



# Social Work (Scotland) Act 1968

## 1968 CHAPTER 49

### PART I

#### ADMINISTRATION

##### *Central Authority*

#### 5 Powers of Secretary of State.

(1) Local authorities shall perform their functions under this Act [<sup>F1</sup>and Part II of the Children (Scotland) Act 1995][<sup>F2</sup>, Parts 5, 6, 9 to 11, 13 to 16, and 18 of the Children's Hearings (Scotland) Act 2011 ([asp 1](#))] under the general guidance of the Secretary of State.

[<sup>F3</sup>(1A) Without prejudice to subsection (1) above, the Secretary of State may issue directions to local authorities, either individually or collectively, as to the manner in which they are to exercise any of their functions under this Act or any of the enactments mentioned in [<sup>F4</sup>subsection (1B) below]; and a local authority shall comply with any direction made under this subsection.]

[<sup>F5</sup>(1B) The enactments referred to in subsection (1A) above are—

- (a) this Act as read with sections 1 and 2(1) of the <sup>M1</sup> Chronically Sick and Disabled Persons Act 1970 and the <sup>M2</sup> Disabled Persons (Services, Consultation and Representation) Act 1986;
- (b) Part IV of the <sup>M3</sup> Children and Young Persons (Scotland) Act 1937;
- (c) section 22(2) to (5A), (7) and (8), section 26(2) to (4) and sections 43, 45, 47 and 48 of the <sup>M4</sup> National Assistance Act 1948;
- (d) the Disabled Persons (Employment) Act 1958;
- (e) sections 10 to 12 of the <sup>M5</sup> Matrimonial Proceedings (Children) Act 1958, and sections 11 and 12 of the <sup>M6</sup> Guardianship Act 1973;
- [<sup>F6</sup>(f) section 51 of the Criminal Procedure (Scotland) Act 1995;]
- (g) the Children Act 1975;

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- (h) the Adoption Act 1976;
  - <sup>F7</sup>(i) .....
  - (j) sections 21 to 23 of the <sup>M7</sup> Health and Social Services and Social Security Adjudications Act 1983;
  - <sup>F8</sup>(k) the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
  - (l) the Foster Children (Scotland) Act 1984;
  - (m) sections 38(b) and 235 of the <sup>M8</sup> Housing (Scotland) Act 1987;
  - (n) the Access to Personal Files Act 1987; <sup>F9</sup> . . .
  - (o) <sup>F10</sup> .....
  - (p) Part II of the Children (Scotland) Act 1995.]
  - <sup>F11</sup>(q) the Adoption and Children (Scotland) Act 2007 (asp 4).]
  - <sup>F12</sup>(s) Parts 5, 6, 9 to 11, 13 to 16, and 18 of the Children’s Hearings (Scotland) Act 2011 (asp 1).]
- <sup>F13</sup>(2) The Secretary of State may make regulations in relation to—
- (a) the performance of the functions assigned to local authorities by this Act;
  - (b) the activities of voluntary organisations in so far as those activities are concerned with the like purposes;
  - <sup>F14</sup>(c) [ the performance of the functions of local authorities under any of the enactments mentioned in paragraphs (b), (d), (e), (g), (h), (i), (l) <sup>F15</sup>, (o) <sup>F16</sup>, (p)]<sup>F17</sup>, (q) and (s)] of subsection (1B) above]
  - (d) . . . .]
- <sup>F18</sup>(3) Without prejudice to the generality of subsection (2) above, regulations under this section may make such provision as is mentioned in subsection (4) of this section as regards—
- (a) the boarding out of persons other than children by local authorities and voluntary organisations, whether under any enactment or otherwise; and
  - (b) the placing of children under paragraph (a), or the making of arrangements in respect of children under paragraph (c), of section 26(1) of the Children (Scotland) Act 1995, by local authorities.
- (4) The provision referred to in subsection (3) of this section is—
- (a) for the recording—
    - (i) by local authorities and voluntary organisations, of information relating to those with whom persons are so boarded out, or who are willing to have persons so boarded out with them; and
    - (ii) by local authorities, of information relating to those with whom children are so placed or with whom such arrangements are made or who are willing to have children so placed with them or to enter into such arrangements;
  - (b) for securing that—
    - (i) persons are not so boarded out in any household unless it is for the time being approved by such local authority or voluntary organisation as may be prescribed by the regulations; and
    - (ii) children are not so placed or, in accordance with such arrangements, provided with accommodation, in any household unless it is for the time being approved by the local authority placing the child or as the case may be making the arrangements;

