



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART I

#### PARENTS, CHILDREN AND GUARDIANS

##### *Parental responsibilities and parental rights*

#### **1 Parental responsibilities.**

- (1) Subject to section 3(1)(b) [F1, and (d)] and (3) of this Act, a parent has in relation to his child the responsibility—
- (a) to safeguard and promote the child's health, development and welfare;
  - (b) to provide, in a manner appropriate to the stage of development of the child—
    - (i) direction;
    - (ii) guidance,to the child;
  - (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
  - (d) to act as the child's legal representative,
- but only in so far as compliance with this section is practicable and in the interests of the child.
- (2) "Child" means for the purposes of—
- (a) paragraphs (a), (b)(i), (c) and (d) of subsection (1) above, a person under the age of sixteen years;
  - (b) paragraph (b)(ii) of that subsection, a person under the age of eighteen years.
- (3) The responsibilities mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental responsibilities"; and the child, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those responsibilities.

*Status: Point in time view as at 29/09/2021.*

*Changes to legislation: Children (Scotland) Act 1995 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The parental responsibilities supersede any analogous duties imposed on a parent at common law; but this section is without prejudice to any other duty so imposed on him or to any duty imposed on him by, under or by virtue of any other provision of this Act or of any other enactment.

#### Textual Amendments

- F1** Words in s. 1(1) inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68, [Sch. 6 para. 48](#); S.I. 2009/479, [art. 6\(1\)\(e\)\(2\)](#) (as amended by S.I. 2009/2232, [art. 3](#))

#### Commencement Information

- II** [S. 1](#) wholly in force at 1.4.1997; [s. 1](#) not in force at Royal Assent see [s. 105\(1\)](#); [s. 1\(1\)-\(3\)](#) in force for certain purposes at 1.11.1995 by S.I. 1995/2787, [art. 3](#), [Sch.](#); [s. 1](#) in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, [art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by S.I. 1997/744, [arts. 2, 3](#))

## 2 Parental rights.

- (1) Subject to section 3(1)(b) [<sup>F2</sup>, and (d)] and (3) of this Act, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right—
- to have the child living with him or otherwise to regulate the child's residence;
  - to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;
  - if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and
  - to act as the child's legal representative.
- (2) Subject to subsection (3) below, where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others, unless any decree or deed conferring the right, or regulating its exercise, otherwise provides.
- (3) Without prejudice to any court order, no person shall be entitled to remove a child habitually resident in Scotland from, or to retain any such child outwith, the United Kingdom without the consent of a person described in subsection (6) below.
- (4) The rights mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as “parental rights”; and a parent, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those rights.
- (5) The parental rights supersede any analogous rights enjoyed by a parent at common law; but this section is without prejudice to any other right so enjoyed by him or to any right enjoyed by him by, under or by virtue of any other provision of this Act or of any other enactment.
- (6) The description of a person referred to in subsection (3) above is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1) above; except that, where both the child's parents are persons so described, the consent required for his removal or retention shall be that of them both.

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(7) In this section, “child” means a person under the age of sixteen years.

#### Textual Amendments

- F2** Words in s. 2(1) inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68, [Sch. 6 para. 49](#); S.I. 2009/479, [art. 6\(1\)\(e\)\(2\)](#) (as amended by S.I. 2009/2232, art. 3)

### 3 Provisions relating both to parental responsibilities and to parental rights.

(1) Notwithstanding section 1(1) of the <sup>M1</sup>Law Reform (Parent and Child) (Scotland) Act 1986 (provision for disregarding whether a person’s parents are not, or have not been, married to one another in establishing the legal relationship between him and any other person)—

(a) a child’s mother has parental responsibilities and parental rights in relation to him whether or not she is or has been married to [<sup>F3</sup>or in a civil partnership with] his father; and

(b) without prejudice to any arrangements which may be made under subsection (5) below and subject to any agreement which may be made under section 4 of this Act, his father has such responsibilities and rights in relation to him only if

[<sup>F4</sup>(i)] married to [<sup>F5</sup>or in a civil partnership with] the mother at the time of the child’s conception or subsequently, [<sup>F6</sup>or

(ii) where not married to [<sup>F7</sup>or in a civil partnership with] the mother at that time or subsequently, the father is registered as the child’s father under any of the enactments mentioned in subsection (1A).]

[<sup>F8</sup>(c) without prejudice to any arrangements which may be made under subsection (5) below, where a child has a parent by virtue of section 42 of the Human Fertilisation and Embryology Act 2008, that parent has parental responsibilities and parental rights in relation to the child;

(d) without prejudice to any arrangements which may be made under subsection (5) below and subject to any agreement which may be made under section 4A(1) of this Act, where a child has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008, that parent has parental responsibilities and parental rights in relation to the child if she is registered as a parent of the child under any of the enactments mentioned in subsection (3A).]

[<sup>F9</sup>(1A) Those enactments are—

(a) section 18(1)(a), (b)(i) and (c) and (2)(b) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49);

(b) sections 10(1)(a) to (e) and 10A(1)(a) to (e) of the Births and Deaths Registration Act 1953 (c. 20); and

(c) article 14(3)(a) to (e) of the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041).]

(2) For the purposes of subsection (1)(b) above, the father shall be regarded as having [<sup>F10</sup>been—

(a) married to the mother at any time when he was a party to a purported marriage with her which was—

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- (i) voidable; or
- (ii) void but believed by them (whether by error of fact or law) in good faith at that time to be valid;
- (b) in a civil partnership with the mother at any time when he was a party to a purported civil partnership with her which was—
  - (i) voidable; or
  - (ii) void but believed by them (whether by error of fact or law) in good faith at that time to be valid.]
- (3) Subsection (1) above is without prejudice to any order made under section 11 of this Act or section 3(1) of the said Act of 1986 (provision analogous to the said section 11 but repealed by this Act) or to any other order, disposal or resolution affecting parental responsibilities or parental rights; and nothing in subsection (1) above or in this Part of this Act shall affect any other—
  - (a) enactment (including any other provision of this Act or of that Act); or
  - (b) rule of law,
 by, under or by virtue of which a person may have imposed on him (or be relieved of) parental responsibilities or may be granted (or be deprived of) parental rights.
- [<sup>F11</sup>(3A) Those enactments are—
  - (a) paragraphs (a), (b) and (d) of section 18B(1) and section 18B(3)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965;
  - (b) paragraphs (a), (b) and (c) of section 10(1B) and of section 10A(1B) of the Births and Deaths Registration Act 1953;
  - (c) sub-paragraphs (a), (b) and (c) of Article 14ZA(3) of the Births and Deaths Registration (Northern Ireland) Order 1976.]
- (4) The fact that a person has parental responsibilities or parental rights in relation to a child shall not entitle that person to act in any way which would be incompatible with any court order relating to the child or the child's property, or with any [<sup>F12</sup>compulsory supervision order or interim compulsory supervision order (as defined in sections 83 and 86 respectively of the Children's Hearings (Scotland) Act 2011 (asp 1)) that is in force in relation to the child.].
- (5) Without prejudice to [<sup>F13</sup>sections 4(1) and 4A(1)] of this Act, a person who has parental responsibilities or parental rights in relation to a child shall not abdicate those responsibilities or rights to anyone else but may arrange for some or all of them to be fulfilled or exercised on his behalf; and without prejudice to that generality any such arrangement may be made with a person who already has parental responsibilities or parental rights in relation to the child concerned.
- (6) The making of an arrangement under subsection (5) above shall not affect any liability arising from a failure to fulfil parental responsibilities; and where any arrangements so made are such that the child is a foster child for the purposes of the <sup>M2</sup>Foster Children (Scotland) Act 1984, those arrangements are subject to the provisions of that Act.

#### Textual Amendments

- F3** Words in s. 3(1)(a) inserted (1.6.2021) by [Civil Partnership \(Scotland\) Act 2020 \(asp 15\)](#), s. 16, [sch. 2 para. 4\(2\)\(a\)](#); S.S.I. 2021/23, [reg. 2](#), [sch.](#) (with [reg. 3](#))
- F4** Words in s. 3(1)(b) renumbered as s. 3(1)(b)(i) (4.5.2006) by virtue of [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), [ss. 23\(2\)\(a\)](#), 46(2); S.S.I. 2006/212, [art. 2](#) (subject to [arts. 3-13](#))

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- F5** Words in s. 3(1)(b)(i) inserted (1.6.2021) by Civil Partnership (Scotland) Act 2020 (asp 15), s. 16, **sch. 2 para. 4(2)(b)(i)**; S.S.I. 2021/23, reg. 2, sch. (with reg. 3)
- F6** S. 3(1)(b)(ii) inserted (4.5.2006) Family Law (Scotland) Act 2006 (asp 2), **ss. 23(2)(b)**, 46(2) (with s. 23(4)); S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F7** Words in s. 3(1)(b)(ii) inserted (1.6.2021) by Civil Partnership (Scotland) Act 2020 (asp 15), s. 16, **sch. 2 para. 4(2)(b)(ii)**; S.S.I. 2021/23, reg. 2, sch. (with reg. 3)
- F8** S. 3(1)(c)(d) inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 50(2)**; S.I. 2009/479, **art. 6(1)(e)(2)** (as amended by S.I. 2009/2232, art. 3)
- F9** S. 3(1A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 23(3)**, 46(2); S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F10** Words in s. 3(2) substituted (1.6.2021) by Civil Partnership (Scotland) Act 2020 (asp 15), s. 16, **sch. 2 para. 4(2)(c)**; S.S.I. 2021/23, reg. 2, sch. (with reg. 3)
- F11** S. 3(3A) inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 50(3)**; S.I. 2009/479, **art. 6(1)(e)(2)** (as amended by S.I. 2009/2232, art. 3)
- F12** Words in s. 3(4) substituted (24.6.2013) by The Childrens Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **sch. 1 para. 9(2)**
- F13** Words in s. 3(5) substituted (6.4.2009 for certain purposes, otherwise 1.9.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 50(4)**; S.I. 2009/479, **art. 6(1)(e)(2)** (as amended by S.I. 2009/2232, art. 3)

#### **Modifications etc. (not altering text)**

- C1** S. 3(4) extended (*temp.* from 22.8.1996 to 1.4.1997) by S.I. 1996/2203, **art. 4**

#### **Marginal Citations**

- M1** 1986 c.9.  
**M2** 1984 c. 56.

## **4 Acquisition of parental rights and responsibilities by natural father.**

- (1) Where a child's mother has not been deprived of some or all of the parental responsibilities and parental rights in relation to him and, by virtue of subsection (1) (b) of section 3 of this Act, his father has no parental responsibilities or parental rights in relation to him, the father and mother, whatever age they may be, may by agreement provide that, as from the appropriate date, the father shall have the parental responsibilities and parental rights which (in the absence of any order under section 11 of this Act affecting those responsibilities and rights) he would have if married to the mother.
- (2) No agreement under subsection (1) above shall have effect unless—
- in a form prescribed by the Secretary of State; and
  - registered in the Books of Council and Session while the mother still has the parental responsibilities and parental rights which she had when the agreement was made.
- (3) The date on which such registration as is mentioned in subsection (2)(b) above takes place shall be the “appropriate date” for the purposes of subsection (1) above.
- (4) An agreement which has effect by virtue of subsection (2) above shall, subject only to section 11(11) of this Act, be irrevocable.

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#### Commencement Information

- I2** S. 4 wholly in force at 1.4.1997; s. 4 not in force at Royal Assent see s. 105(1); s. 4 in force for certain purposes at 1.9.1996 by S.I. 1996/2203, art. 3(1) (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); s. 4 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

#### [<sup>F14</sup>4A Acquisition of parental responsibilities and parental rights by second female parent by agreement with mother

(1) Where—

- (a) a child's mother has not been deprived of some or all of the parental responsibilities and parental rights in relation to the child; and
- (b) the child has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and that parent is not registered as such under any of the enactments mentioned in section 3(3A),

the mother and the other parent may by agreement provide that, as from the appropriate date, the other parent shall have the parental responsibilities and rights (in the absence of any order under section 11 of this Act affecting responsibilities and rights) as if the other parent were treated as a parent by virtue of section 42 of that Act of 2008.

(2) Section 4(2), (3) and (4) applies in relation to an agreement under subsection (1) of this section as it applies in relation to an agreement under subsection (1) of section 4.]

