



Children (Scotland) Act 1995

1995 CHAPTER 36

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)

C1 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, ^{F1}... a court determines, any matter with respect to a child the welfare of that child throughout his childhood shall be ^{F2}... its paramount consideration.
- (2) In the circumstances mentioned in subsection (4) below, ^{F3}... 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 [^{F4}(4)] of this section, no ^{F5}... order so mentioned shall be made with respect to the child concerned unless ^{F6}... the sheriff

Status: Point in time view as at 01/04/2015.

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considers, that it would be better for the child that the ^{F5}... order be made than that none should be made at all.

[^{F7}(4) The circumstances to which subsection (2) refers are that the sheriff is considering whether to make, vary or discharge an exclusion order.]

(5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm)—

^{F8}(a)

(b) a court considers it necessary to make a determination under or by virtue of [^{F9}Chapter 1 or 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.

Textual Amendments

- F1** Words in s. 16(1) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(a)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F2** Words in s. 16(1) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(a)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F3** Words in s. 16(2) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(b)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F4** Word in s. 16(3) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(c)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F5** Words in s. 16(3) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(c)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F6** Words in s. 16(3) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(c)(iii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F7** S. 16(4) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(d)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F8** S. 16(5)(a) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(e)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F9** Words in s. 16(5)(b) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(e)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

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.

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- (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
 - (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;
 - [^{F10}(b) who is subject to a compulsory supervision order or an interim compulsory supervision order and in respect of whom they are the implementation authority (within the meaning of the Children’s Hearings (Scotland) Act 2011);]
 - ^{F11}(c)
 - (d) who is subject to an order in accordance with which, by virtue of regulations made under section 33(1) of this Act [^{F12}or section 190 of the Children’s Hearings (Scotland) Act 2011 (asp 1) (effect of Orders made outwith Scotland)], they have [^{F13}responsibilities as respects the child] [^{F14}; or
 - (e) in respect of whom a permanence order has, on an application by them under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4), been made and has not ceased to have effect.]
- (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.

Textual Amendments

F10 S. 17(6)(b) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 5 para. 2(4)(a) (with s. 186); S.S.I. 2013/195, arts. 2, 3

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- F11** S. 17(6)(c) repealed (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 2\(4\)\(b\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F12** Words in s. 17(6)(d) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [sch. 1 para. 9\(3\)](#)
- F13** Words in s. 17(6)(d) substituted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 2\(4\)\(c\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F14** S. 17(6)(e) and word inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(1), 121(2), [Sch. 2 para. 9\(4\)\(b\)](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)

Modifications etc. (not altering text)

- C2** S. 17(1) applied (1.4.1997) by [S.I. 1996/3263](#), [reg. 6\(2\)](#)
- C3** S. 17(1)-(5) applied (1.4.1997) by [S.I. 1996/3262](#), [reg. 3\(2\)\(b\)](#)

Commencement Information

- II** 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.

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
 - ^{F15}(aa) the [Children’s Hearings \(Scotland\) Act 2011](#);
 - (b) any of the enactments mentioned in section 5(1B)(a) to (o) of the ^{M1}[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).

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- (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 ^{M2}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 ^{F16}...;
 - [^{F17}(d) the National Convener of Children's Hearings Scotland;]
 - (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.

Textual Amendments

- F15** S. 19(2)(aa) inserted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 5 para. 2(5)(a)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F16** Words in s. 19(5)(c) repealed (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 5 para. 2(5)(b)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F17** S. 19(5)(d) substituted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 5 para. 2(5)(b)(ii)** (with s. 186) (with savings and transitional provisions in S.S.I. 2013/150, art. 12); S.S.I. 2013/195, arts. 2, 3

Modifications etc. (not altering text)

- C4** S. 19(5)(d): savings for effects of 2011 asp 1, sch. 5 para. 2(5)(b)(ii) (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **5** (with art. 4(2)); S.S.I. 2013/195

Commencement Information

- I2** 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

- M1** 1968 c. 49.
M2 1978 c. 29.

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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

- I3** 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 ^{M3}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

- M3** 1978 c. 29.

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

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- (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—
- ^{F18}(za) universal credit under Part 1 of the Welfare Reform Act 2012;]
- (a) income support or ^{F19}working families’ tax credit] payable under the ^{M4}Social Security Contributions and Benefits Act 1992;
- ^{F20}[(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 ^{M5}Jobseekers Act 1995^{F21}; or
- (c) an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance).]

