



# Children Act 1975

## 1975 CHAPTER 72

### PART III

#### CARE

##### *Children in care of local authorities*

#### **56 Restriction on removal of child from care**

- (1) In section 1 of the Children Act 1948, the following subsections are inserted after subsection (3)—

“(3A) Except 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,

subsection (8) (penalty for taking away a child in care) of section 3 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 2 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.

- (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 the period which, by a previous order under this subsection, was substituted for that period).”

- (2) The following section is inserted after section 33 of the Children Act 1948—

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**“33A Restriction on removal of child from care of voluntary organisation.**

- (1) Section 3(8) of this Act shall apply in relation to children who are not in the care of local authorities under section 1 of this Act but who are in voluntary homes or are boarded out, as it applies by virtue of subsection (3A) of the said section 1 to children in the care of the local authority, except that in the case of a child who is not in the care of a local authority the references in subsection (3A) 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) a child is boarded out if he is boarded out, by the voluntary organisation in whose care he is, with foster parents to live in their home as a member of their family ;
  - (b) " voluntary home" includes a controlled community home and an assisted community home.”.

**57 Substitution of s. 2 of Children Act 1948**

The following section is substituted for section 2 of the Children Act 1948.

**“2 Assumption by local authority of parental rights and duties.**

- (1) Subject to the provisions of this Part of this Act, if it appears to a local authority in relation to any child who is in their care under the foregoing section—
  - (a) that his parents are dead and he has no guardian or custodian; or
  - (b) that a parent of his—
    - (i) has abandoned him, or
    - (ii) suffers from some permanent disability rendering him incapable of caring for the child, or
    - (iii) while not falling within sub-paragraph (ii) of this paragraph, suffers from a mental disorder (within the meaning of the Mental Health Act 1959), which renders him unfit to have the care of the child, or
    - (iv) is of such habits or mode of life as to be unfit to have the care of the child, or
    - (v) has so consistently failed without reasonable cause to discharge the obligations of a parent as to be unfit to have the care of the child ; or
  - (c) that a resolution under paragraph (b) of this subsection is in force in relation to one parent of the child who is, or is likely to become, a member of the household comprising the child and his other parent; or
  - (d) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under the foregoing section, or partly in the care of a local authority and partly in the care of a voluntary organisation,

the local authority may resolve that there shall vest in them the parental rights and duties with respect to that child, and, if the rights and duties were vested in the parent on whose account the resolution was passed jointly with another

person, they shall also be vested in the local authority jointly with that other person.

- (2) In the case of a resolution passed under paragraph (b), (c) or (d) of subsection (1) of this section, unless the person whose parental rights and duties have under the resolution vested in the local authority 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.
- (3) Every notice served by a local authority under subsection (2) of this section shall inform the person on whom the notice is served of his right to object to the resolution and the effect of any objection made by him.
- (4) If, not later than one month after notice is served on a person under subsection (2) 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 (5) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.
- (5) Where a counter-notice has been served on a local authority under subsection (4) of this section, the authority may not later than fourteen days after the receipt by them of the counter-notice complain to a juvenile court having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the complaint; and the court may on the hearing of the complaint order that the resolution shall not lapse by reason of the service of the counter-notice:  
Provided that the court shall not so order unless satisfied—
  - (a) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out, and
  - (b) 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, and
  - (c) that it is in the interests of the child to do so.
- (6) While a resolution passed under subsection (1)(b), (c) or (d) of this section is in force with respect to a child, section 1(3) of this Act shall not apply in relation to the person who, but for the resolution, would have the parental rights and duties in relation to the child.
- (7) Any notice under this section (including a counter-notice) may be served by post, so however that 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.
- (8) A resolution under this section shall cease to have effect if—
  - (a) the child is adopted ;
  - (b) an order in respect of the child is made under section 14 or 25 of the Children Act 1975 ; or
  - (c) a guardian of the child is appointed under section 5 of the Guardianship of Minors Act 1971.
- (9) Where, after a child has been received into the care of a local authority under the foregoing section, the whereabouts of any parent of his have remained unknown

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for twelve months, then, for the purposes of this section, the parent shall be deemed to have abandoned the child.

(10) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (1)(d) of this section to substitute a different period for the period mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).

