



Foster Children (Scotland) Act 1984

1984 CHAPTER 56

Foster children for the purposes of the Act

1 Foster children

Subject to section 2, a child is a foster child for the purposes of this Act if he is—

- (a) below the upper limit of the compulsory school age, and
- (b) his care is undertaken for a period of more than 6 days by a person who is not a relative or guardian of his.

The period of 6 days begins with the day on which the child is received into the care of that person.

2 Exceptions to section 1

- (1) A child is not a foster child while he is in the care of a local authority or a voluntary organisation or is boarded out by an education authority.
- (2) A child is not a foster child while he is in the care of any person—
 - (a) in premises in which any parent, adult relative or guardian of his is for the time being residing;
 - (b) in any residential establishment;
 - (c) in any school within the meaning of the Education (Scotland) Act 1980;
 - (d) in any hospital or in any nursing home registered or exempted from registration under the Nursing Homes Registration (Scotland) Act 1938 ;
 - (e) in any home or institution not specified in this section but maintained by a public or local authority ; or
 - (f) who undertakes his care for a period not exceeding one month beginning with the day the child is received into that care, unless—
 - (i) the person during the year immediately preceding the date of receiving into care has had the care of one or more foster children for periods which in the aggregate exceed 3 months, or

- (ii) the number of continuous periods which exceed 6 days beginning on the day of receiving into care, throughout which the particular child or any child was in the care of that person in that period of one year, exceeds 3.
- (3) A child is not a foster child while he is in the care of any person in compliance with a supervision order within the meaning of the Children and Young Persons Act 1969 or a supervision requirement within the meaning of the Social Work (Scotland) Act 1968 or a probation order.
- (4) A child is not a foster child while he is liable to be detained or subject to guardianship under the Mental Health (Scotland) Act 1984.
- (5) A child is not a foster child—
 - (a) while he is placed in the care and possession of a person who proposes to adopt him under arrangements made by an adoption agency within the meaning of section 1 of the Adoption Act 1976 or section 1 of the Adoption (Scotland) Act 1978 ; or
 - (b) while he is a protected child within the meaning of section 32 of the said Act of 1978.

Duties of local authorities

3 Local authorities to ensure well-being of and to visit foster children

- (1) It shall be the duty of every local authority to secure the welfare of children within their area who are foster children
- (2) Every local authority shall cause such children to be visited by officers of the authority in accordance with regulations made under subsection (3), who shall give such advice as to the care and maintenance of the children as may appear to be necessary.
- (3) The Secretary of State may make regulations requiring foster children in a local authority's area to be visited by an officer of the local authority on specified occasions or within specified periods of time.
- (4) Subsections (1) and (2) are without prejudice to the provisions of the Social Work (Scotland) Act 1968.

Notification of fostering to local authorities

4 Notification by parents

- (1) The Secretary of State may by regulations make provision for requiring parents whose children are, or are going to be, maintained as foster children to give to the local authority for the area where the children are, or are going to be, living as foster children, such information about the fostering as may be specified in the regulations.
- (2) Regulations under this section may include such incidental and supplementary provisions as the Secretary of State thinks fit.

5 Notification by persons maintaining or proposing to maintain foster children

- (1) A person who proposes to maintain as a foster child a child not already in his care shall give written notice thereof to the local authority in whose area the premises in which the child is to be kept are situated, not less than two weeks before he receives the child, unless he receives him in an emergency.
- (2) A person who maintains a foster child—
 - (a) whom he received in an emergency, or
 - (b) who became a foster child while in his care,shall give written notice thereof to the local authority in whose area the premises in which the child is being kept are situated not later than one week after he receives the child or, as the case may be, after the child becomes a foster child.
- (3) A notice under subsection (1) or (2) shall specify the premises in which the child is to be or is being kept.
- (4) Where a person who is maintaining a foster child changes his permanent address or the premises in which the child is kept, he shall give written notice to the local authority—
 - (a) not less than two weeks before the change, or
 - (b) if the change is made in an emergency, not later than one week after the change,specifying the new address or premises ; and if the new premises are in the area of another local authority, or of a local authority in England or Wales, the authority to whom the notice is given shall inform that other authority and give them such of the particulars mentioned in subsection (5) as are known to them.
- (5) At the request of the local authority, a person maintaining or proposing to maintain a foster child shall give them, so far as known to him, the following particulars—
 - (a) the name, sex and date and place of birth of the child ; and
 - (b) the name and address of every person who is a parent or guardian or acts as a guardian of the child or from whom the child was or is to be received.
- (6) A person maintaining or proposing to maintain a foster child need not give a notice under subsection (1) or (2) if the child has within the last 3 months been maintained by him as a foster child but ceased to be a foster child while in his care or on removal from his care.
- (7) A local authority may exempt any person from the duty of giving notices under this section, and any such exemption may be granted as regards all or any such notices for a specified period, and may be revoked at any time by notice in writing served on that person.