Textual Amendments

- F18** S. 22(4)(za) inserted (29.4.2013) by [The Welfare Reform \(Consequential Amendments\) \(Scotland\) \(No. 2\) Regulations 2013 \(S.S.I. 2013/137\)](#), regs. 1, 5
- F19** Words in s. 22 substituted (5.10.1999) by [1999 c. 10, ss. 1\(2\), 20, Sch. 1 paras. 1, 6\(j\)](#)
- F20** 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](#))
- F21** S. 22(4)(c) and word inserted (27.10.2008) by [Welfare Reform Act 2007 \(c. 5\), ss. 28, 70, Sch. 3 para. 14; S.I. 2008/787, {art. 2\(4\)\(f\)}](#)

Modifications etc. (not altering text)

- C5** 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

- M4** [1992 c.4.](#)
- M5** [1995 c. 18.](#)

Status: Point in time view as at 01/04/2015.

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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 ^{F22}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 ^{F23}—

- (a) a child’s parent or guardian ^{F24}; 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.

^{F25}[(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

- F22** 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](#))
- F23** 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](#))
- F24** 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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F25 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.

[^{F26}(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 ^{M6}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

F26 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

M6 1986 c.33.

[^{F27}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

F27 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

Status: Point in time view as at 01/04/2015.

Changes to legislation: Children (Scotland) Act 1995, Chapter 1 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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)

- C6** 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
 - ^{F28} . . . ;
 - (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) [^{F29}a local authority in England and Wales could place the child in a placement falling within section 22C(6)(c) of the Children Act 1989;]
 - (ii) an authority within the meaning of the ^{M8}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)

Status: Point in time view as at 01/04/2015.

Changes to legislation: Children (Scotland) Act 1995, Chapter 1 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F28** Words in s. 26(1)(a) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), [Sch. 3](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)
- F29** S. 26(2)(b)(i) substituted (1.4.2011 for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), s. 44(4), [Sch. 1 para. 9](#); S.I. 2010/2981, art. 4(a)

Marginal Citations

- M7** 1989 c.41.
- M8** S.I. 1995/755 (N.I.2)

[^{F30} 26A Provision of continuing care: looked after children

- (1) This section applies where an eligible person ceases to be looked after by a local authority.
- (2) An “eligible person” is a person who—
 - (a) is at least sixteen years of age, and
 - (b) is not yet such higher age as may be specified.
- (3) Subject to subsection (5) below, the local authority must provide the person with continuing care.
- (4) “Continuing care” means the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after.
- (5) The duty to provide continuing care does not apply if—
 - (a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,
 - (b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or
 - (c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.
- (6) A local authority's duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.
- (7) The duty to provide continuing care ceases if—
 - (a) the person leaves the accommodation of the person's own volition,
 - (b) the accommodation ceases to be available, or
 - (c) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.
- (8) For the purposes of subsection (7)(b) above, the situations in which accommodation ceases to be available include—
 - (a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,
 - (b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,
 - (c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.

Status: Point in time view as at 01/04/2015.

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- (9) The Scottish Ministers may by order—
- (a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(c) above is the case,
 - (b) modify subsection (5) above so as to add, remove or vary a situation in which the duty to provide continuing care does not apply,
 - (c) modify subsection (7) or (8) above so as to add, remove or vary a situation in which the duty to provide continuing care ceases.
- (10) If a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify—
- (a) the Scottish Ministers, and
 - (b) Social Care and Social Work Improvement Scotland.
- (11) An order under this section—
- (a) may make different provision for different purposes,
 - (b) is subject to the affirmative procedure.
- (12) Before making an order under this section, the Scottish Ministers must consult—
- (a) each local authority, and
 - (b) such other persons as they consider appropriate.
- (13) In this section—
- “carer”, in relation to a care placement, means the family or persons with whom the placement is made,
- “care placement” means a placement such as is mentioned in section 26(1) (a) of this Act,
- “specified” means specified by order made the Scottish Ministers.]

Textual Amendments

F30 S. 26A inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 67(1), 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.

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.

[^{F31}(1A) A local authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of children in need within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above about how they should provide day care for such children in pursuance of that subsection; and

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Changes to legislation: Children (Scotland) Act 1995, Chapter 1 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide day care for such children in pursuance of that subsection.
- (1B) A local authority must, at least once every two years—
- (a) consult such persons as appear to be representative of parents of children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above but are not in need about whether and if so how they should provide day care for such children under that subsection; and
 - (b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of day care for such children under that subsection.]
- (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.
- [^{F32}(3A) A local authority must, at least once every two years—
- (a) consult such persons as appear to be representative of parents of children in need within their area who are in attendance at a school about how they should provide appropriate care for such children in pursuance of subsection (3) above; and
 - (b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide appropriate care for such children in pursuance of that subsection.
- (3B) A local authority must, at least once every two years—
- (a) consult such persons as appear to be representative of parents of children within their area who are in attendance at a school but are not in need about whether and if so how they should provide appropriate care for such children under subsection (3) above; and
 - (b) after having had regard to the views expressed, prepare and publish plans in relation to the provision of appropriate care for such children in their area under that subsection.
- (3C) The Scottish Ministers may by order modify subsection (1A), (1B), (3A) or (3B) above so as to vary the regularity within which a local authority must consult and plan in pursuance of that subsection.
- (3D) An order made under subsection (3C) above is subject to the negative procedure.]
- (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 ^{M9}Education (Scotland) Act 1980.

