

*Changes to legislation: Public Services Reform (Scotland) Act 2010, SCHEDULE 12 is up to date with all changes known to be in force on or before 14 April 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## SCHEDULE 12

(introduced by section 47(2))

### CARE SERVICES: DEFINITIONS

- 1 (1) A “support service” is a service provided, by reason of a person's vulnerability or need (other than vulnerability or need arising by reason only of that person being of a young age), to that person or to someone who cares for that person by—
- (a) a local authority;
  - (b) any person under arrangements made by a local authority;
  - (c) a health body; or
  - (d) any person if it includes personal care or personal support.
- (2) But—
- (a) the expression does not include a care home service, an independent health care service (within the meaning of section 10F of the National Health Service (Scotland) Act 1978 (c. 29)), a service which provides overnight accommodation, an adoption service, a fostering service or a service excepted from this definition by regulations;
  - (b) paragraphs (c) and (d) do not apply where the provider is a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c. 29);
  - (c) paragraph (d) does not apply if the provider is an individual who personally and solely gives the care or support in question.

#### Commencement Information

- I1** Sch. 12 para. 1 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
- I2** Sch. 12 para. 1 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

- 2 A “care home service” is a service which provides accommodation, together with nursing, personal care or personal support, for persons by reason of their vulnerability or need; but the expression does not include—
- (a) a hospital;
  - (b) a public, independent or grant-aided school; or
  - (c) a service excepted from this definition by regulations.

#### Commencement Information

- I3** Sch. 12 para. 2 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
- I4** Sch. 12 para. 2 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

- 3 (1) A “school care accommodation service” is a service which—
- (a) consists of the provision of residential accommodation to a pupil in a place in or outwith a public, independent or grant-aided school;
  - (b) is provided (whether or not during term-time) for the purpose of or in connection with the pupil's attendance at the school (whether current or otherwise); and
  - (c) is provided to the pupil by—
    - (i) an education authority or the managers of an independent or grant-aided school; or

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(ii) any person under arrangements made between that person and any such authority or managers.

- (2) For the purposes of sub-paragraph (1)(c)(i), a service which—
- (a) falls within the description given by sub-paragraph (1)(a), (b) and (c)(ii); and
  - (b) is provided to the pupil in domestic premises,
- is to be regarded as being provided by that authority or (as the case may be) those managers.
- (3) A service may be excepted from the definition in sub-paragraph (1) by regulations.

#### Commencement Information

- I5** Sch. 12 para. 3 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I6** Sch. 12 para. 3 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 4 A “nurse agency” is a service which consists of or includes supplying, or introducing to persons who use the service, registered nurses, registered midwives or registered health visitors; but a service may be excepted from this definition by regulations.

#### Commencement Information

- I7** Sch. 12 para. 4 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I8** Sch. 12 para. 4 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 5 (1) A “child care agency” is a service which consists of or includes supplying, or introducing to persons who use the service, child carers; but the expression does not include a nurse agency and a service may be excepted from this definition by regulations.
- (2) In sub-paragraph (1), “child carer” means a person who—
- (a) whether or not for reward; and
  - (b) whether on a day-to-day or on an occasional basis,
- looks after a child wholly or mainly in the home of the child's parents.

#### Commencement Information

- I9** Sch. 12 para. 5 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I10** Sch. 12 para. 5 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 6 A “secure accommodation service” is a service which—
- (a) provides accommodation for the purpose of restricting the liberty of children in residential premises where care services are provided; and
  - (b) is approved by the Scottish Ministers for that purpose.

#### Commencement Information

- I11** Sch. 12 para. 6 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I12** Sch. 12 para. 6 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

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- 7 An “offender accommodation service” is a service which consists of giving advice, guidance or assistance to persons who have been provided with accommodation under subsection (1)(b) or (c) of section 27 of the Social Work (Scotland) Act 1968 (c. 49) (supervision and care of persons put on probation or released from prison etc.); but the expression does not include a support service.

