



Children Act 1975

1975 CHAPTER 72

PART III

CARE

Further amendments of Social Work (Scotland) Act 1968

73 Amendment of s. 15 of Social Work (Scotland) Act 1968

In section 15 of the Social Work (Scotland) Act 1968 the following subsections are inserted after subsection (3)—

“(3A) Subsection (8) (penalty for taking away a child in care etc.) of section 17 of this Act shall apply to a child in the care of a local authority under this section, notwithstanding that no resolution is in force under section 16 of this Act with respect to the child, if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away:

Provided that that subsection shall not by virtue of this subsection apply in relation to an act done—

- (a) with the consent of the local authority, or
- (b) by a parent or guardian of the child who has given the local authority not less than 28 days' notice of his intention to do it.

(3B) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (3A) of this section by substituting a different period for the period of 28 days or of six months mentioned in that subsection (or for the period which by a previous order under this subsection, was substituted for that period).”

74 **Substitution of s. 16 of Social Work (Scotland) Act 1968**

The following section is substituted for section 16 of the Social Work (Scotland) Act 1968—

“16 Resolution by local authority in respect of assumption and vesting of parental rights and powers.

- (1) Subject to the provisions of this Part of this Act, a local authority may resolve—
- (a) that there shall vest in them the relevant parental rights and powers with respect to any child who is in their care under section 15 of this Act; or
 - (b) that there shall vest in a voluntary organisation which is an incorporated body, or a trust within the meaning of section 2(a) of the Trusts (Scotland) Act 1921, the relevant parental rights and powers with respect to any child who is in the care of that organisation,
- if it appears to the local authority—
- (i) that the parents of the child are dead and that he has no guardian ; or
 - (ii) that there exists in respect of a parent or guardian of the child (the said parent or guardian being hereafter in this Part of this Act referred to as the person on whose account the resolution was passed) any of the circumstances specified in subsection (2) of this section; or
 - (iii) that a resolution under this subsection is in force in terms of sub-paragraph (ii) above in relation to one parent of the child and that parent is, or is likely to become, a member of the household comprising the child and his other parent; or
 - (iv) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation or partly the one and partly the other.
- (2) The circumstances referred to in sub-paragraph (ii) of subsection (1) of this section are that the person on whose account the resolution was passed—
- (a) has abandoned the child ; or
 - (b) suffers from some permanent disability rendering him incapable of caring for the child ; or
 - (c) while not falling within paragraph (b) of this subsection, suffers from a mental disorder (within the meaning of the Mental Health (Scotland) Act 1960) which renders him unfit to have the care of the child; or
 - (d) is of such habits or mode of life as to be unfit to have the care of the child; or
 - (e) has so persistently failed without reasonable cause to discharge the obligations of a parent or guardian as to be unfit to have the care of the child.
- (3) In this section " the relevant parental rights and powers " means all the rights and powers in relation to the child (other than the right to consent or refuse to consent to the making of an application under section 14 or 25 of the Children Act 1975 and the right to agree or refuse to agree to the making of an adoption order)—

- (a) where the resolution was passed by virtue of circumstances specified in sub-paragraph (i) of subsection (1) of this section, which the deceased parents would have if they were still living;
 - (b) where the resolution was passed by virtue of circumstances specified in sub-paragraph (ii) of that subsection, of the person on whose account the resolution was passed ;
 - (c) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iii) of that subsection, of the parent other than the one on whose account the previous resolution was passed;
 - (d) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iv) of that subsection, of the parents or guardian of the child.
- (4) A local authority shall not pass a resolution under paragraph (b) of subsection (1) of this section unless—
- (a) it is satisfied that the child is not in the care of any local authority under any enactment; and
 - (b) it is satisfied that it is necessary in the interests of the welfare of the child for the parental rights and powers to be vested in the voluntary organisation ; and
 - (c) the child is living in the area of the local authority either in a residential establishment or with foster parents with whom he has been boarded out by the voluntary organisation in whose care he is ; and
 - (d) that organisation has requested the local authority to pass the resolution.
- (5) In the case of a resolution passed under subsection (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof, unless the person whose parental rights and powers have under the resolution vested in the local authority or in the voluntary organisation as the case may be, has consented in writing to the passing of the resolution, the local authority, if that person's whereabouts are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.
- (6) Every notice served by a local authority under subsection (5) of this section shall inform the person on whom the notice is served of his right to object to the resolution and of the effect of any objection made by him.
- (7) If, not later than one month after notice is served on a person under subsection (5) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (8) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.
- (8) Where a counter-notice has been served on a local authority under subsection (7) of this section, the authority may, not later than fourteen days after the receipt by them of the counter-notice, make a summary application in respect thereto to the sheriff having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the application; and the sheriff may, on the hearing of the application, order that the resolution shall not lapse by reason of the service of the counter-notice:

Provided that the sheriff shall not so order unless satisfied—

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- (a) that it is in the interests of the child to do so; and
 - (b) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out; and
 - (c) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded.
- (9) While a resolution passed under subsection (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof is in force with respect to a child, that part of subsection (3) of section 15 of this Act from the words " and nothing in this section shall authorise" onwards shall not apply in relation to the person who, but for the resolution, would have the relevant parental rights and powers in relation to the child.
- (10) Any notice under this section (including a counter-notice) may be served by post, but a notice served by a local authority under subsection (5) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.
- (11) A resolution under this section shall cease to have effect if—
- (a) the child becomes the subject of an adoption order within the meaning of Schedule 2 to the Children Act 1975 ; or
 - (b) an order in respect of the child is made under section 14 or section 25 of the Children Act 1975; or
 - (c) a person is appointed, under section 4(2A) of the Guardianship of Infants Act 1925, to be the guardian of the child ; or
 - (d) it is a resolution under paragraph (b) of subsection (1) of this section and a resolution is passed under subsection (1) of section 16A of this Act in respect of the child.
- (12) If the whereabouts of any parent or guardian of a child have remained unknown for twelve months, and throughout that period the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation, or partly the one and partly the other, then for the purposes of this section that parent or guardian shall be deemed to have abandoned the child.
- (13) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend sub-paragraph (iv) of subsection (1) of this section to substitute a different period for the period of three years mentioned in that sub-paragraph (or for the period which, by a previous order under this subsection, was substituted for that period).”.

75 Duty of local authority in Scotland to assume parental rights and powers vested in a voluntary organisation

The following section is inserted after section 16 of the Social Work (Scotland) Act 1968—

“16A Duty of local authority to assume parental rights and powers vested in a voluntary organisation.

- (1) If it appears to a local authority, having regard to the interests of the welfare of a child living within their area, the parental rights and powers in respect of whom are by virtue of a resolution under section 16(1)(b) of this Act (hereafter

in this section referred to as " the earlier resolution ") vested in a voluntary organisation, that it is necessary that the said parental rights and powers should no longer be vested in the organisation, the local authority shall resolve that the said parental rights and powers shall vest in them ; and the said parental rights and powers shall so vest from the date of the resolution under this subsection.

- (2) The local authority shall, within seven days of passing a resolution under subsection (1) of this section, by notice in writing inform—
 - (a) the organisation who but for that resolution ; and
 - (b) any person, in so far as that person's whereabouts are known to them, who, but for that resolution and the earlier resolution, would have the parental rights and powers in respect of the child, of the passing thereof.
- (3) On a summary application being made for the determining of a resolution under subsection (1) of this section by a person who but for that resolution and the earlier resolution would have the parental rights and powers in respect of the child, the sheriff having jurisdiction where the applicant resides may order that—
 - (a) the resolution under subsection (1) of this section shall continue to have effect; or
 - (b) the resolution under subsection (1) of this section shall cease to have effect and that the earlier resolution shall again take effect; or
 - (c) the resolution under subsection (1) of this section shall cease to have effect and that the parental rights and powers in respect of the child shall again vest in the applicant; or
 - (d) the resolution under subsection (1) of this section shall continue to have effect, but that either for a fixed period or until the sheriff, or if the order so provides, the local authority, otherwise directs, the local authority shall allow the care of the child to be taken over by, and the child to be under the control of, the applicant.
- (4) In hearing an application under subsection (3) of this section the sheriff may consider whether there was any ground for the making of the earlier resolution, and if he is satisfied that there was no ground for the making of that earlier resolution he shall make an order under subsection (3)(c) of this section.
- (5) In this section " the parental rights and powers " means all the rights and powers in relation to the child which in accordance with the earlier resolution were vested in the voluntary organisation.
- (6) While a resolution under subsection (1) of this section is in force with respect to a child, the child shall be deemed to have been received into and to be in the care of the local authority by virtue of section 15 of this Act, and subsections (2) to (5) of that section shall apply accordingly; except that where the earlier resolution was passed by virtue of circumstances specified in subparagraph (ii), (iii) or (iv) of subsection (1) of section 16 of this Act, that part of subsection (3) of section 15 of this Act from the words " and nothing in this section shall authorise " onwards shall not apply in relation to the person who but for the earlier resolution and the resolution under subsection (1) of this section, would have the parental rights and powers in relation to the child.
- (7) Subsection (11)(a), (b) and (c) of section 16, subsections (3) and (4) to (9) of section 17 and subsections (1), (2), (4) and (4A) of section 18 of this Act

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shall apply to a resolution under this section as they apply to a resolution under section 16(1)(a) of this Act.