(11) In this section—

" parent ", except in subsection (1)(a), includes a guardian or custodian;

" parental rights and duties ", in relation to a particular child, means all rights and duties which by law the mother and father have in relation to a legitimate child and his property except the right to consent or refuse to consent to the making of an application under section 14 of the Children Act 1975 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25 of that Act."

## 58 **Supplementary provisions relating to care proceedings**

In the Children Act 1948, the following sections are inserted after section 4—

### **“4A Appeal to High Court.**

An appeal shall lie to the High Court from the making by a juvenile court of an order under section 2(5) or section 4(3) of this Act (orders confirming or terminating local authority resolutions under section 2(1) of this Act), or from the refusal by a juvenile court to make such an order.

### **4B Guardians ad litem and reports in care proceedings.**

- (1) In any proceedings under section 2(5) or 4(3) or 4A of this Act, a juvenile court or the High Court may, where it considers it necessary in order to safeguard the interests of the child to whom the proceedings relate, by order make the child a party to the proceedings and appoint, subject to rules of court, a guardian ad litem of the child for the purposes of the proceedings.
- (2) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child in the manner prescribed by rules of court.
- (3) Section 6 of the Guardianship Act 1973 shall apply in relation to complaints under section 2(5) or 4(3) of this Act as it applies in relation to applications under section 3(3) of the said Act of 1973."

## 59 **General duty of local authority in care cases**

In section 12 of the Children Act 1948, the following subsections are substituted for subsection (1)—

- “(1) In reaching any decision relating to a child in their care, a local authority shall 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.

- (1A) If it appears to the local authority that it is necessary, for the purpose of protecting members of the public, to exercise their powers in relation to a particular child in their care in a manner which may not be consistent with their duty under the foregoing subsection, the authority may, notwithstanding that duty, act in that manner.”.

*Children in care of voluntary organisations in England and Wales*

**60 Transfer of parental rights and duties to voluntary organisations**

- (1) Where it appears to a local authority as respects a child in the care of a voluntary organisation which is an incorporated body—
- (a) that the child is not in the care of any local authority; and
  - (b) that a condition specified in section 2(1) of the Children Act 1948 is satisfied; and
  - (c) that it is necessary in the interests of the welfare of the child for the parental rights and duties to be vested in the organisation,
- the authority may, subject to subsections (5) and (6), resolve that there shall vest in the organisation the parental rights and duties with respect to that child.
- (2) While a resolution under this section is in force the parental rights and duties shall vest in the organisation in whose care the child is when the resolution is passed.
- (3) If, immediately before the resolution is passed, the parental rights and duties are vested in the parent in relation to whom the resolution is passed jointly with any other person, then on the passing of the resolution the parental rights and duties shall vest jointly in that other person and the organisation in whose care the child is.
- (4) In determining, for the purposes of subsection (1) of this section, whether the condition specified in section 2(1)(b)(i) of the Children Act 1948 is satisfied, if the whereabouts of any parent of the child have remained unknown for twelve months, that parent shall be deemed to have abandoned the child.
- (5) A resolution under subsection (1) may not be passed by a local authority in respect of any child unless—
- (a) the child is living in the area of the authority either in a voluntary home or with foster parents with whom he has been boarded by the organisation in whose care he is; and
  - (b) that organisation has requested the authority to pass the resolution.
- (6) The parental rights and duties which may vest in an organisation by virtue of this section do not include the right to consent or refuse to consent to the making of an application under section 14 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25 ; and regulations made under section 33(1) of the Children Act 1948 shall apply to the emigration of a child notwithstanding that the parental rights and duties relating to the child are vested in the voluntary organisation.
- (7) Subsection (8) of section 2 of the Children Act 1948 shall apply in relation to a resolution under subsection (1) as if it were a resolution under the said section 2.

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## **61 Duty of local authority to assume parental rights and duties**

- (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 duties with respect to whom are by virtue of a resolution under section 60 vested in a voluntary organisation, that it is necessary that the parental rights and duties should no longer be vested in the organisation, the local authority shall resolve that there shall vest in them the parental rights and duties relating to the child.
- (2) The local authority shall within seven days of passing a resolution under subsection (1) by notice in writing inform the organisation and each parent, guardian or custodian of the child whose whereabouts are known to them that the resolution has been passed.