#### Commencement Information

- I13** Sch. 12 para. 7 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I14** Sch. 12 para. 7 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 8 (1) An “adoption service” is any service which is—
- (a) provided by a local authority under subsection (1) of section 1 of the Adoption and Children (Scotland) Act 2007 (asp 4); or
  - (b) provided by a person other than a local authority and which consists of, or includes, services mentioned in subsection (4) of that section (the reference in subsection (5) of that section to a local authority being taken, for the purposes of this paragraph, to be a reference to a person other than a local authority), (whether the person functions generally or in relation to a service provided, under that section).
- (2) For the purpose of sub-paragraph (1)(b)—
- (a) the making by a person of arrangements for the adoption of a child by a relevant person; or
  - (b) the placing by a person of a child for adoption with a relevant person, is not an adoption service.
- (3) In sub-paragraph (2), “relevant person” means—
- (a) a parent of the child;
  - (b) any other relative of the child; or
  - (c) where a parent of the child is a member of a relevant couple, the other member of the couple.
- (4) In sub-paragraph (3)—
- “relative” has the meaning given by section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4);
  - “relevant couple” is to be construed in accordance with section 29(3) of that Act.

#### Commencement Information

- I15** Sch. 12 para. 8 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I16** Sch. 12 para. 8 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 9 A “fostering service” is a service which is provided by—
- (a) a local authority under paragraph (a) of section 26(1) of the Children (Scotland) Act 1995 (c. 36) (fostering of children looked after by a local authority);
  - (b) a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the performance of functions assigned to a local authority—

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- (i) under that paragraph; or
- (ii) by virtue of section 5(2) to (4) of the Social Work (Scotland) Act 1968 (c. 49) (regulations relating to performance of functions assigned to a local authority under that Act); or
- (c) a local authority and which consists of, or includes, the functions assigned to the authority by sections 3 and 8 to 10 of the Foster Children (Scotland) Act 1984 (c. 56) (ensuring well-being etc. of certain privately fostered children).

#### Commencement Information

- I17** Sch. 12 para. 9 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I18** Sch. 12 para. 9 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 10 The services mentioned—
- (a) in paragraph 9(a) and (b) and registered under this Part may be collectively referred to as the “Scottish public fostering service”;
  - (b) in paragraph 9(c) and so registered may be collectively referred to as the “Scottish private fostering service”.

#### Commencement Information

- I19** Sch. 12 para. 10 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I20** Sch. 12 para. 10 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 11 An “adult placement service” is a service which consists of, or includes, arranging for the provision of accommodation for an adult (that is to say for a person who has attained the age of sixteen years), together with—
- (a) personal care;
  - (b) personal support; or
  - (c) counselling, or other help, provided other than as part of a planned programme of care,
- by reason of the person's vulnerability or need, by placing the person with a family or individual; but a service may be excepted from this definition by regulations.

#### Commencement Information

- I21** Sch. 12 para. 11 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)  
**I22** Sch. 12 para. 11 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 12 (1) “Child minding” means, subject to sub-paragraphs (2) and (3) and paragraph 14(a), looking after one or more children on domestic premises for reward and “act as a child minder” is to be construed accordingly; but a service may be excepted from those definitions by regulations.
- (2) For the purposes of sub-paragraph (1), a person who—
- (a) is the parent, or a relative, of a child;
  - (b) has parental responsibilities (within the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c. 36)) relating to the child;
  - (c) is a foster parent with whom a child is placed by a local authority;

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- (d) maintains a foster child (within the meaning of the Foster Children (Scotland) Act 1984 (c. 56));
  - [<sup>F1</sup>(e) is a person with whom a child is required to reside by virtue of a compulsory supervision order or an interim compulsory supervision order (as defined in sections 83 and 86 of the Children’s Hearings (Scotland) Act 2011 (asp 1)),]
  - (f) is a kinship carer (within the meaning of the Looked After Children (Scotland) Regulations 2009 (S.S.I. 2009/210)), of a child,  
does not act as a child minder when looking after that child.
- (3) For the purposes of sub-paragraph (1), where a person—
- (a) looks after a child for the parents of the child and the work consists of looking after the child wholly or mainly in the parents' home; or
  - (b) looks after a child for the parents of the child (the “first parents”) and another child for the different parents of that other child (the “second parents”) and the work consists of looking after the children wholly or mainly in the first parents' home or in the second parents' home, or in both those homes,  
that work is not child minding.