- (8) A notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.”.

76 Return of child taken away in breach of section 17(8) or (9) of Social Work (Scotland) Act 1968

In section 17 of the Social Work (Scotland) Act 1968 (effect of assumption of parental rights) the following subsection is inserted after subsection (9)—

- “(10) Where an offence under subsection (8) or (9) of this section has been or is believed to have been committed, a constable, or any person authorised by any court or by any justice of the peace, may take and return the child to the local authority or voluntary organisation in whom are vested the parental rights and powers relating to the child.”.

77 Making of adoption orders where local authority have parental rights

In section 18 of the Social Work (Scotland) Act 1968 the following subsection is inserted after subsection (4)—

- “(4A) A court may entertain an application under—
- (a) section 8 of the Children Act 1975 for an adoption order in respect of a child ;
 - (b) section 14 of the Children Act 1975 for an order declaring a child free for adoption ;
 - (c) section 25 of the Children Act 1975 for an order vesting the parental rights and duties relating to a child;

notwithstanding that, by virtue of a resolution under section 16 of this Act, a local authority or a voluntary organisation have parental rights with respect to him.”.

78 Safeguarding of interests of children in proceedings in Scotland relating to the assumption of parental rights

In the Social Work (Scotland) Act 1968 the following section is inserted after section 18—

“18A Safeguarding of interests of children in proceedings relating to the assumption of parental rights.

- (1) In any proceedings under section 16(8), 16A(3) or 18(3) of this Act, the sheriff—
- (a) shall consider whether it is necessary to appoint a person for the purpose of safeguarding the interests of the child in the proceedings ; and
 - (b) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (a) above.

- (2) The power to make rules under section 32 of the Sheriff Courts (Scotland) Act 1971 shall include power to make rules providing for—
- (a) the procedure in relation to the disposal of matters arising under this section;
 - (b) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.”.

79 Amendment of section 20 of Social Work (Scotland) Act 1968

The following subsection is substituted for subsection (1) of section 20 of the Social Work (Scotland) Act 1968—

- “(1) Where a child is in the care of a local authority under any enactment, the local authority shall, in reaching any decision relating to the child, give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”.

80 Review of case of child in care in Scotland

In the Social Work (Scotland) Act 1968 the following section is inserted after section 20—

“20A Review of case of child in care.

- (1) Without prejudice to their general duty under section 20(1) of this Act, it shall be the duty of a local authority who have at any time had a child in their care throughout the preceding six months and have not during that period held a review of his case, to review his case as soon as is practicable after the expiration of that period and, if a supervision requirement is in force with respect to him, the local authority shall consider in the course of the review whether to refer his case to their reporter for review of that requirement by a children's hearing.
- (2) The Secretary of State may by regulations—
- (a) amend subsection (1) of this section by—
 - (i) substituting a different period for the period of six months mentioned in that subsection (or for any period which, by previous regulations under this subsection, was substituted for that period);
 - (ii) specifying different periods in respect of the first review under that subsection occurring after a child has been taken into care, and in respect of subsequent such reviews ;
 - (b) make provision as to the manner in which cases are to be reviewed under this section ;
 - (c) make provision as to the considerations to which the local authority are to have regard in reviewing cases under this section.”.

81 Restriction on removal of child from care of voluntary organisation

The following section is inserted after section 25 of the Social Work (Scotland) Act 1968—

“25A Restriction on removal of child from care of voluntary organisation.

- (1) Section 17(8) of this Act shall apply in relation to a child who is not in the care of a local authority under section 15 of this Act but who is in the care of a voluntary organisation, as it applies by virtue of subsection (3A) of the said section 15 to a child in the care of a local authority except that, in the case of a child who is not in the care of a local authority, references in subsection (3 A) to a local authority shall be construed as references to the voluntary organisation in whose care the child is.
- (2) For the purposes of this section, a child is in the care of a voluntary organisation if the voluntary organisation is providing accommodation for the child in a residential establishment or has boarded out the child.”.

