



Children (Scotland) Act 1995

1995 CHAPTER 36

PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

CHAPTER 1

SUPPORT FOR CHILDREN AND THEIR FAMILIES

Provision of services

^{F1}19 Local authority plans for services for children.

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Annotations:

Amendments (Textual)

F1 S. 19 repealed (1.4.2017) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), [sch. 5 para. 4\(2\)](#); S.S.I. 2016/254, art. 3(3)(c)

20 Publication of information about services for children.

(1) A local authority shall, within such period after the coming into force of this section as the Secretary of State may direct, and thereafter from time to time, prepare and publish information—

- (a) about relevant services which are provided by them for or in respect of children (including, without prejudice to that generality, services for or in respect of disabled children or children otherwise affected by disability) in their area or by any other local authority for those children; and

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- (b) where they consider it appropriate, about services which are provided by voluntary organisations and by other persons for those children, being services which the authority have power to provide and which, were they to do so, they would provide as relevant services.

[^{F2}(2) In subsection (1) above, “relevant services” means services provided by a local authority under or by virtue of—

- (a) this Part of this Act;
 (b) the Children's Hearings (Scotland) Act 2011;
 (c) Part 12 or 13 of the Children and Young People (Scotland) Act 2014; or
 (d) any of the enactments mentioned in section 5(1B)(a) to (n), (r) or (t) of the Social Work (Scotland) Act 1968.]

Annotations:

Amendments (Textual)

- F2** S. 20(2) substituted (1.4.2017) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\), s. 102\(3\), sch. 5 para. 4\(3\)](#); S.S.I. 2016/254, art. 3(3)(c)

Commencement Information

- II** S. 20 wholly in force at 1.4.1997; s. 20 not in force at Royal Assent see s. 105(1); s. 20 in force for certain purposes at 12.12.1996 by [S.I. 1996/3201, art. 3\(1\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by [S.I. 1997/744, art. 3](#))); s. 20 in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201, art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by [S.I. 1997/744, arts. 2, 3](#))

21 Co-operation between authorities.

- (1) Where it appears to a local authority that an appropriate person could, by doing certain things, help in the exercise of any of their functions under this Part of this Act, they may, specifying what those things are, request the help of that person.
- (2) For the purposes of subsection (1) above, persons who are appropriate are—
- (a) any other local authority;
 (b) a health board constituted under section 2 of the ^{M1}National Health Service (Scotland) Act 1978;
 (c) a national health service trust established under section 12A of that Act; and
 (d) any person authorised by the Secretary of State for the purposes of this section;
- and an appropriate person receiving such a request shall comply with it provided that it is compatible with their own statutory or other duties and obligations and (in the case of a person not a natural person) does not unduly prejudice the discharge of any of their functions.

Annotations:

Marginal Citations

- M1** [1978 c. 29.](#)

22 Promotion of welfare of children in need.

- (1) A local authority shall—

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- (a) safeguard and promote the welfare of children in their area who are in need; and
 - (b) so far as is consistent with that duty, promote the upbringing of such children by their families,
- by providing a range and level of services appropriate to the children’s needs.
- (2) In providing services under subsection (1) above, a local authority shall have regard so far as practicable to each child’s religious persuasion, racial origin and cultural and linguistic background.
- (3) Without prejudice to the generality of subsection (1) above—
- (a) a service may be provided under that subsection—
 - (i) for a particular child;
 - (ii) if provided with a view to safeguarding or promoting his welfare, for his family; or
 - (iii) if provided with such a view, for any other member of his family; and
 - (b) the services mentioned in that subsection may include giving assistance in kind or, in exceptional circumstances, in cash.
- (4) Assistance such as is mentioned in subsection (3)(b) above may be given unconditionally or subject to conditions as to the repayment, in whole or in part, of it or of its value; but before giving it, or imposing such conditions, the local authority shall have regard to the means of the child concerned and of his parents and no condition shall require repayment by a person at any time when in receipt of—
- ^{F3}(za) universal credit under Part 1 of the Welfare Reform Act 2012;]
 - (a) income support or [^{F4}working families’ tax credit] payable under the ^{M2}Social Security Contributions and Benefits Act 1992;
 - ^{F5}[(aa) any element of child tax credit other than the family element or working tax credit;] or
 - (b) an income-based jobseeker’s allowance payable under the ^{M3}Jobseekers Act 1995^[F6]; or
 - (c) an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance).]

