



# Child Care Act 1980

## 1980 CHAPTER 5

### PART I

#### POWERS AND DUTIES OF LOCAL AUTHORITIES IN RELATION TO THE WELFARE AND CARE OF CHILDREN

*Duty of local authorities to assume care of orphans and deserted children etc.*

#### **2 Duty of local authority to provide for orphans, deserted children etc.**

- (1) Where it appears to a local authority with respect to a child in their area appearing to them to be under the age of seventeen—
  - (a) that he has neither parent nor guardian or has been and remains abandoned by his parents or guardian or is lost; or
  - (b) that his parents or guardian are, for the time being or permanently, prevented by reason of mental or bodily disease or infirmity or other incapacity or any other circumstances from providing for his proper accommodation, maintenance and upbringing; and
  - (c) in either case, that the intervention of the local authority under this section is necessary in the interests of the welfare of the child,it shall be the duty of the local authority to receive the child into their care under this section.
- (2) Where a local authority have received a child into their care under this section, it shall, subject to the provisions of this Part of this Act, be their duty to keep the child in their care so long as the welfare of the child appears to them to require it and the child has not attained the age of eighteen.
- (3) Nothing in this section shall authorise a local authority to keep a child in their care under this section if any parent or guardian desires to take over the care of the child, and the local authority shall, in all cases where it appears to them consistent with the welfare of the child so to do, endeavour to secure that the care of the child is taken over either—

- (a) by a parent or guardian of his, or
  - (b) by a relative or friend of his, being, where possible, a person of the same religious persuasion as the child or who gives an undertaking that the child will be brought up in that religious persuasion.
- (4) Where a local authority receive into their care under this section a child who is then ordinarily resident in the area of another local authority—
- (a) that other local authority may at any time not later than three months after the determination (whether by agreement between the authorities or in accordance with the following provisions of this subsection) of the ordinary residence of the child, or with the concurrence of the first mentioned authority at any subsequent time, take over the care of the child; and
  - (b) the first mentioned authority may recover from the other authority any expenses duly incurred by them under Part III of this Act in respect of the child (including any expenses so incurred after he has ceased to be a child and, if the other authority takes over the care of him, including also any travelling or other expenses incurred in connection with the taking over).

Any question arising under this subsection as to the ordinary residence of a child shall be determined by the Secretary of State and in this subsection any reference to another local authority includes a reference to a local authority within the meaning of the Social Work (Scotland) Act 1968.

- (5) In determining for the purposes of subsection (4) above the ordinary residence of any child, any period during which he resides in any place—
- (a) as an inmate of a school or other institution, or
  - (b) in accordance with the requirements of a supervision order or probation order or of a supervision requirement, or
  - (c) in accordance with the conditions of a recognisance, or
  - (d) while boarded out under this Act, the Children and Young Persons (Scotland) Act 1937 or Part II of the Social Work (Scotland) Act 1968 by a local authority or education authority,
- shall be disregarded.
- (6) Any reference in this section to the parents or guardian of a child shall be construed as a reference to all the persons who are parents of the child or who are guardians of the child.

### **3 Assumption by local authority of parental rights and duties**

- (1) Subject to the provisions of this Part of this Act, if it appears to a local authority in relation to any child who is in their care under section 2 of this Act—
- (a) that his parents are dead and he has no guardian or custodian; or
  - (b) that a parent of his—
    - (i) has abandoned him, or
    - (ii) suffers from some permanent disability rendering him incapable of caring for the child, or
    - (iii) while not falling within sub-paragraph (ii) of this paragraph, suffers from a mental disorder (within the meaning of the Mental Health Act 1959), which renders him unfit to have the care of the child, or

- (iv) is of such habits or mode of life as to be unfit to have the care of the child, or
  - (v) has so consistently failed without reasonable cause to discharge the obligations of a parent as to be unfit to have the care of the child; or
  - (c) that a resolution under paragraph (b) of this subsection is in force in relation to one parent of the child who is, or is likely to become, a member of the household comprising the child and his other parent; or
  - (d) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under section 2 of this Act, or partly in the care of a local authority and partly in the care of a voluntary organisation, the local authority may resolve that there shall vest in them the parental rights and duties with respect to that child, and, if the rights and duties were vested in the parent on whose account the resolution was passed jointly with another person, they shall also be vested in the local authority jointly with that other person.
- (2) In the case of a resolution passed under paragraph (b), (c) or (d) of subsection (1) above, unless the person whose parental rights and duties have under the resolution vested in the local authority has consented in writing to the passing of the resolution, the local authority, if that person's whereabouts are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.
- (3) Every notice served by a local authority under subsection (2) above shall inform the person on whom the notice is served of his right to object to the resolution and the effect of any objection made by him.
- (4) If, not later than one month after notice is served on a person under subsection (2) above, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsections (5) and (6) below, lapse on the expiry of fourteen days from the service of the counter-notice.
- (5) Where a counter-notice has been served on a local authority under subsection (4) above, the authority may not later than fourteen days after the receipt by them of the counter-notice complain to a juvenile court having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the complaint.
- (6) On hearing a complaint made under subsection (5) above the court may if it is satisfied—
- (a) that the grounds mentioned in subsection (1) above on which the local authority purported to pass the resolution were made out, and
  - (b) that at the time of the hearing there continue to be grounds on which a resolution under that subsection could be founded, and
  - (c) that it is in the interests of the child to do so,
- order that the resolution shall not lapse by reason of the service of the counter-notice.
- (7) Any notice under this section (including a counter-notice) may be served by post, so however that a notice served by a local authority under subsection (2) above shall not be duly served by post unless it is sent by registered post or recorded delivery service.
- (8) Where, after a child has been received into the care of a local authority under section 2 of this Act, the whereabouts of any parent of his have remained unknown for twelve months, then, for the purposes of this section, the parent shall be deemed to have abandoned the child.

