making of the application.
- (4) The mother or father of the child is not qualified under any paragraph of subsection (3).
- (5) A step-parent of the child is not qualified under any paragraph of subsection (3) if in proceedings for divorce or nullity of marriage the child was named in an order made under paragraph (b) or (c) of section 41(1) (arrangements for welfare of children of family) of the <sup>M1</sup>Matrimonial Causes Act 1973.
- (6) If no person has legal custody of the child, or the applicant himself has legal custody or the person with legal custody cannot be found, paragraphs (a) and (b) of subsection (3) apply with the omission of sub-paragraph (i).
- (7) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (3)(c) to substitute a different period for the period of three years mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).
- (8) Subsection (5) does not apply—
- (a) if the parent other than the one the step-parent married is dead or cannot be found, or
  - (b) if the order referred to in subsection (5) was made under subsection (1)(c) of section 41 of the <sup>M2</sup>Matrimonial Causes Act 1973 and it has since been determined that the child was not a child of the family to whom that section applied.
- (9) For the avoidance of doubt, it is hereby declared that the provisions of section 1 of the <sup>M3</sup>Guardianship of Minors Act 1971 apply to applications made under this Part of this Act.
- [<sup>F3</sup>(9A) In this Part of this Act references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 of the Family Law Reform Act 1987.]
- (10) This section and sections 34 to 46 do not apply to Scotland.

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#### Textual Amendments

- F2** Words repealed by **Family Law Act 1986 (c. 55, SIF 49:3)**, s. 68(1)(2), Sch. 1 para. 19, **Sch. 2**  
**F3** **S. 33(9A)** inserted (E.W.) by **Family Law Reform Act 1987 (c. 42, SIF 49:7)**, s. 33(1), **Sch. 2 para. 60**

#### Marginal Citations

- M1** 1973 c. 18(49:3).  
**M2** 1973 c. 18(49:3).  
**M3** 1971 c. 3(49:9).

### [<sup>F4</sup>34 Access and maintenance.

- (1) An authorised court may, on making a custodianship order or while a custodianship order is in force, by order—
- (a) on the application of the mother, the father or a grandparent of the child, make such provision as it thinks fit requiring access to the child to be given to the applicant;
  - (b) on the application of the custodian, require the child's mother or father (or both) to make to the applicant for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order;
  - (c) on the application of the custodian, require the child's mother or father (or both) to pay to the applicant for the benefit of the child or to the child such lump sum as may be so specified;
  - (d) on the application of the child's mother or father, revoke an order requiring the applicant to contribute to the child's maintenance made (otherwise than under this section) by any court;
  - (e) on the application of the child's mother or father or the custodian, vary an order made (otherwise than under this section) by any court requiring the mother or father to contribute towards the child's maintenance—
    - (i) by altering the amount of the contributions;
    - (ii) by substituting the custodian for the person to whom the contributions were ordered to be made.
- (2) References in subsection (1) to the child's mother or father include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the <sup>M4</sup>Matrimonial Causes Act 1973).

[ No order shall be made under subsection (1)(b) or (c) requiring the father of an <sup>F5</sup>(3) illegitimate child to make any payments to the child's custodian or to the child.

- (4) An authorised court shall have power to make an order under subsection (1)(a) in favour of a grandparent of a child notwithstanding that the child is illegitimate.]
- (5) Subsections (2), (3), (3A), (3B), (4), [<sup>F6</sup>(4A), (5A), (5B), (5C), (5D) and (5E)] (orders as to the supervision, local authority care, maintenance etc. of children) of section 2 of the <sup>M5</sup>Guardianship Act 1973 and sections 3 and 4 of that Act (supplementary provisions) shall apply to an application for a custodianship order as they apply to an application under section 9 of the <sup>M6</sup>Guardianship of Minors Act 1971 subject to the following modifications, that is to say—

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- (a) in [<sup>F6</sup>section 2(2)(b) and (4A)] of the <sup>M7</sup>Guardianship Act 1973 any reference to a parent of a minor to whom the order relates shall be construed as including a reference to any other individual;
  - (b) section 3(3) of that Act shall have effect as if the words “or the custodian” were inserted after the words “application of either parent”;
  - (c) in section 4(2) of that Act the reference to section 6 of that Act shall be construed as including a reference to section 39 and 40 of this Act.
- (6) A local authority may make contributions to a custodian towards the cost of the accommodation and maintenance of the child, except where the custodian is the husband or wife of a parent of the child.]

#### Textual Amendments

- F4** S. 34 substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 64, [Sch. 1](#)
- F5** S. 34(3)(4) repealed (E.W.) by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1)(4), [Sch. 2 para. 61\(2\)](#), [Sch. 4](#)
- F6** Words substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), [Sch. 2 para. 61\(3\)](#)

#### Marginal Citations

- M4** 1973 c. 18(49:3).
- M5** 1973 c. 29(49:10).
- M6** 1971 c. 3(49:9).
- M7** 1973 c. 29(49:10).

#### [<sup>F7</sup>34A Matters to which court is required to have regard in exercising powers as to maintenance.

- (1) The court, in deciding whether to exercise its powers under section 34(1)(b) or (c) and, if so, in what manner, shall have regard to all the circumstances of the case including the following matters, that is to say—
- (a) the income, earning capacity, property and other financial resources of each parent and of the custodian;
  - (b) the financial needs, obligations and responsibilities of each parent and of the custodian;
  - (c) the financial needs of the child;
  - (d) the income, earning capacity (if any), property and other financial resources of the child;
  - (e) any physical or mental disability of the child.
- (2) The court in deciding whether to exercise its powers under section 34(1)(b) or (c) against a person who is not the child’s mother or father and, if so, in what manner, shall, in addition to the matters mentioned in subsection (1), have regard (among the circumstances of the case)—
- (a) to whether that person had assumed any responsibility for the child’s maintenance and, if he did, to the extent to which and the basis on which he assumed that responsibility and to the length of time during which he discharged that responsibility;
  - (b) to whether in assuming and discharging that responsibility he did so knowing that the child was not his own child;

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- (c) to the liability of any other person to maintain the child.
- (3) In subsection (1)—
- (a) references to a parent of a child include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the <sup>M8</sup>Matrimonial Causes Act 1973);
  - (b) the reference in paragraph (a) to income, earning capacity, and other financial resources includes the income, earning capacity, property and other financial resources which the person concerned is likely to have in the foreseeable future; and
  - (c) the reference in paragraph (b) to financial needs, obligations and responsibilities includes the financial needs, obligations and responsibilities which the person concerned is likely to have in the foreseeable future.]

**Textual Amendments**

**F7** Ss. 34A, 34B inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 65, Sch. 1

**Marginal Citations**

**M8** 1973 c. 18(49:3).

**34B Duration of orders for maintenance.**

- (1) The term to be specified in an order made under section 34(1)(b) in favour of a child may begin with the date of the making of an application for the order in question or any later date but—
- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the <sup>M9</sup>Education Act 1944 together with any Order in Council made under that section) unless the court thinks it right in the circumstances of the case to specify a later date; and
  - (b) shall not in any event, subject to subsection (2) below, extend beyond the date of the child's eighteenth birthday.
- (2) Paragraph (b) of subsection (1) shall not apply in the case of a child if it appears to the court that—
- (a) the child is, or will be, or if an order were made without complying with that paragraph would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
  - (b) there are special circumstances which justify the making of an order without complying with that paragraph.
- (3) Any order made under section 34(1)(b) in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

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#### Marginal Citations

M9 1944 c. 31(41:1).

### 35 Revocation and variation of orders.

- (1) An authorised court may by order revoke a custodianship order on the application of—
  - (a) the custodian, or
  - (b) the mother or father, or a guardian, of the child, or
  - (c) any local authority in England or Wales.
- (2) The court shall not proceed to hear an application made by any person for the revocation of a custodianship order where a previous such application made by the same person was refused by that or any other court unless—
  - (a) in refusing the previous application the court directed that this subsection should not apply, or
  - (b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.
- (3) The custodian of a child may apply to an authorised court for the revocation or variation of any order made under section 34 [<sup>F8</sup>(other than an order under subsection (1)(c))] in respect of that child.
- (4) Any other person on whose application an order under section 34 was made, or who was required by [<sup>F9</sup>an order made under that section (other than an order under subsection (1)(c))] to contribute towards the maintenance of the child, may apply to an authorised court for the revocation or variation of that order.
- [<sup>F10</sup>(4A) An application for the variation of an order made under section 34(1)(b) may, if the child has attained the age of sixteen, be made by the child himself.]
- (5) Any order made under [<sup>F11</sup>section 34(1)(a), (b) or (e)] in respect of a child who is the subject of a custodianship order shall cease to have effect on the revocation of the custodianship order.
- (6) A custodianship order made in respect of a child, and any order made under [<sup>F12</sup>section 34(1)(a)] in respect of the child, shall cease to have effect when the child attains the age of 18 years.
- [<sup>F13</sup>(7) On an application under this section for the revocation or variation of an order made under section 34(1)(b), the court shall have power to suspend the operation of any provision of that order temporarily and to revive the operation of any provision so suspended.
- (8) In exercising its power under this section to revoke or vary an order made under section 34(1)(b), the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.
- (9) Where on an application under this section the court varies any payments required to be made under section 34(1)(b), the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.

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[ Where an order made under section 34(1)(b) ceases to have effect on the date on which <sup>X1</sup>(10) the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then, if at any time before he attains the age of twenty-one an application is made by the child to an authorised court for an order under this subsection, the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to vary or revoke under this section any order so revived.]