Annotations:

Amendments (Textual)

- F3** S. 22(4)(za) inserted (29.4.2013) by [The Welfare Reform \(Consequential Amendments\) \(Scotland\) \(No. 2\) Regulations 2013 \(S.S.I. 2013/137\)](#), regs. 1, **5**
- F4** Words in s. 22 substituted (5.10.1999) by [1999 c. 10](#), ss. 1(2), 20, [Sch. 1 paras. 1, 6\(j\)](#)
- F5** S. 22(4)(aa) inserted (6.4.2003) by [2002 c. 21](#), ss. 47, 61, [Sch. 3 para. 50](#); [S.I. 2003/962](#), [art. 2\(3\)\(d\)](#) **(iii)** (subject to [arts 3, 4](#))
- F6** S. 22(4)(c) and word inserted (27.10.2008) by [Welfare Reform Act 2007 \(c. 5\)](#), ss. 28, 70, [Sch. 3 para. 14](#); [S.I. 2008/787](#), {[art. 2\(4\)\(f\)](#)}

Modifications etc. (not altering text)

- C1** S. 22 restricted (8.1.2003) by [2002 c. 41](#), [art. 54](#), [Sch. 3 para. 1\(1\)\(i\)](#); [S.I. 2002/2811](#), [art. 2](#), [Sch.](#) (with [arts. 3-6](#))

Marginal Citations

- M2** [1992 c.4](#).

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M3 1995 c. 18.

23 Children affected by disability.

- (1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—
- (a) to minimise the effect on any—
 - (i) disabled child who is within the authority’s area, of his disability; and
 - (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person’s disability; and
 - (b) to give those children the opportunity to lead lives which are as normal as possible.
- (2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or ^{F7}has a mental disorder (as defined in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)).
- (3) Where requested to do so by ^{F8}—
- (a) a child’s parent or guardian ^{F9}; or
 - (b) a mental health officer (as defined in section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) who—
 - (i) has responsibility under that Act or the Criminal Procedure (Scotland) Act 1995 (c. 46) for a child’s case; and
 - (ii) makes the request for the purposes of either of those Acts.]
- a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child, carry out an assessment of the child, or of any other person in the child’s family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.
- ^{F10}(4) In determining the needs of a child under subsection (3) above, the local authority shall take account—
- ^{F11}(a) if an adult carer provides, or intends to provide, care for the child, of the care provided by that carer,
 - (aa) if a young carer provides, or intends to provide, care for the child, of the care provided by that carer,]
 - (b) in so far as it is reasonable and practicable to do so, of—
 - (i) the views of the parent or guardian of the child, and the child; ^{F12}...
 - ^{F12}(ii)
 provided that the parent, guardian, ^{F13}or child] in question has a wish, or as the case may be, a capacity, to express a view.]
- ^{F14}(5) In subsection (4)(a) and (aa), the reference to the care provided by a carer means—
- (a) in the case of an adult carer who has an adult carer support plan, the information about that care set out in that plan,
 - (b) in the case of a young carer who has a young carer statement, the information about that care set out in that statement.
- (6) In—
- (a) determining the needs of a child under subsection (3),

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- (b) deciding whether to provide any services under section 22(1), and
- (c) deciding how any such services are to be provided,

a local authority must take account of the views of the carer, in so far as it is reasonable and practicable to do so.

(7) In this section—

“adult carer” and “adult carer support plan” have the meanings given by the Carers (Scotland) Act 2016,

“young carer” and “young carer statement” have the meanings given by the Carers (Scotland) Act 2016.]

