



# Children and Young People (Scotland) Act 2014

2014 asp 8

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 19th February 2014 and received Royal Assent on 27th March 2014**

An Act of the Scottish Parliament to make provision about the rights of children and young people; to make provision about investigations by the Commissioner for Children and Young People in Scotland; to make provision for and about the provision of services and support for or in relation to children and young people; to make provision for an adoption register; to make provision about children's hearings, detention in secure accommodation and consultation on certain proposals in relation to schools; and for connected purposes.

VALID FROM 15/06/2015

## PART 1

### RIGHTS OF CHILDREN

#### **1 Duties of Scottish Ministers in relation to the rights of children**

- (1) The Scottish Ministers must—
  - (a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and
  - (b) if they consider it appropriate to do so, take any of the steps identified by that consideration.
- (2) In complying with their duty under subsection (1)(a), the Scottish Ministers must take such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware.
- (3) The Scottish Ministers must promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children.

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- (4) As soon as practicable after the end of each 3 year period, the Scottish Ministers must lay before the Scottish Parliament a report of—
  - (a) what steps they have taken in that period to secure better or further effect in Scotland of the UNCRC requirements,
  - (b) what they have done in that period in pursuance of subsection (3), and
  - (c) their plans until the end of the next 3 year period—
    - (i) to take steps to secure better or further effect in Scotland of the UNCRC requirements, and
    - (ii) to do things in pursuance of subsection (3).
- (5) In preparing such a report the Scottish Ministers must take such steps as they consider appropriate to obtain the views of children on what their plans for the purposes of subsection (4)(c) should be.
- (6) In subsection (4), “3 year period” means—
  - (a) the period of 3 years beginning with the day on which this section comes into force, and
  - (b) each subsequent period of 3 years.
- (7) As soon as practicable after a report has been laid before the Scottish Parliament under subsection (4), the Scottish Ministers must publish it (in such manner as they consider appropriate).

VALID FROM 01/04/2017

## 2 Duties of public authorities in relation to the UNCRC

- (1) As soon as practicable after the end of each 3 year period, an authority to which this section applies must publish (in such manner as the authority considers appropriate) a report of what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements.
- (2) In subsection (1), “3 year period” means—
  - (a) the period of 3 years beginning with the day on which this section comes into force, and
  - (b) each subsequent period of 3 years.
- (3) Two or more authorities to which this section applies may satisfy subsection (1) by publishing a report prepared by them jointly.

VALID FROM 01/04/2017

## 3 Authorities to which section 2 applies

- (1) The authorities to which section 2 applies are the persons listed, or persons within a description listed, in schedule 1.
- (2) The Scottish Ministers may by order modify schedule 1 by—
  - (a) adding a person or description of persons,

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- (b) removing an entry listed in it, or
  - (c) varying an entry listed in it.
- (3) An order under subsection (2)(a) may—
- (a) add a person only if the person falls within subsection (4),
  - (b) add a description of persons only if each of the persons within the description falls within subsection (4).
- (4) A person falls within this subsection if the person—
- (a) is part of the Scottish Administration,
  - (b) is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
  - (c) is a publicly owned company.
- (5) In subsection (4)(c), “publicly owned company” means a company that is wholly owned by—
- (a) the Scottish Ministers, or
  - (b) a person listed, or a person within a description listed, in schedule 1.
- (6) For the purpose of subsection (5), a company is wholly owned—
- (a) by the Scottish Ministers if it has no members other than—
    - (i) the Scottish Ministers or other companies that are wholly owned by them, or
    - (ii) persons acting on behalf of the Scottish Ministers or of such other companies,
  - (b) by a person listed, or a person within a description listed, in schedule 1 if it has no members other than—
    - (i) the person or other companies that are wholly owned by the person, or
    - (ii) persons acting on behalf of the person or of such other companies.
- (7) In this section, “company” includes any body corporate.

#### 4 Interpretation of Part 1

- (1) In this Part—
- “the rights of children” includes the rights and obligations set out in—
- (a) the UNCRC,
  - (b) the first optional protocol to the UNCRC, and
  - (c) the second optional protocol to the UNCRC,
- “the UNCRC” means the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989,
- “the first optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,
- “the second optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,
- “the UNCRC requirements” means the rights and obligations set out in—
- (a) Part 1 of the UNCRC,

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- (b) Articles 1 to 6(1), 6(3) and 7 of the first optional protocol, and
  - (c) Articles 1 to 10 of the second optional protocol.
- (2) A reference in subsection (1) to a UNCRC document is to be read as a reference to that document subject to—
- (a) any amendments in force in relation to the United Kingdom at the time, and
  - (b) any reservations, objections or interpretative declarations by the United Kingdom in force at the time.
- (3) In subsection (2), “UNCRC document”—
- (a) means the UNCRC or any optional protocol to the UNCRC, and
  - (b) includes provision of a UNCRC document.
- (4) Where subsection (5) applies, the Scottish Ministers may by order modify subsection (1) as they consider appropriate to take account of—
- (a) an optional protocol to the UNCRC, or
  - (b) an amendment of a document referred to in subsection (1) at the time.
- (5) This subsection applies where the protocol or amendment is one which—
- (a) the United Kingdom has ratified, or
  - (b) the United Kingdom has signed with a view to ratification.
- (6) No modification may be made by an order under subsection (4) so as to come into force before the protocol or amendment is in force in relation to the United Kingdom.

VALID FROM 07/08/2017

## PART 2

### COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

#### 5 Investigations by the Commissioner

- (1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.
- (2) In section 7—
- (a) for subsections (1) and (2), substitute—
    - “(1) The Commissioner may carry out an investigation into—
    - (a) whether, by what means and to what extent a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people (such an investigation being called a “general investigation”);
    - (b) whether, by what means and to what extent a service provider had regard to the rights, interests and views of a child or young person in making a decision or taking an action that affected that child or young person (such an investigation being called an “individual investigation”).

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- (2) The Commissioner may carry out a general investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to—
- (a) children and young people generally; or
  - (b) particular groups of children and young people.
- (2A) The Commissioner may carry out an investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the investigation would not duplicate work that is properly the function of another person.”
- (b) in subsection (3), omit paragraph (b),
- (c) after that subsection, add—
- “(4) Subsection (5) applies in relation to a matter about which the Commissioner may carry out an individual investigation.
- (5) Where the Commissioner considers that the matter may be capable of being resolved without an investigation, the Commissioner may with a view to securing that outcome take such steps as the Commissioner considers appropriate.”
- (3) In section 8—
- (a) in subsection (1), for paragraph (b) substitute—

“(b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the investigation and terms of reference to the attention of persons likely to be affected by it.”,
  - (b) in subsection (2), for “An” substitute “ A general ”,
  - (c) after that subsection, add—

“(3) An individual investigation is to be conducted in private.”.
- (4) In section 11—
- (a) in subsection (1), for “lay before the Parliament” substitute “ prepare ”,
  - (b) in subsection (3), for “laid before the Parliament” substitute “ finalised ”,
  - (c) after that subsection, add—

“(4) The Commissioner must lay before the Parliament the report of a general investigation.

(5) The Commissioner may lay before the Parliament the report of an individual investigation.”.

## **6 Requirement to respond to Commissioner's recommendations**

- (1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.
- (2) In section 11—
- (a) after subsection (2), insert—

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“(2A) In relation to any such recommendation, the report may include a requirement to respond.

(2B) A requirement to respond is a requirement that the service provider provides, within such period as the Commissioner reasonably requires, a statement in writing to the Commissioner setting out—

- (a) what the service provider has done or proposes to do in response to the recommendation; or
  - (b) if the service provider does not intend to do anything in response to the recommendation, the reasons for that.”,
- (b) after subsection (5) (as inserted by section 5 of this Act), add—

“(6) Where a report of an investigation includes a requirement to respond, the Commissioner must give a copy of the report to the service provider.”.

(3) After section 14, insert—

**“14AA Publication of responses to recommendations of investigations**

- (1) The Commissioner must publish any statement provided in response to a requirement to respond to a recommendation arising out of a general investigation.
- (2) Subsection (1) does not apply if, or to the extent that, the Commissioner considers publication to be inappropriate.
- (3) The Commissioner may publish any statement provided in response to a requirement to respond to a recommendation arising out of an individual investigation.
- (4) The Commissioner must ensure that, so far as reasonable and practicable having regard to the subject matter, the version of the statement which is published under subsection (1) or (3) does not name or identify any child or young person, or group of children or young people, referred to in it.
- (5) The Commissioner may, in such manner as the Commissioner considers appropriate, publicise a failure to comply with a requirement to respond.”.

VALID FROM 30/09/2015

**PART 3**

CHILDREN'S SERVICES PLANNING

VALID FROM 07/10/2016

**7 Introductory**

- (1) For the purposes of this Part—

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“children's service” means any service provided in the area of a local authority by a person mentioned in subsection (2) which is provided wholly or mainly to, or for the benefit of—

- (a) children generally, or
- (b) children with needs of a particular type (such as looked after children or children with a disability or a need for additional support in learning),

“other service provider” means—

- (a) the chief constable of the Police Service of Scotland,
- (b) the Scottish Fire and Rescue Service,
- (c) the Principal Reporter,
- (d) the National Convener of Children's Hearings Scotland,
- (e) the Scottish Court Service,
- (f) [<sup>F1</sup>an integration joint board established by order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014.]

“related service” means any service provided in the area of a local authority by a person mentioned in subsection (2) which though not a children's service is capable of having a significant effect on the wellbeing of children,

“relevant health board” means—

- (a) if the area of the local authority is the same as that of a health board, that health board,
- (b) if the area of the local authority is not the same as that of a health board, the health board within whose area the area of the local authority falls.

(2) The persons referred to in the definitions of “children's service” and “related service” in subsection (1) are—

- (a) the local authority,
- (b) the relevant health board,
- (c) any other service provider,
- (d) the Scottish Ministers (but only in relation to a service provided by them in exercise of their functions under the Prisons (Scotland) Act 1989).

(3) The Scottish Ministers may by order specify—

- (a) services which are to be considered to be included within or excluded from the definition of “children's service” or “related service” in subsection (1),
- (b) matters in relation to services falling within either of those definitions which are to be considered to be included within or excluded from those services.

(4) Before making such an order, the Scottish Ministers must consult—

- (a) each health board,
- (b) each local authority, and
- (c) where the service concerned is provided by one of the other service providers, that person.

(5) The Scottish Ministers may by order modify the definition of “other service provider” in subsection (1) by—

- (a) adding a person or a description of persons,
- (b) removing an entry listed in it, or

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(c) varying an entry listed in it.

(6) A function conferred by this Part on a local authority and the relevant health board is to be exercised by those persons jointly.

#### Textual Amendments

**F1** Words in s. 7(1) inserted (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), ss. 58, 72(2); S.S.I. 2014/231, art. 2

### 8 Requirement to prepare children's services plan

(1) A local authority and the relevant health board must in respect of each 3 year period prepare a children's services plan for the area of the local authority.

(2) In subsection (1)—

“3 year period” means—

- (a) the period of 3 years beginning with such date after the coming into force of this section as the Scottish Ministers specify by order, and
- (b) each subsequent period of 3 years,

“children's services plan” means a document setting out their plans for the provision over that period of all—

- (a) children's services, and
- (b) related services.

VALID FROM 07/10/2016

### 9 Aims of children's services plan

(1) A children's services plan is to be prepared with a view to securing the achievement of the aims in subsection (2).

(2) Those aims are—

- (a) that children's services in the area concerned are provided in the way which—
  - (i) best safeguards, supports and promotes the wellbeing of children in the area concerned,
  - (ii) ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising,
  - (iii) is most integrated from the point of view of recipients, and
  - (iv) constitutes the best use of available resources,
- (b) that related services in the area concerned are provided in the way which, so far as consistent with the objects and proper delivery of the service concerned, safeguards, supports and promotes the wellbeing of children in the area concerned.



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VALID FROM 07/10/2016

## 10 Children's services plan: process

- (1) In preparing a children's services plan a local authority and the relevant health board must—
  - (a) give each of the other service providers and the Scottish Ministers an effective opportunity (consistent with the extent to which the services they provide are to be the subject of the children's services plan) to participate in or contribute to the preparation of the plan, and
  - (b) consult—
    - (i) such organisations as appear to fall within subsection (2),
    - (ii) such social landlords as appear to provide housing in the area of the local authority, and
    - (iii) such other persons as the Scottish Ministers may by direction specify.
- (2) The organisations falling within this subsection are organisations (whether or not formally constituted) which—
  - (a) represent the interests of persons who use or are likely to use any children's service or related service in the area of the local authority, or
  - (b) provide a service in the area which, if it were provided by the local authority, the relevant health board, any of the other service providers or the Scottish Ministers, would be a children's service or a related service.
- (3) In subsection (1)(b)(ii), “social landlords” has the meaning given by section 165 of the Housing (Scotland) Act 2010.
- (4) A direction under subsection (1)(b)(iii) may be revised or revoked.
- (5) Each of the other service providers is and the Scottish Ministers are to participate in or contribute to the preparation of the children's services plan in accordance with the opportunity given to them under subsection (1)(a).
- (6) The persons to be consulted under subsection (1)(b) are to meet any reasonable request which the local authority and the relevant health board make of them—
  - (a) to participate in the preparation of the children's services plan for the area,
  - (b) to contribute to the preparation of that plan.
- (7) As soon as reasonably practicable after a children's services plan has been prepared, the local authority and the relevant health board must—
  - (a) send a copy to—
    - (i) the Scottish Ministers, and
    - (ii) each of the other service providers, and
  - (b) publish it (in such manner as the local authority and the relevant health board consider appropriate).
- (8) Where the Scottish Ministers or any of the other service providers disagrees with the plan in relation to any matter concerning the provision of a service by them, they must prepare and publish (in such manner as they consider appropriate)—
  - (a) a notice of the matters in relation to which they disagree, and

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- (b) a statement of their reasons for disagreeing.