#### Textual Amendments

- F1** Sch. 12 para. 12(2)(e) substituted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [Sch. 1 para. 19\(4\)](#)

#### Commencement Information

- I23** Sch. 12 para. 12 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)  
**I24** Sch. 12 para. 12 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

- 13 “Day care of children” means, subject to paragraphs 14(b) to 17, a service which consists of any form of care (whether or not provided to any extent in the form of an educational activity), supervised by a responsible person and not excepted from this definition by regulations, provided for children, on premises other than domestic premises, during the day (whether or not it is provided on a regular basis or commences or ends during the hours of daylight).

#### Commencement Information

- I25** Sch. 12 para. 13 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)  
**I26** Sch. 12 para. 13 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

- 14 For the purposes of—
- (a) paragraph 12(1), a person does not act as a child minder;
  - (b) paragraph 13, a person does not provide day care of children,
- unless the period, or the total of periods, during which the service is provided exceeds two hours in any day.

#### Commencement Information

- I27** Sch. 12 para. 14 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)  
**I28** Sch. 12 para. 14 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

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- 15 (1) Where a person provides a service for children in particular premises on less than six days in any year, that provision is not day care of children for the purposes of paragraph 13 if the person has notified SCSWIS in writing, before the first occasion on which the service is so provided in that year, of the intention so to provide it.
- (2) In sub-paragraph (1), “year” means the year beginning with the day on which the service is (after the commencement of this section) first provided in the premises concerned; and thereafter any year beginning with the anniversary of that day.

#### Commencement Information

- I29** Sch. 12 para. 15 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
- I30** Sch. 12 para. 15 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

- 16 For the purposes of paragraph 13, a service which consists of looking after children who are patients in a hospital and is provided as part of the medical treatment which they are receiving there is not day care of children.

#### Commencement Information

- I31** Sch. 12 para. 16 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
- I32** Sch. 12 para. 16 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

- 17 For the purposes of paragraph 13, a person does not provide day care of children where—
- (a) the children are of school age;
  - (b) the service is provided—
    - (i) wholly or mainly in a public, independent or grant-aided school; and
    - (ii) as part of the school's activities; and
  - (c) the person is—
    - (i) the education authority managing the school;
    - (ii) the person carrying on the school; or
    - (iii) a person employed to work at the school and authorised to provide the service as part of the school's activities.

#### Commencement Information

- I33** Sch. 12 para. 17 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
- I34** Sch. 12 para. 17 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

- 18 Expressions used in paragraph 2(b), 3 or 17 have the meanings given by section 135(1) of the Education (Scotland) Act 1980 (c. 44).

#### Commencement Information

- I35** Sch. 12 para. 18 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
- I36** Sch. 12 para. 18 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

- 19 A “housing support service” is a service which provides support, assistance, advice or counselling to a person who has particular needs, with a view to enabling

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that person to occupy residential accommodation as a sole or main residence; but a service may be excepted from this definition by regulations and such residential accommodation does not include accommodation specified as excepted accommodation in regulations under section 91(9) of the Housing (Scotland) Act 2001 (asp 10).

#### Commencement Information

**I37** Sch. 12 para. 19 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)

**I38** Sch. 12 para. 19 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

20

In this schedule, unless the context otherwise requires—

“someone who cares for” (or “a person who cares for”) a person, means someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service;

“vulnerability or need”, in relation to a person, means vulnerability or need arising by reason of that person—

- (a) being affected by infirmity or ageing;
- (b) being, or having been, affected by disability, illness or mental disorder;
- (c) being, or having been, dependent on alcohol or drugs; or
- (d) being of a young age;

“personal care” means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash); and

“personal support” means counselling, or other help, provided as part of a planned programme of care.

#### Commencement Information

**I39** Sch. 12 para. 20 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)

**I40** Sch. 12 para. 20 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)



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

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

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

- Pt. 5 Ch. 3A inserted by [2019 asp 6 s. 12\(2\)](#)