



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART I

#### PARENTS, CHILDREN AND GUARDIANS

##### *Parental responsibilities and parental rights*

#### **1 Parental responsibilities.**

- (1) Subject to section 3(1)(b) and (3) of this Act, a parent has in relation to his child the responsibility—
  - (a) to safeguard and promote the child's health, development and welfare;
  - (b) to provide, in a manner appropriate to the stage of development of the child—
    - (i) direction;
    - (ii) guidance,to the child;
  - (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
  - (d) to act as the child's legal representative,but only in so far as compliance with this section is practicable and in the interests of the child.
- (2) "Child" means for the purposes of—
  - (a) paragraphs (a), (b)(i), (c) and (d) of subsection (1) above, a person under the age of sixteen years;
  - (b) paragraph (b)(ii) of that subsection, a person under the age of eighteen years.
- (3) The responsibilities mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental responsibilities"; and the child, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those responsibilities.

**Status:** Point in time view as at 05/10/2005. This version of this Act contains provisions that are not valid for this point in time.

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- (4) The parental responsibilities supersede any analogous duties imposed on a parent at common law; but this section is without prejudice to any other duty so imposed on him or to any duty imposed on him by, under or by virtue of any other provision of this Act or of any other enactment.

#### Commencement Information

- II** S. 1 wholly in force at 1.4.1997; s. 1 not in force at Royal Assent see s. 105(1); s. 1(1)-(3) in force for certain purposes at 1.11.1995 by S.I. 1995/2787, art. 3, Sch.; s. 1 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

## 2 Parental rights.

- (1) Subject to section 3(1)(b) and (3) of this Act, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right—
- (a) to have the child living with him or otherwise to regulate the child's residence;
  - (b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;
  - (c) if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and
  - (d) to act as the child's legal representative.
- (2) Subject to subsection (3) below, where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others, unless any decree or deed conferring the right, or regulating its exercise, otherwise provides.
- (3) Without prejudice to any court order, no person shall be entitled to remove a child habitually resident in Scotland from, or to retain any such child outwith, the United Kingdom without the consent of a person described in subsection (6) below.
- (4) The rights mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental rights"; and a parent, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those rights.
- (5) The parental rights supersede any analogous rights enjoyed by a parent at common law; but this section is without prejudice to any other right so enjoyed by him or to any right enjoyed by him by, under or by virtue of any other provision of this Act or of any other enactment.
- (6) The description of a person referred to in subsection (3) above is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1) above; except that, where both the child's parents are persons so described, the consent required for his removal or retention shall be that of them both.
- (7) In this section, "child" means a person under the age of sixteen years.

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### 3 Provisions relating both to parental responsibilities and to parental rights.

- (1) Notwithstanding section 1(1) of the <sup>M1</sup>Law Reform (Parent and Child) (Scotland) Act 1986 (provision for disregarding whether a person's parents are not, or have not been, married to one another in establishing the legal relationship between him and any other person)—
  - (a) a child's mother has parental responsibilities and parental rights in relation to him whether or not she is or has been married to his father; and
  - (b) without prejudice to any arrangements which may be made under subsection (5) below and subject to any agreement which may be made under section 4 of this Act, his father has such responsibilities and rights in relation to him only if married to the mother at the time of the child's conception or subsequently.
- (2) For the purposes of subsection (1)(b) above, the father shall be regarded as having been married to the mother at any time when he was a party to a purported marriage with her which was—
  - (a) voidable; or
  - (b) void but believed by them (whether by error of fact or of law) in good faith at that time to be valid.
- (3) Subsection (1) above is without prejudice to any order made under section 11 of this Act or section 3(1) of the said Act of 1986 (provision analogous to the said section 11 but repealed by this Act) or to any other order, disposal or resolution affecting parental responsibilities or parental rights; and nothing in subsection (1) above or in this Part of this Act shall affect any other—
  - (a) enactment (including any other provision of this Act or of that Act); or
  - (b) rule of law,by, under or by virtue of which a person may have imposed on him (or be relieved of) parental responsibilities or may be granted (or be deprived of) parental rights.
- (4) The fact that a person has parental responsibilities or parental rights in relation to a child shall not entitle that person to act in any way which would be incompatible with any court order relating to the child or the child's property, or with any supervision requirement made under section 70 of this Act.
- (5) Without prejudice to section 4(1) of this Act, a person who has parental responsibilities or parental rights in relation to a child shall not abdicate those responsibilities or rights to anyone else but may arrange for some or all of them to be fulfilled or exercised on his behalf; and without prejudice to that generality any such arrangement may be made with a person who already has parental responsibilities or parental rights in relation to the child concerned.
- (6) The making of an arrangement under subsection (5) above shall not affect any liability arising from a failure to fulfil parental responsibilities; and where any arrangements so made are such that the child is a foster child for the purposes of the <sup>M2</sup>Foster Children (Scotland) Act 1984, those arrangements are subject to the provisions of that Act.

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

C1 S. 3(4) extended (*temp.* from 22.8.1996 to 1.4.1997) by [S.I. 1996/2203](#), [art. 4](#)

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#### Marginal Citations

- M1** 1986 c.9.  
**M2** 1984 c. 56.

#### 4 Acquisition of parental rights and responsibilities by natural father.

- (1) Where a child's mother has not been deprived of some or all of the parental responsibilities and parental rights in relation to him and, by virtue of subsection (1) (b) of section 3 of this Act, his father has no parental responsibilities or parental rights in relation to him, the father and mother, whatever age they may be, may by agreement provide that, as from the appropriate date, the father shall have the parental responsibilities and parental rights which (in the absence of any order under section 11 of this Act affecting those responsibilities and rights) he would have if married to the mother.
- (2) No agreement under subsection (1) above shall have effect unless—
- in a form prescribed by the Secretary of State; and
  - registered in the Books of Council and Session while the mother still has the parental responsibilities and parental rights which she had when the agreement was made.
- (3) The date on which such registration as is mentioned in subsection (2)(b) above takes place shall be the “appropriate date” for the purposes of subsection (1) above.
- (4) An agreement which has effect by virtue of subsection (2) above shall, subject only to section 11(11) of this Act, be irrevocable.

#### Commencement Information

- I2** S. 4 wholly in force at 1.4.1997; s. 4 not in force at Royal Assent see s. 105(1); s. 4 in force for certain purposes at 1.9.1996 by S.I. 1996/2203, art. 3(1) (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); s. 4 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

VALID FROM 06/04/2009

#### [<sup>F1</sup>4A Acquisition of parental responsibilities and parental rights by second female parent by agreement with mother

- (1) Where—
- a child's mother has not been deprived of some or all of the parental responsibilities and parental rights in relation to the child; and
  - the child has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and that parent is not registered as such under any of the enactments mentioned in section 3(3A),
- the mother and the other parent may by agreement provide that, as from the appropriate date, the other parent shall have the parental responsibilities and rights (in the absence of any order under section 11 of this Act affecting responsibilities and rights) as if the other parent were treated as a parent by virtue of section 42 of that Act of 2008.

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(2) Section 4(2), (3) and (4) applies in relation to an agreement under subsection (1) of this section as it applies in relation to an agreement under subsection (1) of section 4.]

#### Textual Amendments

**F1** S. 4A inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, Sch. 6 para. 51; S.I. 2009/479, art. 6(1)(e)(2) (as amended by S.I. 2009/2232, art. 3)

## 5 Care or control of child by person without parental responsibilities or parental rights.

- (1) Subject to subsection (2) below, it shall be the responsibility of a person who has attained the age of sixteen years and who has care or control of a child under that age, but in relation to him either has no parental responsibilities or parental rights or does not have the parental responsibility mentioned in section 1(1)(a) of this Act, to do what is reasonable in all the circumstances to safeguard the child's health, development and welfare; and in fulfilling his responsibility under this section the person may in particular, even though he does not have the parental right mentioned in section 2(1)(d) of this Act, give consent to any surgical, medical or dental treatment or procedure where—
- (a) the child is not able to give such consent on his own behalf; and
  - (b) it is not within the knowledge of the person that a parent of the child would refuse to give the consent in question.
- (2) Nothing in this section shall apply to a person in so far as he has care or control of a child in a school ("school" having the meaning given by section 135(1) of the <sup>M3</sup>Education (Scotland) Act 1980).

#### Marginal Citations

**M3** 1980 c. 44.

## 6 Views of children.

- (1) A person shall, in reaching any major decision which involves—
- (a) his fulfilling a parental responsibility or the responsibility mentioned in section 5(1) of this Act; or
  - (b) his exercising a parental right or giving consent by virtue of that section,
- have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and to those of any other person who has parental responsibilities or parental rights in relation to the child (and wishes to express those views); and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (2) A transaction entered into in good faith by a third party and a person acting as legal representative of a child shall not be challengeable on the ground only that the child, or a person with parental responsibilities or parental rights in relation to the child, was

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not consulted or that due regard was not given to his views before the transaction was entered into.

### *Guardianship*

## 7 **Appointment of guardians.**

- (1) A child's parent may appoint a person to be guardian of the child in the event of the parent's death; but—
  - (a) such appointment shall be of no effect unless—
    - (i) in writing and signed by the parent; and
    - (ii) the parent, at the time of death, was entitled to act as legal representative of the child (or would have been so entitled if he had survived until after the birth of the child); and
  - (b) any parental responsibilities or parental rights (or the right to appoint a further guardian under this section) which a surviving parent has in relation to the child shall subsist with those which, by, under or by virtue of this Part of this Act, the appointee so has.
- (2) A guardian of a child may appoint a person to take his place as guardian in the event of the guardian's death; but such appointment shall be of no effect unless in writing and signed by the person making it.
- (3) An appointment as guardian shall not take effect until accepted, either expressly or impliedly by acts which are not consistent with any other intention.
- (4) If two or more persons are appointed as guardians, any one or more of them shall, unless the appointment expressly provides otherwise, be entitled to accept office even if both or all of them do not accept office.
- (5) Subject to any order under section 11 or 86 of this Act, a person appointed as a child's guardian under this section shall have, in respect of the child, the responsibilities imposed, and the rights conferred, on a parent by sections 1 and 2 of this Act respectively; and sections 1 and 2 of this Act shall apply in relation to a guardian as they apply in relation to a parent.
- (6) Without prejudice to the generality of subsection (1) of section 6 of this Act, a decision as to the appointment of a guardian under subsection (1) or (2) above shall be regarded for the purposes of that section (or of that section as applied by subsection (5) above) as a major decision which involves exercising a parental right.

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

**C2** S. 7(5) extended (*temp.* from 22.8.1996 to 1.4.1997) by S.I. 1996/2203, art. 5(a)

## 8 **Revocation and other termination of appointment.**

- (1) An appointment made under section 7(1) or (2) of this Act revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as a result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

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- (2) Subject to subsections (3) and (4) below, the revocation of an appointment made under section 7(1) or (2) of this Act (including one made in an unrevoked will or codicil) shall not take effect unless the revocation is in writing and is signed by the person making the revocation.
- (3) An appointment under section 7(1) or (2) of this Act (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it—
  - (a) destroys the document by which it was made; or
  - (b) has some other person destroy that document in his presence.
- (4) For the avoidance of doubt, an appointment made under section 7(1) or (2) of this Act in a will or codicil is revoked if the will or codicil is revoked.
- (5) Once an appointment of a guardian has taken effect under section 7 of this Act, then, unless the terms of the appointment provide for earlier termination, it shall terminate only by virtue of—
  - (a) the child concerned attaining the age of eighteen years;
  - (b) the death of the child or the guardian; or
  - (c) the termination of the appointment by a court order under section 11 of this Act.

#### *Administration of child's property*

### **9 Safeguarding of child's property.**

- (1) Subject to section 13 of this Act, this section applies where—
  - (a) property is owned by or due to a child;
  - (b) the property is held by a person other than a parent or guardian of the child; and
  - (c) but for this section, the property would be required to be transferred to a parent having parental responsibilities in relation to the child or to a guardian for administration by that parent or guardian on behalf of the child.
- (2) Subject to subsection (4) below, where this section applies and the person holding the property is an executor or trustee, then—
  - (a) if the value of the property exceeds £20,000, he shall; or
  - (b) if that value is not less than £5,000 and does not exceed £20,000, he may,apply to the Accountant of Court for a direction as to the administration of the property.
- (3) Subject to subsection (4) below, where this section applies and the person holding the property is a person other than an executor or trustee, then, if the value of the property is not less than £5,000, that person may apply to the Accountant of Court for a direction as to the administration of the property.
- (4) Where the parent or guardian mentioned in subsection (1)(c) above has been appointed a trustee under a trust deed to administer the property concerned, subsections (2) and (3) above shall not apply, and the person holding the property shall transfer it to the parent or guardian.
- (5) On receipt of an application under subsection (2) or (3) above, the Accountant of Court may do one, or (in so far as the context admits) more than one, of the following—

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- (a) apply to the court for the appointment of a judicial factor (whether or not the parent or guardian mentioned in subsection (1)(c) above) to administer all or part of the property concerned and in the event of the court making such an appointment shall direct that the property, or as the case may be part, concerned be transferred to the factor;
  - (b) direct that all or part of the property concerned be transferred to himself;
  - (c) direct that all or, in a case where the parent or guardian so mentioned has not been appointed by virtue of paragraph (a) above, part of the property concerned be transferred to the parent or guardian,
- to be administered on behalf of the child.
- (6) A direction under subsection (5)(c) above may include such conditions as the Accountant of Court considers appropriate, including in particular a condition—
- (a) that in relation to the property concerned no capital expenditure shall be incurred without his approval; or
  - (b) that there shall be exhibited annually to him the securities and bank books which represent the capital of the estate.
- (7) A person who has applied under subsection (2) or (3) above for a direction shall not thereafter transfer the property concerned except in accordance with a direction under subsection (5) above.
- (8) The Secretary of State may from time to time prescribe a variation in any sum referred to in subsections (2) and (3) above.
- (9) In this section “child” means a person under the age of sixteen years who is habitually resident in Scotland.

## **10 Obligations and rights of person administering child’s property.**

- (1) A person acting as a child’s legal representative in relation to the administration of the child’s property—
- (a) shall be required to act as a reasonable and prudent person would act on his own behalf; and
  - (b) subject to any order made under section 11 of this Act, shall be entitled to do anything which the child, if of full age and capacity, could do in relation to that property;
- and subject to subsection (2) below, on ceasing to act as legal representative, shall be liable to account to the child for his intromissions with the child’s property.
- (2) No liability shall be incurred by virtue of subsection (1) above in respect of funds which have been used in the proper discharge of the person’s responsibility to safeguard and promote the child’s health, development and welfare.

### *Court Orders*

## **11 Court orders relating to parental responsibilities etc.**

- (1) In the relevant circumstances in proceedings in the Court of Session or sheriff court, whether those proceedings are or are not independent of any other action, an order may be made under this subsection in relation to—
- (a) parental responsibilities;



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- (b) parental rights;
- (c) guardianship; or
- (d) subject to section 14(1) and (2) of this Act, the administration of a child's property.

<sup>F2</sup>(1A) .....

(2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders—

- (a) an order depriving a person of some or all of his parental responsibilities or parental rights in relation to a child;
- (b) an order—
  - (i) imposing upon a person (provided he is at least sixteen years of age or is a parent of the child) such responsibilities; and
  - (ii) giving that person such rights;
- (c) an order regulating the arrangements as to—
  - (i) with whom; or
  - (ii) if with different persons alternately or periodically, with whom during what periods,a child under the age of sixteen years is to live (any such order being known as a “residence order”);
- (d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age and a person with whom the child is not, or will not be, living (any such order being known as a “contact order”);
- (e) an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in paragraphs (a) to (d) of subsection (1) of this section (any such order being known as a “specific issue order”);
- (f) an interdict prohibiting the taking of any step of a kind specified in the interdict in the fulfillment of parental responsibilities or the exercise of parental rights relating to a child or in the administration of a child's property;
- (g) an order appointing a judicial factor to manage a child's property or remitting the matter to the Accountant of Court to report on suitable arrangements for the future management of the property; or
- (h) an order appointing or removing a person as guardian of the child.

(3) The relevant circumstances mentioned in subsection (1) above are—

- (a) that application for an order under that subsection is made by a person who—
  - (i) not having, and never having had, parental responsibilities or parental rights in relation to the child, claims an interest;
  - (ii) has parental responsibilities or parental rights in relation to the child;
  - (iii) has had, but for a reason other than is mentioned in subsection (4) below no longer has, parental responsibilities or parental rights in relation to the child; or
- (b) that although no such application has been made, the court (even if it declines to make any other order) considers it should make such an order.

(4) The reasons referred to in subsection (3)(a)(iii) above are that the parental responsibilities or parental rights have been—

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- (a) extinguished on the making of an adoption order;
  - (b) transferred to an adoption agency on the making of an order declaring the child free for adoption;
  - (c) extinguished by virtue of subsection (9) of section 30 of the <sup>M4</sup>Human Fertilisation and Embryology Act 1990 (provision for enactments about adoption to have effect with modifications) on the making of a parental order under subsection (1) of that section; or
  - (d) transferred to a local authority by a parental responsibilities order.
- (5) In subsection (3)(a) above “person” includes (without prejudice to the generality of that subsection) the child concerned; but it does not include a local authority.
- (6) In subsection (4) above—
- “adoption agency” and “adoption order” have the same meanings as they are given, in section 18 of the <sup>M5</sup>Adoption (Scotland) Act 1978, by section 65(1) of that Act; and
  - “parental responsibilities order” has the meaning given by section 86(1) of this Act.
- (7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court—
- (a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and
  - (b) taking account of the child’s age and maturity, shall so far as practicable—
    - (i) give him an opportunity to indicate whether he wishes to express his views;
    - (ii) if he does so wish, give him an opportunity to express them; and
    - (iii) have regard to such views as he may express.
- (8) The court shall, notwithstanding subsection (7) above, endeavour to ensure that any order which it makes, or any determination by it not to make an order, does not adversely affect the position of a person who has, in good faith and for value, acquired any property of the child concerned, or any right or interest in such property.
- (9) Nothing in paragraph (b) of subsection (7) above requires a child to be legally represented, if he does not wish to be, in proceedings in the course of which the court implements that paragraph.
- (10) Without prejudice to the generality of paragraph (b) of subsection (7) above, a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view for the purposes both of that paragraph and of subsection (9) above.
- (11) An order under subsection (1) above shall have the effect of depriving a person of a parental responsibility or parental right only in so far as the order expressly so provides and only to the extent necessary to give effect to the order; but in making any such order as is mentioned in paragraph (a) or (b) of subsection (2) above the court may revoke any agreement which, in relation to the child concerned, has effect by virtue of section 4(2) of this Act.
- (12) Where the court makes a residence order which requires that a child live with a person who, immediately before the order is made does not have in relation to the child all the parental responsibilities mentioned in paragraphs (a), (b) and (d) of section 1(1), and the parental rights mentioned in paragraphs (b) and (d) of section 2(1), of this Act

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(those which he does not so have being in this subsection referred to as the “relevant responsibilities and rights”) that person shall, subject to the provisions of the order or of any other order made under subsection (1) above, have the relevant responsibilities and rights while the residence order remains in force.

- (13) Any reference in this section to an order includes a reference to an interim order or to an order varying or discharging an order.

#### Textual Amendments

- F2** S. 11(1A) repealed (1.3.2005) by [The European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), [reg. 9](#) (with [reg. 6](#))

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

- C3** S. 11(1) restricted (30.12.2005) by [1978 c. 28, s. 53C\(2\)](#) (as inserted by [2002 c. 38, ss. 139\(1\), 148\(5\) \(c\), Sch. 3 para. 30](#)) (with [Sch. 4 paras. 6-8](#)); [S.S.I. 2005/643](#), [art. 2\(c\)](#)
- C4** S. 11(4)(d) extended (*temp.* from 22.8.1996 to 1.4.1997) by [S.I. 1996/2203](#), [art. 5\(b\)](#)

#### Marginal Citations

- M4** [1990 c. 37](#).
- M5** [1978 c. 28](#).

VALID FROM 28/09/2009

### **[<sup>F3</sup>11A Restriction on making of orders under section 11**

- (1) Subsection (2) applies where a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)) is in force in respect of a child.
- (2) The court may not, under subsection (1) of section 11 of this Act, make an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section.]

#### Textual Amendments

- F3** S. 11A inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), [ss. 103, 121\(2\)](#); [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#))

## **12 Restrictions on decrees for divorce, separation or annulment affecting children.**

- (1) In any action for divorce, judicial separation or declarator of nullity of marriage, the court shall, where this section applies, consider (in the light of such information as is before the court as to the arrangements which have been, or are proposed to be, made for the upbringing of each child by virtue of which it applies) whether to exercise with respect to him the powers conferred by section 11 or 54 of this Act.
- (2) Where, in any case to which this section applies, the court is of the opinion that—
- (a) the circumstances of the case require, or are likely to require, it to exercise any power under section 11 or 54 of this Act with respect to the child concerned;

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- (b) it is not in a position to exercise that power without giving further consideration to the case; and
  - (c) there are exceptional circumstances which make it desirable in the interests of that child that it should not grant decree in the action until it is in a position to exercise such a power,
- it shall postpone its decision on the granting of decree in the action until it is in such a position.
- (3) This section applies where a child of the family has not reached the age of sixteen years at the date when the question first arises as to whether the court should give such consideration as is mentioned in subsection (1) above.
- (4) In this section “child of the family”, in relation to the parties to a marriage, means—
- (a) a child of both of them; or
  - (b) any other child, not being a child who is placed with them as foster parents by a local authority or voluntary organisation, who has been treated by both of them as a child of their family.

### **13 Awards of damages to children.**

- (1) Where in any court proceedings a sum of money becomes payable to, or for the benefit of, a child under the age of sixteen years, the court may make such order relating to the payment and management of the sum for the benefit of the child as it thinks fit.
- (2) Without prejudice to the generality of subsection (1) above, the court may in an order under this section—
- (a) appoint a judicial factor to invest, apply or otherwise deal with the money for the benefit of the child concerned;
  - (b) order the money to be paid—
    - (i) to the sheriff clerk or the Accountant of Court; or
    - (ii) to a parent or guardian of that child,
 to be invested, applied or otherwise dealt with, under the directions of the court, for the benefit of that child; or
  - (c) order the money to be paid directly to that child.
- (3) Where payment is made to a person in accordance with an order under this section, a receipt given by him shall be a sufficient discharge of the obligation to make the payment.

#### *Jurisdiction and choice of law*

### **14 Jurisdiction and choice of law in relation to certain matters.**

- (1) The Court of Session shall have jurisdiction to entertain an application for an order relating to the administration of a child’s property if the child is habitually resident in, or the property is situated in, Scotland.
- (2) A sheriff shall have jurisdiction to entertain such an application if the child is habitually resident in, or the property is situated in, the sheriffdom.
- (3) Subject to subsection (4) below, any question arising under this Part of this Act—
- (a) concerning—

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- (i) parental responsibilities or parental rights; or
  - (ii) the responsibilities or rights of a guardian,
- in relation to a child shall, in so far as it is not also a question such as is mentioned in paragraph (b) below, be determined by the law of the place of the child's habitual residence at the time when the question arises;
- (b) concerning the immediate protection of a child shall be determined by the law of the place where the child is when the question arises; and
  - (c) as to whether a person is validly appointed or constituted guardian of a child shall be determined by the law of the place of the child's habitual residence on the date when the appointment was made (the date of death of the testator being taken to be the date of appointment where an appointment was made by will), or the event constituting the guardianship occurred.
- (4) Nothing in any provision of law in accordance with which, under subsection (3) above, a question which arises in relation to an application for, or the making of, an order under subsection (1) of section 11 of this Act falls to be determined, shall affect the application of subsection (7) of that section.
- [<sup>F4</sup>(5) The provisions of sections 9, 11, 13 and this section are subject to Sections 2 and 3 of Chapter II of Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.]

#### Textual Amendments

- F4** S. 14(5) added (1.3.2005 with application in accordance with reg. 7 of the amending S.S.I.) by The European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 (S.S.I. 2005/42), **reg. 5(2)** (with reg. 6)

### Interpretation

## 15 Interpretation of Part I.

(1) In this Part of this Act—

“child” means, where the expression is not otherwise defined, a person under the age of eighteen years;

“contact order” has the meaning given by section 11(2)(d) of this Act;

“parent”, in relation to any person, means, subject to Part IV of the <sup>M6</sup>Adoption (Scotland) Act 1978 and sections 27 to 30 of the <sup>M7</sup>Human Fertilisation and Embryology Act 1990 and any regulations made under subsection (9) of the said section 30, someone, of whatever age, who is that person's genetic father or mother;

“parental responsibilities” has the meaning given by section 1(3) of this Act;

“parental rights” has the meaning given by section 2(4) of this Act;

“residence order” has the meaning given by section 11(2)(c) of this Act;

“specific issue order” has the meaning given by section 11(2)(e) of this Act; and

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“transaction” has the meaning given by section 9 of the <sup>M8</sup>Age of Legal Capacity (Scotland) Act 1991 (except that, for the purposes of subsection (5) (b) below, paragraph (d) of the definition in question shall be disregarded).

- (2) No provision in this Part of this Act shall affect any legal proceedings commenced, or any application made to a court, before that provision comes into effect; except that where, before section 11 of this Act comes into force, there has been final decree in a cause in which, as respects a child, an order for custody or access, or an order which is analogous to any such order as is mentioned in subsection (2) of that section, has been made, any application on or after the date on which the section does come into force for variation or recall of the order shall proceed as if the order had been made under that section.
- (3) In subsection (2) above, the reference to final decree is to a decree or interlocutor which, taken by itself or along with previous interlocutors, disposes of the whole subject matter of the cause.
- (4) Any reference in this Part of this Act to a person—
  - (a) having parental rights or responsibilities;
  - (b) acting as a legal representative; or
  - (c) being appointed a guardian,
 is to a natural person only.
- (5) Any reference in this Part of this Act to a person acting as the legal representative of a child is a reference to that person, in the interests of the child—
  - (a) administering any property belonging to the child; and
  - (b) acting in, or giving consent to, any transaction where the child is incapable of so acting or consenting on his own behalf.
- (6) Where a child has legal capacity to sue, or to defend, in any civil proceedings, he may nevertheless consent to be represented in those proceedings by any person who, had the child lacked that capacity, would have had the responsibility to act as his legal representative.