VALID FROM 07/10/2016

## 11 Children's services plan: review

- (1) A local authority and the relevant health board—
- (a) must keep the children's services plan for the area of the local authority under review, and
  - (b) may in consequence prepare a revised children's services plan.
- (2) The following provisions apply to a revised children's services plan as they apply to a children's services plan—
- section 9,
  - section 10, and
  - subsection (1) of this section.

VALID FROM 07/10/2016

## 12 Implementation of children's services plan

- (1) During the period to which a children's services plan relates, the persons mentioned in subsection (2) must, so far as reasonably practicable, provide children's services and relevant services in the area of the local authority in accordance with the plan.
- (2) Those persons are—
- (a) the local authority,
  - (b) the relevant health board,
  - (c) the Scottish Ministers,
  - (d) the other service providers.
- (3) The duty in subsection (1) to provide services in accordance with the plan—
- (a) does not apply to the extent that the person providing the service considers that to comply with it would adversely affect the wellbeing of a child,
  - (b) does not apply in relation to the Scottish Ministers or the other service providers to the extent of any matter within a notice published by them under section 10(8) in relation to the plan.

VALID FROM 07/10/2016

## 13 Reporting on children's services plan

- (1) As soon as practicable after the end of each 1 year period, a local authority and the relevant health board must publish (in such manner as they consider appropriate) a report on the extent to which—

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- (a) children's services and related services have in that period been provided in the area of the local authority in accordance with the children's services plan, and
  - (b) that provision has achieved—
    - (i) the aims listed in section 9(2),
    - (ii) such outcomes in relation to the wellbeing of children in the area as the Scottish Ministers may by order prescribe.
- (2) In subsection (1), “1 year period” means—
- (a) the period of 1 year beginning with the date specified under section 8(1), and
  - (b) each subsequent period of 1 year.

VALID FROM 07/10/2016

#### **14 Assistance in relation to children's services planning**

- (1) A person mentioned in subsection (2) must comply with any reasonable request made of them to provide a local authority and the relevant health board with information, advice or assistance for the purposes of exercising their functions under this Part.
- (2) Those persons are—
- (a) any of the other service providers or the Scottish Ministers (but only in so far as the information, advice or assistance relates to a children's service or a related service which it is a function of the person to provide),
  - (b) any of the persons mentioned in section 10(1)(b).
- (3) Subsection (1) does not apply where the person considers that the provision of the information, advice or assistance concerned would—
- (a) be incompatible with any duty of the person, or
  - (b) unduly prejudice the exercise of any function of the person.

VALID FROM 07/10/2016

#### **15 Guidance in relation to children's services planning**

- (1) A person or the persons mentioned in subsection (2) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by this Part (other than the function of complying with section 12).
- (2) Those persons are—
- (a) a local authority and the relevant health board,
  - (b) each of the other service providers.
- (3) Before issuing or revising guidance, the Scottish Ministers must consult—
- (a) any person to which it relates, and
  - (b) such other persons as they consider appropriate.

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VALID FROM 07/10/2016

## 16 Directions in relation to children's services planning

- (1) A person or the persons mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by this Part (other than the function of complying with section 12).
- (2) Those persons are—
  - (a) a local authority and the relevant health board,
  - (b) each of the other service providers.
- (3) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—
  - (a) any person to which it relates, and
  - (b) such other persons as they consider appropriate.

VALID FROM 07/10/2016

## 17 Children's services planning: default powers of Scottish Ministers

- (1) This section applies where the Scottish Ministers consider that a local authority and the relevant health board—
  - (a) are not exercising a function conferred on them by this Part (other than the function of complying with section 12), or
  - (b) are in exercising such a function not complying with section 15(1).
- (2) The Scottish Ministers may direct that the function—
  - (a) is to be exercised in a particular way, or
  - (b) is to be exercised instead by such of the persons mentioned in subsection (3) as the Scottish Ministers consider appropriate.
- (3) Those persons are—
  - (a) the local authority,
  - (b) the relevant health board,
  - (c) another local authority or health board.
- (4) A direction under subsection (2)(b) may include such provision as the Scottish Ministers consider appropriate as to the making by a person who is not to be exercising the function of payment to a person who is to exercise the function by virtue of the direction.
- (5) Before issuing, revising or revoking a direction under subsection (2) the Scottish Ministers must consult—
  - (a) the local authority and relevant health board whose failure is to be, or is, the subject of the direction, and
  - (b) such other persons as they consider appropriate.

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(6) The persons to whom a direction under subsection (2) is addressed must comply with the direction.

VALID FROM 07/10/2016

## 18 Interpretation of Part 3

In this Part—

“children's services plan” has the meaning given by section 8(2),

“service” means any service or support—

- (a) which must be provided by the person concerned, or
- (b) which the person concerned has power to provide.

VALID FROM 05/01/2016

## PART 4

### PROVISION OF NAMED PERSONS

## 19 Named person service

- (1) In this Part, “named person service” means the service of making available, in relation to a child or young person, an identified individual who is to exercise the functions in subsection (5).
- (2) An individual may be identified for the purpose of a named person service only if the individual falls within subsection (3).
- (3) An individual falls within this subsection if—
  - (a) the individual—
    - (i) is an employee of the service provider, or
    - (ii) is, or is an employee of, a person who exercises any function on behalf of the service provider, and
  - (b) the individual meets such requirements as to training, qualifications, experience or position as may be specified by the Scottish Ministers by order.
- (4) An individual does not fall within subsection (3) if the individual is a parent of the child or young person.
- (5) The functions referred to in subsection (1) are—
  - (a) subject to subsection (6), doing such of the following where the named person considers it to be appropriate in order to promote, support or safeguard the wellbeing of the child or young person—
    - (i) advising, informing or supporting the child or young person, or a parent of the child or young person,

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- (ii) helping the child or young person, or a parent of the child or young person, to access a service or support, or
  - (iii) discussing, or raising, a matter about the child or young person with a service provider or relevant authority, and
  - (b) such other functions as are specified by this Act or any other enactment as being functions of a named person in relation to a child or young person.
- (6) The function in subsection (5)(a) does not apply in relation to a matter arising at a time when the child or young person is, as a member of any of the reserve forces, subject to service law.
- (7) The named person functions are exercised on behalf of the service provider concerned.
- (8) Responsibility for the exercise of the named person functions lies with the service provider rather than the named person.

PROSPECTIVE

## 20 Named person service in relation to pre-school child

- (1) A health board is to make arrangements for the provision of a named person service in relation to each pre-school child residing in its area.
- (2) A “pre-school child” is a child who—
- (a) has not commenced attendance at a primary school, and
  - (b) if the child is of school age, has not commenced attendance at a primary school because the relevant local authority has consented to the child's commencement at primary school being delayed.
- (3) For the purposes of this section—
- (a) the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant local authority,
  - (b) references to attendance at a primary school do not include attendance at a nursery class in such a school,
  - (c) references to the relevant local authority are to the local authority for the area in which the child concerned resides.

PROSPECTIVE

## 21 Named person service in relation to children not falling within section 20

- (1) A local authority is to make arrangements for the provision of a named person service in relation to each child residing in its area, other than—
- (a) a pre-school child, or
  - (b) a child falling within subsection (2) or (4).
- (2) A child falls within this subsection if the child is—
- (a) a pupil at a public school which is managed by a different local authority,
  - (b) a pupil at—

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- (i) a grant-aided school, or
  - (ii) an independent school,
  - (c) kept in secure accommodation, or
  - (d) in legal custody or subject to temporary release from such custody.
- (3) For the purposes of subsection (2)(d), a child is in legal custody—
- (a) while confined in or being taken to or from any penal institution in which the child may be lawfully confined,
  - (b) while working, or for any other reason, outside the penal institution in the custody or under the control of an officer of the institution, a constable or a police custody and security officer,
  - (c) while being taken to any place to which the child is required or authorised to be taken by virtue of the Prisons (Scotland) Act 1989, or
  - (d) while kept in custody in pursuance of such a requirement or authorisation.
- (4) A child falls within this subsection if the child is a member of any of the regular forces.
- (5) During any period when a child falls within subsection (2)(a), the local authority which manages the school concerned is to make arrangements for the provision of a named person service in relation to the child.
- (6) During any period when a child falls within subsection (2)(b) or (c), the directing authority of the establishment concerned is to make arrangements for the provision of a named person service in relation to the child.
- (7) During any period when a child falls within subsection (2)(d), the Scottish Ministers are to make arrangements for the provision of a named person service in relation to the child.

PROSPECTIVE

## **22 Continuation of named person service in relation to certain young people**

- (1) A person mentioned in subsection (3) is to make arrangements for the provision of a named person service in relation to each young person.
- (2) A “young person” is a person who—
- (a) attained the age of 18 years while a pupil at a school, and
  - (b) has since attaining that age, remained a pupil at that or another school.
- (3) The person referred to in subsection (1) is—
- (a) where the young person is a pupil at a school managed by a local authority, that authority,
  - (b) where the young person is a pupil at a grant-aided school or an independent school, the directing authority of the establishment concerned.

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## PROSPECTIVE

**23 Communication in relation to movement of children and young people**

- (1) This section applies where a person ceases to be the service provider in relation to a child or young person.
- (2) The person (“the outgoing service provider”) must as soon as is reasonably practicable—
  - (a) inform any other person which has become or which it considers may be the service provider in relation to the child or young person (“the incoming service provider”) that the outgoing service provider has ceased to be the service provider in relation to the child or young person, and
  - (b) provide the incoming service provider with—
    - (i) the name and address of the child or young person and each parent of the child or young person (so far as the outgoing service provider has that information), and
    - (ii) all information which the outgoing service provider holds which falls within subsection (3).
- (3) Information falls within this subsection if the outgoing service provider considers that—
  - (a) it is likely to be relevant to—
    - (i) the exercise by the incoming service provider of any functions of a service provider under this Part, or
    - (ii) the future exercise of the named person functions in relation to the child or young person,
  - (b) it ought to be provided for that purpose, and
  - (c) its provision would not prejudice the conduct of a criminal investigation or the prosecution of any offence.
- (4) In considering for the purpose of subsection (3)(b) whether information ought to be provided, the outgoing service provider is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.
- (5) In having regard to the views of a child under subsection (4), an outgoing service provider is to take account of the child's age and maturity.
- (6) The outgoing service provider may decide for the purpose of subsection (3)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.
- (7) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.



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PROSPECTIVE

**24 Duty to communicate information about role of named persons**

- (1) Each service provider must publish (in such manner as it considers appropriate) information about—
  - (a) the operation of the named person service provided in pursuance of the arrangements made by it, including in particular—
    - (i) how the named person functions are, generally, exercised, and
    - (ii) the arrangements, generally, for contacting named persons,
  - (b) how the service provider generally exercises its functions under this Part, and
  - (c) such other matters relating to this Part as it considers appropriate.
- (2) The service provider in relation to a child or young person must provide the child or young person and the parents of the child or young person with information about the arrangements for contacting the named person for the child or young person—
  - (a) as soon as reasonably practicable after it becomes the service provider in relation to the child or young person, and
  - (b) as soon as reasonably practicable after there is any change in those arrangements.

PROSPECTIVE

**25 Duty to help named person**

- (1) Subsection (2) applies where it appears to the service provider in relation to a child or young person that another service provider or a relevant authority could, by doing a certain thing, help in the exercise of any of the named person functions for a child or young person.
- (2) The other service provider or relevant authority must comply with any request for such help which is made of it, unless subsection (3) applies.
- (3) This subsection applies where the other service provider or relevant authority considers that the provision of the help would—
  - (a) be incompatible with any duty of the other service provider or relevant authority, or
  - (b) unduly prejudice the exercise of any function of the other service provider or relevant authority.

PROSPECTIVE

**26 Information sharing**

- (1) A service provider or relevant authority must provide to the service provider in relation to a child or young person any information which the person holds which falls within subsection (2).

