

*Status: Point in time view as at 23/02/2006.*

**Changes to legislation:** Children (Scotland) Act 1995 is up to date with all changes known to be in force on or before 17 July 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)

## SCHEDULES

### SCHEDULE 1 **S**

Section 39(2).

#### CHILDREN’S PANELS

##### *Appointment*

- 1 The Secretary of State shall, for each local government area, appoint such number of members of children’s panels as he considers appropriate and from among that number appoint a chairman and a deputy chairman.
- 2 A member of a children’s panel shall hold office for such period as is specified by the Secretary of State, but may be removed from office by the Secretary of State at any time.

##### *Children’s Panel Advisory Committees*

- 3 Subject to paragraph 8 below, each local authority shall form a body (to be known as a “Children’s Panel Advisory Committee”) consisting of two members nominated by the local authority and three members nominated by the Secretary of State.
- 4 The Secretary of State may at the request of the local authority provide for an increase in the membership of the Children’s Panel Advisory Committee appointed under paragraph 3 above by such number, not exceeding five, of additional members as the authority specify in relation to their request, the additional members to be nominated as follows—
  - (a) the first, and any second or fourth additional member, by the Secretary of State;
  - (b) any third or fifth additional member, by the local authority.
- 5 The chairman of the Children’s Panel Advisory Committee shall be appointed by the Secretary of State from among such of the members he has nominated as are resident in the local government area for which the panel is appointed.
- 6 It shall be the duty of the Children’s Panel Advisory Committee—
  - (a) to submit names of possible panel members to the Secretary of State;
  - (b) to advise the Secretary of State, in so far as he requires advice, on the suitability of persons referred to him as potential panel members; and
  - (c) to advise the Secretary of State on such matters relating to the general administration of the panels as he may refer to them.
- 7 The Children’s Panel Advisory Committee shall have power—
  - (a) to appoint sub-committees;
  - (b) to appoint to any such sub-committee a person who is not a member of the Children’s Panel Advisory Committee; and
  - (c) to refer all or any of the duties set out in paragraph 6 above to any such sub-committee for their advice.

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### *Joint Advisory Committees*

- 8 (1) Two or more local authorities may, instead of each acting under paragraph 3 above, make arrangements to form a Children’s Panel Advisory Committee for their areas (a “joint advisory committee”).
- (2) A joint advisory committee shall not be formed in pursuance of arrangements made under sub-paragraph (1) above unless the authorities concerned have obtained the consent in writing of the Secretary of State.
- (3) The Secretary of State may give a direction, in any case where a joint advisory committee has not been formed, to two or more local authorities requiring them to form a joint advisory committee; and they shall comply with any such direction.
- (4) Paragraphs 3 to 7, 10(a) and 11(b) of this Schedule shall apply to a joint advisory committee as they apply in respect of a Children’s Panel Advisory Committee and, for the purposes of those paragraphs the local authorities acting under sub-paragraph (1) above shall be regarded as a single local authority.

### *Recruitment and training of panel members*

- 9 The Secretary of State may make such arrangements as he considers appropriate—
- [<sup>F1</sup>(a)] to recruit and train members, or possible members, of the children’s panels [<sup>F2</sup>; and
- (b) to train members, or possible members, of the Children’s Panel Advisory Committees (or of any sub-committees of any of those committees).]

#### **Textual Amendments**

- F1** Words in Sch. 1 para. 9 renumbered as subparagraph (a) (19.7.2001) by 2001 asp 8, ss. 76(a), 81(2)
- F2** Sch. 1 para. 9(b) and word “and” immediately preceding inserted (19.7.2001) by 2001 asp 8, ss. 76(b), 81(2)

- 10 Each local authority shall make such arrangements as they consider appropriate—
- (a) to enable the Children’s Panel Advisory Committee to obtain names for submission to the Secretary of State as potential panel members; and
- (b) to train—
- [<sup>F3</sup>(i) panel members or potential panel members][<sup>F4</sup>; and
- (ii) members or potential members of Children’s Panel Advisory Committees (or of any sub-committees of any of those committees).]

#### **Textual Amendments**

- F3** Words in Sch. 1 para. 10(b) renumbered as head (i) (19.7.2001) by 2001 asp 8, ss. 76(b), 81(2)
- F4** Sch. 1 para. 10(b)(ii) inserted (19.7.2001) by 2001 asp 8, ss. 76(b), 81(2)

### *Expenses of panel members*

- 11 A local authority may pay—
- (a) to a member or a potential member of a children’s panel,

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- (b) to a member of the Children’s Panel Advisory Committee,
  - (c) to any person appointed under paragraph 7 above,
- such allowances as may be determined by the Secretary of State; and he may determine differently in relation to different cases or different classes of case.

*Publication of list of members of children’s panel*

- 12 Each local authority shall publish a list of names and addresses of members of the children’s panel for their area, and that list shall be open for public inspection at the principal offices of the local authority, and at any place where an electors list for the local government area is available for inspection.

SCHEDULE 2 **S**

Section 98(1).

AMENDMENTS OF THE ADOPTION (SCOTLAND) ACT 1978

- 1 The <sup>M1</sup>Adoption (Scotland) Act 1978 shall be amended in accordance with this Schedule.

**Marginal Citations**

**M1** 1978 c.28.

- 2 In section 1(2) (facilities to be provided as part of adoption service)—
- (a) paragraph (a) shall cease to have effect; and
  - (b) for paragraph (c) substitute—
    - “(bb) counselling and assistance (but, without prejudice to sections 51 to 51B, not assistance in cash) to children who have been adopted and to persons who have adopted a child; and
    - (c) counselling for other persons if they have problems relating to adoption.”.

F53

**Textual Amendments**

**F5** Sch. 2 para. 3 repealed (1.4.2004) by 2001 asp 8, ss. 80(1), 81(2), Sch. 4; S.S.I. 2004/100, art. 2(f)(g) (with arts. 3, 4 (as amended by S.S.I. 2004/377, art. 2))

- 4 Section 8 (direction where adoption society inactive or defunct) shall cease to have effect.

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- 5 In section 9 (regulations relating to an adoption agency’s exercise of its functions)—
- <sup>F6</sup>(a) .....
- (b) after subsection (3) insert—
- “(3A) Regulations under this section may make provision—
- (a) as to the determination by an adoption agency of whether, as regards a child for whose adoption it proposes to make arrangements, any such agreement as is mentioned in sections 16(1)(b)(i) and 18(1)(a) is likely to be forthcoming and as to a period by the end of which, if they have determined that the agreement is unlikely to be forthcoming and if no application has been made for an adoption order in relation to the child, application for an order under section 18(1) shall require to be made in relation to him; and
- (b) where the case of a child for whose adoption an adoption agency proposes to make arrangements is referred under section 73(4)(c)(ii) or (iii) of the Children (Scotland) Act 1995 to the Principal Reporter (within the meaning of Part II of that Act), as to circumstances in which and, on the occurrence of such circumstances, a period by the end of which, if no application has been made for an adoption order in relation to the child, application for an order under section 18(1) shall require to be made in relation to him.”.

#### Textual Amendments

**F6** Sch. 2 para. 5(a) repealed (1.4.2004) by 2001 asp 8, ss. 80(1), 81(2), Sch. 4; S.S.I. 2004/100, art. 2(f) (g) (with arts. 3, 4 (as amended by S.S.I. 2004/377, art. 2))

#### Commencement Information

**II** Sch. 2 para. 5 wholly in force at 1.4.1997; Sch. 2 para. 5 not in force at Royal Assent see s. 105(1); Sch. 2 para. 5 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(4) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); Sch. 2 para. 5 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)

- 6 In section 11(3) (offence of receiving child illegally placed for adoption), for paragraph (c) substitute—
- “(c) both receives a child placed with him in contravention of subsection (1) and knows that the placement is with a view to his adopting the child.”.
- 7 In section 12 (adoption orders)—
- (a) in subsection (1)—
- (i) for the words “rights and duties relating” substitute “responsibilities and parental rights in relation”; and
- (ii) at the end add—

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- “; except that an adoption order may be made in relation to a person who has attained the age of 18 years if the application for it was made before such attainment.”;
- (b) in subsection (2), for the words “rights and duties” substitute “responsibilities and parental rights”;
  - (c) in subsection (3)—
    - (i) in paragraph (a), for the words “right or duty” substitute “responsibility or parental right”; and
    - (ii) in paragraph (b)(ii), for the words “rights and duties” substitute “responsibilities and parental rights”; and
  - (d) at the end add—

“(9) Where a court making an adoption order in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.”.

#### Commencement Information

- I2** Sch. 2 para. 7 wholly in force at 1.4.1997; Sch. 2 para. 7 not in force at Royal Assent see s. 105(1); Sch. 2 para. 7(a)(i)(b)(c) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 2 para. 7 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)

- 8 In section 14 (adoption by married couple)—
- (a) in subsection (1), the words from “subject” to “certain cases)” shall cease to have effect; and
  - (b) in subsection (2), after paragraph (b) add—

“, or
  - (c) both of them were habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of their application”.

#### Commencement Information

- I3** Sch. 2 para. 8 wholly in force at 1.4.1997; Sch. 2 para. 8 not in force at Royal Assent see s. 105(1); Sch. 2 para. 8(a) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 2 para. 8 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)

- 9 In section 15 (adoption by one person)—
- (a) in subsection (1), the words from “subject” to “certain cases)” shall cease to have effect; and
  - (b) in subsection (2), after paragraph (b) add—

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“, or

- (c) he was habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of his application”.

#### Commencement Information

**I4** Sch. 2 para. 9 wholly in force at 1.4.1997; Sch. 2 para. 9 not in force at Royal Assent see s. 105(1); Sch. 2 para. 9(a) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 2 para. 9 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)

10 In section 16 (provision for parental agreement to adoption order)—

(a) for subsection (2) substitute—

“(2) The grounds mentioned in subsection (1)(b)(ii) are, that the parent or guardian—

- (a) is not known, cannot be found or is incapable of giving agreement;
- (b) is withholding agreement unreasonably;
- (c) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child—
- (i) the responsibility to safeguard and promote the child’s health, development and welfare; or
- (ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis;
- (d) has seriously ill-treated the child, whose reintegration into the same household as the parent or guardian is, because of the serious ill-treatment or for other reasons, unlikely.”;
- and

(b) subsection (5) shall cease to have effect.

11 In section 18 (making and effect of orders freeing for adoption)—

(a) in subsection (1), after the word “agency” insert “ which is a local authority ”;

(b) for subsection (5) substitute—

“(5) On the making of an order under this section, the parental responsibilities and parental rights in relation to the child are transferred to the adoption agency.”;

(c) for subsection (7) substitute—

“(7) Before making an order under this section in the case of a child whose father is not, and has not been, married to the mother and does not have any parental responsibilities or parental rights in

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relation to the child, the court shall satisfy itself in relation to any person claiming to be the father that—

- (a) he has no intention of applying for, or, if he did so apply, it is likely that he would be refused, an order under section 11 of the Children (Scotland) 1995 Act (orders in relation to parental responsibilities and parental rights); and
  - (b) he has no intention of entering into an agreement with the mother under section 4(1) of that Act (acquisition by natural father by agreement of such responsibilities and rights), or, if he has such an intention, that no agreement under that subsection is likely to be made.”; and
- (d) at the end add—

“(9) Where a court making an order under this section in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.”.

#### Commencement Information

- I5** Sch. 2 para. 11 wholly in force at 1.4.1997; Sch. 2 para. 11 not in force at Royal Assent see s. 105(1); Sch. 2 para. 11(b)(c) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 2 para. 11 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)

12 In section 19 (progress reports)—

- (a) in subsection (1)—
  - (i) for the words “(“the former parent”)” substitute “ (in this section and in section 20 referred to as the “relevant parent”) ”; and
  - (ii) for the words “did not do so” substitute—

“either—

    - (a) did not do so; or
    - (b) having done so, subsequently by written notice under this subsection to the adoption agency to which the parental responsibilities and parental rights have been transferred, has withdrawn such declaration.”;
- (b) in subsection (2)—
  - (i) for the words “in which the parental rights and duties were vested” substitute “ to which the parental responsibilities and parental rights were transferred ”; and
  - (ii) for the word “former”, in both places where it occurs, substitute “ relevant ”;
- (c) in subsection (3)—
  - (i) for the word “former”, wherever it occurs, substitute “ relevant ”; and

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- (ii) for the words “have his home with a person with whom he has been placed for adoption” substitute “ be placed with a person with a view to his being adopted by that person ”; and
- (d) in subsection (4)—
  - (i) for the words “the former” substitute “ the relevant ”;
  - (ii) after paragraph (b) add— “ but a declaration under this subsection may be withdrawn in the same way as may a declaration under subsection (6) of section 18, in which event the agency shall no longer be so released ”; and
  - (iii) for the words “that former” substitute “ that relevant ”.

#### Commencement Information

- I6** Sch. 2 para. 12 wholly in force at 1.4.1997; Sch. 2 para. 12 not in force at Royal Assent see s. 105(1); Sch. 2 para. 12(b)(i) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 2 para. 12 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)

- 13 In section 20 (revocation of order under section 18)—
- (a) in subsection (1)—
    - (i) for the word “former” substitute “ relevant ”; and
    - (ii) for the words “rights and duties” substitute “ responsibilities and parental rights ”;
  - (b) after subsection (1) insert—
 

“(1A) The adoption agency, at any time after the making of the order under section 18 when the conditions mentioned in paragraphs (a) and (b) of subsection (1) above are satisfied, may apply to the court which made the order for a further order revoking it.”;
  - (c) in subsection (2)—
    - (i) for the words “the application” substitute “ an application under subsection (1) or (1A) ”; and
    - (ii) for the words “rights and duties” substitute “ responsibilities and parental rights ”;
  - (d) for subsection (3) substitute—
 

“(3) Where an order freeing a child for adoption is revoked under this section, the court shall, by an order under section 11 of the Children (Scotland) Act 1995 determine on whom are to be imposed the parental responsibilities, and to whom are to be given the parental rights, in relation to the child.”;
  - (e) in subsection (4)—
    - (i) for the words “if the application” substitute “ if an application under subsection (1) ”; and
    - (ii) in paragraph (a), for the word “former” substitute “ relevant ”; and
  - (f) in subsection (5), for the word “former” substitute “ relevant ”.



