



# 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

##### *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>M1</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.

*Status: Point in time view as at 29/04/2013.*

*Changes to legislation: Children (Scotland) Act 1995, Cross Heading: Provision of services is up to date with all changes known to be in force on or before 08 August 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)*

- (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>M2</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>M3</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

**II** 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.  
**M3** 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.

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### Commencement Information

**I2** 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>M4</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

**M4** 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
  - (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.

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- (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—
- [<sup>F1</sup>(za) universal credit under Part 1 of the Welfare Reform Act 2012;]
  - (a) income support or [<sup>F2</sup>working families’ tax credit] payable under the <sup>M5</sup>Social Security Contributions and Benefits Act 1992;
  - <sup>F3</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>M6</sup>Jobseekers Act 1995[<sup>F4</sup>; or
  - (c) an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance).]

#### Textual Amendments

- F1** 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**
- F2** Words in s. 22 substituted (5.10.1999) by [1999 c. 10, ss. 1\(2\), 20, Sch. 1 paras. 1, 6\(j\)](#)
- F3** 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](#))
- F4** 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)

- C1** 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

- M5** [1992 c.4.](#)
- M6** [1995 c. 18.](#)

## 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>F5</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>F6</sup>—
- (a)] a child’s parent or guardian [<sup>F7</sup>; or

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- (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>F8</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

- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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>F9</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

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- (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>M7</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**

**F9** 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**

**M7** 1986 c.33.

**[<sup>F10</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,

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**

**F10** 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;

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- (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
  - (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.

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

- C2** 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
- F11 . . . ;
- (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) [F12 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 M9 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)

**Textual Amendments**

- F11** 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)
- F12** 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**

- M8** 1989 c.41.  
**M9** 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—



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- (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>M10</sup>Education (Scotland) Act 1980.

**Marginal Citations**

**M10** 1980 c.44.

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

Section 23 of the <sup>M11</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**

**M11** 1968 c.49.

**Status:**

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