82 Power of reporters to conduct proceedings under Social Work (Scotland) Act 1968

The following section is inserted after section 36 of the Social Work (Scotland) Act 1968—

“36A Power of reporters to conduct proceedings before a sheriff.

The Secretary of State and the Lord Advocate may, by regulations—

- (a) empower officers or any officer or class of officers appointed under section 36 of this Act, whether or not they are advocates or solicitors, to conduct before a sheriff—
 - (i) any proceedings which, under this Act are heard by the sheriff in chambers;
 - (ii) any application under section 37 or 40 of this Act in relation to a warrant;
- (b) prescribe such requirements as they think fit as to qualifications, training or experience necessary for any officer to be so empowered.”.

83 Amendment of section 37 of Social Work (Scotland) Act 1968

In section 37 of the Social Work (Scotland) Act 1968—

- (a) the following subsection is inserted after subsection (1)—

“(1A) Where a local authority receive information suggesting that a child may be in need of compulsory measures of care, they shall—

- (a) cause enquiries to be made into the case unless they are satisfied that such enquiries are unnecessary; and
 - (b) if it appears to them that the child may be in need of compulsory measures of care, give to the reporter such information about the child as they may have been able to discover.”;
- (b) for subsection (2) there is substituted—

“(2) A constable or any person authorised by any court or by any justice of the peace may take to a place of safety any child—

- (a) in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1975 has been or is believed to have been committed; or
- (b) who is a member of the same household as a child in respect of whom such an offence has been or is believed to have been committed ; or
- (c) who is, or is likely to become, a member of the same household as a person who has committed or is believed to have committed such an offence ; or
- (d) in respect of whom an offence under section 21(1) of the Children and Young Persons (Scotland) Act 1937 has been or is believed to have been committed ; or
- (e) who is likely to be caused unnecessary suffering or serious impairment of health because there is, or is believed to be, in respect of the child a lack of parental care,

and any child so taken to a place of safety or any child who has taken refuge in a place of safety may be detained there until arrangements can be made for him to be brought before a children's hearing under the following provisions of this Part of this Act; and, where a child is so detained, the constable or the person authorised as aforesaid or the occupier of the place of safety shall forthwith inform the reporter of the case.”;

- (c) in subsection (5), after " renewed " there is inserted " by a children's hearing " ;
- (d) the following subsections are inserted after subsection (5)—

“(5A) Where a warrant has been renewed under subsection (5) of this section but it appears to the reporter—

- (a) that the children's hearing will not be able to dispose of the child's case before the expiry of the period of detention required by the warrant as renewed ; and
- (b) that further detention of the child is necessary in the child's own interest,

the reporter may apply to the sheriff for a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary and the sheriff may issue such a warrant if he is satisfied that such detention is necessary in the child's own interest.

(5B) On cause shown a warrant authorising detention under subsection (5A) of this section may be renewed by the sheriff on one occasion only, for the period mentioned in that subsection on the application of the reporter.”.

84 Amendment of section 40 of Social Work (Scotland) Act 1968

In section 40 of the Social Work (Scotland) Act 1968—

- (a) for subsection (7) there is substituted—

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“(7) Where a children's hearing before whom a child is brought are unable to dispose of his case and—

- (a) have reason to believe that the child may not attend at any hearing of his case, or at any proceedings arising from the case or may fail to comply with a requirement under section 43(4) of this Act; or
- (b) are satisfied that detention of the child is necessary in his own interest,

they may issue a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary.”;

- (b) for subsection (8) there is substituted—

“(8) On cause shown a warrant authorising detention under subsection (7) of this section may be renewed by a children's hearing on one occasion only, for the period mentioned in that subsection, on the application of the reporter.”;

- (c) the following subsections are inserted after subsection (8)—

“(8A) Where a warrant has been renewed under subsection (8) of this section but it appears to the reporter—

- (a) that the children's hearing will not be able to dispose of the child's case before the expiry of the period of detention required by the warrant as renewed; and
- (b) that further detention of the child is necessary in the child's own interest,

the reporter may apply to the sheriff for a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary, and the sheriff may issue such a warrant if he is satisfied that such detention is necessary in the child's own interest.

- (8B) On cause shown, a warrant authorising detention under subsection (8A) of this section may be renewed by the sheriff on one occasion only, for the period mentioned in that subsection, on the application of the reporter.”.