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- I7** Sch. 2 para. 13 wholly in force at 1.4.1997; Sch. 2 para. 13 not in force at Royal Assent see s. 105(1); Sch. 2 para. 13(a)(ii)(c)(ii)(d) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 2 para. 13 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)
- 14 In section 21 (variation of order under section 18 so as to substitute one adoption agency for another)—
- (a) in subsection (1)—
    - (i) for the words “rights and duties” substitute “ responsibilities and parental rights ”; and
    - (ii) for the words “in which they are vested under” substitute “ to which they are transferred by virtue of ”; and
  - (b) in subsection (3)—
    - (i) for the words “rights and duties” substitute “ responsibilities and parental rights ”; and
    - (ii) for the words “vested in” substitute “ been transferred to ”.
- 15 After section 22 insert—
- “22A Children subject to supervision requirements.**
- (1) An approved adoption society shall refer the case of a child who is subject to a supervision requirement to the Principal Reporter where it is satisfied that the best interests of the child would be served by its placing the child for adoption and it intends so to place him.
  - (2) On a case being referred to him under subsection (1), the Principal Reporter shall arrange for a children’s hearing to review the supervision requirement in question and shall make any arrangements incidental to that review.
  - (3) Subsections (9), (13) and (14) of section 73 of the Children (Scotland) Act 1995 (which provide, respectively, for acting on the review of a supervision requirement, a report by a children’s hearing and consideration of that report) shall apply in relation to a children’s hearing arranged under this section as those subsections apply in relation to one arranged by virtue of subsection (4) (c)(iii) of that section.
  - (4) In this section “Principal Reporter” has the same meaning as in Part II of the Children (Scotland) Act 1995.”.
- 16 In section 24 (restrictions on making adoption orders), for subsection (2) substitute—
- “(2) The court may make an adoption order in relation to a child even where it is found that the applicants have, as respects the child, contravened section 51.
  - (3) In considering whether to make an adoption order or an order under section 18(1), the court shall regard the welfare of the child concerned as its

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paramount consideration and shall not make the order in question unless it considers that it would be better for the child that it should do so than that it should not.”.

- 17 In section 25(1) (making of interim order and preconditions for so doing)—
- (a) for the words “of sections 16(1) and 22(1) are complied with” substitute—
- “—
- (a) of section 16(1); and
- (b) in a case where the child was not placed with the applicant by an adoption agency, of section 22(1),
- are complied with”; and
- (b) for the words “vesting the custody of the child in” substitute “ giving parental responsibilities and parental rights to ”.

#### **Commencement Information**

- 18** Sch. 2 para. 17 wholly in force at 1.4.1997; Sch. 2 para. 17 not in force at Royal Assent see s. 105(1); Sch. 2 para. 17(b) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 2 para. 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 After section 25 insert—

#### **“25A Timetable for resolving question as to whether agreement to adoption order etc. should be dispensed with.**

In proceedings in which the question arises as to whether the court is satisfied as is mentioned in section 16(1)(b)(ii) or 18(1)(b), the court shall, with a view to determining the question without delay—

- (a) draw up a timetable specifying periods within which certain steps must be taken in relation to those proceedings; and
- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.”.

- 19 In section 27 (restrictions on removal of a child by a parent or guardian who has agreed to an adoption order or to an order freeing the child for adoption)—
- (a) for subsections (1) and (2), substitute—
- “(1) Where—
- (a) an adoption agency has placed a child with a person with a view to his being adopted by the person; and
- (b) the consent of each parent or guardian of the child has been duly obtained to that placement (whether or not in knowledge of the identity of the person),

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any such parent or guardian shall not be entitled to remove the child from the care and possession of the person without the leave either of the adoption agency or of the court.

- (2) The reference in subsection (1) to consent having been duly obtained is to its having been obtained in accordance with such regulations as may be made by the Secretary of State for the purposes of this section.”; and
- (b) in subsection (3), for the words “contravenes subsection (1) or (2)” substitute “removes a child in contravention of subsection (1)”.

#### Commencement Information

- 19** Sch. 2 para. 19 wholly in force at 1.4.1997; Sch. 2 para. 19 not in force at Royal Assent see s. 105(1); Sch. 2 para. 19 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(3) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); Sch. 2 para. 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)

- 20 In section 28 (restriction on removal of child from care and possession of applicant for adoption order etc.)—
- (a) in subsection (4), for the words from “, in terms of” to the end substitute “under or by virtue of Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995”; and
- (b) in subsection (5), the words “or of a voluntary organisation” and “or the organisation” shall cease to have effect.
- 21 Sections 32 to 37 (protected children) shall cease to have effect.
- 22 In section 45(5) (restrictions as to persons to whom information contained in the Adopted Children Register or in certain other registers or books may be provided, including a restriction as to the minimum age which an adopted person must be for it to be provided to him), for the word “17” substitute “16”.
- 23 In section 49(1) (adoption of children abroad), for the words “vesting in him the parental rights and duties relating” substitute “transferring to him the parental responsibilities and parental rights in relation”.
- 24 In section 51 (prohibition on certain payments)—
- (a) in subsection (1), after the word “section” insert “and of section 51A(3)”;
- (b) in subsection (2), for the words “the court may order any child in respect of whom the offence was committed” substitute “without prejudice to any power which the court has to make any other order in relation to the child as respects whom the offence was committed, it may order him”;
- (c) in subsection (5)—
- (i) at the beginning insert “Subject to section 51B, ”; and

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- (ii) at the end add “ (including any such payment made by virtue of section 51B) ”; and
- (d) subsections (6)(a) and (7) to (11) shall cease to have effect.

25 After section 51 insert—

**“51A Adoption allowances schemes.**

- (1) Subject to subsection (2), an adoption agency which is—
  - (a) a local authority shall, within such period after the coming into force of this section as the Secretary of State may by order direct;
  - (b) an approved adoption society may,
    - prepare a scheme (in this section and in section 51B referred to as an “adoption allowances scheme”) for the payment by the agency of allowances to any person who has adopted, or intends to adopt, a child in any case where arrangements for the adoption were made, or as the case may be are to be made, by the agency.
- (2) The Secretary of State may make regulations as respects adoption allowances schemes; and without prejudice to the generality of this subsection such regulations may in particular make provision as to—
  - (a) the procedure to be followed by an agency in determining whether a person should be paid an allowance;
  - (b) the circumstances in which an allowance may be paid;
  - (c) the factors to be taken into account in determining the amount of an allowance;
  - (d) the procedure for review, variation and termination of allowances;
  - (e) the information about allowances which is to be supplied by an agency to a person who intends to adopt a child; and
  - (f) the procedure to be followed by an agency in drawing up, in making alterations to, or in revoking and replacing, an adoption allowances scheme.
- (3) Section 51(1) shall not apply to any payment made in accordance with an adoption allowances scheme (including any such payment made by virtue of section 51B).

**51B Transitional provisions as respects adoption allowances.**

After the coming into force of section 51A—

- (a) no scheme for the payment of allowances shall be submissible under subsection (5) of section 51; and
- (b) a scheme which has been approved under that subsection of that section shall forthwith be revoked under subsection (6)(b) of that section, so however that where a person was before its revocation receiving payments made in accordance with that scheme he may continue to receive payments so made which, had there been no revocation, would have fallen to be made to him or he may agree to receive, instead of the continued payments, payments made in accordance with an adoption allowances scheme.”.

*Status: Point in time view as at 23/02/2006.*

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### Commencement Information

**I10** Sch. 2 para. 25 wholly in force at 1.4.1998; Sch. 2 para. 25 not in force at Royal assent see s. 105(1); Sch. 2 para. 25 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(5) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); Sch. 2 para. 25 in force for certain purposes at 1.4.1997 by S.I. 1996/3201, art. 3(7)(a) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3); Sch. 2 para. 25 wholly in force at 1.4.1998 by S.I. 1996/3201, art. 3(7)(a) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

- 26 In section 58 (curators *ad litem* and reporting officers), in subsection (2)(c), for the words “rights and duties relating” substitute “responsibilities and parental rights in relation”.
- 27 In section 59(4) (disapplication of provisions regarding rules), for the words “, 11 and 32 to 37” substitute “ and 11 ”.
- 28 In section 60(3) (affirmative procedure for certain orders), the words “or 51(9)” shall cease to have effect.
- 29 In section 65 (interpretation)—
- (a) in subsection (1)—
- (i) in the definition of “adoption order”, in each of paragraphs (b) and (c), for the words “and 30 to 32” substitute “ 30 and 31 ”;
- (ii) after the definition of “child” insert—
- ““compulsory measures of supervision” has the same meaning as in Part II of the Children (Scotland) Act 1995;”;
- (iii) in the definition of “guardian”, paragraph (b) shall cease to have effect;
- (iv) in the definition of “local authority”, the words “, 35(1)” shall cease to have effect;
- (v) after the definition of “overseas adoption” insert—
- ““parent” means, irrespective of whether or not they are, or have been, married to each other—
- (a) the mother of the child, where she has parental responsibilities or parental rights in relation to him;
- (b) the father of the child where he has such responsibilities or rights; and
- (c) both of his parents, where both have such responsibilities or rights;
- “parental responsibilities” and “parental rights” have the meanings respectively given by sections 1(3) and 2(4) of the Children (Scotland) Act 1995 (analogous expressions being construed accordingly);”;

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- (vi) in the definition of “relative” for the words from “and any person” to the end substitute “ where he is not a parent within the meaning of this Act, and any person who would be a relative within the meaning of this definition if the father were such a parent; ” and
- (vii) after the definition of “specified order” insert—
  - ““supervision requirement” has the same meaning as in Part II of the Children (Scotland) Act 1995;”;
- (b) in subsection (3), for the words “44 of the Social Work (Scotland) Act 1968” substitute “ 70 of the Children (Scotland) Act 1995 ”; and
- (c) after subsection (5) add—
  - “(6) Any reference in this Act to a child being in, received into or kept in, care (whether or not such care is expressed as being the care of a local authority and except where the context otherwise requires) shall be taken to be a reference to his being looked after by a local authority and shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995; and any reference to the authority in whose care a child is, shall be construed accordingly.”.

#### Commencement Information

- III** Sch. 2 para. 29 wholly in force at 1.4.1997; Sch. 2 para. 29 not in force at Royal Assent see s. 105(1); Sch. 2 para. 29(a)(iii)(v)(vi) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 2 para. 29 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)

## SCHEDULE 3 S

Section 105(3).

### TRANSITIONAL PROVISIONS AND SAVINGS

- 1 Where, immediately before the day appointed for the coming into force of section 25 of this Act, a child is by virtue of section 15 of the 1968 Act (duty of local authority to provide for orphans, deserted children etc.) in the care of a local authority, the child shall on and after that day be treated as if he had been provided with accommodation under (and within the meaning of) subsection (1) of the said section 25.
- 2 Sections 29 and 30 of this Act shall apply in respect of a person who, at the time when he ceased to be of school age (as defined in section 31 of the <sup>M2</sup>Education (Scotland) Act 1980) or at any subsequent time, was—
  - (a) in the care of a local authority by virtue of the said section 15 or of section 16 of the 1968 Act (assumption of parental rights and powers); or
  - (b) subject to a supervision requirement (within the meaning of section 44(1) of the 1968 Act),
 as they apply in respect of a person who at such time was looked after (within the meaning of Part II of this Act) by a local authority.

*Status: Point in time view as at 23/02/2006.*

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**Marginal Citations**

**M2** 1980 c.44.

- 3 Where the parental rights in respect of a child have, by a resolution under the said section 16 or under section 16A of the 1968 Act (duty of local authority in cases of necessity to assume parental rights and powers vested in a voluntary organisation), vested in a local authority and immediately before the day appointed for the coming into force of section 86 of this Act those rights remain so vested, the resolution shall on and after that day have effect as if it were a parental responsibilities order transferring the appropriate parental rights and responsibilities (as defined in subsection (3) of the said section 86) relating to the child to the authority; and any access order made under section 17B of the 1968 Act in relation to the child (with any order made under section 17C of that Act as respects the access order) being (in either case) an order which immediately before that day remains undischarged, shall on and after that day have effect as if it were an order made under section 88(3) of this Act as respects the child.
- 4 Where the parental rights in respect of a child have, by a resolution under the said section 16, vested in a voluntary organisation (as defined in section 93 of this Act) and immediately before the day mentioned in paragraph 3 above those rights remain so vested, the resolution shall, notwithstanding the repeal by this Act of the said section 16, continue to have effect until one of the following occurs—
- (a) the child attains the age of eighteen years;
  - (b) the resolution is rescinded by the local authority because it appears to them that their doing so would promote the child's welfare;
  - (c) the period of six months commencing with that day expires;
  - (d) an order is made by virtue of section 11(2)(b), or under section 86(1), of this Act in relation to the child;
  - (e) an order is made under section 12 (adoption order) or 18 (order freeing for adoption) of the <sup>M3</sup>1978 c. 21. Adoption (Scotland) Act 1978 in relation to the child.