Annotations:

Amendments (Textual)

- F7** Words in s. 23(2) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (asp 13), ss. 331(1), 333(3), [Sch. 4 para. 7](#); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, [art. 2](#))
- F8** Word in s. 23(3) become s. 23(3)(a) (5.10.2005) by virtue of [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (asp 13), [ss. 227\(2\)\(a\)](#), 333(3); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, [art. 2](#))
- F9** S. 23(3)(b) and preceding word inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (asp 13), [ss. 227\(2\)\(b\)](#), 333(3); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, [art. 2](#))
- F10** S. 23(4) inserted (1.9.2002) by [2002 asp 5](#), [s. 10](#); S.S.I. 2002/170, [art. 2\(4\)](#)
- F11** S. 23(4)(a)(aa) substituted for s. 23(4)(a) (1.4.2018) by [Carers \(Scotland\) Act 2016](#) (asp 9), [ss. 30\(6\)\(a\)](#), 45(2); S.S.I. 2017/152, [reg. 4](#)
- F12** S. 23(4)(b)(ii) and word repealed (1.4.2018) by [Carers \(Scotland\) Act 2016](#) (asp 9), [ss. 30\(6\)\(b\)\(i\)](#), 45(2); S.S.I. 2017/152, [reg. 4](#)
- F13** Words in s. 23(4)(b) substituted (1.4.2018) by [Carers \(Scotland\) Act 2016](#) (asp 9), [ss. 30\(6\)\(b\)\(ii\)](#), 45(2); S.S.I. 2017/152, [reg. 4](#)
- F14** S. 23(5)-(7) inserted (1.4.2018) by [Carers \(Scotland\) Act 2016](#) (asp 9), [ss. 30\(7\)](#), 45(2); S.S.I. 2017/152, [reg. 4](#)

[^{F15}23A Sections 17, 22 and 26A: consideration of wellbeing

- (1) This section applies where a local authority is exercising a function under or by virtue of section 17, 22 or 26A of this Act.
- (2) The local authority must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing.
- (3) For the purpose of subsection (2) above, the local authority is to assess the wellbeing of a child or young person by reference to the extent to which the matters listed in section 96(2) of the 2014 Act are or, as the case may be, would be satisfied in relation to the child or young person.
- (4) In assessing the wellbeing of a child or young person as mentioned in subsection (3) above, a local authority is to have regard to the guidance issued under section 96(3) of the 2014 Act.
- (5) In this section, “the 2014 Act” means the Children and Young People (Scotland) Act 2014.]

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Annotations:

Amendments (Textual)

F15 S. 23A inserted (S.) (31.8.2016) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 95, 102(3)**; [S.S.I. 2016/60, art. 2\(b\)](#)

^{F16}24 Assessment of ability of carers to provide care for disabled children.

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Annotations:

Amendments (Textual)

F16 S. 24 repealed (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), s. 45(2), **sch. para. 2(2)**; [S.S.I. 2017/152, reg. 4](#)

^{F17}24A Duty of local authority to provide information to carer of disabled child

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Annotations:

Amendments (Textual)

F17 S. 24A repealed (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), s. 45(2), **sch. para. 2(2)**; [S.S.I. 2017/152, reg. 4](#)

25 Provision of accommodation for children, etc.

- (1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because—
 - (a) no-one has parental responsibility for him;
 - (b) he is lost or abandoned; or
 - (c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.
- (2) Without prejudice to subsection (1) above, a local authority may provide accommodation for any child within their area if they consider that to do so would safeguard or promote his welfare.
- (3) A local authority may provide accommodation for any person within their area who is at least eighteen years of age but not yet twenty-one, if they consider that to do so would safeguard or promote his welfare.
- (4) A local authority providing accommodation under subsection (1) above for a child who is ordinarily resident in the area of another local authority shall notify the other authority, in writing, that such provision is being made; and the other authority may at any time take over the provision of accommodation for the child.

