



Education (Scotland) Act 1980

1980 CHAPTER 44

PART VII

MISCELLANEOUS PROVISIONS

Employment

123 Work experience in last year of compulsory schooling

- (1) Subject to subsection (2) below, the enactments relating to the prohibition or regulation of the employment of children shall not apply to the employment of a child in his last year of compulsory schooling where the employment is in pursuance of arrangements made or approved by the education authority with a view to providing him with work experience as part of his education.
- (2) Subsection (1) above shall not be taken to permit the employment of any person in any way contrary to—
 - (a) an enactment which in terms applies to persons of less than, or not over, a specified age expressed as a number of years ; or
 - (b) section 1(2) of the Employment of Women, Young Persons and Children Act 1920 or (when it comes into force) section 51(1) of the Merchant Shipping Act 1970 (prohibition of employment of children in ships).
- (3) No arrangements shall be made under subsection (1) above for a child to be employed in any way which would be contrary to an enactment prohibiting or regulating the employment of young persons if he were a young person (within the meaning of that enactment) and not a child; and where a child is employed in pursuance of arrangements so made, then so much of any enactment as regulates the employment of young persons (whether by excluding them from any description of work, or prescribing the conditions under which they may be permitted to do it, or otherwise howsoever) and would apply in relation to him if he were of an age to be treated as a young person for the purposes of that enactment shall apply in relation to him, in and in respect of the employment arranged for him, in all respects as if he were of an age to be so treated.

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- (4) For the purposes of subsection (1) above a child is in his last year of compulsory schooling at any time during the period of twelve months before he attains the upper limit of school age.

124 Effect of attendance notices on computation of working hours

- (1) Where a young person is employed in any employment with respect to which a limitation upon the number of working hours during which he may be employed in that employment otherwise than by way of overtime in any week is imposed by or under any enactment, any period of attendance at a junior college required of him during that week by an attendance notice served on him shall, for the purposes of the limitation, be deemed to be time during which he has been so employed in that week.
- (2) Where a young person employed in any employment is entitled by or under the provisions of any enactment or of any agreement to overtime rates of pay in respect of any time during which he is employed in that employment on any day or in any week in excess of any specified number of hours or before or after any specified hour, any period of attendance at a junior college required of him on that day or during that week by an attendance notice served on him shall, for the purposes of those provisions, be deemed to be a period during which he was employed in that employment otherwise than in excess of the specified number of hours or before or after the specified hour, as the case may be.

125 Adaptation of enactments relating to employment of children and young persons

For the purpose of any enactment relating to the prohibition or regulation of the employment of children or young persons, any person who is not for the purposes of this Act over school age shall be deemed to be a child within the meaning of that enactment.

Careers services of education authorities

126 Provision of services by education authorities

- (1) Subject to subsections (3) to (5) below, it shall be the duty of each education authority—
- (a) to make arrangements for the purpose of assisting persons who are attending, either full-time or part-time, educational institutions in Great Britain other than universities—
 - (i) to determine what employments will, having regard to their capabilities, be suitable for them and available to them when they leave the institutions, and
 - (ii) to determine what training will then be required by them and available to them in order to fit them for those employments;
 - (b) to make arrangements for the purpose of assisting persons leaving institutions mentioned in paragraph (a) above to obtain such employments and training as are so mentioned; and
 - (c) to make the arrangements made in pursuance of paragraphs (a) and (b) above available to persons who seek to make use of them and are either such persons as are mentioned in those paragraphs or persons attending or leaving universities in Great Britain;

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and it shall also be the duty of each education authority to arrange for officers of the authority to be appointed to administer the arrangements made by the authority in pursuance of this subsection.