**Marginal Citations**

**M3** 1978 c.21.

- 5 Where the circumstance by virtue of which a resolution under the said section 16 ceases to have effect is that mentioned in sub-paragraph (c) of paragraph 4 above, the appropriate parental rights and responsibilities (defined as mentioned in paragraph 3 above) in relation to the child shall transfer forthwith to the local authority in whose area he resides; and for the purposes of sections 86(6) and 87 to 89 of this Act the transfer shall be deemed effected by a parental responsibilities order applied for by that authority.
- 6 While a resolution continues to have effect by virtue of paragraph 4 above, sections 17(3A) and (6) to (10), 17A, 17B, 17D, 17E and 20(3) of the 1968 Act (together with the code of practice last published under subsection (5) of the said section 17E) shall continue to have effect in relation to the child in question notwithstanding the repeal by this Act of those sections.

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- 7       Where an order made under—
- (a) section 10 (power of court in actions of divorce etc. to commit care of child to local authority) or 12 (power of court to provide for supervision of child) of the <sup>M4</sup>Matrimonial Proceedings (Children) Act 1958;
  - (b) section 11 of the <sup>M5</sup>Guardianship Act 1973 (orders relating to care and custody of children); or
  - (c) section 26 of the <sup>M6</sup>Adoption (Scotland) Act 1978 (provision for supervision or care where adoption order refused),
- committed the care of the child to, or as the case may be placed the child under the supervision of, a local authority and immediately before the repeal by this Act of the section in question (the “relevant repeal”) that order remained undischarged, the order shall continue to have effect notwithstanding the relevant repeal until one of the following occurs—
- (i) the period of six months commencing with the date of the relevant repeal expires;
  - (ii) the Court of Session direct, or the sheriff directs, that the order be discharged; or
  - (iii) there is an event in consequence of which, but for the provisions (apart from this paragraph) of this Act, the order would have fallen to be discharged.

#### Marginal Citations

- M4** 1958 c.40.  
**M5** 1973 c.29.  
**M6** 1978 c.21.

- 8       (1) Where relevant proceedings in relation to a child have been commenced and on the relevant date have not been concluded, the provisions of Part III of the 1968 Act shall continue to apply to those proceedings until the proceedings are concluded, notwithstanding the repeal of any of those provisions by this Act.
- (2) For the purposes of this paragraph, “relevant proceedings” means any proceedings at a children’s hearing under Part III of the 1968 Act, any application to the sheriff under that Part for a warrant or under section 42(2)(c) of that Act to establish any ground of referral, and any appeal under section 49 or 50 of that Act; and a reference to the commencement, or to the conclusion, of such proceedings shall be construed in accordance with sub-paragraph (3) or, as the case may be, (4) below.
- (3) Relevant proceedings are commenced when one of the following occurs—
- (a) a children’s hearing is arranged under section 37(4) or section 39(3) of the 1968 Act;
  - (b) an application under section 42(2)(c) of that Act is lodged;
  - (c) an appeal to the sheriff under section 49 of that Act is lodged;
  - (d) an application under section 50(2) of that Act is made.
- (4) Relevant proceedings are concluded when one of the following occurs—
- (a) the sheriff discharges the referral under section 42(5) of the 1968 Act;
  - (b) a children’s hearing discharge the referral under section 43(2) of that Act;



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- (c) the period of three weeks after a children’s hearing make a supervision requirement under section 44 of that Act or on remission to them under section 49(5) of that Act, expires provided that no appeal has been lodged within that period against that decision under section 49 of that Act;
  - (d) subject, as respects a decision under section 49(5)(b) of that Act, to head (c) above, the period of twenty eight days after the sheriff has disposed of an appeal under section 49(4), (5) or (6) of that Act expires provided that no application has been made within that period to him to state a case under section 50(2) of that Act;
  - (e) the period of twenty eight days after the sheriff has disposed of a case remitted to him under section 50(3) expires provided that no further application under the said section 50(2) has been made.
- 9 Where a child has been taken to a place of safety, or is being detained in such a place, in accordance with section 37(2) of the 1968 Act before the relevant date, and the first lawful day for the purposes of subsection (4) of that section is on or after that date, the child’s case shall be proceeded with as if that day had been before the relevant date.
- 10 (1) Where on the relevant date a child is subject to a supervision requirement imposed under section 44 of the 1968 Act, he shall be treated as if the requirement had been imposed under section 70 of this Act; and in calculating any period of time for the purposes of section 73 of this Act, that requirement shall be deemed to have been imposed on the day on which the requirement was imposed under the said section 44 or, as the case may be, was last reviewed or varied under the said Act of 1968.
- (2) Where any relevant proceedings are concluded as mentioned in paragraph 8(4)(c) above, a supervision requirement imposed under section 44 of the 1968 Act shall have effect as if it were made under section 70 of this Act.
- (3) Where before the relevant date, or in any relevant proceedings, the sheriff has in relation to a supervision requirement made an order under section 49(6) of the 1968 Act, that order shall have effect in relation to the supervision requirement deemed to have been made under section 70 of this Act as it would have had effect in relation to the supervision requirement made under section 44 of the 1968 Act.
- 11 In this Schedule—  
“the 1968 Act” means the <sup>M7</sup>Social Work (Scotland) Act 1968;  
“the relevant date” means the date on which the repeal of Part III of the 1968 Act by this Act takes effect; and  
“relevant proceedings” shall be construed in accordance with paragraph 8(2) above.

**Marginal Citations**

M7 1968 c.49.

*Status: Point in time view as at 23/02/2006.*

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## SCHEDULE 4 U.K.

Section 105(4).

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Lands Clauses Consolidation (Scotland) Act 1845 (c.19)*

- 1 (1) The Lands Clauses Consolidation (Scotland) Act 1845 shall be amended in accordance with this paragraph.
- (2) In section 7 (which makes provision for certain persons to have full power to sell and convey land)—
- (a) after the word “husbands,” insert “ persons who, within the meaning of Part I of the Children (Scotland) Act 1995, are entitled to act as the legal representatives of a child, ”;
  - (b) after the words “guardians for” the words “persons under a legal disability by reason of nonage” shall cease to have effect; and
  - (c) after the word “whether”, the words “persons under legal disability by reason of nonage” shall cease to have effect;
  - (d) after the word “such” where it appears for the sixth time, insert “ legal representatives, ”; and
  - (e) after the word “such” where it appears for the seventh time, the words “persons under legal disability by reason of nonage” shall cease to have effect.
- (3) In section 67 (certain payments to persons under a disability to be deposited with the Bank)—
- (a) after the word “husband,” insert “ a person who, within the meaning of Part I of the Children (Scotland) Act 1995, is entitled to act as a legal representative of a child ”; and
  - (b) the words “persons under legal disability by reason of nonage” shall cease to have effect.
- (4) In section 69 (nomination of trustees to whom certain payments of under £200 may be paid)—
- (a) the words “legal disability by reason of nonage” shall cease to have effect; and
  - (b) after the word “husbands,” insert “ legal representatives of a child (within the meaning of Part I of the Children (Scotland) Act 1995), ”.
- (5) In section 70 (sums of under £20 to be paid to certain persons), after the word “husbands,” insert “ legal representatives of a child (within the meaning of Part I of the Children (Scotland) Act 1995), ”.

#### *Judicial Factors (Scotland) Act 1849 (c.51)*

- 2 (1) The Judicial Factors (Scotland) Act 1849 shall be amended in accordance with this paragraph.
- (2) In section 1 (interpretation), the words from “the word ”Guardian” to” “years;” shall cease to have effect.
- (3) In section 10 (duty of accountant to supervise judicial factors and others), for the words “guardians and tutors” substitute “ , tutors ”.

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- (4) Section 25(2) (guardians to be subject to the provisions of the Act), shall cease to have effect.
- (5) In section 27 (limitation by court of amount of caution), the words “guardians and” shall cease to have effect.
- (6) In section 31 (power of court to remove tutors etc.), the word “guardian” shall cease to have effect.
- (7) In section 32 (provisions of the Act not to alter existing powers, rights and duties of offices), the word “guardian,” shall cease to have effect.
- (8) In section 33 (power of accountant to obtain information from banks), the words “guardians or” shall cease to have effect.
- (9) In section 34 (petitions for discharge of office), in both places where it occurs, the word “guardian,” shall cease to have effect.
- (10) In section 34A (act of sederunt to provide for other forms of discharge), for the words “, death or coming of age” substitute “ or death ”.
- (11) In section 36 (records held by accountant to be open to inspection), the word “guardianships,” shall cease to have effect.
- (12) In section 37 (accumulation of interest on accounts), the word “guardian,” shall cease to have effect.
- (13) In section 40 (act of sederunt to regulate *inter alia* application of the Act to offices other than judicial factors), in both places where it occurs, the word “guardians,” shall cease to have effect.

*Improvement of Land Act 1864 (c.114)*

- 3 In section 24 of the Improvement of Land Act 1864 (representation of persons under disability in certain applications etc.), for the words from the beginning to “feoffee” where it last occurs substitute “ Any person entitled to act as the legal representative of a person under legal disability by reason of non-age or mental incapacity shall be entitled to act on behalf of that person for the purposes of this Act; and any trustee, judicial factor, executor or administrator shall, subject to any other enactment, have the same rights and powers for the purposes of this Act as if the property vested in or administered by him had been vested in him in his own right; but no such legal representative ”.

*Judicial Factors (Scotland) Act 1880 (c.4)*

- 4 In section 3 of the Judicial Factors (Scotland) Act 1880 (interpretation), in the definition of “judicial factor”—
  - (a) for the word “*absentis*,” substitute “ absentis and ”; and
  - (b) the words from “and” to “required,” shall cease to have effect.

*Heritable Securities (Scotland) Act 1894 (c.44)*

- 5 In section 13 of the Heritable Securities (Scotland) Act 1894 (persons to have powers conferred by Act where person subject to legal disability), for the words “and trustees” substitute “and—

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- (a) any person entitled, within the meaning of Part I of the Children (Scotland) Act 1995, to act as the legal representative of a child; and
- (b) trustees”.

*Trusts (Scotland) Act 1921 (c.58)*

- 6 In section 2 of the Trusts (Scotland) Act 1921 (interpretation)—
- (a) in the definition of “trustee” the words “(including a father or mother acting as guardian of a child under the age of 16 years)” shall cease to have effect; and
  - (b) after the definition of “trustee” insert—
    - ““curator” and “tutor” shall have respectively the meanings assigned to these expressions by section 1 of the Judicial Factors Act 1849;
    - “guardian” shall not include any person who, within the meaning of Part I of the Children (Scotland) Act 1995, is entitled to act as the legal representative of a child;”.

*Children and Young Persons (Scotland) Act 1937 (c. 37)*

- 7 (1) The Children and Young Persons (Scotland) Act 1937 shall be amended in accordance with this paragraph.
- (2) In section 12 (cruelty to persons under sixteen)—
- (a) in subsection (1), for the words from “has the custody” to “that age” substitute “ who has parental responsibilities in relation to a child or to a young person under that age or has charge or care of a child or such a young person, ”;
  - (b) in subsection (2)(a), after the words “young person” insert “ or the legal guardian of a child or young person ”; and
  - (c) in subsection (4), for the words from “of whom” to “or care” substitute “ and he had parental responsibilities in relation to, or charge or care of, that child or young person ”.
- (3) In section 15 (causing or allowing persons under sixteen to be used for begging), in each of subsections (1) and (2), for the words “the custody” substitute “ parental responsibilities in relation to, or having ”.
- (4) In section 22 (exposing children under seven to risk of burning), for the words from “having the custody” to “seven years” substitute “ and who has parental responsibilities in relation to a child under the age of seven years or charge or care of such a child ”.
- (5) In section 27 (interpretation)—
- (a) the first paragraph shall cease to have effect; and
  - (b) in the second paragraph, for the words “the custody of” substitute “ parental responsibilities in relation to ”.
- (6) In section 110(1) (interpretation)—
- (a) after the definition of “local authority” insert—

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““parental responsibilities” has the same meaning as in section 1(3) of the Children (Scotland) Act 1995 and includes the responsibilities which a father would have as a parent but for the operation of section 3(1)(b) of that Act;”;

(b) for the definition of “Place of Safety”, substitute

““place of safety” has the meaning give by section 93(1) of the Children (Scotland) Act 1995;”;

(c) for the definition of “Residential establishment” substitute

““residential establishment” has the meaning given by the said section 93(1);”.

#### Commencement Information

**I12** Sch. 4 para. 7 wholly in force at 1.4.1997; Sch. 4 para. 7 not in force at Royal Assent see s. 105(1); Sch. 2 para. 7(1)(5)(6)(a) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 4 para. 7 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)

#### *Mines and Quarries Act 1954 (c. 70)*

8 In section 182(1) of the Mines and Quarries Act 1954 (interpretation), in the definition of “parent”, for the words from “means” to “and includes” substitute “ means a parent of a young person or any person who is not a parent of his but who has parental responsibility for him (within the meaning of the <sup>M8</sup>Children Act 1989) or who has parental responsibilities in relation to him (within the meaning of section 1(3) of the Children (Scotland) Act 1995), and includes ”.

#### Marginal Citations

**M8** 1989 c.41.

#### *Matrimonial Proceedings (Children) Act 1958 (c. 40)*

9 In section 11(1) of the Matrimonial Proceedings (Children) Act 1958 (reports as to arrangements for future care and upbringing of children), for the words from the beginning to “the court may” substitute “ Where the court is considering any question relating to the care and upbringing of a child, it may ”.

#### *Factories Act 1961 (c. 34)*

10 In section 176(1) of the Factories Act 1961 (interpretation)—

<sup>F7</sup>(a) .....

(b) in the definition of “parent”, for the words from “means” to “and includes” substitute “ means a parent of a child or young person or any person who is not a parent of his but who has parental responsibility for him (within the meaning of the Children Act 1989) or who has parental responsibilities in relation to him (within the meaning of section 1(3) of the Children (Scotland) Act 1995), and includes ”.