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- (2) Information falls within this subsection if the information holder considers that—
  - (a) it is likely to be relevant to the exercise of the named person functions in relation to the child or young person,
  - (b) it ought to be provided for that purpose, and
  - (c) its provision to the service provider in relation to the child or young person would not prejudice the conduct of any criminal investigation or the prosecution of any offence.
- (3) The service provider in relation to a child or young person must provide to a service provider or relevant authority any information which the person holds which falls within subsection (4).
- (4) Information falls within this subsection if the information holder considers that—
  - (a) it is likely to be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person,
  - (b) it ought to be provided for that purpose, and
  - (c) its provision to the service provider or relevant authority would not prejudice the conduct of any criminal investigation or the prosecution of any offence.
- (5) In considering for the purpose of subsection (2)(b) or (4)(b) whether information ought to be provided, the information holder is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.
- (6) In having regard to the views of a child under subsection (5), an information holder is to take account of the child's age and maturity.
- (7) The information holder may decide for the purpose of subsection (2)(b) or (4)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.
- (8) The service provider in relation to a child or young person may provide to a service provider or relevant authority any information which the person holds which falls within subsection (9).
- (9) Information falls within this subsection if the information holder considers that its provision to the service provider or relevant authority is necessary or expedient for the purposes of the exercise of any of the named person functions.
- (10) References in this section to a service provider or a relevant authority include any person exercising a function on behalf of a service provider or relevant authority.
- (11) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

PROSPECTIVE

## 27 Disclosure of information

- (1) This section applies—

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- (a) where by virtue of this Part, a person provides information in breach of a duty of confidentiality, and
  - (b) in providing the information, the person informs the recipient of the breach of duty.
- (2) The recipient is not to provide the information to any other person, unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law.

PROSPECTIVE

## 28 Guidance in relation to named person service

- (1) A person mentioned in subsection (2) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by this Part.
- (2) Those persons are—
- (a) a local authority,
  - (b) a health board,
  - (c) a directing authority,
  - (d) a relevant authority.
- (3) Before issuing or revising guidance, the Scottish Ministers must consult—
- (a) any person to which it relates, and
  - (b) such other persons as they consider appropriate.

PROSPECTIVE

## 29 Directions in relation to named person service

- (1) A person mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by this Part.
- (2) Those persons are—
- (a) a local authority,
  - (b) a health board,
  - (c) a directing authority,
  - (d) a relevant authority.
- (3) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—
- (a) any person to which it relates, and
  - (b) such other persons as they consider appropriate.

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### 30 Complaints in relation to Part 4

- (1) The Scottish Ministers may by order make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under this Part.
- (2) The provision which may be made under subsection (1) includes provision about—
  - (a) matters which may, or may not, be the subject of a complaint,
  - (b) who may make a complaint,
  - (c) how a complaint may be made,
  - (d) time limits for making complaints,
  - (e) steps which require to be taken before a complaint may be made,
  - (f) who is to consider a complaint,
  - (g) the procedure for the consideration of a complaint,
  - (h) the obtaining of information for the purpose of considering a complaint,
  - (i) the keeping of records in relation to complaints or their consideration,
  - (j) the making of findings, and reporting, following the consideration of a complaint.
- (3) An order under subsection (1) may modify any enactment.

### 31 Relevant authorities

- (1) The persons listed, or within a description listed, in schedule 2, are “relevant authorities” for the purposes of this Part (subject to subsection (3)).
- (2) The Scottish Ministers may by order modify schedule 2 by—
  - (a) adding a person or description of persons,
  - (b) removing an entry listed in it, or
  - (c) varying an entry listed in it.
- (3) The following persons are not relevant authorities for the purposes of section 29—
  - (a) the Commissioner for Children and Young People in Scotland,
  - (b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.
- (4) An order under subsection (2) which adds a person, or a description of persons, to schedule 2, may modify this section so as to provide that the person is not a relevant authority, or the persons within the description are not relevant authorities, for the purposes of section 29.

PROSPECTIVE

### 32 Interpretation of Part 4

In this Part—

“constable” has the same meaning as in section 13(b) of the Prisons (Scotland) Act 1989,

“directing authority” means—

- (a) when used generally, each of the following—

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- (i) the managers of each grant-aided school,
  - (ii) the proprietor of each independent school, and
  - (iii) the local authority or other person who manages each residential establishment which comprises secure accommodation,
- (b) when used in relation to a particular establishment—
- (i) in relation to a grant-aided school, the managers of the school,
  - (ii) in relation to an independent school, the proprietor of the school,
  - (iii) in relation to secure accommodation, the local authority or other person who manages the residential establishment,
- “named person” means the identified individual made available in pursuance of a named person service,
- “named person functions” means the functions to be exercised by way of the named person service,
- “parent” has the same meaning as in the 1980 Act,
- “penal institution” means any—
- (a) prison (other than a naval, military or air force prison),
  - (b) remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or
  - (c) young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),
- “pre-school child” has the meaning given by section 20(2),
- “regular forces” has the meaning given by section 374 of the Armed Forces Act 2006,
- “reserve forces” has the meaning given by section 374 of the Armed Forces Act 2006,
- “secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,
- “service provider” means—
- (a) when used generally, each of the following—
    - (i) each health board,
    - (ii) each local authority,
    - (iii) each directing authority, and
    - (iv) the Scottish Ministers,
  - (b) when used in relation to a child or young person, the person which has the function of making arrangements for the provision of a named person service in relation to the child or young person,
- “subject to service law” has the meaning given by section 374 of the Armed Forces Act 2006,
- “temporary release” means release by virtue of rules made under section 39(6) of the Prisons (Scotland) Act 1989,
- “young person” has the meaning given by section 22(2).

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VALID FROM 05/01/2016

## PART 5

### CHILD'S PLAN

#### 33 Child's plan: requirement

- (1) For the purposes of this Part, a child requires a child's plan if the responsible authority in relation to a child considers that—
  - (a) the child has a wellbeing need, and
  - (b) subsection (3) applies in relation to that need.
- (2) A child has a wellbeing need if the child's wellbeing is being, or is at risk of being, adversely affected by any matter.
- (3) This subsection applies in relation to a wellbeing need if—
  - (a) the need is not capable of being met, or met fully, by the taking of action other than a targeted intervention in relation to the child, and
  - (b) the need, or the remainder of the need, is capable of being met, or met to some extent, by one or more targeted interventions in relation to the child.
- (4) A “targeted intervention” is a service which—
  - (a) is provided by a relevant authority in pursuance of any of its functions, and
  - (b) is directed at meeting the needs of children whose needs are not capable of being met, or met fully, by the services which are provided generally to children by the authority.
- (5) The references in subsection (4) to services being provided by a relevant authority include references to services provided by a third person under arrangements made by the relevant authority.
- (6) In deciding whether a child requires a child's plan, the responsible authority—
  - (a) is, where the child's named person is not an employee of the responsible authority, to consult the child's named person, and
  - (b) is so far as reasonably practicable to ascertain and have regard to the views of—
    - (i) the child,
    - (ii) the child's parents,
    - (iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and
    - (iv) such other persons as the responsible authority considers appropriate.
- (7) In having regard to the views of the child, the responsible authority is to take account of the child's age and maturity.
- (8) Subsection (1) does not apply in relation to—
  - (a) a child who already has a child's plan,
  - (b) a child who is a member of any of the regular forces.

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(9) In subsection (8)(b), “regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

### **34 Content of a child's plan**

- (1) A child's plan is to contain a statement of—
- (a) the child's wellbeing need,
  - (b) the targeted intervention which requires to be provided, or the targeted interventions which require to be provided, in relation to the child, and
  - (c) in relation to each such targeted intervention—
    - (i) the relevant authority which is to provide the targeted intervention,
    - (ii) the manner in which the targeted intervention is to be provided, and
    - (iii) the outcome in relation to the child's wellbeing need which the targeted intervention is intended to achieve.
- (2) A child's plan may contain a targeted intervention only where the relevant authority which would provide it, or under whose arrangements it would be provided, agrees.
- (3) If that relevant authority is not to prepare the plan, it must provide to the person who is to prepare the plan a statement of its reasons for not agreeing.
- (4) The Scottish Ministers may by order make provision as to—
- (a) other information which is, or is not, to be contained in child's plans,
  - (b) the form of child's plans.

### **35 Preparation of a child's plan**

- (1) This section applies where a child requires a child's plan.
- (2) Subject to subsections (3) and (5), the responsible authority is to prepare such a plan as soon as is reasonably practicable.
- (3) Where the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare a child's plan, the relevant authority is to prepare the plan as soon as is reasonably practicable.
- (4) A relevant authority which declines to give its agreement as mentioned in subsection (3) must provide a statement of its reasons.
- (5) Subsection (2) does not apply where, by virtue of section 34(2), there are no targeted interventions which may be contained in a child's plan.
- (6) In preparing a child's plan, an authority—
- (a) is, where the child's named person is not an employee of the authority, to consult the child's named person, and
  - (b) is so far as reasonably practicable to ascertain and have regard to the views of—
    - (i) the child,
    - (ii) the child's parents,
    - (iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and
    - (iv) such other persons as the authority considers appropriate.

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- (7) In having regard to the views of the child, the authority preparing the child's plan is to take account of the child's age and maturity.
- (8) The Scottish Ministers may by order—
  - (a) make further provision as to the preparation of child's plans,
  - (b) make provision requiring or permitting the authority which prepared a child's plan to provide a copy of it to a particular person or to the persons within a particular description.
- (9) An order under subsection (8)(b) may include provision to the effect that a copy of a child's plan is to be provided to a person, or to persons within a particular description, only—
  - (a) in circumstances described in the order, or
  - (b) where the authority considers it appropriate.

PROSPECTIVE

### 36 Responsible authority: general

- (1) For the purposes of this Part, the responsible authority in relation to a child is—
  - (a) where the child is a pre-school child, the health board for the area in which the child resides,
  - (b) where the child is not a pre-school child, the local authority for the area in which the child resides.
- (2) Subsection (1) is subject to section 37.
- (3) A “pre-school child” is a child who—
  - (a) has not commenced attendance at a primary school, and
  - (b) if the child is of school age, has not commenced attendance at a primary school because the relevant local authority has consented to the child's commencement at primary school being delayed.
- (4) For the purposes of this section—
  - (a) the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant local authority,
  - (b) the references to attendance at a primary school do not include attendance at a nursery class in such a school, and
  - (c) the references to the relevant local authority are to the local authority for the area in which the child concerned resides.

### 37 Responsible authority: special cases

- (1) Where in pursuance of a decision of a local authority or health board a pre-school child resides in the area of a health board which is different to that in which the child would otherwise reside, the health board for the area in which the child would otherwise reside is the responsible authority in relation to the child.



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- (2) Where the child is a pupil at a public school which is managed by a local authority other than the one for the area in which the child resides, that other authority is the responsible authority in relation to the child.
- (3) Where the child is a pupil at a grant-aided school or an independent school, the directing authority of that school is the responsible authority in relation to the child.
- (4) Subsection (3) does not apply where the child is such a pupil by virtue of a placement by a local authority.
- (5) Where—
  - (a) the child falls within subsection (6), and
  - (b) in consequence the child resides in the area of a local authority which is different to that in which the child would otherwise reside,
 the local authority for the area in which the child would otherwise reside is the responsible authority in relation to the child.
- (6) A child falls within this subsection if—
  - (a) in pursuance of the duties of a local authority under the 1980 Act the child—
    - (i) is a pupil at a grant-aided school or an independent school, and
    - (ii) resides in accommodation provided for the purpose of attending that school by its managers,
  - (b) by virtue of Chapter 1 of Part 2 of the 1995 Act, the child is placed in a residential establishment (within the meaning of section 93 of that Act),
  - (c) by virtue of an order under the Children's Hearing (Scotland) Act 2011, the child resides at a residential establishment (within the meaning of section 202 of that Act), or
  - (d) in pursuance of an order under the Criminal Procedure (Scotland) Act 1995, the child is detained in residential accommodation provided under Part 2 of the 1995 Act.
- (7) The Scottish Ministers may by order modify this section so as to make further or different provision as to circumstances in which section 36(1) does not apply in relation to a child.

PROSPECTIVE

### 38 Delivery of a child's plan

- (1) A relevant authority is so far as reasonably practicable—
  - (a) to provide any targeted intervention contained in a child's plan which is to be provided by it in accordance with the plan,
  - (b) to secure that any targeted intervention contained in a child's plan which is to be provided by a third person under arrangements made by the authority is provided in accordance with the plan.
- (2) Subsection (1) does not apply to the extent that the authority considers that to comply with it would adversely affect the wellbeing of the child.

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### **39 Child's plan: management**

- (1) The managing authority of a child's plan is to keep under review whether—
  - (a) the wellbeing need of the child stated in the plan is still accurate,
  - (b) in relation to each targeted intervention, it or the manner of its provision, is still appropriate,
  - (c) the outcome of the plan has been achieved, and
  - (d) the management of the plan should transfer to another relevant authority.
- (2) In reviewing a child's plan, the managing authority—
  - (a) is to consult—
    - (i) each other relevant authority to which subsection (3) applies,
    - (ii) where it is neither the managing authority nor consulted under subparagraph (i), the responsible authority in relation to the child, and
    - (iii) where the child's named person is not an employee of the managing authority, the child's named person, and
  - (b) is so far as reasonably practicable to ascertain and have regard to the views of—
    - (i) the child,
    - (ii) the child's parents,
    - (iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and
    - (iv) such other persons as the managing authority considers appropriate.
- (3) This subsection applies to a relevant authority if—
  - (a) it is providing a targeted intervention contained in the plan, or
  - (b) a targeted intervention contained in the plan is being provided by a third person under arrangements made by the authority.
- (4) In having regard to the views of the child as mentioned in subsection (2)(b)(i), the managing authority is to take account of the child's age and maturity.
- (5) The managing authority of a child's plan may in consequence of the review—
  - (a) amend the plan so as to revise—
    - (i) the wellbeing need of the child,
    - (ii) a targeted intervention,
    - (iii) the manner in which a targeted intervention requires to be provided, or
    - (iv) the outcome which the plan is intended to achieve,
  - (b) transfer the management of the plan to another relevant authority, or
  - (c) end the plan.
- (6) The Scottish Ministers may by order make provision about the management of child's plans, including provision about—
  - (a) when and how a child's plan is to be reviewed in accordance with subsection (1),
  - (b) who is to be the managing authority of a child's plan,
  - (c) when and to whom management of a child's plan is to or may transfer under subsection (5)(b),
  - (d) when and how a new targeted intervention may be included in a child's plan,

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(e) the keeping, disclosure and destruction of child's plans.