#### Textual Amendments

- F14** S. 4A inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, Sch. 6 para. 51; S.I. 2009/479, art. 6(1)(e)(2) (as amended by S.I. 2009/2232, art. 3)

#### 5 Care or control of child by person without parental responsibilities or parental rights.

(1) Subject to subsection (2) below, it shall be the responsibility of a person who has attained the age of sixteen years and who has care or control of a child under that age, but in relation to him either has no parental responsibilities or parental rights or does not have the parental responsibility mentioned in section 1(1)(a) of this Act, to do what is reasonable in all the circumstances to safeguard the child's health, development and welfare; and in fulfilling his responsibility under this section the person may in particular, even though he does not have the parental right mentioned in section 2(1)(d) of this Act, give consent to any surgical, medical or dental treatment or procedure where—

- (a) the child is not able to give such consent on his own behalf; and
- (b) it is not within the knowledge of the person that a parent of the child would refuse to give the consent in question.

(2) Nothing in this section shall apply to a person in so far as he has care or control of a child in a school ("school" having the meaning given by section 135(1) of the <sup>M3</sup>Education (Scotland) Act 1980).

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#### Marginal Citations

M3 1980 c. 44.

## 6 Views of children.

- (1) A person shall, in reaching any major decision which involves—
  - (a) his fulfilling a parental responsibility or the responsibility mentioned in section 5(1) of this Act; or
  - (b) his exercising a parental right or giving consent by virtue of that section,have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and to those of any other person who has parental responsibilities or parental rights in relation to the child (and wishes to express those views); and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (2) A transaction entered into in good faith by a third party and a person acting as legal representative of a child shall not be challengeable on the ground only that the child, or a person with parental responsibilities or parental rights in relation to the child, was not consulted or that due regard was not given to his views before the transaction was entered into.

### *Guardianship*

## 7 Appointment of guardians.

- (1) A child's parent may appoint a person to be guardian of the child in the event of the parent's death; but—
  - (a) such appointment shall be of no effect unless—
    - (i) in writing and signed by the parent; and
    - (ii) the parent, at the time of death, was entitled to act as legal representative of the child (or would have been so entitled if he had survived until after the birth of the child); and
  - (b) any parental responsibilities or parental rights (or the right to appoint a further guardian under this section) which a surviving parent has in relation to the child shall subsist with those which, by, under or by virtue of this Part of this Act, the appointee so has.
- (2) A guardian of a child may appoint a person to take his place as guardian in the event of the guardian's death; but such appointment shall be of no effect unless in writing and signed by the person making it.
- (3) An appointment as guardian shall not take effect until accepted, either expressly or impliedly by acts which are not consistent with any other intention.
- (4) If two or more persons are appointed as guardians, any one or more of them shall, unless the appointment expressly provides otherwise, be entitled to accept office even if both or all of them do not accept office.

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- (5) Subject to any order under section 11 or 86 of this Act, a person appointed as a child's guardian under this section shall have, in respect of the child, the responsibilities imposed, and the rights conferred, on a parent by sections 1 and 2 of this Act respectively; and sections 1 and 2 of this Act shall apply in relation to a guardian as they apply in relation to a parent.
- (6) Without prejudice to the generality of subsection (1) of section 6 of this Act, a decision as to the appointment of a guardian under subsection (1) or (2) above shall be regarded for the purposes of that section (or of that section as applied by subsection (5) above) as a major decision which involves exercising a parental right.

**Modifications etc. (not altering text)**

**C2** S. 7(5) extended (*temp.* from 22.8.1996 to 1.4.1997) by S.I. 1996/2203, art. 5(a)

**8 Revocation and other termination of appointment.**

- (1) An appointment made under section 7(1) or (2) of this Act revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as a result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.
- (2) Subject to subsections (3) and (4) below, the revocation of an appointment made under section 7(1) or (2) of this Act (including one made in an unrevoked will or codicil) shall not take effect unless the revocation is in writing and is signed by the person making the revocation.
- (3) An appointment under section 7(1) or (2) of this Act (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it—
  - (a) destroys the document by which it was made; or
  - (b) has some other person destroy that document in his presence.
- (4) For the avoidance of doubt, an appointment made under section 7(1) or (2) of this Act in a will or codicil is revoked if the will or codicil is revoked.
- (5) Once an appointment of a guardian has taken effect under section 7 of this Act, then, unless the terms of the appointment provide for earlier termination, it shall terminate only by virtue of—
  - (a) the child concerned attaining the age of eighteen years;
  - (b) the death of the child or the guardian; or
  - (c) the termination of the appointment by a court order under section 11 of this Act.

*Administration of child's property*

**9 Safeguarding of child's property.**

- (1) Subject to section 13 of this Act, this section applies where—
  - (a) property is owned by or due to a child;



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- (b) the property is held by a person other than a parent or guardian of the child; and
  - (c) but for this section, the property would be required to be transferred to a parent having parental responsibilities in relation to the child or to a guardian for administration by that parent or guardian on behalf of the child.
- (2) Subject to subsection (4) below, where this section applies and the person holding the property is an executor or trustee, then—
  - (a) if the value of the property exceeds £20,000, he shall; or
  - (b) if that value is not less than £5,000 and does not exceed £20,000, he may, apply to the Accountant of Court for a direction as to the administration of the property.
- (3) Subject to subsection (4) below, where this section applies and the person holding the property is a person other than an executor or trustee, then, if the value of the property is not less than £5,000, that person may apply to the Accountant of Court for a direction as to the administration of the property.
- (4) Where the parent or guardian mentioned in subsection (1)(c) above has been appointed a trustee under a trust deed to administer the property concerned, subsections (2) and (3) above shall not apply, and the person holding the property shall transfer it to the parent or guardian.
- (5) On receipt of an application under subsection (2) or (3) above, the Accountant of Court may do one, or (in so far as the context admits) more than one, of the following—
  - (a) apply to the court for the appointment of a judicial factor (whether or not the parent or guardian mentioned in subsection (1)(c) above) to administer all or part of the property concerned and in the event of the court making such an appointment shall direct that the property, or as the case may be part, concerned be transferred to the factor;
  - (b) direct that all or part of the property concerned be transferred to himself;
  - (c) direct that all or, in a case where the parent or guardian so mentioned has not been appointed by virtue of paragraph (a) above, part of the property concerned be transferred to the parent or guardian,to be administered on behalf of the child.
- (6) A direction under subsection (5)(c) above may include such conditions as the Accountant of Court considers appropriate, including in particular a condition—
  - (a) that in relation to the property concerned no capital expenditure shall be incurred without his approval; or
  - (b) that there shall be exhibited annually to him the securities and bank books which represent the capital of the estate.
- (7) A person who has applied under subsection (2) or (3) above for a direction shall not thereafter transfer the property concerned except in accordance with a direction under subsection (5) above.
- (8) The Secretary of State may from time to time prescribe a variation in any sum referred to in subsections (2) and (3) above.
- (9) In this section “child” means a person under the age of sixteen years who is habitually resident in Scotland.

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**10 Obligations and rights of person administering child’s property.**

- (1) A person acting as a child’s legal representative in relation to the administration of the child’s property—
  - (a) shall be required to act as a reasonable and prudent person would act on his own behalf; and
  - (b) subject to any order made under section 11 of this Act, shall be entitled to do anything which the child, if of full age and capacity, could do in relation to that property;
 and subject to subsection (2) below, on ceasing to act as legal representative, shall be liable to account to the child for his intromissions with the child’s property.
- (2) No liability shall be incurred by virtue of subsection (1) above in respect of funds which have been used in the proper discharge of the person’s responsibility to safeguard and promote the child’s health, development and welfare.

*Court Orders*

**11 Court orders relating to parental responsibilities etc.**

- (1) In the relevant circumstances in proceedings in the Court of Session or sheriff court, whether those proceedings are or are not independent of any other action, an order may be made under this subsection in relation to—
  - (a) parental responsibilities;
  - (b) parental rights;
  - (c) guardianship; or
  - (d) subject to section 14(1) and (2) of this Act, the administration of a child’s property.

<sup>F15</sup>(1A) .....

- (2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders—
  - (a) an order depriving a person of some or all of his parental responsibilities or parental rights in relation to a child;
  - (b) an order—
    - (i) imposing upon a person (provided he is at least sixteen years of age or is a parent of the child) such responsibilities; and
    - (ii) giving that person such rights;
  - (c) an order regulating the arrangements as to—
    - (i) with whom; or
    - (ii) if with different persons alternately or periodically, with whom during what periods,
 a child under the age of sixteen years is to live (any such order being known as a “residence order”);
  - (d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age and a person with whom the child is not, or will not be, living (any such order being known as a “contact order”);

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- (e) an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in paragraphs (a) to (d) of subsection (1) of this section (any such order being known as a “specific issue order”);
- (f) an interdict prohibiting the taking of any step of a kind specified in the interdict in the fulfillment of parental responsibilities or the exercise of parental rights relating to a child or in the administration of a child’s property;
- (g) an order appointing a judicial factor to manage a child’s property or remitting the matter to the Accountant of Court to report on suitable arrangements for the future management of the property; or
- (h) an order appointing or removing a person as guardian of the child.

[<sup>F16</sup>(2A) An order doing any of the things mentioned in subsection (2) is to be regarded as an order in relation to at least one of the matters mentioned in subsection (1).]

(3) The relevant circumstances mentioned in subsection (1) above are—

- (a) that application for an order under that subsection is made by a person who—
  - (i) not having, and never having had, parental responsibilities or parental rights in relation to the child, claims an interest;
  - (ii) has parental responsibilities or parental rights in relation to the child;
  - <sup>F17</sup>(iii) . . . . .

[<sup>F18</sup>(aa) that application for a contact order is made with the leave of the court by a person whose parental responsibilities or parental rights in relation to the child were extinguished on the making of an adoption order;

(ab) that application for an order under subsection (1) above <sup>F19</sup>... is made by a person who has had, but for a reason other than is mentioned in subsection (4) below, no longer has, parental responsibilities or parental rights in relation to the child;]

(b) that although no [<sup>F20</sup>application for an order under subsection (1) above] has been made, the court (even if it declines to make any other order) considers it should make such an order.

(4) The reasons referred to in [<sup>F21</sup>(3)(ab)] above are that the parental responsibilities or parental rights have been—

(a) extinguished on the making of an adoption order; [<sup>F22</sup> or]

<sup>F23</sup>(b) . . . . .

(c) extinguished by virtue of [<sup>F24</sup>section 55(1) of the Human Fertilisation and Embryology Act 2008 (parental orders: supplementary provision)] on the making of a parental order under [<sup>F25</sup>section 54 [<sup>F26</sup>or 54A] of that Act]; <sup>F27</sup> . . .

<sup>F27</sup>(d) . . . . .

(5) In subsection (3)(a) [<sup>F28</sup>and (ab)] above “person” includes (without prejudice to the generality of that subsection) the child concerned; but it does not include a local authority.

(6) In [<sup>F29</sup>subsections (3)(aa) and (4)] above—

<sup>F30</sup> . . . “adoption order” [<sup>F31</sup>has the meaning given by section 119 of the Adoption and Children (Scotland) Act 2007 (asp 4)].

(7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court—

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- (a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and
- (b) taking account of the child's age and maturity, shall so far as practicable—
  - (i) give him an opportunity to indicate whether he wishes to express his views;
  - (ii) if he does so wish, give him an opportunity to express them; and
  - (iii) have regard to such views as he may express.

[<sup>F32</sup>(7A) In carrying out the duties imposed by subsection (7)(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below.

(7B) Those matters are—

- (a) the need to protect the child from—
  - (i) any abuse; or
  - (ii) the risk of any abuse,
 which affects, or might affect, the child;
- (b) the effect such abuse, or the risk of such abuse, might have on the child;
- (c) the ability of a person—
  - (i) who has carried out abuse which affects or might affect the child; or
  - (ii) who might carry out such abuse,
 to care for, or otherwise meet the needs of, the child; and
- (d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under subsection (1), would have) those responsibilities.

(7C) In subsection (7B) above—

“abuse” includes —

- (a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;
- (b) abuse of a person other than the child; and
- (c) domestic abuse;

“conduct” includes—

- (a) speech; and
- (b) presence in a specified place or area.

(7D) Where—

- (a) the court is considering making an order under subsection (1) above; and
- (b) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child,

the court shall consider whether it would be appropriate to make the order.

(7E) In subsection (7D) above, “relevant person”, in relation to a child, means—

- (a) a person having parental responsibilities or parental rights in respect of the child; or
- (b) where a parent of the child does not have parental responsibilities or parental rights in respect of the child, a parent of the child.]