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### Textual Amendments

- F7** Sch. 4 para. 10(a) repealed (1.9.1997) by 1996 c. 56, s. 582(2), **Sch. 38 Pt. II** (with Sch. 39); S.I. 1997/1623, **art. 2(2)**

### Commencement Information

- I13** Sch. 4 para. 10 wholly in force at 1.4.1997; Sch. 2 para. 10 not in force at Royal Assent see s.105(1); Sch. 2 para. 10(b) in force (1.11.1996) by S.I. 1996/2203, **art. 3(3)**, **Sch.** (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, **art. 2**); Sch. 4 para. 10 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**)

### *Education (Scotland) Act 1962 (c. 47)*

- 11 In section 145(33) of the Education (Scotland) Act 1962 (interpretation), for the words “the actual custody of” substitute “ parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has the care of, ”.

### *Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49)*

- 12 (1) The Registration of Births, Deaths and Marriages (Scotland) Act 1965 shall be amended in accordance with this paragraph.
- (2) In section 20(3)(a) (re-registration of birth of person under sixteen), for subparagraphs (i) and (ii) substitute “ , by any person (whether or not he has himself attained the age of sixteen years) having parental responsibilities in relation to that person; ”.
- (3) In section 43 (recording of baptismal name or change of name or surname)—
- (a) in subsection (3), the words from “In this” to the end shall cease to have effect;
  - (b) in subsections (6)(a) and (7), for the words “the parent or guardian” substitute “ the qualified applicant ”;
  - (c) after subsection (9) insert—
 

“(9A) In this section “qualified applicant” means—

    - (a) where only one parent has parental responsibilities in relation to the child, that parent;
    - (b) where both parents have such responsibilities in relation to the child, both parents; and
    - (c) where neither parent has such responsibilities, any other person who has such responsibilities.

(9B) A person may be a qualified applicant for the purposes of this section whether or not he has attained the age of sixteen years”; and
  - (d) subsection (10) shall cease to have effect.
- (4) In section 53(3)(c) (offence of failure by parent to give information concerning birth), after the word “fails” insert “ without reasonable excuse ”.
- (5) In section 56(1) (interpretation), after the definition of “parentage” insert—

*Status: Point in time view as at 23/02/2006.*

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““parental responsibilities” has the meaning given in section 1(3) of the Children (Scotland) Act 1995;”

- 13 Where, at any time after the coming into force of the <sup>M9</sup>Age of Legal Capacity (Scotland) Act 1991 but before the coming into force of—
- (a) sub-paragraph (2) of paragraph 12 of this Schedule, a person’s mother or father, who had not at that time attained the age of sixteen years, purported to apply under section 20(3)(a) of that Act to re-register the person’s birth, the mother, or as the case may be the father, shall be presumed to have had legal capacity to make the application; or
  - (b) sub-paragraph (3)(c) of that paragraph, a person who had not at that time attained the age of sixteen years purported to make an application under any provision of section 43 of that Act (“making an application” including for the purposes of this sub-paragraph, without prejudice to the generality of that expression, signing and delivering a certificate in accordance with subsection (3) of that section) the person shall be presumed to have had legal capacity to make the application.

**Marginal Citations**

M9 1991 c.50.

*Law Reform (Miscellaneous Provisions)(Scotland) Act 1966 (c.19)*

- 14 In section 8 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1966 (variation and recall of certain orders in respect of maintenance, custody etc.)—
- (a) in subsection (1), after paragraph (c) insert—
    - “(cc) an order under section 11 of the Children (Scotland) Act 1995 (orders in respect of parental responsibilities etc.) or under any earlier enactment relating to the custody, care or supervision of a child, or access to a child;”, and
  - (b) in subsection (6), in the definition of “sheriff”, in paragraph (a), for the words “or (c)” substitute “, (c) or (cc)”.

*Social Work (Scotland) Act 1968 (c.49)*

- 15 (1) The Social Work (Scotland) Act 1968 shall be amended in accordance with this paragraph.
- (2) In section 1(1) (duty of local authority to implement statutory duties not falling on other authorities), after the word “Act” insert “ or Part II of the Children (Scotland) Act 1995 ”.
  - (3) In section 4 (arrangements for provision of assistance to local authorities by other bodies), after “1984” insert “ or Part II of the Children (Scotland) Act 1995 ”.
  - (4) In section 5 (powers of the Secretary of State in relation to certain functions of local authorities)—
    - (a) in subsection (1) after the word “Act” insert “ and Part II of the Children (Scotland) Act 1995 ”;
    - (b) in subsection (1B)—

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- (i) before paragraph (o), the word “and” shall cease to have effect; and
- (ii) at the end add “; and
  - (p) Part II of the Children (Scotland) Act 1995.”;
- (c) in subsection (2), in paragraph (c) for the words “and (o)” substitute “, (o) and (p)”; and
- (d) for subsection (3) substitute—
  - “(3) Without prejudice to the generality of subsection (2) above, regulations under this section may make such provision as is mentioned in subsection (4) of this section as regards—
    - (a) the boarding out of persons other than children by local authorities and voluntary organisations, whether under any enactment or otherwise; and
    - (b) the placing of children under paragraph (a), or the making of arrangements in respect of children under paragraph (c), of section 26(1) of the Children (Scotland) Act 1995, by local authorities.
  - (4) The provision referred to in subsection (3) of this section is—
    - (a) for the recording—
      - (i) by local authorities and voluntary organisations, of information relating to those with whom persons are so boarded out, or who are willing to have persons so boarded out with them; and
      - (ii) by local authorities, of information relating to those with whom children are so placed or with whom such arrangements are made or who are willing to have children so placed with them or to enter into such arrangements;
    - (b) for securing that—
      - (i) persons are not so boarded out in any household unless it is for the time being approved by such local authority or voluntary organisation as may be prescribed by the regulations; and
      - (ii) children are not so placed or, in accordance with such arrangements, provided with accommodation, in any household unless it is for the time being approved by the local authority placing the child or as the case may be making the arrangements;
    - (c) for securing that, where possible, the person with whom a child is so placed or with whom such arrangements are made is either of the same religious persuasion as the child or gives an undertaking that the child shall be brought up in that persuasion;
    - (d) for securing—
      - (i) that a person who is, and the place in which he is, so boarded out by a local authority or voluntary organisation is supervised and inspected by that authority or organisation; and
      - (ii) that a child who is, and the place in which he is, so placed or, in accordance with such arrangements,



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provided with accommodation, by a local authority is supervised and inspected by that authority, and that he shall be removed from the place in question if his welfare appears to require it.

(5) In subsections (3) and (4) of this section, “child” has the same meaning as in Chapters 2 and 3 of Part II of the Children (Scotland) Act 1995.”

(5) In section 5B (requirement to establish complaints procedures)—

- (a) in subsection (4), in paragraph (b), for the words “rights in respect of” substitute “ responsibilities and parental rights (within the meaning of section 1(3) and section 2(4) respectively of the Children (Scotland) Act 1995) in relation to ”; and
- (b) in subsection (5), at the end of the definition of “child”, the words from “ and ” to the end of the subsection shall cease to have effect.

(6) <sup>F8</sup> .....

(7) For subsection (1) of section 6A (power of the Secretary of State to hold inquiries), substitute—

“(1) Without prejudice to section 6B(1) of this Act, the Secretary of State may cause an inquiry to be held into—

- (a) the functions of a local authority under this Act or any of the enactments mentioned in section 5(1B) of this Act;
- (b) the functions of an adoption society, within the meaning of section 65 of the <sup>M10</sup>Adoption (Scotland) Act 1978;
- (c) the functions of a voluntary organisation in so far as those functions relate to establishments to which sections 61 to 68 of this Act apply;
- (d) the detention of a child under—
  - (i) section 57 of the <sup>M11</sup>Children and Young Persons (Scotland) Act 1937; or
  - (ii) section 206 or 413 of the <sup>M12</sup>Criminal Procedure (Scotland) Act 1975; or
- (e) the functions of the Principal Reporter under Part III of the <sup>M13</sup>Local Government (Scotland) Act 1994, the Children (Scotland) Act 1995 or any other enactment.”

(8) In section 9 (powers of the Secretary of State with regard to training etc.), in subsections (1) and (2), after the word “Act” insert “ or Part II of the Children (Scotland) Act 1995 ”.

(9) In section 10(1) (making of grants and loans for social work), for the words “and (l)” substitute “ , (l) and (p) ”.

(10) In section 11(1) (local authority authorised by Secretary of State to purchase compulsorily land), in subsection (1), after the word “Act” insert “ or Part II of the Children (Scotland) Act 1995 ”.

(11) In section 12 (general social welfare services of local authorities), for the words from “be given” in subsection (1) to “a person” in subsection (2)(b) substitute—

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“, subject to subsections (3) to (5) of this section, be given in kind or in cash to, or in respect of, any relevant person.

(2) A person is a relevant person for the purposes of this section if, not being less than eighteen years of age, he is”.

(12) In section 28 (burial or cremation)—

(a) in subsection (1), after the word “from,” insert “ or was a child being looked after by, ”; and

(b) after subsection (2) add—

“(3) In subsection (1) of this section, the reference to a child being looked after by a local authority shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.”.

(13) In section 29 (power of local authority to defray expenses of parents etc. visiting persons accommodated by a local authority or attending certain funerals)—

(a) in subsection (1)—

(i) for the words from “a person” to “respect” substitute—

“—

(a) a person, other than a child, in the care of the authority or receiving assistance from the authority; or

(b) a child who is being looked after by the authority,

in respect ”;

(ii) after the words “visiting the person” insert “ or child ”; and

(iii) for the words “the person”, where they occur for the second time, substitute “ him ”;

(b) in subsection (2), for the words from “a person” to “for” substitute—

“—

(a) a person, other than a child, who had been in the care of the authority or receiving assistance from the authority; or

(b) a child who had been looked after by the authority,

for ”; and

(c) after subsection (2), add—

“(3) In subsections (1) and (2) above, references to a child looked after by a local authority shall be construed as is mentioned in subsection (3) of section 28 of this Act.”.

(14) Part III (children in need of compulsory measures of care) shall cease to have effect, with the exception of subsections (1) and (3) of section 31 and the amendments provided for by the said subsection (3) and contained in Schedule 2 to that Act.

(15) In section 59(1) (provision and maintenance of residential and other establishments) after the word “Act,” where it occurs for the second time, insert “ or under Part II of the Children (Scotland) Act 1995, ”

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- <sup>F9</sup>(16) .....
- (17) In section 78 (duty to make contributions in respect of children in care etc.)—
- (a) in subsection (1)—
    - (i) for the words “has been received into care under Part II of this Act” substitute “ is being looked after by a local authority ”; and
    - (ii) in paragraph (a), for the words “his father and mother” substitute “ any natural person who has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to him ”; and
  - (b) for subsection (2) substitute—

“(2) This Part of this Act applies to any supervision requirement which, under paragraph (a) of section 70(3) of the Children (Scotland) Act 1995, requires the child concerned to reside in a place or places other than his own home.”.
- (18) In section 78A (recovery of contributions), in subsection (2)(a), for the words “in their care or under their supervision” substitute “ looked after by them ”.
- (19) In section 79 (recipients of contributions)—
- (a) in subsection (1), for the words “in the care or under the supervision of” substitute “ looked after by ”; and
  - (b) in subsection (2), for the words “having the care or supervision of” substitute “ looking after ”.
- (20) In section 80 (enforcement of duty to make contributions)—
- (a) in subsection (1), for the words from “received” to “requirement” substitute “ looked after by a local authority ”;
  - (b) in subsection (4), for paragraphs (a) and (b) substitute “ throughout the period during which he is looked after by a local authority ”;
  - (c) in subsection (5), for the words “is the maintainable child’s father or mother” substitute “ , being a natural person, has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to the maintainable child ”; and
  - (d) in subsection (7), for the words “having the care or supervision of” substitute “ looking after ”.
- (21) In section 82(1) (recovery of arrears of contributions), for the words “having the care or supervision of” substitute “ looking after ”.
- (22) In section 83(2) (variation of trusts where person in whose care a child has been residing is for the time being residing in England, Wales or Northern Ireland), for the words “having the care or supervision of” substitute “ looking after ”.
- (23) After section 83 insert—

**“83A References in this Part of this Act to child being looked after.**

In this Part of this Act, references to a child being looked after by a local authority shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.”.