6 Notification by persons ceasing to maintain foster children

- (1) If a foster child dies, the person who was maintaining him shall give, not later than 48 hours after the death, written notice of the death to the local authority and to the person from whom the child was received.
- (2) Where a foster child is removed or removes himself from the care of the person maintaining him, that person shall give, not later than 48 hours after the removal, the local authority and the person from whom the child was received the name and address, if known, of the person (if any) into whose care the child has been removed.

- (3) Where a foster child ceases to be a foster child on his removal from the care of the person maintaining him that person need not give notice under subsection (2) but shall at the request of the local authority give them the same particulars as would have been required to be stated in the notice.
- (4) A local authority may exempt any person from the duty of giving notices under this section, and any such exemption may be granted as regards all or any such notices for a specified period, and may be revoked at any time by notice in writing served on that person.

Disqualification for fostering

7 Persons disqualified from keeping foster children

- (1) A person shall not maintain a foster child if—
- (a) an order removing a child from his care has been made against him under this Act or any Act repealed by this Act or under section 12 of the Foster Children Act 1980;
 - (b) an order has been made under the Children and Young Persons Act 1933, the Children and Young Persons Act 1969, or the Children and Young Persons (Scotland) Act 1937, or a supervision requirement has been made under the Social Work (Scotland) Act 1968 and by virtue of the order or requirement a child was removed from his care;
 - (c) he has been convicted of any offence specified in Schedule 1 to the said Act of 1933 or Schedule 1 to the Criminal Procedure (Scotland) Act 1975, or has been placed on probation or discharged absolutely or conditionally for any such offence ;
 - (d) his rights and powers with respect to a child have been vested in a local authority under section 2 of the Children Act 1948 or under section 16 of the Social Work (Scotland) Act 1968 or in a local authority in England or Wales under the said section 2 or section 3 of the Child Care Act 1980;
 - (e) an order under section 1(3) or (4) of the Nurseries and Child-Minders Regulation Act 1948 has been made against him refusing, or an order has been made under section 5 of that Act cancelling, the registration of any premises occupied by him or his registration ; or
 - (f) an order has been made under section 43 of the Adoption Act 1958, section 34 of the Adoption Act 1976 or section 34 of the Adoption (Scotland) Act 1978 for the removal of a protected child who was being kept or was about to be received by him,
- unless he has disclosed that fact to the local authority and obtained their written consent.
- (2) Where subsection (1) applies to any person, otherwise than by virtue of this subsection, it shall apply also to any other person who lives in the same premises as he does or who lives in premises at which he is employed.

Control by local authorities of fostering

8 Power to inspect premises

Any officer of a local authority authorised to visit foster children may, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, inspect any premises in the area of the authority in which foster children are to be or are being kept.

9 Power to impose requirements as to the keeping of foster children

- (1) Where a person is keeping or proposes to keep foster children in premises used (while foster children are kept in them) wholly or mainly for that purpose, the local authority may impose on him requirements as to—
 - (a) the number, age and sex of the foster children who may be kept at any one time in the premises or any part of them;
 - (b) the accommodation and equipment to be provided for the children;
 - (c) the medical arrangements to be made for protecting the health of the children;
 - (d) the giving of particulars of the person for the time being in charge of the children;
 - (e) the number, qualifications or experience of the persons employed in looking after the children;
 - (f) the keeping of records.
- (2) A requirement imposed under paragraphs (b) to (f) of subsection (1) may be limited by the authority so as to apply only when the number of foster children kept in the premises exceeds a specified number.
- (3) A person shall, after such time as the local authority may specify, comply with any requirement imposed on him under this section whenever a foster child is kept in the premises in question.
- (4) A requirement imposed under this section shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of his right under section 11(1) to appeal against the requirement and of the time within which he may do so.

10 Power to prohibit the keeping of foster children

- (1) Where a person proposes to keep a foster child in any premises and the local authority are of opinion that it would be detrimental to that child to be kept by him in those premises, the local authority may prohibit him from doing so; and if the premises are not for the time being used by him for the keeping of any foster child and the local authority are of opinion that it would be detrimental to any foster child to be kept by him in those premises, the local authority may prohibit his use of the premises or the keeping of any foster child.
- (2) Where a local authority impose a requirement on any person under section 9 as respects any premises, they may prohibit him from keeping foster children in the premises after the time specified for compliance with the requirement unless the requirement is complied with.