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**Marginal Citations**

**M6** 1978 c.28.

**M7** 1990 c.37.

**M8** 1991 c.50.

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## PART II

### PROMOTION OF CHILDREN’S WELFARE BY LOCAL AUTHORITIES AND BY CHILDREN’S HEARINGS ETC.

#### CHAPTER 1

##### SUPPORT FOR CHILDREN AND THEIR FAMILIES

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

C5 Pt. II Ch. 1 (ss. 16-38) modified (1.4.1997) by S.I. 1996/3255, reg. 7(1)

#### *Introductory*

#### **16 Welfare of child and consideration of his views.**

- (1) Where under or by virtue of this Part of this Act, a children’s hearing decide, or a court determines, any matter with respect to a child the welfare of that child throughout his childhood shall be their or its paramount consideration.
- (2) In the circumstances mentioned in subsection (4) below, a children’s hearing or as the case may be the sheriff, taking account of the age and maturity of the child concerned, shall so far as practicable—
  - (a) give him an opportunity to indicate whether he wishes to express his views;
  - (b) if he does so wish, give him an opportunity to express them; and
  - (c) have regard to such views as he may express;
 and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (3) In the circumstances mentioned in subsection (4)(a)(i) or (ii) or (b) of this section, no requirement or order so mentioned shall be made with respect to the child concerned unless the children’s hearing consider, or as the case may be the sheriff considers, that it would be better for the child that the requirement or order be made than that none should be made at all.
- (4) The circumstances to which subsection (2) above refers are that—
  - (a) the children’s hearing—
    - (i) are considering whether to make, or are reviewing, a supervision requirement;
    - (ii) are considering whether to grant a warrant under subsection (1) of section 66, or subsection (4) or (7) of section 69, of this Act or to provide under subsection (5) of the said section 66 for the continuation of a warrant;
    - (iii) are engaged in providing advice under section 60(10) of this Act; or
    - (iv) are drawing up a report under section 73(13) of this Act;
  - (b) the sheriff is considering—
    - (i) whether to make, vary or discharge a parental responsibilities order, a child assessment order or an exclusion order;

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- (ii) whether to vary or discharge a child protection order; (ia) whether to grant a warrant under section 66 of this Act; or
  - (iii) on appeal, whether to make such substitution as is mentioned in section 51(5)(c)(iii) of this Act; or
  - (c) the sheriff is otherwise disposing of an appeal against a decision of a children’s hearing.
- (5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm)—
- (a) a children’s hearing consider it necessary to make a decision under or by virtue of this Part of this Act which (but for this paragraph) would not be consistent with their affording paramountcy to the consideration mentioned in subsection (1) above, they may make that decision; or
  - (b) a court considers it necessary to make a determination under or by virtue of Chapters 1 to 3 of this Part of this Act which (but for this paragraph) would not be consistent with its affording such paramountcy, it may make that determination.

## 17 **Duty of local authority to child looked after by them.**

- (1) Where a child is looked after by a local authority they shall, in such manner as the Secretary of State may prescribe—
- (a) safeguard and promote his welfare (which shall, in the exercise of their duty to him be their paramount concern);
  - (b) make such use of services available for children cared for by their own parents as appear to the authority reasonable in his case; and
  - (c) take such steps to promote, on a regular basis, personal relations and direct contact between the child and any person with parental responsibilities in relation to him as appear to them to be, having regard to their duty to him under paragraph (a) above, both practicable and appropriate.
- (2) The duty under paragraph (a) of subsection (1) above includes, without prejudice to that paragraph’s generality, the duty of providing advice and assistance with a view to preparing the child for when he is no longer looked after by a local authority.
- (3) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the views of—
- (a) the child;
  - (b) his parents;
  - (c) any person who is not a parent of his but who has parental rights in relation to him; and
  - (d) any other person whose views the authority consider to be relevant,
- regarding the matter to be decided.
- (4) In making any such decision a local authority shall have regard so far as practicable—
- (a) to the views (if he wishes to express them) of the child concerned, taking account of his age and maturity;
  - (b) to such views of any person mentioned in subsection (3)(b) to (d) above as they have been able to ascertain; and



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- (c) to the child’s religious persuasion, racial origin and cultural and linguistic background.
- (5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm) a local authority consider it necessary to exercise, in a manner which (but for this paragraph) would not be consistent with their duties under this section, their powers with respect to a child whom they are looking after, they may do so.
- (6) Any reference in this Chapter of this Part to a child who is “looked after” by a local authority, is to a child—
- (a) for whom they are providing accommodation under section 25 of this Act;
  - (b) who is subject to a supervision requirement and in respect of whom they are the relevant local authority;
  - (c) who is subject to an order made, or authorisation or warrant granted, by virtue of Chapter 2, 3 or 4 of this Part of this Act, being an order, authorisation or warrant in accordance with which they have responsibilities as respects the child; or
  - (d) who is subject to an order in accordance with which, by virtue of regulations made under section 33(1) of this Act, they have such responsibilities.
- (7) Regulations made by the Secretary of State under subsection (1) above may, without prejudice to the generality of that subsection, include—
- (a) provision as to the circumstances in which the child may be cared for by the child’s own parents; and
  - (b) procedures which shall be followed in the event of the child’s death.

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

C6 S. 17(1) applied (1.4.1997) by S.I. 1996/3263, reg. 6(2)

C7 S. 17(1)-(5) applied (1.4.1997) by S.I. 1996/3262, reg. 3(2)(b)

#### Commencement Information

I3 S. 17 wholly in force at 1.4.1997; s. 17 not in force at Royal Assent see s. 105(1), s. 17 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(1) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); s. 17 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

## 18 Duty of persons with parental responsibilities to notify change of address to local authority looking after child.

- (1) Where a child is being looked after by a local authority, each natural person who has parental responsibilities in relation to the child shall, without unreasonable delay, inform that authority whenever the person changes his address.
- (2) A person who knowingly fails to comply with the requirement imposed by subsection (1) above shall be liable on summary conviction to a fine of level 1 on the standard scale; but in any proceedings under this section it shall be a defence that—
- (a) the change was to the same address as that to which another person who at that time had parental responsibilities in relation to the child was changing; and
  - (b) the accused had reasonable cause to believe that the other person had informed the authority of the change of address of them both.

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### *Provision of services*

## **19 Local authority plans for services for children.**

- (1) Within such period after the coming into force of this section as the Secretary of State may direct, each local authority shall prepare and publish a plan for the provision of relevant services for or in respect of children in their area.
- (2) References to “relevant services” in this section are to services provided by a local authority under or by virtue of—
  - (a) this Part of this Act; or
  - (b) any of the enactments mentioned in section 5(1B)(a) to (o) of the <sup>M9</sup>Social Work (Scotland) Act 1968 (enactments in respect of which Secretary of State may issue directions to local authorities as to the exercise of their functions).
- (3) A local authority shall from time to time review the plan prepared by them under subsection (1) above (as modified, or last substituted, under this subsection) and may, having regard to that review, prepare and publish—
  - (a) modifications (or as the case may be further modifications) to the plan reviewed; or
  - (b) a plan in substitution for that plan.
- (4) The Secretary of State may, subject to subsection (5) below, issue directions as to the carrying out by a local authority of their functions under subsection (3) above.
- (5) In preparing any plan, or carrying out any review, under this section a local authority shall consult—
  - (a) every Health Board and National Health Service trust providing services under the <sup>M10</sup>National Health Service (Scotland) Act 1978 in the area of the authority;
  - (b) such voluntary organisations as appear to the authority—
    - (i) to represent the interests of persons who use or are likely to use relevant services in that area; or
    - (ii) to provide services in that area which, were they to be provided by the authority, might be categorised as relevant services;
  - (c) the Principal Reporter appointed under section 127 of the <sup>M11</sup>Local Government etc. (Scotland) Act 1994;
  - (d) the chairman of the children’s panel for that area;
  - (e) such housing associations, voluntary housing agencies and other bodies as appear to the authority to provide housing in that area; and
  - (f) such other persons as the Secretary of State may direct.

#### **Commencement Information**

- I4** S. 19 wholly in force at 1.4.1997; s. 19 not in force at Royal Assent see s. 105(1); s. 19 in force for certain purposes at 12.12.1996 by [S.I. 1996/3201](#), [art. 3\(1\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by [S.I. 1997/744](#), [art. 3](#))); s. 19 in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201](#), [art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by [S.I. 1997/744](#), [arts. 2, 3](#))

#### **Marginal Citations**

- M9** 1968 c. 49.  
**M10** 1978 c. 29.

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**M11** 1994 c.39.

## 20 Publication of information about services for children.

- (1) A local authority shall, within such period after the coming into force of this section as the Secretary of State may direct, and thereafter from time to time, prepare and publish information—
- (a) about relevant services which are provided by them for or in respect of children (including, without prejudice to that generality, services for or in respect of disabled children or children otherwise affected by disability) in their area or by any other local authority for those children; and
  - (b) where they consider it appropriate, about services which are provided by voluntary organisations and by other persons for those children, being services which the authority have power to provide and which, were they to do so, they would provide as relevant services.
- (2) In subsection (1) above, “relevant services” has the same meaning as in section 19 of this Act.

### Commencement Information

**I5** S. 20 wholly in force at 1.4.1997; s. 20 not in force at Royal Assent see s. 105(1); s. 20 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(1) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); s. 20 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

## 21 Co-operation between authorities.

- (1) Where it appears to a local authority that an appropriate person could, by doing certain things, help in the exercise of any of their functions under this Part of this Act, they may, specifying what those things are, request the help of that person.
- (2) For the purposes of subsection (1) above, persons who are appropriate are—
- (a) any other local authority;
  - (b) a health board constituted under section 2 of the <sup>M12</sup>National Health Service (Scotland) Act 1978;
  - (c) a national health service trust established under section 12A of that Act; and
  - (d) any person authorised by the Secretary of State for the purposes of this section;
- and an appropriate person receiving such a request shall comply with it provided that it is compatible with their own statutory or other duties and obligations and (in the case of a person not a natural person) does not unduly prejudice the discharge of any of their functions.

### Marginal Citations

**M12** 1978 c. 29.

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## 22 Promotion of welfare of children in need.

- (1) A local authority shall—
- (a) safeguard and promote the welfare of children in their area who are in need; and
  - (b) so far as is consistent with that duty, promote the upbringing of such children by their families,
- by providing a range and level of services appropriate to the children’s needs.
- (2) In providing services under subsection (1) above, a local authority shall have regard so far as practicable to each child’s religious persuasion, racial origin and cultural and linguistic background.
- (3) Without prejudice to the generality of subsection (1) above—
- (a) a service may be provided under that subsection—
    - (i) for a particular child;
    - (ii) if provided with a view to safeguarding or promoting his welfare, for his family; or
    - (iii) if provided with such a view, for any other member of his family; and
  - (b) the services mentioned in that subsection may include giving assistance in kind or, in exceptional circumstances, in cash.
- (4) Assistance such as is mentioned in subsection (3)(b) above may be given unconditionally or subject to conditions as to the repayment, in whole or in part, of it or of its value; but before giving it, or imposing such conditions, the local authority shall have regard to the means of the child concerned and of his parents and no condition shall require repayment by a person at any time when in receipt of—
- (a) income support or [<sup>F5</sup>working families’ tax credit] payable under the <sup>M13</sup>Social Security Contributions and Benefits Act 1992;
  - [<sup>F6</sup>(aa) any element of child tax credit other than the family element or working tax credit;] or
  - (b) an income-based jobseeker’s allowance payable under the <sup>M14</sup>Jobseekers Act 1995.

### Textual Amendments

- F5** Words in s. 22 substituted (5.10.1999) by 1999 c. 10, ss. 1(2), 20, Sch. 1 paras. 1, 6(j)
- F6** S. 22(4)(aa) inserted (6.4.2003) by 2002 c. 21, ss. 47, 61, **Sch. 3 para. 50**; S.I. 2003/962, **art. 2(3)(d)** (iii) (subject to arts 3, 4)

### Modifications etc. (not altering text)

- C8** S. 22 restricted (8.1.2003) by 2002 c. 41, art. 54, **Sch. 3 para. 1(1)(i)**; S.I. 2002/2811, art. 2, **Sch.** (with arts. 3-6)

### Marginal Citations

- M13** 1992 c.4.
- M14** 1995 c. 18.

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## 23 Children affected by disability.

(1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—

- (a) to minimise the effect on any—
  - (i) disabled child who is within the authority’s area, of his disability; and
  - (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person’s disability; and
- (b) to give those children the opportunity to lead lives which are as normal as possible.

(2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or <sup>F7</sup>has a mental disorder (as defined in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)).

(3) Where requested to do so by <sup>F8</sup>—

- (a) a child’s parent or guardian <sup>F9</sup>; or
- (b) a mental health officer (as defined in section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) who—
  - (i) has responsibility under that Act or the Criminal Procedure (Scotland) Act 1995 (c. 46) for a child’s case; and
  - (ii) makes the request for the purposes of either of those Acts.]

a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child, carry out an assessment of the child, or of any other person in the child’s family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.

<sup>F10</sup>(4) In determining the needs of a child under subsection (3) above, the local authority shall take account—

- (a) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for the child, or for another person in the child’s family who is being assessed under that subsection, of such care as is being so provided; and
- (b) in so far as it is reasonable and practicable to do so, of—
  - (i) the views of the parent or guardian of the child, and the child; and
  - (ii) the views of the carer,

provided that the parent, guardian, child or carer in question has a wish, or as the case may be, a capacity, to express a view.]

### Textual Amendments

- F7** Words in s. 23(2) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(3), [Sch. 4 para. 7](#); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, art. 2)
- F8** Word in s. 23(3) become s. 23(3)(a) (5.10.2005) by virtue of [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. [227\(2\)\(a\)](#), 333(3); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, art. 2)
- F9** S. 23(3)(b) and preceding word inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. [227\(2\)\(b\)](#), 333(3); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, art. 2)

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**F10** S. 23(4) inserted (1.9.2002) by 2002 asp 5, s. 10; S.S.I. 2002/170, art. 2(4)

## 24 Assessment of ability of carers to provide care for disabled children.

[<sup>F11</sup>(1) Subject to subsection (2) below, a person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for a disabled child may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for the child.

(1A) The local authority to whom the request is made shall—

- (a) comply with the request where it appears to them that the child, or another person in the child’s family, is a person for whom they must or may provide services under section 22(1) of this Act; and
- (b) if they then or subsequently make an assessment under section 23(3) of this Act to determine the needs of the child, have regard to the results of the carer’s assessment—
  - (i) in the assessment of the child; and
  - (ii) in making a decision as to the discharge by them of any duty they may have as respects the child under section 2(1) of the Chronically Sick and Disabled Persons Act 1970 (c.44) or under section 22(1) of this Act.]

(2) No request may be made under subsection (1) above by a person who provides or will provide the care in question—

- (a) under or by virtue of a contract of employment or other contract; or
- (b) as a volunteer for a voluntary organisation.

(3) Where an assessment of a carer’s ability to continue to provide, or as the case may be to provide, care for a child is carried out under subsection (1) above, there shall, as respects the child, be no requirement under section 8 of the <sup>M15</sup>Disabled Persons (Services, Consultation and Representation) Act 1986 (carer’s ability to continue to provide care to be considered in any decision as respects provision of certain services for disabled persons) to have regard to that ability.

(4) In this section “person” means a natural person.

### Textual Amendments

**F11** S. 24(1)(1A) substituted for s. 24(1) (1.9.2002) by 2002 asp 5, s. 11(1); S.S.I. 2002/170, art. 2(4)

### Marginal Citations

**M15** 1986 c.33.

## [<sup>F12</sup>24A Duty of local authority to provide information to carer of disabled child

Where it appears to a local authority both that—

- (a) a child is a disabled child for whom they must or may provide services under section 22(1) of this Act; and
- (b) a person (“the carer”) provides, or intends to provide, a substantial amount of care on a regular basis for the child,

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the local authority shall notify the carer that he may be entitled under section 24(1) of this Act to request an assessment of his ability to provide, or to continue to provide, care for the child.]

#### Textual Amendments

**F12** S. 24A inserted (1.9.2002) by 2002 asp 5, s. 11(2); S.S.I. 2002/170, art. 2(4)

## 25 Provision of accommodation for children, etc.

- (1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because—
  - (a) no-one has parental responsibility for him;
  - (b) he is lost or abandoned; or
  - (c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.
- (2) Without prejudice to subsection (1) above, a local authority may provide accommodation for any child within their area if they consider that to do so would safeguard or promote his welfare.
- (3) A local authority may provide accommodation for any person within their area who is at least eighteen years of age but not yet twenty-one, if they consider that to do so would safeguard or promote his welfare.
- (4) A local authority providing accommodation under subsection (1) above for a child who is ordinarily resident in the area of another local authority shall notify the other authority, in writing, that such provision is being made; and the other authority may at any time take over the provision of accommodation for the child.
- (5) Before providing a child with accommodation under this section, a local authority shall have regard, so far as practicable, to his views (if he wishes to express them), taking account of his age and maturity; and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (6) Subject to subsection (7) below—
  - (a) a local authority shall not provide accommodation under this section for a child if any person who—
    - (i) has parental responsibilities in relation to him and the parental rights mentioned in section 2(1)(a) and (b) of this Act; and
    - (ii) is willing and able either to provide, or to arrange to have provided, accommodation for him,
 objects; and
  - (b) any such person may at any time remove the child from accommodation which has been provided by the local authority under this section.
- (7) Paragraph (a) of subsection (6) above does not apply—
  - (a) as respects any child who, being at least sixteen years of age, agrees to be provided with accommodation under this section; or

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- (b) where a residence order has been made in favour of one or more persons and that person has, or as the case may be those persons have, agreed that the child should be looked after in accommodation provided by, or on behalf of, the local authority;

and paragraph (b) of that subsection does not apply where accommodation has been provided for a continuous period of at least six months (whether by a single local authority or, by virtue of subsection (4) above, by more than one local authority), unless the person removing the child has given the local authority for the time being making such provision at least fourteen days’ notice in writing of his intention to remove the child.

- (8) In this Part of this Act, accommodation means, except where the context otherwise requires, accommodation provided for a continuous period of more than twenty-four hours.

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

- C9** S. 25 modified (1.4.1997) by 1984 c. 56, s. 12(5) (as substituted (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 35(5) (with Sch. 3 paras. 4, 6); S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3))

**26 Manner of provision of accommodation to child looked after by local authority.**

- (1) A local authority may provide accommodation for a child looked after by them by—
- (a) placing him with—
- (i) a family (other than such family as is mentioned in paragraph (a) or (b) of the definition of that expression in section 93(1) of this Act);
- (ii) a relative of his; or
- (iii) any other suitable person,
- on such terms as to payment, by the authority or otherwise, as the authority may determine;
- (b) maintaining him in a residential establishment; or
- (c) making such other arrangements as appear to them to be appropriate, including (without prejudice to the generality of this paragraph) making use of such services as are referred to in section 17(1)(b) of this Act.
- (2) A local authority may arrange for a child whom they are looking after—
- (a) to be placed, under subsection (1)(a) above, with a person in England and Wales or in Northern Ireland; or
- (b) to be maintained in any accommodation in which—
- (i) a local authority in England and Wales could maintain him by virtue of section 23(2)(b) to (e) of the <sup>M16</sup>Children Act 1989; or
- (ii) an authority within the meaning of the <sup>M17</sup>Children (Northern Ireland) Order 1995 could maintain him by virtue of Article 27(2)(b) to (e) of that Order.

**Extent Information**

- E1** S. 26(1) extends to Scotland only; s. 26(2) extends also to England, Wales and Northern Ireland; see s. 105(1) and (8)



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### Marginal Citations

**M16** 1989 c.41.

**M17** S.I. 1995/755 (N.I.2)

## 27 Day care for pre-school and other children.

- (1) Each local authority shall provide such day care for children in need within their area who—
- (a) are aged five or under; and
  - (b) have not yet commenced attendance at a school,
- as is appropriate; and they may provide such day care for children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) but are not in need.
- (2) A local authority may provide facilities (including training, advice, guidance and counselling) for those—
- (a) caring for children in day care; or
  - (b) who at any time accompany such children while they are in day care.
- (3) Each local authority shall provide for children in need within their area who are in attendance at a school such care—
- (a) outside school hours; or
  - (b) during school holidays,
- as is appropriate; and they may provide such care for children within their area who are in such attendance but are not in need.
- (4) In this section—
- “day care” means any form of care provided for children during the day, whether or not it is provided on a regular basis; and
- “school” has the meaning given by section 135(1) of the <sup>M18</sup>Education (Scotland) Act 1980.

### Marginal Citations

**M18** 1980 c.44.

## 28 Removal of power to arrange for emigration of children.

Section 23 of the <sup>M19</sup>Social Work (Scotland) Act 1968 (which provides a power for local authorities and voluntary associations, with the consent of the Secretary of State, to make arrangements for the emigration of children in their care) shall cease to have effect.

### Marginal Citations

**M19** 1968 c.49.

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### *Advice and assistance for young persons formerly looked after by local authorities*

## 29 After-care.

- (1) A local authority shall, unless they are satisfied that his welfare does not require it, advise, guide and assist any person in their area over school age but not yet nineteen years of age who, at the time when he ceased to be of school age or at any subsequent time was, but who is no longer, looked after by a local authority.
- (2) If a person within the area of a local authority is at least nineteen, but is less than twenty-one, years of age and is otherwise a person such as is described in subsection (1) above, he may by application to the authority request that they provide him with advice, guidance and assistance; and they may, unless they are satisfied that his welfare does not require it, grant that application.
- (3) <sup>[F13]</sup>Subject to section 73(2) of the Regulation of Care (Scotland) Act 2001 (asp 8),] assistance given under subsection (1) or (2) above may include assistance in kind or in cash.
- (4) Where a person—
  - (a) over school age ceases to be looked after by a local authority; or
  - (b) described in subsection (1) above is being provided with advice, guidance or assistance by a local authority,
 they shall, if he proposes to reside in the area of another local authority, inform that other local authority accordingly provided that he consents to their doing so.
- <sup>[F14]</sup>(5) It is the duty of each local authority, in relation to any person to whom they have a duty under subsection (1) above or who makes an application under subsection (2) above, to carry out an assessment of the person’s needs.
- (6) Each local authority shall establish a procedure for considering representations (including complaints) made to them by any person mentioned in subsection (1) or (2) above about the discharge of their functions under the provisions of subsections (1) to (5) above.
- (7) In subsection (1) above, the reference to having been “looked after by a local authority” shall be construed as including having been looked after by a local authority in England and Wales; and subsection (4) of section 105 of the Children Act 1989 (c.41) (construction of references to a child looked after by a local authority) shall apply for the purposes of this subsection as it applies for the purposes of that Act (“local authority in England and Wales” being construed in accordance with subsection (1) of that section).]

#### **Textual Amendments**

**F13** Words in s. 29(3) inserted (5.12.2003) by 2001 asp 8, ss. 73(1)(a), 81(2); S.S.I. 2003/596, art. 3(1)

**F14** S. 29(5)-(7) inserted (1.4.2004) by 2001 asp 8, ss. 73(1)(b), 81(2); S.S.I. 2003/596, art. 3(2)

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

**C10** S. 29 restricted (8.1.2003) by 2002 c. 41, art. 54, Sch. 3 para. 1(1)(i); S.I. 2002/2811, art. 2, Sch. (with arts. 3-6)

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### 30 Financial assistance towards expenses of education or training and removal of power to guarantee indentures etc.

- (1) Without prejudice to section 12 of the <sup>M20</sup>Social Work (Scotland) Act 1968 (general social welfare services of local authorities), a local authority may make—
- (a) grants to any relevant person in their area to enable him to meet expenses connected with his receiving education or training; and
  - (b) contributions to the accommodation and maintenance of any such person in any place near where he may be—
    - (i) employed, or seeking employment; or
    - (ii) receiving education or training.
- (2) Subject to subsection (3) below, a person is a relevant person for the purposes of subsection (1) above if—
- (a) he is over school age but not yet twenty-one years of age; and
  - (b) at the time when he ceased to be of school age or at any subsequent time he was, but he is no longer, looked after by a local authority.
- (3) A local authority making grants under paragraph (a), or contributions under paragraph (b)(ii), of subsection (1) above to a person may continue to make them, though he has in the meantime attained the age of twenty-one years, until he completes the course of education or training in question; but if, after he has attained that age, the course is interrupted by any circumstances they may only so continue if he resumes the course as soon as is practicable.
- (4) Section 25 of the Social Work (Scotland) Act 1968 (which empowers a local authority to undertake obligations by way of guarantee under any indentures or other deed of apprenticeship or articles of clerkship entered into by a person in their care or under supplemental deeds or articles) shall cease to have effect.

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

**C11** S. 30 restricted (8.1.2003) by 2002 c. 41, art. 54, **Sch. 3 para. 1(1)(i)**; S.I. 2002/2811, art. 2, **Sch.** (with arts. 3-6)

#### Marginal Citations

**M20** 1968 c.49.

### Miscellaneous and General

### 31 Review of case of child looked after by local authority.

- (1) Without prejudice to their duty under section 17(1)(a) of this Act, it shall be the duty of a local authority who are looking after a child to review his case at such intervals as may be prescribed by the Secretary of State.
- (2) The Secretary of State may prescribe—
- (a) different intervals in respect of the first such review and in respect of subsequent reviews;
  - (b) the manner in which cases are to be reviewed under this section;

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- (c) the considerations to which the local authority are to have regard in reviewing cases under this section.

#### Commencement Information

- I6** S. 31 wholly in force at 1.4.1997; s. 31 not in force at Royal Assent see s. 105(1); s. 31 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(1) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); s. 31 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

### 32 Removal of child from residential establishment.

A local authority, notwithstanding any agreement made in connection with the placing of a child in a residential establishment under this Chapter, or Chapter 4, of this Part of this Act by them—

- (a) may, at any time; and  
 (b) shall, if requested to do so by the person responsible for the establishment, remove a child so placed.