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- (24) In section 86 (adjustments between local authorities as regards certain expenditure)
- (a) in subsection (1)—
- (i) in paragraph (a), after the word “Act” insert “, or under section 25 of the Children (Scotland) Act 1995, ”; and
- (ii) in paragraph (b), for the words from “of services” to “Act”, where it occurs for the second time, substitute “, or under or by virtue of Part II of the said Act of 1995, of services and facilities for a person ordinarily so resident (including, in the case of a child, any expenses incurred after he has ceased to be a child, and, in the event of another local authority taking over, under section 25(4) of that Act, the provision of accommodation for him, ”); and
- (b) in subsection (3), after the words “1989” insert “ or provided with accommodation under paragraph (a) of, or by virtue of paragraph (c) of, section 26(1) of the Children (Scotland) Act 1995 ”.
- (25) In section 87 (charges which may be made for services and accommodation), in each of subsections (1) and (1A), after the words “1984” there shall be inserted “ or under or by virtue of Part II of the Children (Scotland) Act 1995 ”.
- (26) Section 88 (duty of parents to notify change of address) shall cease to have effect.
- (27) In section 90(1) (power to make regulations, orders or rules), the words “(other than orders under section 52 and 58 and Part V of this Act)” shall cease to have effect.
- (28) In section 94(1) (interpretation)—
- (a) the definition of “children’s panel” and of “children’s hearing” shall cease to have effect;
- (b) the definition of “compulsory measures of care” shall cease to have effect;
- (c) in the definition of “establishment”, after the word “Act,” insert “ or of Part II of the Children (Scotland) Act 1995, ”;
- (d) the definition of “guardian” shall cease to have effect;
- (e) for the definition of “parent” substitute—
- ““parent” means either parent or both parents, except that where the child was born out of wedlock and the parents have not subsequently married each other it means the natural mother but not the natural father;”;
- (f) the definition of “place of safety” shall cease to have effect;
- (g) in the definition of “prescribed”—
- (i) in paragraph (a), for the words “sections 3 and 36” substitute “ section 3 ”; and
- (ii) paragraph (b) shall cease to have effect;
- (h) in the definition of “residential establishment”, after the word “Act” insert “ or of Part II of the Children (Scotland) Act 1995 ”;
- (i) the definition of “school age” shall cease to have effect;
- (j) in the definition of “supervision requirement”, for the words “section 44(1) of this Act” substitute “ section 70(1) of the Children (Scotland) Act 1995 ”.
- (k) for the definition of “training school” substitute—

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““training school” has the meaning assigned to it by section 180(1) of the Children and Young Persons Act (Northern Ireland) 1968;”

- (29) In section 97 (provisions of the Act which extend to England and Wales)—
- (a) subsection (1), the words “section 44(1) (except head (b)) and (1A)”, “section 58” and “Part V” shall cease to have effect; and
  - (b) subsections (2) and (3) shall cease to have effect.
- (30) In Schedule 2 (general adaptations of Part IV of <sup>M14</sup>Children and Young Persons (Scotland) Act 1937), for paragraph 1 substitute—
- “1 Any reference to a child or to a young person shall be construed as a reference to a child as defined in section 93(2)(b) of the Children (Scotland) Act 1995.”.

#### Textual Amendments

- F8** Sch. 4 para. 15(6) repealed (23.2.2006) by Joint Inspection of Childrens Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3), ss. 8(4)(f), 10(2)
- F9** Sch. 4 para. 15(16) 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)

#### Commencement Information

- I14** Sch. 4 para. 15 wholly in force at 1.4.1997; Sch. 4 para. 15 not in force at Royal Assent see s. 105(1); Sch. 4 para. 15(1)(5)(17(a)(ii)(20)(c)(28)(d)(e) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 4 para. 15 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

- M10** 1978 c.28.  
**M11** 1937 c.37.  
**M12** 1975 c.21.  
**M13** 1994 c.39.  
**M14** 1937 c.37.

#### *Children and Young Persons Act 1969 (c. 54)*

- 16 In Schedule 5 to the Children and Young Persons Act 1969, paragraphs 57 and 65(1) (which relate to the provision of accommodation for children outside Scotland) shall cease to have effect.

#### *Chronically Sick and Disabled Persons Act 1970 (c. 44)*

- 17 (1) The Chronically Sick and Disabled Persons Act 1970 shall be amended in accordance with this paragraph.
- (2) In section 18(2) (information as to accommodation of younger with older persons), for the words “having functions under the Social Work (Scotland) Act 1968” substitute “, in respect of their functions both under the Social Work (Scotland) Act 1968 and under the Children (Scotland) Act 1995, ”.

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- (3) In section 29(2) (modifications of provisions of the Act in their application to Scotland)—
- (a) in paragraph (a), at the end add “ except that in the case of persons under eighteen years of age such references shall instead be construed as references to duties to disabled children (within the meaning of Chapter 1 of Part II of the Children (Scotland) Act 1995) ”; and
- (b) for paragraph (b) substitute—
- “(b) any references to services provided under arrangements made by a local authority under the said section 29 shall be construed as references to services for—
- (i) such chronically sick or disabled, or such mentally disordered, persons provided by virtue of the said section 12; or
- (ii) such disabled children provided under section 23(1) of the said Act of 1995,
- by a local authority;”.

*Sheriff Courts (Scotland) Act 1971 (c. 58)*

- 18 (1) The Sheriff Courts (Scotland) Act 1971 shall be amended in accordance with this paragraph.
- (2) In section 32(1) (power of Court of Session to regulate civil procedure in the sheriff court), after paragraph (i) insert—
- “(j) permitting a person who is not an advocate or solicitor and is not represented by an advocate or solicitor to transmit, whether orally or in writing, the views of a child to the sheriff for the purposes of any enactment which makes provision (however expressed) for the sheriff to have regard to those views.”.
- (3) In section 37(2A) (remit to Court of Session), for the words “the custody” substitute “ parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to a child or the ”.

**Commencement Information**

**I15** Sch. 4 para. 18 wholly in force at 1.11.1996; Sch. 4 para. 18 not in force at Royal Assent see s. 105(1); Sch. 4 para. 18(1)(2) in force at 1.11.1995 by S.I. 1995/2787, art. 3, Sch.; Sch. 4 para. 18(3) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2)

*Employment of Children Act 1973 (c. 24)*

- 19 In section 2(2A) of the Employment of Children Act 1973 (supervision by education authorities), for paragraph (b) substitute—
- “(b) in Scotland, if he has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to the child or care of him.”.

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*Domicile and Matrimonial Proceedings Act 1973 (c. 45)*

- 20 (1) The Domicile and Matrimonial Proceedings Act 1973 shall be amended in accordance with this paragraph.
- (2) In section 10 (ancillary and collateral orders)—
- (a) in subsection (1)—
- (i) for the words from the beginning to “in connection with” substitute “ Where after the commencement of this Act an application is competently made to the Court of Session or to a sheriff court for the making, or the variation or recall, of an order which is ancillary or collateral to ”;
- (ii) the words “as respects the person or property in question” shall cease to have effect; and
- (b) after subsection (1) insert—
- “(1A) For the purposes of subsection (1) above, references to an application for the making, or the variation or recall, of an order are references to the making, or the variation or recall, of an order relating to children, aliment, financial provision on divorce, judicial separation, nullity of marriage or expenses.”.
- (3) In paragraph 11 of Schedule 3 (sisting of consistorial action)—
- (a) in sub-paragraph (1), in the definition of “the relevant order”, for the words from “made” to the end substitute “ relating to aliment or children ”; and
- (b) in sub-paragraph (3), for the words “custody of a child, and the education of a child” substitute “ arrangements to be made as to with whom a child is to live, contact with a child, and any other matter relating to parental responsibilities within the meaning of section 1(3) of the Children (Scotland) Act 1995 or parental rights within the meaning of section 2(4) of that Act ”.

*Land Compensation (Scotland) Act 1973 (c.56)*

- 21 (1) The Land Compensation (Scotland) Act 1973 shall be amended in accordance with this paragraph.
- (2) In section 35(3) (disturbance payments where modification of dwelling required for disabled person), in paragraph (a), after “1968” insert “ or section 23 of the Children (Scotland) Act 1995 ”.
- (3) In section 80(1) (interpretation), in the definition of “disabled person”—
- (a) after “means” insert “—
- (a);
- and
- (b) after “1972” insert “; and
- (b) a child in need within the meaning of section 93(4)(a)(iii) of the Children (Scotland) Act 1995”.

*Local Government (Scotland) Act 1973 (c. 65)*

- 22 (1) The Local Government (Scotland) Act 1973 shall be amended in accordance with this paragraph.

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- (2) In section 56(9) (enactments exempted from repeal by virtue of that section), for paragraph (d) substitute—
- “(d) paragraphs 3 and 8 of Schedule 1 to the Children (Scotland) Act 1995 (Children’s Panel Advisory Committees and joint advisory committees);”.
- (3) In Schedule 25, paragraph 41 shall cease to have effect.
- (4) In Schedule 27, paragraphs 185 and 187 shall cease to have effect.

*Rehabilitation of Offenders Act 1974 (c. 53)*

- 23 (1) The Rehabilitation of Offenders Act 1974 shall be amended in accordance with this paragraph.
- (2) In section 3 (special provision with respect to certain disposals by children’s hearings)—
- (a) for the words “Social Work (Scotland) Act 1968 is that mentioned in section 32(2)(g)” substitute “Children (Scotland) Act 1995 is that mentioned in section 52(2)(i)”; and
- (b) for the words “to the satisfaction of the sheriff under section 42 of that Act, the acceptance or establishment” substitute “(or deemed established) to the satisfaction of the sheriff under section 68 or 85 of that Act, the acceptance, establishment (or deemed establishment)”.
- (3) In section 5 (rehabilitation periods for particular sentences)—
- (a) in subsection (3)(b), for the words “43(2) of the Social Work (Scotland) Act 1968” substitute “69(1)(b) and (12) of the Children (Scotland) Act 1995”;
- (b) in subsection (5)(f), for the words “Social Work (Scotland) Act 1968” substitute “Children (Scotland) Act 1995”;
- (c) in subsection (10), for the words “Social Work (Scotland) Act 1968” substitute “Children (Scotland) Act 1995”; and
- (d) subsection (10A) shall cease to have effect.
- (4) In section 7(2) (limitations on rehabilitation)—
- (a) for paragraph (c) substitute—
- “(c) in any proceedings relating to parental responsibilities or parental rights (within the meaning of section 1(3) and section 2(4) respectively of the Children (Scotland) Act 1995), guardianship, adoption or the provision by any person of accommodation, care or schooling for children under the age of 18 years;
- (cc) in any proceedings under Part II of the Children (Scotland) Act 1995;”;
- (b) paragraph (e) shall cease to have effect; and
- (c) the words from “In the application” to the end shall cease to have effect.

**Commencement Information**

**I16** Sch. 4 para. 23 wholly in force at 1.4.1997; Sch. 4 para. 23 not in force at Royal Assent see s. 105(1); Sch. 4 para. 23(1)(4)(c) in force and Sch. 4 para. 23(4)(a) in force for certain purposes at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 4



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para. 23 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)

*Criminal Procedure (Scotland) Act 1975 (c. 21)*

F10 24 .....

**Textual Amendments**

F10 Sch. 4 para. 24 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 16, 17)

*Local Government (Scotland) Act 1975 (c. 30)*

F11 25 .....

**Textual Amendments**

F11 Sch. 4 para. 25 repealed (23.10.2002) by 2002 asp 11, s. 25, Sch. 6 para. 16; S.S.I. 2002/467, art. 2

*Children Act 1975 (c. 72)*

- 26 (1) The Children Act 1975 shall be amended in accordance with this paragraph.
- (2) Sections 47 to 49 shall cease to have effect.
- (3) In section 50 (payments towards maintenance for children), for the words from “custody” to “authority” substitute “ a child under the age of sixteen is residing with and being cared for (other than as a foster child) by a person other than a parent of the child, a council constituted under section 2 of the <sup>M15</sup>Local Government (Scotland) Act 1994 ”.
- (4) In section 51 (restriction on removal of child where applicant has provided home for three years)—
- (a) in subsection (1), for the words “custody of” substitute “ a residence order in relation to ”;
  - (b) for subsection (2) substitute—
    - “(2) In any case where subsection (1) applies, and the child—
    - (a) was being looked after by a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 before he began to have his home with the applicant, and
    - (b) continues to be looked after by such a council,the council by whom the child is being looked after shall not remove him from the applicant’s care and possession except—
    - (i) with the applicant’s consent;
    - (ii) with the leave of the court; or
    - (iii) in accordance with an order made, or authority or warrant granted, under Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995.”; and  - (c) at the end add—

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

- (5) In section 52 (return of child taken away in breach of section 51), for the words “custody of” substitute “ a residence order in relation to ”.
- (6) Section 53 (custody order on application for adoption in Scotland) shall cease to have effect.
- (7) In section 55 (interpretation and extent), for the words “sections 47 to 54”, in both places where they occur, substitute “ sections 50 to 53 ”.
- (8) Sections 73 to 84, 89, 99, 100, 102 and 103 shall cease to have effect.
- (9) Section 107 (interpretation), except in so far as subsection (1) defines “adoption society”, “child” and “voluntary organisation”, shall cease to have effect.
- (10) In Schedule 3 (minor and consequential amendments), paragraph 52 to 57 shall cease to have effect.

#### Commencement Information

**I17** Sch. 4 para. 26 fully in force at 22.1.2002; Sch. 4 para. 26 not in force at Royal Assent see s. 105(1); Sch. 4 para. 26(1)-(3), (4)(a)(c), (5)-(7) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 4 para. 26(4)(b)(9)(10) in force at 1.4.1997 by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (3.7.1997) by S.I. 1997/744, arts. 2, 3); Sch. 4 para. 26(8) in force in so far as not already in force at 22.1.2002 by S.S.I. 2002/12, art. 2

#### Marginal Citations

**M15** 1994 c. 39.

#### *Sexual Offences (Scotland) Act 1976 (c. 67)*

**F12**27 .....

#### Textual Amendments

**F12** Sch. 4 para. 27 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 16, 17)

#### *Education (Scotland) Act 1980 (c. 44)*

- 28 (1) The Education (Scotland) Act 1980 shall be amended in accordance with this paragraph.
- (2) In section 36(3) (referral to reporter of case of irregular school attendance), for the words from “may” to the end substitute “ , where no requirement arises under section 53(1) of the Children (Scotland) Act 1995 to give information about the child to the Principal Reporter, may under this subsection provide the Principal Reporter with such information. ”.
- (3) In section 44—

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- (a) subsection (1) (referral by court to Principal Reporter of case involving offence against section 35) shall cease to have effect; and
  - (b) in subsection (2) (powers of court where no referral to Principal Reporter), for the words “subsection (1) above, make a direction” substitute “section 54(1) of the Children (Scotland) Act 1995, refer the matter to the Principal Reporter”.
- (4) <sup>F13</sup> .....
- (5) In section 135(1) (interpretation)—
- (a) in the definition of “parent”, for the words “the actual custody of” substitute “parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of”.
  - (b) the definition of “reporter of the appropriate local authority” shall cease to have effect;
  - (c) for the definition of “residential establishment” substitute—  
““residential establishment” has the meaning given by paragraph (a) of the definition of that expression in section 93(1) of the Children (Scotland) Act 1995;”;
  - (d) for the definition of “supervision requirement” substitute—  
““supervision requirement” has the meaning given by section 70(1) of the said Act of 1995;”.