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- (8) The court shall, notwithstanding subsection (7) above, endeavour to ensure that any order which it makes, or any determination by it not to make an order, does not adversely affect the position of a person who has, in good faith and for value, acquired any property of the child concerned, or any right or interest in such property.
- (9) Nothing in paragraph (b) of subsection (7) above requires a child to be legally represented, if he does not wish to be, in proceedings in the course of which the court implements that paragraph.
- (10) Without prejudice to the generality of paragraph (b) of subsection (7) above, a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view for the purposes both of that paragraph and of subsection (9) above.
- (11) An order under subsection (1) above shall have the effect of depriving a person of a parental responsibility or parental right only in so far as the order expressly so provides and only to the extent necessary to give effect to the order; but in making any such order as is mentioned in paragraph (a) or (b) of subsection (2) above the court may revoke any agreement which, in relation to the child concerned, has effect by virtue of section 4(2) [<sup>F33</sup>or 4A(2)] of this Act.
- (12) Where the court makes a residence order which requires that a child live with a person who, immediately before the order is made does not have in relation to the child all the parental responsibilities mentioned in paragraphs (a), (b) and (d) of section 1(1), and the parental rights mentioned in paragraphs (b) and (d) of section 2(1), of this Act (those which he does not so have being in this subsection referred to as the “relevant responsibilities and rights”) that person shall, subject to the provisions of the order or of any other order made under subsection (1) above, have the relevant responsibilities and rights while the residence order remains in force.
- (13) Any reference in this section to an order includes a reference to an interim order or to an order varying or discharging an order.

#### Textual Amendments

- F15** S. 11(1A) repealed (1.3.2005) by [The European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), **reg. 9** (with **reg. 6**)
- F16** S. 11(2A) inserted (17.1.2021) by [Children \(Scotland\) Act 2020 \(asp 16\)](#), **ss. 15(2)**, 34(2); S.S.I. 2020/412, **reg. 2(1)(a)** (with **reg. 3**)
- F17** S. 11(3)(a)(iii) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 107(a)**, 121(2); S.S.I. 2009/267, **arts. 1(2)**, **2** (with **arts. 3-21**)
- F18** S. 11(3)(aa)(ab) inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 107(b)**, 121(2); S.S.I. 2009/267, **arts. 1(2)**, **2** (with **arts. 3-21**)
- F19** Words in s. 11(3)(ab) repealed (15.1.2016) by [The Adoption and Children \(Scotland\) Act 2007 \(Amendment of the Children \(Scotland\) Act 1995\) Order 2016 \(S.S.I. 2016/21\)](#), **arts. 1**, **2(a)**
- F20** Words in s. 11(3)(b) inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 107(c)**, 121(2); S.S.I. 2009/267, **arts. 1(2)**, **2** (with **arts. 3-21**)
- F21** Words in s. 11(4) substituted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 120(1)**, 121(2), **Sch. 2 para. 9(2)(a)(i)**; S.S.I. 2009/267, **arts. 1(2)**, **2** (with **arts. 3-21**)
- F22** Word in s. 11(4) inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 120(1)**, 121(2), **Sch. 2 para. 9(2)(a)(ii)**; S.S.I. 2009/267, **arts. 1(2)**, **2** (with **arts. 3-21**)
- F23** S. 11(4)(b) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 120(2)**, 121(2), **Sch. 3**; S.S.I. 2009/267, **arts. 1(2)**, **2** (with **arts. 3-21**)

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- F24** Words in s. 11(4)(c) substituted (6.4.2009 for certain purposes, otherwise 6.4.2010) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 52(2)(a)**; S.I. 2009/479, **art. 6(1)(e)** (as amended by S.I. 2009/2232, art. 3); S.I. 2010/987, **art. 2(g)**
- F25** Words in s. 11(4)(c) substituted (6.4.2009 for certain purposes, otherwise 6.4.2010) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 52(2)(b)**; S.I. 2009/479, **art. 6(1)(e)** (as amended by S.I. 2009/2232, art. 3); S.I. 2010/987, **art. 2(g)**
- F26** Words in s. 11(4)(c) inserted (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 9**
- F27** S. 11(4)(d) and preceding word repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F28** Words in s. 11(5) inserted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(1), 121(2), **Sch. 2 para. 9(2)(b)**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F29** Words in s. 11(6) substituted (15.1.2016) by The Adoption and Children (Scotland) Act 2007 (Amendment of the Children (Scotland) Act 1995) Order 2016 (S.S.I. 2016/21), arts. 1, **2(b)**
- F30** Words in s. 11(6) repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F31** Words in s. 11(6) substituted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(1), 121(2), **Sch. 2 para. 9(2)(c)**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F32** S. 11(7A)-(7E) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 24**, 46(2); S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F33** Words in s. 11(11) inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 52(3)**; S.I. 2009/479, **art. 6(1)(e)(2)** (as amended by S.I. 2009/2232, art. 3)

#### Modifications etc. (not altering text)

- C3** S. 11(1) restricted (30.12.2005) by 1978 c. 28, s. 53C(2) (as inserted by 2002 c. 38, ss. 139(1), 148(5) (c), **Sch. 3 para. 30**) (with Sch. 4 paras. 6-8); S.S.I. 2005/643, **art. 2(c)**
- C4** S. 11(1) restricted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), **ss. 79(2)**, 121(2); S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

### [<sup>F34</sup>11A Restriction on making of orders under section 11

- (1) Subsection (2) applies where a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)) is in force in respect of a child.
- (2) The court may not, under subsection (1) of section 11 of this Act, make an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section.]

#### Textual Amendments

- F34** S. 11A inserted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), **ss. 103**, 121(2); S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

### 12 Restrictions on decrees for divorce, separation or annulment affecting children.

- (1) In any action for
  - [<sup>F35</sup>(a)] divorce, judicial separation or declarator of nullity of marriage, [<sup>F36</sup> or
  - (b) dissolution or declarator of nullity of a civil partnership or separation of civil partners,]
 the court shall, where this section applies, consider (in the light of such information as is before the court as to the arrangements which have been, or are proposed to be,

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made for the upbringing of each child by virtue of which it applies) whether to exercise with respect to him the powers conferred by section 11 <sup>F37</sup> of this Act or section 62 of the Children's Hearings (Scotland) Act 2011].

- (2) Where, in any case to which this section applies, the court is of the opinion that—
- (a) the circumstances of the case require, or are likely to require, it to exercise any power under section 11 <sup>F38</sup> of this Act or section 62 of the Children's Hearings (Scotland) Act 2011] with respect to the child concerned;
  - (b) it is not in a position to exercise that power without giving further consideration to the case; and
  - (c) there are exceptional circumstances which make it desirable in the interests of that child that it should not grant decree in the action until it is in a position to exercise such a power,

it shall postpone its decision on the granting of decree in the action until it is in such a position.

- (3) This section applies where a child of the family has not reached the age of sixteen years at the date when the question first arises as to whether the court should give such consideration as is mentioned in subsection (1) above.

<sup>F39</sup>(4) In this section “child of the family”, in relation to the parties to a marriage or civil partnership, means a child—

- (a) of both of them; or
- (b) who has been treated by both of them as a child of their family, not being a child who is placed with them as foster parents by a local authority or voluntary organisation.]

#### Textual Amendments

- F35** Words in s. 12(1) renumbered as s. 12(1)(a) (5.12.2005) by virtue of [Civil Partnership Act 2004](#) (c. 33), ss. 261(2), 263, [Sch. 28 para. 60\(2\)](#); S.S.I. 2005/604, [art. 2\(c\)](#)
- F36** S. 12(1)(b) and preceding word inserted (5.12.2005) by [Civil Partnership Act 2004](#) (c. 33), ss. 261(2), 263, [Sch. 28 para. 60\(2\)](#); S.S.I. 2005/604, [art. 2\(c\)](#)
- F37** Words in s. 12(1) substituted (24.6.2013) by [Children's Hearings \(Scotland\) Act 2011](#) (asp 1), s. 206(2), [sch. 5 para. 2\(2\)\(a\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F38** Words in s. 12(2)(a) substituted (24.6.2013) by [Children's Hearings \(Scotland\) Act 2011](#) (asp 1), s. 206(2), [sch. 5 para. 2\(2\)\(b\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F39** S. 12(4) substituted (1.6.2021) by [Civil Partnership \(Scotland\) Act 2020](#) (asp 15), s. 16, [sch. 2 para. 4\(3\)](#); S.S.I. 2021/23, [reg. 2, sch.](#) (with [reg. 3](#))

### 13 Awards of damages to children.

- (1) Where in any court proceedings a sum of money becomes payable to, or for the benefit of, a child under the age of sixteen years, the court may make such order relating to the payment and management of the sum for the benefit of the child as it thinks fit.
- (2) Without prejudice to the generality of subsection (1) above, the court may in an order under this section—
- (a) appoint a judicial factor to invest, apply or otherwise deal with the money for the benefit of the child concerned;
  - (b) order the money to be paid—
    - (i) to the sheriff clerk or the Accountant of Court; or

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- (ii) to a parent or guardian of that child,  
to be invested, applied or otherwise dealt with, under the directions of the court, for the benefit of that child; or
  - (c) order the money to be paid directly to that child.
- (3) Where payment is made to a person in accordance with an order under this section, a receipt given by him shall be a sufficient discharge of the obligation to make the payment.

#### *Jurisdiction and choice of law*

### **14 Jurisdiction and choice of law in relation to certain matters.**

- (1) The Court of Session shall have jurisdiction to entertain an application for an order relating to the administration of a child's property if the child is habitually resident in, or the property is situated in, Scotland.
- (2) A sheriff shall have jurisdiction to entertain such an application if the child is habitually resident in, or the property is situated in, the sheriffdom.
- (3) Subject to subsection (4) below, any question arising under this Part of this Act—
- (a) concerning—
    - (i) parental responsibilities or parental rights; or
    - (ii) the responsibilities or rights of a guardian,  
in relation to a child shall, in so far as it is not also a question such as is mentioned in paragraph (b) below, be determined by the law of the place of the child's habitual residence at the time when the question arises;
  - (b) concerning the immediate protection of a child shall be determined by the law of the place where the child is when the question arises; and
  - (c) as to whether a person is validly appointed or constituted guardian of a child shall be determined by the law of the place of the child's habitual residence on the date when the appointment was made (the date of death of the testator being taken to be the date of appointment where an appointment was made by will), or the event constituting the guardianship occurred.
- (4) Nothing in any provision of law in accordance with which, under subsection (3) above, a question which arises in relation to an application for, or the making of, an order under subsection (1) of section 11 of this Act falls to be determined, shall affect the application of subsection (7) of that section.

<sup>F40</sup>(5) .....

#### **Textual Amendments**

**F40** S. 14(5) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 3](#) (with reg. 6) (as amended by [S.S.I. 2020/441](#), regs. 1(2)(a), 16); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)



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## Interpretation

### 15 Interpretation of Part I.

(1) In this Part of this Act—

“child” means, where the expression is not otherwise defined, a person under the age of eighteen years;

“contact order” has the meaning given by section 11(2)(d) of this Act;

“parent”, in relation to any person, means, subject to Part IV of the <sup>M4</sup>Adoption (Scotland) Act 1978 and sections 27 to 30 of the <sup>M5</sup>Human Fertilisation and Embryology Act 1990 [<sup>F41</sup>and Part 2 of the Human Fertilisation and Embryology Act 2008] and any regulations made under [<sup>F42</sup>section 55(1) of that Act of 2008][<sup>F43</sup>and Chapter 3 of Part 1 of the Adoption and Children (Scotland) Act 2007 (asp 4)], someone, of whatever age, who is that person’s genetic father or mother;

“parental responsibilities” has the meaning given by section 1(3) of this Act;

“parental rights” has the meaning given by section 2(4) of this Act;

“residence order” has the meaning given by section 11(2)(c) of this Act;

“specific issue order” has the meaning given by section 11(2)(e) of this Act; and

“transaction” has the meaning given by section 9 of the <sup>M6</sup>Age of Legal Capacity (Scotland) Act 1991 (except that, for the purposes of subsection (5) (b) below, paragraph (d) of the definition in question shall be disregarded).

(2) No provision in this Part of this Act shall affect any legal proceedings commenced, or any application made to a court, before that provision comes into effect; except that where, before section 11 of this Act comes into force, there has been final decree in a cause in which, as respects a child, an order for custody or access, or an order which is analogous to any such order as is mentioned in subsection (2) of that section, has been made, any application on or after the date on which the section does come into force for variation or recall of the order shall proceed as if the order had been made under that section.

(3) In subsection (2) above, the reference to final decree is to a decree or interlocutor which, taken by itself or along with previous interlocutors, disposes of the whole subject matter of the cause.

(4) Any reference in this Part of this Act to a person—

- (a) having parental rights or responsibilities;
- (b) acting as a legal representative; or
- (c) being appointed a guardian,

is to a natural person only.

(5) Any reference in this Part of this Act to a person acting as the legal representative of a child is a reference to that person, in the interests of the child—

- (a) administering any property belonging to the child; and
- (b) acting in, or giving consent to, any transaction where the child is incapable of so acting or consenting on his own behalf.

(6) Where a child has legal capacity to sue, or to defend, in any civil proceedings, he may nevertheless consent to be represented in those proceedings by any person who, had

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the child lacked that capacity, would have had the responsibility to act as his legal representative.