(7) Subject to provision made under subsection (6)(b), the managing authority of a child's plan is—

- (a) the relevant authority which prepared it, or
- (b) where management of the child's plan has been transferred under subsection (5)(b), the relevant authority to which the management of the child's plan was so transferred (or where there has been more than one such transfer, last so transferred).

PROSPECTIVE

#### 40 Assistance in relation to child's plan

(1) A person mentioned in subsection (2) must comply with any reasonable request made of the person to provide a person exercising functions under this Part with information, advice or assistance for that purpose.

(2) Those persons are—

- (a) a relevant authority,
- (b) a listed authority.

(3) Subsection (1) does not apply where the person to whom the request is made considers that provision of the information, advice or assistance concerned would—

- (a) be incompatible with any duty of the person, or
- (b) unduly prejudice the exercise of any function of the person.

(4) Other than in relation to a duty of confidentiality, subsection (1) does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

(5) Subsection (6) applies—

- (a) where, by virtue of subsection (1), a person provides information in breach of a duty of confidentiality, and
- (b) in providing the information, the person informs the recipient of the breach of duty.

(6) The recipient is not to provide the information to any other person unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law.

PROSPECTIVE

#### 41 Guidance on child's plans

(1) A person mentioned in subsection (2) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by or under this Part (other than the function of complying with section 38).

(2) Those persons are—

- (a) a relevant authority,

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(b) a listed authority.

(3) Before issuing or revising guidance, the Scottish Ministers must consult—

- (a) any person to which it relates, and
- (b) such other persons as they consider appropriate.

PROSPECTIVE

#### 42 Directions in relation to child's plans

(1) A person mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by or under this Part (other than the function of complying with section 38).

(2) Those persons are—

- (a) a relevant authority,
- (b) a listed authority.

(3) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—

- (a) any person to which it relates, and
- (b) such other persons as they consider appropriate.

#### 43 Complaints in relation to Part 5

(1) The Scottish Ministers may by order make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under this Part.

(2) The provision which may be made under subsection (1) includes provision about—

- (a) matters which may, or may not, be the subject of a complaint,
- (b) who may make a complaint,
- (c) how a complaint may be made,
- (d) time limits for making complaints,
- (e) steps which require to be taken before a complaint may be made,
- (f) who is to consider a complaint,
- (g) the procedure for the consideration of a complaint,
- (h) the obtaining of information for the purpose of considering a complaint,
- (i) the keeping of records in relation to complaints or their consideration,
- (j) the making of findings, and reporting, following the consideration of a complaint.

(3) An order under subsection (1) may modify any enactment.

#### 44 Listed authorities

(1) The persons listed, or within a description listed, in schedule 3, are “listed authorities” for the purposes of this Part (subject to subsections (3) and (4)).

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- (2) The Scottish Ministers may by order modify schedule 3 by—
  - (a) adding a person or description of persons,
  - (b) removing an entry listed in it, or
  - (c) varying an entry listed in it.
- (3) The Scottish Ministers are not a listed authority for the purposes of sections 41 and 42.
- (4) The following persons are not listed authorities for the purposes of section 42—
  - (a) the Commissioner for Children and Young People in Scotland,
  - (b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.
- (5) An order under subsection (2) which adds a person, or a description of persons, to schedule 3, may modify this section so as to provide that the person is not a listed authority, or the persons within the description are not listed authorities, for the purposes of section 42.

PROSPECTIVE

## 45 Interpretation of Part 5

In this Part—

“child's named person” means the individual who is the child's named person by virtue of Part 4,

“directing authority” means—

(a) when used generally—

- (i) the managers of each grant-aided school,
- (ii) the proprietor of each independent school,

(b) when used in relation to a particular establishment—

- (i) in relation to a grant-aided school, the managers of the school,
- (ii) in relation to an independent school, the proprietor of the school,

“parent” has the same meaning as in the 1980 Act,

“relevant authority” means any—

- (a) health board,
- (b) local authority, or
- (c) directing authority,

“service” includes support,

“targeted intervention” has the meaning given by section 33(4).

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## PART 6

### EARLY LEARNING AND CHILDCARE

VALID FROM 28/06/2014

#### **46 Early learning and childcare**

In this Part, “early learning and childcare” means a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting.

#### **47 Duty to secure provision of early learning and childcare**

- (1) An education authority must, in pursuance of its duty under section 1(1) of the 1980 Act, secure that the mandatory amount of early learning and childcare is made available for each eligible pre-school child belonging to its area.
- (2) An “eligible pre-school child” is a child who—
  - (a) is under school age,
  - (b) has not commenced attendance at a primary school (other than at a nursery class in such a school), and
  - (c) either—
    - (i) falls within subsection (3), or
    - (ii) is within such age range, or is of such other description, as the Scottish Ministers may by order specify.
- (3) Subject to subsection (4), a child falls within this subsection if the child is aged 2 or over and is or has been at any time since the child's second birthday—
  - (a) looked after by the authority concerned or by any other local authority, or
  - (b) the subject of a kinship care order or a child falling within section 71(3)(f).
- (4) The Scottish Ministers may by order provide that a child aged 4 or over does not (or is no longer to) fall within subsection (3) in such circumstances as may be specified in the order.
- (5) An order made under subsection (2)(c)(ii) may provide that a child is to be an eligible pre-school child only if the education authority concerned is satisfied as to any matter relating to the child which is specified in the order.
- (6) In subsection (3)(b), “kinship care order” has the meaning given by section 72(1).

#### **Commencement Information**

**II** S. 47 partly in force; s. 47 not in force at Royal Assent; s. 47(2)-(5) in force at 28.3.2014, see s. 102(2)

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VALID FROM 01/08/2014

#### **48 Mandatory amount of early learning and childcare**

- (1) The “mandatory amount”, for the purposes of section 47(1), means—
  - (a) 600 hours in each year for which a child is an eligible pre-school child, and
  - (b) a pro rata amount for each part of a year for which a child is an eligible pre-school child.
- (2) The Scottish Ministers may by order modify subsection (1) so as to vary the amount of early learning and childcare which is to be made available in pursuance of section 47(1).
- (3) Such an order may, without prejudice to section 99(1)(a), make different provision in relation to different types of eligible pre-school children.

VALID FROM 01/08/2014

#### **49 Looked after 2 year olds: alternative arrangements to meet wellbeing needs**

- (1) Subsection (2) applies where—
  - (a) an authority's duty under section 47(1) applies in relation to a child only by virtue of the child falling within section 47(3)(a),
  - (b) the authority, after assessing the child's needs, considers that making alternative arrangements in relation to the child's education and care would better safeguard or promote the child's wellbeing.
- (2) Where this subsection applies, the authority—
  - (a) need not comply with its duty under section 47(1) in relation to the child, but
  - (b) must make such alternative arrangements in relation to the child's education and care as it considers appropriate for the purposes of safeguarding or promoting the child's wellbeing.
- (3) Subsection (2) does not apply in relation to a child who is not being looked after by the authority if a parent of the child objects to the authority making alternative arrangements.
- (4) The authority may, at any time, review any alternative arrangements it makes in relation to a child in pursuance of subsection (2)(b) (and must do so on becoming aware of any significant change in the child's circumstances) and may, following such a review, alter those arrangements.
- (5) The authority must seek to ensure that a record of—
  - (a) the outcome of any assessment of a child's needs that it undertakes in pursuance of subsection (1)(b), and
  - (b) any alternative arrangements that it makes in relation to the child's education and care in pursuance of subsection (2)(b),is included in any child's plan which is prepared for the child under Part 5.

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VALID FROM 01/08/2014

## 50 Duty to consult and plan on delivery of early learning and childcare

- (1) An education authority must, at least once every 2 years—
  - (a) consult such persons as appear to it to be representative of parents of children under school age in its area about how it should make early learning and childcare available in pursuance of this Part, and
  - (b) after having had regard to views expressed, prepare and publish a plan for how it intends to make early learning and childcare available in pursuance of this Part.
- (2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

VALID FROM 01/08/2014

## 51 Method of delivery of early learning and childcare

- (1) An education authority must ensure that it makes early learning and childcare available in pursuance of this Part by way of sessions—
  - (a) which are provided during at least 38 weeks of every calendar year, and
  - (b) which are each of more than 2.5 hours but less than 8 hours in duration.
- (2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the method of delivering early learning and childcare which it describes.

VALID FROM 01/08/2014

## 52 Flexibility in way in which early learning and childcare is made available

In exercising functions under sections 50 and 51, an education authority must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available in pursuance of this Part is flexible enough to allow parents an appropriate degree of choice when deciding how to access the service.

VALID FROM 01/08/2014

## 53 Interpretation of Part 6

In this Part—

- “early learning and childcare” has the meaning given by section 46,
- “eligible pre-school child” has the meaning given by section 47(2),
- “parent” has the same meaning as in the 1980 Act.



**Status:** Point in time view as at 28/03/2014. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/08/2014

## PART 7

### POWER TO PROVIDE SCHOOL EDUCATION FOR PRE-SCHOOL CHILDREN

#### 54 **Duty to consult and plan in relation to power to provide school education for pre-school children**

In section 1 of the 1980 Act, after subsection (2A) insert—

“(2B) An education authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of pre-school children within their area about whether and if so how they should provide school education for such children under subsection (1C) above; and
- (b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of such education for such children under that subsection.

(2C) The Scottish Ministers may by order modify subsection (2B) above so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

(2D) An order made under subsection (2C) above is subject to the negative procedure.”.

VALID FROM 01/08/2014

## PART 8

### DAY CARE AND OUT OF SCHOOL CARE

#### 55 **Duty to consult and plan in relation to day care and out of school care**

(1) Section 27 of the 1995 Act is amended as follows.

(2) After subsection (1) insert—

“(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.

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(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.”.

(3) After subsection (3) insert—

“(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
- (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.”.

VALID FROM 01/08/2014

## PART 9

### CORPORATE PARENTING

VALID FROM 01/04/2015

#### 56 Corporate parents

- (1) The persons listed, or within a description listed, in schedule 4 are “corporate parents” for the purposes of this Part (subject to subsections (3) and (4)).

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- (2) The Scottish Ministers may by order modify schedule 4 by—
  - (a) adding a person or description of persons,
  - (b) removing an entry listed in it, or
  - (c) varying an entry listed in it.
- (3) The Scottish Ministers are not corporate parents for the purposes of sections 61 to 64.
- (4) The following persons are not corporate parents for the purposes of section 64—
  - (a) the Commissioner for Children and Young People in Scotland,
  - (b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.
- (5) An order under subsection (2) which adds a person, or a description of persons, to schedule 4, may modify this section so as to provide that the person is not a corporate parent, or the persons within the description are not corporate parents, for the purposes of section 64.
- (6) In this Part, references to the “corporate parenting responsibilities” of a corporate parent are to the duties conferred on that corporate parent by section 58(1).

## 57 Application of Part: children and young people

- (1) This Part applies to—
  - (a) every child who is looked after by a local authority, and
  - (b) every young person who—
    - (i) is under the age of 26, and
    - (ii) was (on the person's 16th birthday or at any subsequent time) but is no longer looked after by a local authority.
- (2) This Part also applies to a young person who—
  - (a) is at least the age of 16 but under the age of 26, and
  - (b) is not of the description in subsection (1)(b)(ii) but is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.

VALID FROM 01/04/2015

## 58 Corporate parenting responsibilities

- (1) It is the duty of every corporate parent, in so far as consistent with the proper exercise of its other functions—
  - (a) to be alert to matters which, or which might, adversely affect the wellbeing of children and young people to whom this Part applies,
  - (b) to assess the needs of those children and young people for services and support it provides,
  - (c) to promote the interests of those children and young people,
  - (d) to seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing,

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- (e) to take such action as it considers appropriate to help those children and young people—
  - (i) to access opportunities it provides in pursuance of paragraph (d), and
  - (ii) to make use of services, and access support, which it provides, and
- (f) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to those children and young people.

(2) The Scottish Ministers may by order—

- (a) modify subsection (1) so as to confer, remove or vary a duty on corporate parents,
- (b) provide that subsection (1) is to be read, in relation to a particular corporate parent or corporate parents of a particular description, with a modification conferring, removing or varying a duty.