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- (5) Before providing a child with accommodation under this section, a local authority shall have regard, so far as practicable, to his views (if he wishes to express them), taking account of his age and maturity; and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (6) Subject to subsection (7) below—
- (a) a local authority shall not provide accommodation under this section for a child if any person who—
- (i) has parental responsibilities in relation to him and the parental rights mentioned in section 2(1)(a) and (b) of this Act; and
- (ii) is willing and able either to provide, or to arrange to have provided, accommodation for him,
- objects; and
- (b) any such person may at any time remove the child from accommodation which has been provided by the local authority under this section.
- (7) Paragraph (a) of subsection (6) above does not apply—
- (a) as respects any child who, being at least sixteen years of age, agrees to be provided with accommodation under this section; or
- (b) where a residence order has been made in favour of one or more persons and that person has, or as the case may be those persons have, agreed that the child should be looked after in accommodation provided by, or on behalf of, the local authority;
- and paragraph (b) of that subsection does not apply where accommodation has been provided for a continuous period of at least six months (whether by a single local authority or, by virtue of subsection (4) above, by more than one local authority), unless the person removing the child has given the local authority for the time being making such provision at least fourteen days’ notice in writing of his intention to remove the child.
- (8) In this Part of this Act, accommodation means, except where the context otherwise requires, accommodation provided for a continuous period of more than twenty-four hours.

Annotations:

Modifications etc. (not altering text)

- C2** S. 25 modified (1.4.1997) by 1984 c. 56, s. 12(5) (as substituted (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 35(5) (with Sch. 3 paras. 4, 6); S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3))

26 Manner of provision of accommodation to child looked after by local authority.

- (1) A local authority may provide accommodation for a child looked after by them by—
- (a) placing him with—
- (i) a family (other than such family as is mentioned in paragraph (a) or (b) of the definition of that expression in section 93(1) of this Act);
- (ii) a relative of his; or
- (iii) any other suitable person

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F18 ;

- (b) maintaining him in a residential establishment; or
- (c) making such other arrangements as appear to them to be appropriate, including (without prejudice to the generality of this paragraph) making use of such services as are referred to in section 17(1)(b) of this Act.

(2) A local authority may arrange for a child whom they are looking after—

- (a) to be placed, under subsection (1)(a) above, with a person in England and Wales or in Northern Ireland; or
- (b) to be maintained in any accommodation in which—
 - (i) [F19 a local authority in England and Wales could place the child in a placement falling within section 22C(6)(c) of the Children Act 1989;]
 - (ii) an authority within the meaning of the M5 Children (Northern Ireland) Order 1995 could maintain him by virtue of Article 27(2)(b) to (e) of that Order.

Annotations:

Extent Information

E1 S. 26(1) extends to Scotland only; s. 26(2) extends also to England, Wales and Northern Ireland; see s. 105(1) and (8)

Amendments (Textual)

F18 Words in s. 26(1)(a) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), [Sch. 3](#); [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21)

F19 S. 26(2)(b)(i) substituted (1.4.2011 for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), s. 44(4), [Sch. 1 para. 9](#); [S.I. 2010/2981](#), art. 4(a)

Marginal Citations

M4 1989 c.41.

M5 [S.I. 1995/755 \(N.I.2\)](#)

[F20] 26A Provision of continuing care: looked after children

- (1) This section applies where an eligible person ceases to be looked after by a local authority.
- (2) An “eligible person” is a person who—
 - (a) is at least sixteen years of age, and
 - (b) is not yet such higher age as may be specified.
- (3) Subject to subsection (5) below, the local authority must provide the person with continuing care.
- (4) “Continuing care” means the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after.
- (5) The duty to provide continuing care does not apply if—
 - (a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,