[<sup>F44</sup>(7) No provision in this Part of this Act shall permit a person to give a consent to the storage of gametes under the Human Fertilisation and Embryology Act 1990 on behalf of a child.]

#### Textual Amendments

- F41** S. 15(1): words in the definition of "parent" inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68, [Sch. 6 para. 54\(a\)](#); S.I. 2009/479, [art. 6\(1\)\(e\)\(2\)](#) (as amended by S.I. 2009/2232, art. 3)
- F42** S. 15(1): words in the definition of "parent" substituted (6.4.2009 for certain purposes, otherwise 6.4.2010) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68, [Sch. 6 para. 54\(b\)](#); S.I. 2009/479, [art. 6\(1\)\(e\)](#) (as amended by S.I. 2009/2232, art. 3); S.I. 2010/987, [art. 2\(g\)](#)
- F43** S. 15(1), in the definition of "parent": words inserted (28.9.2009) after "30" [semble in the second place where "30" appeared when the amending Act was enacted] by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(1), 121(2), [Sch. 2 para. 9\(3\)](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)
- F44** S. 15(7) inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 65, 68, [Sch. 7 para. 17](#); S.I. 2009/2232, [art. 2](#)

#### Marginal Citations

- M4** 1978 c.28.  
**M5** 1990 c.37.  
**M6** 1991 c.50.

## PART II

### PROMOTION OF CHILDREN’S WELFARE BY LOCAL AUTHORITIES AND BY CHILDREN’S HEARINGS ETC.

## CHAPTER 1

### SUPPORT FOR CHILDREN AND THEIR FAMILIES

#### Modifications etc. (not altering text)

- C5** [Pt. II Ch. 1](#) (ss. 16-38) modified (1.4.1997) by S.I. 1996/3255, [reg. 7\(1\)](#)

#### *Introductory*

### 16 Welfare of child and consideration of his views.

- (1) Where under or by virtue of this Part of this Act, <sup>F45</sup>... a court determines, any matter with respect to a child the welfare of that child throughout his childhood shall be <sup>F46</sup>... its paramount consideration.
- (2) In the circumstances mentioned in subsection (4) below, <sup>F47</sup>... the sheriff, taking account of the age and maturity of the child concerned, shall so far as practicable—

*Status: Point in time view as at 29/09/2021.*

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- (a) give him an opportunity to indicate whether he wishes to express his views;
- (b) if he does so wish, give him an opportunity to express them; and
- (c) have regard to such views as he may express;

and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

- (3) In the circumstances mentioned in subsection [F48(4)] of this section, no F49 ... order so mentioned shall be made with respect to the child concerned unless F50 ... the sheriff considers, that it would be better for the child that the F49 ... order be made than that none should be made at all.

[F51(4) The circumstances to which subsection (2) refers are that the sheriff is considering whether to make, vary or discharge an exclusion order.]

- (5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm)—

- F52(a) .....
- (b) a court considers it necessary to make a determination under or by virtue of [F53 Chapter 1 or 3] of this Part of this Act which (but for this paragraph) would not be consistent with its affording such paramountcy, it may make that determination.

#### Textual Amendments

- F45** Words in s. 16(1) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(a)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F46** Words in s. 16(1) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(a)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F47** Words in s. 16(2) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(b)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F48** Word in s. 16(3) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(c)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F49** Words in s. 16(3) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(c)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F50** Words in s. 16(3) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(c)(iii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F51** S. 16(4) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(d)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F52** S. 16(5)(a) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(e)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F53** Words in s. 16(5)(b) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(3)(e)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

## 17 Duty of local authority to child looked after by them.

- (1) Where a child is looked after by a local authority they shall, in such manner as the Secretary of State may prescribe—
- (a) safeguard and promote his welfare (which shall, in the exercise of their duty to him be their paramount concern);
  - (b) make such use of services available for children cared for by their own parents as appear to the authority reasonable in his case; F54 ...

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- (c) take such steps to promote, on a regular basis, personal relations and direct contact between the child and any person with parental responsibilities in relation to him as appear to them to be, having regard to their duty to him under paragraph (a) above, both practicable and appropriate <sup>[F55]</sup>; and
- (d) take such steps to promote, on a regular basis, personal relations and direct contact between the child and any person mentioned in subsection (1A) as appear to them to be appropriate having regard to their duty to the child under paragraph (a).]

<sup>[F56]</sup>(1A) The persons referred to in subsection (1)(d) are—

- (a) a sibling of the child, and
- (b) any other person with whom the child has lived and with whom the child has an ongoing relationship with the character of a relationship between siblings.

(1B) For the purposes of subsection (1A), two people are siblings if they have at least one parent in common.]

(2) The duty under paragraph (a) of subsection (1) above includes, without prejudice to that paragraph’s generality, the duty of providing advice and assistance with a view to preparing the child for when he is no longer looked after by a local authority.

(3) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the views of—

- (a) the child;
- (b) his parents;
- (c) any person who is not a parent of his but who has parental rights in relation to him; <sup>F57</sup> ...

<sup>[F58]</sup>(ca) any person mentioned in subsection (1A); and]

(d) any other person whose views the authority consider to be relevant, regarding the matter to be decided.

(4) In making any such decision a local authority shall have regard so far as practicable—

- (a) to the views (if he wishes to express them) of the child concerned, taking account of his age and maturity;
- (b) to such views of any person mentioned in subsection (3)(b) to (d) above as they have been able to ascertain; and
- (c) to the child’s religious persuasion, racial origin and cultural and linguistic background.

(5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm) a local authority consider it necessary to exercise, in a manner which (but for this paragraph) would not be consistent with their duties under this section, their powers with respect to a child whom they are looking after, they may do so.

(6) Any reference in this Chapter of this Part to a child who is “looked after” by a local authority, is to a child—

- (a) for whom they are providing accommodation under section 25 of this Act;
- <sup>[F59]</sup>(b) who is subject to a compulsory supervision order or an interim compulsory supervision order and in respect of whom they are the implementation authority (within the meaning of the Children's Hearings (Scotland) Act 2011);]

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- <sup>F60</sup>(c) .....
- (d) who is subject to an order in accordance with which, by virtue of regulations made under section 33(1) of this Act [<sup>F61</sup>or section 190 of the Children’s Hearings (Scotland) Act 2011 (asp 1) (effect of Orders made outwith Scotland)], they have [<sup>F62</sup>responsibilities as respects the child ] [<sup>F63</sup>; or
- (e) in respect of whom a permanence order has, on an application by them under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4), been made and has not ceased to have effect.]

- (7) Regulations made by the Secretary of State under subsection (1) above may, without prejudice to the generality of that subsection, include—
- (a) provision as to the circumstances in which the child may be cared for by the child’s own parents; and
- (b) procedures which shall be followed in the event of the child’s death.

#### Textual Amendments

- F54** Word in s. 17(1) repealed (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 13(2)(a)(i)**, 34(2); S.S.I. 2020/412, reg. 2(2)(a)
- F55** S. 17(1)(d) and word inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 13(2)(a)(ii)**, 34(2); S.S.I. 2020/412, reg. 2(2)(a)
- F56** S. 17(1A)(1B) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 13(2)(b)**, 34(2); S.S.I. 2020/412, reg. 2(2)(a)
- F57** Word in s. 17(3) repealed (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 13(2)(c)(i)**, 34(2); S.S.I. 2020/412, reg. 2(2)(a)
- F58** S. 17(3)(ca) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 13(2)(c)(ii)**, 34(2); S.S.I. 2020/412, reg. 2(2)(a)
- F59** S. 17(6)(b) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(4)(a)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F60** S. 17(6)(c) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(4)(b)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F61** Words in s. 17(6)(d) 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. 9(3)**
- F62** Words in s. 17(6)(d) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(4)(c)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F63** S. 17(6)(e) and word inserted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(1), 121(2), **Sch. 2 para. 9(4)(b)**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)

#### Modifications etc. (not altering text)

- C6** S. 17(1) applied (1.4.1997) by S.I. 1996/3263, **reg. 6(2)**
- C7** S. 17(1)-(5) applied (1.4.1997) by S.I. 1996/3262, **reg. 3(2)(b)**
- C8** S. 17(6) applied (26.7.2021) by The Disability Assistance for Children and Young People (Scotland) Regulations 2021 (S.S.I. 2021/174), regs. 1, **17(6)(a)** (with sch. para. 13(a))

#### Commencement Information

- I3** S. 17 wholly in force at 1.4.1997; s. 17 not in force at Royal Assent see s. 105(1), s. 17 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, **art. 3**)); s. 17 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, **art. 3(7)** (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, **arts. 2, 3**)

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## **18 Duty of persons with parental responsibilities to notify change of address to local authority looking after child.**

- (1) Where a child is being looked after by a local authority, each natural person who has parental responsibilities in relation to the child shall, without unreasonable delay, inform that authority whenever the person changes his address.
- (2) A person who knowingly fails to comply with the requirement imposed by subsection (1) above shall be liable on summary conviction to a fine of level 1 on the standard scale; but in any proceedings under this section it shall be a defence that—
  - (a) the change was to the same address as that to which another person who at that time had parental responsibilities in relation to the child was changing; and
  - (b) the accused had reasonable cause to believe that the other person had informed the authority of the change of address of them both.

### *Provision of services*

## **<sup>F64</sup>19 Local authority plans for services for children.**

.....

### **Textual Amendments**

**F64** S. 19 repealed (1.4.2017) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), [sch. 5 para. 4\(2\)](#); S.S.I. 2016/254, art. 3(3)(c)

## **20 Publication of information about services for children.**

- (1) A local authority shall, within such period after the coming into force of this section as the Secretary of State may direct, and thereafter from time to time, prepare and publish information—
  - (a) about relevant services which are provided by them for or in respect of children (including, without prejudice to that generality, services for or in respect of disabled children or children otherwise affected by disability) in their area or by any other local authority for those children; and
  - (b) where they consider it appropriate, about services which are provided by voluntary organisations and by other persons for those children, being services which the authority have power to provide and which, were they to do so, they would provide as relevant services.
- [<sup>F65</sup>(2) In subsection (1) above, “relevant services” means services provided by a local authority under or by virtue of—
  - (a) this Part of this Act;
  - (b) the Children’s Hearings (Scotland) Act 2011;
  - (c) Part 12 or 13 of the Children and Young People (Scotland) Act 2014; or
  - (d) any of the enactments mentioned in section 5(1B)(a) to (n), (r) or (t) of the Social Work (Scotland) Act 1968.]

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### Textual Amendments

**F65** S. 20(2) substituted (1.4.2017) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), [sch. 5 para. 4\(3\)](#); S.S.I. 2016/254, art. 3(3)(c)

### Commencement Information

**I4** S. 20 wholly in force at 1.4.1997; s. 20 not in force at Royal Assent see s. 105(1); s. 20 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, [art. 3\(1\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by S.I. 1997/744, [art. 3](#))); s. 20 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, [art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by S.I. 1997/744, [arts. 2, 3](#))

## 21 Co-operation between authorities.

- (1) Where it appears to a local authority that an appropriate person could, by doing certain things, help in the exercise of any of their functions under this Part of this Act, they may, specifying what those things are, request the help of that person.
- (2) For the purposes of subsection (1) above, persons who are appropriate are—
  - (a) any other local authority;
  - (b) a health board constituted under section 2 of the <sup>M7</sup>National Health Service (Scotland) Act 1978;
  - (c) a national health service trust established under section 12A of that Act; and
  - (d) any person authorised by the Secretary of State for the purposes of this section;
 and an appropriate person receiving such a request shall comply with it provided that it is compatible with their own statutory or other duties and obligations and (in the case of a person not a natural person) does not unduly prejudice the discharge of any of their functions.

### Marginal Citations

**M7** 1978 c. 29.

## 22 Promotion of welfare of children in need.

- (1) A local authority shall—
  - (a) safeguard and promote the welfare of children in their area who are in need; and
  - (b) so far as is consistent with that duty, promote the upbringing of such children by their families,
 by providing a range and level of services appropriate to the children’s needs.
- (2) In providing services under subsection (1) above, a local authority shall have regard so far as practicable to each child’s religious persuasion, racial origin and cultural and linguistic background.
- (3) Without prejudice to the generality of subsection (1) above—
  - (a) a service may be provided under that subsection—
    - (i) for a particular child;

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- (ii) if provided with a view to safeguarding or promoting his welfare, for his family; or
  - (iii) if provided with such a view, for any other member of his family; and
  - (b) the services mentioned in that subsection may include giving assistance in kind or, in exceptional circumstances, in cash.
- (4) Assistance such as is mentioned in subsection (3)(b) above may be given unconditionally or subject to conditions as to the repayment, in whole or in part, of it or of its value; but before giving it, or imposing such conditions, the local authority shall have regard to the means of the child concerned and of his parents and no condition shall require repayment by a person at any time when in receipt of—
- [<sup>F66</sup>(za) universal credit under Part 1 of the Welfare Reform Act 2012;]
  - (a) income support or [<sup>F67</sup>working families’ tax credit] payable under the <sup>M8</sup>Social Security Contributions and Benefits Act 1992;
  - <sup>F68</sup>[(aa) any element of child tax credit other than the family element or working tax credit;] or
  - (b) an income-based jobseeker’s allowance payable under the <sup>M9</sup>Jobseekers Act 1995<sup>F69</sup>; or
  - (c) an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance).]