VALID FROM 01/04/2015

## **59 Planning by corporate parents**

- (1) A corporate parent must—
  - (a) prepare a plan for how it proposes to exercise its corporate parenting responsibilities, and
  - (b) keep its plan under review.
- (2) Before preparing or revising a plan, a corporate parent must consult such other corporate parents, and such other persons, as it considers appropriate.
- (3) A corporate parent must publish its plan, and any revised plan, in such manner as it considers appropriate (and, in particular, plans may be published together with, or as part of, any other plan or document).

VALID FROM 01/04/2015

## **60 Collaborative working among corporate parents**

- (1) Corporate parents must, in so far as reasonably practicable, collaborate with each other when exercising their corporate parenting responsibilities or any other functions under this Part where they consider that doing so would safeguard or promote the wellbeing of children or young people to whom this Part applies.
- (2) Such collaboration may include—
  - (a) sharing information,
  - (b) providing advice or assistance,
  - (c) co-ordinating activities (and seeking to prevent unnecessary duplication),
  - (d) sharing responsibility for action,
  - (e) funding activities jointly,

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- (f) exercising functions under this Part jointly (for example, by publishing a joint plan or joint report).

VALID FROM 01/04/2015

## **61 Reports by corporate parents**

- (1) A corporate parent must report on how it has exercised—
- (a) its corporate parenting responsibilities,
  - (b) its planning and collaborating functions in pursuance of sections 59 and 60, and
  - (c) its other functions under this Part.
- (2) Reports may, in particular, include information about—
- (a) standards of performance,
  - (b) the outcomes achieved in pursuance of this Part.
- (3) Reports are to be published in such manner as the corporate parent considers appropriate (and, in particular, reports may be published together with, or as part of, any other report or document).

VALID FROM 01/04/2015

## **62 Duty to provide information to Scottish Ministers**

- (1) A corporate parent must provide the Scottish Ministers with such information as they may reasonably require about how it is—
- (a) exercising its corporate parenting responsibilities,
  - (b) planning, collaborating or reporting in pursuance of sections 59, 60 or 61, or
  - (c) otherwise exercising functions under this Part.
- (2) Information which is required may, in particular, include information about—
- (a) standards of performance,
  - (b) the outcomes achieved in pursuance of this Part.

VALID FROM 01/04/2015

## **63 Guidance on corporate parenting**

- (1) A corporate parent must have regard to any guidance about corporate parenting issued by the Scottish Ministers.
- (2) Guidance may, in particular, include advice or information about—
- (a) how corporate parents should—
    - (i) exercise their corporate parenting responsibilities,

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- (ii) promote awareness of their corporate parenting responsibilities,
  - (iii) plan, collaborate or report in pursuance of sections 59, 60 or 61, or
  - (iv) otherwise exercise functions under this Part,
- (b) outcomes which corporate parents should seek to achieve in exercising functions under this Part.
- (3) Before issuing or revising guidance, the Scottish Ministers must consult—
- (a) any corporate parent to which it relates, and
  - (b) such other persons as they consider appropriate.

VALID FROM 01/04/2015

#### **64 Directions to corporate parents**

- (1) A corporate parent must comply with any direction issued by the Scottish Ministers about—
- (a) its corporate parenting responsibilities,
  - (b) its planning, collaborating or reporting functions under sections 59, 60 or 61, or
  - (c) its other functions under this Part.
- (2) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—
- (a) any corporate parent to which it relates, and
  - (b) such other persons as they consider appropriate.

VALID FROM 01/04/2015

#### **65 Reports by Scottish Ministers**

- (1) The Scottish Ministers must, as soon as practicable after the end of each 3 year period, lay before the Scottish Parliament a report on how they have exercised their corporate parenting responsibilities during that period.
- (2) In subsection (1), “3 year period” means—
- (a) the period of 3 years beginning with the day on which this section comes into force, and
  - (b) each subsequent period of 3 years.

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VALID FROM 01/08/2014

## PART 10

### AFTERCARE

#### 66 Provision of aftercare to young people

- (1) The 1995 Act is amended as follows.
- (2) In section 29—
  - (a) in subsection (1)—
    - (i) for “over school age” substitute “ who is at least sixteen ”,
    - (ii) for the words from first “at” substitute “either—
      - (a) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or
      - (b) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.”,
  - (b) after subsection (1) insert—

“(1A) An order made under subsection (1)(b) above is subject to the affirmative procedure.”,
  - (c) in subsection (2)—
    - (i) for “twenty-one” substitute “ twenty-six ”,
    - (ii) the words from third “and” to the end of the subsection are repealed,
  - (d) in subsection (3), for “or (2) above” substitute “ above or (5A) or (5B) below ”,
  - (e) in subsection (4), for “over school” substitute “ who is at least sixteen years of ”,
  - (f) after subsection (5) insert—

“(5A) After carrying out an assessment under subsection (5) above in pursuance of an application made by a person under subsection (2) above, the local authority—
    - (a) must, if satisfied that the person has any eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs; and
    - (b) may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person's welfare.

(5B) A local authority may (but is not required to) continue to provide advice, guidance and assistance to a person in pursuance of subsection (5A) after the person reaches the age of twenty-six.”,
  - (g) in subsection (6), for “(5)” substitute “ (5B) ”,

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(h) after subsection (7) insert—

“(8) For the purposes of subsection (5A)(a) above, a person has “eligible needs” if the person needs care, attention or support of such type as the Scottish Ministers may by order specify.

(9) An order made under subsection (8) is subject to the affirmative procedure.

(10) If a local authority becomes aware that a person who is being provided with advice, guidance or assistance by them under this section 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.”.

(3) In section 30—

(a) in subsection (2)—

(i) in the opening words, for “Subject to subsection (3) below, a” substitute “ A ”,

(ii) in paragraph (a)—

(A) for “over school” substitute “ at least sixteen years of ”,

(B) for “twenty-one” substitute “ twenty-six ”,

(iii) for paragraph (b) substitute—

“(b) he either—

(i) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or

(ii) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.

(2A) An order made under subsection (2)(b)(ii) above is subject to the affirmative procedure.”,

(b) omit subsections (3) and (4).

VALID FROM 01/08/2014

## PART 11

### CONTINUING CARE

#### 67 Continuing care: looked after children

(1) After section 26 of the 1995 Act insert—



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### **“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,
  - (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,

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- (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.”.
- (2) In section 29 of the 1995 Act, after subsection (2) insert—
  - “(2A) Subsections (1) and (2) above do not apply to a person during any period when the person is being provided with continuing care under section 26A of this Act.”.

VALID FROM 01/08/2014

## PART 12

SERVICES IN RELATION TO CHILDREN AT RISK OF BECOMING LOOKED AFTER, ETC.

### 68 Provision of relevant services to parents and others

- (1) A local authority must make arrangements to secure that relevant services of such description as the Scottish Ministers may by order specify are made available for—
  - (a) each eligible child residing in its area,
  - (b) a qualifying person in relation to such a child,
  - (c) each eligible pregnant woman residing in its area,
  - (d) a qualifying person in relation to such a woman.
- (2) A “relevant service” is a service comprising, or comprising any combination of—
  - (a) providing information about a matter,
  - (b) advising or counselling about a matter,

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- (c) taking other action to facilitate the addressing of a matter by a person.
- (3) An “eligible child” is a child who the authority considers—
  - (a) to be at risk of becoming looked after, or
  - (b) to fall within such other description as the Scottish Ministers may by order specify.
- (4) A “qualifying person” in relation to an eligible child is a person—
  - (a) who is related to the child,
  - (b) who has any parental rights or responsibilities in relation to the child, or
  - (c) with whom the child is, or has been, living.
- (5) An “eligible pregnant woman” is a pregnant woman who the authority considers is going to give birth to a child who will be an eligible child.
- (6) A “qualifying person” in relation to an eligible pregnant woman is a person—
  - (a) who is the father of the child to whom the pregnant woman is to give birth,
  - (b) who is married to, in a civil partnership with or otherwise related to the pregnant woman,
  - (c) with whom the pregnant woman is living, or
  - (d) who does not fall within any of paragraphs (a) to (c) but who the authority considers will, when the pregnant woman gives birth to the child, become a qualifying person in relation to the child.
- (7) The references in this section to a person who is related to another person (“the other person”) includes a person who—
  - (a) is married to or in a civil partnership with a person who is related to the other person,
  - (b) is related to the other person by the half blood.
- (8) This section is without prejudice to section 22 of the 1995 Act.

## **69 Relevant services: further provision**

- (1) The Scottish Ministers may by order make provision about—
  - (a) when or how relevant services specified in an order under section 68(1) are to be provided,
  - (b) when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 68(3),
  - (c) when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 68(3),
  - (d) such other matters about the provision of relevant services specified in an order under section 68(1) as the Scottish Ministers consider appropriate.
- (2) An order under subsection (1)(d) may include provision about—
  - (a) circumstances in which relevant services specified in an order under section 68(1) may be provided subject to conditions (including conditions as to payment), and
  - (b) consequences of such conditions not being met.

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## 70 Interpretation of Part 12

The following expressions have the same meaning in this Part as they have in Part 1 of the 1995 Act—

- parental responsibilities
- parental rights.

VALID FROM 01/08/2014

## PART 13

### SUPPORT FOR KINSHIP CARE

## 71 Assistance in relation to kinship care orders

- (1) A local authority must make arrangements to secure that kinship care assistance is made available for a person residing in its area who falls within subsection (3).
- (2) “Kinship care assistance” is assistance of such description as the Scottish Ministers may by order specify.
- (3) A person falls within this subsection if the person is—
  - (a) a person who is applying for, or considering applying for, a kinship care order in relation to an eligible child who has not attained the age of 16 years,
  - (b) an eligible child who has not attained the age of 16 years who is the subject of a kinship care order,
  - (c) a person in whose favour a kinship care order in relation to an eligible child who has not attained the age of 16 years subsists,
  - (d) a child who has attained the age of 16 years, where—
    - (i) immediately before doing so, the child was the subject of a kinship care order, and
    - (ii) the child is an eligible child,
  - (e) a person who is a guardian by virtue of an appointment under section 7 of the 1995 Act of an eligible child who has not attained the age of 16 years (but this is subject to subsection (4)),
  - (f) an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.
- (4) Subsection (3)(e) does not include a person who is also a parent of the child.
- (5) An “eligible child” is a child who the local authority considers—
  - (a) to be at risk of becoming looked after, or
  - (b) to fall within such other description as the Scottish Ministers may by order specify.

## 72 Orders which are kinship care orders

- (1) In section 71, “kinship care order” means—

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- (a) an order under section 11(1) of the 1995 Act which gives to a qualifying person the right mentioned in section 2(1)(a) of that Act in relation to a child,
  - (b) a residence order which has the effect that a child is to live with, or live predominantly with, a qualifying person, or
  - (c) an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.
- (2) For the purposes of subsection (1), a “qualifying person” is a person who, at the time the order is made—
- (a) is related to the child,
  - (b) is a friend or acquaintance of a person related to the child, or
  - (c) has such other relationship to, or connection with, the child as the Scottish Ministers may by order specify.
- (3) But a parent of a child is not a “qualifying person” for the purposes of subsection (1).
- (4) The references in subsection (2) to a person who is related to a child include a person who is—
- (a) married to or in a civil partnership with a person who is related to the child,
  - (b) related to the child by the half blood.

### **73 Kinship care assistance: further provision**

- (1) The assistance which may be specified as kinship care assistance includes—
- (a) the provision of counselling, advice or information about any matter,
  - (b) the provision of financial support (or support in kind) of any description,
  - (c) the provision of any service provided by a local authority on a subsidised basis.
- (2) An order under section 71(1) may specify assistance by reference to assistance which a person was entitled to from, or being provided with by, a local authority immediately before becoming entitled to assistance under that section.
- (3) The Scottish Ministers may by order make provision about—
- (a) when or how kinship care assistance is to be provided,
  - (b) when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 71(5),
  - (c) when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 71(5),
  - (d) such other matters about the provision of kinship care assistance as the Scottish Ministers consider appropriate.
- (4) An order under subsection (3)(d) may include provision about—
- (a) circumstances in which a local authority may provide kinship care assistance subject to conditions (including conditions as to payment for the assistance or the repayment of financial support), and
  - (b) consequences of such conditions not being met (including the recovery of any financial support provided).

### **74 Interpretation of Part 13**

In this Part—

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“kinship care assistance” has the meaning given by section 71(2),  
“parent” has the same meaning as it has in Part 1 of the 1995 Act.

VALID FROM 30/09/2015

## PART 14

### ADOPTION REGISTER

#### 75 Scotland's Adoption Register

After section 13 of the Adoption and Children (Scotland) Act 2007, insert—

### “CHAPTER 1A

#### SCOTLAND'S ADOPTION REGISTER

##### 13A Scotland's Adoption Register

- (1) The Scottish Ministers must make arrangements for the establishment and maintenance of a register to be known as Scotland's Adoption Register for the purposes of facilitating adoption (referred to in this Chapter as “the Register”).
- (2) The Scottish Ministers may by regulations—
  - (a) prescribe information relating to adoption which is, or types of information relating to adoption which are, to be included in the Register, which may include information relating to—
    - (i) children who adoption agencies consider ought to be placed for adoption,
    - (ii) persons considered by adoption agencies as suitable to have a child placed with them for adoption,
    - (iii) matters relating to such children or persons which arise after information about them is included in the Register,
    - (iv) children outwith Scotland who may be suitable for adoption,
    - (v) prospective adopters outwith Scotland,
  - (b) provide for how information is to be retained in the Register,
  - (c) make such further provision in relation to the Register as they consider appropriate.
- (3) The Register is not to be open to public inspection or search.
- (4) Information is to be kept in the Register in any form the Scottish Ministers consider appropriate.