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- (c) for securing that, where possible, the person with whom a child is so placed or with whom such arrangements are made is either of the same religious persuasion as the child or gives an undertaking that the child shall be brought up in that persuasion;
  - (d) for securing—
    - (i) that a person who is, and the place in which he is, so boarded out by a local authority or voluntary organisation is supervised and inspected by that authority or organisation; and
    - (ii) that a child who is, and the place in which he is, so placed or, in accordance with such arrangements, provided with accommodation, by a local authority is supervised and inspected by that authority, and that he shall be removed from the place in question if his welfare appears to require it.
- (5) In subsections (3) and (4) of this section, “ child ” <sup>F19</sup>means a person who is under the age of 18.]]

#### Textual Amendments

- F1** Words in s. 5(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F2** Words in s. 5(1) inserted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **sch. 1 para. 1(4)(a)**
- F3** S. 5(1A) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 51**
- F4** Words in s. 5(1A) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(3)(a)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F5** S. 5(1B) added (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(3)(b)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F6** S. 5(1B)(f) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 6(2)**
- F7** S. 5(1B)(i) repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **sch. 3**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- F8** S. 5(1B)(k) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **sch. 4 para. 1(3)**; S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F9** Word in s. 5(1B) before para. (o) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(b)(i)**, **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**)) and said word expressed to be repealed (1.4.2002) by 2001 asp 8, s. 80(1), **Sch. 4**; S.S.I. 2002/162, **art. 2** (subject to arts. 3-13)
- F10** S. 5(1B)(o) repealed (1.4.2002) by 2001 asp 8, s. 80(1), **Sch. 4**; S.S.I. 2002/162, **art. 2** (subject to arts. 3-13)
- F11** S. 5(1B)(q) inserted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **sch. 2 para. 2(2)(a)**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- F12** S. 5(1B)(s) added (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **sch. 1 para. 1(4)(b)**
- F13** S. 5(2) substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 49**
- F14** S. 5(2)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(3)(c)**; S.I. 1996/323, **art. 4(1)(b)(c)**

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- F15** Words in s. 5(2)(c) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(c)** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F16** Words in s. 5(2)(c) substituted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **sch. 2 para. 2(2)(b)**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- F17** Words in s. 5(2)(c) substituted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **sch. 1 para. 1(4)(c)**
- F18** S. 5(3)-(5) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) for s. 5(3) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(4)(d)** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F19** Words in s. 5(5) substituted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **sch. 2 para. 2(2)(c)**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### Marginal Citations

- M1** 1970 c. 44.  
**M2** 1986 c. 33.  
**M3** 1937 c. 37.  
**M4** 1948 c. 29.  
**M5** 1958 c. 40.  
**M6** 1973 c. 29.  
**M7** 1983 c. 41.  
**M8** 1987 c. 26.

#### [<sup>F20</sup>5A Local authority plans for community care services.

- (1) Within such period after the day appointed for the coming into force of this section as the Secretary of State may direct, and in accordance with the provisions of this section, each local authority shall prepare and publish a plan for the provision of community care services in their area.
- (2) Each local authority shall from time to time review any plan prepared by them under subsection (1) above, and shall, in the light of any such review, prepare and publish—
  - (a) any modifications to the plan under review; or
  - (b) if the case requires, a new plan.
- (3) In preparing any plan or carrying out any review under subsection (1) or, as the case may be, subsection (2) above the authority shall consult—
  - (a) any Health Board providing services under the National Health Service (Scotland) Act <sup>M9</sup>1978 in the area of the authority;
  - <sup>F21</sup>(b) .....
  - (c) such voluntary organisations as appear to the authority to represent the interests of persons who use or are likely to use any community care services within the area of the authority or the interests of private carers who, within that area, provide care to persons for whom, in the exercise of their functions under this Act or any of the enactments mentioned in [<sup>F22</sup>5(1B)] of this Act, the local authority have a power or a duty to provide, or to secure the provision of, a service;

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- (d) such voluntary housing agencies and other bodies as appear to the authority to provide housing or community care services in their area; and
- (e) such other persons as the Secretary of State may direct.