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- (b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or
 - (c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.
- (6) A local authority's duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.
- (7) The duty to provide continuing care ceases if—
 - (a) the person leaves the accommodation of the person's own volition,
 - (b) the accommodation ceases to be available, or
 - (c) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.
- (8) For the purposes of subsection (7)(b) above, the situations in which accommodation ceases to be available include—
 - (a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,
 - (b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,
 - (c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.
- (9) The Scottish Ministers may by order—
 - (a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(c) above is the case,
 - (b) modify subsection (5) above so as to add, remove or vary a situation in which the duty to provide continuing care does not apply,
 - (c) modify subsection (7) or (8) above so as to add, remove or vary a situation in which the duty to provide continuing care ceases.
- (10) If a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify—
 - (a) the Scottish Ministers, and
 - (b) Social Care and Social Work Improvement Scotland.
- (11) An order under this section—
 - (a) may make different provision for different purposes,
 - (b) is subject to the affirmative procedure.
- (12) Before making an order under this section, the Scottish Ministers must consult—
 - (a) each local authority, and
 - (b) such other persons as they consider appropriate.
- (13) In this section—
 - “carer”, in relation to a care placement, means the family or persons with whom the placement is made,
 - “care placement” means a placement such as is mentioned in section 26(1) (a) of this Act,
 - “specified” means specified by order made the Scottish Ministers.]

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Annotations:

Amendments (Textual)

F20 S. 26A inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), ss. [67\(1\)](#), [102\(3\)](#); S.S.I. 2014/131, art. [2\(2\)\(3\)](#), sch.; S.S.I. 2015/61, art. [2\(1\)\(2\)](#), sch.

27 Day care for pre-school and other children.

(1) Each local authority shall provide such day care for children in need within their area who—

- (a) are aged five or under; and
- (b) have not yet commenced attendance at a school,

as is appropriate; and they may provide such day care for children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) but are not in need.

[^{F21}(1A) A local authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of children in need within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above about how they should provide day care for such children in pursuance of that subsection; and
- (b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide day care for such children in pursuance of that subsection.

(1B) A local authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above but are not in need about whether and if so how they should provide day care for such children under that subsection; and
- (b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of day care for such children under that subsection.]

(2) A local authority may provide facilities (including training, advice, guidance and counselling) for those—

- (a) caring for children in day care; or
- (b) who at any time accompany such children while they are in day care.

(3) Each local authority shall provide for children in need within their area who are in attendance at a school such care—

- (a) outside school hours; or
- (b) during school holidays,

as is appropriate; and they may provide such care for children within their area who are in such attendance but are not in need.

[^{F22}(3A) A local authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of children in need within their area who are in attendance at a school about how they should provide appropriate care for such children in pursuance of subsection (3) above; and

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- (b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide appropriate care for such children in pursuance of that subsection.

(3B) A local authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of children within their area who are in attendance at a school but are not in need about whether and if so how they should provide appropriate care for such children under subsection (3) above; and
- (b) after having had regard to the views expressed, prepare and publish plans in relation to the provision of appropriate care for such children in their area under that subsection.

(3C) The Scottish Ministers may by order modify subsection (1A), (1B), (3A) or (3B) above so as to vary the regularity within which a local authority must consult and plan in pursuance of that subsection.

(3D) An order made under subsection (3C) above is subject to the negative procedure.]

(4) In this section—

“day care” means any form of care provided for children during the day, whether or not it is provided on a regular basis; and

“school” has the meaning given by section 135(1) of the ^{M6}Education (Scotland) Act 1980.

Annotations:

Amendments (Textual)

F21 S. 27(1A)(1B) inserted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 55(2), 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.

F22 S. 27(3A)-(3D) inserted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 55(3), 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.

Marginal Citations

M6 1980 c.44.

28 Removal of power to arrange for emigration of children.

Section 23 of the ^{M7}Social Work (Scotland) Act 1968 (which provides a power for local authorities and voluntary associations, with the consent of the Secretary of State, to make arrangements for the emigration of children in their care) shall cease to have effect.

Annotations:

Marginal Citations

M7 1968 c.49.

Changes to legislation:

Children (Scotland) Act 1995, Cross Heading: Provision of services is up to date with all changes known to be in force on or before 17 March 2019. 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.

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2010/875 reg. 16Sch. 2](#) (This amendment not applied to [legislation.gov.uk](#). These Regulations never came into effect, having been revoked before coming into force by [S.I. 2010/1906, reg. 2](#))

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- [s. 3\(3A\)\(ba\)](#) inserted by [2009 c. 24 Sch. 6 para. 25](#)