## **62 Effect of resolutions under sections 60 and 61**

- (1) A resolution under subsection (1) of section 60 shall cease to have effect on the passing of a resolution under subsection (1) of section 61.
- (2) Section 6 of the Children Act 1948 shall have effect in relation to a resolution under subsection (1) of section 60 as it has effect in relation to a resolution under section 2 of that Act.
- (3) A resolution under subsection (1) of section 61 shall be deemed to be a resolution under section 2 of the Children Act 1948 except that sections 2(2) to (7) and 4(3) of that Act shall not apply.

## **63 Appeals by parents etc.**

- (1) Subsections (2) to (5) and (7) of section 2 of the Children Act 1948 shall apply to a resolution under section 60 as they apply to a resolution under the said section 2, with the substitution for the reference in subsection (2) to the vesting of parental rights and duties in the local authority of a reference to the vesting of parental rights and duties in the voluntary organisation.
- (2) An appeal may be made—
  - (a) where the complaint relates to a resolution under section 60, by a person deprived of parental rights and duties by the resolution, or
  - (b) where the complaint relates to a resolution under section 61, by a person who but for that resolution and an earlier resolution under section 60 would have parental rights and duties,to a juvenile court having jurisdiction in the area of the authority which passed the resolution, on the ground that—
  - (i) there was no ground for the making of the resolution, or
  - (ii) that the resolution should in the interests of the child be determined.
- (3) An appeal shall be to the High Court against the decision of a juvenile court under this section.
- (4) Section 4B of the Children Act 1948 shall apply in relation to proceedings under this section.

*Conflict of interest between parent and child*

**64 Addition of new sections to Children and Young Persons Act 1969**

The following heading and sections are inserted after section 32 of the Children and Young Persons Act 1969—

**“32A Conflict of interest between parent and child or young person  
Conflict of Interest between parent and child or young person.**

- (1) If before or in the course of proceedings in respect of a child or young person—
- (a) in pursuance of section 1 of this Act, or
  - (b) on an application under section 15(1) of this Act for the discharge of a relevant supervision order or a supervision order made under section 21(2) of this Act on the discharge of a relevant care order; or
  - (c) on an application under section 21(2) of this Act for the discharge of a relevant care order or a care order made under section 15(1) of this Act on the discharge of a relevant supervision order; or
  - (d) on an appeal to the Crown Court under section 2(12) of this Act, or
  - (e) on an appeal to the Crown Court under section 16(8) of this Act against the dismissal of an application for the discharge of a relevant supervision order or against a care order made under section 15(1) on the discharge of—
    - (i) a relevant supervision order; or
    - (ii) a supervision order made under section 21(2) on the discharge of a relevant care order; or
  - (f) on an appeal to the Crown Court under section 21(4) of this Act against the dismissal of an application for the discharge of a relevant care order or against a supervision order made under section 21(2) on the discharge of—
    - (i) a relevant care order ; or
    - (ii) a care order made under section 15(1) on the discharge of a relevant supervision order,
- it appears to the court that there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child or young person and those of his parent or guardian, the court may order that in relation to the proceedings the parent or guardian is not to be treated as representing the child or young person or as otherwise authorised to act on his behalf.
- (2) If an application such as is referred to in subsection (1)(b) or (c) of this section is unopposed, the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall order that in relation to proceedings on the application no parent or guardian of his shall be treated as representing him or as otherwise authorised to act on his behalf; but where the application was made by a parent or guardian on his behalf the order shall not invalidate the application.
- (3) Where an order is made under subsection (1) or (2) of this section for the purposes of proceedings on an application within subsection (1)(a), (b) or (c) of this section, that order shall also have effect for the purposes of any appeal to the Crown Court arising out of those proceedings.

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- (4) The power of the court to make orders for the purposes of an application within subsection (1)(a), (b) or (c) of this section shall also be exercisable, before the hearing of the application, by a single justice.
- (5) In this section—
- " relevant care order " means a care order made under section 1 of this Act;
- " relevant supervision order " means a supervision order made under section 1 of this Act.

**32B Safeguarding of interests of child or young person where section 32A order made.**

- (1) Where the court makes an order under section 32A(2) of this Act the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall in accordance with rules of court appoint a guardian ad litem of the child or young person for the purposes of the proceedings. In this subsection " court" includes a single justice.
- (2) Rules of court shall provide for the appointment of a guardian ad litem of the child or young person for the purposes of any proceedings to which an order under section 32A(1) of this Act relates.
- (3) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child or young person in the manner prescribed by rules of court.”.