#### Textual Amendments

- F66** S. 22(4)(za) inserted (29.4.2013) by [The Welfare Reform \(Consequential Amendments\) \(Scotland\) \(No. 2\) Regulations 2013 \(S.S.I. 2013/137\)](#), regs. 1, **5**
- F67** Words in s. 22 substituted (5.10.1999) by 1999 c. 10, ss. 1(2), 20, Sch. 1 paras. 1, **6(j)**
- F68** S. 22(4)(aa) inserted (6.4.2003) by 2002 c. 21, ss. 47, 61, **Sch. 3 para. 50**; S.I. 2003/962, **art. 2(3)(d) (iii)** (subject to [arts 3, 4](#))
- F69** S. 22(4)(c) and word inserted (27.10.2008) by [Welfare Reform Act 2007 \(c. 5\)](#), ss. 28, 70, **Sch. 3 para. 14**; S.I. 2008/787, {art. 2(4)(f)}

#### Modifications etc. (not altering text)

- C9** S. 22 restricted (8.1.2003) by 2002 c. 41, art. 54, **Sch. 3 para. 1(1)(i)**; S.I. 2002/2811, art. 2, **Sch.** (with [arts. 3-6](#))

#### Marginal Citations

- M8** 1992 c.4.  
**M9** 1995 c. 18.

## 23 Children affected by disability.

- (1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—
- (a) to minimise the effect on any—
    - (i) disabled child who is within the authority’s area, of his disability; and
    - (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person’s disability; and
  - (b) to give those children the opportunity to lead lives which are as normal as possible.



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(2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or <sup>F70</sup>has a mental disorder (as defined in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)).

(3) Where requested to do so by <sup>F71</sup>—

(a) a child’s parent or guardian <sup>F72</sup>; or

(b) a mental health officer (as defined in section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) who—

(i) has responsibility under that Act or the Criminal Procedure (Scotland) Act 1995 (c. 46) for a child’s case; and

(ii) makes the request for the purposes of either of those Acts.]

a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child, carry out an assessment of the child, or of any other person in the child’s family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.

<sup>F73</sup>(4) In determining the needs of a child under subsection (3) above, the local authority shall take account—

<sup>F74</sup>(a) if an adult carer provides, or intends to provide, care for the child, of the care provided by that carer,

(aa) if a young carer provides, or intends to provide, care for the child, of the care provided by that carer.]

(b) in so far as it is reasonable and practicable to do so, of—

(i) the views of the parent or guardian of the child, and the child; <sup>F75</sup>...

<sup>F75</sup>(ii) .....

provided that the parent, guardian, <sup>F76</sup>or child] in question has a wish, or as the case may be, a capacity, to express a view.]

<sup>F77</sup>(5) In subsection (4)(a) and (aa), the reference to the care provided by a carer means—

(a) in the case of an adult carer who has an adult carer support plan, the information about that care set out in that plan,

(b) in the case of a young carer who has a young carer statement, the information about that care set out in that statement.

(6) In—

(a) determining the needs of a child under subsection (3),

(b) deciding whether to provide any services under section 22(1), and

(c) deciding how any such services are to be provided,

a local authority must take account of the views of the carer, in so far as it is reasonable and practicable to do so.

(7) In this section—

“adult carer” and “adult carer support plan” have the meanings given by the Carers (Scotland) Act 2016,

“young carer” and “young carer statement” have the meanings given by the Carers (Scotland) Act 2016.]

*Status: Point in time view as at 29/09/2021.*

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### Textual Amendments

- F70** Words in s. 23(2) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 331\(1\), 333\(3\)](#), [Sch. 4 para. 7](#); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, [art. 2](#))
- F71** Word in s. 23(3) become s. 23(3)(a) (5.10.2005) by virtue of [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 227\(2\)\(a\), 333\(3\)](#); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, [art. 2](#))
- F72** S. 23(3)(b) and preceding word inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 227\(2\)\(b\), 333\(3\)](#); S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, [art. 2](#))
- F73** S. 23(4) inserted (1.9.2002) by [2002 asp 5, s. 10](#); S.S.I. 2002/170, [art. 2\(4\)](#)
- F74** S. 23(4)(a)(aa) substituted for s. 23(4)(a) (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(6\)\(a\), 45\(2\)](#); S.S.I. 2017/152, [reg. 4](#)
- F75** S. 23(4)(b)(ii) and word repealed (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(6\)\(b\)\(i\), 45\(2\)](#); S.S.I. 2017/152, [reg. 4](#)
- F76** Words in s. 23(4)(b) substituted (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(6\)\(b\)\(ii\), 45\(2\)](#); S.S.I. 2017/152, [reg. 4](#)
- F77** S. 23(5)-(7) inserted (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(7\), 45\(2\)](#); S.S.I. 2017/152, [reg. 4](#)

### Modifications etc. (not altering text)

- C10** S. 23(3) restricted (temp.) (5.4.2020) by [Coronavirus Act 2020 \(c. 7\)](#), [ss. 16\(7\)\(8\), 87\(2\)](#) (with [ss. 16\(12\)\(13\), 88-90](#)); S.S.I. 2020/121, [reg. 2\(a\)](#) (which affecting provision is suspended (29.9.2021) by [The Coronavirus Act 2020 \(Suspension: Children and Young Persons Social Care\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/315\)](#), [regs. 1\(1\), 2\(d\)](#) (with [reg. 3](#)) (and which affecting provision expires (25.3.2022) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), [s. 89](#))

### [<sup>F78</sup>23A Sections 17, 22 and 26A: consideration of wellbeing

- (1) This section applies where a local authority is exercising a function under or by virtue of section 17, 22 or 26A of this Act.
- (2) The local authority must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing.
- (3) For the purpose of subsection (2) above, the local authority is to assess the wellbeing of a child or young person by reference to the extent to which the matters listed in section 96(2) of the 2014 Act are or, as the case may be, would be satisfied in relation to the child or young person.
- (4) In assessing the wellbeing of a child or young person as mentioned in subsection (3) above, a local authority is to have regard to the guidance issued under section 96(3) of the 2014 Act.
- (5) In this section, “the 2014 Act” means the Children and Young People (Scotland) Act 2014.]

*Status: Point in time view as at 29/09/2021.*

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**Textual Amendments**

**F78** S. 23A inserted (S.) (31.8.2016) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 95, 102(3)**; [S.S.I. 2016/60](#), art. 2(b)

**F79** **24 Assessment of ability of carers to provide care for disabled children.**

.....

**Textual Amendments**

**F79** S. 24 repealed (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), s. 45(2), **sch. para. 2(2)**; [S.S.I. 2017/152](#), reg. 4

**F80** **24A Duty of local authority to provide information to carer of disabled child**

.....

**Textual Amendments**

**F80** S. 24A repealed (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), s. 45(2), **sch. para. 2(2)**; [S.S.I. 2017/152](#), reg. 4

**25 Provision of accommodation for children, etc.**

- (1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because—
  - (a) no-one has parental responsibility for him;
  - (b) he is lost or abandoned; or
  - (c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.
- (2) Without prejudice to subsection (1) above, a local authority may provide accommodation for any child within their area if they consider that to do so would safeguard or promote his welfare.
- (3) A local authority may provide accommodation for any person within their area who is at least eighteen years of age but not yet twenty-one, if they consider that to do so would safeguard or promote his welfare.
- (4) A local authority providing accommodation under subsection (1) above for a child who is ordinarily resident in the area of another local authority shall notify the other authority, in writing, that such provision is being made; and the other authority may at any time take over the provision of accommodation for the child.
- (5) Before providing a child with accommodation under this section, a local authority shall have regard, so far as practicable, to his views (if he wishes to express them), taking account of his age and maturity; and without prejudice to the generality of this

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subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

- (6) Subject to subsection (7) below—
- (a) a local authority shall not provide accommodation under this section for a child if any person who—
    - (i) has parental responsibilities in relation to him and the parental rights mentioned in section 2(1)(a) and (b) of this Act; and
    - (ii) is willing and able either to provide, or to arrange to have provided, accommodation for him,
 objects; and
  - (b) any such person may at any time remove the child from accommodation which has been provided by the local authority under this section.
- (7) Paragraph (a) of subsection (6) above does not apply—
- (a) as respects any child who, being at least sixteen years of age, agrees to be provided with accommodation under this section; or
  - (b) where a residence order has been made in favour of one or more persons and that person has, or as the case may be those persons have, agreed that the child should be looked after in accommodation provided by, or on behalf of, the local authority;

and paragraph (b) of that subsection does not apply where accommodation has been provided for a continuous period of at least six months (whether by a single local authority or, by virtue of subsection (4) above, by more than one local authority), unless the person removing the child has given the local authority for the time being making such provision at least fourteen days’ notice in writing of his intention to remove the child.

- (8) In this Part of this Act, accommodation means, except where the context otherwise requires, accommodation provided for a continuous period of more than twenty-four hours.

**Modifications etc. (not altering text)**

**C11** S. 25 modified (1.4.1997) by 1984 c. 56, s. 12(5) (as substituted (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 35(5) (with Sch. 3 paras. 4, 6); S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3))

**26 Manner of provision of accommodation to child looked after by local authority.**

- (1) A local authority may provide accommodation for a child looked after by them by—
- (a) placing him with—
    - (i) a family (other than such family as is mentioned in paragraph (a) or (b) of the definition of that expression in section 93(1) of this Act);
    - (ii) a relative of his; or
    - (iii) any other suitable person
 . . . ;
  - (b) maintaining him in a residential establishment; or

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- (c) making such other arrangements as appear to them to be appropriate, including (without prejudice to the generality of this paragraph) making use of such services as are referred to in section 17(1)(b) of this Act.
- (2) A local authority may arrange for a child whom they are looking after—
- (a) to be placed, under subsection (1)(a) above, with a person in England and Wales or in Northern Ireland; or
  - (b) to be maintained in any accommodation in which—
    - (i) [<sup>F82</sup>a local authority in England and Wales could place the child in a placement falling within section 22C(6)(c) of the Children Act 1989;]
    - (ii) an authority within the meaning of the <sup>M11</sup>Children (Northern Ireland) Order 1995 could maintain him by virtue of Article 27(2)(b) to (e) of that Order.

#### Extent Information

- E1** S. 26(1) extends to Scotland only; s. 26(2) extends also to England, Wales and Northern Ireland; see s. 105(1) and (8)

#### Textual Amendments

- F81** Words in s. 26(1)(a) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), [Sch. 3](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)
- F82** S. 26(2)(b)(i) substituted (1.4.2011 for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), s. 44(4), [Sch. 1 para. 9](#); S.I. 2010/2981, art. 4(a)

#### Marginal Citations

- M10** 1989 c.41.
- M11** S.I. 1995/755 (N.I.2)

### [<sup>F83</sup>26A Provision of continuing care: looked after children

- (1) This section applies where an eligible person ceases to be looked after by a local authority.
- (2) An “eligible person” is a person who—
  - (a) is at least sixteen years of age, and
  - (b) is not yet such higher age as may be specified.
- (3) Subject to subsection (5) below, the local authority must provide the person with continuing care.
- (4) “Continuing care” means the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after.
- (5) The duty to provide continuing care does not apply if—
  - (a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,
  - (b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or

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- (c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.
- (6) A local authority's duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.
- (7) The duty to provide continuing care ceases if—
  - (a) the person leaves the accommodation of the person's own volition,
  - (b) the accommodation ceases to be available, or
  - (c) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.
- (8) For the purposes of subsection (7)(b) above, the situations in which accommodation ceases to be available include—
  - (a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,
  - (b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,
  - (c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.
- (9) The Scottish Ministers may by order—
  - (a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(c) above is the case,
  - (b) modify subsection (5) above so as to add, remove or vary a situation in which the duty to provide continuing care does not apply,
  - (c) modify subsection (7) or (8) above so as to add, remove or vary a situation in which the duty to provide continuing care ceases.
- (10) If a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify—
  - (a) the Scottish Ministers, and
  - (b) Social Care and Social Work Improvement Scotland.
- (11) An order under this section—
  - (a) may make different provision for different purposes,
  - (b) is subject to the affirmative procedure.
- (12) Before making an order under this section, the Scottish Ministers must consult—
  - (a) each local authority, and
  - (b) such other persons as they consider appropriate.
- (13) In this section—
  - “carer”, in relation to a care placement, means the family or persons with whom the placement is made,
  - “care placement” means a placement such as is mentioned in section 26(1) (a) of this Act,
  - “specified” means specified by order made the Scottish Ministers.]