[ Where an order under section 34(1)(b) ceases to have effect on the date on which <sup>F14</sup>(10) the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply to an authorised court, other than a magistrates' court, for an order for the revival of that order, and if, on such an application, it appears to the court that—

- (a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the order made under section 34(1)(b) from such date as the court may specify, not being earlier than the date of the making of the application and to vary or revoke under this section any order so revived.

(10A) Any order made by a magistrates' court under section 34(1)(b) which is revived by an order under subsection (10) shall for the purposes of the enforcement of the order be treated as an order made by the magistrates' court by which the order was originally made.]

(11) The powers of a magistrates' court to revoke, revive or vary under [<sup>F15</sup>section 60 of the <sup>M10</sup>Magistrates' Courts Act 1980] an order for the periodical payment of money and to suspend or rescind under [<sup>F15</sup>section 63(2)] of that Act certain other orders shall not apply in relation to a custodianship order or an order made under section 34.]

#### Editorial Information

- X1** S. 35(10)(10A) commencing “Where an order under” substituted (E.W.) (in force 1.4.1989 subject to a saving in S.I. 1989/382, **art. 3 Sch. 2 para 2**) for subsection (10) commencing “Where an order made” by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1), **Sch. 2 para. 62**

#### Textual Amendments

- F8** Words inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(2), **Sch. 1**
- F9** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(3), **Sch. 1**
- F10** S. 35(4A) inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(4), **Sch. 1**
- F11** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(5), **Sch. 1**
- F12** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(6), **Sch. 1**

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- F13** S. 35(7)–(11) added by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(7), **Sch. 1**
- F14** S. 35(10)(10A) commencing “Where an order under” substituted (E.W.) (in force 1.4.1989 subject to a saving in S.I. 1989/382, **art. 3 Sch. 2 para 2**) for subsection (10) commencing “Where an order made” by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1), **Sch. 2 para. 62**
- F15** Words substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), **s. 17(2)(a)**

#### Marginal Citations

- M10** 1980 c. 45(82).

### [<sup>F16</sup>35A Care etc. of child on revocation of custodianship order.

- (1) Without prejudice to the generality of section 34(1)(c), an order under that section for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the child before the making of the order to be met.
- (2) The amount of any lump sum required to be paid by an order made by a magistrates' court under section 34(1)(c) shall not exceed £500 or such larger amount as the Secretary of State may from time to time by order fix for the purposes of this subsection.  
  
Any order made by the Secretary of State under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The power of the court under section 35 to vary or revoke an order made under section 34(1)(b) shall include power to make an order under section 34(1)(c) for the payment of a lump sum by the child's mother or father (or both).
- (4) The amount of any lump sum which the mother or father of the child may be required to pay by virtue of subsection (3) shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under sub-section (2), but a magistrates' court may make an order for the payment of a sum not exceeding that amount notwithstanding that the child's mother or father was required to pay a lump sum by a previous order under this Part of this Act.
- (5) An order made under section 34(1)(c) for the payment of a lump sum may provide for the payment of that sum by instalments, and where such an order makes provision for the payment of a lump sum by instalments, an authorised court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.
- (6) References in this section to the mother or father of a child include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the <sup>M11</sup>Matrimonial Causes Act 1973).]

#### Textual Amendments

- F16** S. 35A inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 67, **Sch. 1**



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**Marginal Citations**

**M11** 1973 c. 18(49:3).

**36 Provisions relating to lump sums.**

- (1) Before revoking a custodianship order the court shall ascertain who would have legal custody of the child, if, on the revocation of the custodianship order, no further order were made under this section.
- (2) If the child would not be in the legal custody of any person, the court shall, if it revokes the custodianship order, commit the care of the child to a specified local authority.
- (3) If there is a person who would have legal custody of the child on the revocation of the custodianship order, the court shall consider whether it is desirable in the interests of the welfare of the child for the child to be in the legal custody of that person and—
  - (a) if the court is of the opinion that it would not be so desirable, it shall on revoking the custodianship order commit the care of the child to a specified local authority;
  - (b) if it is of the opinion that while it is desirable for the child to be in the legal custody of that person, it is also desirable in the interests of the welfare of the child for him to be under the supervision of an independent person, the court shall, on revoking the custodianship order, order that the child shall be under the supervision of a specified local authority or of a probation officer.
- (4) Before exercising its functions under this section the court shall, unless it has sufficient information before it for the purpose, request—
  - (a) a local authority to arrange for an officer of the authority, or
  - (b) a probation officer,to make to the court a report, orally or in writing, on the desirability of the child returning to the legal custody of any individual, and it shall be the duty of the local authority or probation officer to comply with the request.
- <sup>[F17]</sup>(5) Where the court makes an order under subsection (3)(a) the order may require either parent to make to the local authority or to the child such periodical payments, and for such term, as may be specified in the order; but the order shall only require payments to be made to the local authority while it has the care of the child.
- <sup>[F18]</sup>(5A) [ An order made under subsection (3)(a) with reference to an illegitimate child shall not require the father of that child to make any payments to the local authority or to the child.]
- (5B) The court in deciding whether to exercise its powers under subsection (5) and, if so, in what manner, shall have regard to all the circumstances of the case including the matters to which the court is required to have regard under section 34A.
- (5C) Section 34B shall apply in relation to an order under subsection (5) as it applies in relation to an order under section 34(1)(b).]
- (6) Sections 3 and 4 of the <sup>M12</sup>Guardianship Act 1973 (which contain supplementary provisions relating to children who are subject to supervision, or in the care of local authority, by virtue of orders made under section 2 of that Act) apply in relation to an order under this section as they apply in relation to an order under section 2 of that Act

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[<sup>F19</sup>subject to the modification that the reference in section 4(2) of that Act to section 6 of that Act shall be construed as including a reference to subsection (4) of this section].

- (7) Subsections (2) to (6) of section 6 of the Guardianship Act 1973 shall apply in relation to reports which are requested by magistrates' courts under this section as they apply to reports under subsection (1) of that section.

#### Textual Amendments

- F17** S. 36(5)–(5C) substituted for s. 36(5) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 68, **Sch. 1**
- F18** S. 36(5A) repealed (E.W.) by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1)(4), Sch. 2 para. 63, **Sch. 4**
- F19** Words added by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 89, Sch. 1, **Sch. 2 para. 46**

#### Marginal Citations

- M12** 1973 c. 29(49:10).

### 37 Custodianship order on application for adoption or guardianship.

- (1) Where on an application for an adoption order by a relative of the child or by the husband or wife of the mother or father of the child, whether alone or jointly with his or her spouse, the requirements of [<sup>F20</sup>section 12][<sup>F20</sup>section 16 of the <sup>M13</sup>Adoption Act 1976] or, where the application is for a Convention adoption order, [<sup>F20</sup>section 24(6)][<sup>F20</sup>section 17(6) of that Act] are satisfied, but the court is satisfied—
- that the child's welfare would not be better safeguarded and promoted by the making of adoption order in favour of the applicant, than it would be by the making of a custodianship order in his favour, and
  - that it would be appropriate to make a custodianship order in the applicant's favour,

the court shall direct the application to be treated as if it had been made by the applicant under section 33, but if the application was made jointly by the father or mother of the child and his or her spouse, the court shall direct the application to be treated as if made by the father's wife or the mother's husband alone.

- (2) Where on an application for an adoption order made—
- by a person who is neither a relative of the child nor the husband or wife of the mother or father of the child; or
  - by a married couple [<sup>F21</sup>neither of whom is a relative of the child or the husband or wife of the mother or father of the child],

the said requirements are satisfied but the court is of opinion that it would be more appropriate to make a custodianship order in favour of the applicant, it may direct the application to be treated as if it had been made by the applicant under section 33.

- (3) Where on an application under [<sup>F22</sup>section 9 (orders for custody and maintenance)][<sup>F22</sup>section 9 (orders for custody)] on application of mother or father) of the <sup>M14</sup>Guardianship of Minors Act 1971 the court is of opinion that legal custody should be given to a person other than the mother or father, it may direct the application to be treated as if it had been made by that person under section 33.

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(4) Where a direction is given under this section the applicant shall be treated (if such is not the case) as if he were qualified to apply for a custodianship order and this Part, except section 40, shall have effect accordingly.

[<sup>F23</sup>(4A) Where a custodianship order is made by virtue of a direction under subsection (3) or a direction under section 8(3) of the <sup>M15</sup>Domestic Proceedings and Magistrates' Courts Act 1978, the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the custodianship order, or any provision thereof, shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.]

(5) Subsection (1) does not apply to an application made by a step-parent whether alone or jointly with another person in any case where the step-parent is prevented by section 33(5) from being qualified to apply for a custodianship order in respect of the child.

(6) Subsections (1) and (2) do not apply to an application for an adoption order made by the child's mother or father alone.

#### Textual Amendments

- F20** Words “section 16” to “1976” substituted for words “section 12” and words “section 17(6)” to “Act” substituted for words “section 24(6)” (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), [Sch. 3 para. 19](#)
- F21** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 23](#)
- F22** Words “section 9 (orders for custody)” expressed to be substituted (E.W.) for “section 9 (orders for custody and maintenance)” by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), [Sch. 2 para. 64](#)
- F23** [S. 37\(4A\)](#) inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 69, [Sch. 1](#)

#### Marginal Citations

- M13** [1976 c. 36\(49:11\)](#).  
**M14** [1971 c. 3\(49:9\)](#).  
**M15** [1978 c. 22\(49:3\)](#).

### 38 Disputes between joint custodians.

If two persons have a parental right or duty vested in them jointly by a custodianship order or by virtue of section 44(2) but cannot agree on its exercise or performance, either of them may apply to an authorised court, and the court may make such order regarding the exercise of the right or performance of the duty as it thinks fit.