**65 Legal aid for parents where order made under new section 32A of 1969 Act**

In section 28 (power to order legal aid to be given) of the Legal Aid Act 1974—

- (a) in subsection (1), for " subsections (3) and (6)" there is substituted " subsections (3), (6) and (6A) " , and
- (b) the following subsection is inserted after subsection (6)—

“(6A) Where a court makes an order under section 32A of the Children and Young Persons Act 1969 affecting the parent or guardian of a person in relation to any proceedings, it may order that the parent or guardian shall be given legal aid for the purpose of taking such part in the proceedings as may be allowed by rules of court.

In this subsection "guardian" has the same meaning as in the Children and Young Persons Act 1933.”.

**66 Safeguarding of interests of children before children's hearings etc. in Scotland**

In the Social Work (Scotland) Act 1968 the following section is inserted after section 34—

**“34A Safeguarding of interests of children before children's hearings etc.**

- (1) In any proceedings—
- (a) before a children's hearing;



(b) before the sheriff on an application under section 42(2)(c) of this Act;  
(c) before the sheriff on an appeal under section 49 or 51 of this Act,  
the chairman (in the case of proceedings referred to in paragraph (a) above) or  
the sheriff (in any other case)—

(i) shall consider whether it is necessary for the purpose of safeguarding  
the interests of the child in the proceedings, because there is or may  
be a conflict, on any matter relevant to the proceedings, between the  
interests of the child and those of his parent, to appoint a person to act  
for that purpose; and

(ii) 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 (i) above.

(2) The power to make rules under—

(a) section 35(4) of this Act,

(b) section 32 of the Sheriff Courts (Scotland) Act 1971,

shall include power to make rules providing for—

(i) the procedure in relation to the disposal of matters arising under this  
section;

(ii) 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.

(3) The expenses of a person appointed under subsection (1) of this section shall—

(a) in so far as reasonably incurred by him in safeguarding the interests of  
the child in the proceedings, and

(b) except in so far as otherwise defrayed in terms of regulations made  
under section 103(2) of the Children Act 1975,

be borne by the local authority for whose area the children's panel from which  
the relevant children's hearing has been constituted is formed.

(4) For the purposes of subsection (3) of this section, " relevant children's hearing  
" means—

(a) in the case of proceedings referred to in subsection (1)(a) of this  
section, the children's hearing;

(b) in the case of proceedings referred to in subsection (1)(b) of this  
section, the children's hearing who have directed the application;

(c) in the case of proceedings referred to in subsection (1)(c) of this  
section, the children's hearing whose decision is being appealed  
against.”.

*Absence from care and children in need of secure accommodation*

**67 Recovery of children in care of local authorities**

(1) This section applies to a child—

(a) who is in the care of a local authority under section 1 of the Children Act  
1948 ; and

(b) with respect to whom there is in force a resolution under section 2 of that Act;  
and

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- (c) who—
- (i) has run away from accommodation provided for him by the local authority under Part II of the said Act; or
  - (ii) has been taken away from such accommodation contrary to section 3(8) of the said Act; or
  - (iii) has not been returned to the local authority as required by a notice served under section 49 of the Children and Young Persons Act 1963 on a person under whose charge and control the child was, in accordance with section 13(2) of the said Act of 1948, allowed to be.
- (2) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a person specified in the information can produce the child to whom this-section applies, he may issue a summons directed to the person so specified and requiring him to attend and produce the child before a magistrates' court acting for the same petty sessions area as the justice.
- (3) Without prejudice to the powers under subsection (2) above, if a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom this section applies is in premises specified in the information, he may issue a search warrant authorising a person named in the warrant, being an officer of the local authority in whose care the child is, to search the premises for the child; and if the child is found, he shall be placed in such accommodation as the local authority may provide for him under Part II of the Children Act 1948.
- (4) A person who, without reasonable excuse, fails to comply with a summons under subsection (2) shall, without prejudice to any liability apart from this subsection, be guilty of an offence and liable on summary conviction to a fine not exceeding £100.