- (9) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (1)(d) above by substituting a different period for the period mentioned/in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).
- (10) In this section—
- "parent", except in subsection (1)(a), includes a guardian or custodian;
  - "parental rights and duties", in relation to a particular child, does not include—
    - (a) the right to consent or refuse to consent to the making of an application under section 18 of the Adoption Act 1976 (orders freeing a child for adoption in England and Wales) or section 18 of the Adoption (Scotland) Act 1978 (orders freeing a child for adoption in Scotland), and
    - (b) the right to agree or refuse to agree to the making of an adoption order or an order under section 55 of the Adoption Act 1976 (orders in England and Wales authorising adoption abroad) or section 49 of the Adoption (Scotland) Act 1978 (orders in Scotland authorising adoption abroad).

#### **4 Effect of resolution under s. 3**

- (1) While a resolution passed under subsection (1)(b), (c) or (d) of section 3 of this Act is in force with respect to a child, section 2(3) of this Act shall not apply in relation to the person who, but for the resolution, would have the parental rights and duties in relation to the child.
- (2) A resolution under section 3 of this Act shall not relieve any person from any liability to maintain, or contribute to the maintenance of, the child.
- (3) A resolution under section 3 of this Act shall not authorise a local authority to cause a child to be brought up in any religious creed other than that in which he would have been brought up but for the resolution.

#### **5 Duration and rescission of resolutions under s. 3**

- (1) Subject to the provisions of this Part of this Act, a resolution under section 3 of this Act shall continue in force until the child with respect to whom it was passed attains the age of 18.
- (2) A resolution under section 3 of this Act shall cease to have effect if—
  - (a) the child is adopted ;
  - (b) an order in respect of the child is made under section 18 or 55 of the Adoption Act 1976 or section 18 or 49 of the Adoption (Scotland) Act 1978 ; or
  - (c) a guardian of the child is appointed under section 5 of the Guardianship of Minors Act 1971.
- (3) A resolution under section 3 of this Act may be rescinded by resolution of the local authority if it appears to them that the rescinding of the resolution will be for the benefit of the child.
- (4) On a complaint being made—
  - (a) in the case of a resolution passed by virtue of section 3(1)(a) of this Act, by a person claiming to be a parent, guardian or custodian of the child ;

- (b) in the case of a resolution passed by virtue of section 3(1)(b), (c) or (d) of this Act, by the person who, but for the resolution, would have the parental rights and duties in relation to the child,

a juvenile court having jurisdiction where the complainant resides, if satisfied that there was no ground for the making of the resolution or that the resolution should in the interests of the child be determined, may by order determine the resolution, and the resolution shall thereupon cease to have effect.

## **6 Appeal to the High Court**

An appeal shall lie to the High Court from the making by a juvenile court of an order under section 3(6) or 5(4) of this Act or from the refusal by a juvenile court to make such an order.

## **7 Guardians ad litem and reports in care proceedings**

- (1) In any proceedings under section 3(6) or 5(4) or 6 of this Act a juvenile court or the High Court may, where it considers it necessary in order to safeguard the interests of the child to whom the proceedings relate, by order make the child a party to the proceedings and appoint, subject to rules of court, a guardian ad litem of the child for the purposes of the proceedings.
- (2) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child in the manner prescribed by rules of court
- (3) Section 6 of the Guardianship Act 1973 shall apply in relation to complaints under section 3(6) or 5(4) of this Act as it applies in relation to applications under section 3(3) of the said Act of 1973.

## **8 Application of Part I in relation to children subject to orders of court**

- (1) The reception of a child into their care by a local authority under section 2 of this Act, and the passing of a resolution with respect to him under section 3 of this Act, shall not affect any supervision order or probation order previously made with respect to him by any court.
- (2) Where an order of any court is in force giving the custody of a child to any person, the foregoing provisions of this Part of this Act shall have effect in relation to the child as if for references to the parents or guardian of the child or to a parent or guardian of his there were substituted references to that person.

## **9 Duty of parents to maintain contact with local authorities having their children in care**

- (1) The parent of a child who is in the care of a local authority under section 2 of this Act shall secure that the appropriate local authority are informed of the parent's address for the time being.
- (2) Where under section 2(4) of this Act a local authority take over the care of a child from another local authority, that other authority shall where possible inform the parent of the child that the care of the child has been so taken over.

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*Status: This is the original version (as it was originally enacted).*

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- (3) For the purposes of subsection (1) above, the appropriate local authority shall be the authority in whose care the child is for the time being; but where under section 2(4) of this Act a local authority have taken over the care of a child from another authority, then unless and until a parent is informed that the care of a child has been so taken over the appropriate local authority shall in relation to that parent continue to be the authority from whom the care of the child was taken over.
- (4) Any parent who knowingly fails to comply with subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £10.
- (5) It shall be a defence in any proceeding under subsection (4) above to prove that the defendant was residing at the same address as the other parent of the child and had reasonable cause to believe that the other parent had informed the appropriate authority that both parents were residing at that address.