- (2) An education authority may, and shall so far as the Secretary of State directs it to do so, make arrangements in accordance with the following subsection—
- (a) for the purpose of assisting persons (other than those mentioned in paragraphs (a) and (b) of subsection (1) above) who are seeking employment or different employment to determine—
 - (i) what employments are suitable for persons having their capabilities, and
 - (ii) what training they require and is available to them in order to fit them for those employments; and
 - (b) for the purpose of assisting those persons to obtain such employments and training as are mentioned in paragraph (a) above.
- (3) The arrangements made in pursuance of subsection (1) or (2) above shall be arrangements—
- (a) for the giving of assistance by collecting and furnishing information about persons seeking and offering employment and persons providing facilities and services for training; and
 - (b) for providing advice and guidance for the purposes mentioned in that subsection,
- and may include arrangements for the provision of services calculated to facilitate the carrying out of arrangements made in pursuance of paragraph (a) or (b) of this subsection.
- (4) Subject to subsection (5) below, it shall be the duty of education authorities to consult and co-operate with one another to the extent appropriate for the purpose of securing that the functions conferred on them by subsections (1) and (2) above are performed efficiently; and, without prejudice to the powers exercisable by an authority for the purpose of performing that duty, any two or more education authorities may make arrangements on such terms as they think fit (which may include terms as to the making of payments by one authority to another)—
- (a) for any of the authorities to perform any of those functions on behalf of another of the authorities as respects the whole or part of the other authority's area;
 - (b) for the authorities to act jointly in performing any of those functions as respects the whole or parts of their areas.
- (5) The Manpower Services Commission and any education authority may make arrangements for the performance by the Commission on behalf of the authority of any function conferred on the authority by virtue of subsection (1) above or subsection (4) above so far as it relates to subsection (1), and any such arrangements—
- (a) may be made in respect of the whole or part of the area of the authority ; and
 - (b) except in a case in which the Secretary of State has authorised the Commission to disregard this paragraph, must include provision for the making by the authority to the Commission of payments intended to defray the expenditure incurred by the Commission by virtue of the arrangements.
- (6) The Secretary of State may by order provide that subsection (5) above, section 127(5) of this Act, this subsection and any arrangements in force by virtue of subsection (5)

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above or the said section 127(5) shall cease to have effect on a day specified in the order.

- (7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument, and such an order may include such supplemental and incidental provisions as the Secretary of State considers appropriate for the purposes of the order.
- (8) The reference to part-time attendance in paragraph (a) of subsection (1) above does not include—
- (a) part-time attendance where none of the relevant classes begins on any day before 5 o'clock in the evening ; and
 - (b) any other part-time attendance as to which the Secretary of State directs that it shall be disregarded for the purposes of that paragraph;

except that the said reference does include part-time attendance by persons who satisfy the education authority in question that their attendance is with a view to employment.

- (9) In this section—

" employment " means employment under a contract of service or apprenticeship or a contract for services or otherwise than under a contract; and

" training " includes any education with a view to employment ;

and in this section and section 127 of this Act " university " includes a central institution and a college of education.

127 Records of vocational advice

- (1) It shall be the duty of each education authority to keep records of the vocational advice given on behalf of the authority to such persons as are mentioned in subsection (1)(a) of section 126 of this Act.
- (2) Where a person ceases to attend an educational institution (other than a university) in the area of an authority and begins to attend such an institution in the area of another authority it shall be the duty of the first-mentioned authority, on the request of the other authority, to furnish to the other authority any records relating to that person which have been kept by the first-mentioned authority in pursuance of subsection (1) above or transmitted to that authority in pursuance of this subsection and any records of vocational advice given to that person by the Secretary of State which have been transmitted to the first-mentioned authority by the Secretary of State.
- (3) Where to the knowledge of an authority a person ceases to attend a school in the area of the authority otherwise than with a view to attending another school in the area of that or another authority, then, subject to subsection (4) below, it shall be the duty of the authority—
- (a) to give him a written summary of any vocational advice already given to him on behalf of the authority and of any vocational advice relating to him of which records were transmitted to the authority in pursuance of subsection (2) above or by the Secretary of State; and
 - (b) to keep a copy of the summary for two years beginning with the date on which he ceased to attend the school in question; and
 - (c) to comply with a request for a copy of the summary which during that period is made to the authority by him; and