### 33 Effect of orders etc. made in different parts of the United Kingdom.

- (1) The Secretary of State may make regulations providing for a prescribed order which is made by a court in England and Wales or in Northern Ireland, if that order appears to him to correspond generally to an order of a kind which may be made under this Part of this Act or to a supervision requirement, to have effect in prescribed circumstances and for prescribed purposes of the law of Scotland as if it were an order of that kind or, as the case may be, as if it were a supervision requirement.
- (2) The Secretary of State may make regulations providing—
- (a) for a prescribed order made under this Part of this Act by a court in Scotland; or
- (b) for a supervision requirement,
- if that order or requirement appears to him to correspond generally to an order of a kind which may be made under any provision of law in force in England and Wales or in Northern Ireland, to have effect in prescribed circumstances and for prescribed purposes of the law of England and Wales, or as the case may be of Northern Ireland, as if it were an order of that kind.
- (3) Regulations under subsection (1) or (2)(a) above may provide for the order given effect for prescribed purposes to cease to have effect for those purposes, or for the purposes of the law of the place where the order was made, if prescribed conditions are satisfied.
- (4) Where a child who is subject to a supervision requirement is lawfully taken to live in England and Wales or in Northern Ireland, the requirement shall cease to have effect if prescribed conditions are satisfied.
- (5) Regulations under this section may modify any provision of—
- (a) the <sup>M21</sup>Social Work (Scotland) Act 1968 or this Act in any application which the Acts may respectively have, by virtue of the regulations, in relation to an order made otherwise than in Scotland;

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- (b) the <sup>M22</sup>Children Act 1989 or the <sup>M23</sup>Children and Young Persons Act 1969 [<sup>F15</sup>or sections 63 to 67 of and Schedules 6 and 7 to the Powers of Criminal Courts (Sentencing) Act 2000] in any application which those Acts may respectively have, by virtue of the regulations, in relation to an order prescribed under subsection (2)(a) above or to a supervision requirement; or
- (c) the <sup>M24</sup>Children (Northern Ireland) Order 1995 or the <sup>M25</sup>Children and Young Persons Act (Northern Ireland) 1968 in any application which they may respectively have, by virtue of the regulations, in relation to an order so prescribed or to a supervision requirement.

**Textual Amendments**

**F15** Words in s. 33(5)(b) inserted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 175**

**Commencement Information**

**I7** S. 33 wholly in force at 1.4.1997; s. 33 not in force at Royal Assent see s. 105(1); s. 33 in force for certain purposes at 12.12.1996 by **S.I. 1996/3201, art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by **S.I. 1997/744, art. 3**)); s. 33 in force at 1.4.1997 insofar as not already in force by **S.I. 1996/3201, art. 3(7)** (with arts. 4-6) (as amended (7.3.1997) by **S.I. 1997/744, arts. 2, 3**)

**Marginal Citations**

- M21** 1968 c.49.
- M22** 1989 c.41.
- M23** 1969 c.54
- M24** S.I. 1995/755 (N.I.2)
- M25** 1968 c.34 (N.I.)

<sup>F16</sup>**34** .....

**Textual Amendments**

**F16** S. 34 repealed (1.4.2002) by 2001 asp 8, s. 80(1), **Sch. 4; S.S.I. 2002/162, art. 2(g)(i)** (subject to arts. 3-13)

**35 Welfare of children in accommodation provided for purposes of school attendance.**

After section 125 of the <sup>M26</sup>Education (Scotland) Act 1980 there shall be inserted—

*“ Children and young persons in accommodation*

**125A Welfare of children and young persons in accommodation provided for purposes of school attendance.**

Where, for the purposes of his being in attendance at a school, a child or young person is provided with residential accommodation, in a place in or outwith that school, by—

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- (a) an education authority, the board of management of a self-governing school or the managers of a grant-aided or independent school; or
- (b) by any other person in pursuance of arrangements made by any such authority, board of management or managers,

the authority, board of management or managers in question shall have the duty to safeguard and promote the welfare of the child or young person while he is so accommodated; and the powers of inspection exercisable by virtue of section 66(1) of this Act shall include the power to inspect the place to determine whether his welfare is adequately safeguarded and promoted there.”.

#### Marginal Citations

M26 1980 c.44.

### 36 Welfare of certain children in hospitals and nursing homes etc.

- (1) Where a child is provided with residential accommodation by a person mentioned in subsection (3) below and it appears to the person that the child either—
  - (a) has had no parental contact for a continuous period of three months or more; or
  - (b) is likely to have no parental contact for a period which, taken with any immediately preceding period in which the child has had no such contact, will constitute a continuous period of three months or more,
 the person shall (whether or not the child has been, or will be, so accommodated throughout the continuous period) so notify the local authority in whose area the accommodation is provided.
- (2) A local authority receiving notification under subsection (1) above shall—
  - (a) take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while he is so accommodated; and
  - (b) consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.
- (3) The persons are—
  - (a) any health board constituted under section 2 of the <sup>M27</sup>National Health Service (Scotland) Act 1978;
  - (b) any national health service trust established under section 12A of that Act;
  - <sup>F17</sup>(c)
    - (i) an independent health care service within the meaning of the Regulation of Care (Scotland) Act 2001 (asp 8).]
    - <sup>F18</sup>(ii) .....
  - (d) any person providing a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)).
- (4) For the purposes of subsection (1) above, a child has parental contact only when in the presence of a person having parental responsibilities in relation to him.
- (5) A person duly authorised by a local authority may in the area of that authority, at all reasonable times, enter for the purposes of subsection (2) above or of determining whether there has been compliance with subsection (1) above any such place as is mentioned in sub-paragraph (i) or (ii) of subsection (3)(c) above and may for those

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purposes inspect any records or registers relating to that place; and subsections (2A) to (2D) and (4) of section 6 of the <sup>M28</sup>Social Work (Scotland) Act 1968 (exercise of powers of entry and inspection) shall apply in respect of a person so authorised as they apply in respect of a person duly authorised under subsection (1) of that section.

**Textual Amendments**

- F17** S. 36(3)(c)(i) substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), arts. 1, 2, **Sch. 1 para. 26**
- F18** S. 36(3)(c)(ii) and word in s. 36(3)(c)(i) repealed (1.4.2002) by [2001 asp 8, s. 79](#), **Sch. 3 para. 19(2)(a)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)

**Marginal Citations**

- M27** 1978 c.29.
- M28** 1968 c.49.

**F19**<sup>37</sup> .....

**Textual Amendments**

- F19** S. 37 repealed (1.4.2002) by [2001 asp 8, s. 80\(1\)](#), **Sch. 4**; S.S.I. 2002/162, **art. 2(g)(i)** (subject to arts. 3-13)

**38 Short-term refuges for children at risk of harm.**

- (1) Where a child appears—
  - (a) to a local authority to be at risk of harm, they may at the child’s request—
    - (i) provide him with refuge in a residential establishment both controlled or managed by them and designated by them for the purposes of this paragraph; or
    - (ii) arrange for a person whose household is approved by virtue of section 5(3)(b) of the <sup>M29</sup>Social Work (Scotland) Act 1968 (provision for securing that persons are not placed in any household unless the household has prescribed approval) and is designated by them for the purposes of this paragraph, to provide him with refuge in that household,
 for a period which does not exceed the relevant period;
  - (b) to a person who [<sup>F20</sup>provides a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8))], or to any person for the time being employed in the management of [<sup>F21</sup>the accommodation in question], to be at risk of harm, the person to whom the child so appears may at the child’s request provide him with refuge, for a period which does not exceed the relevant period, in the [<sup>F22</sup>accommodation] but shall do so only if and to the extent that the local authority within whose area the [<sup>F22</sup>accommodation] is situated have given their approval to the use of the [<sup>F22</sup>accommodation] (or a part of the [<sup>F22</sup>accommodation]) for the purposes of this paragraph.
- (2) The Secretary of State may by regulations make provision as to—

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- (a) designation, for the purposes of paragraph (a) of subsection (1) above, of establishments and households;
- (b) application for, the giving of and the withdrawal of, approval under paragraph (b) of subsection (1) above;
- (c) requirements (if any) which must be complied with while any such approval remains in force;
- (d) the performance by a person mentioned in the said paragraph (b) of anything to be done by him under that paragraph;
- (e) the performance by a local authority of their functions under this section; and
- (f) the giving, to such persons or classes of person as may be specified in the regulations, of notice as to the whereabouts of a child provided with refuge under this section,

and regulations made under this subsection may include such incidental and supplementary provisions as he thinks fit.

- (3) While a child is being provided with refuge under, and in accordance with regulations made under, this section, none of the enactments mentioned in subsection (4) below shall apply in relation to him unless the commencement of the period of refuge has followed within two days of the termination of a prior period of refuge so provided to him by any person.
- (4) The enactments are—
  - (a) section 89 of this Act and, so far as it applies in relation to anything done in Scotland, section 83 of this Act; and
  - (b) section 32(3) of the <sup>M30</sup>Children and Young Persons Act 1969 (compelling, persuading, inciting or assisting any person to be absent from detention etc.), so far as it applies in relation to anything done in Scotland.
- (5) References in this section to the relevant period shall be construed as references either to a period which does not exceed seven days or, in such exceptional circumstances as the Secretary of State may prescribe, to a period which does not exceed fourteen days.
- (6) A child who is provided with refuge for a period by virtue of such arrangements as are mentioned in subsection (1)(a) above shall not be regarded as a foster child for the purposes of the <sup>M31</sup>Foster Children (Scotland) Act 1984 by reason only of such provision.

#### Textual Amendments

- F20** Words in s. 38(1)(b) substituted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 19(3)(a)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F21** Words in s. 38(1)(b) substituted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 19(3)(b)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F22** Word in s. 38(1)(b) substituted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 19(3)(c)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)

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

- C12** S. 38(5) explained (1.4.1997) by S.I. 1996/3259, **reg. 11**

#### Commencement Information

- I8** S. 38 wholly in force at 1.4.1997; s. 38 not in force at Royal Assent see s. 105(1); s. 38 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by



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S.I. 1997/744, art. 3); s. 38 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

#### Marginal Citations

**M29** 1968 c.49.

**M30** 1969 c.54.

**M31** 1984 c.56.

## CHAPTER 2

### CHILDREN’S HEARINGS

#### *Constitution of children’s hearings*

#### **39 Formation of children’s panel and children’s hearings.**

- (1) For every local government area there shall be a children’s panel for the purposes of this Act, and any other enactment conferring powers on a children’s hearing (or on such a panel).
- (2) Schedule 1 to this Act shall have effect with respect to the recruitment, appointment, training and expenses of members of a children’s panel and the establishment of Children’s Panel Advisory Committees and joint advisory committees.
- (3) Sittings of members of the children’s panel (to be known as “children’s hearings”) shall be constituted from the panel in accordance with subsection (5) below.
- (4) A children’s hearing shall be constituted for the performance of the functions given to such a hearing by or by virtue of—
  - (a) this Act; or
  - (b) any other enactment conferring powers on a children’s hearing.
- (5) A children’s hearing shall consist of three members, one of whom shall act as chairman; and shall not consist solely of male, or solely of female, members.

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

**C13** S. 39(5) extended (1.4.1997) by S.I. 1996/3261, Rule 4(1)

#### *Qualifications, employment and duties of reporters*

#### **40 Qualification and employment of reporters.**

- (1) The qualifications of a reporter shall be such as the Secretary of State may prescribe.
- (2) A reporter shall not, without the consent of the Scottish Children’s Reporter Administration, be employed by a local authority.
- (3) The Secretary of State may make regulations in relation to the functions of any reporter under this Act and the <sup>M32</sup>Criminal Procedure (Scotland) Act 1975.

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- (4) The Secretary of State <sup>F23</sup> . . . may—
- (a) by regulations empower a reporter, whether or not he is an advocate or solicitor, to conduct before a sheriff any proceedings which under this Chapter or Chapter 3 of this Part of this Act are heard by the sheriff;
  - (b) prescribe such requirements as they think fit as to qualifications, training or experience necessary for a reporter to be so empowered.
- (5) In this section, “reporter” means—
- (a) the Principal Reporter; or
  - (b) any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of the <sup>M33</sup>Local Government etc. (Scotland) Act 1994, any of the functions which the Principal Reporter has under this or any other enactment.

#### Textual Amendments

**F23** Words in s. 40(4) repealed (20.5.1999 by virtue of 1998 c. 46, art. 2(2), 44(1)(c), **Sch. 4**; S.I. 1998/3178, art. 2, **Sch. 4**) by S.I. 1999/1042, arts. 1(2)(b), 4, **Sch. 2 Pt. I para. 10**, Pt. III

#### Commencement Information

**I9** S. 40 wholly in force at 1.4.1997; s. 40 not in force at Royal Assent see s. 105(1); s. 40 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with **arts. 4-6** (as inserted (7.3.1997) by S.I. 1997/744, **art. 3**)); s. 40 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, **art. 3(7)** (with **arts. 4-6**) (as amended (7.3.1997) by S.I. 1997/744, **arts. 2, 3**)

#### Marginal Citations

**M32** 1975 c.21.

**M33** 1994 c.39.

### *Safeguards for children*

#### **41 Safeguarding child’s interests in proceedings.**

- (1) Subject to subsection (2) below, in any proceedings under this Chapter or Chapter 3 of this Part of this Act either at a children’s hearing or before the sheriff, the hearing or, as the case may be, the sheriff—
  - (a) shall consider if it is necessary to appoint a person to safeguard the interests of the child in the proceedings; and
  - (b) if they, or he, so consider, shall make such an appointment, on such terms and conditions as appear appropriate.
- (2) Subsection (1) above shall not apply in relation to proceedings under section 57 of this Act.
- (3) Where a children’s hearing make an appointment under subsection (1)(b) above, they shall state the reasons for their decision to make that appointment.
- (4) The expenses of a person appointed under subsection (1) above shall—
  - (a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and

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- (b) except in so far as otherwise defrayed in terms of regulations made under section 101 of this Act,  
be borne by the local authority—
    - (i) for whose area the children’s panel from which the relevant children’s hearing has been constituted is formed;
    - (ii) where there is no relevant children’s hearing, within whose area the child resides.
- (5) For the purposes of subsection (4) above, “relevant children’s hearing” means, in the case of proceedings—
- (a) at before a children’s hearing, that hearing;
  - (b) under section 68 of this Act, the children’s hearing who have directed the application;
  - (c) on an appeal under section 51 of this Act, the children’s hearing whose decision is being appealed against.

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

**C14** S. 41(1) restricted (23.2.2002) by [S.S.I. 2001/478, rule 3\(1\)](#)

*Conduct of proceedings at and in connection with children’s hearing*

**42 Power of Secretary of State to make rules governing procedure at children’s hearing etc.**

- (1) Subject to the following provisions of this Act, the Secretary of State may make rules for constituting and arranging children’s hearings and other meetings of members of the children’s panel and for regulating their procedure.
- (2) Without prejudice to the generality of subsection (1) above, rules under that subsection may make provision with respect to—
  - (a) the conduct of, and matters which shall or may be determined by, a business meeting arranged under section 64 of this Act;
  - (b) notification of the time and place of a children’s hearing to the child and any relevant person in relation to the child and to such other persons as may be prescribed;
  - (c) how the grounds for referring the case to a children’s hearing under section 65(1) of this Act are to be stated, and the right of the child and any such relevant person to dispute those grounds;
  - (d) the making available by the Principal Reporter, subject to such conditions as may be specified in the rules, of reports or information received by him to—
    - (i) members of the children’s hearing;
    - (ii) the child concerned;
    - (iii) any relevant person; and
    - (iv) any other person or class of persons so specified;
  - (e) the procedure in relation to the disposal of matters arising under section 41(1) of this Act;

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- (f) the functions of any person appointed by a children’s hearing under section 41(1) of this Act and any right of that person to information relating to the proceedings in question;
- (g) the recording in writing of any statement given under section 41(3) of this Act;
- (h) the right to appeal to the sheriff under section 51(1)(a) of this Act against a decision of the children’s hearing and notification to such persons as may be prescribed of the proceedings before him;
- (i) the right of the child and of any such relevant person to be represented at a children’s hearing;
- (j) the entitlement of the child, of any such relevant person and of any person who acts as the representative of the child or of any such relevant person to the refund of such expenses, incurred by the child or as the case may be the person or representative, as may be prescribed in connection with a children’s hearing and with any proceedings arising from the hearing;
- (k) persons whose presence shall be permitted at a children’s hearing.

#### Commencement Information

**I10** S. 42 wholly in force at 1.4.1997; s. 42 not in force at Royal Assent see s. 105(10); s. 42 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with **arts. 4-6** (as inserted (7.3.1997) by S.I. 1997/744, **art. 3**)); s. 42 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, **art. 3(7)** (with **arts. 4-6**) (as amended (7.3.1997) by S.I. 1997/744, **arts. 2, 3**)

#### 43 Privacy of proceedings at and right to attend children’s hearing.

- (1) Subject to subsection (3) below, a children’s hearing shall be conducted in private, and, subject to any rules made under section 42 of this Act, no person other than a person whose presence is necessary for the proper consideration of the case which is being heard, or whose presence is permitted by the chairman, shall be present.
- (2) The chairman shall take all reasonable steps to ensure that the number of persons present at a children’s hearing at any one time is kept to a minimum.
- (3) The following persons have the right to attend a children’s hearing—
  - (a) a member of the Council on Tribunals, or of the Scottish Committee of that Council, in his capacity as such; and
  - (b) subject to subsection (4) below, *abona fide* representative of a newspaper or news agency.
- (4) A children’s hearing may exclude a person described in subsection (3)(b) above from any part or parts of the hearing where, and for so long as, they are satisfied that—
  - (a) it is necessary to do so, in the interests of the child, in order to obtain the child’s views in relation to the case before the hearing; or
  - (b) the presence of that person is causing, or is likely to cause, significant distress to the child.
- (5) Where a children’s hearing have exercised the power conferred by subsection (4) above to exclude a person, the chairman may, after that exclusion has ended, explain to the person the substance of what has taken place in his absence.

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#### 44 Prohibition of publication of proceedings at children’s hearing.

- (1) No person shall publish [<sup>F24</sup>any matter in respect of a case about which the Principal Reporter has from any source received information or] any matter in respect of proceedings at a children’s hearing, or before a sheriff on an application under section 57, section 60(7), section 65(7) or (9), section 76(1) or section 85(1) of this Act, or on any appeal under this Part of this Act, which is intended to, or is likely to, identify—
  - (a) [<sup>F25</sup>the child concerned in, or any other child connected (in any way) with, the case,] proceedings or appeal; or
  - (b) an address or school as being that of any such child.
- (2) Any person who contravenes subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale in respect of each such contravention.
- (3) It shall be a defence in proceedings for an offence under this section for the accused to prove that he did not know, and had no reason to suspect, that the published matter was intended, or was likely, to identify the child or, as the case may be, the address or school.
- (4) In this section “to publish” includes, without prejudice to the generality of that expression,—
  - (a) to publish matter in a programme service, as defined by section 201 of the <sup>M34</sup>Broadcasting Act 1990 (definition of programme service); and
  - (b) to cause matter to be published.
- (5) The requirements of subsection (1) above may, in the interests of justice, be dispensed with by—
  - (a) the sheriff in any proceedings before him;
  - (b) the Court of Session in any appeal under section 51(11) of this Act; or
  - (c) the Secretary of State in relation to any proceedings at a children’s hearing, to such extent as the sheriff, the Court or the Secretary of State as the case may be considers appropriate.

##### Textual Amendments

**F24** Words in s. 44(1) inserted (S.) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 52(a)(i)**, 89; [S.S.I. 2003/288](#), **art. 2**, Sch.

**F25** Words in s. 44(1)(a) substituted (S.) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 52(a)(ii)**, 89; [S.S.I. 2003/288](#), **art. 2**, Sch.

##### Marginal Citations

**M34** 1990 c.42.

#### 45 Attendance of child and relevant person at children’s hearing.

- (1) Where a child has been notified in accordance with rules made under subsection (1) of section 42 of this Act by virtue of subsection (2)(b) of that section that his case has been referred to a children’s hearing, he shall—
  - (a) have the right to attend at all stages of the hearing; and

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- (b) subject to subsection (2) below, be under an obligation to attend those stages in accordance with the notice.
- (2) Without prejudice to subsection (1)(a) above and section 65(4) of this Act, where a children’s hearing are satisfied—
- (a) in a case concerned with an offence mentioned in [F26Schedule 1 of the Criminal Procedure (Scotland) Act 1995], that the attendance of the child is not necessary for the just hearing of that case; or
- (b) in any case, that it would be detrimental to the interests of the child for him to be present at the hearing of his case,
- they may release the child from the obligation imposed by subsection (1)(b) above.
- (3) Subject to subsection (2) above, the Principal Reporter shall be responsible for securing the attendance of the child at the hearing of his case by a children’s hearing (and at any subsequent hearing to which the case is continued under section 69(1)(a) of this Act).
- (4) On the application of the Principal Reporter, a children’s hearing, if satisfied on cause shown that it is necessary for them to do so, may issue, for the purposes of subsection (3) above, a warrant under this subsection to find the child, to keep him in a place of safety and to bring him before a children’s hearing.
- (5) Where a child has failed to attend a children’s hearing in accordance with such notice as is mentioned in subsection (1) above, they may, either on the application of the Principal Reporter or of their own motion, issue a warrant under this subsection, which shall have the same effect as a warrant under subsection (4) above.
- (6) A child who has been taken to a place of safety under a warrant granted under this section shall not be kept there after whichever is the earlier of—
- (a) the expiry of seven days beginning on the day he was first so taken there; or
- (b) the day on which a children’s hearing first sit to consider his case in accordance with subsection (7) below.
- (7) Where a child has been found in pursuance of a warrant under this section and he cannot immediately be brought before a children’s hearing, the Principal Reporter shall, wherever practicable, arrange a children’s hearing to sit on the first working day after the child was so found.
- (8) Subject to section 46 of this Act, a person who is a relevant person as respects a child shall, where a children’s hearing are considering the case of the child—
- (a) have the right to attend at all stages of the hearing; and
- (b) be obliged to attend at all stages of the hearing unless the hearing are satisfied that it would be unreasonable to require his attendance or that his attendance is unnecessary for the proper consideration of the case.
- (9) Any person who fails to attend a hearing which, under subsection (8)(b) above, he is obliged to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Textual Amendments

**F26** Words in s. 45(2)(a) substituted (1.4.1996) by 1996 c. 40, ss. 5, 7(2), Sch. 4 para. 97(2)

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

C15 S. 45(4)(5) amended (form prescribed) (1.4.1997) by S.I. 1996/3261, Rule 27, Sch.

**46 Power to exclude relevant person from children’s hearing.**

- (1) Where a children’s hearing are considering the case of a child in respect of whom a person is a relevant person, they may exclude that person, or that person and any representative of his, or any such representative, from any part or parts of the hearing for so long as is necessary in the interests of the child, where they are satisfied that—
  - (a) they must do so in order to obtain the views of the child in relation to the case before the hearing; or
  - (b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child.
- (2) Where a children’s hearing exercise the power conferred by subsection (1) above, the chairman of the hearing shall, after that exclusion has ended, explain to any person who was so excluded the substance of what has taken place in his absence.

**47 Presumption and determination of age.**

- (1) Where a children’s hearing has been arranged in respect of any person, the hearing—
  - (a) shall, at the commencement of the proceedings, make inquiry as to his age and shall proceed with the hearing only if he declares that he is a child or they so determine; and
  - (b) may, at any time before the conclusion of the proceedings, accept a declaration by the child, or make a fresh determination, as to his age.
- (2) The age declared to, or determined by, a children’s hearing to be the age of a person brought before them shall, for the purposes of this Part of this Act, be deemed to be the true age of that person.
- (3) No decision reached, order continued, warrant granted or requirement imposed by a children’s hearing shall be invalidated by any subsequent proof that the age of a person brought before them had not been correctly declared to the hearing or determined by them.

*Transfer etc. of cases*

**48 Transfer of case to another children’s hearing.**

- (1) Where a children’s hearing are satisfied, in relation to a case which they are hearing, that it could be better considered by a children’s hearing constituted from a children’s panel for a different local government area, they may at any time during the course of the hearing request the Principal Reporter to arrange for such other children’s hearing to dispose of the case.
- (2) Where a case has been transferred in pursuance of subsection (1) above, the grounds of referral accepted or established for the case shall not require to be further accepted or established for the purposes of the children’s hearing to which the case has been transferred.

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**F27 49** .....

**Textual Amendments**

**F27** S. 49 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with **Sch. 3** paras. 1, 3, 16, 17)

**50 Treatment of child’s case on remission by court.**

- (1) Where a court has, under [<sup>F28</sup>section 49 of the Criminal Procedure (Scotland) Act 1995], remitted a case to a children’s hearing for disposal, a certificate signed by the clerk of the court stating that the child or person concerned has pled guilty to, or has been found guilty of, the offence to which the remit relates shall be conclusive evidence for the purposes of the remit that the offence has been committed by the child or person.
- (2) Where a court has under [<sup>F29</sup>subsection (7) of the said section 49] remitted a case to a children’s hearing for disposal, the provisions of this Act shall apply to the person concerned as if he were a child.

**Textual Amendments**

**F28** Words in s. 50(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(3)(a)**

**F29** Words in s. 50(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(3)(b)**

*Appeals*

**51 Appeal against decision of children’s hearing or sheriff.**

- (1) Subject to subsection (15) below, a child or a relevant person (or relevant persons) or both (or all)—
  - (a) may, within a period of three weeks beginning with the date of any decision of a children’s hearing, appeal to the sheriff against that decision; and
  - (b) where such an appeal is made, shall be heard by the sheriff.
- (2) The Principal Reporter shall, in respect of any appeal under subsection (1) above, ensure that all reports and statements available to the hearing, along with the reports of their proceedings and the reasons for the decision, are lodged with the sheriff clerk.
- (3) The sheriff may, on appeal under subsection (1) above, hear evidence from, or on behalf of, the parties in relation to the decision; and, without prejudice to that generality the sheriff may—
  - (a) examine the Principal Reporter;
  - (b) examine the authors or compilers of any reports or statements; and
  - (c) call for any further report which he considers may assist him in deciding the appeal.
- (4) Where the sheriff decides that an appeal under this section has failed, he shall confirm the decision of the children’s hearing.



