



Social Work (Scotland) Act 1968

1968 CHAPTER 49

PART I **S**

ADMINISTRATION

Central Authority

5 Powers of Secretary of State. **S**

(1) Local authorities shall perform their functions under this Act [^{F1}, Part 2 of the Children (Scotland) Act [^{F2}1995,] the Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1)] [^{F3}Part 6 (in so far as it applies to looked after children) and Parts 12 and 13 of the Children and Young People (Scotland) Act 2014 (asp 8)] [^{F4}, Parts 5, 6, 9 to 11, 13 to 16, and 18 of the Children's Hearings (Scotland) Act 2011 (asp 1)] [^{F5}and the Carers (Scotland) Act 2016] under the general guidance of the Secretary of State.

[^{F6}(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 [^{F7}subsection (1B) below]; and a local authority shall comply with any direction made under this subsection.]

[^{F8}(1B) The enactments referred to in subsection (1A) above are—

- (a) this Act as read with sections 1 and 2(1) of the ^{M1} Chronically Sick and Disabled Persons Act 1970 and the ^{M2} Disabled Persons (Services, Consultation and Representation) Act 1986;
 - (b) Part IV of the ^{M3} 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 ^{M4} National Assistance Act 1948;
 - (d) the Disabled Persons (Employment) Act 1958;
 - (e) sections 10 to 12 of the ^{M5} Matrimonial Proceedings (Children) Act 1958, and sections 11 and 12 of the ^{M6} Guardianship Act 1973;
- [section 51 of the Criminal Procedure (Scotland) Act 1995;]

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- ^{F9}(f)
- (g) the Children Act 1975;
- (h) the Adoption Act 1976;
- ^{F10}(i)
- (j) sections 21 to 23 of the ^{M7} Health and Social Services and Social Security Adjudications Act 1983;
- [^{F11}(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 ^{M8} Housing (Scotland) Act 1987;
- (n) the Access to Personal Files Act 1987; ^{F12} . . .
- (o) ^{F13}
- (p) Part II of the Children (Scotland) Act 1995.]
- [^{F14}(q) the Adoption and Children (Scotland) Act 2007 (asp 4).]
- [^{F15}(r) the Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1).]
- [^{F16}(s) Parts 5, 6, 9 to 11, 13 to 16, and 18 of the Children’s Hearings (Scotland) Act 2011(asp 1).]
- [^{F17}(t) Part 6 (in so far as it applies to looked after children) of the Children and Young People (Scotland) Act 2014 (asp 8).]
- [^{F18}(u) the Carers (Scotland) Act 2016.]

[^{F19}(1C) In subsections (1) and (1B) of this section, the references to looked after children are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.]

[^{F20}(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;
- [
- ^{F21}(c) the performance of the functions of local authorities under any of the enactments mentioned in paragraphs (b), (d), (e), (g), (h), (i), (l) [^{F22}, (o) [^{F23}, (p)]] [^{F24}, (q) and (s)]] of subsection (1B) above]
- (d)]

[^{F25}(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;

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- (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;
- (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” [F26 means a person who is under the age of 18.]

Textual Amendments

- F1** Words in s. 5(1) substituted (1.4.2014) by [Social Care \(Self-directed Support\) \(Scotland\) Act 2013](#) (asp 1), [ss. 21\(a\)](#), 28(2); S.S.I. 2014/32, art. 3
- F2** Words in s. 5(1) substituted (1.8.2014) by [Children and Young People \(Scotland\) Act 2014](#) (asp 8), s. 102(3), [sch. 5 para. 1\(a\)\(i\)](#); S.S.I. 2014/131, art. 2(2)(3), sch. (with art. 4)
- F3** Words in s. 5(1) inserted (1.8.2014) by [Children and Young People \(Scotland\) Act 2014](#) (asp 8), s. 102(3), [sch. 5 para. 1\(a\)\(ii\)](#); S.S.I. 2014/131, art. 2(2)(3), sch. (with art. 4)
- F4** 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\(4\)\(a\)](#)
- F5** Words in s. 5(1) inserted (1.10.2017) by [Carers \(Scotland\) Act 2016](#) (asp 9), [ss. 37\(2\)](#), 45(2); S.S.I. 2017/152, reg. 3, sch.
- F6** S. 5(1A) inserted (1.4.1991) by [National Health Service and Community Care Act 1990](#) (c. 19, SIF 113:2), [s. 51](#)
- F7** 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\(1\)\(b\)\(c\)](#)
- F8** 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\(1\)\(b\)\(c\)](#)
- F9** S. 5(1B)(f) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), [Sch. 4 para. 6\(2\)](#)
- F10** 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)
- F11** 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)
- F12** 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)

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- (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)
- F13** 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)
- F14** 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)
- F15** S. 5(1B)(r) added (1.4.2014) by Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1), ss. 21(b), 28(2); S.S.I. 2014/32, art. 3
- F16** 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)
- F17** S. 5(1B)(t) inserted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), sch. 5 para. 1(b); S.S.I. 2014/131, art. 2(2)(3), sch.
- F18** S. 5(1B)(u) inserted (1.10.2017) by Carers (Scotland) Act 2016 (asp 9), ss. 37(3), 45(2); S.S.I. 2017/152, reg. 3, sch.
- F19** S. 5(1C) inserted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), sch. 5 para. 1(c); S.S.I. 2014/131, art. 2(2)(3), sch.
- F20** S. 5(2) substituted by Children Act 1975 (c. 72, SIF 49:9, 10), Sch. 3 para. 49
- F21** 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)
- F22** 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))
- F23** 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)
- F24** 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)
- F25** 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))
- F26** 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.

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Changes and effects yet to be applied to :

- s. 5(1B) word repealed by [2007 asp 4 Sch. 3](#)

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

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

- s. 27(1)(za) inserted by [2023 asp 4 s. 1\(5\)](#)
- s. 29(3)(j) repealed by [2005 asp 3 Sch. 5 para. 1](#)
- s. 61B inserted by [2000 asp 4 s. 36](#) (This amendment not applied to legislation.gov.uk. S. 36 repealed (1.4.2002) without ever being in force by 2001 asp 8, Sch. 4; S.S.I. 2002/162, art. 2 (with arts. 3-13))
- s. 62(3)(d) inserted by [2000 asp 4 s. 38\(3\)](#) (This amendment not applied to legislation.gov.uk. S. 38 repealed (1.4.2002) without ever being in force by 2001 asp 8, Sch. 4; S.S.I. 2002/162, art. 2 (with arts. 3-13))
- s. 64A(1)(e) and word inserted by [2000 asp 4 Sch. 5 para. 10](#) (This amendment not applied to legislation.gov.uk. Sch. 5 para. 10 repealed (1.4.2002) without ever being in force by 2001 asp 8, Sch. 4; S.S.I. 2002/162, art. 2 (with arts. 3-13))
- s. 87A inserted by [2007 asp 10 s. 66](#)