- (3) A prohibition imposed under this section shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of his right under section 11(1) to appeal against the prohibition and of the time within which he may do so.

Proceedings

11 Appeal to sheriff against requirement or prohibition imposed under section 9 or 10

- (1) A person aggrieved by a requirement imposed under section 9, or by a prohibition imposed under section 10, may appeal to the sheriff within 14 days from the date on which he is notified of the requirement or prohibition; and where the appeal is against a requirement imposed under section 9, the requirement shall not have effect while the appeal is pending.
- (2) Where the sheriff allows an appeal under subsection (1), the sheriff, instead of cancelling the requirement or prohibition—
- (a) may vary the requirement or allow more time for compliance with it; or
 - (b) if an absolute prohibition has been imposed, may substitute for it a prohibition on using the premises after such time as the sheriff may specify unless such specified requirements as the local authority had power to impose under section 9 are complied with.
- (3) Any requirement or prohibition specified or substituted under this section by the sheriff shall be deemed for the purposes of this Act, other than this section, to have been imposed by the local authority under section 9 or, as the case may be, section 10.

12 Removal of foster children kept in unsuitable surroundings

- (1) If the sheriff is satisfied, on the complaint of a local authority, that a foster child is being kept or is about to be received—
- (a) by any person who is unfit to have his care, or
 - (b) in contravention of section 7 or of any prohibition imposed by a local authority under section 10, or
 - (c) in any premises or environment detrimental or likely to be detrimental to him,
- the sheriff may make an order for his removal to a place of safety until he can be restored to a parent, relative or guardian of his or until other arrangements can be made with respect to him.
- (2) On proof that there is imminent danger to the health or well-being of the child, the power to make an order under this section may be exercised by a justice of the peace acting on the application of a person authorised to visit foster children.
- (3) An order under this section made on the ground that a prohibition of a local authority under section 10 has been contravened may require the removal from the premises of all the foster children kept there.
- (4) An order under this section may be executed by any person authorised to visit foster children or by any constable.

- (5) A local authority may receive into their care under section 15 of the Social Work (Scotland) Act 1968 (duty of local authority to provide for orphans, deserted children, etc.) any child removed under this section, whether or not the circumstances of the child are such that they fall within paragraphs (a) to (c) of subsection (1) of the said section 15 and notwithstanding that he may appear to the local authority to be over the age of 17.
- (6) Where a child is removed under this section, the local authority shall, if practicable, inform a parent or guardian of the child, or any person who acts as his guardian.

13 Search warrants

—A refusal to allow the visiting of a foster child or the inspection of any premises by a person authorised to do so under this Act shall be treated, for the purposes of sections 14 and 323 of the Criminal Procedure (Scotland) Act 1975 (under which a warrant authorising the search for and removal of a child may be issued on suspicion of any unnecessary suffering caused to, or certain offences committed against the child), as giving reasonable cause for such suspicion.

Advertisements

14 Prohibition of advertisements relating to the fostering of children

- (1) No advertisement indicating that a person will undertake, or will arrange for, the care and maintenance of a child shall be published, unless it truly states that person's name and address.
- (2) The Secretary of State may by regulations prohibit the parent or guardian of any child from publishing or causing to be published any advertisement indicating that foster parents are sought for the child.
- (3) The Secretary of State may by regulations prohibit—
 - (a) a member of a class of persons specified in the regulations, or
 - (b) a person other than a person specified in the regulations, or other than a member of a class of persons so specified,from publishing or causing to be published any advertisement indicating that he is willing to undertake, or to arrange for, the care and maintenance of a child.
- (4) Regulations made under this section—
 - (a) may make different provision for different cases or classes of cases, and
 - (b) may exclude certain cases or classes of cases.

Offences

15 Offences relating to foster children

- (1) A person shall be guilty of an offence if—
 - (a) being required under any provision of this Act or of regulations made under section 4, to give any notice or information, he—
 - (i) fails to give the notice within the time specified in that provision, or
 - (ii) fails to give the information within a reasonable time, or

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

- (iii) knowingly makes, or causes or procures another person to make, any false or misleading statement in the notice or information;
 - (b) he refuses to allow—
 - (i) the visiting of any foster child by a duly authorised officer of a local authority, or
 - (ii) the inspection under section 8 of any premises;
 - (c) he maintains a foster child in contravention of section 7;
 - (d) he fails to comply with any requirement imposed by a local authority under this Act or keeps any foster child in any premises in contravention of a prohibition so imposed;
 - (e) he refuses to comply with an order under this Act for the removal of any child or obstructs any person in the execution of such an order ; or
 - (f) he causes to be published or knowingly publishes an advertisement in contravention of section 14 or of regulations made under that section.
- (2) Where subsection (1) of section 7 applies to any person by virtue only of subsection (2) of that section he shall not be guilty of an offence under subsection (1)(c) above if he proves that he did not know, and had no reasonable ground for believing, that a person living or employed in the premises in which he lives was a person to whom subsection (1) of that section applies.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.