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### **13B Registration organisation**

- (1) Arrangements made by the Scottish Ministers under section 13A(1) may in particular—
  - (a) authorise an organisation to perform the Scottish Ministers' functions in respect of the Register (other than functions of making subordinate legislation),
  - (b) provide for payments to be made by the Scottish Ministers to an organisation so authorised.
- (2) The Scottish Ministers must publish arrangements under section 13A(1) so far as they authorise an organisation as mentioned in subsection (1)(a).
- (3) An organisation authorised in pursuance of subsection (1) (a “registration organisation”) must perform functions delegated to it in accordance with any directions (general or specific) given by the Scottish Ministers.

### **13C Supply of information for the Register**

- (1) An adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about—
  - (a) children who it considers ought to be placed for adoption or persons who were included in the Register as such children,
  - (b) persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons.
- (2) Regulations made under section 13A(2) may—
  - (a) provide that information is to be provided to a registration organisation in pursuance of subsection (1) instead of to the Scottish Ministers,
  - (b) provide for how and by when information is to be provided in pursuance of subsection (1),
  - (c) prescribe circumstances in which an adoption agency, despite subsection (1), is not to disclose information of the type prescribed for the purposes of that subsection.

### **13D Disclosure of information**

- (1) It is an offence to disclose any information derived from the Register other than in accordance with regulations made under section 13A(2) in pursuance of this section.
- (2) Regulations made under section 13A(2) may authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register—
  - (a) to an adoption agency for the purposes of helping it—
    - (i) to find persons with whom it would be appropriate to place a child for whom the agency is acting, or

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- (ii) to find a child who is appropriate for adoption by persons for whom the agency is acting,
- (b) to any person (whether or not established or operating in Scotland) specified in the regulations—
  - (i) for any purpose connected with the performance of functions by the Scottish Ministers or a registration organisation in pursuance of this Chapter,
  - (ii) for the purpose of enabling the information to be entered in a register which is maintained in respect of England, Wales or Northern Ireland and which contains information about children who are suitable for adoption or prospective adopters,
  - (iii) for the purpose of enabling or assisting that person to perform any functions which relate to adoption,
  - (iv) for use for statistical or research purposes, or
  - (v) for any other purpose relating to adoption.
- (3) Regulations made under section 13A(2) may—
  - (a) set out terms and conditions on which information may be disclosed in pursuance of this section,
  - (b) specify steps to be taken by an adoption agency in respect of information received in pursuance of subsection (2),
  - (c) authorise an adoption agency to disclose information derived from the Register for purposes relating to adoption.
- (4) Subsection (1) does not apply to a disclosure of information by or with the authority of the Scottish Ministers.
- (5) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

### **13E Fees and other payments**

Regulations made under section 13A(2) may prescribe—

- (a) a fee which is to be paid by an adoption agency when providing information in pursuance of section 13C(1),
- (b) a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of section 13D(2), (3)(c) or (4),
- (c) such other fees to be paid by adoption agencies, or payments to be made by them, in relation to the Register as the Scottish Ministers consider appropriate.

### **13F Use of an organisation as agency for payments**

- (1) The Scottish Ministers may by regulations authorise a registration organisation or any other person to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.



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- (2) A registration organisation or other person authorised under subsection (1) is to perform the functions exercisable by virtue of that subsection in accordance with any directions (general or specific) given by the Scottish Ministers.

### 13G Supplementary

Nothing authorised or required to be done by virtue of this Chapter constitutes an offence under section 72(2) or 75(1).”.

VALID FROM 01/08/2014

## PART 15

### SCHOOL CLOSURE PROPOSALS, ETC.

#### 76 References to the Schools (Consultation) (Scotland) Act 2010

In this Part, references to the 2010 Act are to the Schools (Consultation) (Scotland) Act 2010.

#### 77 Restriction on closure proposals

After section 2 of the 2010 Act, insert—

##### “2A Restriction on closure proposals

- (1) This section applies where a decision is made not to implement a closure proposal in relation to a school.
- (2) For the purposes of subsection (1)—
  - (a) a decision not to implement a closure proposal is—
    - (i) a decision not to implement the proposal made by the education authority following the publication of a consultation report in relation to the proposal (whether or not the proposal was called-in under section 15),
    - (ii) a decision of a School Closure Review Panel in relation to the proposal under section 17C(1)(a),
  - (b) such a decision is made by a School Closure Review Panel on the day on which the Panel notifies the decision to the education authority in pursuance of section 17C(5).
- (3) The education authority may not publish a proposal paper concerning a further closure proposal in relation to the school during the period of 5 years beginning with the day on which the decision is made unless there is a significant change in the school's circumstances.”.

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## 78 Financial implications of closure proposals

In section 4 of the 2010 Act (proposal paper), after subsection (2) insert—

“(2A) Where a proposal paper relates to a closure proposal, it must also contain information about the financial implications of the proposal.”.

## 79 Correction of proposal paper

(1) Section 5 of the 2010 Act (correction of the proposal paper) is amended in accordance with subsections (2) to (4).

(2) In subsection (2)—

- (a) the word “and” immediately following paragraph (a) is repealed,
- (b) after that paragraph insert—
  - “(aa) inform the notifier of its determination under paragraph (a), and the reasons for that determination,”
- (c) in paragraph (b), for “subsection (3)” substitute “ subsection (4) and of the reasons why it is, or is not, taking such action ”,
- (d) after paragraph (b) insert “, and
  - (c) invite the notifier to make representations to the authority if the notifier disagrees with the authority's determination under paragraph (a) or its decision as to whether to take action under subsection (4).”.

(3) After that subsection insert—

“(2A) Where the notifier makes representations to the authority in pursuance of subsection (2)(c), the authority may—

- (a) make a fresh determination under subsection (2)(a),
- (b) make a fresh decision as to whether to take action under subsection (4).

(2B) The authority must inform the notifier if it takes a step mentioned in subsection (2A)(a) or (b).”.

(4) For subsection (3) substitute—

“(3) Subsection (4) applies—

- (a) where, in a situation mentioned in subsection (1)(a), the education authority determines that—
  - (i) relevant information has (in its opinion) been omitted from the proposal paper, or
  - (ii) there is (in fact) an inaccuracy in the proposal paper,
- (b) in a situation mentioned in subsection (1)(b).

(4) Where—

- (a) the information that has been omitted or, as the case may be, the inaccuracy relates to a material consideration relevant to the education authority's decision as to implementation of the proposal, it must take action as mentioned in subsection (5)(a) or (b),
- (b) that information or inaccuracy does not relate to such a material consideration, the authority may—

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- (i) take action as mentioned in subsection (5)(a) or (b), or
  - (ii) take no further action (except by virtue of section 10(3)).
- (5) The action referred to in subsection (4)(a) and (b)(i) is—
- (a) to take the following steps—
    - (i) publish a corrected proposal paper,
    - (ii) give revised notice in accordance with section 6, and
    - (iii) send a copy of the corrected paper to HMIE,
  - (b) to issue a notice to the relevant consultees and HMIE—
    - (i) providing the omitted information or, as the case may be, correcting the inaccuracy, and
    - (ii) if the authority considers it appropriate, extending the consultation period by such period as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction.
- (6) Where the education authority issues a notice mentioned in subsection (5) (b) after the end of the consultation period—
- (a) the notice may, instead of extending the consultation period, specify such further period during which representations may be made on the proposal as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction, and
  - (b) any such further period is to be treated as part of the consultation period for the purposes of sections 8, 9 and 10.”.
- (5) In section 10 of the 2010 Act (content of the consultation report), in subsection (3)—
- (a) in the opening text, after “applies,” insert “ including any alleged omission or inaccuracy notified to the education authority, ”,
  - (b) in paragraph (a), after “inaccuracy” insert “ , or (as the case may be) the alleged omission or inaccuracy, ”,
  - (c) in paragraph (b), after “inaccuracy” insert “ , or (as the case may be) the alleged omission or inaccuracy, ”,
  - (d) after that paragraph insert—
    - “(c) any representations made to the authority in pursuance of section 5(2)(c).”.

## **80 Special provision for rural school closure proposals**

- (1) Before section 12 of the 2010 Act (factors for rural school closure proposals), insert—

### **“11A Presumption against rural school closure**

- (1) This section applies in relation to any closure proposal as respects a rural school.
- (2) The education authority may not decide to implement the proposal (wholly or partly) unless the authority—
  - (a) has complied with sections 12, 12A and 13, and

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- (b) having so complied, is satisfied that such implementation of the proposal is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).
- (3) The authority must publish on its website notice of—
  - (a) its decision as to implementation of the proposal, and
  - (b) where it decides to implement the proposal (wholly or partly), the reasons why it is satisfied that such implementation is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).”.
- (2) In that section—
  - (a) subsection (3)(a) is repealed,
  - (b) in subsection (4), after “(3)(b)” insert “ and sections 12A(2)(c)(ii) and 13(5)(b)(ii) ”,
  - (c) in subsection (5), after “(3)(c)” insert “ and sections 12A(2)(c)(iii) and 13(5)(b)(iii) ”.
- (3) After that section, insert—

**“12A Preliminary requirements in relation to rural school closure**

- (1) This section applies where an education authority is formulating a closure proposal as respects a rural school.
- (2) The authority must—
  - (a) identify its reasons for formulating the proposal,
  - (b) consider whether there are any reasonable alternatives to the proposal as a response to those reasons,
  - (c) assess, for the proposal and each of the alternatives to the proposal identified under paragraph (b) (if any)—
    - (i) the likely educational benefits in consequence of the implementation of the proposal, or as the case may be, alternative,
    - (ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,
    - (iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.
- (3) For the purposes of this section and section 13, reasonable alternatives to the proposal include (but are not limited to) steps which would not result in the school or a stage of education in the school (within the meaning of paragraph 12 of schedule 1) being discontinued.
- (4) The authority may not publish a proposal paper in relation to the proposal unless, having complied with subsection (2), it considers that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

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(5) In this section and section 13, the references to the reasons for the proposal are references to the reasons identified by the education authority under subsection (2)(a).”.

(4) For section 13 of the 2010 Act substitute—

**“13 Additional consultation requirements**

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The proposal paper must additionally—

- (a) explain the reasons for the proposal,
- (b) describe what (if any) steps the authority took to address those reasons before formulating the proposal,
- (c) if the authority did not take such steps, explain why it did not do so,
- (d) set out any alternatives to the proposal identified by the authority under section 12A(2)(b),
- (e) explain the authority's assessment under section 12A(2)(c),
- (f) explain the reasons why the authority considers, in light of that assessment, that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(3) The notice to be given to relevant consultees under section 6(1) must—

- (a) give a summary of the alternatives to the proposal set out in the proposal paper,
- (b) state that written representations may be made on those alternatives (as well as on the proposal), and
- (c) state that written representations on the proposal may suggest other alternatives to the proposal.

(4) In sections 8(4)(c), 9(4) and 10(2)(a), the references to written representations on the proposal include references to written representations on the alternatives to the proposal set out in the proposal paper.

(5) When carrying out its review of the proposal under section 9(1), the education authority is to carry out—

- (a) for the proposal and each of the alternatives to it set out in the proposal paper (if any), a further assessment of the matters mentioned in section 12A(2)(c)(i) to (iii), and
- (b) an assessment, in relation to any other reasonable alternative to the proposal suggested in written representations on the proposal, of—
  - (i) the likely educational benefits in consequence of the implementation of the alternative,
  - (ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,
  - (iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

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(6) The consultation report must additionally explain—

- (a) the education authority's assessment under subsection (5)(a),
- (b) how that assessment differs (if at all) from the authority's assessment under section 12A(2)(c),
- (c) the authority's assessment under subsection (5)(b),
- (d) whether and, if so, the reasons why the authority considers that implementation of the proposal (wholly or partly) would be the most appropriate response to the reasons for the proposal.”.

(5) In section 1 of the 2010 Act (overview of key requirements), after subsection (4) insert—

“(4A) In the case of a closure proposal in relation to a rural school, the education authority must also comply with—

- (a) the preliminary requirements set out in section 12A when it is formulating the proposal,
- (b) the additional consultation requirements set out in section 13.”.

## 81 Call-in of closure proposals

(1) In section 15 of the 2010 Act (call-in of closure proposals)—

(a) in subsection (2), after paragraph (b)(ii) insert—

“(iii) where the decision relates to a rural school, the notice published under section 11A(3).”.

(b) after that subsection insert—

“(2A) At the same time as it notifies the Scottish Ministers of the decision under subsection (2)(a), the education authority must publish on its website notice of—

- (a) the fact that the Scottish Ministers have been so notified, and
- (b) the opportunity for making representations to the Scottish Ministers in connection with subsection (4), including the date on which the 3 week period referred to in that subsection ends.”.

(c) in each of subsections (3), (4) and (6) for “6” substitute “ 8 ”,

(d) subsection (5) is repealed.

(2) Section 16 of the 2010 Act is repealed.