**Textual Amendments**

**F13** Sch. 4 para. 28(4) repealed (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), ss. 33, 35(1), **Sch. 3 para. 9**; S.S.I. 2005/564, **art. 2**

**Commencement Information**

**I18** Sch. 4 para. 28 wholly in force at 1.4.1997; Sch. 4 para. 28 not in force at Royal Assent see s. 105(1); Sch. 4 para. 28(1)(5)(a) in force at 1.11.1996 by S.I. 1996/2203, **art. 3(3)**, **Sch.** (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, **art. 2**); Sch. 4 para. 28 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**)

*Criminal Justice (Scotland) Act 1980 (c. 62)*

<sup>F14</sup>29 .....

**Textual Amendments**

**F14** Sch. 4 para. 29 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 16, 17)

*Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)*

30 In section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (interpretation), in the definition of “child”, for the word “accepted” substitute “treated”.

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*Civil Jurisdiction and Judgments Act 1982 (c. 27)*

31 In Schedule 9 to the Civil Jurisdiction and Judgments Act 1982 (excluded proceedings), after paragraph 2 insert—

“2A Proceedings relating to parental responsibilities within the meaning of section 1(3) of the Children (Scotland) Act 1995 or parental rights within the meaning of section 2(4) of that Act.”.

*Health and Social Services and Social Security Adjudications Act 1983 (c. 41)*

32 In Schedule 2 to the Health and Social Services and Social Security Adjudications Act 1983, paragraphs 4 to 6 and 8 (which amend provisions of the Social Work (Scotland) Act 1968 repealed by this Act) shall cease to have effect.

*Mental Health (Scotland) Act 1984 (c. 36)*

33 F15 .....

**Textual Amendments**

**F15** Sch. 4 para. 33 repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(2), 333(3), [Sch. 5 Pt. 1](#); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, [art. 2](#))

*Child Abduction Act 1984 (c. 37)*

34 In section 6 of the Child Abduction Act 1984 (offence in Scotland of person connected with a child taking or sending that child out of United Kingdom)—

- (a) in subsection (1)(a)(i), after the word “person” insert “ or naming any person as the person with whom the child is to live ”;
- (b) in subsection (2)(b), after the words “to him” insert “ or naming him as the person with whom the child is to live ”; and
- (c) in subsection (3)(a)(i)(b), for the word “(whether” substitute “ or who is named as the person with whom the child is to live (whether the award is made, or the person so named is named ”.

*Foster Children (Scotland) Act 1984 (c.56)*

35 (1) The Foster Children (Scotland) Act 1984 shall be amended in accordance with this paragraph.

(2) In section 2 (exceptions to definition of “foster child”)—

- (a) in subsection (1), for the words “in the care of a local authority or a voluntary organisation” substitute “ being looked after by a local authority ”;
- (b) in subsection (3), the words “within the meaning of the Social Work (Scotland) Act 1968” shall cease to have effect;
- (c) in subsection (5), the words “; or (b) while he is a protected child within the meaning of section 32 of the said Act of 1978” shall cease to have effect; and
- (d) after subsection (5) add—

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- “(6) The reference in subsection (1) above to a child being looked after by a local authority shall be construed as if it were a reference to which section 17(6) of the Children (Scotland) Act 1995 applies.”
- (3) In section 3(4) (saving for <sup>M16</sup>Social Work (Scotland) Act 1968), for the words “the Social Work (Scotland) Act 1968” substitute “ Part II of the Children (Scotland) Act 1995 ”.
- (4) In section 7(1) (persons disqualified from keeping foster children)—
- (a) in paragraph (b), after the word “1968” insert “ or under section 70 of the Children (Scotland) Act 1995 ”; and
- (b) after paragraph (d) insert—
- “(dd) his parental rights and parental responsibilities (within the meaning of the Children (Scotland) Act 1995) have been transferred, by an order under section 86(1) of that Act, to a local authority;”.
- (5) In section 12 (removal of foster children on complaint of local authority), for subsection (5) substitute—
- “(5) For the purposes of section 25 of the Children (Scotland) Act 1995 (and for the reason mentioned in subsection (1)(c) of that section) a child removed under this section shall be regarded as requiring accommodation.”.
- <sup>F16</sup>(6) .....
- (7) In section 21(1) (interpretation)—
- (a) in the definition of “residential establishment”, after the word “1968” insert “ or of Part II of the Children (Scotland) Act 1995 ”; and
- (b) for the definition of “supervision requirement”, substitute—
- ““supervision requirement” has the meaning given by section 70(1) of the Children (Scotland) Act 1995;”.

**Textual Amendments**

**F16** Sch. 4 para. 35(6) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 17, Sch. 3; S.I. 1997/1712, art. 3

**Marginal Citations**

**M16** 1968 c. 49.

*Family Law (Scotland) Act 1985 (c. 37)*

- 36 In section 2 of the Family Law (Scotland) Act 1985 (actions for aliment)—
- (a) in subsection (2), for paragraph (c) substitute—
- “(c) concerning parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) or guardianship in relation to children;”;
- (b) in subsection (4)(c), for sub-paragraph (iii) substitute—

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“(iii) a person with whom the child lives or who is seeking a residence order (within the meaning of section 11(2)(c) of the Children (Scotland) Act 1995) in respect of the child.”.

*Child Abduction and Custody Act 1985 (c. 60)*

- 37 (1) The Child Abduction and Custody Act 1985 shall be amended in accordance with this paragraph.
- (2) In section 9 (suspension of court’s powers in cases of wrongful removal), for paragraph (d) substitute—
- “(d) making, varying or discharging an order under section 86 of the Children (Scotland) Act 1995;”.
- (3) In section 20 (further provision as regards suspension of court’s powers)—
- (a) for paragraph (d) substitute—
- “(d) in the case of proceedings for, or for the variation or discharge of, a parental responsibilities order under section 86 of the Children (Scotland) Act 1995, make, vary or discharge any such order;”;
- (b) in subsection (5), for the words “within the meaning of Part III of <sup>M17</sup>the Social Work (Scotland) Act 1968” substitute “ (as defined in section 93(1) of the Children (Scotland) Act 1995) ”.
- (4) In section 25 (termination of existing custody orders etc.), subsection (6) shall cease to have effect.
- (5) In section 27(4) (interpretation), after the word “Wales” insert “ or Scotland ”.
- (6) In Schedule 3 (custody orders)—
- (a) in paragraph 5—
- (i) for the words “custody, care or control of a child or” substitute “ residence, custody, care or control of a child or contact with, or ”;
- (ii) in sub-paragraph (iii), for the words “tutory or curatory” substitute “ guardianship ”;
- (iii) in sub-paragraph (iv), for the words “16(8), 16A(3) or 18(3) of the Social Work (Scotland) Act 1968” substitute “ 86 of the Children (Scotland) Act 1995 ”; and
- (iv) for sub-paragraph (v), substitute—
- “(v) an order made, or warrant or authorisation granted, under or by virtue of Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995 to remove the child to a place of safety or to secure accommodation, to keep him at such a place or in such accommodation, or to prevent his removal from a place where he is being accommodated (or an order varying or discharging any order, warrant or authorisation so made or granted);”;
- (b) for paragraph 6 substitute—

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- “6 A supervision requirement made by a children’s hearing under section 70 of the Children (Scotland) Act 1995 (whether or not continued under section 73 of that Act) or made by the sheriff under section 51(5)(c)(iii) of that Act and any order made by a court in England and Wales or in Northern Ireland if it is an order which, by virtue of section 33(1) of that Act, has effect as if it were such a supervision requirement.”; and
- (c) paragraph 7 shall cease to have effect.

#### Commencement Information

**I19** Sch. 4 para. 37 wholly in force at 1.4.1997; Sch. 4 para. 37 not in force at Royal Assent see s. 105(1); Sch. 4 para. 37(1)(5)(6)(a)(i)(ii) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 4 para. 37 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

**M17** 1968 c.49.

#### *Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9)*

- 38 (1) The Law Reform (Parent and Child) (Scotland) Act 1986 shall be amended in accordance with this paragraph.
- (2) In section 1 (legal equality of children), for subsection (3) substitute—
- “(3) Subsection (1) above is subject to subsection (4) below, to section 9(1) of this Act and to section 3(1)(b) of the Children (Scotland) Act 1995 (parental responsibilities and parental rights of natural father).”.
- (3) In section 6(2) (consent to taking of sample of blood), for the words from “guardian” to “custody or” substitute “any person having parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to him or having”.

#### *Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)*

- 39 (1) The Disabled Persons (Services, Consultation and Representation) Act 1986 shall be amended in accordance with this paragraph.
- (2) In section 1(3) (regulations with respect to appointment of authorised representatives of disabled persons)—
- (a) in paragraph (a), for the words from the beginning to “appoint” substitute—
- “may provide for—
- (i) any person who has parental responsibilities in relation to a disabled person under the age of sixteen (“parental responsibilities” having the meaning given by section 1(3) of the Children (Scotland) Act 1995); or

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- (ii) any other person who is entitled to act as the disabled person’s legal representative (as defined in section 15(5) of the Children (Scotland) Act 1995),  
to appoint ”; and
- (b) in paragraph (b), for the words “in the care of” substitute “looked after by.”
- (3) In section 2 (rights of certain authorised representatives of disabled persons)—
  - (a) in subsection (3)(a), for the words “the words ”the parent or guardian of” shall be inserted after the words ”if so requested by”,” substitute “for the words “by the disabled person ” there shall be substituted the words “by any person appointed by virtue of regulations made under section 1(3)(a)(i) or (ii) of this Act ”,” and
  - (b) in subsection (5), after paragraph (bb) insert—
    - “(bc) in Scotland, in accommodation provided by or on behalf of a local authority under Chapter 1 of Part II of the Children (Scotland) Act 1995, or”.
- (4) In section 13(8)(b) (limitation on requirement for assessment of needs)—
  - (a) for the words “his parent” substitute “any person having parental responsibilities in relation to him ”; and
  - (b) after the word “request” insert “ (“parental responsibilities” having the meaning given in section 1(3) of the Children (Scotland) Act 1995) ”.
- (5) In section 16 (interpretation)—
  - (a) in the definition of “disabled person”, for paragraph (b) substitute—
    - “(b) in relation to Scotland, means—
      - (i) in the case of a person aged eighteen or over, one chronically sick or disabled or one suffering from mental disorder (being, in either case, a relevant person for the purposes of section 12 of the Social Work (Scotland) Act 1968; and
      - (ii) in any other case, a disabled child (“disabled child” being construed in accordance with Chapter 1 of Part II of the Children (Scotland) Act 1995);”;
  - (b) in the definition of “guardian”, paragraph (b) shall cease to have effect;
  - (c) in the definition of “the welfare enactments”, in paragraph (b), for the words “and sections 7 and 8 of the 1984 Act”, substitute “ , sections 7 and 8 of the 1984 Act and Chapter 1 of Part II of the Children (Scotland) Act 1995 ”.
  - (d) the existing provisions as so amended shall be subsection (1) of the section and at the end of the section there shall be added—
    - “(2A) In this Act as it applies in relation to Scotland, any reference to a child who is looked after by a local authority shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.”)

#### **Commencement Information**

**I20** Sch. 4 para. 39 wholly in force at 1.4.1997; Sch. 4 para. 39 not in force at Royal Assent see s. 105(1); Sch. 4 para. 39(1)(2)(a)(3)(a)(4)(5)(b) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 4 para. 39 in force at 1.4.1997 insofar as not



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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**)

*Legal Aid (Scotland) Act 1986 (c. 47)*

- 40 In section 41 of the Legal Aid (Scotland) Act 1986 (interpretation)—
- (a) in the definition of “legal aid”, for the words “Part III of the Social Work (Scotland Act 1968” substitute “ Chapter 2 or Chapter 3 of Part II of the Children (Scotland) Act 1995 ” and
  - (b) in the definition of “person”, the existing words from “does” to the end shall be paragraph (a) and after that paragraph there shall be added—  
“; and  
(b) includes a person under the age of sixteen years.”.

**Commencement Information**

**I21** Sch. 4 para. 40 wholly in force at 1.4.1997; Sch. 4 para. 40 not in force at Royal Assent see s. 105(1); Sch. 4 para. 40(b) in force at 1.11.1995 by S.I. 1995/2787, art. 3, Sch.; Sch. 4 para. 40 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

*Family Law Act 1986 (c. 55)*

- 41 (1) The Family Law Act 1986 shall be amended in accordance with this paragraph.
- (2) In section 1(1)(b) (meaning of “custody order”)—
- (a) for the words “custody, care or control of a child” substitute “ residence, custody, care or control of a child, contact with or ”; and
  - (b) in sub-paragraph (iv), for the words “for the custody of” substitute “ giving parental responsibilities and parental rights in relation to ”.
- (3) In section 13 (jurisdiction ancillary to matrimonial proceedings)—
- (a) in subsection (2), for the words “under section 9(1) of the <sup>M18</sup>Matrimonial Proceedings (Children) Act 1958” substitute “ in those proceedings ”; and
  - (b) in subsection (4), for the words “under section 9(1) of the Matrimonial Proceedings (Children) Act 1958” substitute “ in matrimonial proceedings where the court has refused to grant the principal remedy sought in the proceedings ”.
- (4) In section 15 (duration, variation and recall of orders)—
- (a) in subsection (1)(b), for the words “for the custody of” substitute “ relating to the parental responsibilities or parental rights in relation to ”; and
  - (b) in subsection (4), for the words from the beginning to “above” substitute “ Where, by virtue of subsection (1) above, a child is to live with a different person ”.
- (5) In section 17 (orders for delivery of child)—
- (a) in subsection (3), for the words from “is the child” to “other party” substitute “, although not a child of both parties to the marriage, is a child of the family of those parties ”; and

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(b) at the end of the section add—

“(4) In subsection (3) above, “child of the family” means any child who has been treated by both parties as a child of their family, except a child who has been placed with those parties as foster parents by a local authority or a voluntary organisation.”.