### 39 Reports by local authorities and probation officers.

(1) A court dealing with an application made under this Part, or an application which is treated as if made under section 33, may request—

- (a) a local authority to arrange for an officer of the authority, or

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(b) a probation officer,

to make to the court a report, orally or in writing, with respect to any specified matter which appears to the court to be relevant to the application, and it shall be the duty of the local authority or probation officer to comply with the request.

- (2) Subsections (2) to (6) of section 6 of the <sup>M16</sup>Guardianship Act 1973 shall apply in relation to reports which are requested by magistrates' courts under this section as they apply to reports under subsection (1) of that section.

#### Marginal Citations

M16 1973 c. 29(49:10).

### 40 Notice of application to be given to local authority.

- (1) A custodianship order shall not be made unless the applicant has given notice of the application for the order to the local authority in whose area the child resides within the seven days following the making of the application, or such extended period as the court or local authority may allow.
- (2) On receipt of a notice given by the applicant under subsection (1) the local authority shall arrange for an officer of the authority to make a report to the court (so far as is practicable) on the matters prescribed under subsection (3) and on any other matter which he considers to be relevant to the application.
- (3) The Secretary of State shall by regulations prescribe matters which are to be included in a report under subsection (2) and, in particular, but without prejudice to the generality of the foregoing, the prescribed matters shall include—
- (a) the wishes and feelings of the child having regard to his age and understanding and all other matters relevant to the operation of section 1 (principle on which questions relating to custody are to be decided) of the <sup>M17</sup>Guardianship of Minors 1971 in relation to the application;
  - (b) the means and suitability of the applicant;
  - (c) information of a kind specified in the regulations relating to members of the applicant's household;
  - (d) the wishes regarding the application, and the means, of the mother and father of the child.
- (4) Subsections (2), (3) and (3A) of section 6 of the <sup>M18</sup>Guardianship Act 1973 shall apply to a report under this section which is submitted to a magistrates' court.

#### Marginal Citations

M17 1971 c. 3(49:9).

M18 1973 c. 29(49:10).

### 41 Restriction on removal of child where applicant has provided home for three years.

- (1) While an application for a custodianship order in respect of a child made by the person with whom the child has at the time the application is made had his home

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for a period (whether continuous or not) amounting to at least three years is pending, another person is not entitled, against the will of the applicant, to remove the child from the applicant's [<sup>F24</sup>actual] custody except with the leave of a court or under authority conferred by any enactment or on the arrest of the child.

- (2) In any case where subsection (1) applies, and
  - (a) the child was in the care of a local authority before he began to have his home with the applicant, and
  - (b) the child remains in the care of a local authority,the authority in whose care the child is shall not remove the child from the applicant's [<sup>F24</sup>actual] custody except with the applicant's consent or the leave of a court.
- (3) Any person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding [<sup>F25</sup>level 5 on the standard scale] or both.
- (4) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (1) to substitute a different period for the period mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).

#### Textual Amendments

**F24** Words inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 60\(b\)](#)

**F25** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

## 42 Return of child taken away in breach of section 41.

- (1) An authorised court may on the application of a person from whose [<sup>F26</sup>actual] custody a child has been removed in breach of section 41 order the person who has so removed the child to return the child to the applicant.
- (2) An authorised court may on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's [<sup>F26</sup>actual] custody in breach of section 41 by order direct that other person not to remove the child from the applicant's custody in breach of that section.
- (3) If, in the case of an order made by the High Court under subsection (1), the High Court or, in the case of an order made by a county court under subsection (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising an officer of the court to search such premises as may be specified in the order for the child and, if the officer finds the child, to return the child to the applicant.
- (4) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in premises specified in the information, he may issue a search warrant authorising a constable to search the premises for the child; and if a constable acting in pursuance of a warrant under this section finds the child, he shall return the child to the person on whose application the order under subsection (1) was made.
- (5) An order under subsection (3) may be enforced in like manner as a warrant for committal.

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*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

#### Textual Amendments

- F26** Words inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 60\(b\)](#)

### 43 Enforcement of orders made by magistrates' courts.

- (1) If at a time when the custodian is entitled to actual custody of the child by virtue of a custodianship order made by a magistrates' court any other person has actual custody of him, a copy of the custodianship order may be served on that person and thereupon the order may, without prejudice to any other remedy open to the custodian, be enforced under [<sup>F27</sup>section 63(3) of the <sup>M19</sup>Magistrates' Courts Act 1980] as if it were an order of a magistrates' court requiring that person to give up the child to the custodian.
- (2) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a magistrates' court under section 34 shall give notice of any change of address to such person (if any) as may be specified in the order; and if he fails without reasonable excuse to give such a notice he commits an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F28</sup>level 2 on the standard scale].
- [<sup>X2</sup>(3) An order for the payment of money made by a magistrates' court under section 34 shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the <sup>M20</sup>Magistrates' Courts Act 1980.]
- [<sup>F29</sup>(3) An order for the payment of money made by a magistrates' court under section 34 may be enforced in like manner as an affiliation order, and the enactments relating to affiliation orders shall apply accordingly with the necessary modifications.]

#### Editorial Information

- X2** [S. 43\(3\)](#) appearing first substituted (E.W.) for s. 43(3) appearing second by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), [Sch. 2 para. 65](#)

#### Textual Amendments

- F27** Words substituted by virtue of [Interpretation Act 1978 \(c. 30, SIF 115:1\)](#), [s. 17\(2\)\(a\)](#)
- F28** Words substituted by virtue of [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 89, [Sch. 1](#), [Sch. 2 para. 47](#) and [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 46](#)
- F29** [S. 43\(3\)](#) appearing first substituted (E.W.) for s. 43(3) appearing second by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), [Sch. 2 para. 65](#)

#### Marginal Citations

- M19** [1980 c. 43\(82\)](#).
- M20** [1980 c. 43 \(82\)](#)

### [<sup>F30</sup>43A Restriction on removal of child from England and Wales.

- [ An authorised court, on making an order to which this subsection applies or at any <sup>F31</sup>(1) time while such an order is in force, may by order direct, if an application is made under this section, that no person shall take the child to whom the order relates out

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of [<sup>F32</sup>the United Kingdom, or out of any part of the United Kingdom specified in the order,] except with the leave of the court.

- (1A) Subsection (1) applies to the following orders under this Part of this Act—
- (a) a custodianship order; and
  - (b) an interim order under section 34(5) containing provision regarding legal custody.]
- (2) An authorised court may by order vary or revoke any order made under this section.
- (3) An application for an order under subsection (1), or for the variation or revocation of such an order, may be made by the mother or father of the child or by the custodian.]

#### Textual Amendments

- F30** S. 43A inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 70, [Sch. 1](#)
- F31** S. 43A(1)(1A) substituted for s. 43A(1) by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 24](#)
- F32** Words substituted by [Family Law Act 1986 \(c. 55, SIF 49:10\)](#), [s. 35\(1\)](#)

#### 44 Effect of custodianship order on existing custody.

- (1) While a custodianship order has effect in relation to a child the right of any person other than the custodian to legal custody of the child is suspended, but, subject to any further order made by any court, revives on the revocation of the custodianship order.
- (2) Subsection (1) does not apply where the person already having custody is a parent of the child and the person who becomes custodian under the order is the husband or wife of the parent; and in such a case the spouses have the legal custody jointly.

#### [<sup>F33</sup>45 Affiliation order on application by custodian.

- (1) Where a custodianship order subsists in respect of an illegitimate child, and no affiliation order relating to the child has been made under the <sup>M21</sup>Affiliation Proceedings Act 1957, the custodian of the child may apply to a justice of the peace acting for the petty sessions area in which the child or the child's mother resides for a summons to be served under section 1 of that Act.
- (2) The court shall proceed on the application as on a complaint under that section, but the person entitled to any payments under an affiliation order made on the application shall be the custodian.
- (3) An application may not be made under subsection (1)—
  - (a) if the custodian is married to the child's mother, or
  - (b) more than three years after the custodianship order was made.]

#### Textual Amendments

- F33** S. 45 repealed (E.W.) by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1)(4), [Sch. 2 para. 65](#), [Sch. 4](#)



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#### Marginal Citations

M21 1957 c. 55(49:7).

#### 46 Procedure in magistrates' courts.

- (1) It is hereby declared that any jurisdiction conferred on a magistrates' court by virtue of this Part is exercisable notwithstanding that the proceedings are brought by or against a person residing outside England and Wales.
- (2) A magistrates' court may, subject to subsection (3), proceed on an application for an order under this Part notwithstanding that the defendant has not been served with the summons, and rules may prescribe matters as to which the court is to be satisfied before proceeding in such a case.
- (3) A magistrates' court shall not—
  - (a) make an order under this Part requiring a person to make [<sup>F34</sup>periodical payments or pay a lump sum] towards the maintenance of a child, or
  - (b) vary an order under this Part so as to increase a person's liability to make [<sup>F35</sup>periodical] payments towards the maintenance of a child,
 unless the person has been served with the summons.
- (4) Rules may make provision as to the persons who are to be made defendants to a complaint for an order under this Part and where there are two or more defendants to such a complaint the power of the court under [<sup>F36</sup>section 64(1) of the <sup>M22</sup>Magistrates' Courts Act 1980] (power to award costs etc.) shall be deemed to include power, whatever adjudication the court makes, to order any of the parties to pay the whole or part of the costs of all or any of the parties.
- (5) In this section, "rules" means rules made under section 15 of the Justices of the <sup>M23</sup>Peace Act 1949.