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- (5) Where the sheriff is satisfied that the decision of the children’s hearing is not justified in all the circumstances of the case he shall allow the appeal, and—
- (a) where the appeal is against a warrant to find and keep or, as the case may be, to keep a child in a place of safety, he shall recall the warrant;
  - (b) where the child is subject to a supervision requirement containing a [F30 movement restriction condition imposed under subsection (3)(b) of section 70 of this Act or a condition imposed under subsection (9) of that section] of this Act, he shall direct that the condition shall cease to have effect; and
  - (c) in any case, he may, as he thinks fit—
    - (i) remit the case with reasons for his decision to the children’s hearing for reconsideration of their decision; or
    - (ii) discharge the child from any further hearing or other proceedings in relation to the grounds for the referral of the case; or
    - (iii) substitute for the disposal by the children’s hearing any requirement which could be imposed by them under section 70 of this Act.
- (6) Where a sheriff imposes a requirement under subsection (5)(c)(iii) above, that requirement shall for the purposes of this Act, except of this section, be treated as a disposal by the children’s hearing.
- (7) Where the sheriff is satisfied that an appeal under subsection (1) above against the decision of a children’s hearing arranged under section 73(8) of this Act is frivolous, he may order that no subsequent appeal against a decision to continue (whether with or without any variation) the supervision requirement in question shall lie until the expiration of twelve months beginning with the date of the order.
- (8) An appeal under subsection (1) above in respect of the issue of a warrant by a children’s hearing shall be disposed of within three days of the lodging of the appeal; and failing such disposal the warrant shall cease to have effect at the end of that period.
- (9) Where a child or a relevant person appeals under subsection (1) above against a decision of a children’s hearing in relation to a supervision requirement, the child or the relevant person may make application to a children’s hearing for the suspension of the requirement appealed against.
- (10) It shall be the duty of the Principal Reporter forthwith to arrange a children’s hearing to consider the application under subsection (9) above, and that hearing may grant or refuse the application.
- (11) Subject to subsections (13) and (15) below, an appeal shall lie by way of stated case either on a point of law or in respect of any irregularity in the conduct of the case—
- (a) to the sheriff principal from any decision of the sheriff—
    - (i) on an appeal under subsection (1) of this section;
    - (ii) on an application made under section 65(7) or (9) of this Act; or
    - (iii) on an application made under section 85(1) of this Act; and
  - (b) to the Court of Session from any decision of the sheriff such as is mentioned in sub-paragraphs (i) to (iii) of paragraph (a) above and, with leave of the sheriff principal, from any decision of the sheriff principal on an appeal under that paragraph; and the decision of the Court of Session in the matter shall be final.
- (12) An appeal under subsection (11) above may be made at the instance of—

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- (a) the child or any relevant person, either alone or together; or
  - (b) the Principal Reporter on behalf of the children’s hearing.
- (13) An application to the sheriff, or as the case may be the sheriff principal, to state a case for the purposes of an appeal under subsection (11)(a) or (b) above shall be made within a period of twenty-eight days beginning with the date of the decision appealed against.
- (14) On deciding an appeal under subsection (11) above the sheriff principal or as the case may be the Court of Session shall remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (15) No appeal shall lie under this section in respect of—
- (a) a decision of the sheriff on an application under section 57 of this Act; or
  - (b) a decision of a children’s hearing continuing a child protection order under section 59(4) of this Act.

#### Textual Amendments

**F30** Words in s. 51(5)(b) substituted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 144(1), 145(2), [Sch. 4 para. 4\(2\)](#); S.S.I. 2004/420, [art. 3](#), [Sch. 4](#)

## CHAPTER 3

### PROTECTION AND SUPERVISION OF CHILDREN

#### *Children requiring compulsory measures of supervision*

#### **52 Children requiring compulsory measures of supervision.**

- (1) The question of whether compulsory measures of supervision are necessary in respect of a child arises if at least one of the conditions mentioned in subsection (2) below is satisfied with respect to him.
- (2) The conditions referred to in subsection (1) above are that the child—
- (a) is beyond the control of any relevant person;
  - (b) is falling into bad associations or is exposed to moral danger;
  - (c) is likely—
    - (i) to suffer unnecessarily; or
    - (ii) be impaired seriously in his health or development, due to a lack of parental care;
  - (d) is a child in respect of whom any of the offences mentioned in [<sup>F31</sup>Schedule 1 of the Criminal Procedure (Scotland) Act 1995] (offences against children to which special provisions apply) has been committed;
  - (e) is, or is likely to become, a member of the same household as a child in respect of whom any of the offences referred to in paragraph (d) above has been committed;
  - (f) is, or is likely to become, a member of the same household as a person who has committed any of the offences referred in paragraph (d) above;

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- (g) is, or is likely to become, a member of the same household as a person in respect of whom an offence under [F32sections 1 to 3 of the Criminal Law (Consolidation)(Scotland) Act 1995] (incest and intercourse with a child by step-parent or person in position of trust) has been committed by a member of that household;
  - (h) has failed to attend school regularly without reasonable excuse;
  - (i) has committed an offence;
  - (j) has misused alcohol or any drug, whether or not a controlled drug within the meaning of the M35Misuse of Drugs Act 1971;
  - (k) has misused a volatile substance by deliberately inhaling its vapour, other than for medicinal purposes;
  - (l) is being provided with accommodation by a local authority under section 25, or is the subject of a parental responsibilities order obtained under section 86, of this Act and, in either case, his behaviour is such that special measures are necessary for his adequate supervision in his interest or the interest of others.
- [F33(m) is a child to whom subsection (2A) below applies.
- (2A) This subsection applies to a child where—
- (a) a requirement is made of the Principal Reporter under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (power of sheriff to require Principal Reporter to refer case to children’s hearing) in respect of the child’s case; and
  - (b) the child is not subject to a supervision requirement.]
- (3) In this Part of this Act, “supervision” in relation to compulsory measures of supervision may include measures taken for the protection, guidance, treatment or control of the child.

#### Textual Amendments

**F31** Words in s. 52(2)(d) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(4)(a)**

**F32** Words in s. 52(2)(g) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(4)(b)**

**F33** S. 52(2)(m)(2A) inserted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. **12(3), 145(2); S.S.I. 2004/420, art. 3, Sch. 1**

#### Marginal Citations

**M35** 1971 c.38.

### *Preliminary and investigatory measures*

#### **53 Provision of information to the Principal Reporter.**

- (1) Where information is received by a local authority which suggests that compulsory measures of supervision may be necessary in respect of a child, they shall—
- (a) cause inquiries to be made into the case unless they are satisfied that such inquiries are unnecessary; and
  - (b) if it appears to them after such inquiries, or after being satisfied that such inquiries are unnecessary, that such measures may be required in respect of the child, give to the Principal Reporter such information about the child as they have been able to discover.

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- (2) A person, other than a local authority, who has reasonable cause to believe that compulsory measures of supervision may be necessary in respect of a child—
  - (a) shall, if he is a constable, give to the Principal Reporter such information about the child as he has been able to discover;
  - (b) in any other case, may give the Principal Reporter that information.
- (3) A constable shall make any report required to be made under paragraph (b) of section 17(1) of the <sup>M36</sup>Police (Scotland) Act 1967 (duty to make reports in relation to commission of offences) in relation to a child to the Principal Reporter as well as to the appropriate prosecutor.
- (4) Where an application has been made to the sheriff—
  - (a) by the Principal Reporter in accordance with a direction given by a children’s hearing under section 65(7) or (9) of this Act; or
  - (b) by any person entitled to make an application under section 85 of this Act, the Principal Reporter may request any prosecutor to supply him with any evidence lawfully obtained in the course of, and held by the prosecutor in connection with, the investigation of a crime or suspected crime, being evidence which may assist the sheriff in determining the application; and, subject to subsection (5) below, it shall be the duty of the prosecutor to comply with such a request.
- (5) A prosecutor may refuse to comply with a request issued under subsection (4) above where he reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime, whether the proceedings have been commenced or are to be commenced by him.
- (6) The Lord Advocate may direct that in any specified case or class of cases any evidence lawfully obtained in the course of an investigation of a crime or suspected crime shall be supplied, without the need for a request under subsection (4) above, to the Principal Reporter.
- (7) In subsections (3), (4) and (5) above “crime” and “prosecutor” have the same meanings respectively given by [<sup>F34</sup>section 307 of the Criminal Procedure (Scotland) Act 1995].

#### Textual Amendments

**F34** Words in s. 53(7) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 97(5)

#### Marginal Citations

**M36** 1967 c.77.

## 54 Reference to the Principal Reporter by court.

- (1) Where in any relevant proceedings it appears to the court that any of the conditions in section 52(2)(a) to (h), (j), (k) or (l) of this Act is satisfied with respect to a child, it may refer the matter to the Principal Reporter, specifying the condition.
- (2) In this section “relevant proceedings” means—
  - (a) an action for divorce or judicial separation or for declarator of marriage, nullity of marriage, parentage or non-parentage;
  - (b) proceedings relating to parental responsibilities or parental rights within the meaning of Part I of this Act;

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- (c) proceedings for an adoption order under the <sup>M37</sup>Adoption (Scotland) Act 1978 or for an order under section 18 of that Act declaring a child free for adoption; and
  - (d) proceedings for an offence against section 35 (failure by parent to secure regular attendance by his child at a public school), 41 (failure to comply with attendance order) or 42(3) (failure to permit examination of child) of the <sup>M38</sup>Education (Scotland) Act 1980.
- (3) Where the court has referred a matter to the Principal Reporter under subsection (1) above, he shall—
- (a) make such investigation as he thinks appropriate; and
  - (b) if he considers that compulsory measures of supervision are necessary, arrange a children’s hearing to consider the case of the child under section 69 of this Act; and subsection (1) of that section shall apply as if the condition specified by the court under subsection (1) above were a ground of referral established in accordance with section 68 of this Act.

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

**C16** S. 54(1) extended (*temp.* from 22.8.1996 to 1.4.1997) by S.I. 1996/2203, art. 6(a)

**C17** S. 54(3) extended (*temp.* from 22.8.1996 to 1.4.1997) by S.I. 1996/2203, art. 6(b)

#### Marginal Citations

**M37** 1978 c. 28.

**M38** 1980 c. 44.

## 55 Child assessment orders.

- (1) A sheriff may grant an order under this section for an assessment of the state of a child’s health or development, or of the way in which he has been treated (to be known as a “child assessment order”), on the application of a local authority if he is satisfied that—
- (a) the local authority have reasonable cause to suspect that the child in respect of whom the order is sought is being so treated (or neglected) that he is suffering, or is likely to suffer, significant harm;
  - (b) such assessment of the child is required in order to establish whether or not there is reasonable cause to believe that the child is so treated (or neglected); and
  - (c) such assessment is unlikely to be carried out, or be carried out satisfactorily, unless the order is granted.
- (2) Where—
- (a) an application has been made under subsection (1) above; and
  - (b) the sheriff considers that the conditions for making a child protection order under section 57 of this Act are satisfied,
- he shall make such an order under that section as if the application had been duly made by the local authority under that section rather than this section.
- (3) A child assessment order shall—
- (a) specify the date on which the assessment is to begin;

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- (b) have effect for such period as is specified in the order, not exceeding seven days beginning with the date specified by virtue of paragraph (a) above;
  - (c) require any person in a position to produce the child to—
    - (i) produce him to any authorised person;
    - (ii) permit that person or any other authorised person to carry out an assessment in accordance with the order; and
    - (iii) comply with any other conditions of the order; and
  - (d) be carried out by an authorised person in accordance with the terms of the order.
- (4) A child assessment order may—
- (a) where necessary, permit the taking of the child concerned to any place for the purposes of the assessment; and
  - (b) authorise the child to be kept at that place, or any other place, for such period of time as may be specified in the order.
- (5) Where a child assessment order makes provision under subsection (4) above, it shall contain such directions as the sheriff considers appropriate as to the contact which the child shall be allowed to have with any other person while the child is in any place to which he has been taken or in which he is being kept under a child assessment order.
- (6) In this section “authorised person” means any officer of the local authority, and any person authorised by the local authority to perform the assessment, or perform any part of it.

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

**C18** S. 55 restricted (30.12.2005) by 1978 c. 28, s. 53C(4)(b) (as inserted by 2002 c. 38, ss. 139(1), 148(5) (c), Sch. 3 para. 30) (with Sch. 4 paras. 6-8); S.S.I. 2005/643, art. 2(c)

**C19** S. 55 restricted (28.9.2009) Adoption and Children (Scotland) Act 2007 (asp 4), ss. 79(4), 121(2); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)

**56 Initial investigation by the Principal Reporter.**

- (1) Where the Principal Reporter receives information from any source about a case which may require a children’s hearing to be arranged he shall, after making such initial investigation as he thinks necessary, proceed with the case in accordance with subsection (4) or (6) below.
- (2) For the purposes of making any initial investigation under subsection (1) above, the Principal Reporter may request from the local authority a report on the child and on such circumstances concerning the child as appear to him to be relevant; and the local authority shall supply the report which may contain such information, from any person whomsoever, as the Principal Reporter thinks, or the local authority think, fit.
- (3) A report requested under subsection (2) above may contain information additional to that given by the local authority under section 53 of this Act.
- (4) The Principal Reporter may decide, after an initial investigation under subsection (1) above, that a children’s hearing does not require to be arranged; and where he so decides—

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- (a) he shall inform the child, any relevant person and the person who brought the case to his notice, or any of those persons, that he has so decided; <sup>F35</sup> . . .
  - (b) he may, if he considers it appropriate, refer the case to a local authority with a view to their making arrangements for the advice, guidance and assistance of the child and his family in accordance with Chapter 1 of this Part of this Act<sup>F36</sup>; and
  - (c) he may, where it appears to him that—
    - (i) an education authority have a duty under section 14(3) of the Education (Scotland) Act 1980 (c. 44) in relation to the child; and
    - (ii) the authority are not complying with that duty,
 refer the matter to the Scottish Ministers.
- (4A) A reference made under subsection (4)(c) above shall be in writing.
- (4B) A copy of a reference made under subsection (4)(c) above shall be sent by the Principal Reporter to the education authority in respect of which the reference is made.]
- (5) Where the Principal Reporter has decided under subsection (4) above that a children’s hearing does not require to be arranged, he shall not at any other time, on the basis solely of the information obtained during the initial investigation referred to in that subsection, arrange a children’s hearing under subsection (6) below.
- (6) Where it appears to the Principal Reporter that compulsory measures of supervision are necessary in respect of the child, he shall arrange a children’s hearing to which he shall refer the case for consideration and determination.
- (7) Where the Principal Reporter has arranged a children’s hearing in accordance with subsection (6) above, he—
- (a) shall, where he has not previously done so, request a report under subsection (2) above;
  - (b) may request from the local authority such information, supplementary or additional to a report requested under subsection (2) above, as he thinks fit;
- and the local authority shall supply that report, or as the case may be information, and any other information which they consider to be relevant.

#### Textual Amendments

**F35** Word in s. 56(4) repealed (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. [137\(2\)\(a\)](#), 145(2); S.S.I. 2004/420, art. 3, Sch. 4

**F36** S. 56(4)(c)(4A)(4B) and word inserted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. [137\(2\)\(b\)](#), 145(2); S.S.I. 2004/420, art. 3, Sch. 4

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

**C20** S. 56(6)(7) modified (1.4.1997) by [S.I. 1996/3255](#), reg. [8\(3\)](#)

### *Measures for the emergency protection of children*

#### 57 Child protection orders.

- (1) Where the sheriff, on an application by any person, is satisfied that—
  - (a) there are reasonable grounds to believe that a child—

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- (i) is being so treated (or neglected) that he is suffering significant harm;  
or
  - (ii) will suffer such harm if he is not removed to and kept in a place of safety, or if he does not remain in the place where he is then being accommodated (whether or not he is resident there); and
  - (b) an order under this section is necessary to protect that child from such harm (or such further harm),
- he may make an order under this section (to be known as a “child protection order”).
- (2) Without prejudice to subsection (1) above, where the sheriff on an application by a local authority is satisfied—
- (a) that they have reasonable grounds to suspect that a child is being or will be so treated (or neglected) that he is suffering or will suffer significant harm;
  - (b) that they are making or causing to be made enquiries to allow them to decide whether they should take any action to safeguard the welfare of the child; and
  - (c) that those enquiries are being frustrated by access to the child being unreasonably denied, the authority having reasonable cause to believe that such access is required as a matter of urgency,
- he may make a child protection order.
- (3) Without prejudice to any additional requirement imposed by rules made by virtue of section 91 of this Act, an application for a child protection order shall—
- (a) identify—
    - (i) the applicant; and
    - (ii) in so far as practicable, the child in respect of whom the order is sought;
  - (b) state the grounds on which the application is made; and
  - (c) be accompanied by such supporting evidence, whether in documentary form or otherwise, as will enable the sheriff to determine the application.
- (4) A child protection order may, subject to such terms and conditions as the sheriff considers appropriate, do any one or more of the following—
- (a) require any person in a position to do so to produce the child to the applicant;
  - (b) authorise the removal of the child by the applicant to a place of safety, and the keeping of the child at that place;
  - (c) authorise the prevention of the removal of the child from any place where he is being accommodated;
  - (d) provide that the location of any place of safety in which the child is being kept should not be disclosed to any person or class of person specified in the order.
- (5) Notice of the making of a child protection order shall be given forthwith by the applicant to the local authority in whose area the child resides (where that authority is not the applicant) and to the Principal Reporter.
- (6) In taking any action required or permitted by a child protection order or by a direction under section 58 of this Act the applicant shall only act where he reasonably believes that to do so is necessary to safeguard or promote the welfare of the child.
- (7) Where by virtue of a child protection order a child is removed to a place of safety provided by a local authority, they shall, subject to the terms and conditions of that order and of any direction given under section 58 of this Act, have the like duties in



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respect of the child as they have under section 17 of this Act in respect of a child looked after by them.

## **58 Directions in relation to contact and exercise of parental responsibilities and parental rights.**

- (1) When the sheriff makes a child protection order, he shall at that time consider whether it is necessary to give a direction to the applicant for the order as to contact with the child for—
  - (a) any parent of the child;
  - (b) any person with parental responsibilities in relation to the child; and
  - (c) any other specified person or class of persons;
 and if he determines that there is such a necessity he may give such a direction.
- (2) Without prejudice to the generality of subsection (1) above, a direction under that subsection may—
  - (a) prohibit contact with the child for any person mentioned in paragraphs (a) to (c) of that subsection;
  - (b) make contact with the child for any person subject to such conditions as the sheriff considers appropriate to safeguard and promote the welfare of the child.
- (3) A direction under subsection (1) above may make different provision in relation to different persons or classes of person.
- (4) A person applying for a child protection order under section 57(1) or (2) of this Act may at the same time apply to the sheriff for a direction in relation to the exercise or fulfilment of any parental responsibilities or parental rights in respect of the child concerned, if the person considers such a direction necessary to safeguard or promote the welfare of the child.
- (5) Without prejudice to the generality of subsection (4) above, a direction under that subsection may be sought in relation to—
  - (a) any examination as to the physical or mental state of the child;
  - (b) any other assessment or interview of the child; or
  - (c) any treatment of the child arising out of such an examination or assessment, which is to be carried out by any person.
- (6) The sheriff may give a direction sought under subsection (4) above where he considers there is a necessity such as is mentioned in that subsection; and such a direction may be granted subject to such conditions, if any, as the sheriff (having regard in particular to the duration of the child protection order to which it relates) considers appropriate.
- (7) A direction under this section shall cease to have effect when—
  - (a) the sheriff, on an application under section 60(7) of this Act, directs that it is cancelled; or
  - (b) the child protection order to which it is related ceases to have effect.

## **59 Initial hearing of case of child subject to child protection order.**

- (1) This section applies where—
  - (a) a child in respect of whom a child protection order has been made—

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- (i) has been taken to a place of safety by virtue of section 57(4)(b) of this Act; or
  - (ii) is prevented from being removed from any place by virtue of section 57(4)(c) of this Act;
  - (b) the Principal Reporter has not exercised his powers under section 60(3) of this Act to discharge the child from the place of safety; and
  - (c) the Principal Reporter has not received notice, in accordance with section 60(9) of this Act, of an application under subsection (7) of that section.
- (2) Where this section applies, the Principal Reporter shall arrange a children’s hearing to conduct an initial hearing of the child’s case in order to determine whether they should, in the interests of the child, continue the child protection order under subsection (4) below.
- (3) A children’s hearing arranged under subsection (2) above shall take place on the second working day after that order is implemented.
- (4) Where a children’s hearing arranged under subsection (2) above are satisfied that the conditions for the making of a child protection order under section 57 of this Act are established, they may continue the child protection order and any direction given under section 58 of this Act (whether with or without variation of the order or, as the case may be, the direction) until the commencement of a children’s hearing in relation to the child arranged in accordance with section 65(2) of this Act.
- (5) In subsection (3) above, section 60 and section 65(2) of this Act any reference, in relation to the calculation of any period, to the time at which a child protection order is implemented shall be construed as a reference—
- (a) in relation to such an order made under paragraph (b) of subsection (4) of section 57 of this Act, to the day on which the child was removed to a place of safety in accordance with the order; and
  - (b) in relation to such an order made under paragraph (c) of that subsection, to the day on which the order was made,
- and “implement” shall be construed accordingly.

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

**C21** S. 59(4) amended (forms prescribed) (1.4.1997) by [S.I. 1996/3261, Rule 27, Sch.](#)

**60 Duration, recall or variation of child protection order.**

- (1) Where, by the end of twenty-four hours of a child protection order being made (other than by virtue of section 57(4)(c) of this Act), the applicant has made no attempt to implement the order it shall cease to have effect.
- (2) Where an application made under subsection (7) below has not been determined timeously in accordance with subsection (8) below, the order to which the application relates shall cease to have effect.
- (3) A child shall not be—
  - (a) kept in a place of safety under a child protection order;
  - (b) prevented from being removed from any place by such an order; or

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- (c) subject to any term or condition contained in such an order or a direction given under section 58 of this Act,
- where the Principal Reporter, having regard to the welfare of the child, considers that, whether as a result of a change in the circumstances of the case or of further information relating to the case having been received by the Principal Reporter, the conditions for the making of a child protection order in respect of the child are no longer satisfied or that the term, condition or direction is no longer appropriate and notifies the person who implemented the order that he so considers.
- (4) The Principal Reporter shall not give notice under subsection (3) above where—
- (a) proceedings before a children’s hearing arranged under section 59(2) of this Act in relation to the child who is subject to the child protection order have commenced; or
  - (b) the hearing of an application made under subsection (7) of this section has begun.
- (5) Where the Principal Reporter has given notice under subsection (3) above, he shall also, in such manner as may be prescribed, notify the sheriff who made the order.
- (6) A child protection order shall cease to have effect—
- (a) where an initial hearing arranged under section 59(2) of this Act does not continue the order under subsection (4) of that section;
  - (b) where an application is made to the sheriff under subsection (7) below, on the sheriff recalling such order under subsection (13) below;
  - (c) on the person who implemented the order receiving notice from the Principal Reporter that he has decided not to refer the case of a child who is subject to the order to a children’s hearing arranged in accordance with section 65(2) of this Act;
  - (d) on the Principal Reporter giving notice in accordance with subsection (3) above in relation to the order that he considers that the conditions for the making of it are no longer satisfied; or
  - (e) where such order is continued under section 59(4) of this Act or subsection (12)(d) below, on the commencement of a children’s hearing arranged under section 65(2) of this Act.
- (7) An application to the sheriff to set aside or vary a child protection order made under section 57 of this Act or a direction given under section 57 of this Act or such an order or direction continued (whether with or without variation) under section 59(4) of this Act, may be made by or on behalf of—
- (a) the child to whom the order or direction relates;
  - (b) a person having parental rights over the child;
  - (c) a relevant person;
  - (d) any person to whom notice of the application for the order was given by virtue of rules; or
  - (e) the applicant for the order made under section 57 of this Act.
- (8) An application under subsection (7) above shall be made—
- (a) in relation to a child protection order made under section 57, or a direction given under section 58, of this Act, before the commencement of a children’s hearing arranged in accordance with section 59(2) of this Act; and

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- (b) in relation to such an order or direction continued (whether with or without variation) by virtue of subsection (4) of the said section 59, within two working days of such continuation,  
and any such application shall be determined within three working days of being made.
- (9) Where an application has been made under subsection (7) above, the applicant shall forthwith give notice, in a manner and form prescribed by rules, to the Principal Reporter.
- (10) At any time which is—  
(a) after the giving of the notice required by subsection (9) above; but  
(b) before the sheriff has determined the application in accordance with subsection (11) below,  
the Principal Reporter may arrange a children’s hearing the purpose of which shall be to provide any advice they consider appropriate to assist the sheriff in his determination of the application.
- (11) The sheriff shall, after hearing the parties to the application and, if he wishes to make representations, the Principal Reporter, determine whether—  
(a) the conditions for the making of a child protection order under section 57 of this Act are satisfied; or  
(b) where the application relates only to a direction under section 58 of this Act, the direction should be varied or cancelled.
- (12) Where the sheriff determines that the conditions referred to in subsection (11)(a) above are satisfied, he may—  
(a) confirm or vary the order, or any term or condition on which it was granted;  
(b) confirm or vary any direction given, in relation to the order, under section 58 of this Act;  
(c) give a new direction under that section; or  
(d) continue in force the order and any such direction until the commencement of a children’s hearing arranged in accordance with section 65(2) of this Act.
- (13) Where the sheriff determines that the conditions referred to in subsection (11)(a) above are not satisfied he shall recall the order and cancel any direction given under section 58 of this Act.

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

- C22** S. 60(3) amended (form prescribed) (1.4.1997) by [S.I. 1996/3261, Rule 28\(2\)](#), [Sch.](#)  
**C23** S. 60(5) amended (form prescribed) (1.4.1997) by [S.I. 1996/3261, Rule 28\(3\)](#), [Sch.](#)  
**C24** S. 60(10) amended (form prescribed) (1.4.1997) by [S.I. 1996/3261, Rule 28\(4\)](#), [Sch.](#)

**61 Emergency protection of children where child protection order not available.**

- (1) Where, on the application of any person, a justice of the peace is satisfied—  
(a) both that the conditions laid down for the making of a child protection order in section 57(1) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but

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- (b) that it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application, he may grant to the applicant an authorisation under this section.
- (2) Where on the application for a local authority a justice of the peace is satisfied—
- (a) both that the conditions laid down for the making of a child protection order in section 57(2) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but
- (b) that it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application, he may grant an authorisation under this section.
- (3) An authorisation under this section may—
- (a) require any person in a position to do so to produce the child to the applicant;
- (b) prevent any person from removing a child from a place where he is then being accommodated;
- (c) authorise the applicant to remove the child to a place of safety and to keep him there until the expiration of the authorisation.
- (4) An authorisation under this section shall cease to have effect—
- (a) twelve hours after being made, if within that time—
- (i) arrangements have not been made to prevent the child’s removal from any place specified in the authorisation; or
- (ii) he has not been, or is not being, taken to a place of safety; or
- (b) where such arrangements have been made or he has been so taken when—
- (i) twenty-four hours have expired since it was so given; or
- (ii) an application for a child protection order in respect of the child is disposed of,
- whichever is the earlier.
- (5) Where a constable has reasonable cause to believe that—
- (a) the conditions for the making of a child protection order laid down in section 57(1) are satisfied;
- (b) that it is not practicable in the circumstances for him to make an application for such an order to the sheriff or for the sheriff to consider such an application; and
- (c) that, in order to protect the child from significant harm (or further such harm), it is necessary for him to remove the child to a place of safety,
- he may remove the child to such a place and keep him there.
- (6) The power conferred by subsection (5) above shall not authorise the keeping of a child in a place of safety for more than twenty four hours from the time when the child is so removed.
- (7) The authority to keep a child in a place of safety conferred by subsection (5) above shall cease on the disposal of an application in relation to the child for a child protection order.
- (8) A child shall not be—
- (a) kept in a place of safety; or

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(b) prevented from being removed from any place,  
 under this section where the Principal Reporter considers that the conditions for the grant of an authorisation under subsection (1) or (2) above or the exercise of the power conferred by subsection (5) above are not satisfied, or that it is no longer in the best interests of the child that he should be so kept.