(6) For section 26 (recognition: special Scottish rule), substitute—

**“26 Recognition: special Scottish rule.**

An order relating to parental responsibilities or parental rights in relation to a child which is made outside the United Kingdom shall be recognised in Scotland if the order was made in the country where the child was habitually resident.”.

(7) In section 33(3) (power to order disclosure of child’s whereabouts), for the words “for the custody of” substitute “relating to parental responsibilities or parental rights in relation to”.

(8) In section 35(3) (power to restrict removal of child from jurisdiction), for the words “whose custody” substitute “whose care”.

(9) In section 42 (interpretation)—

(a) in subsection (1), before the definition of “part of the United Kingdom” insert—

““parental responsibilities” and “parental rights” have the meanings respectively given by sections 1(3) and 2(4) of the Children (Scotland) Act 1995;”, and

(b) in subsection (4)(b), for the words from “of one of the parties” to the end substitute “who has been treated by both parties as a child of their family, except a child who has been placed with those parties as foster parents by a local authority or a voluntary organisation;”.

**Marginal Citations**

**M18** 6 & 7 Eliz. c.40.

*Housing (Scotland) Act 1987 (c. 26)*

<sup>F17</sup>42 .....

**Textual Amendments**

**F17** Sch. 4 para. 42 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) and repealed (30.9.2002) by 2001 asp 10, s. 112, Sch. 10 para. 23; S.S.I. 2002/321, art. 2, Sch. (subject to arts 3-5)

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*Criminal Justice (Scotland) Act 1987 (c. 41)*

- 43 In section 49(4)(b) of the Criminal Justice (Scotland) Act 1987 (right to have someone informed when detained), for the words “actual custody” substitute “care”.

*Civil Evidence (Scotland) Act 1988 (c. 32)*

- 44 In paragraph (a) of the definition of “civil proceedings” in section 9 of the Civil Evidence (Scotland) Act 1988 (interpretation)—
- (a) the words “under section 42 of the Social Work (Scotland) Act 1968” shall cease to have effect;
  - (b) after the word “application” where it first occurs insert “ under section 65(7) or (9) of the Children (Scotland) Act 1995 ”;
  - (c) after the word “established,” insert “ or of an application for a review of such a finding under section 85 of that Act ”;
  - (d) after the word “application” where it occurs for the second time insert “ or, as the case may be, the review ”; and
  - (e) for the words “32(2)(g)” substitute “ 52(2)(i) ”.

*Court of Session Act 1988 (c. 36)*

- 45 In section 5 of the Court of Session Act 1988 (power to regulate procedure etc. by act of sederunt), after paragraph (e) insert—
- “(ee) to permit a person who is not an advocate or solicitor and is not represented by an advocate or solicitor to transmit, whether orally or in writing, the views of a child to the Court for the purposes of any enactment which makes provision (however expressed) for the Court to have regard to those views;”.

*School Boards (Scotland) Act 1988 (c. 47)*

- 46 In section 22(2) of the School Boards (Scotland) Act 1988 (interpretation), in the definition of “parent”, for the word “custody” substitute “ parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to him or who has care ”.

*Self-Governing Schools etc. (Scotland) Act 1989 (c. 39)*

- 47 In section 80(1) of the Self-Governing Schools etc. (Scotland) Act 1989 (interpretation), in the definition of “parent”, for the words “the actual custody” substitute “ parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to him or has care ”.

*Children Act 1989 (c. 41)*

- 48 (1) The Children Act 1989 shall be amended in accordance with this paragraph.
- (2) In section 31(7)(b)(iii) (restriction on applications for care and supervision orders), for the words “the Social Work (Scotland) Act 1968” substitute “ Part II of the Children (Scotland) Act 1995 ”.

*Status: Point in time view as at 23/02/2006.*

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- (3) In section 51(7) (enactments which do not apply where a child is granted refuge), for paragraph (b) substitute—
- “(b) sections 82 (recovery of certain fugitive children) and 83 (harbouring) of the Children (Scotland) Act 1995, so far as they apply in relation to anything done in England and Wales;”.
- [<sup>F18</sup>(4) In section 79(e) (application of Part X to Scotland), for the words from “in whom” to “vested” substitute “ having parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) relating to the child ”.]
- (5) In Schedule 8 (privately fostered children), in paragraph 3(b), for the words “the Social Work (Scotland) Act 1968” substitute “ Part II of the Children (Scotland) Act 1995 ”.

#### Textual Amendments

**F18** Sch. 4 para. 48(4) repealed (S.) (1.4.2002) by 2001 asp 8, s. 80(1), Sch. 4; S.S.I. 2002/162, art. 2(g)(i)

#### Commencement Information

**I22** Sch. 4 para. 48 wholly in force at 1.4.1997; Sch. 4 para. 48 not in force at Royal Assent see s. 105(1); Sch. 4 para. 48(1)(4) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 4 para. 48 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)

#### *Local Government and Housing Act 1989 (c. 42)*

- 49 (1) The Local Government and Housing Act 1989 shall be amended in accordance with this paragraph.
- (2) In section 14(5) (restriction of effect of provisions of that section in relation to certain committees), for paragraph (d) substitute—
- “(d) a Children’s Panel Advisory Committee formed under paragraph 3, or a joint advisory committee formed under paragraph 8, of Schedule 1 to the Children (Scotland) Act 1995;”.

#### *Access to Health Records Act 1990 (c. 23)*

- 50 (1) The Access to Health Records Act 1990 shall be amended in accordance with this paragraph.
- (2) In section 3(1) (right of access to health records), for paragraphs (c) and (d) substitute—
- “(cc) where the patient is a child, a person having parental responsibility for him;”.
- (3) In section 4 (cases where right of access may be wholly excluded)—
- (a) in subsection (1), for paragraphs (a) and (b) substitute “ the patient is a child ”; and
- (b) in subsection (2), for the words “(1)(c) or (d)” substitute “ (1)(cc) ”.

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- (4) In section 5(3) (access to records not to be given where record compiled on basis that access would not be available to particular applicant), for the words “(1)(c), (d), (e) or (f)” substitute “ (1)(cc), (e) or (f) ”.
- (5) In section 11 (interpretation), for the definition of “parental responsibility” substitute—
- ““parental responsibility”, in the application of this Act—
- (a) to England and Wales, has the same meaning as in the <sup>M19</sup>Children Act 1989; and
- (b) to Scotland, shall be construed as a reference to “parental responsibilities” within the meaning given by section 1(3) of the Children (Scotland) Act 1995.”.

**Marginal Citations**

M19 1989 c.41.

*Horses (Protective Headgear for Young Riders) Act 1990 (c. 25)*

- 51 In section 1(2)(a)(ii) (application), of the Horses (Protective Headgear for Young Riders) Act 1990, for the word “custody” substitute “ parental responsibilities (within the meaning given by section 1(3) of the Children (Scotland) Act 1995) in relation to, or has ”.

*Child Support Act 1991 (c. 48)*

- 52 (1) The Child Support Act 1991 shall be amended in accordance with this paragraph.
- (2) In section 3(4)(d) (interpretation), for the words from “having” to the end substitute “ with whom a child is to live by virtue of a residence order under section 11 of the Children (Scotland) Act 1995. ”.
- (3) In section 5(1) (supplemental provisions as respects child support maintenance), the words “(or, in Scotland, parental rights over)”, in both places where they occur, shall cease to have effect.
- (4) In section 54 (interpretation)—
- (a) for the definition of “parental responsibility” substitute—
- ““parental responsibility”, in the application of this Act—
- (a) to England and Wales, has the same meaning as in the <sup>M20</sup>Children Act 1989; and
- (b) to Scotland, shall be construed as a reference to “parental responsibilities” within the meaning given by section 1(3) of the Children (Scotland) Act 1995;”, and
- (b) the definition of “parental rights” shall cease to have effect.

**Marginal Citations**

M20 1968 c. 34 (N.I.)

*Status: Point in time view as at 23/02/2006.*

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*Age of Legal Capacity (Scotland) Act 1991 (c. 50)*

- 53 (1) The Age of Legal Capacity (Scotland) Act 1991 shall be amended in accordance with this paragraph.
- (2) In section 1(3) (age of legal capacity)—
- (a) in sub-paragraph (i) of paragraph (f), for the words “who has no guardian or whose guardian” substitute “in relation to whom there is no person entitled to act as his legal representative (within the meaning of Part I of the Children (Scotland) Act 1995), or where there is such a person”; and
  - (b) in paragraph (g), for sub-paragraphs (i) and (ii) substitute “exercising parental responsibilities and parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to any child of his.”.
- (3) In section 2 (exceptions to the general rule), after subsection (4) insert—
- “(4A) A person under the age of sixteen years shall have legal capacity to instruct a solicitor, in connection with any civil matter, where that person has a general understanding of what it means to do so; and without prejudice to the generality of this subsection a person twelve years of age or more shall be presumed to be of sufficient age and maturity to have such understanding.
- (4B) A person who by virtue of subsection (4A) above has legal capacity to instruct a solicitor shall also have legal capacity to sue, or to defend, in any civil proceedings.
- (4C) Subsections (4A) and (4B) above are without prejudice to any question of legal capacity arising in connection with any criminal matter.”.
- (4) In section 5(1) (construction of references to “tutor”)—
- (a) the words “or tutory” shall cease to have effect; and
  - (b) for the words from “the guardian”, where they first appear, to the end substitute “a person entitled to act as a child’s legal representative (within the meaning of Part I of the Children (Scotland) Act 1995), and any reference to the tutory of such a child shall be construed as a reference to the entitlement to act as a child’s legal representative enjoyed by a person by, under or by virtue of the said Part I.”.
- (5) In section 5(2) (restriction on appointment of guardian to person under sixteen), for the words from “section 3” to the end substitute “section 7 of the Children (Scotland) Act 1995.”.

**Commencement Information**

**123** Sch. 4 para. 53 wholly in force at 1.11.1996; Sch. 4 para. 53 not in force at Royal Assent see s. 105(1); Sch. 4 para. 53(1)(3) in force at 1.11.1995 by S.I. 1995/2787, art. 3, Sch.; Sch. 4 para. 53(2)(4)(5) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2)

*Armed Forces Act 1991 (c. 62)*

- 54 (1) The Armed Forces Act 1991 shall be amended in accordance with this paragraph.

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- (2) In paragraph (f) of section 17(4) (persons to whom notice of an application for an assessment order must be given)—
- (a) after the word “order” insert “—  
(i)”;  
and
  - (b) at the end insert “; or  
(ii) under section 88 of the Children (Scotland) Act 1995”.
- (3) In paragraph (f) of section 18(7) (persons who may apply for variation etc. of assessment order)—
- (a) after the word “order” insert “—  
(i)”;  
and
  - (b) at the end insert “; or  
(ii) under section 88 of the Children (Scotland) Act 1995”.
- (4) In section 21(4) (which makes provision in relation to a child returned to the United Kingdom under a protection order under that Act) for the words “<sup>M21</sup>Social Work (Scotland) Act 1968” substitute “ Children (Scotland) Act 1995 ”.
- (5) In section 23(1) (interpretation)—
- (a) in the definition of “contact order”—
    - (i) after the word “meaning” insert “—
      - (a) except in relation to an order made in Scotland,”; and
      - (ii) at the end, add “; and
    - (b) in relation to an order there made, given by section 11(2)(d) of the Children (Scotland) Act 1995.”; and
  - (b) in the definition of “parental responsibility”—
    - (i) after the word “responsibility” insert “—
      - (a) except in relation to Scotland,”; and
      - (ii) at the end add “; and
    - (b) in relation to Scotland, shall be construed as a reference to “parental responsibilities” within the meaning given by section 1(3) of the Children (Scotland) Act 1995;”.

#### Commencement Information

**I24** Sch. 4 para. 54 wholly in force at 1.4.1997; Sch. 4 para. 54 not in force at Royal Assent see s. 105(1); Sch. 4 para. 54(1)(5) in force at 1.11.1996 by S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); Sch. 4 para. 54 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

#### Marginal Citations

**M21** 1968 c. 49.

*Status: Point in time view as at 23/02/2006.*

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*Tribunals and Inquiries Act 1992 (c. 53)*

- 55 In paragraph 61 in column 2 of Schedule 1 to the Tribunals and Inquiries Act 1992 (which specifies certain tribunals in relation to social work in Scotland)—
- (a) in sub-paragraph (a), for the words “Social Work (Scotland) Act 1968 (c.49)” substitute “Children (Scotland) Act 1995 (c.36)”; and
  - (b) in sub-paragraph (b), for the words “that Act” substitute “the Social Work (Scotland) Act 1968 (c.49)”.

*Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)*

- 56 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 shall be amended in accordance with this paragraph.
- (2) In paragraph 8 of Schedule 3 (which provides for the definition of certain expressions in relation to the admission of documentary evidence in criminal proceedings), in the definition of “criminal proceedings”—
- (a) the words “under section 42 of the Social Work (Scotland) Act 1968” shall cease to have effect;
  - (b) after the word “application” where it appears for the first time insert “under section 65(7) or (9) of the Children (Scotland) Act 1995”;
  - (c) after the word “established” insert “or for a review of such a finding under section 85 of that Act”; and
  - (d) after the word “application” where it appears for the second time insert “or, as the case may be, the review”.
- (3) In paragraph 1 of Schedule 6 (which provides for the definition of certain expressions in relation to transitional provisions), in the definition of “existing child detainee”, for the words “section 30 of the Social Work (Scotland) Act 1968” substitute “section 93(2)(b) of the Children (Scotland) Act 1995”.