#### Textual Amendments

**F34** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 89, Sch. 1, **Sch. 2 para. 48(a)**

**F35** Word inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 89, Sch. 1, **Sch. 2 para. 48(b)**

**F36** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, **Sch. 7 para. 138**

#### Marginal Citations

M22 1980 c. 43(82).

M23 1949 c. 101(82).

#### *Custody in Scotland*



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*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

**Textual Amendments**

**F37** S. 47 repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(2), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

**F38** **48** .....

**Textual Amendments**

**F38** S. 48 repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(2), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

**F39** **49** .....

**Textual Amendments**

**F39** S. 49 repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(2), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

**50** **Payments towards maintenance of children.**

Without prejudice to any existing powers and duties to make payments in respect of the maintenance of children, where [<sup>F40</sup>a child under the age of [<sup>F41</sup>eighteen] is residing with and being cared for (other than as a foster child) by a person other than a parent of the child, a council constituted under section 2 of the <sup>M24</sup>Local Government (Scotland) Act 1994] may make to that person payments for or towards the maintenance of the child.

**Textual Amendments**

**F40** Words in s. 50 substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(3)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

**F41** Words in s. 50 substituted (1.10.2001) by 2001 asp 8, s. 71; S.S.I. 2001/304, art. 2(a)

**Marginal Citations**

**M24** 1994 c. 39.

**51** **Restriction on removal of child where applicant has provided home for three years.**

(1) Where a person has applied for [<sup>F42</sup>a residence order in relation to] a child, it shall be an offence, except with the authority of a court or under authority conferred by any enactment or on the arrest of the child, to remove the child from the [<sup>F43</sup>care and possession] of the applicant against the will of the applicant if—

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- (a) the child has been in the care and possession of that person for a period or periods before the making of the application which amount to at least three years; and
- (b) the application is pending in any court.

<sup>F44</sup>[( 2 ) In any case where subsection (1) applies, and the child—

- (a) was being looked after by a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 before he began to have his home with the applicant, and

- (b) continues to be looked after by such a council,

the council by whom the child is being looked after shall not remove him from the applicant's care and possession except—

- (i) with the applicant's consent;
- (ii) with the leave of the court; [<sup>F45</sup>or]
- (iii) in accordance with an order made [<sup>F46</sup>, or authority or warrant granted,] under Chapter [<sup>F46</sup>2 or] 3 of Part II of the Children (Scotland) Act 1995.]
- [<sup>F47</sup>(iv) in accordance with section 56 of the Children's Hearings (Scotland) Act 2011 (asp 1) (constable's power to remove child to place of safety); or
- (v) in accordance with an order or warrant under that Act of 2011.]

- (3) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding [<sup>F48</sup>level 5 on the standard scale] or both.

- (4) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (1) to substitute a different period for the period mentioned in that subsection (or for the period which, by a previous order under this subsection, was substituted for that period).

<sup>F49</sup>[( 5 ) In this section “ looked after ” and “ residence order ” have the meanings given respectively by section 17(6) and section 11(2)(c) of the Children (Scotland) Act 1995; and “ residence order ” shall have the same meaning in sections 52 and 53 of this Act. ]

#### Textual Amendments

- F42** Words in s. 51(1) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(4)(a)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F43** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 25**
- F44** S. 51(2) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(4)(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**
- F45** Word in s. 51(2) repealed (S.) (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 3(a)**
- F46** Words in s. 51(2)(iii) repealed (S.) (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 3(b)**
- F47** S. 51(2)(iv)(v) inserted (S.) (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 3(c)**
- F48** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G**
- F49** S. 51(5) added (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(4)(c)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

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**52 Return of child taken away in breach of section 51.**

A court in which an application for [<sup>F50</sup>a residence order in relation to] a child is pending may—

- (a) on the application of a person from whose [<sup>F51</sup>care and possession] the child has been removed in breach of section 51, order the person who has so removed the child to return the child to the applicant;
- (b) on the application of a person who has reasonable grounds for believing that another person is intending to remove the child from the applicant’s [<sup>F51</sup>care and possession] in breach of section 51, by order direct that other person not to remove the child from the applicant’s [<sup>F51</sup>care and possession] in breach of that section.

**Textual Amendments**

- F50** Words in s. 52 substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(5)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F51** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 26**

<sup>F52</sup>**53** .....

**Textual Amendments**

- F52** S. 53 repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(6), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

**54** ..... <sup>F53</sup>

**Textual Amendments**

- F53** S. 54 repealed by Family Law Act 1986 (c. 55, SIF 49:3), s. 68(2), **Sch. 2**

**55 Interpretation and extent of [<sup>F54</sup>sections 50 to 53].**

- (1) In [<sup>F54</sup>sections 50 to 53]“child” means a person under the age of sixteen [<sup>F55</sup>and “relative” means a grand-parent, brother, sister, uncle or aunt, whether of the full blood or half blood or by affinity].
- (2) [<sup>F54</sup>Sections 50 to 53] and this section apply to Scotland only [<sup>F56</sup>and shall be construed in accordance with section 1(1) of the <sup>M25</sup>Law Reform (Parent and Child) (Scotland) Act 1986].

**Textual Amendments**

- F54** Words in s. 55 substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(7)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

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**F55** Words added by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(1), Sch. 1 para. 14(3)

**F56** Words added by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(1), Sch. 1 para. 14(4)

#### Marginal Citations

**M25** 1986 c. 9(49:8).

## PART III

### CARE

#### [<sup>F57</sup>56] **Restriction on removal of child from care.**

(1) In section 1 of the Children Act 1948, the following subsections are inserted after subsection (3)—

“(3A) Except in relation to an act done—

- (a) with the consent of the local authority, or
- (b) by a parent or guardian of the child who has given the local authority not less than 28 days’ notice of his intention to do it,

subsection (8) (penalty for taking away a child in care) of section 3 of this Act shall apply to a child in the care of a local authority under this section (notwithstanding that no resolution is in force under section 2 of this Act with respect to the child) if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away.

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

(2) The following section is inserted after section 33 of the Children Act 1948—

#### “ **Restriction on removal of a child from care of voluntary organisation.**

(1) Section 3(8) of this Act shall apply in relation to children who are not in the care of local authorities under section 1 of this Act but who are in voluntary homes or are boarded out, as it applies by virtue of subsection (3A) of the said section 1 to children in the care of the local authority, except that in the case of a child who is not in the care of a local authority the references in subsection (3A) to a local authority shall be construed as references to the voluntary organisation in whose care the child is.

(2) For the purposes of this section—

- (a) a child is boarded out if he is boarded out, by the voluntary organisation in whose care he is, with foster parents to live in their home as a member of their family;

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- (b) “voluntary home” includes a controlled community home and an assisted community home.”.]

#### Textual Amendments

**F57** Ss. 56–59 repealed (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 89, [Sch. 6](#)

#### Modifications etc. (not altering text)

**C3** The text of ss. 56–59, 72 and 93 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### [<sup>F58</sup>57] **Substitution of s. 2 of Children Act 1948.**

The following section is substituted for section 2 of the <sup>M26</sup>Children Act 1948.

- (1) Subject to the provisions of this Part of this Act, if it appears to a local authority in relation to any child who is in their care under the foregoing section—
- (a) that his parents are dead and he has no guardian or custodian; or
  - (b) that a parent of his—
    - (i) has abandoned him, or
    - (ii) suffers from some permanent disability rendering him incapable of caring for the child, or
    - (iii) while not falling within sub-paragraph (ii) of this paragraph, suffers from a mental disorder (within the meaning of the Mental Health Act 1959), which renders him unfit to have the care of the child, or
    - (iv) is of such habits or mode of life as to be unfit to have the care of the child, or
    - (v) has so consistently failed without reasonable cause to discharge the obligations of a parent as to be unfit to have the care of the child; or
  - (c) that a resolution under paragraph (b) of this subsection is in force in relation to one parent of the child who is, or is likely to become, a member of the household comprising the child and his other parent; or
  - (d) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under the foregoing section, or partly in the care of a local authority and partly in the care of a voluntary organisation,

the local authority may resolve that there shall vest in them the parental rights and duties with respect to that child, and, if the rights and duties were vested in the parent on whose account the resolution was passed jointly with another person, they shall also be vested in the local authority jointly with that other person.

- (2) In the case of a resolution passed under paragraph (b), (c) or (d) of subsection (1) of this section, unless the person whose parental rights and duties have under the resolution vested in the local authority has consented in writing to the passing of the resolution, the local authority, if that person’s whereabouts

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*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

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are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.

- (3) Every notice served by a local authority under subsection (2) of this section shall inform the person on whom the notice is served of his right to object to the resolution and the effect of any objection made by him.
- (4) If, not later than one month after notice is served on a person under subsection (2) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (5) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.
- (5) Where a counter-notice has been served on a local authority under subsection (4) of this section, the authority may not later than fourteen days after the receipt by them of the counter-notice complain to a juvenile court having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the complaint; and the court may on the hearing of the complaint order that the resolution shall not lapse by reason of the service of the counter-notice:
 

Provided that the court shall not so order unless satisfied—

  - (a) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out, and
  - (b) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded, and
  - (c) that it is in the interests of the child to do so.
- (6) While a resolution passed under subsection (1)(b), (c) or (d) of this section is in force with respect to a child, section 1(3) of this Act shall not apply in relation to the person who, but for the resolution would have the parental rights and duties in relation to the child.
- (7) Any notice under this section (including a counter-notice) may be served by post, so however that a notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.
- (8) A resolution under this section shall cease to have effect if—
  - (a) the child is adopted;
  - (b) an order in respect of the child is made under section 14 or 25 of the Children Act 1975; or
  - (c) a guardian of the child is appointed under section 5 of the Guardianship of Minors Act 1971.
- (9) Where, after a child has been received into the care of a local authority under the foregoing section, the whereabouts of any parent of his have remained unknown for twelve months, then, for the purposes of this section, the parent shall be deemed to have abandoned the child.
- (10) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (1)(d) of this section to substitute a different period for the period mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

(11) In this section—

“parent”, except in subsection (1)(a), includes a guardian or custodian;

“parental rights and duties”, in relation to a particular child, means all rights and duties which by law the mother and father have in relation to a legitimate child and his property except the right to consent or refuse to consent to the making of an application under section 14 of the Children Act 1975 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25 of that Act.”.]