## **68 Extension of powers under section 32 of Children and Young Persons Act 1969**

- (1) Section 32 of the Children and Young Persons Act 1969 (detention of absentees) shall have effect subject to the following provisions of this section.
- (2) In subsection (1) of the said section 32, paragraph (b) shall cease to have effect.
- (3) After subsection (1) of the said section 32, there is inserted the following subsection:—
- “(1A) If a child or young person is absent from a place of safety to which he has been taken in pursuance of section 2(5), 16(3) or 28 of this Act without the consent of—
- (a) the person who made the arrangements for his detention in the place of safety in pursuance of the said section 2(5) or 16(3), or
  - (b) the person on whose application an authorisation relating to the child or young person has been issued under the said section 28,
- he may be arrested by a constable anywhere in the United Kingdom or the Channel Islands without a warrant, and shall, if so arrested, be conducted to the place of safety at the expense of the person referred to in paragraph (a) or (b) (as the case may be) of this subsection.”.
- (4) In subsection (2) of the said section 32, after the words " subsection (1) " there are inserted the words " or (1A) " , and for the words " twenty pounds " there is substituted the word " £100 " .
- (5) After the said subsection (2), the following subsections are inserted—

“(2A) Without prejudice to its powers under subsection (2) of this section, a magistrates' court (within the meaning of that subsection) may, if it is satisfied by information on oath that there are reasonable grounds for believing that a person who is absent as mentioned in subsection (1) or (1A) of this section is in premises specified in the information, issue a search warrant authorising a constable to search the premises for that person.

(2B) A court shall not issue a summons or search warrant under subsection (2) or (2A) of this section in any case where the person who is absent is a person to whom subsection (1A) of this section applies, unless the information referred to in the said subsection (2) or (2A) is given by the person referred to in subsection (1A)(a) or (b) (as the case may be) of this section.”.

(6) In subsection (3) of the said section 32, for the words " one hundred pounds " there is substituted the word " £400 ".

(7) In subsection (4) of the said section 32, for the words " subsection (1) " there are substituted the words " subsections (1), (1A) and (2A) " , and for the words " that subsection " there are substituted the words " subsection (1). " .

## **69 Certificates of unruly character**

The court shall not certify under section 22(5) or section 23(2) or (3) of the Children and Young Persons Act 1969 (committals to remand centres or prison) that a child is of so unruly a character that he cannot safely be committed to the care of a local authority unless the conditions prescribed by order made by the Secretary of State are satisfied in relation to that child. In this section, " court" includes a justice.

## **70 Children of unruly character in Scotland**

The following provisions of the Criminal Procedure (Scotland) Act 1975 (which relate to children of unruly character) shall be amended in the manner specified in paragraphs (a) to (c) below—

(a) in sections 23(1)(b), 24(1), 297(1) and 329(1)(b) of the said Act of 1975 the following words are added at the end—

“; but the court shall not so certify a child unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.”;

(b) in sections 23(3) and 329(3) of the said Act of 1975 the following words are added at the end—

“; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the said person.”;

(c) in sections 24(2) and 297(2) of the said Act of 1975 the following words are added at the end—

“; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.”.

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*Status: This is the original version (as it was originally enacted).*

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## 71 Grants in respect of secure accommodation for children in England and Wales

The following section is inserted after section 64 of the Children and Young Persons Act 1969—

### “64A Grants in respect of secure accommodation.

- (1) The Secretary of State may make to local authorities out of moneys provided by Parliament grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authorities in providing secure accommodation in community homes other than assisted community homes.
- (2) The Secretary of State may with the consent of the Treasury require the local authority to repay the grant, in whole or in part, if the secure accommodation in respect of which the grant was made (including such accommodation in a controlled community home) ceases to be used as such.
- (3) In this section " secure accommodation" means accommodation provided for the purposes of restricting the liberty of children in a community home.”.

## 72 Grants in respect of secure accommodation for children in Scotland

The following section is inserted after section 59 of the Social Work (Scotland) Act 1968—

### “59A Grants in respect of secure accommodation for children.

- (1) The Secretary of State may make to a local authority grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in—
  - (a) providing;
  - (b) joining with another local authority in providing; or
  - (c) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of,
 

secure accommodation in residential establishments.
- (2) The conditions subject to which grants are made under subsection (1) of this section may include conditions for securing the repayment in whole or in part of such grants.
- (3) In this section " secure accommodation" means accommodation provided for the purpose of restricting the liberty of children.”.

*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

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- (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—
- (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.

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- (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 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;

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- (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—

“(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.

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*Status: This is the original version (as it was originally enacted).*

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(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.”