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### Textual Amendments

**F83** S. 26A inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 67(1), 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.

## 27 Day care for pre-school and other children.

(1) Each local authority shall provide such day care for children in need within their area who—

- (a) are aged five or under; and
- (b) have not yet commenced attendance at a school,

as is appropriate; and they may provide such day care for children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) but are not in need.

[<sup>F84</sup>(1A) A local authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of children in need within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above about how they should provide day care for such children in pursuance of that subsection; and
- (b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide day care for such children in pursuance of that subsection.

(1B) A local authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above but are not in need about whether and if so how they should provide day care for such children under that subsection; and
- (b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of day care for such children under that subsection.]

(2) A local authority may provide facilities (including training, advice, guidance and counselling) for those—

- (a) caring for children in day care; or
- (b) who at any time accompany such children while they are in day care.

(3) Each local authority shall provide for children in need within their area who are in attendance at a school such care—

- (a) outside school hours; or
- (b) during school holidays,

as is appropriate; and they may provide such care for children within their area who are in such attendance but are not in need.

[<sup>F85</sup>(3A) A local authority must, at least once every two years—

- (a) consult such persons as appear to be representative of parents of children in need within their area who are in attendance at a school about how they should provide appropriate care for such children in pursuance of subsection (3) above; and

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- (b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide appropriate care for such children in pursuance of that subsection.
- (3B) A local authority must, at least once every two years—
- (a) consult such persons as appear to be representative of parents of children within their area who are in attendance at a school but are not in need about whether and if so how they should provide appropriate care for such children under subsection (3) above; and
  - (b) after having had regard to the views expressed, prepare and publish plans in relation to the provision of appropriate care for such children in their area under that subsection.
- (3C) The Scottish Ministers may by order modify subsection (1A), (1B), (3A) or (3B) above so as to vary the regularity within which a local authority must consult and plan in pursuance of that subsection.
- (3D) An order made under subsection (3C) above is subject to the negative procedure.]
- (4) In this section—
- “day care” means any form of care provided for children during the day, whether or not it is provided on a regular basis; and
  - “school” has the meaning given by section 135(1) of the <sup>M12</sup>Education (Scotland) Act 1980.

**Textual Amendments**

**F84** S. 27(1A)(1B) inserted (1.8.2014) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 55(2), 102(3)**; S.S.I. 2014/131, art. 2(2)(3), sch.

**F85** S. 27(3A)-(3D) inserted (1.8.2014) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 55(3), 102(3)**; S.S.I. 2014/131, art. 2(2)(3), sch.

**Marginal Citations**

**M12** 1980 c.44.

**28 Removal of power to arrange for emigration of children.**

Section 23 of the <sup>M13</sup>Social Work (Scotland) Act 1968 (which provides a power for local authorities and voluntary associations, with the consent of the Secretary of State, to make arrangements for the emigration of children in their care) shall cease to have effect.

**Marginal Citations**

**M13** 1968 c.49.



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*Advice and assistance for young persons formerly looked after by local authorities*

**29 After-care.**

- (1) A local authority shall, unless they are satisfied that his welfare does not require it, advise, guide and assist any person in their area [<sup>F86</sup>who is at least sixteen] but not yet nineteen years of age who, [<sup>F87</sup>either—
- (a) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or
  - (b) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.]

[<sup>F88</sup>(1A) An order made under subsection (1)(b) above is subject to the affirmative procedure.]

- (2) If a person within the area of a local authority is at least nineteen, but is less than [<sup>F89</sup>twenty-six], years of age and is otherwise a person such as is described in subsection (1) above, he may by application to the authority request that they provide him with advice, guidance and assistance; <sup>F90</sup> ...

[<sup>F91</sup>(2A) Subsections (1) and (2) above do not apply to a person during any period when the person is being provided with continuing care under section 26A of this Act.]

- (3) [<sup>F92</sup>Subject to section 73(2) of the Regulation of Care (Scotland) Act 2001 (asp 8),] assistance given under subsection (1) [<sup>F93</sup>above or (5A) or (5B) below] may include assistance in kind or in cash.

- (4) Where a person—
- (a) [<sup>F94</sup>who is at least sixteen years of] age ceases to be looked after by a local authority; or
  - (b) described in subsection (1) above is being provided with advice, guidance or assistance by a local authority,

they shall, if he proposes to reside in the area of another local authority, inform that other local authority accordingly provided that he consents to their doing so.

[<sup>F95</sup>(5) It is the duty of each local authority, in relation to any person to whom they have a duty under subsection (1) above or who makes an application under subsection (2) above, to carry out an assessment of the person’s needs.

[ After carrying out an assessment under subsection (5) above in pursuance of an

<sup>F96</sup>(5A) application made by a person under subsection (2) above, the local authority—

- (a) must, if satisfied that the person has any eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs; and
- (b) may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person's welfare.

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

- (6) Each local authority shall establish a procedure for considering representations (including complaints) made to them by any person mentioned in subsection (1) or

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- (2) above about the discharge of their functions under the provisions of subsections (1) to [F97(5B)] above.
- (7) In subsection (1) above, the reference to having been “looked after by a local authority” shall be construed as including having been looked after by a local authority in England and Wales; and subsection (4) of section 105 of the Children Act 1989 (c.41) (construction of references to a child looked after by a local authority) shall apply for the purposes of this subsection as it applies for the purposes of that Act (“local authority in England and Wales” being construed in accordance with subsection (1) of that section).]
- [F98(8) For the purposes of subsection (5A)(a) above, a person has “eligible needs” if the person needs care, attention or support of such type as the Scottish Ministers may by order specify.
- (9) An order made under subsection (8) is subject to the affirmative procedure.
- (10) If a local authority becomes aware that a person who is being provided with advice, guidance or assistance by them under this section has died, the local authority must as soon as reasonably practicable notify—
- (a) the Scottish Ministers; and
  - (b) Social Care and Social Work Improvement Scotland.]

#### Textual Amendments

- F86** Words in s. 29(1) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(2)(a)(i)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F87** Words in s. 29(1) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(2)(a)(ii)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F88** S. 29(1A) inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(2)(b)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F89** Word in s. 29(2) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(2)(c)(i)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F90** Words in s. 29(2) repealed (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(2)(c)(ii)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F91** S. 29(2A) inserted (1.4.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 67(2)**, 102(3); S.S.I. 2015/61, art. 2(1)(2), sch.
- F92** Words in s. 29(3) inserted (5.12.2003) by [2001 asp 8](#), **ss. 73(1)(a)**, 81(2); S.S.I. 2003/596, **art. 3(1)**
- F93** Words in s. 29(3) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(2)(d)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F94** Words in s. 29(4) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(2)(e)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F95** S. 29(5)-(7) inserted (1.4.2004) by [2001 asp 8](#), **ss. 73(1)(b)**, 81(2); S.S.I. 2003/596, **art. 3(2)**
- F96** S. 29(5A)(5B) inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(2)(f)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.

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**F97** Word in s. 29(6) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(g)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.

**F98** S. 29(8)-(10) inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 66(2)(h)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.

**Modifications etc. (not altering text)**

**C12** S. 29 restricted (8.1.2003) by 2002 c. 41, art. 54, **Sch. 3 para. 1(1)(i)**; S.I. 2002/2811, art. 2, **Sch.** (with arts. 3-6)

**C13** S. 29(5) restricted (temp.) (5.4.2020) by Coronavirus Act 2020 (c. 7), **ss. 16(9)**, 87(2) (with ss. 16(12)(13), 88-90); S.S.I. 2020/121, **reg. 2(a)** (which affecting provision is suspended (29.9.2021) by The Coronavirus Act 2020 (Suspension: Children and Young Persons Social Care) (Scotland) Regulations 2021 (S.S.I. 2021/315), regs. 1(1), **2(e)** (with reg. 3)) (and which affecting provision expires (25.3.2022) by virtue of Coronavirus Act 2020 (c. 7), **s. 89**)

**C14** S. 29(5A) applied (temp.) (5.4.2020) by Coronavirus Act 2020 (c. 7), **ss. 16(10)(11)**, 87(2) (with ss. 16(12)(13), 88-90); S.S.I. 2020/121, **reg. 2(a)** (and which affecting provision expires (25.3.2022) by virtue of Coronavirus Act 2020 (c. 7), **s. 89**)

**30 Financial assistance towards expenses of education or training and removal of power to guarantee indentures etc.**

(1) Without prejudice to section 12 of the <sup>M14</sup>Social Work (Scotland) Act 1968 (general social welfare services of local authorities), a local authority may make—

- (a) grants to any relevant person in their area to enable him to meet expenses connected with his receiving education or training; and
- (b) contributions to the accommodation and maintenance of any such person in any place near where he may be—
  - (i) employed, or seeking employment; or
  - (ii) receiving education or training.

(2) <sup>F99</sup>A] person is a relevant person for the purposes of subsection (1) above if—

- (a) he is <sup>F100</sup>at least sixteen years of ] age but not yet <sup>F101</sup>twenty-six] years of age; and
- <sup>F102</sup>(b) he either—
  - (i) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or
  - (ii) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.

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

<sup>F103</sup>(3) .....

<sup>F103</sup>(4) .....

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### Textual Amendments

- F99** Word in s. 30(2) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(3)(a)(i)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F100** Words in s. 30(2)(a) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **s. 66(3)(a)(ii)(A)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F101** Word in s. 30(2)(a) substituted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **s. 66(3)(a)(ii)(B)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F102** S. 30(2)(b)(2A) substituted for s. 30(2)(b) (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(3)(a)(iii)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.
- F103** S. 30(3)(4) omitted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by virtue of [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 66(3)(b)**, 102(3); S.S.I. 2014/131, art. 2(2)(3), sch.; S.S.I. 2015/61, art. 2(1)(2), sch.

### Modifications etc. (not altering text)

- C15** S. 30 restricted (8.1.2003) by [2002 c. 41](#), art. 54, **Sch. 3 para. 1(1)(i)**; S.I. 2002/2811, art. 2, **Sch.** (with arts. 3-6)

### Marginal Citations

- M14** [1968 c.49](#).

## *Miscellaneous and General*

### 31 Review of case of child looked after by local authority.

- (1) Without prejudice to their duty under section 17(1)(a) of this Act, it shall be the duty of a local authority who are looking after a child to review his case at such intervals as may be prescribed by the Secretary of State.
- (2) The Secretary of State may prescribe—
- (a) different intervals in respect of the first such review and in respect of subsequent reviews;
  - (b) the manner in which cases are to be reviewed under this section;
  - (c) the considerations to which the local authority are to have regard in reviewing cases under this section.

### Commencement Information

- I5** [S. 31](#) wholly in force at 1.4.1997; [s. 31](#) not in force at Royal Assent see [s. 105\(1\)](#); [s. 31](#) in force for certain purposes at 12.12.1996 by [S.I. 1996/3201](#), **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by [S.I. 1997/744](#), **art. 3**)); [s. 31](#) in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201](#), **art. 3(7)** (with arts. 4-6) (as amended (7.3.1997) by [S.I. 1997/744](#), **arts. 2, 3**)

*Status: Point in time view as at 29/09/2021.*

*Changes to legislation: Children (Scotland) Act 1995 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**32 Removal of child from residential establishment.**

A local authority, notwithstanding any agreement made in connection with the placing of a child in a residential establishment under this Chapter, or Chapter 4, of this Part of this Act by them—

- (a) may, at any time; and
- (b) shall, if requested to do so by the person responsible for the establishment, remove a child so placed.

**33 Effect of orders etc. made in different parts of the United Kingdom.**

(1) The Secretary of State may make regulations providing for a prescribed order which is made by a court in England and Wales or in Northern Ireland, if that order appears to him to correspond generally to an order of a kind which may be made under this Part of this Act <sup>F104F105</sup> ..., to have effect in prescribed circumstances and for prescribed purposes of the law of Scotland as if it were an order of that kind <sup>F106F105</sup> ....

(2) The Secretary of State may make regulations providing—

- (a) for a prescribed order made under this Part of this Act by a court in Scotland;

<sup>F108F109</sup>(b) .....  
 if that order <sup>F110F111</sup> ... appears to him to correspond generally to an order of a kind which may be made under any provision of law in force in England and Wales or in Northern Ireland, to have effect in prescribed circumstances and for prescribed purposes of the law of England and Wales, or as the case may be of Northern Ireland, as if it were an order of that kind.