#### Textual Amendments

**F58** Ss. 56–59 repealed (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 89, [Sch. 6](#)

#### Marginal Citations

**M26** 1948 c. 43

### [<sup>F59</sup> 58 **Supplementary provisions relating to care proceedings.**

In the <sup>M27</sup>Children Act 1948, the following sections are inserted after section 4—

#### “ **Appeal to High Court.**

An appeal shall lie to the High Court from the making by a juvenile court of an order under section 2(5) or section 4(3) of this Act (orders confirming or terminating local authority resolutions under section 2(1) of this Act), or from the refusal by a juvenile court to make such an order.

#### **Guardians ad litem and reports in care proceedings.**

- (1) In any proceedings under section 2(5) or 4(3) or 4A of this Act, a juvenile court or the High Court may, where it considers it necessary in order to safeguard the interests of the child to whom the proceedings relate, by order make the child a party to the proceedings and appoint, subject to rules of court, a guardian ad litem of the child for the purposes of the proceedings.
- (2) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child in the manner prescribed by rules of court.
- (3) Section 6 of the Guardianship Act 1973 shall apply in relation to complaints under section 2(5) or 4(3) of this Act as it applies in relation to applications under section 3(3) of the said Act of 1973.”.]

#### Textual Amendments

**F59** Ss. 56–59 repealed (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 89, [Sch. 6](#)

#### Modifications etc. (not altering text)

**C4** The text of ss. 56–59, 72 and 93 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

### Marginal Citations

M27 1948 c. 43

## [<sup>F60</sup>59] General duty of local authority in care cases.

In section 12 of the Children Act 1948, the following subsections are substituted for subsection (1)—

“(1) In reaching any decision relating to a child in their care, a local authority shall give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

(1A) If it appears to the local authority that it is necessary, for the purpose of protecting members of the public, to exercise their powers in relation to a particular child in their care in a manner which may not be consistent with their duty under the foregoing subsection, the authority may, notwithstanding that duty, act in that manner.”.]

### Textual Amendments

F60 Ss. 56–59 repealed (E.W.) by Child Care Act 1980 (c. 5, SIF 20), s. 89, Sch. 6

### Modifications etc. (not altering text)

C5 The text of ss. 56–59, 72 and 93 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

## *Children in care of voluntary organisations in England and Wales*

## [<sup>F61</sup>60] Transfer of parental rights and duties to voluntary organisations.

- (1) Where it appears to a local authority as respects a child in the care of a voluntary organisation which is an incorporated body—
  - (a) that the child is not in the care of any local authority, and
  - (b) that a condition specified in section 2(1) of the <sup>M28</sup>Children Act 1948 is satisfied; and
  - (c) that it is necessary in the interests of the welfare of the child for the parental rights and duties to be vested in the organisation,
 the authority may, subject to subsections (5) and (6), resolve that there shall vest in the organisation the parental rights and duties with respect to that child.
- (2) While a resolution under this section is in force the parental rights and duties shall vest in the organisation in whose care the child is when the resolution is passed.
- (3) If, immediately before the resolution is passed, the parental rights and duties are vested in the parent in relation to whom the resolution is passed jointly with any other person, then on the passing of the resolution the parental rights and duties shall vest jointly in that other person and the organisation in whose care the child is.



*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

- (4) In determining, for the purposes of subsection (1) of this section, whether the condition specified in section 2(1)(b)(i) of the Children Act 1948 is satisfied, if the whereabouts of any parent of the child have remained unknown for twelve months, that parent shall be deemed to have abandoned the child.
- (5) A resolution under subsection (1) may not be passed by a local authority in respect of any child unless—
- (a) the child is living in the area of the authority either in a voluntary home or with foster parents with whom he has been boarded by the organisation in whose care he is; and
  - (b) that organisation has requested the authority to pass the resolution.
- (6) The parental rights and duties which may vest in an organisation by virtue of this section do not include the right to consent or refuse to consent to the making of an application under section 14 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25; and regulations made under section 33(1) of the Children Act 1948 shall apply to the emigration of a child notwithstanding that the parental rights and duties relating to the child are vested in the voluntary organisation.
- (7) Subsection (8) of section 2 of the Children Act 1948 shall apply in relation to a resolution under subsection (1) as if it were a resolution under the said section 2.]

#### Textual Amendments

**F61** S. 60 repealed (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 89, [Sch. 6](#)

#### Marginal Citations

**M28** 1948 c. 43.

### [<sup>F62</sup>61 Duty of local authority to assume parental rights and duties.

- (1) If it appears to a local authority, having regard to the interests of the welfare of a child living within their area, the parental rights and duties with respect to whom are by virtue of a resolution under section 60 vested in a voluntary organisation, that it is necessary that the parental rights and duties should no longer be vested in the organisation, the local authority shall resolve that there shall vest in them the parental rights and duties relating to the child.
- (2) The local authority shall within seven days of passing a resolution under subsection (1) by notice in writing inform the organisation and each parent, guardian or custodian of the child whose whereabouts are known to them that the resolution has been passed.]

#### Textual Amendments

**F62** S. 61 repealed (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 89, [Sch. 6](#)

### [<sup>F63</sup>62 Effect of resolutions under sections 60 and 61.

- (1) A resolution under subsection (1) of section 60 shall cease to have effect on the passing of a resolution under subsection (1) of section 61.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

- (2) Section 6 of the <sup>M29</sup>Children Act 1948 shall have effect in relation to a resolution under subsection (1) of section 60 as it has effect in relation to a resolution under section 2 of that Act.
- (3) A resolution under subsection (1) of section 61 shall be deemed to be a resolution under section 2 of the Children Act 1948 except that sections 2(2) to (7) and 4(3) of that Act shall not apply.]

#### Textual Amendments

**F63** S. 62 repealed (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 89, [Sch. 6](#)

#### Marginal Citations

**M29** 1948 c. 43.

### [<sup>F64</sup>63 Appeals by parents etc.

- (1) Subsections (2) to (5) and (7) of section 2 of the Children Act 1948 shall apply to a resolution under section 60 as they apply to a resolution under the said section 2, with the substitution for the reference in subsection (2) to the vesting of parental rights and duties in the local authority of a reference to the vesting of parental rights and duties in the voluntary organisation.
- (2) An appeal may be made—
- (a) where the complaint relates to a resolution under section 60, by a person deprived of parental rights and duties by the resolution, or
  - (b) where the complaint relates to a resolution under section 61, by a person who but for that resolution and an earlier resolution under section 60 would have parental rights and duties,
- to a juvenile court having jurisdiction in the area of the authority which passed the resolution, on the ground that—
- (i) there was no ground for the making of the resolution, or
  - (ii) that the resolution should in the interests of the child be determined.
- (3) An appeal shall lie to the High Court against the decision of a juvenile court under this section.
- (4) Section 4B of the <sup>M30</sup>Children Act 1948 shall apply in relation to proceedings under this section.]

#### Textual Amendments

**F64** S. 63 repealed (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 89, [Sch. 6](#)

#### Marginal Citations

**M30** 1948 c. 43.

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*Status:* This version of this Act contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)

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*Conflict of interest between parent and child*

**64 Addition of new sections to Children and Young Persons Act 1969.**

The following heading and sections are inserted after section 32 of the <sup>M31</sup>Children and Young Persons Act 1969—

*“ Conflict of interest between parent and child or young person*

**32A Conflict of interest between parent and child or young person.**

- (1) If before or in the course of proceedings in respect of a child or young person—
- (a) in pursuance of section 1 of this Act, or
  - (b) on an application under section 15(1) of this Act for the discharge of a relevant supervision order or a supervision order made under section 21(2) of this Act on the discharge of a relevant care order; or
  - (c) on an application under section 21(2) of this Act for the discharge of a relevant care order or a care order made under section 15(1) of this Act on the discharge of a relevant supervision order; or
  - (d) on an appeal to the Crown Court under section 2(12) of this Act, or
  - (e) on an appeal to the Crown Court under section 16(8) of this Act against the dismissal of an application for the discharge of a relevant supervision order or against a care order made under section 15(1) on the discharge of—
    - (i) a relevant supervision order; or
    - (ii) a supervision order made under section 21(2) on the discharge of a relevant care order; or
  - (f) on an appeal to the Crown Court under section 21(4) of this Act against the dismissal of an application for the discharge of a relevant care order or against a supervision order made under section 21(2) on the discharge of—
    - (i) a relevant care order; or
    - (ii) a care order made under section 15(1) on the discharge of a relevant supervision order,

it appears to the court that there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child or young person and those of his parent or guardian, the court may order that in relation to the proceedings the parent or guardian is not to be treated as representing the child or young person or as otherwise authorised to act on his behalf.

- (2) If an application such as is referred to in subsection (1)(b) or (c) of this section is unopposed, the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall order that in relation to proceedings on the application no parent or guardian of his shall be treated as representing him or as otherwise authorised to act on his behalf; but where the application was made by a parent or guardian on his behalf the order shall not invalidate the application.
- (3) Where an order is made under subsection (1) or (2) of this section for the purposes of proceedings on an application within subsection 1(a), (b) or (c) of

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

this section, that order shall also have effect for the purposes of any appeal to the Crown Court arising out of those proceedings.