*Local Government etc. (Scotland) Act 1994 (c. 39)*

- 57 (1) The Local Government etc. (Scotland) Act 1994 shall be amended in accordance with this paragraph.
- (2) In section 128 (establishment of Scottish Children’s Reporter Administration)—
- (a) in subsection (3), for the words from “the 1968 Act” to the end substitute “the Children (Scotland) Act 1995 and any other enactment conferring functions upon him”; and
  - (b) in subsection (8), for the words from “the 1968 Act” to the end substitute “the Children (Scotland) Act 1995 and any other enactment conferring functions upon him”.
- (3) In section 130 (annual reports by Principal Reporter) in sub-paragraph (i) of paragraph (a) of subsection (1), for the words “the 1968 Act and the Criminal Procedure (Scotland) Act 1975” substitute “the Children (Scotland) Act 1995 and any other enactment (except this Act) conferring functions upon him”.
- (4) In section 132 (duty of Administration to provide accommodation for children’s hearings), for the words “section 34 of the 1968 Act” substitute “section 39 of the Children (Scotland) Act 1995”.



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*Children (Northern Ireland) Order 1995 (SI 1995/755 (N.I.2))*

- 58 In Article 70(7) of the Children (Northern Ireland) Order 1995 (enactments not to apply where child given refuge), in sub-paragraph (c), for the words “section 71 of the Social Work (Scotland) Act 1968” substitute “ section 83 of the Children (Scotland) Act 1995 ”.

*Civil Evidence (Family Mediation)(Scotland) Act 1995 (c. 6)*

- 59 In section 2 of the Civil Evidence (Family Mediation) (Scotland) Act 1995 (which provides for exceptions to the general inadmissibility of evidence concerning family mediation), in paragraph (d)(ii)—

- (a) for the words “Part III of the Social Work (Scotland) Act 1968” substitute “ Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995 ”; and  
(b) after the word “hearing” insert—

“, before a sheriff or before a justice of the peace;

(ia) on any appeal arising from such proceedings as are mentioned in sub-paragraph (ii) above”.

*Criminal Justice (Scotland) Act 1995 (c. 20)*

- 60 In section 20 of the Criminal Justice (Scotland) Act 1995 (construction of sections relating to the admissibility of certain evidence)—

- (a) in subsection (3), in the definition of “criminal proceedings”—  
(i) for the words from “under” to “application” where it appears for the first substitute “ of an application made under Chapter 3 of Part II of the Children (Scotland) Act 1995 ”; and  
(ii) after the word “child” insert “ or for a review of such a finding ”; and  
(b) in subsection (5), after the word “1968” insert “ or by virtue of Chapter 3 of Part II of the Children (Scotland) Act 1995 ”.

SCHEDULE 5 **U.K.**

Section 105(5).

REPEALS

**Extent Information**

- E1** [Sch. 5](#) extends to Scotland, and it extends also to England, Wales, Northern Ireland and the Channel Islands so far as it relates to certain repeals, see [s. 105\(1\)\(8\)\(9\)](#)

**Commencement Information**

- I25** [Sch. 5](#) partly in force; [Sch. 5](#) not in force at Royal Assent see [s. 105\(1\)](#); [Sch. 5](#) in force for certain purposes at 1.11.1995 by [S.I. 1995/2787](#), [art. 3](#), [Sch.](#); [Sch. 5](#) in force for certain purposes at 1.11.1996 by [S.I. 1996/2203](#), [art. 3\(3\)](#), [Sch.](#) (with [arts. 4-7](#)) (as amended (18.10.1996) by [S.I. 1996/2708](#), [art. 2](#) and (19.1.1997) by [S.I. 1997/137](#), [art. 2](#)); [Sch. 5](#) in force for certain purposes at 1.4.1997 by [S.I. 1996/3201](#), [art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by [S.I. 1997/744](#), [arts. 2, 3](#)); [Sch 5](#) in force for further certain purposes at 22.1.2002 by [S.S.I. 2002/12](#), [art. 2](#)

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<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
8 & 9 Vict. c.19.	Lands Clauses Consolidation (Scotland) Act 1845.	<p>In section 7, the words “persons under legal disability by reason of nonage” in each place where they occur.</p> <p>In section 67, the words “persons under legal disability by reason of nonage”.</p> <p>In section 69, the words “persons under legal disability by reason of nonage”.</p>
12 & 13 Vict. c.51.	Judicial Factors Act 1849.	<p>In section 1, the words from “the word ”Guardian”” to “years;”.</p> <p>Section 25(2)</p> <p>In section 27, the words “guardians and”.</p> <p>In section 31, the word “guardian,”.</p> <p>In section 32, the word “guardian,”.</p> <p>In section 33, the words “guardians or”.</p> <p>In section 34, in both places where it occurs, the word “guardian,”.</p> <p>In section 36, the word “guardianships,”.</p> <p>In section 37, the word “guardian,”</p> <p>In section 40, the word “guardians,” in both places where it occurs.</p>
27 & 28 Vict. c.114.	Improvement of Land Act 1864.	<p>In section 18, the words from “nor shall they” to the end.</p> <p>In section 21, the words from “or if the landowner” to “minors”; and the words “or circumstance” in both places where they occur.</p>

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43 & 44 Vict. c.4.	Judicial Factors (Scotland) Act 1880.	In section 3, in the definition of “judicial factor”, the words from “and” to “required”.
7 Edw.7 c.51.	Sheriff Courts (Scotland) Act 1907.	Section 5(2C).  Section 38C.
11 & 12 Geo.5 c.58.	Trusts (Scotland) Act 1921.	In section 2, in the definition of “trustee”, the words from “guardian” to “years”.
1 Edw.8 & 1 Geo.6 c.37.	Children and Young Persons (Scotland) Act 1937.	In section 27, the first paragraph.
1 & 2 Geo.6 c.73.	Nursing Homes Registration (Scotland) Act 1938.	In section 4(1)(b)(iii), the words “custody or”.
14 & 15 Geo.6 c.65.	Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951.	In section 8(1)(d), the words from “or any order” to the end.
6 & 7 Eliz.2 c.40.	Matrimonial Proceedings (Children) Act 1958.	Sections 8 to 10.  Section 12.
1965 c.49.	Registration of Births, Deaths and Marriages (Scotland) Act 1965.	In section 43, in subsection (3) the words from “In this” to the end; and subsection (10).
1968 c.49.	Social Work (Scotland) Act 1968.	In section 5(1B), before paragraph (o), the word “and”.  In section 5B(5), the words from “and” at the end of the definition of child to the end of the subsection.  Section 6(1)(b)(ii).  Sections 15 to 26.  Part III, except section 31(1) and (3).  Part V.  Section 88.  In section 90(1), the words “(other than orders under sections 52 and 58 and Part V of this Act)”.  In section 94(1), the definition of “children’s panel” and of “children’s hearing”; the definitions of

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		“compulsory measures of care”, “guardian” and “place of safety”; in the definition of “prescribed”, paragraph (b); and the definition of “school age”.
		In section 97, in subsection (1), the words “section 44(1) (except head (b)) and (1A)”, “section 58” and “Part V”; and subsections (2) and (3).
1969 c.54.	Children and Young Persons Act 1969.	In Schedule 5, paragraphs 57 and 65(1).
1972 c.18.	Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 4(3).
1972 c. 24.	Social Work (Scotland) Act 1972.	The whole Act.
1973 c.29.	Guardianship Act 1973.	The whole Act.
1973 c. 65	Local Government (Scotland) Act 1973.	In Schedule 25, paragraph 41.
		In Schedule 27, paragraphs 185 and 187.
1974 c.53.	Rehabilitation of Offenders Act 1974.	Section 5(10A).
		In section 7(2), paragraph (e); and the words from “In the application” to the end.
1975 c.21.	Criminal Procedure (Scotland) Act 1975.	Section 14.
		In section 168(c), the word “female”.
		In section 177, the words “provided by a local authority under Part IV of the Social Work (Scotland) Act 1968”.
		In section 296, in subsection (3), the words from “and the child” to the end; and subsection (4).
		Section 323.
		In section 364(c), the word “female”.

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		<p>In section 378, the words “provided by a local authority under Part IV of the Social Work (Scotland) Act 1968”.</p> <p>In section 413, in subsection (3), the definitions of “care” and of “the 1968 Act”; in subsection (4), the words “within the meaning of the 1968 Act”; in subsection (5), the words “(within the meaning of the 1968 Act)”; and in subsection (6A), the words “within the meaning of the 1968 Act”.</p> <p>In Schedule 9, paragraphs 43 and 44.</p>
1975 c.72.	Children Act 1975.	<p>Sections 47 to 49.</p> <p>Section 53.</p> <p>Sections 73 to 84.</p> <p>Sections 99 and 100.</p> <p>Section 102.</p> <p>Section 103.</p> <p>Section 105.</p> <p>Section 107, except the definitions, in subsection (1), of “adoption society”, “child” and “voluntary organisation”.</p> <p>In Schedule 3, paragraphs 52 to 57.</p>
1978 c.28.	Adoption (Scotland) Act 1978.	<p>In section 1(2), paragraph (a).</p> <p>In section 2, paragraph (d).</p> <p>In section 3(3)(a), the words “including in particular its ability to make provision for children who are free for adoption”.</p> <p>Section 8.</p> <p>In section 12, in subsection (3)(b), the words “or by”; and in subsection (4)</p>

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		the word “— (a)” and paragraph (b).
		In section 14(1), the words from “subject” to “certain cases)”.
		In section 15, in subsection (1), the words from “Subject” to “certain cases)””; and in subsection (3), the word “natural” wherever it occurs.
		In section 16, subsection (5).
		Section 26.
		In section 28(5), the words “or of a voluntary organisation” and “or the organisation”.
		Sections 32 to 37.
		In section 51, subsections (6) (a) and (7) to (11).
		In section 60(3), the words “or 51(9)”.
		In section 65(1), in the definition of “guardian”, paragraph (b), and in the definition of “local authority”, the words “, 35(1)”.
		In Schedule 3, paragraphs 13, 14 and 15.
1980 c.44.	Education (Scotland) Act 1980.	Section 44(1).
		In section 65B(6), paragraph (a).
		In section 135(1), the definition of “reporter of the appropriate local authority”.
1980 c.62.	Criminal Justice (Scotland) Act 1980.	In Schedule 7, paragraph 21.
1983 c.33.	Solvent Abuse (Scotland) Act 1983.	The whole Act.
1983 c.41.	Health and Social Services and Social Security Adjudications Act 1983.	Section 7.

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		Section 8(1) and (4). In Schedule 2, paragraphs 4 to 6 and 8.
1984 c.15.	Law Reform (Husband and Wife) (Scotland) Act 1984.	Section 3(2).
1984 c.36.	Mental Health (Scotland) Act 1984.	In section 10(1)(a), sub-paragraph (i); and the word “or” immediately following that sub-paragraph. Section 55(4).
1984 c.56.	Foster Children (Scotland) Act 1984.	In section 2, in subsection (3), the words “within the meaning of the Social Work (Scotland) Act 1968”; and in subsection (5), the words “; or (b) while he is a protected child within the meaning of section 32 of the said Act of 1978.”.
1985 c.37.	Family Law (Scotland) Act 1985.	In section 21, the words from “or an order” to “child”.
1985 c.60.	Child Abduction and Custody Act 1985.	In section 25, subsection (6). In Schedule 3, paragraph 7.
1986 c.9.	Law Reform (Parent and Child) (Scotland) Act 1986.	Sections 2 to 4. In section 8, the definitions of “child” and “parental rights”. In Schedule 1, paragraph 3.
1986 c.33.	Disabled Persons (Services, Consultation and Representation) Act 1986.	In section 16, in the definition of “guardian”, paragraph (b).
1986 c.55.	Family Law Act 1986.	In section 15(4), the words from “under section” to “1973”. In section 17, in subsection (1), the words “Subject to subsection (2) below”; and subsection (2). In section 35(4)(c), the words “custody or”.
1988 c.32	Civil Evidence (Scotland) Act 1988.	In section 9, in the definition of “civil proceedings”, in paragraph (a), the words “under section 42 of the

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		Social Work (Scotland) Act 1968”.
1988 c.36.	Court of Session Act 1988.	Section 20.
1989 c.41.	Children Act 1989.	In Schedule 13, paragraph 13.
1989 c.42.	Local Government and Housing Act 1989.	In Schedule 11, paragraph 15.
1991 c.48.	Child Support Act 1991.	In section 5(1), the words “(or, in Scotland, parental rights over)” in both places where they occur.
		In section 54, the definition of “parental rights”.
1991 c.50.	Age of Legal Capacity (Scotland) Act 1991.	In section 5(1), the words “or tutory”.
		In section 9, the definition of “parental rights”.
		In Schedule 1, paragraphs 3 to 5 and 7 to 15.
1993 c.9	Prisoners and Criminal Proceedings (Scotland) Act 1993.	In paragraph 8 of Schedule 3, the definition of “criminal proceedings”, the words “under section 42 of the Social Work (Scotland) Act 1968”.
1993 c.35.	Education Act 1993.	In Schedule 19, paragraph 36.
1994 c.39.	Local Government etc. (Scotland) Act 1994.	Section 139.
		In Schedule 13, paragraphs 76(6) and (10) to (25); 92(14)(b)(iii); 100(6)(b)(iv); 103; and 161(7)(c).

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