(4) In this section—

“ community care services ” means services, other than services for children, which a local authority are under a duty or have a power to provide, or to secure the provision of, under Part II of this Act or [F23section 25 (provision of care and support services for persons who have or have had a mental disorder), 26 (provision of services designed to promote well-being and social development of such persons) or 27 (assistance with travel in connection with such services) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)]; and

“ private carer ” means a person who is not employed to provide the care in question by any body in the exercise of its functions under any enactment. ]

#### Textual Amendments

- F20** Ss. 5A, 5B inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 52](#)
- F21** S. 5A(3)(b) repealed (1.4.1996) by [1994 c. 39, s. 180\(1\)\(2\), Sch. 13 para. 76\(4\)\(a\), Sch. 14](#); [S.I. 1996/323, art. 4\(1\)\(b\)-\(d\), Sch. 2](#)
- F22** Words in s. 5A(3)(c) substituted (1.4.1996) by [1994 c. 39, s. 180\(1\), Sch. 13 para. 76\(4\)\(b\)](#); [S.I. 1996/323, art. 4\(1\)\(b\)\(c\)](#)
- F23** Words in s. 5A(4) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\), s. 333\(2\), sch. 4 para. 1\(4\)](#); [S.S.I. 2005/161, art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375, art. 2](#) and as amended (22.9.2005) by [S.S.I. 2005/459, art. 2](#))

#### Marginal Citations

- M9** [1978 c. 29 \(113:2\)](#).

## 5B Complaints procedure.

- (1) Subject to the provisions of this section, the Secretary of State may by order require local authorities to establish a procedure whereby a person, or anyone acting on his behalf, may make representations (including complaints) in relation to the authority's discharge of, or failure to discharge, any of their functions under this Act, or any of the enactments [F24mentioned in section 5(1B)] of this Act, in respect of that person.
- (2) For the purposes of subsection (1) of this section, “person” means any person for whom the local authority have a power or a duty to provide, or to secure the provision of, a service, and whose need or possible need for such a service has (by whatever means) come to the attention of the authority.
- (3) An order under subsection (1) of this section may be commenced at different times in respect of such different classes of person as may be specified in the order.
- (4) In relation to a child, representations may be made by virtue of subsection (1) above by the child, or on his behalf by—
  - (a) his parent;

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- (b) any person having parental [<sup>F25</sup>responsibilities and parental rights (within the meaning of section 1(3) and section 2(4) respectively of the Children (Scotland) Act 1995) in relation to] him;
- (c) any local authority foster parent; or
- (d) any other person appearing to the authority to have a sufficient interest in the child’s wellbeing to warrant his making representations on the child’s behalf.

(5) In this section—

“child” means a child under the age of 18 years; <sup>F26</sup> . . .

(6) A local authority shall comply with any directions given by the Secretary of State as to the procedure to be adopted in considering representations made as mentioned in subsection (1) of this section and as to the taking of such action as may be necessary in consequence of such representations.

(7) Every local authority shall give such publicity to the procedure established under this section as they consider appropriate.

**Textual Amendments**

**F24** Words in s. 5B(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(5)**; S.I. 1996/323, **art. 4(1)(b)(c)**

**F25** Words in s. 5B(4)(b) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(5)(a)** (with s. 103(1)); S.I. 1996/2203, **art. 3, Sch.** (with transitional provisions in arts. 4-6)

**F26** Words in s. 5B(5) repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), **Sch. 4 para. 15(5)(b), Sch. 5** (with s. 103(1)); S.I. 1996/2203, **art. 3, Sch.** (with transitional provisions in arts. 4-6)

<sup>F27</sup> **6 Supervision of establishments providing accommodation for persons and inspection of records etc.**

.....