- (4) The power of the court to make orders for the purposes of an application within subsection (1)(a),(b) or (c) of this section shall also be exercisable, before the hearing of the application, by a single justice.
- (5) In this section— “relevant care order” means a care order made under section 1 of this Act; “relevant supervision order” means a supervision order made under section 1 of this Act.

### **32B Safeguarding of interests of child or young person where section 32A order made.**

- (1) Where the court makes an order under section 32A(2) of this Act the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall in accordance with rules of court appoint a guardian ad litem of the child or young person for the purposes of the proceedings.

In this subsection “court” includes a single justice.

- (2) Rules of court shall provide for the appointment of a guardian ad litem of the child or young person for the purposes of any proceedings to which an order under section 32A(1) of this Act relates.
- (3) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child or young person in the manner prescribed by rules of court.”.

#### **Modifications etc. (not altering text)**

- C6** The text of ss. 48(3)(4), 64, 66, 68, 70, 71, 73–84, 90, 92, 108(1) 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**

- M31** 1969 c.54

**65** ..... **F65**

#### **Textual Amendments**

- F65** S. 65 repealed by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 6](#)

### **66 Safeguarding of interests of children before children’s hearings etc. in Scotland.**

In the <sup>M32</sup>Social Work (Scotland) Act 1968 the following section is inserted after section 34—

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

### “34A Safeguarding of interests of children before children’s hearings etc.

- (1) In any proceedings—
  - (a) before a children’s hearing;
  - (b) before the sheriff on an application under section 42(2)(c) of this Act;
  - (c) before the sheriff on an appeal under section 49 or 51 of this Act,the chairman (in the case of proceedings referred to in paragraph (a) above) or the sheriff (in any other case)—
  - (i) shall consider whether it is necessary for the purpose of safeguarding the interests of the child in the proceedings, because there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child and those of his parent, to appoint a person to act for that purpose ; and
  - (ii) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (i) above.
- (2) The power to make rules under—
  - (a) section 35(4) of this Act,
  - (b) section 32 of the Sheriff Courts (Scotland) Act 1971,shall include power to make rules providing for—
  - (i) the procedure in relation to the disposal of matters arising under this section ;
  - (ii) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.
- (3) The expenses of a person appointed under subsection (1) of this section shall—
  - (a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and
  - (b) except in so far as otherwise defrayed in terms of regulations made under section 103(2) of the Children Act 1975, be borne by the local authority for whose area the children’s panel from which the relevant children’s hearing has been constituted is formed.
- (4) For the purposes of subsection (3) of this section, “relevant children’s hearing” means—
  - (a) in the case of proceedings referred to in subsection (1)(a) of this section, the children’s hearing,
  - (b) in the case of proceedings referred to in subsection (1)(b) of this section, the children’s hearing who have directed the application ;
  - (c) in the case of proceedings referred to in subsection (1)(c) of this section, the children’s hearing whose decision is being appealed against.”.

#### **Modifications etc. (not altering text)**

- C7** The text of ss. 48(3)(4), 64, 66, 68, 70, 71, 73–84, 90, 92, 108(1) 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.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

#### Marginal Citations

M32 1968 c. 49

### *Absence from care and children in need of secure accommodation*

#### [<sup>F66</sup>67 Recovery of children in care of local authorities.

- (1) This section applies to a child—
- (a) who is in the care of a local authority under section 1 of the Children Act 1948; and
  - (b) with respect to whom there is in force a resolution under section 2 of that Act; and
  - (c) who—
    - (i) has run away from accommodation provided for him by the local authority under Part II of the said Act; or
    - (ii) has been taken away from such accommodation contrary to section 3(8) of the said Act; or
    - (iii) has not been returned to the local authority as required by a notice served under section 49 of the <sup>M33</sup>Children and Young Persons Act 1963 on a person under whose charge and control the child was, in accordance with section 13(2) of the said Act of 1948, allowed to be.
- (2) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a person specified in the information can produce the child to whom this section applies, he may issue a summons directed to the person so specified and requiring him to attend and produce the child before a magistrates' court acting for the same petty sessions area as the justice.
- (3) Without prejudice to the powers under subsection (2) above, if a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom this section applies is in premises specified in the information, he may issue a search warrant authorising a person named in the warrant, being an officer of the local authority in whose care the child is, to search the premises for the child; and if the child is found, he shall be placed in such accommodation as the local authority may provide for him under Part II of the Children Act 1948.
- (4) A person who, without reasonable excuse, fails to comply with a summons under subsection (2) shall, without prejudice to any liability apart from this subsection, be guilty of an offence and liable on summary conviction to a fine not exceeding £100.]

#### Textual Amendments

F66 S. 67 repealed (E.W.) by Child Care Act 1980 (c. 5, SIF 20), s. 89, Sch. 6

#### Marginal Citations

M33 1963 c. 37(20).

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*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

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## 68 Extension of powers under section 32 of the Children and Young Persons Act 1969.

- (1) Section 32 of the <sup>M34</sup>Children and Young Persons Act 1969 (detention of absentees) shall have effect subject to the following provisions of this section.
- (2) In subsection (1) of the said section 32, paragraph (b) shall cease to have effect.
- (3) After subsection (1) of the said section 32, there is inserted the following subsection:—
  - “(1A) If a child or young person is absent from a place of safety to which he has been taken in pursuance of section 2(5), 16(3) or 28 of this Act without the consent of—
    - (a) the person who made the arrangements for his detention in the place of safety in pursuance of the said section 2(5) or 16(3), or
    - (b) the person on whose application an authorisation relating to the child or young person has been issued under the said section 28,
 he may be arrested by a constable anywhere in the United Kingdom or the Channel Islands without a warrant, and shall, if so arrested, be conducted to the place of safety at the expense of the person referred to in paragraph (a) or (b) (as the case may be) of this subsection.”
- (4) In subsection (2) of the said section 32, after the words “subsection (1)” there are inserted the words “or (1A)”, and for the words “twenty pounds” there is substituted the word “£100”.
- (5) After the said subsection (2), the following subsections are inserted—
  - “(2A) Without prejudice to its powers under subsection (2) of this section, a magistrates’ court (within the meaning of that subsection) may, if it is satisfied by information on oath that there are reasonable grounds for believing that a person who is absent as mentioned in subsection (1) or (1A) of this section is in premises specified in the information, issue a search warrant authorising a constable to search the premises for that person.
  - (2B) A court shall not issue a summons or search warrant under subsection (2) or (2A) of this section in any case where the person who is absent is a person to whom subsection (1A) of this section applies, unless the information referred to in the said subsection (2) or (2A) is given by the person referred to in subsection (1A)(a) or (b) (as the case may be) of this section.”
- (6) In subsection (3) of the said section 32, for the words “one hundred pounds” there is substituted the word “£400”.
- (7) In subsection (4) of the said section 32, for the words “subsection (1)” there are substituted the words “subsections (1), (1A) and (2A)”, and for the words “that subsection” there are substituted the words “subsection (1).”.

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### Modifications etc. (not altering text)

- C8** The text of ss. 48(3)(4), 64, 66, 68, 70, 71, 73–84, 90, 92, 108(1) 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.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

**Marginal Citations**

M34 1969 c. 54.

**69 Certificates of unruly character.**

The court shall not certify under section 22(5) or section 23(2) or (3) of the<sup>M35</sup>Children and Young Persons Act 1969 (committals to remand centres or prison) that a child is of so unruly a character that he cannot safely be committed to the care of a local authority unless the conditions prescribed by order made by the Secretary of State are satisfied in relation to that child.

In this section, “court” includes a justice.

**Marginal Citations**

M35 1969 c. 54(20).

PROSPECTIVE

**70 Children of unruly character in Scotland.**

The following provisions of the<sup>M36</sup>Criminal Procedure (Scotland) Act 1975 (which relate to children of unruly character) shall be amended in the manner specified in paragraphs (a) to (c) below—

- (a) in sections 23(1)(b), 24(1), 297(1) and 329(1)(b) of the said Act of 1975 the following words are added at the end— “; but the court shall not so certify a child unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.”;
- (b) in sections 23(3) and 329(3) of the said Act of 1975 the following words are added at the end— “; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the said person.”;
- (c) in sections 24(2) and 297(2) of the said Act of 1975 the following words are added at the end— “; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.”.

**Modifications etc. (not altering text)**

**C9** The text of ss. 48(3)(4), 64, 66, 68, 70, 71, 73–84, 90, 92, 108(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

M36 1975 c. 21.



*Status: This version of this Act contains provisions that are prospective.  
Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

**Textual Amendments**

**F67** S. 71 repealed (E.W.) by [Child Care Act 1980 \(c. 5, SIF 20\)](#), [Sch. 6](#)

**72 Grants in respect of secure accommodation for children in Scotland.**

The following section is inserted after section 59 of the <sup>M37</sup> Social Work (Scotland) Act 1968—

**“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 . . . <sup>F68</sup>.
- (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) . . . . . <sup>F68</sup> . . . . .” <sup>F68</sup>

**Textual Amendments**

**F68** Words "in residential establishment." and s. 72(3) repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 13:3\)](#), [Sch. 10 Pt. I](#)

**Modifications etc. (not altering text)**

**C10** The text of ss. 56–59, 72 and 93 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M37** 1968 c. 49.

*Further amendments of Social Work (Scotland) Act 1968*

<sup>F69</sup>**73** . . . . .