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

C25 S. 61(1)(2)(5) applied (1.4.1997) by S.I. 1996/3258, [regs. 12-16](#)

**62 Regulations in respect of emergency child protection measures.**

- (1) The Secretary of State may make regulations concerning the duties in respect of a child of any person removing him to, and keeping him in, a place of safety under section 61 above.
- (2) Regulations under this section may make provision requiring—
  - (a) notification of the removal of a child to be given to a person specified in the regulations;
  - (b) intimation to be given to any person of the place of safety at which a child is being kept;
  - (c) notification to be given to any person of the ceasing to have effect, under section 61(4)(a) of this Act, of an authorisation.

**Commencement Information**

**III** S. 62 wholly in force at 1.4.1997; s. 62 not in force at Royal Assent see s. 105(1); s. 62 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, [art. 3\(1\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by S.I. 1997/744, [art. 3](#))); s. 62 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, [art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by S.I. 1997/744, [arts. 2, 3](#))

*Children arrested by the police*

**63 Review of case of child arrested by police.**

- (1) Where the Principal Reporter has been informed by a constable, in accordance with [<sup>F37</sup>section 43(5) of the Criminal Procedure (Scotland) Act 1995], that charges are not to be proceeded with against a child who has been detained in a place of safety in accordance with that section, the Principal Reporter shall, unless he considers that compulsory measures of supervision are not required in relation to the child, arrange a children’s hearing to which he shall refer the case.
- (2) A children’s hearing arranged under subsection (1) above shall begin not later than the third day after the Principal Reporter received the information mentioned in that subsection.
- (3) Where the Principal Reporter considers that a child of whose detention he has been informed does not require compulsory measures of supervision, he shall direct that the child shall no longer be kept in the place of safety.

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- (4) Subject to subsection (3) above, a child who has been detained in a place of safety may continue to be kept at that place until the commencement of a children’s hearing arranged under subsection (1) above.
- (5) Subject to subsection (6) below, a children’s hearing arranged under subsection (1) above may—
- (a) if they are satisfied that the conditions mentioned in subsection (2) of section 66 of this Act are satisfied, grant a warrant to keep the child in a place of safety; and
  - (b) direct the Principal Reporter to arrange a children’s hearing for the purposes of section 65(1) of this Act,
- and subsections (3) to (8) of the said section 66 shall apply to a warrant granted under this subsection as they apply to a warrant granted under subsection (1) of the said section 66.
- (6) A child shall not be kept in a place of safety in accordance with a warrant granted under subsection (5) above where the Principal Reporter, having regard to the welfare of the child, considers that, whether as a result of a change in the circumstances of the case or of further information relating to the case having been received by the Principal Reporter—
- (a) the conditions mentioned in section 66(2) of this Act are no longer satisfied in relation to the child; or
  - (b) the child is not in need of compulsory measures of supervision,
- and where he does so consider he shall give notice to that effect to the person who is keeping the child in that place in accordance with the warrant.

#### Textual Amendments

**F37** Words in s. 63(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(6)**

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

**C26** S. 63(5) amended (forms prescribed) (1.4.1997) by S.I. 1996/3261, **Rule 27, Sch.**

### *Business meeting preparatory to children’s hearing*

#### **64 Business meeting preparatory to children’s hearing.**

- (1) At any time prior to the commencement of proceedings at the children’s hearing, the Principal Reporter may arrange a meeting with members of the children’s panel from which the children’s hearing is to be constituted under section 39(4) of this Act for those proceedings (any such meeting being, in this Part of this Act referred to as a “business meeting”).
- (2) Where a business meeting is arranged under subsection (1) above, the Principal Reporter shall give notice to the child in respect of whom the proceedings are to be commenced and any relevant person in relation to the child—
- (a) of the arrangement of the meeting and of the matters which may be considered and determined by the meeting;
  - (b) of their right to make their views on those matters known to the Principal Reporter; and

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- (c) of the duty of the Principal Reporter to present those views to the meeting.
- (3) A business meeting, subject to subsection (4) below—
  - (a) shall determine such procedural and other matters as may be prescribed by rules under subsection (1) of section 42 of this Act by virtue of subsection (2) (a) of that section; and
  - (b) may give such direction or guidance to the Principal Reporter in relation to the performance of his functions in relation to the proceedings as they think appropriate.
- (4) Before a business meeting makes such a determination or gives such direction or guidance to the Principal Reporter, the Principal Reporter shall present, and they shall consider, any views expressed to him by virtue of subsection (2)(b) above.
- (5) Subject to any rules made under section 42(1) of this Act by virtue of subsection (2)(a) of that section and with the exception of sections 44 and, as regards any determination made by the business meeting under subsection (3)(a) above, 51, the provisions of this Act which relate to a children’s hearing shall not apply to a business meeting.

*Referral to, and disposal of case by, children’s hearing*

**65 Referral to, and proceedings at, children’s hearing.**

- (1) The Principal Reporter shall refer to the children’s hearing, for consideration and determination on the merits, the case of any child in respect of whom he is satisfied that—
  - (a) compulsory measures of supervision are necessary, and
  - (b) at least one of the grounds specified in section 52(2) of this Act is established;
 and he shall state such grounds in accordance with rules made under section 42(1) of this Act by virtue of subsection (2)(c) of that section.
- [<sup>F38</sup>(1A) Where the Principal Reporter is satisfied that the ground specified in section 52(2)(m) of this Act is established in respect of any child, he shall be taken to be satisfied as to the matter mentioned in section 65(1)(a) in respect of the child.]
- (2) Where a referral is made in respect of a child who is subject to a child protection order made under section 57, and that order is continued under section 59(4) or 60(12) (d), of this Act, the Principal Reporter shall arrange for the children’s hearing under subsection (1) above to take place on the eighth working day after the order was implemented.
- (3) Where a referral is made in respect of a child who is subject to a supervision requirement, the children’s hearing shall, before disposing of the referral in accordance with section 69(1)(b) or (c) of this Act, review that requirement in accordance with subsections (9) to (12) of section 73 of this Act.
- (4) Subject to subsections (9) and (10) below, it shall be the duty of the chairman of the children’s hearing to whom a child’s case has been referred under subsection (1) above to explain to the child and the relevant person, at the opening of proceedings on the referral, the grounds stated by the Principal Reporter for the referral in order to ascertain whether these grounds are accepted in whole or in part by them.



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- (5) Where the chairman has given the explanation required by subsection (4) above and the child and the relevant person accept the grounds for the referral, the children’s hearing shall proceed in accordance with section 69 of this Act.
- (6) Where the chairman has given the explanation required by subsection (4) above and the child and the relevant person accept the grounds in part, the children’s hearing may, if they consider it appropriate to do so, proceed in accordance with section 69 of this Act with respect to those grounds which are accepted.
- (7) Where the chairman has given the explanation required under subsection (4) above and either or both of the child and the relevant person—
  - (a) do not accept the grounds for the referral; or
  - (b) accept the grounds in part, but the children’s hearing do not consider it appropriate to proceed with the case under subsection (6) above,
 the hearing shall either direct the Principal Reporter to make an application to the sheriff for a finding as to whether such grounds for the referral as are not accepted by the child and the relevant person are established or shall discharge the referral.
- (8) Subject to subsection (10) below, it shall be the duty of the chairman to explain to the child and to the relevant person the purpose for which the application to the sheriff is being made and to inform the child that he is under an obligation to attend the hearing before the sheriff.
- (9) Where a children’s hearing are satisfied that the child—
  - (a) for any reason will not be capable of understanding the explanation of the grounds for the referral required under subsection (4) above; or
  - (b) has not understood an explanation given under that subsection,
 they shall either direct the Principal Reporter to make an application to the sheriff for a finding as to whether any of the grounds of the referral are established or discharge the referral.
- (10) The acceptance by the relevant person of the grounds of the referral shall not be a requirement for a children’s hearing proceeding under this section to consider a case where that person is not present.

#### Textual Amendments

**F38** S. 65(1A) inserted (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), **ss. 12(4)**, **145(2)**; [S.S.I. 2004/420](#), **art. 3**, **Sch. 1**

## 66 Warrant to keep child where children’s hearing unable to dispose of case.

- (1) Without prejudice to any other power enjoyed by them under this Part of this Act and subject to subsection (5) below, a children’s hearing—
  - (a) arranged to consider a child’s case under this Part of this Act; and
  - (b) unable to dispose of the case,
 may, if they are satisfied that one of the conditions mentioned in subsection (2) below is met, grant a warrant under this subsection.
- (2) The conditions referred to in subsection (1) above are—
  - (a) that there is reason to believe that the child may—

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- (i) not attend at any hearing of his case; or
  - (ii) fail to comply with a requirement under section 69(3) of this Act; or
  - (b) that it is necessary that the child should be kept in a place of safety in order to safeguard or promote his welfare.
- (3) A warrant under subsection (1) above may require any person named in the warrant—
- (a) to find and to keep or, as the case may be, to keep the child in a place of safety for a period not exceeding twenty-two days after the warrant is granted;
  - (b) to bring the child before a children’s hearing at such times as may be specified in the warrant.
- (4) A warrant under subsection (1) above may contain such conditions as appear to the children’s hearing to be necessary or expedient, and without prejudice to that generality may—
- (a) subject to section 90 of this Act, require the child to submit to any medical or other examination or treatment; and
  - (b) regulate the contact with the child of any specified person or class of persons.
- (5) Subject to subsection (8) below, at any time prior to its expiry, a warrant granted under this section may, on an application to the children’s hearing, on cause shown by the Principal Reporter, be continued in force, whether with or without variation of any conditions imposed by virtue of subsection (4) above, by the children’s hearing for such further period, not exceeding twenty-two days, as appears to them to be necessary.
- (6) Where a children’s hearing are satisfied
- [<sup>F39</sup>(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
  - (b) that it is necessary to do so,]
- they may order that, pending the disposal of his case, the child shall be liable to be placed and kept in secure accommodation within a residential establishment at such times as the person in charge of that establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.
- (7) Where a children’s hearing grant a warrant under subsection (1) above or continue such a warrant under subsection (5) above, they may order that the place of safety at which the child is to be kept shall not be disclosed to any person or class of persons specified in the order.
- (8) A child shall not be kept in a place of safety or secure accommodation by virtue of this section for a period exceeding sixty-six days from the day when he was first taken to a place of safety under a warrant granted under subsection (1) above.

#### Textual Amendments

**F39** S. 66(6)(a)(b) substituted (31.1.2005) for words in s. 66(6) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 144(1), 145(2), [Sch. 4 para. 4\(3\)](#); S.S.I. 2004/420, [art. 3](#), [Sch. 4](#)

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

**C27** S. 66(1)(5) amended (forms prescribed) (1.4.1997) by [S.I. 1996/3261](#), [Rule 27](#), [Sch.](#)

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## **67 Warrant for further detention of child.**

- (1) Where a child is being kept in a place of safety by virtue of a warrant granted under section 66 of this Act or under this subsection, the Principal Reporter at any time prior to the expiry of that warrant may apply to the sheriff for a warrant to keep the child in that place after the warrant granted under the said section 66 or, as the case may be, this subsection has expired.
- (2) A warrant under subsection (1) above shall only be granted on cause shown and—
  - (a) shall specify the date on which it will expire; and
  - (b) may contain any such requirement or condition as may be contained in a warrant granted under the said section 66.
- (3) Where the sheriff grants a warrant under subsection (1) above, he may also make an order under this subsection in such terms as are mentioned in subsection (6) or (7) of the said section 66; and any order under this subsection shall cease to have effect when the warrant expires.
- (4) An application under subsection (1) above may be made at the same time as, or during the hearing of, an application which the Principal Reporter has been directed by a children’s hearing to make under section 65(7) or (9) of this Act.

## **68 Application to sheriff to establish grounds of referral.**

- (1) This section applies to applications under subsections (7) and (9) of section 65 of this Act and a reference in this section (except in subsection (8)) to “an application” is a reference to an application under either of those subsections.
- (2) An application shall be heard by the sheriff within twenty-eight days of its being lodged.
- (3) Where one of the grounds for the referral to which an application relates is the condition referred to in section 52(2)(i)—
  - (a) the application shall be made to the sheriff who would have jurisdiction if the child were being prosecuted for that offence; and
  - (b) in hearing the application in relation to that ground, the standard of proof required in criminal proceedings shall apply.
- (4) A child shall—
  - (a) have the right to attend the hearing of an application; and
  - (b) subject to subsection (5) below, be under an obligation to attend such hearing; and without prejudice to the right of each of them to be legally represented, the child and the relevant person may be represented by a person other than a legally qualified person at any diet fixed by the sheriff for the hearing of the application.
- (5) Without prejudice to subsection (4)(a) above, the sheriff may dispense with the obligation imposed by subsection (4)(b) above where he is satisfied—
  - (a) in an application in which the ground of referral to be established is a condition mentioned in section 52(2)(d), (e), (f) or (g) of this Act, that the obligation to attend of the child is not necessary for the just hearing of that application; and
  - (b) in any application, that it would be detrimental to the interests of the child for him to be present at the hearing of the application.

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- (6) Where the child fails to attend the hearing of an application at which his obligation to attend has not been dispensed with under subsection (5) above, the sheriff may grant an order to find and keep the child; and any order under this subsection shall be authority for bringing the child before the sheriff and, subject to subsection (7) below, for keeping him in a place of safety until the sheriff can hear the application.
- (7) The child shall not be kept in a place of safety by virtue of subsection (6) above after whichever is the earlier of—
- (a) the expiry of fourteen days beginning with the day on which the child is found; or
  - (b) the disposal of the application by the sheriff.
- (8) Where in the course of the hearing of an application—
- (a) under section 65(7) of this Act, the child and the relevant person accept any of the grounds for referral to which the application relates, the sheriff shall; or
  - (b) under section 65(9) of this Act, the relevant person accepts any of the grounds for referral to which the application relates, the sheriff may, if it appears to him reasonable to do so,
- dispense with the hearing of evidence relating to that ground and deem the ground to be established for the purposes of the application, unless he is satisfied that, in all the circumstances of the case, the evidence should be heard.
- (9) Where a sheriff decides that none of the grounds for referral in respect of which an application has been made are established, he shall dismiss the application, discharge the referral to the children’s hearing in respect of those grounds and recall, discharge or cancel any order, warrant, or direction under this Chapter of this Act which relates to the child in respect of those grounds.
- (10) Where the sheriff, after the hearing of any evidence or on acceptance in accordance with subsection (8) above, finds that any of the grounds for the referral to which the application relates is, or should be deemed to be, established—
- (a) he shall remit the case to the Principal Reporter to make arrangements for a children’s hearing to consider and determine the case; and
  - (b) he may if he is satisfied that—
    - (i) keeping the child in a place of safety is necessary in the child’s best interests; or
    - (ii) there is reason to believe that the child will run away before the children’s hearing sit to consider the case,
 issue an order requiring, subject to subsection (12) below, that the child be kept in a place of safety until the children’s hearing so sit.
- (11) An order issued under subsection (10) above may, if the sheriff is satisfied
- [<sup>F40</sup>(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
  - (b) that it is necessary for the order to do so,]
- provide that the child shall be liable to be placed and kept in secure accommodation within a residential establishment at such times as the person in charge of the establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.
- (12) A child shall not be kept in a place of safety by virtue of subsection (10)(b) above after whichever is the earlier of the following—
- (a) the expiry of three days beginning with the day on which he is first so kept; or

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- (b) the consideration of his case by the children’s hearing arranged under subsection (10)(a) above.

#### Textual Amendments

**F40** S. 68(11)(a)(b) substituted (31.1.2005) for words in s. 68(11) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 144(1), 145(2), **Sch. 4 para. 4(4)**; S.S.I. 2004/420, **art. 3**, Sch. 4

### [<sup>F41</sup>68A Restrictions on evidence in certain cases involving sexual abuse

- (1) This section applies in relation to—
- (a) an application under section 65(7) or (9) of this Act in which the ground of referral to be established is a condition mentioned in—
    - (i) paragraph (b) of subsection (2) of section 52 of this Act where that condition is alleged to be satisfied by reference to sexual behaviour engaged in by any person,
    - (ii) paragraph (d), (e) or (f) of that subsection where that condition is alleged to be satisfied by reference to a relevant offence, or
    - (iii) paragraph (g) of that subsection, or
  - (b) an application under section 85 of this Act for a review of a finding that any such ground of referral is established.
- (2) In hearing the application, the sheriff shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the child who is the subject of the application or any other witness giving evidence at the hearing (such child or other witness being referred to in this section and section 68B of this Act as “the witness”)—
- (a) is not of good character (whether in relation to sexual matters or otherwise),
  - (b) has, at any time, engaged in sexual behaviour not forming part of the subject matter of the ground of referral,
  - (c) has, at any time (other than shortly before, at the same time as or shortly after the acts which form part of the subject matter of the ground of referral), engaged in such behaviour, not being sexual behaviour, as might found the inference that the witness is not a credible or reliable witness, or
  - (d) has, at any time, been subject to any such condition or predisposition as might found the inference referred to in paragraph (c) above.
- (3) In subsection (1)(a)(ii) above, “relevant offence” means—
- (a) an offence mentioned in paragraph 1 or 4 of Schedule 1 (offences against children under the age of 17 to which special provisions apply) to the Criminal Procedure (Scotland) Act 1995 (c. 46), or
  - (b) any other offence mentioned in that Schedule where there is a substantial sexual element in the alleged commission of the offence.
- (4) In subsection (2)(b) and (c) above—
- (a) “the subject matter of the ground of referral” means—
    - (i) in the case of an application in which the ground of referral to be established is the condition referred to in paragraph (a)(i) of subsection (1) above, the sexual behaviour referred to in that paragraph,

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- (ii) in the case of any other application, the acts or behaviour constituting the offence by reference to which the ground of referral is alleged to be established, and
- (b) the reference to engaging in sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature.

#### Textual Amendments

**F41** Ss. 68A, 68B inserted (S.) (1.4.2005) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 23, 25**; [S.S.I. 2005/168](#), **art. 2**, Sch. (with art. 4)

### 68B Exceptions to restrictions under section 68A

- (1) The sheriff hearing an application referred to in subsection (1) of section 68A of this Act may, on an application by any party to the proceedings, admit such evidence or allow such questioning as is referred to in subsection (2) of that section if satisfied that—
- (a) the evidence or questioning will relate only to a specific occurrence or occurrences of sexual or other behaviour or to specific facts demonstrating—
    - (i) the character of the witness, or
    - (ii) any condition or predisposition to which the witness is or has been subject,
  - (b) that occurrence or those occurrences of behaviour or facts are relevant to establishing the ground of referral, and
  - (c) the probative value of the evidence sought to be admitted or elicited is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.
- (2) In subsection (1) above—
- (a) the reference to an occurrence or occurrences of sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature,
  - (b) “the proper administration of justice” includes—
    - (i) appropriate protection of the witness’s dignity and privacy, and
    - (ii) ensuring the facts and circumstances of which the sheriff is made aware are relevant to an issue to be put before the sheriff and commensurate with the importance of that issue to the sheriff’s decision on the question whether the ground of referral is established.
- (3) In this section, “the witness” means the child who is the subject of the application referred to in section 68A(1) or other witness in respect of whom the evidence is sought to be admitted or elicited.]

#### Textual Amendments

**F41** Ss. 68A, 68B inserted (S.) (1.4.2005) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 23, 25**; [S.S.I. 2005/168](#), **art. 2**, Sch. (with art. 4)

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## **69 Continuation or disposal of referral by children’s hearing.**

- (1) Where the grounds of referral of the child’s case stated by the Principal Reporter are accepted or are established in accordance with section 68 or section 85 of this Act, the children’s hearing shall consider those grounds, any report obtained under section 56(7) of this Act and any other relevant information available to them and shall—
  - (a) continue the case to a subsequent hearing in accordance with subsection (2) below;
  - (b) discharge the referral of the case in accordance with subsection (12) below; or
  - (c) make a supervision requirement under section 70 of this Act.
- (2) The children’s hearing may continue the case to a subsequent hearing under this subsection where they are satisfied that, in order to complete their consideration of the case, it is necessary to have a further investigation of the case.
- (3) Where a children’s hearing continue the case under subsection (2) above, they may, for the purposes of the investigation mentioned by that subsection, require the child to attend, or reside at, any clinic, hospital or other establishment during a period not exceeding twenty-two days.
- (4) Where a child fails to fulfil a requirement made under subsection (3) above, the children’s hearing may, either on an application by the Principal Reporter or of their own motion, grant a warrant under this subsection.
- (5) A warrant under subsection (4) above shall be authority—
  - (a) to find the child;
  - (b) to remove the child to a place of safety and keep him there; and
  - (c) where the place of safety is not the clinic, hospital or other establishment referred to in the requirement made under subsection (3) above, to take the child from the place of safety to such clinic, hospital or other establishment for the purposes of the investigation mentioned in subsection (2) above.
- (6) A warrant under subsection (4) above shall be granted for such period as appears to the children’s hearing to be appropriate, provided that no warrant shall permit the keeping of a child in a place of safety after whichever is the earlier of—
  - (a) the expiry of twenty-two days after the warrant is granted; or
  - (b) the day on which the subsequent hearing of the child’s case by a children’s hearing begins.
- (7) Where a child’s case has been continued under subsection (2) above and the children’s hearing are satisfied that—
  - (a) keeping the child in a place of safety is necessary in the interests of safeguarding or promoting the welfare of the child; or
  - (b) there is reason to believe that the child may not attend the subsequent hearing of his case,they may grant a warrant requiring that the child be taken to and kept in a place of safety.
- (8) A warrant under subsection (7) above shall cease to have effect on whichever is the earlier of—
  - (a) the expiry of twenty-two days after the warrant is granted; or

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- (b) the day on which the subsequent hearing of the child’s case by a children’s hearing begins.
- (9) A warrant under subsection (4) or (7) above may contain such conditions as appear to the children’s hearing to be necessary or expedient, and without prejudice to that generality may—
  - (a) subject to section 90 of this Act, require the child to submit to any medical or other examination or treatment;
  - (b) regulate the contact with the child of any specified person or class of persons.
- (10) Where a child is to be kept at a place of safety under a warrant granted under this section or is to attend, or reside at, any place in accordance with a requirement made under subsection (3) above, the children’s hearing may order that such place shall not be disclosed to any person or class of persons specified in the order.
- (11) Where a child is to reside in a residential establishment by virtue of a requirement made or warrant granted under this section, the children’s hearing may, if satisfied
  - [<sup>F42</sup>(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
  - (b) that it is necessary to do so,]
 order that while the requirement or warrant remains in effect he shall be liable to be placed in secure accommodation within that establishment at such times as the person in charge of the establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.
- (12) Where a children’s hearing decide not to make a supervision requirement under section 70 of this Act they shall discharge the referral.
- (13) On the discharge of the referral of the child’s case any order, direction, or warrant under Chapter 2, or this Chapter, of this Act in respect of the child’s case shall cease to have effect.

#### Textual Amendments

**F42** S. 69(11)(a)(b) substituted (31.1.2005) for words in s. 69(11) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 144(1), 145(2), [Sch. 4 para. 4\(5\)](#); S.S.I. 2004/420, [art. 3](#), [Sch. 4](#)

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

**C28** S. 69(3) amended (form prescribed) (1.4.1997) by [S.I. 1996/3261](#), [Rule 28\(1\)](#), [Sch.](#)

**C29** S. 69(4)(7) amended (forms prescribed) (1.4.1997) by [S.I. 1996/3261](#), [Rule 27](#), [Sch.](#)

## 70 Disposal of referral by children’s hearing: supervision requirements, including residence in secure accommodation.

- (1) Where the children’s hearing to whom a child’s case has been referred under section 65(1) of this Act are satisfied that compulsory measures of supervision are necessary in respect of the child they may make a requirement under this section (to be known as a “supervision requirement”).
- (2) A children’s hearing, where they decide to make such a requirement, shall consider whether to impose any condition such as is described in subsection (5)(b) below.
- (3) A supervision requirement may require the child—
  - (a) to reside at any place or places specified in the requirement; and



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(b) to comply with any condition contained in the requirement.

[<sup>F43</sup>(3A) A children’s hearing may, for the purpose of enabling a child to comply with a supervision requirement, impose such duties on the relevant local authority as may be specified in the supervision requirement.

(3B) The duties imposed under subsection (3A) above may include that of securing or facilitating the provision for the child of services of a kind other than that provided by the relevant local authority.]

(4) The place or, as the case may be, places specified in a requirement under subsection (3) (a) above may, without prejudice to the generality of that subsection, be a place or places in England or Wales; and a supervision requirement shall be authority for the person in charge of such a place to restrict the child’s liberty to such extent as that person may consider appropriate, having regard to the terms of the requirement.

(5) A condition imposed under subsection (3)(b) above may, without prejudice to the generality of that subsection—

- (a) subject to section 90 of this Act, require the child to submit to any medical or other examination or treatment;
- (b) regulate the contact with the child of any specified person or class of persons.

(6) A children’s hearing may require, when making a supervision requirement, that any place where the child is to reside in accordance with the supervision requirement shall not be disclosed to any person specified in the requirement under this subsection or class of persons so specified.

(7) A children’s hearing who make a supervision requirement may determine that the requirement shall be reviewed at such time during the duration of the requirement as they determine.