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- (d) to comply with a request for a copy of the summary which, during that period and at a time when the person to whom it relates is under the age of eighteen, is made to the authority by his parent;
- but an authority shall not be required by virtue of paragraph (c) or (d) above to furnish more than one copy of the summary to the person to whom it relates or more than one copy of it to his parent.
- (4) An authority shall not be required by virtue of paragraph (a) of subsection (3) above to furnish a person with the summary mentioned in that paragraph in a case where the authority has, or the authority and other authorities and the Secretary of State between them have, already furnished him with written statements which together contain the information which apart from this subsection would fall to be included in the summary; and that subsection shall have effect in such a case as if paragraph (a) were omitted and any reference to the summary in any other provision of that subsection were a reference to the statements.
- (5) Subsection (5) of section 126 of this Act shall have effect in relation to any function conferred on an authority by virtue of the preceding provisions of this section as it has effect in relation to any function mentioned in that subsection.
- (6) In this section—
- " authority " means education authority ;
 - " vocational advice " means advice and guidance given in pursuance of arrangements made for the purposes of subsection (1)(a) of section 126 of this Act or in pursuance of the Employment and Training Act 1948.

128 Control of education authorities by Secretary of State

- (1) It shall be the duty of each education authority—
- (a) to perform the functions conferred on the authority by sections 126 and 127 of this Act in accordance with such guidance of a general character as the Secretary of State may give to the authority; and
 - (b) to provide the Secretary of State, in such manner and at such times as he may specify, with such information and facilities and services for obtaining information as he may specify with respect to the performance by the authority of those functions.
- (2) The Secretary of State may make arrangements with one or more other Ministers of the Crown—
- (a) for constituting a body consisting of officers of his and of the other Ministers and of such other persons, if any, as may be determined in pursuance of the arrangements ; and
 - (b) for the performance by that body on behalf of the Secretary of State of functions conferred on him by subsection (1) above.

Examinations Board

129 Establishment of board to conduct examinations, etc.

- (1) There shall be a board (hereafter in this section referred to as " the Board ") for the following purposes, that is to say—

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- (a) conducting examinations for the award of certificates relating to secondary education and awarding such certificates;
 - (b) advising the Secretary of State on matters relating to examinations for pupils receiving secondary education ;
 - (c) such other purposes relating to examinations as may be specified in regulations under this section.
- (2) Regulations shall be made under this section by the Secretary of State, and such regulations shall confer on the Board such powers, and impose on them such duties, as appear to the Secretary of State to be necessary or desirable for the purposes referred to in subsection (1) above and may empower the Secretary of State to give to the Board such directions as to the discharge by them of their functions as appear to him to be expedient.
- (3) Regulations under this section shall make provision with respect to the membership of the Board and shall ensure that not less than four-fifths of the members of the Board are appointed by the Secretary of State from amongst persons nominated by, or by bodies appearing to the Secretary of State to represent the interests of, the universities of Scotland, education authorities, governing bodies of central institutions, governing bodies of colleges of education, directors of education and teachers employed in educational establishments.
- (4) Regulations under this section may—
- (a) provide that the Board shall be a body corporate with perpetual succession and a common seal;
 - (b) make provision with respect to the procedure of the Board and the conduct of their business;
 - (c) make provision with respect to the financial transactions of the Board, including provision for the keeping by the Board of proper accounts and for the auditing of such accounts;
 - (d) provide for the payment by the Board to the members of the Board or of any committee or sub-committee thereof of travelling, subsistence and other allowances;
 - (e) provide that the Board may appoint officers, servants and agents on such terms as to remuneration, pensions or otherwise as the Board may, with the approval of the Secretary of State, determine;
 - (f) provide that the Board shall make an annual report to the Secretary of State on the exercise by them of their functions, and that the Secretary of State shall lay a copy of the report before each House of Parliament;
 - (g) contain such consequential, ancillary and incidental provisions as appear to the Secretary of State to be necessary or desirable for the purposes of the regulations.
- (5) Every education authority shall, at such times as may be fixed by the Secretary of State, contribute to the funds of the Board such sums as may be fixed by him after consultation with such bodies representative of local authorities as appear to him to be concerned, and the said contributions shall be applied by the Board towards meeting their expenses.
- (6) The Secretary of State may from time to time make grants to the Board which shall be applied by them towards meeting their expenses.