(3) In section 17 of the 2010 Act (grounds for call-in etc.)—

(a) in subsection (3)—

- (i) the word “or” immediately following paragraph (a) is repealed,
- (ii) paragraph (b) is repealed,

(b) after that subsection insert—

“(3A) HMIE must provide the Scottish Ministers with such advice as to the educational aspects of a closure proposal as the Scottish Ministers may reasonably require of HMIE for the purpose of the Scottish Ministers' consideration of whether to issue a call-in notice.”.

(4) After section 17 of the 2010 Act insert—

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### **“17A Referral to the Convener of the School Closure Review Panels**

- (1) This section applies where a call-in notice is issued as respects a closure proposal.
- (2) The Scottish Ministers must refer the proposal to the Convener of the School Closure Review Panels.
- (3) The Convener must, within the period of 7 days beginning with the day on which the call-in notice is issued, constitute a School Closure Review Panel to review the proposal under section 17B(1).
- (4) The education authority may not implement the proposal (wholly or partly)  
—
  - (a) unless the Panel grants its consent to it under section 17C(1), and
  - (b) until—
    - (i) the period mentioned in section 17D(2)(c) has expired without any appeal to the sheriff being made, or
    - (ii) where such an appeal is made, it is abandoned or the sheriff confirms the Panel's decision.
- (5) Schedule 2A makes further provision about the Convener and School Closure Review Panels.
- (6) In this Act—
  - (a) “the Convener” is the Convener of the School Closure Review Panels,
  - (b) a “School Closure Review Panel” is a School Closure Review Panel constituted under subsection (3).

### **17B Review by Panel**

- (1) A School Closure Review Panel must consider both of the following in relation to a closure proposal—
  - (a) whether the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,
  - (b) whether the education authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.
- (2) The education authority must provide the Panel with such information in connection with the proposal as the Panel may reasonably require of it for the purpose of subsection (1).
- (3) HMIE must provide the Panel with such advice as to the educational aspects of the proposal as the Panel may reasonably require of them for the purpose of subsection (1).
- (4) The Panel may request such other information and advice from any other person as it may reasonably require for the purpose of subsection (1).

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- (5) The Scottish Ministers may by regulations make further provision as to the procedures to be followed by the Panel when carrying out a review under subsection (1).

### **17C Decision following review**

- (1) Following a review of a closure proposal under section 17B(1), the School Closure Review Panel may—
- (a) refuse to consent to the proposal,
  - (b) refuse to consent to the proposal and remit it to the education authority for a fresh decision as to implementation,
  - (c) grant consent to the proposal—
    - (i) subject to conditions, or
    - (ii) unconditionally.
- (2) The Panel must give reasons for its decision.
- (3) Where the Panel remits the proposal to the education authority under subsection (1)(b), the Panel may specify any steps in the process provided for in sections 1 to 11 and (in relation to a closure proposal as respects a rural school) 12A that the authority must take again in relation to the proposal before making a fresh decision.
- (4) The Panel may refuse to consent to the proposal under subsection (1)(a) or (b) only if the Panel finds either or both of the following—
- (a) that the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,
  - (b) that the authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.
- (5) The Panel must notify the education authority of its decision within the period of 8 weeks beginning with the day on which the Panel is constituted unless (before the end of that period) the Panel issues a notice to the education authority—
- (a) stating that the Panel does not intend to notify the decision within that period,
  - (b) specifying the reason why that is so, and
  - (c) indicating the likely date for notifying the decision.
- (6) Where the Panel issues a notice under subsection (5), it must notify the education authority of its decision within the period of 16 weeks beginning with the day on which the Panel is constituted.
- (7) After the Panel notifies the education authority of its decision, the Panel must—
- (a) notify the Scottish Ministers of the decision, and
  - (b) publish notice of the decision in such manner as it considers appropriate.
- (8) Where the Panel grants consent to the proposal subject to conditions, the education authority must comply with the conditions.



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### 17D Appeal against decision of the Panel

- (1) An appeal may be made to the sheriff against a decision of a School Closure Review Panel under section 17C(1) by—
  - (a) the education authority,
  - (b) a relevant consultee in relation to the closure proposal.
- (2) An appeal under subsection (1)—
  - (a) may be made only on a point of law,
  - (b) must be made by way of summary application,
  - (c) must be made within the period of 14 days beginning with the day on which the Panel publishes notice of the decision under section 17C(7)(b).
- (3) In the appeal, the sheriff may—
  - (a) confirm the decision, or
  - (b) quash the decision and refer the matter back to the Panel.
- (4) The sheriff's determination of the appeal is final.”.
- (5) After schedule 2 to the 2010 Act, insert—

#### “SCHEDULE 2A

(introduced by section 17A)

#### SCHOOL CLOSURE REVIEW PANELS

##### *Convener of the School Closure Review Panels*

- 1 (1) There is established the office of the Convener of the School Closure Review Panels.
- (2) The Scottish Ministers must appoint a person to hold that office.
- (3) A person so appointed—
  - (a) is not to be regarded as a servant or agent of the Crown and does not have any status, immunity or privilege of the Crown,
  - (b) subject to any provision made in regulations under sub-paragraph (9), holds and vacates office on such terms and conditions as the Scottish Ministers may determine.
- (4) The Convener—
  - (a) may delegate a function conferred on the Convener by this Act,
  - (b) must delegate such a function if required to do so by directions issued under paragraph 4.
- (5) Nothing in sub-paragraph (4)(a) prevents the Convener from carrying out any function delegated under that sub-paragraph.
- (6) Sub-paragraph (7) applies during any period when—
  - (a) the office of the Convener is vacant, or

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- (b) the person holding that office is unable to perform the functions conferred on the office because the person is incapacitated.
- (7) The Scottish Ministers may appoint a person to act as Convener during that period.
- (8) A person appointed to act as Convener under sub-paragraph (7)—
  - (a) is to be appointed on such terms and conditions as the Scottish Ministers may determine,
  - (b) while acting as such, is to be treated for all purposes, except those of any regulations made under sub-paragraph (9), as the Convener.
- (9) The Scottish Ministers may by regulations make provision for or about—
  - (a) eligibility for, and disqualification from, appointment under sub-paragraph (2),
  - (b) tenure and removal from office of a person appointed under sub-paragraph (2),
  - (c) payment of—
    - (i) salary, fees, expenses and allowances to such a person,
    - (ii) pensions, allowances or gratuities (including by way of compensation for loss of office) to, or in respect of, such a person,
  - (d) such other matters in relation to the appointment of the Convener as the Scottish Ministers consider appropriate.

#### *Panel members*

- 2 (1) The Convener is to appoint such number of persons as the Convener considers appropriate to be eligible to serve as members of a School Closure Review Panel.
- (2) Each Panel is to consist of 3 of the persons appointed under sub-paragraph (1).
- (3) It is for the Convener to select—
  - (a) the members of the Panel,
  - (b) one of those members to chair the Panel.
- (4) The Convener is to make appropriate arrangements for the training of persons appointed under sub-paragraph (1).
- (5) The Scottish Ministers may by regulations make provision for or about—
  - (a) eligibility for, and disqualification from, appointment under sub-paragraph (1),
  - (b) tenure and removal from office of persons so appointed,
  - (c) the process for the selection of Panel members under sub-paragraph (3),
  - (d) payment of expenses, fees and allowances to persons selected under that sub-paragraph,
  - (e) such other matters as the Scottish Ministers consider appropriate in relation to—
    - (i) the appointment of persons under sub-paragraph (1),

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(ii) the selection of Panel members under sub-paragraph (3).

*Property, staff and services*

- 3 (1) The Scottish Ministers may—
- (a) provide, or ensure the provision of, such property, staff and services to the Convener as they consider necessary or expedient in connection with the exercise of the Convener's functions,
  - (b) pay grants to the Convener for the purposes of enabling the Convener to employ staff and obtain services in connection with the exercise of the Convener's functions.
- (2) The Convener is to provide a School Closure Review Panel with such staff and services as the Convener considers necessary or expedient in connection with the exercise of the Panel's functions.

*Directions*

- 4 (1) The Scottish Ministers may issue directions to the Convener as to the exercise of the Convener's functions (and the Convener must comply with them).
- (2) Directions under sub-paragraph (1) may vary or revoke earlier such directions.
- (3) The Scottish Ministers must publish any directions issued under sub-paragraph (1) in such manner as they consider appropriate.

*Reports*

- 5 (1) As soon as practicable after the end of each calendar year, the Convener must prepare a report on—
- (a) the exercise of the Convener's functions during that year, and
  - (b) the exercise of the functions of any School Closure Review Panel which has carried out a review under section 17B during that year.
- (2) A report prepared under sub-paragraph (1) must be—
- (a) submitted to the Scottish Ministers, and
  - (b) published in such manner as the Convener considers appropriate.”.
- (6) In section 4 of the 2010 Act (proposal paper), in subsection (2) for “17” substitute “ 17D ”.
- (7) In section 19 of the 2010 Act (guidance)—
- (a) the existing text becomes subsection (1),
  - (b) after that subsection insert—  
  
“(2) The Convener, and a School Closure Review Panel, must have regard to any such guidance in exercising their functions under this Act.”.
- (8) In section 20 of the 2010 Act (regulations)—
- (a) in subsection (3) for “17” substitute “ 17D ”,
  - (b) after subsection (6) insert—

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- “(7) Regulations under section 17B(5) and paragraphs 1(9) and 2(5) of schedule 2A—
- (a) may make different provision for different purposes,
  - (b) may make supplemental, incidental, consequential, transitional, transitory or saving provision,
  - (c) are subject to the negative procedure.”.
- (9) In section 21(2) of the 2010 Act (definitions)—
- (a) after the definition of “consultation period” insert—
 

““the Convener” is defined in section 17A(6),”
  - (b) after the definition of “rural school” insert—
 

““School Closure Review Panel” is defined in section 17A(6).”.
- (10) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities), before paragraph 21C insert—
- “21ZC The Convener of the School Closure Review Panels.”.
- (11) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—
- (a) before paragraph 62C insert—
 

“62ZC The Convener of the School Closure Review Panels.”,
  - (b) after paragraph 76 insert—
 

“76A A School Closure Review Panel constituted under section 17A(3) of the Schools (Consultation) (Scotland) Act 2010.”.
- (12) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), before the cross-heading “Executive bodies” insert— “the Convener of the School Closure Review Panels”.

VALID FROM 26/01/2015

## PART 16

### CHILDREN'S HEARINGS

#### 82 Safeguarders: exceptions to duty to prepare report on appointment

In section 33 of the 2011 Act—

- (a) in subsection (1)(a), after “(2)” insert “ or (3) ”,
- (b) after subsection (2), insert—

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“(3) This subsection applies where the children's hearing was arranged under section 45, 46, 50, 96, 126 or 158.”.

### **83 Maximum period of child protection order**

In each of paragraphs (c) and (d) of section 54 of the 2011 Act, after “day” insert “ after the day on which ”.

### **84 Power to determine that deeming of person as relevant person to end**

(1) The 2011 Act is amended as follows.

(2) In section 79—

- (a) in subsection (1), for “This section applies” substitute “ Subsections (2) to (5) apply ”,
- (b) after subsection (1), insert—

“(1A) Subsection (5A) applies (in addition to subsections (2) to (5)) where the children's hearing is—

- (a) a subsequent children's hearing under Part 11, or
  - (b) held for the purposes of reviewing a compulsory supervision order.”,
- (c) after subsection (5), insert—

“(5A) The Principal Reporter—

- (a) must refer the matter of whether an individual deemed to be a relevant person by virtue of section 81 should continue to be deemed to be a relevant person in relation to the child for determination by a pre-hearing panel if requested to do so by—
  - (i) the individual so deemed,
  - (ii) the child, or
  - (iii) a relevant person in relation to the child,
- (b) may refer that matter for determination by a pre-hearing panel on the Principal Reporter's own initiative.”.

(3) After section 81, insert—

#### **“81A Determination that deeming of person as relevant person to end**

- (1) This section applies where a matter mentioned in section 79(5A)(a) is referred to a meeting of a pre-hearing panel.
- (2) Where the matter is referred along with any other matter, the pre-hearing panel must determine it before determining the other matter.
- (3) The pre-hearing panel must determine that the individual is no longer to be deemed to be a relevant person if it considers that the individual does not have (and has not recently had) a significant involvement in the upbringing of the child.

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(4) Where the pre-hearing panel makes a determination as described in subsection (3), section 81(4) ceases to apply in relation to the individual.

(5) Where, by virtue of section 80(3), the children's hearing is to determine a matter mentioned in section 79(5A)(a), references in subsections (2) to (4) to the pre-hearing panel are to be read as references to the children's hearing.”.

## **85 Grounds hearing: non-acceptance of facts supporting ground**

In section 90 of the 2011 Act—

(a) in subsection (1), for paragraph (a) substitute—

“(a) explain to the child and each relevant person in relation to the child—

(i) each section 67 ground specified in the statement of grounds, and

(ii) the supporting facts in relation to that ground,”,

(b) after subsection (1) insert—

“(1A) In relation to each ground that a person accepts applies in relation to the child, the chairing member must ask the person whether the person accepts each of the supporting facts.