**Textual Amendments**

**F27** S. 6 repealed (23.2.2006) by **Joint Inspection of Childrens Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3), ss. 8(4)(a), 10(2)**

<sup>F28</sup> **6A Inquiries.**

[ Without prejudice to section 6B(1) of this Act, the Secretary of State may cause an <sup>F29</sup>(1) inquiry to be held into—

- (a) the functions of a local authority under this Act or any of the enactments mentioned in section 5(1B) of this Act;
- (b) the functions of an adoption society, within the meaning of [<sup>F30</sup>section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4)];
- (c) <sup>F31</sup> .....
- (d) the detention of a child under—
  - (i) section 57 of the <sup>M10</sup> Children and Young Persons (Scotland) Act 1937; or

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- [ section 44 or 208 of the <sup>M11</sup> Criminal Procedure (Scotland) Act <sup>F32</sup>(ii) 1995;]<sup>F33</sup> ...
- (e) the functions of the Principal Reporter under [<sup>F34</sup>the Children’s Hearings (Scotland) Act 2011 (asp 1)] or any other enactment]<sup>F35</sup>; or
  - (f) the functions conferred on the National Convener of Children’s Hearings Scotland by virtue of the Children’s Hearings (Scotland) Act 2011 (asp 1)].
- (2) The Secretary of State may, before an inquiry is commenced, direct that it shall be held in private, but where no such direction has been given the person holding the inquiry may if he thinks fit hold it or any part of it in private.
- (3) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act <sup>M12</sup> 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.]

#### Textual Amendments

- F28** S. 6A inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 54
- F29** S. 6A(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 15(7) (with s. 103(1)); S.I. 1996/3201, art. 3(6)(7) (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, art. 2 (with transitional provisions inserted into S.I. 1996/3201 by art. 3))
- F30** Words in s. 6A(1)(b) substituted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), sch. 2 para. 2(3); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- F31** S. 6A(1)(c) repealed (1.4.2002) by 2001 asp 8, s. 80(1)(2), Sch. 4; S.S.I. 2002/162, art. 2 (with arts. 3-13)
- F32** S. 6A(1)(d)(ii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 6(3)
- F33** Word in s. 6A(1) inserted (18.4.2011) by Children’s Hearings (Scotland) Act 2011 (Consequential Provision) and Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2011 (S.S.I. 2011/186), arts. 1, 2(a)
- F34** Words in s. 6A(1)(e) substituted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, sch. 1 para. 1(5)
- F35** S. 6A(1)(f) and words inserted (18.4.2011) by Children’s Hearings (Scotland) Act 2011 (Consequential Provision) and Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2011 (S.S.I. 2011/186), arts. 1, 2(b)

#### Marginal Citations

- M10** 1937 c.37.  
**M11** 1995 c.40.  
**M12** 1973 c. 65 (81:2).

### [<sup>F36</sup>6B Local authority inquiries into matters affecting children.

- (1) Without prejudice to section 6A(1) of this Act, a local authority may cause an inquiry to be held into their functions under this Act, or any of the enactments mentioned in section 5(1B) of this Act, in so far as those functions relate to children.
- (2) The local authority may, before an inquiry under this section is commenced, direct that it be held in private; but where no such direction is given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.

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- (3) Subsections (2) to (6) of section 210 of the <sup>M13</sup>Local Government (Scotland) Act 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section, so however that, for the purposes of the application, any reference in those subsections to a Minister shall be construed as a reference to the local authority and any reference to an officer of his Department as a reference to an officer of that authority.
- (4) The expenses incurred by a local authority in relation to an inquiry under this section (including such reasonable sum as the authority may determine for the services of any of their officers engaged in the inquiry) shall, unless the authority are of the opinion that those expenses should be defrayed in whole or in part by them, be paid by such party to the inquiry as they may direct; and the authority may certify the amount of the expenses so incurred.
- (5) Any sum certified under subsection (4) above and to be defrayed in accordance with a direction under that subsection shall be a debt due by the party directed and shall be recoverable accordingly.
- (6) The local authority may make an award as to the expenses of the parties at the inquiry and as to the parties by whom such expenses shall be paid.]

**Textual Amendments**

**F36** S. 6B inserted (1.4.1997) by 1995 c. 36, s. 100 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, art. 2 (with transitional provisions inserted into S.I. 1996/3201 by art. 3))

**Marginal Citations**

**M13** 1973 c.45.

7 ..... F37

**Textual Amendments**

**F37** S. 7 repealed by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), Sch. 4



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