Savings and exceptions

130 Saving as to persons in the service of the Crown

No power or duty conferred or imposed by this Act on the Secretary of State, on education authorities, on parents or on young persons shall be construed as relating to any child or young person who is employed by or under the Crown in any service or capacity with respect to which the Secretary of State certifies that, by reason of the arrangements made for the education of children and young persons employed therein, the exercise and performance of those powers and duties with respect to such children and young persons is unnecessary.

131 Saving as to persons suffering from mental disorder and persons detained by order

- (1) Unless the context otherwise requires, no power or duty conferred or imposed by this Act on the Secretary of State, on education authorities or on parents or young persons shall be construed as relating to any person to whom this section applies:

Provided that nothing in this section shall prevent an education authority from providing or securing the provision of education for any such person if he is in their opinion capable of deriving benefit therefrom.

- (2) The persons to whom this section applies are—
- (a) any person who is detained in pursuance of an order made by any court or of an order of recall made by the Secretary of State;
 - (b) any child subject to a supervision requirement requiring him to reside in a residential establishment where education is provided.

General

132 Amendment of enactments

- (1) In relation to any young person punishable under this Act, section 58 of the Act of 1937 (which relates to the substitution of other punishments for imprisonment), shall have effect as if references therein to a young person included references to any person who has not attained the age of eighteen years.
- (2) Any reference in an enactment passed before 2nd July 1945 to a school in receipt of a parliamentary grant shall, unless the context otherwise requires, be construed as a reference to a school other than an independent school.

133 Regulations, etc.

- (1) Any power conferred by this Act on the Secretary of State to make regulations shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing regulations made by the Secretary of State under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (3) Any direction given by the Secretary of State or an education authority under the provisions of this Act may be varied or revoked by a further direction given by the Secretary of State or that authority, as the case may be:

Provided that where the power to give any such direction is exercisable only upon the application or with the consent of any person, or after consultation with or intimation to any person or is otherwise subject to any conditions, no direction given under such power shall be varied or revoked except upon the like application, with the like consent, after the like consultation or intimation or subject to the like conditions, as the case may be.

- (4) If it appears to the Secretary of State, on an application in that behalf made to him—
- (a) in relation to regulations made under section 2 or section 19(1) of this Act, by an education authority;
 - (b) in relation to regulations made under section 74(1) of this Act, by any education authority or other person to whom any grant is payable under this Act;

that it is unreasonable that any provision of those regulations should apply in relation to that authority or person or to such educational establishment under the management of that authority or person as may be specified in the application, or should so apply without modification, he may, subject to subsection (5) below, direct that the said provision shall not apply in relation to that authority or person or that educational establishment or, as the case may be, shall so apply subject to such modification as may be specified in the direction.

- (5) A direction under subsection (4) above—
- (a) may be given either unconditionally or subject to such conditions as may be specified in the direction;
 - (b) shall not be given in respect of any provision of any regulations which is described in those regulations as not being subject to the giving of a direction under this section;
 - (c) may be varied or revoked by a subsequent direction given by the Secretary of State either of his own accord or on the application of the education authority or other person on whose application the original direction was given.

134 Notices

- (1) Subject to the provisions of this section, any notice required or authorised by this Act to be served or given to any person may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it to him by post.
- (2) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service by post) in its application to this section, the proper address of a person on or to whom any such notice as aforesaid is to be served or given shall, in the case of an education authority, be the address of any office of that authority and, in any other case, be the last known address of the person on or to whom the notice is to be served or given.
- (3) Any notice which, in accordance with the provisions of subsection (1) above, is left for a person at his proper address shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.