**Textual Amendments**

**F69** S. 73 repealed (1.4.1997) by [1995 c. 36, s. 105\(4\)\(5\)](#), [Sch. 4 para. 26\(8\)](#), [Sch. 5](#) (with s. 103(1)); [S.I. 1996/3201, art. 3\(7\)](#)

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

F70<sup>74</sup> .....

**Textual Amendments**

**F70** S. 74 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F71<sup>75</sup> .....

**Textual Amendments**

**F71** S. 75 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F72<sup>76</sup> .....

**Textual Amendments**

**F72** S. 76 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F73<sup>77</sup> .....

**Textual Amendments**

**F73** S. 77 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F74<sup>78</sup> .....

**Textual Amendments**

**F74** S. 78 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F75<sup>79</sup> .....

**Textual Amendments**

**F75** S. 79 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

*Status: This version of this Act contains provisions that are prospective.*  
**Changes to legislation:** There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)

F76 **80** .....

**Textual Amendments**

**F76** S. 80 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F77 **81** .....

**Textual Amendments**

**F77** S. 81 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F78 **82** .....

**Textual Amendments**

**F78** S. 82 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F79 **83** .....

**Textual Amendments**

**F79** S. 83 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

F80 **84** .....

**Textual Amendments**

**F80** S. 84 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

## PART IV

### FURTHER AMENDMENTS OF LAW OF ENGLAND AND WALES

#### *Explanation of concepts*

#### 85 Parental rights and duties.

- (1) In this Act, unless the context otherwise requires, “the parental rights and duties” means as respects a particular child (whether legitimate or not), all the rights and duties which by law the mother and father have in relation to a legitimate child and his property; and references to a parental right or duty shall be construed accordingly and shall include a right of access and any other element included in a right or duty.
- (2) Subject to section 1(2) of the <sup>M38</sup>Guardianship Act 1973 [<sup>F81</sup>(which relates to separation agreements between husband and wife)], a person cannot surrender or transfer to another any parental right or duty he has as respects a child.
- (3) Where two or more persons have a parental right or duty jointly, any one of them may exercise or perform it in any manner without the other or others if the other or, as the case may be, one or more of the others have not signified disapproval of its exercise or performance in that manner.
- (4) From the death of a person who has a parental right or duty jointly with one other person, or jointly with two or more other persons, that other person has the right or duty exclusively or, as the case may be, those other persons have it jointly.
- (5) Where subsection (4) does not apply on the death of a person who has a parental right or duty, that right or duty lapses, but without prejudice to its acquisition by another person at any time under any enactment.
- (6) Subsections (4) and (5) apply in relation to the dissolution of a body corporate as they apply in relation to the death of an individual.
- (7) Except as otherwise provided by or under any enactment, while the mother of an illegitimate child is living she has the parental rights and duties exclusively.

#### **Textual Amendments**

**F81** Words repealed (E.W.) by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(4), **Sch. 4**

#### **Marginal Citations**

**M38** 1973 c. 29(49:10).

#### 86 Legal custody.

In this Act, unless the context otherwise requires, “legal custody” means, as respects a child, so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent); but a person shall not by virtue of having legal custody of a child be entitled to effect or arrange for his emigration from the United Kingdom unless he is a parent or guardian of the child.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

**87 Actual custody.**

- (1) A person has actual custody of a child if he has actual possession of his person, whether or not that possession is shared with one or more persons.
- (2) While a person not having legal custody of a child has actual custody of the child he has the like duties in relation to the child as a custodian would have by virtue of his legal custody.
- (3) In this Act, unless the context otherwise requires, references to the person with whom a child has his home refer to the person who, disregarding absence of the child at a hospital or boarding school and any other temporary absence, has actual custody of the child.

**88 Child in care of voluntary organisation.**

A child is in the care of a voluntary organisation if—

- (a) the organisation has actual custody of him, or
- (b) having had actual custody of him, the organisation has transferred that custody to an individual who does not have legal custody of him.

**89** ..... F82

**Textual Amendments**

**F82** S. 89 repealed by Interpretation Act 1978 (c. 30, SIF 115:1), **Sch. 3** and repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

*Reports in guardianship and matrimonial proceedings*

**90 Procedure in guardianship proceedings.**

- (1) The following subsections are substituted for subsections (2) and (3) of section 6 of the <sup>M39</sup>Guardianship Act 1973:—
  - “(2) A report made in pursuance of subsection (1) above to a magistrates’ court shall be made to the court at a hearing of the application unless it is in writing in which case—
    - (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during a hearing of the application; and
    - (b) if the court thinks fit, the report, or such part of the report as the court requires, shall be read aloud at a hearing of the application.
  - (3) A magistrates’ court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor, shall, require the officer by whom the report was made to give evidence of or with respect to the matters referred to in the report and if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any such matter or any matter referred to in the officer’s evidence.

*Status: This version of this Act contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

- (3A) A magistrates’ court may take account of—
- (a) any statement contained in a report made at a hearing of the application or of which copies have been given to the parties or their representatives in accordance with subsection (2)(a) above; and
  - (b) any evidence given by the officer under subsection (3) above,
- in so far as the statement or evidence is, in the opinion of the court, relevant to the application, notwithstanding any enactment or rule of law to the contrary.”.

(2) The following subsection is added after subsection (5) of the said section 6—

“(6) A single justice may request a report under subsection (1) of this section before the hearing of the application, but in such a case the report shall be made to the court which hears the application, and the foregoing provisions of this section shall apply accordingly.”.

**Modifications etc. (not altering text)**

**C11** The text of ss. 48(3)(4), 64, 66, 68, 70, 71, 73–84, 90, 92, 108(1) 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**

**M39** 1973 c. 29.

91 ..... **F83**

**Textual Amendments**

**F83** S. 91 repealed by [Domestic Proceedings and Magistrates' Court Act 1978 \(c. 22, SIF 49:3\)](#), [Sch. 3](#)

*Registration of births*

**92 Registration of births of abandoned children.**

The following section is inserted after section 3 of the <sup>M40</sup> Births and Deaths Registration Act 1953—

**“3A Registration of births of abandoned children.**

- (1) Where the place and date of birth of a child who was abandoned are unknown to, and cannot be ascertained by, the person who has charge of the child, that person may apply to the Registrar General for the child’s birth to be registered under this section.
- (2) On an application under this section the Registrar General shall enter in a register maintained at the General Register Office—
  - (a) as the child’s place of birth, if the child was found by the applicant or by any person from whom (directly or indirectly) the applicant took

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

- charge of the child, the registration district and sub-district where the child was found, or, in any other case, where the child was abandoned;
- (b) as the child's date of birth, the date which, having regard to such evidence as is produced to him, appears to him to be the most likely date of birth of the child, and
- (c) such other particulars as may be prescribed.
- (3) The Registrar General shall not register a child's birth under this section if—
- (a) he is satisfied that the child was not born in England or Wales ; or
- (b) the child has been adopted in pursuance of a court order made in the United Kingdom, the Isle of Man or the Channel Islands; or
- (c) subject to subsection (5) below, the child's birth is known to have been previously registered under this Act.
- (4) If no entry can be traced in any register of births relating to a person who has attained the age of 18 and has not been adopted as aforesaid, that person may apply to the Registrar General for his birth to be registered under this section.
- (5) On the application of—
- (a) a person having the charge of a child whose birth had been registered under this Act by virtue of the proviso to section I of this Act (as originally enacted), or
- (b) any such child who has attained the age of 18 years,
- the Registrar General shall re-register the birth of the child under this section, and shall direct the officer having custody of the register of births in which the entry relating to the child was previously made to enter in the margin of the register a reference to the re-registration of the birth.”

**Modifications etc. (not altering text)**

**C12** The text of ss. 48(3)(4), 64, 66, 68, 70, 71, 73–84, 90, 92, 108(1) 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**

**M40** 1953 c. 20.

[<sup>F84</sup>93 **Registration of father of illegitimate child.**

- (1) At the end of paragraph (b) of section 10 of the <sup>M41</sup> Births and Deaths Registration Act of 1953 (which makes provision for the registration of fathers of illegitimate children) there is added
- (c) at the request of the mother (which shall be made in writing) on production of—
- (i) a certified copy of an order made under section 4 of the Affiliation Proceedings Act 1957 naming that person as the putative father of the child, and
- (ii) if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father.”

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

(2) After the said section 10 there is inserted the following section—

**“ Re-registration of births of illegitimate children.**

- (1) Where the birth of an illegitimate child has been registered under this Act but no person has been registered as the child’s father, the registrar shall re-register the birth so as to show a person as the father—
- (a) at the joint request of the mother and of that person ; or
  - (b) at the request of the mother on production of—
    - (i) a declaration in the prescribed form made by the mother stating that that person is the father of the child ; and
    - (ii) a statutory declaration made by that person acknowledging himself to be the father of the child ; or
  - (c) at the request of the mother (which shall be made in writing) on production of—
    - (i) a certified copy of an order made under section 4 of the Affiliation Proceedings Act 1957 naming that person as the putative father of that child, and
    - (ii) if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father ;

but no birth shall be re-registered under this section except in the prescribed manner and with the authority of the Registrar General.

- (2) On the re-registration of a birth under this section—
- (a) the registrar and the mother shall sign the register ;
  - (b) in the case of a request under paragraph (a) of subsection (1) of this section, the other person making the request shall also sign the register; and
  - (c) if the re-registration takes place more than three months after the birth, the superintendent registrar shall also sign the register.”

(3) In section 9 of the said Act of 1953 (which enables information required to be given to the registrar to be given to other persons) after subsection (3) there are added the following subsections—

“(4) A request made under section 10 of this Act may be included in a declaration under subsection (1) of this section, and, if the request is made under paragraph (b) or (c) of that section, the documents required by that paragraph to be produced shall be produced to the officer in whose presence the declaration is made and sent by him with the declaration to the registrar.