Status: Point in time view as at 01/04/2015.

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Textual Amendments

F31 S. 27(1A)(1B) inserted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 55(2), 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.

F32 S. 27(3A)-(3D) inserted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 55(3), 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.

Marginal Citations

M9 1980 c.44.

28 Removal of power to arrange for emigration of children.

Section 23 of the ^{M10}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

M10 1968 c.49.

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 [^{F33}who is at least sixteen] but not yet nineteen years of age who, [^{F34}either—
- (a) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or
 - (b) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.]

[^{F35}(1A) An order made under subsection (1)(b) above is subject to the affirmative procedure.]

- (2) If a person within the area of a local authority is at least nineteen, but is less than [^{F36}twenty-six], 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; ^{F37}...

[^{F38}(2A) Subsections (1) and (2) above do not apply to a person during any period when the person is being provided with continuing care under section 26A of this Act.]

- (3) [^{F39}Subject to section 73(2) of the Regulation of Care (Scotland) Act 2001 (asp 8),] assistance given under subsection (1) [^{F40}above or (5A) or (5B) below] may include assistance in kind or in cash.

- (4) Where a person—
- (a) [^{F41}who is at least sixteen years of] age ceases to be looked after by a local authority; or

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- (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.
- [^{F42}(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.
- [After carrying out an assessment under subsection (5) above in pursuance of an
- ^{F43}(5A) application made by a person under subsection (2) above, the local authority—
- (a) must, if satisfied that the person has any eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs; and
- (b) may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person's welfare.
- (5B) A local authority may (but is not required to) continue to provide advice, guidance and assistance to a person in pursuance of subsection (5A) after the person reaches the age of twenty-six.]
- (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 [^{F44}(5B)] 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).]
- [^{F45}(8) For the purposes of subsection (5A)(a) above, a person has “eligible needs” if the person needs care, attention or support of such type as the Scottish Ministers may by order specify.
- (9) An order made under subsection (8) is subject to the affirmative procedure.
- (10) If a local authority becomes aware that a person who is being provided with advice, guidance or assistance by them under this section has died, the local authority must as soon as reasonably practicable notify—
- (a) the Scottish Ministers; and
- (b) Social Care and Social Work Improvement Scotland.]

Textual Amendments

F33 Words in s. 29(1) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), ss. [66\(2\)\(a\)\(i\)](#), [102\(3\)](#); S.S.I. [2014/131](#), art. [2\(2\)\(3\)](#), sch.; S.S.I. [2015/61](#), art. [2\(1\)\(2\)](#), sch.

Status: Point in time view as at 01/04/2015.

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- F34** Words in s. 29(1) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(a)(ii)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F35** S. 29(1A) inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(b)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F36** Word in s. 29(2) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(c)(i)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F37** Words in s. 29(2) repealed (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(c)(ii)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F38** S. 29(2A) inserted (1.4.2015) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 67(2)**, 102(3); S.S.I. 2015/61, art. 2(1)(2), sch.
- F39** 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)**
- F40** Words in s. 29(3) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(d)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F41** Words in s. 29(4) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(e)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F42** 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)**
- F43** S. 29(5A)(5B) inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(f)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F44** Word in s. 29(6) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(g)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F45** S. 29(8)-(10) inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(h)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.

Modifications etc. (not altering text)

- C7** 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)

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 ^{M11}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) [^{F46}A] person is a relevant person for the purposes of subsection (1) above if—
- (a) he is [^{F47}at least sixteen years of] age but not yet [^{F48}twenty-six] years of age; and

Status: Point in time view as at 01/04/2015.

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[^{F49}(b) he either—

- (i) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or
- (ii) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.

(2A) An order made under subsection (2)(b)(ii) above is subject to the affirmative procedure.]

^{F50}(3)

^{F50}(4)

Textual Amendments

- F46** Word in s. 30(2) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(3)(a)(i)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F47** Words in s. 30(2)(a) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **s. 66(3)(a)(ii)(A)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F48** Word in s. 30(2)(a) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **s. 66(3)(a)(ii)(B)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F49** S. 30(2)(b)(2A) substituted for s. 30(2)(b) (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(3)(a)(iii)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F50** S. 30(3)(4) omitted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by virtue of [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(3)(b)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.