135 Interpretation

(1) in this Act, unless the context otherwise requires,—

" the Act of 1882 " means the Educational Endowments (Scotland) Act 1882;

"the Act of 1918 " means the Education (Scotland) Act 1918;

" the Acts of 1928 to 1935 " means the Educational Endowments (Scotland) Acts 1928 to 1935 ;

" the Act of 1937 " means the Children and Young Persons (Scotland) Act 1937;

"the Act of 1946 " means the Education (Scotland) Act 1946;

"the Act of 1962 " means the Education (Scotland) Act 1962;

" attendance order " has the meaning assigned to it by section 38 of this Act;

" central institution " means an educational establishment for the provision of further education recognised as a central institution by regulations made by the Secretary of State ;

" child " means a person who is not over school age ;

" clothing " includes boots and other footwear ;

" college of education " means an educational establishment in which further education is provided and the primary purpose of which is the education and training of teachers;

" dental examination " means examination by a registered dentist, so however that in conducting an examination of any such class as may be prescribed, such dentist may be assisted by other persons having such special qualifications or experience as may be prescribed ;

" dental inspection " and " dental supervision " mean, respectively, inspection and supervision by a registered dentist;

" dental treatment " includes prevention and treatment of dental diseases by or (so far as permitted by law) under the direction of any registered dentist, and the supply of appliances on the recommendation of such dentist, but does not, in relation to any pupil other than a pupil receiving school education elsewhere than at school under arrangements made by an education authority under section 14 of this Act, include treatment in that pupil's home ;

" education authority " means a regional or islands council, and " area " in relation to an education authority shall be construed accordingly ;

" educational establishment "—

(i) means a school, a junior college and any other institution for the provision of any form of further education and the premises of such school, junior college or institution, and

(ii) without prejudice to the foregoing generality, includes a central institution, a college of education, a hostel used mainly by pupils attending such schools or junior colleges or institutions, and a residential institution conducted under a scheme under the Acts of 1928 to 1935, Part VI of the Act of 1946, Part VI of the Act of 1962 or Part VI of this Act, but

(iii) does not include a university, a theological college, a hostel or other residence used exclusively by students attending a university or a theological college, or a club or other centre conducted by a voluntary society or body for the purpose of providing facilities for social, cultural or recreative activities or for physical education or training unless the

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society or body are in receipt of a grant from the Secretary of State or of a contribution from an education authority or have obtained the consent of the Secretary of State to the club or centre being treated in all respects as an educational establishment ;

" employment " includes employment in any labour exercised by way of trade or for purposes of gain whether the gain be to the child or to the young person or to any other person, and a person who assists in a trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labour; and " employ " shall be construed accordingly;

" employer " includes a parent who employs his children ;

" enactment " includes an order, regulation, rule or other instrument having effect by virtue of an Act;

" functions " includes powers and duties;

" further education " includes the forms of instruction, occupation and teaching described in section 1(5)(b) of this Act;

" grant-aided school " means a school in respect of which grants are made by the Secretary of State to the managers of the school other than grants in aid of the employers' contributions provided for in Teachers (Superannuation) Regulations, but does not include a public school;

" Health Board " means a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;

" independent school " means a school at which full-time education is provided for five or more pupils of school age (whether or not such education is also provided for pupils under or over that age), not being a public school or a grant-aided school;

" Her Majesty's inspectors " means the inspectors of schools appointed by Her Majesty on the recommendation of the Secretary of State ;

" junior college " has the meaning assigned to it by section 1(5)(b)(i) of this Act;

" managers ", in relation to an educational establishment, means the governing body, trustees, or other person or body of persons responsible for the management of the establishment but does not include an education authority;

" medical examination " means examination by a registered medical practitioner: Provided that in conducting an examination of any such class as may be prescribed, such practitioner may be assisted by other persons having such special qualifications or experience as may be prescribed ;

" medical inspection " and " medical supervision " mean, respectively, inspection and supervision by or under the directions of a registered medical practitioner;

" medical treatment " includes prevention and treatment of diseases by any registered medical practitioner, and the supply of appliances on the recommendation of such practitioner, but does not, in relation to any pupil other than a pupil receiving school education elsewhere than at school under arrangements made by an education authority under section 14 of this Act, include treatment in that pupil's home;

" nursery school " and " nursery class " have the respective meanings assigned to them by section 1(5)(a)(i) of this Act;

" officers " includes servants ;