[<sup>F44</sup>(7A) Where, on a review under subsection (7) above, it appears to the children’s hearing that the relevant local authority are in breach of a duty imposed on them under section 71 of this Act, the hearing may direct the Principal Reporter to give the authority notice of an intended application under section 71A(2) of this Act.

(7B) The Principal Reporter shall, at the same time as giving the notice of an intended application under section 71A(2) of this Act, send a copy of the notice to—

- (a) the child to whom the duty referred to in subsection (7A) above relates;
- (b) any person who, in relation to the child, is a relevant person;
- (c) any person appointed under section 41 of this Act to safeguard the interests of the child in any proceedings which are taking place when the notice is given.

(7C) Notice of an intended application under section 71A(2) of this Act is a written notice—

- (a) setting out the respects in which the relevant local authority are in breach of the duty imposed on them under section 71 of this Act; and
- (b) stating that if the authority do not comply with that duty within the period of 21 days beginning with the day on which they received the notice, the Principal Reporter may make an application under section 71A(2) of this Act.

(7D) Where a children’s hearing have made a direction under subsection (7A) above, they shall determine that a further review under subsection (7) above take place on or as soon as is reasonably practicable after the expiry of the period of 28 days beginning with the day on which notice was given in pursuance of that direction.

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- (7E) Where on a further review under subsection (7) above which takes place by virtue of subsection (7D) above, it appears to the children’s hearing that the relevant local authority continues to be in breach of the duty referred to in subsection (7A) above, the hearing may authorise the Principal Reporter to make an application under section 71A(2) of this Act.]
- (8) A supervision requirement shall be in such form as the Secretary of State may prescribe by rules.
- [<sup>F45</sup>(9) A children’s hearing may exercise a power mentioned in subsection (9A) below in relation to a child if they are satisfied—
- (a) that one of the conditions mentioned in subsection (10) below is met; and
  - (b) that it is necessary to exercise the power concerned.
- (9A) The powers are—
- (a) that the children’s hearing may specify in the supervision requirement that the child shall be liable to be placed and kept in secure accommodation in a residential establishment specified, under subsection (3)(a) above, in the requirement, during such period as the person in charge of that establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary; and
  - (b) that the children’s hearing may impose, under subsection (3)(b) above, a movement restriction condition.]

[<sup>F46</sup>(10) The conditions are—

    - (a) that the child, having previously absconded, is likely to abscond and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk; and
    - (b) that the child is likely to injure himself or some other person.]

[<sup>F47</sup>(11) In this section, “movement restriction condition” means a condition—

      - (a) restricting the child’s movements in such way as may be specified in the supervision requirement; and
      - (b) requiring the child to comply with such arrangements for monitoring compliance with the restriction mentioned in paragraph (a) above as may be so specified.

(12) Where a children’s hearing impose a condition such as is mentioned in subsection (9A) (b) above, they shall also impose under subsection (3)(b) above such of the conditions prescribed by the Scottish Ministers for the purposes of this section as they consider necessary in the child’s case.

(13) The Scottish Ministers may by regulations make provision as to the arrangements mentioned in subsection (11)(b) above.

(14) Regulations under subsection (13) above may in particular include provision—

      - (a) prescribing what method or methods of monitoring compliance with the restriction mentioned in paragraph (a) of subsection (11) above may be specified in a supervision requirement;
      - (b) specifying the devices which may be used for the purpose of that monitoring;
      - (c) prescribing the person who may be designated by a children’s hearing to carry out that monitoring or the class or description of person from which that person may be drawn;

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- (d) requiring a children’s hearing who have designated a person in pursuance of paragraph (c) above who is no longer within the provision made under that paragraph to vary the designation accordingly and notify the child of the variation.
- (15) The Scottish Ministers may, by contract or otherwise, secure the services of such persons as they think fit to carry out the monitoring mentioned in subsection (11)(b) above and may do so in a way in which those services are provided differently in relation to different areas or different forms of that monitoring.
- (16) Nothing in any enactment or rule of law prevents the disclosure to a person providing services in pursuance of subsection (15) above of information relating to a child where the disclosure is made for the purposes only of the full and proper provision of the monitoring mentioned in subsection (11)(b) above.
- (17) A children’s hearing may include in a supervision requirement a movement restriction condition only if the hearing is constituted from the children’s panel for a local government area which is prescribed for the purposes of this section by the Scottish Ministers.]

#### Extent Information

- E2** S. 70(4) extends to England, Wales and Scotland; s. 70 otherwise extends to Scotland only, see s. 105(1) and (8)

#### Textual Amendments

- F43** S. 70(3A)(3B) inserted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [ss. 136\(1\)\(a\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 4
- F44** S. 70(7A)-(7E) inserted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [ss. 136\(1\)\(b\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 4
- F45** S. 70(9)(9A) substituted (31.1.2005) for s. 70(9) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [ss. 135\(2\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 4
- F46** S. 70(10) substituted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [ss. 135\(3\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 4
- F47** S. 70(11)-(17) added (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [ss. 135\(4\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 4

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

- C30** S. 70 modified (1.4.1997) by [S.I. 1996/3255](#), [reg. 6\(1\)](#)

#### Commencement Information

- I12** S. 70 wholly in force at 1.4.1997; s. 70 not in force at Royal Assent see s. 105(1); s. 70 in force for certain purposes at 12.12.1996 by [S.I. 1996/3201](#), [art. 3\(1\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by [S.I. 1997/744](#), [art. 3](#))); s. 70 in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201](#), [art. 3\(7\)](#) (with [arts. 4-6](#) (as amended (7.3.1997) by [S.I. 1997/744](#), [arts. 2, 3](#)))

## 71 Duties of local authority with respect to supervision requirements.

- (1) The relevant local authority shall, as respects a child subject to a supervision requirement, give effect to the requirement.

[<sup>F48</sup>(1A) Where a supervision requirement imposes, under section 70(3A) of this Act, duties on the relevant local authority, the authority shall perform those duties.]

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- (2) Where a supervision requirement provides that the child shall reside—
- (a) in relevant accommodation; or
  - (b) in any other accommodation not provided by a local authority,
- the relevant local authority shall from time to time investigate whether, while the child is so resident, any conditions imposed by the supervision requirement are being fulfilled; and may take such steps as they consider reasonable if they find that such conditions are not being fulfilled.
- (3) In this section, “relevant accommodation” means accommodation provided by the parents or relatives of the child or by any person associated with them or with the child.

#### Textual Amendments

**F48** S. 71(1A) inserted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), **ss. 136(2)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 4

#### [<sup>F49</sup>71A Enforcement of local authorities' duties under section 71

- (1) The sheriff principal may, on an application under subsection (2) below, make an order requiring a relevant local authority in breach of a duty imposed on them under section 71 of this Act to perform that duty.
- (2) The Principal Reporter, having been so authorised by a children’s hearing under section 70(7E) of this Act, may apply for an order under subsection (1) above.
- (3) No such application shall be competent unless—
  - (a) the Principal Reporter has, on a direction of the children’s hearing made under section 70(7A) of this Act, given the relevant local authority the notice referred to in that provision; and
  - (b) the authority have failed to comply, within the period stipulated in the notice, with the duty there referred to.
- (4) In deciding whether to apply under subsection (2) above, the Principal Reporter shall not take into account any factor relating to the adequacy of the means available to the relevant local authority to enable it to comply with the duty.
- (5) An application under subsection (2) above shall be made by summary application.
- (6) The sheriff principal having jurisdiction under this section is the sheriff principal of the sheriffdom in which is situated the principal office of the relevant local authority in breach of the duty referred to in subsection (1) above.
- (7) An order under subsection (1) above shall be final.]

#### Textual Amendments

**F49** S. 71A inserted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), **ss. 136(3)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 4

#### 72 Transfer of child subject to supervision requirement in case of necessity.

- (1) In any case of urgent necessity, where it is in the interests of—

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- (a) a child who is required by a supervision requirement imposed under section 70(3)(a) of this Act to reside in a specific residential establishment or specific other accommodation; or
  - (b) other children in that establishment or accommodation,
- the chief social work officer of the relevant local authority may direct that, notwithstanding that requirement, the child be transferred to another place.
- (2) Any child transferred under subsection (1) above shall have his case reviewed, in accordance with section 73(8) of this Act, by a children’s hearing within seven days of his transfer.

### **73 Duration and review of supervision requirement.**

- (1) No child shall continue to be subject to a supervision requirement for any period longer than is necessary in the interests of promoting or safeguarding his welfare.
- (2) Subject to any variation or continuation of a supervision requirement under subsection (9) below, no supervision requirement shall remain in force for a period longer than one year.
- (3) A supervision requirement shall cease to have effect in respect of a child not later than on his attaining the age of eighteen years.
- (4) A relevant local authority shall refer the case of a child who is subject to a supervision requirement to the Principal Reporter where they are satisfied that—
  - (a) the requirement in respect of the child ought to cease to have effect or be varied;
  - (b) a condition contained in the requirement is not being complied with; or
  - (c) the best interests of the child would be served by their—
    - (i) applying under section 86 of this Act for a parental responsibilities order;
    - (ii) applying under section 18 of the <sup>M39</sup>Adoption (Scotland) Act 1978 for an order freeing the child for adoption; or
    - (iii) placing the child for adoption,
 and they intend to apply for such an order or so place the child.
- (5) Where the relevant local authority are aware that an application has been made and is pending, or is about to be made, under section 12 of the said Act of 1978 for an adoption order in respect of a child who is subject to a supervision requirement, they shall forthwith refer his case to the Principal Reporter.
- (6) A child or any relevant person may require a review of a supervision requirement in respect of the child at any time at least three months after—
  - (a) the date on which the requirement is made; or
  - (b) the date of the most recent continuation, or variation, by virtue of this section of the requirement.
- (7) Where a child is subject to a supervision requirement and, otherwise than in accordance with that requirement or with an order under section 11 of this Act, a relevant person proposes to take the child to live outwith Scotland, the person shall, not later than twenty-eight days before so taking the child, give notice of that proposal in writing to the Principal Reporter and to the relevant authority.

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- (8) The Principal Reporter shall—
- (a) arrange for a children’s hearing to review any supervision requirement in respect of a child where—
    - (i) the case has been referred to him under subsection (4) or (5) above;
    - (ii) the review has been required under subsection (6) above;
    - (iii) the review is required by virtue of section 70(7) or section 72(2) of this Act;
    - (iv) he has received in respect of the child such notice as is mentioned in subsection (7) above; or
    - (v) in any other case, the supervision requirement will expire within three months;
  - [<sup>F50</sup>(aa) where—
    - (i) a requirement is made of the Principal Reporter under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (power of sheriff to require Principal Reporter to refer case to children’s hearing) in respect of the child’s case; and
    - (ii) the child is subject to a supervision requirement,
 arrange for a children’s hearing to review the supervision requirement;] and
    - (b) make any arrangements incidental to [<sup>F51</sup>any such] review.
- (9) Where a supervision requirement is reviewed by a children’s hearing arranged under subsection (8) above, they may—
- (a) where they are satisfied that in order to complete the review of the supervision requirement it is necessary to have a further investigation of the child’s case, continue the review to a subsequent hearing;
  - (b) terminate the requirement;
  - (c) vary the requirement;
  - (d) insert in the requirement any requirement which could have been imposed by them under section 70(3) of this Act; or
  - (e) continue the requirement, with or without such variation or insertion.
- (10) Subsections (3) to (10) of section 69 of this Act shall apply to a continuation under paragraph (a) of subsection (9) above of a review of a supervision requirement as they apply to the continuation of a case under subsection (1)(a) of that section.
- (11) Where a children’s hearing vary or impose a requirement under subsection (9) above which requires the child to reside in any specified place or places, they may order that such place or places shall not be disclosed to any person or class of persons specified in the requirement.
- (12) Where a children’s hearing is arranged under subsection (8)(a)(v) above, they shall consider whether, if the supervision requirement is not continued, the child still requires supervision or guidance; and where a children’s hearing consider such supervision or guidance is necessary, it shall be the duty of the local authority to provide such supervision or guidance as the child is willing to accept.
- (13) Where a children’s hearing is arranged by virtue of subsection (4)(c) or (5) above, then irrespective of what the hearing do under subsection (9) above they shall draw up a report which shall provide advice in respect of, as the case may be, the proposed application under section 86 of this Act or under section 18 of the said Act of 1978, or the proposed placing for adoption or the application, or prospective application, under

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section 12 of that Act, for any court which may subsequently require to come to a decision, in relation to the child concerned, such as is mentioned in subsection (14) below.

- (14) A court which is considering whether, in relation to a child, to grant an application under section 86 of this Act or under section 18 or 12 of the said Act of 1978 and which, by virtue of subsection (13) above, receives a report as respects that child, shall consider the report before coming to a decision in the matter.

#### Textual Amendments

- F50** S. 73(8)(aa) inserted after s. 73(8)(a) (28.10.2004) by virtue of *Antisocial Behaviour etc. (Scotland) Act 2004* (asp 8), **ss. 12(5)(a)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F51** Words in s. 73(8)(b) substituted (28.10.2004) by *Antisocial Behaviour etc. (Scotland) Act 2004* (asp 8), **ss. 12(5)(b)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

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

- C31** S. 73(4)(c)(ii)(iii) modified (1.4.1997) by S.I. 1996/3266, **regs. 12(5)**, 13(1)
- C32** S. 73(7) applied (E.W.) (1.4.1997) by S.I. 1996/3267, **reg. 4(2)(a)**  
S. 73(7) applied (N.I.) (1.4.1997) by S.I. 1996/3267, **reg. 5(2)(a)**
- C33** S. 73(8) applied (with modifications) (1.4.1997) by S.I. 1996/3255, **reg. 6(3)**
- C34** S. 73(9)(13)(14) applied (1.4.1997) by 1978 c. 28, **s. 22A** (as inserted (1.4.1997) by 1995 c. 36, s. 98(1), Sch. 2 para. 15 (with Sch. 3 paras. 4, 6); S.I. 1996/3201, **arts. 3(7)** (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, **arts. 2, 3**))
- C35** S. 73(9) applied (E.W.) (1.4.1997) by S.I. 1996/3267, **reg. 4(2)(a)**  
S. 73(9) applied (N.I.) (1.4.1997) by S.I. 1996/3267, **reg. 5(2)(a)**
- C36** S. 73(13) amended (form prescribed) (1.4.1997) by S.I. 1996/3261, **Rule 28(5)**, **Sch.**

#### Marginal Citations

- M39** 1978 c.28.

## 74 Further provision as respects children subject to supervision requirements.

The Secretary of State may by regulations provide—

- (a) for the transmission of information regarding a child who is subject to a supervision requirement to any person who, by virtue of that requirement, has, or is to have, control over the child;
- (b) for the temporary accommodation, where necessary, of a child so subject; and
- (c) for the conveyance of a child so subject—
  - (i) to any place in which, under the supervision requirement, he is to reside;
  - (ii) to any place to which he falls to be taken under subsection (1) or (5) of section 82 of this Act; or
  - (iii) to any person to whom he falls to be returned under subsection (3) of that section.

#### Commencement Information

- I13** S. 74 wholly in force at 1.4.1997; s. 74 not in force at Royal Assent see s. 105(1); s. 74 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by

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S.I. 1997/744, art. 3); s. 74 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

## 75 Powers of Secretary of State with respect to secure accommodation.

- (1) The Secretary of State may by regulations make provision with respect to the placing in secure accommodation of any child—
  - (a) who is subject to a requirement imposed under section 70(3)(a) of this Act but not subject to a requirement under subsection (9) of that section; or
  - (b) who is not subject to a supervision requirement but who is being looked after by a local authority in pursuance of such enactments as may be specified in the regulations.
- (2) Regulations under subsection (1) above may—
  - (a) specify the circumstances in which a child may be so placed under the regulations;
  - (b) make provision to enable a child who has been so placed or any relevant person to require that the child’s case be brought before a children’s hearing within a shorter period than would apply under regulations made under subsection (3) below; and
  - (c) specify different circumstances for different cases or classes of case.
- (3) Subject to subsection (4) below and without prejudice to subsection (2)(b) above, the Secretary of State may prescribe—
  - (a) the maximum period during which a child may be kept under this Act in secure accommodation without the authority of a children’s hearing or of the sheriff;
  - (b) the period within which a children’s hearing shall be arranged to consider the case of a child placed in secure accommodation by virtue of regulations made under this section (and different periods may be so prescribed in respect of different cases or classes of case).
- (4) Subsection (8) of section 66 of this Act shall apply in respect of a child placed in secure accommodation under regulations made under this section as if such placing took place by virtue of that section.
- (5) The Secretary of State may by regulations vary the period within which a review of a condition imposed under section 70(9) of this Act shall be reviewed under section 73 of this Act.
- (6) The Secretary of State may by regulations make provision for the procedures to be applied in placing children in secure accommodation; and without prejudice to the generality of this subsection, such regulations may—
  - (a) specify the duties of the Principal Reporter in relation to the placing of children in secure accommodation;
  - (b) make provision for the referral of cases to a children’s hearing for review; and
  - (c) make provision for any person with parental responsibilities in relation to the child to be informed of the placing of the child in secure accommodation.

### Commencement Information

**I14** S. 75 wholly in force at 1.4.1997; s. 75 not in force at Royal Assent see s. 105(1); s. 75 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(1) (with arts. 4-6 (as inserted (7.3.1997) by



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S.I. 1997/744, art. 3); s. 75 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

### *[<sup>F52</sup>Parenting orders*

#### **Textual Amendments**

**F52** S. 75A and cross-heading inserted (4.4.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 116, 145(2); S.S.I. 2004/420, art. 3, Sch. 5

#### **75A Requirement on Principal Reporter to consider application for parenting order**

- (1) Subsection (2) below applies where it appears to—
- (a) the children’s hearing to whom a child’s case has been referred under section 65(1) of this Act; or
  - (b) a children’s hearing arranged, under section 73(8) of this Act, to review a supervision requirement in respect of a child,
- that it might be appropriate for a parenting order to be made in respect of a parent of the child under section 102 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (the “2004 Act”).
- (2) The hearing may require the Principal Reporter to consider whether to apply, under subsection (3) of that section of the 2004 Act, for such an order.
- (3) A requirement under subsection (2) above shall specify—
- (a) the parent in respect of whom it might be appropriate for the order to be made; and
  - (b) by reference to subsections (4) to (6) of that section of the 2004 Act, the condition in respect of which the application might be made.
- (4) In subsection (1) above, “parent” and “child” have the same meanings as in section 117 of the 2004 Act.]

### *[<sup>F53</sup>Failure to provide education for excluded pupils*

#### **Textual Amendments**

**F53** S. 75B and cross-heading inserted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 137(3), 145(2); S.S.I. 2004/420, art. 3, Sch. 4

#### **75B Failure to provide education for excluded pupils: reference to Scottish Ministers**

- (1) Where it appears to the children’s hearing to whom a child’s case has been referred under section 65(1) of this Act that—
- (a) an education authority have a duty under section 14(3) of the Education (Scotland) Act 1980 (c. 44) in relation to the child; and
  - (b) the authority are not complying with that duty,
- they may require the Principal Reporter to refer the matter to the Scottish Ministers.

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- (2) The Principal Reporter shall comply with any requirement made under subsection (1) above.
- (3) A reference made by virtue of subsection (1) above shall be in writing.
- (4) A copy of a reference made by virtue of subsection (1) above shall be sent by the Principal Reporter to the education authority in respect of which the reference is made.]

### *Exclusion orders*

## 76 Exclusion orders.

- (1) Subject to subsections (3) to (9) below, where on the application of a local authority the sheriff is satisfied, in relation to a child, that the conditions mentioned in subsection (2) below are met, he may grant an order under this section (to be known as “an exclusion order”) excluding from the child’s family home any person named in the order (in this Part of this Act referred to as the “named person”).
- (2) The conditions are—
  - (a) that the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably apprehended conduct, of the named person;
  - (b) that the making of an exclusion order against the named person—
    - (i) is necessary for the protection of the child, irrespective of whether the child is for the time being residing in the family home; and
    - (ii) would better safeguard the child’s welfare than the removal of the child from the family home; and
  - (c) that, if an order is made, there will be a person specified in the application who is capable of taking responsibility for the provision of appropriate care for the child and any other member of the family who requires such care and who is, or will be, residing in the family home (in this section, sections 77 to 79 and section 91(3)(f) of this Act referred to as an “appropriate person”).
- (3) No application under subsection (1) above for an exclusion order shall be finally determined under this section unless—
  - (a) the named person has been afforded an opportunity of being heard by, or represented before, the sheriff; and
  - (b) the sheriff has considered any views expressed by any person on whom notice of the application has been served in accordance with rules making such provision as is mentioned in section 91(3)(d) of this Act.
- (4) Where, on an application under subsection (1) above, the sheriff—
  - (a) is satisfied as mentioned in that subsection; but
  - (b) the conditions mentioned in paragraphs (a) and (b) of subsection (3) above for the final determination of the application are not fulfilled,
 he may grant an interim order, which shall have effect as an exclusion order pending a hearing by the sheriff under subsection (5) below held within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act.
- (5) The sheriff shall conduct a hearing under this subsection within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act, and, if satisfied at

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that hearing as mentioned in subsection (1) above, he may, before finally determining the application, confirm or vary the interim order, or any term or condition on which it was granted, or may recall such order.

(6) Where the conditions mentioned in paragraphs (a) and (b) of subsection (3) above have been fulfilled, the sheriff may, at any point prior to the final determination of the application, grant an interim order.

(7) An order under subsection (5) or (6) above shall have effect as an exclusion order pending the final determination of the application.

(8) Where—

- (a) an application is made under subsection (1) above; and
- (b) the sheriff considers that the conditions for making a child protection order under section 57 of this Act are satisfied,

he may make an order under that section as if the application had been duly made by the local authority under that rather than under this section.

(9) The sheriff shall not make an exclusion order if it appears to him that to do so would be unjustifiable or unreasonable, having regard to—

- (a) all the circumstances of the case, including without prejudice to the generality of this subsection the matters specified in subsection (10) below; and
- (b) any requirement such as is specified in subsection (11) below and the likely consequences in the light of that requirement of the exclusion of the named person from the family home.

(10) The matters referred to in subsection (9)(a) above are—

- (a) the conduct of the members of the child’s family (whether in relation to each other or otherwise);
- (b) the respective needs and financial resources of the members of that family;
- (c) the extent (if any) to which—
  - (i) the family home; and
  - (ii) any relevant item in that home,

is used in connection with a trade, business or profession by any member of the family.

(11) The requirement referred to in subsection (9)(b) above is a requirement that the named person (whether alone or with any other person) must reside in the family home, where that home—

[<sup>F54</sup>(a) is on or comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act); or]

- (b) is let, or is a home in respect of which possession is given, to the named person (whether alone or with any other person) by an employer as an incident of employment.

(12) In this Part of this Act—

“caravan” has the meaning given to it by section 29(1) of the <sup>M40</sup>Caravan Sites and Control of Development Act 1960;

“exclusion order”, includes an interim order granted under subsection (4) above and such an order confirmed or varied under subsection (5) above

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and an interim order granted under subsection (6) above; except that in subsection (3) above and in section 79 of this Act, it does not include an interim order granted under subsection (4) above;

“family” has the meaning given in section 93(1) of this Act;

“family home” means any house, caravan, houseboat or other structure which is used as a family residence and in which the child ordinarily resides with any person described in subsection (13) below and the expression includes any garden or other ground or building attached to and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure.

- (13) The description of person referred to in the definition of “family home” in subsection (12) above, is a person who has parental responsibilities in relation to the child, or who ordinarily (and other than by reason only of his employment) has charge of, or control over him.

#### Textual Amendments

**F54** S. 76(11)(a) substituted (27.11.2003) by [The Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), arts. 1, 2, **Sch. para. 12**

#### Marginal Citations

**M40** 1960 c.62.

## 77 **Effect of, and orders etc. ancillary to, exclusion order.**

- (1) An exclusion order shall, in respect of the home to which it relates, have the effect of suspending the named person’s rights of occupancy (if any) and shall prevent him from entering the home, except with the express permission of the local authority which applied for the order.
- (2) The sheriff, on the application of the local authority, may, if and in so far as he thinks fit, when making an exclusion order do any of the things mentioned in subsection (3) below.
- (3) The things referred to in subsection (2) above are—
- (a) grant a warrant for the summary ejection of the named person from the home;
  - (b) grant an interdict prohibiting the named person from entering the home without the express permission of the local authority;
  - (c) grant an interdict prohibiting the removal by the named person of any relevant item specified in the interdict from the home, except either—
    - (i) with the written consent of the local authority, or of an appropriate person; or
    - (ii) by virtue of a subsequent order of the sheriff;
  - (d) grant an interdict prohibiting the named person from entering or remaining in a specified area in the vicinity of the home;
  - (e) grant an interdict prohibiting the taking by the named person of any step of a kind specified in the interdict in relation to the child;
  - (f) make an order regulating the contact between the child and the named person,

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and the sheriff may make any other order which he considers is necessary for the proper enforcement of a remedy granted by virtue of paragraph (a), (b) or (c) of this subsection.

- (4) No warrant, interdict or order (except an interdict granted by virtue of paragraph (b) of subsection (3) above) shall be granted or made under subsection (2) above if the named person satisfies the sheriff that it is unnecessary to do so.
- (5) Where the sheriff grants a warrant of summary ejection under subsection (2) above in the absence of the named person, he may give directions as to the preservation of any of that person’s goods and effects which remain in the family home.
- (6) The sheriff may make an order of the kind specified in subsection (3)(f) above irrespective of whether there has been an application for such an order.
- (7) On the application of either the named person or the local authority, the sheriff may make the exclusion order, or any remedy granted under subsection (2) above, subject to such terms and conditions as he considers appropriate.
- (8) In this Part of this Act references to a “relevant item” are references to any item within the home which both—
  - (a) is owned or hired by any member of the family concerned or an appropriate person or is being acquired by any such member or person under a hire purchase agreement or conditional sale agreement; and
  - (b) is reasonably necessary to enable the home to be used as a family residence, but does not include any such vehicle, caravan or houseboat or such other structure so used as is mentioned in the definition of “family home” in section 76(12) of this Act.