(3) Regulations under subsection (1) or (2)(a) above may provide for the order given effect for prescribed purposes to cease to have effect for those purposes, or for the purposes of the law of the place where the order was made, if prescribed conditions are satisfied.

<sup>F112F113</sup>(4) .....

(5) Regulations under this section may modify any provision of—

- (a) the <sup>M15</sup>Social Work (Scotland) Act 1968 or this Act in any application which the Acts may respectively have, by virtue of the regulations, in relation to an order made otherwise than in Scotland;
- (b) the <sup>M16</sup>Children Act 1989 or the <sup>M17</sup>Children and Young Persons Act 1969 [<sup>F114</sup>or sections 63 to 67 of and Schedules 6 and 7 to the Powers of Criminal Courts (Sentencing) Act 2000] in any application which those Acts may respectively have, by virtue of the regulations, in relation to an order prescribed under subsection (2)(a) above <sup>F115F116</sup> ...; or
- (c) the <sup>M18</sup>Children (Northern Ireland) Order 1995 or the <sup>M19</sup>Children and Young Persons Act (Northern Ireland) 1968 in any application which they may respectively have, by virtue of the regulations, in relation to an order so prescribed <sup>F117F116</sup> ....

**Textual Amendments**

**F104** Words in s. 33(1) repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 2\(6\)\(a\)\(i\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3

**Status:** Point in time view as at 29/09/2021.

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- F105** Words in s. 33(1) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F106** Words in s. 33(1) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(a)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F107** Word in s. 33(2) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 1 Pt. 3**
- F108** S. 33(2)(b) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(b)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F109** s. 33(2)(b) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F110** Words in s. 33(2) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(b)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F111** Words in s. 33(2) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F112** S. 33(4) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(c)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F113** S. 33(4) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F114** Words in s. 33(5)(b) inserted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 175**
- F115** Words in s. 33(5)(b) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(d)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F116** Words in s. 33(5)(b)(c) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F117** Words in s. 33(5)(c) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(6)(e)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

#### Commencement Information

- I6** S. 33 wholly in force at 1.4.1997; s. 33 not in force at Royal Assent see s. 105(1); s. 33 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, **art. 3**)); s. 33 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, **art. 3(7)** (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, **arts. 2, 3**)

#### Marginal Citations

- M15** 1968 c.49.  
**M16** 1989 c.41.  
**M17** 1969 c.54  
**M18** S.I. 1995/755 (N.I.2)  
**M19** 1968 c.34 (N.I.)

**F118** 34 .....

#### Textual Amendments

- F118** S. 34 repealed (1.4.2002) by 2001 asp 8, s. 80(1), **Sch. 4**; S.S.I. 2002/162, **art. 2(g)(i)** (subject to arts. 3-13)

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### **35 Welfare of children in accommodation provided for purposes of school attendance.**

After section 125 of the <sup>M20</sup>Education (Scotland) Act 1980 there shall be inserted—

*“ Children and young persons in accommodation*

#### **125A Welfare of children and young persons in accommodation provided for purposes of school attendance.**

Where, for the purposes of his being in attendance at a school, a child or young person is provided with residential accommodation, in a place in or outwith that school, by—

- (a) an education authority, the board of management of a self-governing school or the managers of a grant-aided or independent school; or
- (b) by any other person in pursuance of arrangements made by any such authority, board of management or managers,

the authority, board of management or managers in question shall have the duty to safeguard and promote the welfare of the child or young person while he is so accommodated; and the powers of inspection exercisable by virtue of section 66(1) of this Act shall include the power to inspect the place to determine whether his welfare is adequately safeguarded and promoted there.”.

#### **Marginal Citations**

**M20** 1980 c.44.

### **36 Welfare of certain children in hospitals and nursing homes etc.**

(1) Where a child is provided with residential accommodation by a person mentioned in subsection (3) below and it appears to the person that the child either—

- (a) has had no parental contact for a continuous period of three months or more; or
- (b) is likely to have no parental contact for a period which, taken with any immediately preceding period in which the child has had no such contact, will constitute a continuous period of three months or more,

the person shall (whether or not the child has been, or will be, so accommodated throughout the continuous period) so notify the local authority in whose area the accommodation is provided.

(2) A local authority receiving notification under subsection (1) above shall—

- (a) take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while he is so accommodated; and
- (b) consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.

(3) The persons are—

- (a) any health board constituted under section 2 of the <sup>M21</sup>National Health Service (Scotland) Act 1978;
- (b) any national health service trust established under section 12A of that Act;

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- [<sup>F119</sup>(c) any person providing—
- (i) an independent hospital;
  - (ii) a private psychiatric hospital;
  - (iii) an independent clinic; or
  - (iv) an independent medical agency,
- within the meaning given to those expressions by section 10F(2) of the National Health Service (Scotland) Act 1978 (c.29); and]
- (d) any person providing a care home service (as defined by [<sup>F120</sup>paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8)).

- (4) For the purposes of subsection (1) above, a child has parental contact only when in the presence of a person having parental responsibilities in relation to him.
- (5) A person duly authorised by a local authority may in the area of that authority, at all reasonable times, enter for the purposes of subsection (2) above or of determining whether there has been compliance with subsection (1) above any such place as is mentioned in sub-paragraph (i) or (ii) of subsection (3)(c) above and may for those purposes inspect any records or registers relating to that place; and subsections (2A) to (2D) and (4) of section 6 of the <sup>M22</sup>Social Work (Scotland) Act 1968 (exercise of powers of entry and inspection) [<sup>F121</sup>(as in force immediately prior to their repeal by section 8 of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006)] shall apply in respect of a person so authorised as they [<sup>F122</sup>applied] in respect of a person duly authorised under subsection (1) of that section.

#### Textual Amendments

- F119** S. 36(3)(c) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 2 para. 4**
- F120** Words in s. 36(3)(d) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 1 para. 6(a)**
- F121** Words in s. 36(5) inserted (23.2.2006) by [Joint Inspection of Children's Services and Inspection of Social Work Services \(Scotland\) Act 2006 \(asp 3\)](#), **ss. 8(1)(a)**, 10(2)
- F122** Words in s. 36(5) substituted (23.2.2006) by [Joint Inspection of Children's Services and Inspection of Social Work Services \(Scotland\) Act 2006 \(asp 3\)](#), **ss. 8(1)(b)**, 10(2)

#### Marginal Citations

- M21** 1978 c.29.  
**M22** 1968 c.49.

<sup>F123</sup>37 .....

#### Textual Amendments

- F123** S. 37 repealed (1.4.2002) by [2001 asp 8](#), s. 80(1), **Sch. 4**; [S.S.I. 2002/162](#), **art. 2(g)(i)** (subject to arts. 3-13)

### 38 Short-term refuges for children at risk of harm.

- (1) Where a child appears—



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- (a) to a local authority to be at risk of harm, they may at the child's request—
- (i) provide him with refuge in a residential establishment both controlled or managed by them and designated by them for the purposes of this paragraph; or
  - (ii) arrange for a person whose household is approved by virtue of section 5(3)(b) of the <sup>M23</sup>Social Work (Scotland) Act 1968 (provision for securing that persons are not placed in any household unless the household has prescribed approval) and is designated by them for the purposes of this paragraph, to provide him with refuge in that household,  
for a period which does not exceed the relevant period;
- (b) to a person who [<sup>F124</sup>provides a care home service (as defined by [<sup>F125</sup>paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8))], or to any person for the time being employed in the management of [<sup>F126</sup>the accommodation in question], to be at risk of harm, the person to whom the child so appears may at the child's request provide him with refuge, for a period which does not exceed the relevant period, in the [<sup>F127</sup>accommodation] but shall do so only if and to the extent that the local authority within whose area the [<sup>F127</sup>accommodation] is situated have given their approval to the use of the [<sup>F127</sup>accommodation] (or a part of the [<sup>F127</sup>accommodation]) for the purposes of this paragraph.
- (2) The Secretary of State may by regulations make provision as to—
- (a) designation, for the purposes of paragraph (a) of subsection (1) above, of establishments and households;
  - (b) application for, the giving of and the withdrawal of, approval under paragraph (b) of subsection (1) above;
  - (c) requirements (if any) which must be complied with while any such approval remains in force;
  - (d) the performance by a person mentioned in the said paragraph (b) of anything to be done by him under that paragraph;
  - (e) the performance by a local authority of their functions under this section; and
  - (f) the giving, to such persons or classes of person as may be specified in the regulations, of notice as to the whereabouts of a child provided with refuge under this section,
- and regulations made under this subsection may include such incidental and supplementary provisions as he thinks fit.
- (3) While a child is being provided with refuge under, and in accordance with regulations made under, this section, none of the enactments mentioned in subsection (4) below shall apply in relation to him unless the commencement of the period of refuge has followed within two days of the termination of a prior period of refuge so provided to him by any person.
- (4) The enactments are—
- (a) section 89 of this Act and, so far as it applies in relation to anything done in Scotland, [<sup>F128</sup>section 171 of the Children's Hearings (Scotland) Act 2011]; and
  - (b) section 32(3) of the <sup>M24</sup>Children and Young Persons Act 1969 (compelling, persuading, inciting or assisting any person to be absent from detention etc.), so far as it applies in relation to anything done in Scotland.

**Status:** Point in time view as at 29/09/2021.

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- (5) References in this section to the relevant period shall be construed as references either to a period which does not exceed seven days or, in such exceptional circumstances as the Secretary of State may prescribe, to a period which does not exceed fourteen days.
- (6) A child who is provided with refuge for a period by virtue of such arrangements as are mentioned in subsection (1)(a) above shall not be regarded as a foster child for the purposes of the <sup>M25</sup>Foster Children (Scotland) Act 1984 by reason only of such provision.

#### Textual Amendments

- F124** Words in s. 38(1)(b) substituted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 19(3)(a)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F125** Words in s. 38(1)(b) substituted (1.4.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211), art. 1, **sch. 1 para. 6(b)**
- F126** Words in s. 38(1)(b) substituted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 19(3)(b)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F127** Word in s. 38(1)(b) substituted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 19(3)(c)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F128** Words in s. 38(4) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(7)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

#### Modifications etc. (not altering text)

- C16** S. 38(5) explained (1.4.1997) by S.I. 1996/3259, **reg. 11**

#### Commencement Information

- I7** S. 38 wholly in force at 1.4.1997; s. 38 not in force at Royal Assent see s. 105(1); s. 38 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, **art. 3**)); s. 38 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, **art. 3(7)** (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, **arts. 2, 3**)

#### Marginal Citations

- M23** 1968 c.49.  
**M24** 1969 c.54.  
**M25** 1984 c.56.

## CHAPTER 2

### CHILDREN’S HEARINGS

#### *Constitution of children’s hearings*

#### **<sup>F129</sup>39 Formation of children’s panel and children’s hearings.**

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*Status: Point in time view as at 29/09/2021.*

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**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), [arts. 2, 3\(e\)\(ii\)](#))

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), [arts. 1\(2\), 4\(2\)](#)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), [arts. 1\(1\), 13-18, 25, 28-30](#) (with [art. 4\(2\)](#)); [S.S.I. 2013/195](#)

*Qualifications, employment and duties of reporters*

**F129 40 Qualification and employment of reporters.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), [arts. 2, 3\(e\)\(ii\)](#))

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), [arts. 1\(2\), 4\(2\)](#)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), [arts. 1\(1\), 13-18, 25, 28-30](#) (with [art. 4\(2\)](#)); [S.S.I. 2013/195](#)

*Safeguards for children*

**F129 41 Safeguarding child’s interests in proceedings.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10)

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(a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in S.S.I. 2013/150, arts. 13-18, 25, 28-30); S.S.I. 2013/195, arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

*Conduct of proceedings at and in connection with children’s hearing*

**<sup>F129</sup>42 Power of Secretary of State to make rules governing procedure at children’s hearing etc.**

.....

**Textual Amendments**

- F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in S.S.I. 2013/150, arts. 13-18, 25, 28-30); S.S.I. 2013/195, arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**<sup>F129</sup>43 Privacy of proceedings at and right to attend children’s hearing.**

.....