(1B) Where under subsection (1A) any person does not accept all of the supporting facts in relation to a ground, the ground is taken for the purposes of this Act to be accepted at the grounds hearing only if the grounds hearing considers that—

(a) the person has accepted sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child, and

(b) it is appropriate to proceed in relation to the ground on the basis of only those supporting facts which are accepted by the child and each relevant person.

(1C) Where a ground is taken to be accepted for the purposes of this Act by virtue of subsection (1B), the grounds hearing must amend the statement of grounds to delete any supporting facts in relation to the ground which are not accepted by the child and each relevant person.

(1D) In this section, “supporting facts”, in relation to a section 67 ground, means facts set out in relation to the ground by virtue of section 89(3)(b).”.

## **86 Failure of child to attend grounds hearing: power to make interim order**

In section 95 of the 2011 Act, after subsection (2) insert—

“(3) Subsection (4) applies where under subsection (2) the grounds hearing requires the Principal Reporter to arrange another grounds hearing.

(4) If the grounds hearing considers that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision

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order be made, the grounds hearing may make an interim compulsory supervision order in relation to the child.

(5) An interim compulsory supervision order made under subsection (4) may not include a measure of the kind mentioned in section 83(2)(f)(i).”.

## **87 Limit on number of further interim compulsory supervision orders**

In section 96(4) of the 2011 Act, for the words from “the effect” to the end substitute “it would be the third such order made under subsection (3) in consequence of the same interim compulsory supervision order made under section 93(5)”.

## **88 Area support teams: establishment**

(1) The 2011 Act is amended as follows.

(2) In schedule 1—

(a) in paragraph 12—

(i) in sub-paragraph (1), omit “and maintain”,

(ii) for sub-paragraph (3), substitute—

“(3) The National Convener—

(a) must keep the designation of areas under sub-paragraph (1) under review, and

(b) may at any time revoke a designation or make a new one.

(3A) In exercising the powers to make and revoke designations, the National Convener must ensure that at all times each local authority area falls within an area designated under sub-paragraph (1).

(3B) Revocation of a designation under sub-paragraph (1) has the effect of dissolving the area support team established in consequence of the designation.

(3C) Before deciding to make or revoke a designation under sub-paragraph (1), the National Convener must consult each affected local authority.

(3D) In sub-paragraph (3C), “affected local authority” means—

(a) in the case of making a designation, each local authority whose area falls within the area proposed to be designated,

(b) in the case of revoking a designation, each constituent authority for the area support team established in consequence of the designation.

(3E) On making or revoking a designation under sub-paragraph (1), the National Convener must notify each local authority which was consulted under sub-paragraph (3C) in relation to the decision to make or revoke the designation.”,

(b) in paragraph 13—

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- (i) in sub-paragraph (1), the words “the National Convener establishes an area support team under paragraph 12(1)” become sub-sub-paragraph (a),
- (ii) after that sub-sub-paragraph insert “, and
  - (b) the area of the area support team consists of or includes a new area.”,
- (iii) in sub-paragraph (4)(a), for “area of the area support team” substitute “ new area concerned ”,
- (iv) in sub-paragraph (7), after the definition of “Children's Panel Advisory Committee” insert—

““new area” means an area which has never previously been the area (or part of the area) of an area support team.”.

- (3) An area support team established before this section comes into force continues in existence as if it were established under paragraph 12(1) as amended by this section.

#### **89 Area support teams: administrative support by local authorities**

- (1) The 2011 Act is amended as follows.
- (2) In schedule 1, in paragraph 14, after sub-paragraph (8) insert—
  - “(9) A constituent authority must provide an area support team with such administrative support as the National Convener considers appropriate.
  - (10) In sub-paragraph (9), “administrative support” means staff, property or other services which the National Convener considers are required to facilitate the carrying out by an area support team of its functions.”.

#### **90 Interpretation of Part 16**

In this Part, “the 2011 Act” means the Children's Hearings (Scotland) Act 2011.

VALID FROM 01/08/2014

## **PART 17**

### **OTHER REFORMS**

#### *Detention of children in secure accommodation*

#### **91 Appeal against detention of child in secure accommodation**

After section 44 of the Criminal Procedure (Scotland) Act 1995 insert—



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#### **“44A Appeal against detention in secure accommodation**

- (1) A child, or a relevant person in relation to the child, may appeal to the sheriff against a decision by a local authority to detain the child in secure accommodation in pursuance of an order made under section 44 of this Act.
- (2) An appeal under subsection (1) may be made jointly by—
  - (a) the child and one or more relevant persons in relation to the child; or
  - (b) two or more relevant persons in relation to the child.
- (3) An appeal must not be held in open court.
- (4) The sheriff may determine an appeal by—
  - (a) confirming the decision to detain the child in secure accommodation; or
  - (b) quashing that decision and directing the local authority to move the child to be detained in residential accommodation which is not secure accommodation.
- (5) The Scottish Ministers may by regulations make further provision about appeals under subsection (1).
- (6) Regulations under subsection (5) may in particular—
  - (a) specify the period within which an appeal may be made;
  - (b) make provision about the hearing of evidence during an appeal;
  - (c) provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.
- (7) Regulations under subsection (5) are subject to the affirmative procedure.
- (8) In this section—
 

“relevant person”, in relation to a child, means any person who is a relevant person in relation to the child for the purposes of the Children's Hearings (Scotland) Act 2011 (including anyone deemed to be a relevant person in relation to the child by virtue of section 81(3), 160(4)(b) or 164(6) of that Act);

“secure accommodation” has the same meaning as in section 44 of this Act.”.

VALID FROM 28/11/2016

#### *Children's legal aid*

#### **92 Power of Scottish Ministers to modify circumstances in which children's legal aid to be made available**

- (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) The title of section 28L becomes “ **Power of Scottish Ministers to extend or restrict types of proceedings before children's hearings in which children's legal aid to be available** ”.

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(3) After section 28L, insert—

**“28LA Power of Scottish Ministers to provide for children's legal aid to be available to other persons in relation to court proceedings**

- (1) The Scottish Ministers may by regulations modify this Part so as to—
  - (a) provide that children's legal aid is to be available, in relation to a type of court proceedings under the 2011 Act, to a person to whom it is not available by virtue of section 28D, 28E or 28F,
  - (b) vary any availability provided by virtue of paragraph (a), or
  - (c) remove any availability provided by virtue of paragraph (a).
- (2) If regulations are made making children's legal aid available to a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (3) are met before children's legal aid is made available.
- (3) The conditions are—
  - (a) that it is in the best interests of the child that children's legal aid be made available,
  - (b) that it is reasonable in the particular circumstances of the case that the child should receive children's legal aid,
  - (c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child, and
  - (d) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the child has substantial grounds for making or responding to the appeal.
- (4) If regulations are made making children's legal aid available to a person other than a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (5) are met before children's legal aid is made available.
- (5) The conditions are—
  - (a) that it is reasonable in the particular circumstances of the case that the person should receive children's legal aid,
  - (b) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person, and
  - (c) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the person has substantial grounds for making or responding to the appeal.”.

*Provision of school meals*

**93 Provision of free school lunches**

- (1) Section 53 of the 1980 Act is amended as follows.

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- (2) Subsection (2) is repealed.
- (3) In subsection (2A), after “lunches” insert “ which the authority are required to provide by virtue of subsection (3) ”.
- (4) In subsection (2C)(b), the words “(other than in the middle of the day)” are omitted.
- (5) In subsection (2D), the words “(2) or” are omitted.
- (6) In subsection (3), after paragraph (b) insert—
  - “(c) who is in such yearly stage of primary or secondary education, or is of such other description, as the Scottish Ministers may by regulations prescribe.”.

#### *Licensing of child performances*

#### **94 Extension of licensing of child performances to children under 14**

Section 38 of the Children and Young Persons Act 1963 (licences for performances by children under 14 not to be granted except for certain dramatic or musical performances) is repealed.

VALID FROM 31/08/2016

#### *Wellbeing under 1995 Act*

#### **95 Consideration of wellbeing in exercising certain functions**

After section 23 of the 1995 Act, insert—

##### **“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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## PART 18

### GENERAL

VALID FROM 01/08/2014

#### 96 Assessment of wellbeing

- (1) This section applies where under this Act a person requires to assess whether the wellbeing of a child or young person is being or would be—
  - (a) promoted,
  - (b) safeguarded,
  - (c) supported,
  - (d) affected, or
  - (e) subject to an effect.
- (2) The person is to assess the wellbeing of the child or young person by reference to the extent to which the child or young person is or, as the case may be, would be—
  - Safe,
  - Healthy,
  - Achieving,
  - Nurtured,
  - Active,
  - Respected,
  - Responsible, and
  - Included.
- (3) The Scottish Ministers must issue guidance on how the matters listed in subsection (2) are to be used to assess the wellbeing of a child or young person.
- (4) Before issuing or revising such guidance, the Scottish Ministers must consult—
  - (a) each local authority,
  - (b) each health board, and
  - (c) such other persons as they consider appropriate.
- (5) In measuring the wellbeing of a child or young person as mentioned in subsection (2), a person is to have regard to the guidance issued under subsection (3).
- (6) The Scottish Ministers may by order modify the list in subsection (2).
- (7) Before making an order under subsection (6), the Scottish Ministers must consult—
  - (a) each local authority,
  - (b) each health board, and
  - (c) such other persons as they consider appropriate.

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VALID FROM 01/08/2014

## 97 Interpretation

- (1) In this Act—
- “the 1980 Act” means the Education (Scotland) Act 1980,
  - “the 1995 Act” means the Children (Scotland) Act 1995,
  - “child” means a person who has not attained the age of 18 years,
  - “health board” means a board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978.
- (2) References in this Act to a child being or becoming “looked after” are to be construed in accordance with section 17(6) of the 1995 Act.
- (3) The following expressions have the same meaning in this Act as they have in the 1980 Act—
- education authority
  - grant-aided school
  - independent school
  - managers
  - nursery class
  - primary school
  - proprietor
  - public school
  - pupil
  - school age.

VALID FROM 28/06/2014

## 98 Modification of enactments

Schedule 5 (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

## 99 Subordinate legislation

- (1) Any power of the Scottish Ministers to make an order under this Act includes power to make—
- (a) different provision for different purposes,
  - (b) such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.
- (2) An order made under any of the following sections is subject to the affirmative procedure—
- section 3(2)
  - section 7(5)
  - section 30(1)

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section 31(2)  
 section 37(7)  
 section 43(1)  
 section 44(2)  
 section 47(2)(c)(ii)  
 section 47(4)  
 section 48(2)  
 section 51(2)  
 section 56(2)  
 section 57(2)(b)  
 section 58(2)  
 section 68(3)(b)  
 section 71(5)(b)  
 section 96(6).

- (3) An order made under section 101 containing provisions which add to, replace or omit any part of the text of this or any other Act is subject to the affirmative procedure.
- (4) All other orders made under this Act are subject to the negative procedure.
- (5) This section does not apply to an order made under section 102(3).

## **100 Guidance and directions**

- (1) Any power of the Scottish Ministers to issue guidance or directions under this Act may be exercised—
  - (a) to issue guidance or directions generally or for particular purposes,
  - (b) to issue different guidance or directions to different persons or otherwise for different purposes.
- (2) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance or directions issued by them under this Act.
- (3) In subsection (2)—
  - (a) the reference to guidance includes revision of guidance,
  - (b) the reference to directions includes revision and revocation of directions.

## **101 Ancillary provision**

The Scottish Ministers may by order make—

- (a) such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act, and
- (b) such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

## **102 Commencement**

- (1) This Part (apart from sections 96, 97 and 98) comes into force on the day after Royal Assent.

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- (2) Subsections (2) to (5) of section 47 also come into force on the day after Royal Assent.
- (3) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (4) An order under this section may include transitional, transitory or saving provision.

### **103 Short title**

The short title of this Act is the Children and Young People (Scotland) Act 2014.

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VALID FROM 28/06/2014					
VALID FROM 01/04/2015					
<p><b>SCHEDULE 1</b>  <i>(introduced by section 3)</i></p> <p><b>AUTHORITIES TO WHICH SECTION 2 APPLIES</b></p> <p>.....</p>					
VALID FROM 01/04/2015					
<p><b>SCHEDULE 2</b>  <i>(introduced by section 31)</i></p> <p><b>RELEVANT AUTHORITIES</b></p>					
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The National Waiting Times Centre Board					
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		PROSPECTIVE
7	Social Care and Social Work Improvement Scotland	
		PROSPECTIVE
8	The Scottish Sports Council	
		PROSPECTIVE
9	The chief constable of the Police Service of Scotland	
		PROSPECTIVE
10	The Scottish Police Authority	
		PROSPECTIVE
11	The Scottish Fire and Rescue Service	
		PROSPECTIVE
12	The Commissioner for Children and Young People in Scotland	
		PROSPECTIVE
13	A body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005	
		VALID FROM 01/04/2015
<p>SCHEDULE 3 (introduced by section 44) LISTED AUTHORITIES .....</p>		

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VALID FROM 01/04/2015

**SCHEDULE 4**

*(introduced by section 56)*

**CORPORATE PARENTS**

.....

**SCHEDULE 5**

*(introduced by section 98)*

**MODIFICATION OF ENACTMENTS**

.....

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