## **78 Powers of arrest etc. in relation to exclusion order.**

- (1) The sheriff may, whether or not on an application such as is mentioned in subsection (2) below, attach a power of arrest to any interdict granted under section 77(2) of this Act by virtue of subsection (3) of that section.
- (2) A local authority may at any time while an exclusion order has effect apply for such attachment of a power of arrest as is mentioned in subsection (1) above.
- (3) A power of arrest attached to an interdict by virtue of subsection (1) above shall not have effect until such interdict, together with the attached power of arrest, is served on the named person.
- (4) If, by virtue of subsection (1) above, a power of arrest is attached to an interdict, the local authority shall, as soon as possible after the interdict, together with the attached power of arrest, is served on the named person, ensure that there is delivered—
  - (a) to the chief constable of the police area in which the family home is situated; and
  - (b) where the interdict was granted by virtue of section 77(3)(e) of this Act, to the chief constable of the area in which the step or conduct which is prevented by the interdict may take place,

a copy of the application for the interdict and of the interlocutor granting the interdict together with a certificate of service of the interdict and, where the application to attach the power of arrest was made after the interdict was granted, a copy of that application and of the interlocutor above granting it and a certificate of service of the interdict together with the attached power of arrest.

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- (5) Where any interdict to which a power of arrest is attached by virtue of subsection (1) above is varied or recalled, the person who applied for the variation or recall shall ensure that there is delivered to each chief constable specified in subsection (4) above a copy of the application for such variation or recall and of the interlocutor granting the variation or recall.
- (6) A constable may arrest without warrant the named person if he has reasonable cause for suspecting that person to be in breach of an interdict to which a power of arrest has been attached by virtue of subsection (1) above.
- (7) Where a person has been arrested under subsection (6) above, the constable in charge of a police station may—
- (a) if satisfied there is no likelihood of that person further breaching the interdict to which the power of arrest was attached under subsection (1) above, liberate him unconditionally; or
  - (b) refuse to liberate that person.
- (8) Such a refusal to liberate an arrested person as is mentioned in subsection (7)(b) above, and the detention of that person until his appearance in court by virtue of either subsection (11) below, or any provision of the [<sup>F55</sup>Criminal Procedure (Scotland) Act 1995], shall not subject that constable to any claim whatsoever.
- (9) Where a person has been liberated under subsection (7)(a) above, the facts and circumstances which gave rise to the arrest shall be reported to the procurator fiscal forthwith.
- (10) Subsections (11) to (13) below apply only where—
- (a) the arrested person has not been released under subsection (7)(a) above; and
  - (b) the procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.
- (11) A person arrested under subsection (6) above shall wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which he was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under [<sup>F56</sup>section 8 of the said Act of 1995], on which the sheriff is not sitting for the disposal of criminal business.
- (12) [<sup>F57</sup>Subsections (1), (2) and (4) of section 15 of the said Act of 1995] (intimation to a person named by the person arrested) shall apply to a person arrested under subsection (6) above as they apply to a person who has been arrested in respect of an offence.
- (13) Where a person is brought before the sheriff under subsection (11) above—
- (a) the procurator fiscal shall present to the court a petition containing—
    - (i) a statement of the particulars of the person arrested under subsection (6) above;
    - (ii) a statement of the facts and circumstances which gave rise to that arrest; and
    - (iii) a request that the person be detained for a further period not exceeding two days;
  - (b) the sheriff, if it appears to him that—

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- (i) the statement referred to in paragraph (a)(ii) above discloses *prima facie* breach of interdict by the arrested person;
  - (ii) proceedings for breach of interdict will be taken; and
  - (iii) there is a substantial risk of violence by the arrested person against any member of the family, or an appropriate person, resident in the family home,
- may order the arrested person to be detained for a period not exceeding two days; and
- (c) the sheriff shall, in any case in which paragraph (b) above does not apply, order the release of the arrested person from custody (unless that person is in custody in respect of some other matter);
- and in computing the period of two days referred to in paragraphs (a) and (b) above, no account shall be taken of a Saturday, a Sunday or any holiday in the court in which proceedings for breach of interdict will require to be raised.

(14) Where a person—

- (a) is liberated under subsection (7)(a) above; or
- (b) is to be brought before the sheriff under subsection (11) above,

the procurator fiscal shall at the earliest opportunity, and, in the case of a person to whom paragraph (b) above applies, before that person is brought before the sheriff, take all reasonable steps to intimate to—

- (i) the local authority which made the application for the interdict;
- (ii) an appropriate person who will reside in, or who remains in residence in, the family home mentioned in the order; and
- (iii) any solicitor who acted for the appropriate person when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that person,

that he has decided that no criminal proceedings should be taken in respect of the facts and circumstances which gave rise to the arrest of the named person.

#### Textual Amendments

- F55** Words in s. 78(8) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(7)(a)**
- F56** Words in s. 78(11) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(7)(b)**
- F57** Words in s. 78(12) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(7)(C)**

## 79 Duration, variation and recall of exclusion order.

- (1) Subject to subsection (2) below, an exclusion order shall cease to have effect on a date six months after being made.
- (2) An exclusion order shall cease to have effect on a date prior to the date mentioned in subsection (1) above where—
  - (a) the order contains a direction by the sheriff that it shall cease to have effect on that prior date;
  - (b) the sheriff, on an application under subsection (3) below, recalls the order before the date so mentioned; or

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- (c) any permission given by a third party to the spouse or partner of the named person, or to an appropriate person, to occupy the home to which the order relates is withdrawn.
- (3) The sheriff may, on the application of the local authority, the named person, an appropriate person or the spouse or partner of the named person, if that spouse or partner is not excluded from the family home and is not an appropriate person, vary or recall an exclusion order and any warrant, interdict, order or direction granted or made under section 77 of this Act.
- (4) For the purposes of this section, partners are persons who live together in a family home as if they were husband and wife.

## **80 Exclusion orders: supplementary provisions.**

- (1) The Secretary of State may make regulations with respect to the powers, duties and functions of local authorities in relation to exclusion orders.
- (2) An application for an exclusion order, or under section 79(3) of this Act for the variation or recall of such an order or of any thing done under section 77(2) of this Act, shall be made to the sheriff for the sheriffdom within which the family home is situated.

*Offences in connection with orders etc. for protection of children*

## **81 Offences in connection with orders etc. for protection of children.**

A person who intentionally obstructs—

- (a) any person acting under a child protection order;
- (b) any person acting under an authorisation granted under section 61(1) or (2) of this Act; or
- (c) a constable acting under section 61(5) of this Act,

shall, subject to section 38(3) and (4) of this Act, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Fugitive children and harbouring*

## **82 Recovery of certain fugitive children.**

- (1) A child who absconds—
  - (a) from a place of safety in which he is being kept under or by virtue of this Part of this Act;
  - (b) from a place (in this section referred to as a “relevant place”) which, though not a place of safety such as is mentioned in paragraph (a) above, is a residential establishment in which he is required to reside by virtue of section 70(3)(a) of this Act or a hospital or other institution in which he is temporarily residing while subject to such a requirement; or
  - (c) from a person who, by virtue of a supervision requirement or of section 74 of this Act, has control over him while he is being taken to, is awaiting being taken to, or (whether or not by reason of being on leave) is temporarily away from, such place of safety or relevant place,



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may be arrested without warrant in any part of the United Kingdom and taken to the place of safety or as the case may be the relevant place; and a court which is satisfied that there are reasonable grounds for believing that the child is within any premises may, where there is such power of arrest, grant a warrant authorising a constable to enter those premises and search for the child using reasonable force if necessary.

- (2) Without prejudice to the generality of subsection (1) above, a child who at the end of a period of leave from a place of safety or relevant place fails to return there shall, for the purposes of this section, be taken to have absconded.
- (3) A child who absconds from a person who, not being a person mentioned in paragraph (c) of subsection (1) above, is a person who has control over him by virtue of a supervision requirement may, subject to the same provisions as those to which an arrest under that subsection is subject, be arrested as is mentioned in that subsection and returned to that person; and the provision in that subsection for a warrant to be granted shall apply as respects such a child as it applies as respects a child mentioned in that subsection.
- (4) If a child—
- (a) is taken under subsection (1) above to a place of safety or relevant place; or
  - (b) is returned under subsection (3) above to a person,
- but the occupier of that place of safety or of that relevant place, or as the case may be that person, is unwilling or unable to receive him, that circumstance shall be intimated forthwith to the Principal Reporter.
- (5) Where intimation is required by subsection (4) above as respects a child, he shall be kept in a place of safety until—
- (a) in a case where he is subject to a supervision requirement, he can be brought before a children’s hearing for that requirement to be reviewed; or
  - (b) in any other case, the Principal Reporter has, in accordance with section 56(6) of this Act, considered whether compulsory measures of supervision are required in respect of him.

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

**C37** SS. 82, 83 excluded (1.4.1997) by 1989 c. 41, s. 51(7)(b) (as substituted (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 48(3) (with Sch. 3 paras. 4, 6); S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3))

## 83 Harboursing.

A person who—

- (a) knowingly assists or induces a child to abscond in circumstances which render the child liable to arrest under subsection (1) or (3) of section 82 of this Act;
- (b) knowingly and persistently attempts to induce a child so to abscond;
- (c) knowingly harbours or conceals a child who has so absconded; or
- (d) knowingly prevents a child from returning—
  - (i) to a place mentioned in paragraph (a) or (b) of the said subsection (1);
  - (ii) to a person mentioned in paragraph (c) of that subsection, or in the said subsection (3),

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shall, subject to section 38(3) and (4) of this Act, to section 51(5) and (6) of the <sup>M41</sup>Children Act 1989 and to Article 70(5) and (6) of the <sup>M42</sup>Children (Northern Ireland) Order 1995 (analogous provision for England and Wales and for Northern Ireland), be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

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

**C38** SS. 82, 83 excluded (E.W.S.) (1.4.1997) by 1989 c. 41, s. 51(7)(b) (as substituted (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 48(3) (with Sch. 3 paras. 4, 6); S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3))

**Marginal Citations**

**M41** 1989 c.41.

**M42** S.I. 1995/755 (N.I.2)

*Implementation of authorisations etc.*

**84 Implementation of authorisations etc.**

Where an order, authorisation or warrant under this Chapter or Chapter 2 of this Part of this Act grants power to find a child and to keep him in a place of safety, such order, authorisation or warrant may be implemented as if it were a warrant for the apprehension of an accused person issued by a court of summary jurisdiction; and any enactment or rule of law applying to such a warrant shall, subject to the provisions of this Act, apply in like manner to the order, authorisation or warrant.

*New evidence: review of establishment of grounds of referral*

**85 Application for review of establishment of grounds of referral.**

- (1) Subject to subsections (3) and (4) below, where subsection (2) below applies an application may be made to the sheriff for a review of a finding such as is mentioned in section 68(10) of this Act.
- (2) This subsection applies where the sheriff, on an application made by virtue of subsection (7) or (9) of section 65 of this Act (in this section referred to as the “original application”), finds that any of the grounds of referral is established.
- (3) An application under subsection (1) above may only be made where the applicant claims—
  - (a) to have evidence which was not considered by the sheriff on the original application, being evidence the existence or significance of which might materially have affected the determination of the original application;
  - (b) that such evidence—
    - (i) is likely to be credible and reliable; and
    - (ii) would have been admissible in relation to the ground of referral which was found to be established on the original application; and

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- (c) that there is a reasonable explanation for the failure to lead such evidence on the original application.
- (4) An application under subsection (1) above may only be made by—
- (a) the child in respect of whom the ground of referral was found to be established; or
  - (b) any person who is a relevant person in relation to that child.
- (5) Where the sheriff on an application under subsection (1) above is not satisfied that any of the claims made in the application are established he shall dismiss the application.
- (6) Where the sheriff is satisfied on an application under subsection (1) above that the claims made in the application are established, he shall consider the evidence and if, having considered it, he is satisfied that—
- (a) none of the grounds of referral in the original application to which the application relates is established, he shall allow the application, discharge the referral to the children’s hearing in respect of those grounds and proceed in accordance with subsection (7) below in relation to any supervision requirement made in respect of the child (whether or not varied under section 73 of this Act) in so far as it relates to any such ground; or
  - (b) any ground of referral in the original application to which the application relates is established, he may proceed in accordance with section 68(10) of this Act.
- (7) Where the sheriff is satisfied as is mentioned in subsection (6)(a) above, he may—
- (a) order that any supervision requirement so mentioned shall terminate—
    - (i) immediately; or
    - (ii) on such date as he may specify; or
  - (b) if he is satisfied that there is evidence sufficient to establish any ground of referral, being a ground which was not stated in the original application, find such ground established and proceed in accordance with section 68(10) of this Act in relation to that ground.
- (8) Where the sheriff specifies a date for the termination of a supervision requirement in accordance with subsection (7)(a)(ii) above, he may, before such termination, order a variation of that requirement, of any requirement imposed under subsection (6) of section 70 of this Act, or of any determination made under subsection (7) of that section; and such variation may take effect—
- (a) immediately; or
  - (b) on such date as he may specify.
- (9) Where the sheriff orders the termination of a supervision requirement in accordance with subsection (7)(a) above, he shall consider whether, after such termination, the child concerned will still require supervision or guidance; and where he considers that such supervision or guidance will be necessary he shall direct a local authority to provide it in accordance with subsection (10) below.
- (10) Where a sheriff has given a direction under subsection (9) above, it shall be the duty of the local authority to comply with that direction; but that duty shall be regarded as discharged where they offer such supervision or guidance to the child and he, being a child of sufficient age and maturity to understand what is being offered, is unwilling to accept it.

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## CHAPTER 4

### PARENTAL RESPONSIBILITIES ORDERS, ETC.

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

**C39** Pt. II Ch. 4 modified (1.4.1997) by S.I. 1996/3255, reg. 7(1)

#### *Parental responsibilities orders*

### 86 Parental responsibilities order: general.

- (1) On the application of a local authority the sheriff may make an order transferring (but only during such period as the order remains in force) the appropriate parental rights and responsibilities relating to a child to them; and any such order shall be known as a “parental responsibilities order”.
- (2) A parental responsibilities order shall not be made unless the sheriff is satisfied that each relevant person either—
  - (a) freely, and with full understanding of what is involved, agrees unconditionally that the order be made; or
  - (b) is a person who—
    - (i) is not known, cannot be found or is incapable of giving agreement;
    - (ii) is withholding such agreement unreasonably;
    - (iii) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child, that is to say the responsibility to safeguard and promote the child’s health, development and welfare or, if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis; or
    - (iv) has seriously ill-treated the child, whose reintegration into the same household as that person is, because of the serious ill-treatment or for other reasons, unlikely.
- (3) The reference in subsection (1) above to the appropriate parental rights and responsibilities relating to the child is to all parental rights and responsibilities except any right to agree, or decline to agree—
  - (a) to the making of an application in relation to the child under section 18 (freeing for adoption or 55 (adoptions abroad) of the <sup>M43</sup>Adoption Act 1976, under section 18 or 49 of the <sup>M44</sup>Adoption (Scotland) Act 1978 or under Article 17, 18 or 57 of the <sup>M45</sup>Adoption (Northern Ireland) Order 1987 (corresponding provision for Scotland and Northern Ireland); or
  - (b) to the making of an adoption order.
- (4) A person is a relevant person for the purposes of this section if he is a parent of the child or a person who for the time being has parental rights in relation to the child.
- (5) The sheriff may, in an order under this section impose such conditions as he considers appropriate; and he may vary or discharge such an order on the application of the local authority, of the child, of any person who immediately before the making of the order is a relevant person or of any other person claiming an interest.

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- (6) An order under this section shall, if not first discharged by the sheriff, terminate on the occurrence of any of the following—
- (a) the child attains the age of eighteen years;
  - (b) he becomes the subject—
    - (i) of an adoption order within the meaning of the Adoption (Scotland) Act 1978; or
    - (ii) of an order under section 18 (freeing for adoption) or 55 (adoption abroad) of the Adoption Act 1976 under section 18 or 49 of the said Act of 1978 or under Article 17, 18 or 57 of the Adoption (Northern Ireland) Order 1987 (corresponding provision for Scotland and Northern Ireland);
  - (c) an order is made for his return under Part I of the <sup>M46</sup>Child Abduction and Custody Act 1985; or
  - (d) a decision, other than a decision mentioned in section 25(2) of the said Act of 1985 (decisions relating to rights of access), is registered with respect to him under section 16 of that Act.

#### Marginal Citations

M43 1976 c.36.

M44 1978 c.28.

M45 S.I. 1987/2203 (N.I.22)

M46 1985 c.60.

#### 86A

The provisions of this Chapter are subject to Sections 2 and 3 of Chapter II of Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

#### 87 Further provision as respects parental responsibilities orders.

- (1) Subject to subsections (2) and (3) below, where a parental responsibilities order is made as respects a child it shall be the duty of the local authority which applied for it (in this section and in section 88 of this Act referred to as the “appropriate authority”) to fulfil the transferred responsibilities while the order remains in force.
- (2) Notwithstanding that a parental responsibilities order has been made as respects a child, the appropriate authority may allow, either for a fixed period or until the authority otherwise determine, the child to reside with a parent, guardian, relative or friend of his in any case where it appears to the authority that so to allow would be for the benefit of the child.
- (3) Without prejudice to any other provision of this Part of this Act, where by virtue of subsection (2) above a child is residing with a person, the appropriate authority may by notice in writing to the person require him to return the child to them by a time specified in the notice; and service of such notice shall be effected either by the authority leaving it in the person’s hands or by their sending it to him, at his and the child’s most recent known address, by recorded delivery service.

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- (4) For the purposes of any application for a parental responsibilities order, rules shall provide for the appointment, in such cases as are prescribed by such rules—
- (a) of a person to act as curator *ad litem* to the child in question at the hearing of the application, safeguarding the interests of the child in such manner as may be so prescribed; and
  - (b) of a person (to be known as a “reporting officer”) to witness agreements to parental responsibilities orders and to perform such other duties as may be so prescribed,
- but one person may, as respects the child, be appointed both under paragraph (a) and under paragraph (b) above; so however that, where the applicant is a local authority, no employee of theirs shall be appointed under either or both of those paragraphs.
- (5) Rules may provide for a person to be appointed reporting officer before the application in question is made.

#### Commencement Information

**I15** S. 87 wholly in force at 1.4.1997; s. 87 not in force at Royal Assent see s. 105(1); s. 87 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(1) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); s. 87 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

## 88 Parental contact.

- (1) This section applies where a parental responsibilities order is being made, or as the case may be is in force, as respects a child.
- (2) The child shall, subject to subsection (3) below, be allowed reasonable contact by the appropriate authority with—
  - (a) each person who, immediately before the making of the parental responsibilities order, is a relevant person for the purposes of section 86 of this Act as respects the child; and
  - (b) where, immediately before that order was made—
    - (i) a residence order or contact order was in force with respect to the child, the person in whose favour the residence order or contact order was made;
    - (ii) a person was entitled to have the child residing with him under an order by a court of competent jurisdiction, that person.
- (3) Without prejudice to subsection (4) below, on an application made to him by the child, by the appropriate authority or by any person with an interest, the sheriff may make such order as he considers appropriate as to the contact, if any, which is to be allowed between the child and any person specified in the order (whether or not a person described in paragraphs (a) and (b) of subsection (2) above).
- (4) A sheriff, on making a parental responsibilities order, or at any time while such an order remains in force as respects a child, may make an order under subsection (3) above as respects the child even where no application has been made to him in that regard.

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- (5) An order under this section may impose such conditions as the sheriff considers appropriate; and he may vary or discharge such an order on the application of the child, the appropriate authority or any person with an interest.
- (6) An order under this section shall, if not first discharged by the sheriff, terminate when the parental responsibilities order to which it is referable does.

## 89 Offences in relation to parental responsibilities orders.

Any person who, knowingly and without lawful authority or reasonable excuse—

- (a) fails to comply with a notice under section 87(3) of this Act;
- (b) harbours or conceals a child—
  - (i) as respects whom a parental responsibilities order has been made; and
  - (ii) who has run away, or been taken away or whose return is required by such a notice; or
- (c) induces, assists or incites a child as respects whom any such order has been made to run away, or stay away, from a place where he is looked after or who takes away such a child from that place,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

### *Miscellaneous*

## 90 Consent of child to certain procedures.

Nothing in this Part of this Act shall prejudice any capacity of a child enjoyed by virtue of section 2(4) of the <sup>M47</sup>Age of Legal Capacity (Scotland) Act 1991 (capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment; and without prejudice to that generality where a condition contained, by virtue of—

- (a) section 66(4)(a), section 67(2) or section 69(9)(a) of this Act, in a warrant; or
- (b) section 70(5)(a) of this Act, in a supervision requirement,

requires a child to submit to any examination or treatment but the child has the capacity mentioned in the said section 2(4), the examination or treatment shall only be carried out if the child consents.

### **Marginal Citations**

M47 1991 c.50.

## 91 Procedural rules in relation to certain applications etc.

- (1) All proceedings to which this section applies are civil proceedings for the purposes of section 32 of the <sup>M48</sup>Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate civil procedure in the sheriff court).
- (2) Any reference in this Part of this Act to regulation or prescription by rules in relation to any proceedings to which this section applies shall be construed, unless the context

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otherwise requires, as a reference to regulation or prescription by rules made under the said section 32.

- (3) Without prejudice to the generality of the said section 32, rules may make provision as to—
- (a) the functions of a person appointed by the sheriff under section 41(1) of this Act and any right of that person to information relating to the proceedings;
  - (b) the circumstances in which any person who has been given notice in accordance with such rules of an application for a child assessment order, or any other person specified in the rules, may apply to the court to have that order varied or discharged;
  - (c) the persons to whom notice of the making of a child protection order shall be given by the applicant for that order, and without prejudice to that generality may in making such provision require such notice to be given to either or both of the child and any relevant person in relation to that child;
  - (d) the persons to whom notice of an application for an exclusion order or, under section 79(3) of this Act, for the recall or variation of such an order or of anything done under section 77(2) of this Act shall be given;
  - (e) the period within which a hearing shall be held under subsection (5) of section 76 of this Act after the granting of an order under subsection (4) of that section;
  - (f) the service of any exclusion order on the named person and the appropriate person within such period as may be specified in the rules.
- (4) In relation to any proceedings to which this section applies, rules may permit a party to such proceedings, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.
- (5) This section applies to any application made to the sheriff, and any other proceeding before the sheriff (whether on appeal or otherwise), under any provision of this Part of this Act.

**Marginal Citations**

M48 1971 c.58.

**92 Legal aid in respect of certain proceedings.**

For section 29 of the <sup>M49</sup>Legal Aid (Scotland) Act 1986 substitute the following section—

**“29 Legal aid in respect of certain proceedings relating to children.**

- (1) This section applies to legal aid in connection with—
- (a) proceedings before the sheriff (including, without prejudice to that generality, proceedings on an appeal to the sheriff principal from a decision of the sheriff) in respect of any matter arising under Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995 (in this section referred to as “the 1995 Act”); or
  - (b) an appeal to the Court of Session in connection with such proceedings.



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- (2) Subject to subsections (3) to (5) below, legal aid to which this section applies shall be available to a child and any relevant person in relation to him in connection with—
- (a) proceedings before the sheriff on an application for a child protection order or child assessment order, or for the variation or recall of such an order;
  - (b) an appeal to the sheriff under section 51 of the 1995 Act against—
    - (i) a decision of a children’s hearing to grant a warrant such as is mentioned in subsection (5)(a) of that subsection; or
    - (ii) any other decision of a children’s hearing;
  - (c) an application—
    - (i) by virtue of section 65(7) or (9) of the 1995 Act for a finding as to whether the grounds for a referral are established; or
    - (ii) under section 85 of the 1995 Act for a review of such a finding;
  - (d) an appeal to the sheriff principal or to Court of Session under section 51 of the 1995 Act.
- (3) Legal aid shall be available under subsection (2)(b)(i) above on an application made to the sheriff without inquiry into the resources of the child or the relevant person.
- (4) Legal aid shall be available under subsection (2)(a),(b)(ii) or (c) above on an application made to the sheriff if the sheriff is satisfied—
- (a) that it is in the interests of the child that legal aid be made available; and
  - (b) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the case cannot be met without undue hardship to the child or to any relevant person in relation to him or the dependants of any of them.
- (5) Legal aid shall be available under subsection (2)(d) above on an application made to the Board if it is satisfied—
- (a) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the appeal cannot be met without undue hardship to the child or to any relevant person in relation to him or the dependants of any of them; and
  - (b) that the child, or as the case may be the relevant person has substantial grounds for making or responding to the appeal and it is reasonable, in the particular circumstances of the case, that legal aid should be made available accordingly.
- (6) The Board may require a person receiving legal aid under subsection (2)(d) above or subsection (9) below to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive such legal aid.
- (7) Subject to subsection (8) below, legal aid to which this section applies shall be available in connection with proceedings before the sheriff on an application for an exclusion order (or for the variation or recall of such an order) to—
- (a) a child;
  - (b) a relevant person in relation to a child;

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- (c) a person who is a named person, or will be such a person if the application is granted;
  - (d) a spouse or partner of a person mentioned in paragraph (c) above; and
  - (e) a person who is an appropriate person, or will be such a person if the application is granted.
- (8) Legal aid shall be available under subsection (7) above on an application to the sheriff if the sheriff is satisfied after consideration of the financial circumstances of the applicant and, where the applicant is a child, of any relevant person or appropriate person in relation to him that the expenses of the case cannot be met without undue hardship to the applicant or any dependant of the applicant.
- (9) Legal aid shall be available in connection with any appeal from a decision of the sheriff on an application for an exclusion order or for the variation or recall of such an order to any of the persons mentioned in paragraphs (a) to (e) of subsection (7) above on an application to the Board if it is satisfied—
- (a) after consideration of the financial circumstances of the applicant and, where the applicant is a child, of any relevant person or appropriate person in relation to him, that the expenses of the appeal cannot be met without undue hardship to the applicant or any dependant of the applicant; and
  - (b) that the applicant has substantial grounds for making or responding to the appeal and that it is reasonable, in the particular circumstances of the case, that legal aid should be made available accordingly.
- (10) Where in connection with any proceedings—
- (a) the sheriff has been satisfied as is mentioned in subsection (4)(b) or subsection (8) above; or
  - (b) the Board has been satisfied as is mentioned in subsection (5)(a) or subsection (9)(a) above,
- and has made legal aid available to any person, it shall not be necessary for the sheriff or, as the case may be, the Board to be so satisfied in respect of an application for legal aid by such a person in connection with any subsequent proceedings arising from such proceedings.
- (11) Legal aid to which this section applies shall consist of representation by a solicitor and, where appropriate, by counsel in any proceedings (including any appeal) mentioned in subsection (1) above and shall include all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to such proceedings.
- (12) In this section—
- (a) “child” and “relevant person” have the meanings given by section 93(2) (b) of the 1995 Act;
  - (b) “child protection order”, “child assessment order” and “exclusion order” have the meanings given by section 93(1) of that Act;
  - (c) “named person” and “appropriate person” have the meanings given by section 76 of that Act; and
  - (d) “partner” shall be construed in accordance with section 79(4) of that Act.”.