Modifications etc. (not altering text)

- C8** 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

- M11** [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

I4 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 ^{F51F52} ..., to have effect in prescribed circumstances and for prescribed purposes of the law of Scotland as if it were an order of that kind ^{F53F52}

(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; ^{F54} ...
- ^{F55F56}(b) ^{F57F58} if that order ... 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.

^{F59F60}(4)

(5) Regulations under this section may modify any provision of—

- (a) the ^{M12}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;
- (b) the ^{M13}Children Act 1989 or the ^{M14}Children and Young Persons Act 1969 [^{F61}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

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- respectively have, by virtue of the regulations, in relation to an order prescribed under subsection (2)(a) above ^{F62F63}...; or
- (c) the ^{M15}Children (Northern Ireland) Order 1995 or the ^{M16}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 ^{F64F63}....

Textual Amendments

- F51** Words in s. 33(1) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(a)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F52** Words in s. 33(1) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F53** Words in s. 33(1) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(a)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F54** Word in s. 33(2) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 1 Pt. 3**
- F55** S. 33(2)(b) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(b)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F56** s. 33(2)(b) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F57** Words in s. 33(2) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(b)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F58** Words in s. 33(2) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F59** S. 33(4) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(c)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F60** S. 33(4) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F61** Words in s. 33(5)(b) inserted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 175**
- F62** Words in s. 33(5)(b) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(d)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F63** Words in s. 33(5)(b)(c) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F64** Words in s. 33(5)(c) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(e)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

Commencement Information

- I5** 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

- M12** 1968 c.49.
M13 1989 c.41.
M14 1969 c.54
M15 S.I. 1995/755 (N.I.2)
M16 1968 c.34 (N.I.)

Status: Point in time view as at 01/04/2015.

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F65 34

Textual Amendments

F65 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 ^{M17}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—

- (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

M17 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—

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- (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 ^{M18}National Health Service (Scotland) Act 1978;
 - (b) any national health service trust established under section 12A of that Act;
 - ^{F66}(c) any person providing—
 - (i) an independent hospital;
 - (ii) a private psychiatric hospital;
 - (iii) an independent clinic; or
 - (iv) an independent medical agency,
 within the meaning given to those expressions by section 10F(2) of the National Health Service (Scotland) Act 1978 (c.29); and]
 - (d) any person providing a care home service (as defined by ^{F67}paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (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 purposes inspect any records or registers relating to that place; and subsections (2A) to (2D) and (4) of section 6 of the ^{M19}Social Work (Scotland) Act 1968 (exercise of powers of entry and inspection) ^{F68}(as in force immediately prior to their repeal by section 8 of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006)] shall apply in respect of a person so authorised as they ^{F69}applied] in respect of a person duly authorised under subsection (1) of that section.

Textual Amendments

- F66** S. 36(3)(c) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 2 para. 4**
- F67** Words in s. 36(3)(d) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 1 para. 6(a)**
- F68** Words in s. 36(5) inserted (23.2.2006) by [Joint Inspection of Children’s Services and Inspection of Social Work Services \(Scotland\) Act 2006 \(asp 3\)](#), **ss. 8(1)(a)**, 10(2)
- F69** Words in s. 36(5) substituted (23.2.2006) by [Joint Inspection of Children’s Services and Inspection of Social Work Services \(Scotland\) Act 2006 \(asp 3\)](#), **ss. 8(1)(b)**, 10(2)

Marginal Citations

- M18** 1978 c.29.
M19 1968 c.49.

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Textual Amendments

F70 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^{M20}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 [^{F71}provides a care home service (as defined by [^{F72}paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8))], or to any person for the time being employed in the management of [^{F73}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 [^{F74}accommodation] but shall do so only if and to the extent that the local authority within whose area the [^{F74}accommodation] is situated have given their approval to the use of the [^{F74}accommodation] (or a part of the [^{F74}accommodation]) for the purposes of this paragraph.

(2) The Secretary of State may by regulations make provision as to—

- (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

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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, [^{F75}section 171 of the Children’s Hearings (Scotland) Act 2011]; and
 - (b) section 32(3) of the ^{M21}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 ^{M22}Foster Children (Scotland) Act 1984 by reason only of such provision.

Textual Amendments

- F71** 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)
- F72** Words in s. 38(1)(b) substituted (1.4.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211), art. 1, **sch. 1 para. 6(b)**
- F73** 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)
- F74** 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)
- F75** Words in s. 38(4) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(7)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

Modifications etc. (not altering text)

- C9** S. 38(5) explained (1.4.1997) by **S.I. 1996/3259, reg. 11**

Commencement Information

- I6** 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 **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

- M20** 1968 c.49.
M21 1969 c.54.
M22 1984 c.56.

Status:

Point in time view as at 01/04/2015.

Changes to legislation:

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