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" parent " includes guardian and any person who is liable to maintain or has the actual custody of a child or young person;

"premises " in relation to any educational establishment includes the site of such establishment, any building in which pupils attending such establishment are boarded whether managed by the managers of such establishment or by any other person by arrangement with such managers, and any playing fields used in connection with such establishment whether contiguous to or detached therefrom ;

" prescribed " means prescribed by the Secretary of State ;

" proprietor " in relation to an independent school means the managers of such school, and for the purposes of the provisions of this Act relating to applications for the registration of independent schools includes any person or body of persons proposing to be the managers;

" provisionally registered school " means an independent school registered in the register of independent schools whereof the registration is provisional only;

" psychological examination " means an examination by an educational or clinical psychologist appointed by an education authority for the purpose;

" public school " means any school under the management of an education authority;

" pupil ", where used without qualification, means a person of any age for whom education is or is required to be provided under this Act; and a pupil shall be deemed to be attending or in attendance at a school if he is shown by the register of admission and withdrawal kept at the school in accordance with regulations made under this Act, or by any other register approved by the Secretary of State and kept for a similar purpose, to have been admitted to, but not to have been withdrawn from, or to have been readmitted to, and not thereafter to have been withdrawn from, the school; and similar expressions, whether relating to schools or to other educational establishments, shall be similarly interpreted;

" registered school " means an independent school the registration of which in the register of independent schools is final;

" registered teacher " means a teacher registered under the Teaching Council (Scotland) Act 1965 ;

"reporter of the appropriate local authority " means the reporter of the appropriate local authority for the purposes of the Social Work (Scotland) Act 1968;

" residential establishment " has the same meaning as in the Social Work (Scotland) Act 1968 ;

" school " means an institution for the provision of primary or secondary education or both primary and secondary education being a public school, a grant-aided school or an independent school, and includes a nursery school and a special school; and the expression " school" where used without qualification includes any such school or all such schools as the context may require but does not include an establishment or residential establishment within the meaning of the Social Work (Scotland) Act 1968;

" school age " shall be construed in accordance with section 31 of this Act;

"school education " has the meaning assigned to it by section 1(5)(a) of this Act;

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" special education " has the meaning assigned to it by section 1(5)(c) of this Act;

" special school " includes special classes forming part of primary schools or secondary schools, child guidance clinics and occupational centres;

" supervision requirement " has the same meaning as in the Social Work (Scotland) Act 1968 ;

" teachers' superannuation regulations " means regulations made under section 9 of the Superannuation Act 1972 ;

" young person " means a person over school age who has not attained the age of eighteen years.

- (2) Any reference in any enactment or other instrument (including this Act and, unless the contrary intention appears, any enactment or other instrument passed or made after the commencement of this Act) to—
- (a) primary education shall be construed as a reference to school education of a kind which is appropriate in the ordinary case to the requirements of pupils who have not attained the age of twelve years;
 - (b) secondary education shall be construed as a reference to school education of a kind which is appropriate in the ordinary case to the requirements of pupils who have attained that age ;

and any reference in any such enactment or other instrument as aforesaid to primary or secondary schools or departments or classes shall be construed accordingly.

136 Transitional and savings provisions, amendments and repeals

- (1) The transitional and savings provisions set out in Schedule 3 to this Act shall have effect.
- (2) The enactments specified in Schedule 4 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the consolidation under this Act.
- (3) The enactments set out in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

137 Short title, commencement and extent

- (1) This Act may be cited as the Education (Scotland) Act 1980.
- (2) Subject to subsections (3) and (4) below, this Act shall come into force on the expiry of the period of one month beginning with the date on which it is passed.
- (3) The provisions of this Act set out in Schedule 6 shall, to the extent there specified, come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (4) Subsections (5) to (7) of section 23 of this Act shall come into force on such date as the Secretary of State may by order appoint.
- (5) Any order under subsection (4) above may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions, or of any other provision mentioned in that subsection then in force, as appear to him to be

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necessary or expedient for the purpose or in consequence of the operation of any such provision before the coming into force of any other such provision.

(5) This Act extends to Scotland only.