Extension of provisions of the Act to other children

16 Extension of Act to certain school children during holidays

- (1) Where a child below the upper limit of the compulsory school age resides during school holidays in a school to which this section applies, then, if he so resides for a period exceeding one month, the provisions of this Act shall apply in relation to him as if section 2(2)(c) were omitted, but subject to the modifications specified in subsection (2).
- (2) Where this Act applies to a child by virtue of subsection (1)—
- (a) subsections (1) to (4) of section 5, sections 6, 9 and 10 and section 17 shall not apply; but
 - (b) the person undertaking the care and maintenance of children in the school during the school holidays shall, not less than 2 weeks before this Act first applies to a child in that school during those holidays, give written notice to the local authority that children to whom this Act applies will reside in the school during those holidays, and any such notice shall state the estimated number of the children.
- (3) A local authority may exempt any person from the duty of giving notice under this section ; and any such exemption may be granted for a specified period or indefinitely, and may be revoked at any time by notice in writing given to that person.
- (4) This section applies to any school within the meaning of the Education (Scotland) Act 1980 which is not a school maintained by an education authority.

17 Extension of Act to certain children above compulsory school age

Where a child is a foster child on attaining the upper limit of the compulsory school age, this Act shall apply in relation to him as it applies in relation to a foster child, until

- (a) he would, apart from that limit have ceased to be a foster child, or
- (b) he reaches the age of 18, or
- (c) he lives elsewhere than with the person with whom he was living when he attained the said limit,

whichever first occurs.

Miscellaneous and supplementary

18 Avoidance of insurances on lives of foster children

A person who maintains a foster child for reward shall be deemed for the purposes of the Life Assurance Act 1774 to have no interest in the life of the child.

19 Service of notices by post

Any notice or information required to be given under this Act may be given by post.

20 Regulations

Any power to make regulations conferred on the Secretary of State by this Act shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

21 Interpretation

(1) In this Act—

" child " means a person under the age of 18 ;

" compulsory school age " means school age within the meaning of the Education (Scotland) Act 1980 ;

" local authority " means the council of a region or islands area;

" local authority in England or Wales " means the council of a non-metropolitan county, metropolitan district or London borough, or the Common Council of the City of London;

" place of safety " means any residential or other establishment provided by a local authority, a police station, or any hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive a child ;

" relative " in relation to a child, means a grandparent, brother, sister, uncle or aunt whether of the full blood or half blood or by affinity and includes, where the child is illegitimate, the father of the child and any person who would be a relative within the meaning of this definition if the child were the legitimate child of his father and mother;

" residential establishment " means an establishment managed by a local authority, voluntary organisation or any other person which provides residential accommodation for the purposes of the Social Work (Scotland) Act 1968 whether for reward or not;

" supervision requirement " means a requirement made by a children's hearing which has decided that a child is in need of compulsory measures of care requiring him—

- (a) to submit to supervision in accordance with such conditions as they may impose ; or
- (b) to reside in a residential establishment named in the requirement and be subject to such conditions as they may impose ;

" voluntary organisation " means a body the activities of which are carried on otherwise than for profit.

- (2) In this Act, except insofar as the context otherwise requires,—
 - (a) any reference to a numbered section or Schedule is a reference to the section of, or the Schedule to, this Act so numbered;
 - (b) a reference in a section to a numbered subsection is a reference to the subsections of that section so numbered;
 - (c) a reference in a section, subsection or Schedule to a numbered or lettered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered or lettered.

22 Transitional provisions, consequential amendments and repeals

- (1) This Act shall have effect subject to the transitional provisions set out in Schedule 1 to this Act.
- (2) The enactments mentioned in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act.
- (3) The enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The inclusion in this Act of any express saving or amendment shall not be taken as prejudicing the operation of section 16 or 17 of the Interpretation Act 1978 (which relate to the effect of repeals).

23 Citation etc.

- (1) This Act may be cited as the Foster Children (Scotland) Act 1984.
- (2) This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.
- (3) This Act (except paragraph 8 of Schedule 2) extends to Scotland only.