



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART II

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

### CHAPTER I

#### SUPPORT FOR CHILDREN AND THEIR FAMILIES

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

#### **Commencement Information**

- II** 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)

*Status: Point in time view as at 01/04/1997.*

*Changes to legislation: Children (Scotland) Act 1995, Cross Heading: Miscellaneous and General is up to date with all changes known to be in force on or before 15 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)*

### **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>M1</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;
  - (b) the <sup>M2</sup>Children Act 1989 or the <sup>M3</sup>Children and Young Persons Act 1969 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>M4</sup>Children (Northern Ireland) Order 1995 or the <sup>M5</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.

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#### Commencement Information

- I2** 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

- M1** 1968 c.49.  
**M2** 1989 c.41.  
**M3** 1969 c.54  
**M4** S.I. 1995/755 (N.I.2)  
**M5** 1968 c.34 (N.I.)

### 34 Registration and inspection of certain residential grant-aided and independent schools etc.

(1) Part IV of the Social Work (Scotland) Act 1968 (which makes provision as regards residential and other establishments) shall be amended in accordance with this section.

(2) In section 61 (restriction on carrying on of establishments)—

(a) for subsection (1) there shall be substituted—

“(1) In so far as the context admits, the following provisions of this Part of this Act apply—

- (a) except in the case mentioned in paragraph (b) below, to any residential or other establishment the whole or a substantial part of whose functions is to provide persons with such personal care or support, whether or not combined with board and whether for reward or not, as may be required for the purposes of this Act or of the Children (Scotland) Act 1995;
- (b) in the case of a residential establishment which is a grant-aided or independent school (as respectively defined in section 135(1) of the <sup>M6</sup>Education (Scotland) Act 1980), to that establishment if any part of its functions are as described in paragraph (a) above.”;

(b) in subsection (1A)—

- (i) in paragraph (a) of the definition of “establishment”, for the words “sections 61A and” there shall be substituted “ section ”; and
- (ii) at the end of that definition there shall be added “ but an establishment is not excluded for those purposes by paragraph (a) above by reason only of its being registrable by the Registrar of Independent Schools in Scotland; ”; and

(c) in subsection (2), for the words “section 62(8) and (8A) below” there shall be substituted “ sections 61A(1) and 62(8) and (8A) of this Act ”.

(3) For section 61A there shall be substituted—

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**“61A Voluntary registration.**

- (1) A grant-aided or independent school, provided it is not a residential establishment the whole or a substantial part of whose functions is as described in subsection (1)(a) of section 61 of this Act, may be carried on by a person without his being registered in respect of it as mentioned in subsection (2) of that section; but he may if he wishes apply in accordance with section 62, or as the case may be 63, of this Act for such registration.
- (2) Sections 62(8) and (8A) and 65 of this Act shall not apply in relation to establishments as respects which registration has been by virtue of subsection (1) above.”.
- (4) After section 62 there shall be inserted—

**“62A Certificate of registration as respects grant-aided or independent school.**

A certificate of registration granted under section 62 of this Act as respects an establishment which is a grant-aided, or independent, school shall relate to the whole of the establishment except so much as is used exclusively for educational purposes.”.

- (5) In section 65(1) (removal of persons from establishment), after the word “ought”—
  - (a) where it first occurs, there shall be inserted “ (by virtue of subsections (2) and (3)) of section 61 of this Act) ”; and
  - (b) where it occurs for the second time, there shall be inserted “ (by virtue of the said subsections (2) and (3)) ”.
- (6) For section 67 there shall be substituted—

**“67 Entry to examine state and management of establishments etc.**

- (1) A person duly authorised by a local authority may in the area of that authority, at all reasonable times, enter, for a relevant purpose—
  - (a) any establishment as regards which a person is registered, or ought (by virtue of subsections (2) and (3) of section 61 of this Act) to be registered, under section 62 of this Act; or
  - (b) any place which the person so authorised has reasonable cause to believe is being used as such an establishment,
 and subsections (2A) to (2D), (4) and (5) of section 6 of this Act 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.
- (2) “Relevant purpose” in subsection (1) above means—
  - (a) the purpose of making such examinations into the state and management of the establishment or place, and the condition and treatment of the persons in it, as the person so authorised thinks necessary; or
  - (b) the purpose of inspecting any records, or registers (in whatever form they are held) relating to the place, or to any person for whom, under or by virtue of this Act, section 7 (functions of local authorities) or

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8 (provision of after-care services) of the <sup>M7</sup>Mental Health (Scotland) Act 1984, or Part II of the <sup>M8</sup>Children (Scotland) Act 1995, services are being or have been provided in the place.”.

#### Marginal Citations

**M6** 1980 c.44.

**M7** 1984 c.36.

**M8** 1995 c.36.

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

After section 125 of the <sup>M9</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—

- (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

**M9** 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.

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- (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>M10</sup>National Health Service (Scotland) Act 1978;
  - (b) any national health service trust established under section 12A of that Act;
  - (c) any person carrying on—
    - (i) a private hospital registered under Part IV of the <sup>M11</sup>Mental Health (Scotland) Act 1984; or
    - (ii) a nursing home in respect of which either he is registered under section 1(3) of the <sup>M12</sup>Nursing Homes Registration (Scotland) Act 1938 or exemption has been granted under section 6 or 7 of that Act.
- (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 <sup>M13</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.

**Marginal Citations**

- M10** 1978 c.29.  
**M11** 1984 c.36.  
**M12** 1938 c.73.  
**M13** 1968 c.49.

**37 Modification of provisions of Children Act 1989 regarding disqualification from registration as child minder etc.**

In paragraph 2 of Schedule 9 to the <sup>M14</sup>Children Act 1989 (which provides for regulations disqualifying certain persons from registration as a child minder or as a provider of day care for young children), at the end of sub-paragraph (1) there shall be added “unless he has—

- (a) disclosed the fact to the appropriate local authority; and
- (b) obtained their written consent.”.

**Marginal Citations**

- M14** 1989 c.41.

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### **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>M15</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 carries on a residential establishment in respect of which the person is for the time being registered (as mentioned in section 61(2) of that Act), or to any person for the time being employed in the management of that establishment, 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 establishment but shall do so only if and to the extent that the local authority within whose area the establishment is situated have given their approval to the use of the establishment (or a part of the establishment) 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 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>M16</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.

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- (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>M17</sup>Foster Children (Scotland) Act 1984 by reason only of such provision.

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

**C1** S. 38(5) explained (1.4.1997) by S.I. 1996/3259, reg. 11

**Commencement Information**

**I3** 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**

**M15** 1968 c.49.

**M16** 1969 c.54.

**M17** 1984 c.56.



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