- (5) A request made under section 10A of this Act instead of being made to the registrar may be made by making and signing in the presence of and delivering to a prescribed officer a statement in the prescribed form and producing to the officer any documents required to be produced by that section, and—
- (a) the officer shall send the request together with those documents, if any, to the registrar who shall with the authority of the Registrar General re-register the birth as if the request had been made to him; and



*Status:* This version of this Act contains provisions that are prospective.  
*Changes to legislation:* There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)

- (b) the person or persons who sign the statement shall be deemed to have signed the register as required by subsection (2) of that section.”.]

**Textual Amendments**

**F84** S. 93(1)(2) repealed (E.W.) by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(4), [Sch. 4](#)

**Modifications etc. (not altering text)**

**C13** The text of ss. 56–59, 72 and 93 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M41** 1953 c. 20.

*Extent of Part IV*

**94 Extent of Part IV.**

This Part does not extend to Scotland.

**PART V**

MISCELLANEOUS AND SUPPLEMENTAL

**95—97** ..... **F85**

**Textual Amendments**

**F85** Ss. 95–97 repealed (E.W.) by [Foster Children Act 1980 \(c. 6, SIF 20\)](#), [Sch. 3](#) and (S.) by [Foster Children \(Scotland\) Act 1984 \(c. 56, SIF 20\)](#), [Sch. 3](#)

**98** ..... **F86**

**Textual Amendments**

**F86** S. 98 repealed by [Child Care Act 1980 \(c. 5, SIF 20\)](#), [Sch. 6](#)

*Inquiries*

**F87****99** .....

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

#### Textual Amendments

**F87** S. 99 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 28(6), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

### Supplemental

**F88** **100** .....

#### Textual Amendments

**F88** S. 100 repealed (1.4.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

### 101 Appeals etc.

[<sup>F89</sup>(1) Where any application has been made under this Act [<sup>F90</sup>or the relevant adoption provisions] to a county court, the High Court may, at the instance of any party to the application, order the application to be removed to the High Court and there proceeded with on such terms as to costs as it thinks proper.]

(2) Subject to subsection (3), where on an application to a magistrates' court under this Act [<sup>F91</sup>or the relevant adoption provisions] the court makes or refuses to make an order, an appeal shall lie to the High Court.

(3) Where an application is made to a magistrates' court under this Act [<sup>F91</sup>or the relevant adoption provisions], and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court shall refuse to make an order, and in that case no appeal shall lie to the High Court.

[<sup>F92</sup>(4) Any order made on an appeal under subsection (2) from a decision of a magistrates' court on an application under Part II (other than an order directing that an application shall be re-heard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of sections 35, 35A and 36 be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.]

[<sup>F93</sup>(5) In this section “the relevant adoption provisions” means sections 34, 34A and 35(2) of the <sup>M42</sup>Adoption Act 1958.]

#### Textual Amendments

**F89** S. 101(1) repealed (E.W.) by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(3), 47, **Sch. 3**

**F90** Words inserted (E.W.) by virtue of Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3) Schs. 1, 2 para. 49 and Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 27(a)(i)**

**F91** Words inserted (E.W.) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 27(a)(ii)**

*Status: This version of this Act contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

- F92** S. 101(4) added (E.W.) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 71, **Sch. 1**
- F93** S. 101(5) added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 27(b)**

**Marginal Citations**

- M42** 1958 c. 5(49:11).

**F94** **102** .....

**Textual Amendments**

- F94** S. 102 repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

**F95** **103** .....

**Textual Amendments**

- F95** S. 103 repealed (22.1.2002) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 26(8), **Sch. 5** (with s. 103(1)) (which repeal was to come into force on 1.4.1997 by S.I. 1996/3201, **art. 3(7)** but the said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 4** with the result that the repeal in this section was excepted from the provisions to be brought into force); S.S.I. 2002/12, **art. 2**

**104** **Savings for powers of High Court.**

Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians, or otherwise in respect of children.

**F96** **105** .....

**Textual Amendments**

- F96** S. 105 repealed (1.4.1997) by 1995 c. 36, ss. 102, 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

**106** **Regulations and orders.**

- (1) Where a power to make regulations or orders is exercisable by the Secretary of State by virtue of this Act, regulations or orders made in the exercise of that power shall be made by statutory instrument and may—
- (a) make different provision in relation to different cases or classes of case, and
  - (b) exclude certain cases or classes of case.

*Status: This version of this Act contains provisions that are prospective.  
Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

- (2) A statutory instrument containing regulations made by the Secretary of State under section 103 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred on the Secretary of State by this Act to make orders includes a power to vary or revoke an order so made.

**107 Interpretation.**

(1) In this Act, unless the context otherwise requires—

F97 . . . . .  
 F98 . . . . .  
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 F97 . . . . .  
 F97 . . . . .  
 F97 . . . . . F99  
 . . . . .  
 “voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit.

F97(2) . . . . .  
 (2A) . . . . . F100  
 F97(3) . . . . .  
 F97(4) . . . . .

**Textual Amendments**

**F97** S. 107 repealed except the definitions of “adoption society”, “child” and “voluntary organisation” (1.4.1997) by 1995 c. 36, ss. 105(4)(5), Sch. 4 para. 26(9), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

**F98** Definitions repealed (E.W.) by Adoption Act 1976 (c. 36, SIF 49:11), s. 74(2), Sch. 4 and words in s. 107(1) repealed (S.) (28.9.2009) by **Adoption and Children (Scotland) Act 2007 (asp 4)**, s. 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

- F99** Definitions repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, Sch. 2 para. 3, [Sch. 4](#) and (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), [Sch. 4](#)
- F100** S. 107(2A) repealed by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), Sch. 2 para. 3, [Sch. 3](#)

## 108 Amendments, repeals, commencement and transitory provisions.

- (1) Subject to the following provisions of this section
  - (a) the enactments specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential on the preceding provisions of this Act), and
  - (b) the enactments specified in Schedule 4 are repealed to the extent shown in column 3 of that Schedule.
- (2) This Act, except the provisions specified in subsections (3) and (4), shall come into force on such date as the Secretary of State may by order appoint and different dates may be appointed for, or for different purposes of, different provisions.
- (3) Sections 71, 72 and 82, this section, section 109 and paragraph 57 of Schedule 3 shall come into force on the passing of this Act.
- (4) The following provisions of this Act shall come into force on 1st January 1976—
  - (a) sections 3, 8(9) and (10), 13, 59, 83 to 91, 94, 98, 99, 100 and 103 to 107;
  - (b) Schedules 1 and 2;
  - (c) in Schedule 3, paragraphs 1, 2, 3, 4, 6, 8, 9, 13(6), 15, 17, 18, 19, 20, 21(1) (2) and (4), 22 to 25, 27(b), 29, 33, 34(b), 35, 36(b), 38, 39(c) (d) and (e), 40, 43, 48, 49, 51(a), 52(f)(ii) and (g)(ii), 54, 55, 58 to 63, 65 to 70, 75(3), 77, 78, 81 and 83;
  - (d) Parts I, II and III of Schedule 4.
- <sup>[F101]</sup>(5) Until the date appointed under subsection (2) or sections 4 to 7, in this Act and in the 1958 Act “adoption agency” means a local authority or a registered adoption society within the meaning of the 1958 Act.
- (6) Until the date so appointed for section 12, section 5(1) of the 1958 Act shall, in relation to an application made after 31st December 1975 for an adoption order, have effect with the addition at the end of paragraph (b) of the following words
  - (c) has seriously ill-treated the child and that (whether because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of that person is unlikely.”]
- (7) Until the date so appointed for section 18, section 21A of the <sup>M43</sup>Children and Young Persons Act 1969 shall have effect as if for references to section 25 there were substituted references to section 53 of the 1958 Act.
- (8) An order under subsection (2) may make such transitional provision as appears 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 any provision of this Act then in force or any provision of the 1958 Act as appear to him to be necessary or expedient in consequence of the partial operation of this Act.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975. (See end of Document for details)*

#### Textual Amendments

**F101** S. 108(5)(6) repealed (S.) by [Adoption \(Scotland\) Act 1978](#) (c. 28, SIF 49:11), s. 66(3), Sch. 2 para. 3, Sch. 4

#### Modifications etc. (not altering text)

**C14** The text of ss. 48(3)(4), 64, 66, 68, 70, 71, 73–84, 90, 92, 108(1) 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.

**C15** Power of appointment conferred by s. 108(2) partly exercised; 1976/1744; 1977/227, 1036; 1978/1433, 1440; 1980/1475; 1981/1792; 1982/33; 1983/86; 107, 1946; 1984/554, 1702; 1985/779, 1557, 1987/1242

#### Marginal Citations

**M43** [1969 c. 54](#).

### 109 Short title and extent.

- (1) This Act may be cited as the Children Act 1975.
- (2) This Act, except—
  - (a) section 68;
  - (b) paragraphs 10, 11 . . . <sup>F102</sup> of Schedule 3;
  - (c) <sup>F102</sup> does not extend to Northern Ireland.
- (3) . . . . . <sup>F103</sup>

#### Textual Amendments

**F102** Words and para. (c) repealed by [British Nationality Act 1981](#) (c. 61, SIF 87), s. 52(8), Sch. 9

**F103** S. 109(3) repealed by [Health and Social Services and Social Security Adjudications Act 1983](#) (c. 41, SIF 113:31), Sch. 10 Pt. I

**Status:**

This version of this Act contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Children Act 1975.