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### Marginal Citations

M49 1986 c.47.

## Interpretation of Part II

### 93 Interpretation of Part II.

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

“accommodation” shall be construed in accordance with section 25(8) of this Act;

“chief social work officer” means an officer appointed under section 3 of the <sup>M50</sup>Social Work (Scotland) Act 1968;

“child assessment order” has the meaning given by section 55(1) of this Act;

“child protection order” has the meaning given by section 57(1) of this Act;

“children’s hearing” shall be construed in accordance with section 39(3), but does not include a business meeting arranged under section 64, of this Act;

“compulsory measures of supervision” means, in respect of a child, such measures of supervision as may be imposed upon him by a children’s hearing;

“constable” means a constable of a police force within the meaning of the <sup>M51</sup>Police (Scotland) Act 1967;

“contact order” has the meaning given by section 11(2)(d) of this Act;

“disabled” has the meaning given by section 23(2) of this Act;

[<sup>F58</sup>“education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c. 44);]

“exclusion order” has the meaning given by section 76(12) of this Act;

“family”, in relation to a child, includes—

(a) any person who has parental responsibility for the child; and

(b) any other person with whom the child has been living;

“local authority” means a council constituted under section 2 of the <sup>M52</sup>Local Government etc. (Scotland) Act 1994;

“local government area” shall be construed in accordance with section 1 of the said Act of 1994;

“parental responsibilities” has the meaning given by section 1(3) of this Act;

“parental responsibilities order” has the meaning given by section 86(1) of this Act;

“parental rights” has the meaning given by section 2(4) of this Act;

“place of safety”, in relation to a child, means—

(a) a residential or other establishment provided by a local authority;

(b) a community home within the meaning of section 53 of the <sup>M53</sup>Children Act 1989;

(c) a police station;

(d) [<sup>F59</sup>a hospital, or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child;

(e) the dwelling-house of a suitable person who is so willing; or

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(f) any other suitable place the occupier of which is so willing.

“the Principal Reporter” means the Principal Reporter appointed under section 127 of the said Act of 1994 or any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of that Act, any function of the Principal Reporter under this Act;

“relevant local authority”, in relation to a child who is subject to a warrant granted under this Part of this Act or to a supervision requirement, means the local authority for whose area [<sup>F60</sup>there is established] the children’s panel from which the children’s hearing which granted the warrant or imposed the supervision requirement was [<sup>F61</sup>constituted];

“residence order” has the meaning given by section 11(2)(c) of this Act;

“residential establishment”—

- (a) in relation to a place in Scotland, means an establishment (whether managed by a local authority, by a voluntary organisation or by any other person) which provides residential accommodation for children for the purposes of this Act or the <sup>M54</sup>Social Work (Scotland) Act 1968;
- (b) in relation to a place in England and Wales, means a community home, voluntary home or [<sup>F62</sup>private] children’s home (within the meaning of the Children Act 1989); and
- (c) in relation to a place in Northern Ireland, means a home provided under Part VIII of the <sup>M55</sup>Children (Northern Ireland) Order 1995, or a voluntary home, or a registered children’s home (which have respectively the meanings given by that Order);

“school age” shall be construed in accordance with section 31 of the <sup>M56</sup>Education (Scotland) Act 1980;

“secure accommodation” means accommodation provided in a residential establishment, approved <sup>F63</sup>[by the Scottish Ministers in accordance with regulations made under section 29(9)(a) of the Regulation of Care (Scotland) Act 2001 (asp 8) or] by the Secretary of State in accordance with regulations made under <sup>F64</sup>. . . [<sup>F65</sup>section 22(8)(a) of the Care Standards Act 2000], for the purpose of restricting the liberty of children;

“supervision requirement” has the meaning given by 70(1) of this Act, and includes any condition contained in such a requirement or related to it;

“voluntary organisation” means a body (other than a public or local authority) whose activities are not carried on for profit; and

“working day” means every day except—

- (a) Saturday and Sunday;
- (b) December 25th and 26th; and
- (c) January 1st and 2nd.

(2) For the purposes of—

- (a) Chapter 1 and this Chapter (except this section) of this Part [<sup>F66</sup>and section 44], “child” means a person under the age of eighteen years; and
- (b) [<sup>F67</sup>Chapter 2 (except section 44) and Chapter] 3 [<sup>F68</sup>(except section 75A)] of this Part—
  - “child” means—
    - (i) a child who has not attained the age of sixteen years;
    - (ii) a child over the age of sixteen years who has not attained the age of eighteen years and in respect of whom a supervision requirement is in force; or

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(iii) a child whose case has been referred to a children's hearing by virtue of section 33 of this Act;

and for the purposes of the application of those Chapters to a person who has failed to attend school regularly without reasonable excuse includes a person who is over sixteen years of age but is not over school age; and

“relevant person” in relation to a child means—

- (a) any parent enjoying parental responsibilities or parental rights under Part I of this Act;
  - (b) any person in whom parental responsibilities or rights are vested by, under or by virtue of this Act; and
  - (c) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child.
- (3) Where, in the course of any proceedings under Chapter 2 or 3 of this Part, a child ceases to be a child within the meaning of subsection (2) above the provisions of those Chapters of this Part and of any statutory instrument made under those provisions, shall continue to apply to him as if he had not so ceased to be a child.
- (4) Any reference in this Part of this Act to a child—
- (a) being “in need”, is to his being in need of care and attention because—
    - (i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;
    - (ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;
    - (iii) he is disabled; or
    - (iv) he is affected adversely by the disability of any other person in his family;
  - (b) who is “looked after” by a local authority, shall be construed in accordance with section 17(6) of this Act.
- (5) Any reference to any proceedings under this Part of this Act, whether on an application or on appeal, being heard by the sheriff, shall be construed as a reference to such proceedings being heard by the sheriff in chambers.]

#### Textual Amendments

- F58** S. 93(1): definition of "education authority" inserted (S.) (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\), ss. 137\(4\), 145\(2\)](#); S.S.I 2004/420, {art. 3}, Sch. 4
- F59** S. 93(1): paragraphs (d)(e)(f) in definition of "place of safety" substituted (S.) (19.7.2001) for paragraph (d) and word "or" immediately preceding by [2001 asp 8, ss. 74, 81\(2\)](#)
- F60** S. 93(1): words in the definition of "relevant local authority" inserted (S.) (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\), ss. 144\(1\), 145\(2\), Sch. 4 para. 4\(6\)\(a\)\(i\)](#); S.S.I. 2004/420, [art. 3](#), Sch. 1
- F61** S. 93(1): word in the definition of "relevant local authority" substituted (S.) (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\), ss. 144\(1\), 145\(2\), {Sch. 4 para. 4\(6\)\(a\)\(ii\)}](#); S.S.I. 2004/420, [art. 3](#), Sch. 1
- F62** Word in the definition of "residential establishment" in s. 93 substituted (1.4.2002 for E. and otherwise prosp.) by [2000 c. 14, ss. 116, 122, Sch. 4 para. 23\(a\)](#); S.I. 2001/4150, [art. 3\(3\)\(a\)](#) (subject to transitional provisions in art. 4)

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- F63** S. 93(1) words in definition of “secure accommodation” inserted (1.4.2002) (S.) by 2001 asp 8, s. 79, **Sch. 3 para. 19(4)(a)**; S.S.I. 2002/162, **arts. 2(f)(h)** (subject to **arts. 3-13**)
- F64** S. 93(1) words in definition of “secure accommodation” repealed (1.4.2002) (S.) by 2001 asp 8, s. 79, **Sch. 3 para. 19(4)(b)**; S.S.I. 2002/162, **arts. 2(f)(h)** (subject to **arts. 3-13**)
- F65** Words in the definition of “secure accommodation” in s. 93 substituted (1.4.2002 for E. and otherwise prosp.) by 2000 c. 14, ss. 116, 122, **Sch. 4 para. 23(b)**; S.I. 2001/4150, **art. 3(3)(a)** (subject to transitional provisions in **art. 4**)
- F66** Words in s. 93(2)(a) inserted (S.) (27.6.2003) by **Criminal Justice (Scotland) Act 2003 (asp 7)**, **ss. 52(b)(i)**, 89; S.S.I. 2003/288, **art. 2**, **Sch.**
- F67** Words in s. 93(2)(b) substituted (S.) (27.6.2003) by **Criminal Justice (Scotland) Act 2003 (asp 7)**, **ss. 52(b)(ii)**, 89; S.S.I. 2003/288, **art. 2**, **Sch.**
- F68** Words in s. 93(2)(b) inserted (S.) (28.10.2004) by **Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)**, ss. 144(1), 145(2), **Sch. 4 para. 4(6)(b)**; S.S.I. 2004/420, **art. 3**, **Sch. 1**

#### Marginal Citations

- M50** 1968 c.49.  
**M51** 1967 c.77.  
**M52** 1994 c.39.  
**M53** 1989 c. 41.  
**M54** 1968 c.49.  
**M55** S.I. 1995/755 (N.I.2)  
**M56** 1980 c.44.

## PART III

### ADOPTION

#### 94 Approval of adoption society for specific services.

(1) In section 3 of the 1978 Act (approval of adoption societies)—

(a) for subsections (1) and (2) substitute—

“(1) Subject to any regulations made under section 9(1), a body which is a voluntary organisation may apply to the Secretary of State for his approval to its acting, or as the case may be continuing to act, as an adoption society, whether functioning generally or in relation to some service maintained, or to be maintained, as part of the Scottish Adoption Service and specified in the application (the service so specified being in this section and in section 4 referred to as the body’s “specified service”).

(1A) Application under subsection (1) shall be in such manner as may be specified in regulations made by the Secretary of State under this section.

(2) In considering an application under subsection (1), the Secretary of State shall take into account the matters relating to the applicant specified in subsections (3) to (5) and any other matters which appear to him to be relevant; and if, but only if, he is satisfied that, as the case may be, the applicant is likely to make, or is making, an effective contribution to the Scottish Adoption Service or to the applicant’s

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specified service, he shall by notice to the applicant give the approval sought.

- (2A) Approval under subsection (2) shall operate from such date as may be specified in the notice or, in the case of a renewal of approval, from the date of the notice.”;
- (b) in subsection (3)(a), the words “, including in particular its ability to make provision for children who are free for adoption” shall cease to have effect;
- (c) in subsection (5), for the words “areas within which” substitute “ geographical areas within which, the services as respects which ”;
- (d) in subsection (6), after the word “Service” insert “ , or as the case may be to the applicant’s specified service ”; and
- (e) in subsection (7)—
- (i) for the words “a period of” substitute “ such period not exceeding ”; and
- (ii) after the word “operative” insert “ as the Secretary of State may specify in the approval. ”.
- (2) In section 4 of that Act (withdrawal of approval), after the word “Service” insert “ , or as the case may be to the body’s specified service, ”.
- (3) In section 65(1) of that Act (interpretation), in the definition of “adoption society”, after the word “for” insert “ , or in connection with, ”.

#### Commencement Information

**I16** S. 94 wholly in force at 1.4.1997; s. 94 not in force at Royal Assent see s.105(1); s. 94 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(1) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); s. 94 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

## 95 Welfare of child paramount consideration.

For section 6 of the 1978 Act substitute—

### “6 Duty to promote welfare of child.

- (1) Without prejudice to sections 12(8) and 18(8), in reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances but—
- (a) shall regard the need to safeguard and promote the welfare of the child concerned throughout his life as the paramount consideration; and
- (b) shall have regard so far as practicable—
- (i) to his views (if he wishes to express them) taking account of his age and maturity; and
- (ii) to his religious persuasion, racial origin and cultural and linguistic background.
- (2) Without prejudice to the generality of paragraph (b) of subsection (1), a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view for the purposes of that paragraph.”.

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**96 Duty of adoption agency to consider alternatives to adoption.**

After section 6 of the 1978 Act there shall be inserted—

**“6A Duty to consider alternatives to adoption.**

In complying with its duties under section 6 of this Act, an adoption agency shall, before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of that child or whether for him there is some better, practicable, alternative; and if it concludes that there is such an alternative it shall not proceed to make those arrangements.”.

**97 Adoption by person married to natural parent.**

(1) In section 12 of the 1978 Act (making of adoption orders)—

- (a) in subsection (3), at the beginning, insert “ Subject to subsection (3A) ”; and
- (b) after subsection (3) insert—

“(3A) Where the adoption order is made by virtue of section 15(1)(aa), its making shall not operate to extinguish the parental responsibilities and parental rights which immediately before the making of the order were vested in the natural parent to whom the adopter is married.”.

(2) In section 15(1) of that Act (adoption by one person)—

- (a) after paragraph (a) insert—
  - “(aa) not being a person who may make application by virtue of paragraph (b) below, is married to a person—
    - (i) who is the natural parent of the child concerned; and
    - (ii) in whom are vested parental responsibilities and parental rights in relation to the child,”; and
- (b) in paragraph (b), at the beginning insert—

“not being a person who may make application by virtue of paragraph (aa) above,”.

(3) In section 39 of that Act (status conferred by adoption), for subsection (1) substitute—

- “(1) A child who is the subject of an adoption order shall be treated in law—
  - (a) where the adopters are a married couple, as if—
    - (i) he had been born as a legitimate child of the marriage (whether or not he was in fact born after the marriage was constituted); and
    - (ii) he were not the child of any person other than the adopters;
  - (b) where the adoption order is made by virtue of section 15(1)(aa) as if—
    - (i) he had been born as a legitimate child of the marriage between the adopter and the natural parent to whom the adopter is married (whether or not he was in fact born after the marriage was constituted); and
    - (ii) he were not the child of any person other than the adopter and that natural parent; and
  - (c) in any other case, as if—
    - (i) he had been born as a legitimate child of the adopter; and



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(ii) he were not the child of any person other than the adopter.”.

## 98 Further amendments of the 1978 Act; and interpretation of Part III.

- (1) Schedule 2 to this Act, which contains further amendments of the 1978 Act, shall have effect.
- (2) In this Part of this Act, “the 1978 Act” means the <sup>M57</sup>Adoption (Scotland) Act 1978.

### Commencement Information

**I17** S. 98 wholly in force at 1.4.1997; s. 98 not in force at Royal Assent see s. 105(1); s. 98(1) in force for certain purposes and s. 98(2) in force at 1.11.1996 by S.I. 1999/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); s. 98 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(2)-(5) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); s. 98 in force for certain purposes at 1.4.1997 by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3); s. 98 wholly in force at 1.4.1998 by S.I. 1996/3201, art. 3(7)(a) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

### Marginal Citations

**M57** 1978 c.28.

## PART IV

### GENERAL AND SUPPLEMENTAL

## 99 Registration of births by persons who are themselves children.

- (1) In paragraph (a) of section 14(1) of the <sup>M58</sup>Registration of Births, Deaths and Marriages (Scotland) Act 1965 (duty of father and mother to give information of particulars of birth), for the words “father or mother of the child” substitute “child’s father or mother (whether or not they have attained the age of sixteen years) ”.
- (2) Where, at any time after the coming into force of the <sup>M59</sup>Age of Legal Capacity (Scotland) Act 1991 but before the coming into force of subsection (1) above, a person mentioned in the said paragraph (a) who had not at that time attained the age of sixteen years purported to fulfill the duty mentioned in the said section 14(1), he shall be presumed to have had legal capacity to fulfill that duty.
- (3) In section 18 of the said Act of 1965 (registration of birth of child born out of wedlock), after subsection (2) add—
  - “(3) A person under the age of sixteen years has legal capacity—
    - (a) to make a request, declaration or statutory declaration under subsection (1) or (2)(b) above if, in the opinion of the registrar; or
    - (b) to make an application under subsection (2)(c) above if, in the opinion of the sheriff,that person understands the nature of the request or, as the case may be, of the declaration, statutory declaration or application; and without prejudice to the generality of this subsection a person twelve years of age or more shall be presumed to be of sufficient age and maturity to have such understanding.”.

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- (4) Where, at any time after the coming into force of the <sup>M60</sup>Age of Legal Capacity (Scotland) Act 1991 but before the coming into force of subsection (3) above, a person who had not at that time attained the age of sixteen years made a request, declaration, statutory declaration or application mentioned in subsection (1) or (2) of the said section 18 in relation to a child in respect of whose birth an entry was consequently made under the said subsection (1) in a register of births, or as the case may be under the said subsection (2) in the Register of Corrections etc., the person shall be presumed to have had legal capacity to make the request, declaration, statutory declaration, or application in question.

**Marginal Citations**

**M58** 1965 c.49.

**M59** 1991 c.50.

**M60** 1991 c.50.

**100 Inquiries into matters affecting children.**

After section 6A of the <sup>M61</sup>Social Work (Scotland) Act 1968 there shall be inserted—

**“6B Local authority inquiries into matters affecting children.**

- (1) Without prejudice to section 6A(1) of this Act, a local authority may cause an inquiry to be held into their functions under this Act, or any of the enactments mentioned in section 5(1B) of this Act, in so far as those functions relate to children.
- (2) The local authority may, before an inquiry under this section is commenced, direct that it be held in private; but where no such direction is given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (3) Subsections (2) to (6) of section 210 of the <sup>M62</sup>Local Government (Scotland) Act 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section, so however that, for the purposes of the application, any reference in those subsections to a Minister shall be construed as a reference to the local authority and any reference to an officer of his Department as a reference to an officer of that authority.
- (4) The expenses incurred by a local authority in relation to an inquiry under this section (including such reasonable sum as the authority may determine for the services of any of their officers engaged in the inquiry) shall, unless the authority are of the opinion that those expenses should be defrayed in whole or in part by them, be paid by such party to the inquiry as they may direct; and the authority may certify the amount of the expenses so incurred.
- (5) Any sum certified under subsection (4) above and to be defrayed in accordance with a direction under that subsection shall be a debt due by the party directed and shall be recoverable accordingly.
- (6) The local authority may make an award as to the expenses of the parties at the inquiry and as to the parties by whom such expenses shall be paid.”.

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#### Marginal Citations

- M61** 1968 c.49.  
**M62** 1973 c.45.

### 101 Panel for curators *ad litem*, reporting officers and safeguarders.

- [<sup>F69</sup>(1) The Scottish Ministers may by regulations make provision for the establishment of one or more of each of the following—
- (a) a panel of persons from which curators *ad litem* may be appointed under section 58 of the Adoption (Scotland) Act 1978 or under section 87(4) of this Act;
  - (b) a panel of persons from which reporting officers may be appointed under either of those sections; and
  - (c) a panel of persons from which appointments may be made under section 41(1) of this Act.]
- (2) Regulations under subsection (1) above may provide, without prejudice to generality of that subsection—
- (a) for the appointment, qualifications and training of persons who may be appointed to [<sup>F70</sup>those panels]; and
  - (b) for the management and organisation of persons available for appointment from [<sup>F70</sup>those panels].
- [<sup>F71</sup>(3) Regulations under subsection (1) above may provide—
- (a) for the defrayment by local authorities of expenses incurred by members of any panel established by virtue of that subsection; and
  - (b) for the payment by local authorities of fees and allowances for such members.
- (4) Paragraphs 9 and 10(b) of Schedule 1 to this Act shall apply in relation to any panel established by virtue of subsection (1)(c) above as they apply in relation to children's panels.]

#### Textual Amendments

- F69** S. 101(1) substituted (19.7.2001) by 2001 asp 8, ss. 75(a), 81(2)  
**F70** Words in s. 101(2)(a)(b) substituted (19.7.2001) by virtue of 2001 asp 8, ss. 75(b), 81(2)  
**F71** S. 101: subsections (3) and (4) substituted for subsection (3) (19.7.2001) by 2001 asp 8, ss. 75(c), 81(2)

#### Commencement Information

- I18** S. 101 wholly in force at 22.1.2002; s. 101 not in force at Royal Assent see s. 105(1); s. 101 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(1) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); s. 101 wholly in force at 22.1.2002 by S.I. 2001/475, art. 2

### 102 Removal of duty to report on operation of Children Act 1975.

Section 105 of the <sup>M63</sup>Children Act 1975 (which among other things provides that every five years there shall be laid before Parliament by the Secretary of State a report

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on the operation of such sections of that Act as are for the time being in force) shall cease to have effect.

#### Marginal Citations

M63 1975 c.42.

### 103 Interpretation, rules, regulations and Parliamentary control.

- (1) Any reference in this Act, or in any enactment amended by this Act, to a person having, or to there being vested in him, parental responsibilities or parental rights shall, unless the context otherwise requires, be construed as a reference to his having, or to there being so vested, any of those rights or as the case may be responsibilities.
- (2) Any reference in this Act to something being “prescribed” is, unless the context otherwise requires, a reference to its being prescribed by regulations; and any power conferred by this Act on the Secretary of State or the Lord Advocate to make rules or regulations shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Rules or regulations made under this Act—
  - (a) may make different provision for different cases or classes of case; and
  - (b) may exclude certain cases or classes of case.

### 104 Financial provision.

There shall be paid out of money provided by Parliament—

- (a) any expenses of the Secretary of State incurred in consequence of the provisions of this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

### 105 Extent, short title, minor and consequential amendments, repeals and commencement.

- (1) This Act, which subject to subsections (8) to (10) below extends to Scotland only—
  - (a) may be cited as the Children (Scotland) Act 1995; and
  - (b) except for subsections (1), (2) and (6) to (10) of this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint;
 

and different days may be appointed under paragraph (b) above for different purposes.
- (2) An order under subsection (1)(b) above may contain such transitional and consequential provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions brought into force.
- (3) The transitional provisions and savings contained in Schedule 3 to this Act shall have effect but are without prejudice to sections 16 and 17 of the <sup>M64</sup>Interpretation Act 1978 (effect of repeals).
- (4) Schedule 4 to this Act, which contains minor amendments and amendments consequential upon the provisions of this Act, shall have effect.

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- (5) The enactments mentioned in Schedule 5 to this Act (which include spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (6) The Secretary of State may by order made by statutory instrument make such further amendments or repeals, in such enactments as may be specified in the order, as appear to him to be necessary or expedient in consequence of any provision of this Act.
- (7) A statutory instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Sections 18, 26(2), 33, 44, 70(4), 74, 82, 83, 93 and 104 of this Act and this section extend to England and Wales, and those sections and this section (except section 70(4)) also extend to Northern Ireland; but—
  - (a) subsection (4) of this section so extends—
    - (i) to England and Wales, only in so far as it relates to paragraphs 8, 10, 19, 31, 37, 41(1), (2) and (7) to (9), 48 to 52, 54 and 55 of Schedule 4; and
    - (ii) to Northern Ireland, only in so far as it relates to paragraphs 31, 37, 41(1), (2) and (7) to (9), 54, 55 and 58 of that Schedule; and
  - (b) subsection (5) of this section so extends—
    - (i) to England and Wales, only in so far as it relates to the entries in Schedule 5 in respect of Part V of the <sup>M65</sup>Social Work (Scotland) Act 1968, the <sup>M66</sup>Maintenance Orders (Reciprocal Enforcement) Act 1972, section 35(4)(c) of the <sup>M67</sup>Family Law Act 1986, the <sup>M68</sup>Children Act 1989, the <sup>M69</sup>Child Support Act 1991 and the <sup>M70</sup>Education Act 1993; and
    - (ii) to Northern Ireland, only in so far as it relates to the entries in that Schedule in respect of Part V of the Social Work (Scotland) Act 1968, the Maintenance Orders (Reciprocal Enforcement) Act 1972 and section 35(4)(c) of the Family Law Act 1986.
- (9) This section, so far as it relates to the repeal of Part V of the Social Work (Scotland) 1968, also extends to the Channel Islands.
- (10) Her Majesty may by Order in Council direct that any of the relevant provisions specified in the Order shall extend, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, to any of the Channel Islands; and in this subsection “the relevant provisions” means sections 74, 82, 83 and 93 of this Act and any regulations made under section 74 of this Act.

#### Subordinate Legislation Made

- PI** S. 105(1)(b) power partly exercised (24.10.1995): 1.11.1995 appointed for specified provisions by [S.I. 1995/2787, art. 3, Sch.](#)
- S. 105(1)(b) power partly exercised (22.8.1996): different dates appointed for specified provisions by [S.I. 1996/2203, art. 3, Sch.](#) (with [arts. 4-7](#)) (as amended (18.10.1996) by [S.I. 1996/2708, art. 2](#) and (19.1.1997) by [S.I. 1997/137, art. 2](#))
- S. 105(1)(b) power partly exercised (11.12.1996): different dates appointed for specified provisions by [S.I. 1996/3201, art. 3\(1\)-\(7\)](#) (with [arts. 4-6](#)) (as amended (11.12.1996) by [S.I. 1997/744, arts. 2, 3](#))
- S. 105(1) power partly exercised (20.12.2001): 22.1.2002 appointed for specified provisions by [S.S.I. 2001/475, art. 2](#)
- S. 105(1) power partly exercised (21.1.2002): 22.1.2002 appointed for specified provisions and certain purposes by [S.S.I. 2002/12 art. 2](#)

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### Commencement Information

**I19** S. 105 wholly in force at 1.4.1997: s. 105(1)(2)(6)-(10) in force at Royal Assent see s. 105(1); s. 105(4)(5) in force for certain purposes at 1.11.1995 by [S.I. 1995/2787](#), [art. 3](#), [Sch.](#); s. 105(3)-(5) in force for certain purposes at 1.11.1996 by [S.I. 1996/2203](#), [art. 3\(3\)](#), [Sch.](#) (with [arts. 4-7](#)) (as amended (19.1.1997) by [S.I. 1997/137](#), [art. 2](#)); s. 105(4) in force for certain purposes at 12.12.1996 by [S.I. 1996/3201](#), [art. 3\(6\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by [S.I. 1997/744](#), [art. 3](#))); s. 105 in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201](#), [art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by [S.I. 1997/744](#), [arts. 2, 3](#))

### Marginal Citations

**M64** 1978 c.30.  
**M65** 1968 c.49.  
**M66** 1972 c.18.  
**M67** 1986 c.55.  
**M68** 1989 c.41.  
**M69** 1991 c.48.  
**M70** 1993 c.35.

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