**Textual Amendments**

- F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in S.S.I. 2013/150, arts. 13-18, 25, 28-30); S.S.I. 2013/195, arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

*Status: Point in time view as at 29/09/2021.*

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**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), [13-18](#), 25, [28-30](#) (with art. 4(2)); S.S.I. 2013/195

#### **44 Prohibition of publication of proceedings at children’s hearing.**

- <sup>F130</sup><sup>F131</sup>(1) No person shall publish any matter in respect of proceedings before a sheriff on an application under section 76(1) of this Act which is intended to, or is likely to, identify—
- (a) the child concerned in, or any other child connected (in any way) with, the proceedings; or
  - (b) any address or school as being that of any such child.]
- (2) Any person who contravenes subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale in respect of each such contravention.
- (3) It shall be a defence in proceedings for an offence under this section for the accused to prove that he did not know, and had no reason to suspect, that the published matter was intended, or was likely, to identify the child or, as the case may be, the address or school.
- (4) In this section “to publish” includes, without prejudice to the generality of that expression,—
- (a) to publish matter in a programme service, as defined by section 201 of the <sup>M26</sup>Broadcasting Act 1990 (definition of programme service); and
  - (b) to cause matter to be published.
- (5) The requirements of subsection (1) above may, in the interests of justice, be dispensed with by—
- (a) the sheriff in any proceedings before him;
  - <sup>F132</sup><sup>F133</sup>(b) .....
  - <sup>F132</sup><sup>F133</sup>(c) .....
- to such extent as the sheriff <sup>F134</sup><sup>F135</sup>... considers appropriate.
- <sup>F136</sup><sup>F137</sup>(6) The requirements of subsection (1) do not apply in relation to the publication by or on behalf of a local authority or an adoption agency (within the meaning of the Adoption and Children (Scotland) Act 2007 (asp 4)) of information about a child for the purposes of making arrangements in relation to the child under this Act or that Act.]

#### **Textual Amendments**

- F130** S. 44(1) substituted (S.) (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), [sch. 5 para. 4\(4\)\(a\)](#); S.S.I. 2015/317, art. 2, sch. (with art. 3)
- F131** S. 44(1) substituted (E.W.N.I.) (30.9.2015) by [The Children and Young People \(Scotland\) Act 2014 \(Consequential and Saving Provisions\) Order 2015 \(S.I. 2015/907\)](#), arts. 1(3), [2\(2\)\(a\)](#) (with art. 4)
- F132** S. 44(5)(b)(c) omitted (E.W.N.I.) (30.9.2015) by virtue of [The Children and Young People \(Scotland\) Act 2014 \(Consequential and Saving Provisions\) Order 2015 \(S.I. 2015/907\)](#), arts. 1(3), [2\(2\)\(b\)\(i\)](#) (with art. 4)
- F133** S. 44(5)(b)(c) omitted (S.) (30.9.2015) by virtue of [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), [sch. 5 para. 4\(4\)\(b\)\(i\)](#); S.S.I. 2015/317, art. 2, sch. (with art. 3); S.S.I. 2015/317, art. 2, sch. (with art. 3)

*Status: Point in time view as at 29/09/2021.*

*Changes to legislation: Children (Scotland) Act 1995 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F134** Words in s. 44(5) omitted (S.) (30.9.2015) by virtue of [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), [sch. 5 para. 4\(4\)\(b\)\(ii\)](#); S.S.I. 2015/317, art. 2, sch. (with art. 3)
- F135** Words in s. 44(5) omitted (E.W.N.I.) (30.9.2015) by virtue of [The Children and Young People \(Scotland\) Act 2014 \(Consequential and Saving Provisions\) Order 2015 \(S.I. 2015/907\)](#), arts. 1(3), [2\(2\)\(b\)\(ii\)](#) (with art. 4)
- F136** S. 44(6) inserted (S.) (7.4.2008) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(1), 121(2), [Sch. 2 para. 9\(5\)](#); S.S.I. 2008/130, [art. 2](#), Sch.
- F137** S. 44(6) inserted (E.W.N.I.) (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), [Sch. 2 para. 3\(2\)](#)

#### Marginal Citations

**M26** 1990 c.42.

### <sup>F129</sup>45 Attendance of child and relevant person at children’s hearing.

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#### Textual Amendments

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

#### Modifications etc. (not altering text)

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), [4\(2\)](#)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), [13-18](#), 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

### <sup>F129</sup>46 Power to exclude relevant person from children’s hearing.

.....

#### Textual Amendments

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

#### Modifications etc. (not altering text)

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), [4\(2\)](#)

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**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**F129 47 Presumption and determination of age.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(2)**

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

*Transfer etc. of cases*

**F129 48 Transfer of case to another children’s hearing.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(2)**

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**C19** S. 48 excluded (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **2(3)** (with art. 4(2)); S.S.I. 2013/195

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**F138 49** .....

**Textual Amendments**

**F138** S. 49 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 16, 17)

**F129 50** **Treatment of child’s case on remission by court.**  
 .....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii))

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

*Appeals*

**F129 51** **Appeal against decision of children’s hearing or sheriff.**  
 .....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii))

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)



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### CHAPTER 3

#### PROTECTION AND SUPERVISION OF CHILDREN

##### *Children requiring compulsory measures of supervision*

#### **F129 52 Children requiring compulsory measures of supervision.**

.....

##### **Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

##### **Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), [13-18](#), 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

##### *Preliminary and investigatory measures*

#### **F129 53 Provision of information to the Principal Reporter.**

.....

##### **Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

##### **Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), [13-18](#), 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

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**F129 54 Reference to the Principal Reporter by court.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

**F129 55 Child assessment orders.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

**F129 56 Initial investigation by the Principal Reporter.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

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**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

*Measures for the emergency protection of children*

**F129** **57 Child protection orders.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**F129** **58 Directions in relation to contact and exercise of parental responsibilities and parental rights.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

*Status: Point in time view as at 29/09/2021.*

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**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**F129 59 Initial hearing of case of child subject to child protection order.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

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**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(2)**

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**F129 60 Duration, recall or variation of child protection order.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

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**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(2)**

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**F129 61 Emergency protection of children where child protection order not available.**

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*Status: Point in time view as at 29/09/2021.*

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**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), [arts. 2, 3\(e\)\(ii\)](#))

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), [arts. 1\(2\), 4\(2\)](#))

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), [arts. 1\(1\), 13-18, 25, 28-30](#) (with [art. 4\(2\)](#)); [S.S.I. 2013/195](#)

**F129 62 Regulations in respect of emergency child protection measures.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), [arts. 2, 3\(e\)\(ii\)](#))

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), [arts. 1\(2\), 4\(2\)](#))

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), [arts. 1\(1\), 13-18, 25, 28-30](#) (with [art. 4\(2\)](#)); [S.S.I. 2013/195](#)

*Children arrested by the police*

**F129 63 Review of case of child arrested by police.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), [arts. 2, 3\(e\)\(ii\)](#))

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*Changes to legislation: Children (Scotland) Act 1995 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

*Business meeting preparatory to children’s hearing*

<sup>F129</sup>**64 Business meeting preparatory to children’s hearing.**

.....

**Textual Amendments**

- F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

*Referral to, and disposal of case by, children’s hearing*

<sup>F129</sup>**65 Referral to, and proceedings at, children’s hearing.**

.....

**Textual Amendments**

- F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

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**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

<sup>F129</sup>**66 Warrant to keep child where children’s hearing unable to dispose of case.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(2)**

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

<sup>F129</sup>**67 Warrant for further detention of child.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(2)**

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

<sup>F129</sup>**68 Application to sheriff to establish grounds of referral.**

.....

Status: Point in time view as at 29/09/2021.

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**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), [arts. 2, 3\(e\)\(ii\)](#))

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), [arts. 1\(2\), 4\(2\)](#)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), [arts. 1\(1\), 13-18, 25, 28-30](#) (with [art. 4\(2\)](#)); [S.S.I. 2013/195](#)

**F129 F139 68A Restrictions on evidence in certain cases involving sexual abuse**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), [arts. 2, 3\(e\)\(ii\)](#))

**F139** Ss. 68A, 68B inserted (S.) (1.4.2005) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 23, 25](#); [S.S.I. 2005/168](#), [art. 2](#), [Sch.](#) (with [art. 4](#))

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), [arts. 1\(2\), 4\(2\)](#)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), [arts. 1\(1\), 13-18, 25, 28-30](#) (with [art. 4\(2\)](#)); [S.S.I. 2013/195](#)

**F129 68B Exceptions to restrictions under section 68A**

.....]

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), [s. 206\(2\)](#), [sch. 6](#) (with [s. 186](#)) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), [arts. 2, 3\(e\)\(ii\)](#))



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**F139** Ss. 68A, 68B inserted (S.) (1.4.2005) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 23, 25**; [S.S.I. 2005/168](#), **art. 2**, Sch. (with art. 4)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

**F129** **69 Continuation or disposal of referral by children’s hearing.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); [S.S.I. 2015/317](#), art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

**F129F140** **70 Disposal of referral by children’s hearing: supervision requirements, including residence in secure accommodation.**

.....

**Extent Information**

**E2** S. 70(4) extends to England, Wales and Scotland; s. 70 otherwise extends to Scotland only, see s. 105(1) and (8)

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); [S.S.I. 2015/317](#), art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**F140** S. 70(4) repealed (E.W.) (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **20** (with art. 4(1))

Status: Point in time view as at 29/09/2021.

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**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**F129 71 Duties of local authority with respect to supervision requirements.**

.....

**Textual Amendments**

- F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**F129 F141 71A Enforcement of local authorities' duties under section 71**

.....]

**Textual Amendments**

- F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)
- F141** S. 71A inserted (31.1.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [ss. 136\(3\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 4

**Modifications etc. (not altering text)**

- C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), 4(2)
- C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), 13-18, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

*Status: Point in time view as at 29/09/2021.*

*Changes to legislation: Children (Scotland) Act 1995 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F12972 Transfer of child subject to supervision requirement in case of necessity.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), [4\(2\)](#)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), [13-18](#), 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

**F12973 Duration and review of supervision requirement.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), [4\(2\)](#)

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), [13-18](#), 25, 28-30 (with art. 4(2)); [S.S.I. 2013/195](#)

**F129F14274 Further provision as respects children subject to supervision requirements.**

.....

**Textual Amendments**

**F129** Ss. 39-43, 45-74 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (as amended to exclude s. 44 from the range of repealed provisions (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), Sch. 5 para. 12(10) (a); S.S.I. 2015/317, art. 2, Sch.) (with savings and transitional provisions in [S.S.I. 2013/150](#), arts. 13-18, 25, 28-30); [S.S.I. 2013/195](#), arts. 2, 3(e)(ii)

*Status: Point in time view as at 29/09/2021.*

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**F142** S. 74 repealed (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 2 Pt. 2**

**Modifications etc. (not altering text)**

**C17** Ss. 39-74: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(2)**

**C18** Ss. 39-74: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **13-18**, 25, 28-30 (with art. 4(2)); S.S.I. 2013/195

**Commencement Information**

**I8** S. 74 wholly in force at 1.4.1997; s. 74 not in force at Royal Assent see s. 105(1); s. 74 in force for certain purposes at 12.12.1996 by [S.I. 1996/3201](#), **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by [S.I. 1997/744](#), **art. 3**)); s. 74 in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201](#), **art. 3(7)** (with arts. 4-6) (as amended (7.3.1997) by [S.I. 1997/744](#), **arts. 2, 3**)

**75 Powers of Secretary of State with respect to secure accommodation.**

(1) The Secretary of State may by regulations make provision with respect to the placing in secure accommodation of any child—

- <sup>F143</sup>(a) .....
- (b) who is not subject to a [<sup>F144</sup>compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance (all within the meaning of the Children's Hearings (Scotland) Act 2011)] but who is being looked after by a local authority in pursuance of such enactments as may be specified in the regulations.

(2) Regulations under subsection (1) above may—

- (a) specify the circumstances in which a child may be so placed under the regulations;
- (b) make provision to enable a child who has been so placed or any relevant person to require that the child’s case be brought before a children’s hearing within a shorter period than would apply under regulations made under subsection (3) below; and
- (c) specify different circumstances for different cases or classes of case.

[<sup>F145</sup>(2A) In subsection (2), “relevant person” has the meaning given by section 200 of the Children's Hearings (Scotland) Act 2011 and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act.]

(3) Subject to subsection (4) below and without prejudice to subsection (2)(b) above, the Secretary of State may prescribe—

- (a) the maximum period during which a child may be kept under this Act in secure accommodation without the authority of a children’s hearing or of the sheriff;
- (b) the period within which a children’s hearing shall be arranged to consider the case of a child placed in secure accommodation by virtue of regulations made under this section (and different periods may be so prescribed in respect of different cases or classes of case).

*Status: Point in time view as at 29/09/2021.*

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[<sup>F146</sup>(4) A child may not be kept in secure accommodation by virtue of regulations made under this section for a period exceeding 66 days from the day when the child was first taken to the secure accommodation.]

<sup>F147</sup>(5) . . . . .

(6) The Secretary of State may by regulations make provision for the procedures to be applied in placing children in secure accommodation; and without prejudice to the generality of this subsection, such regulations may—

- (a) specify the duties of the Principal Reporter in relation to the placing of children in secure accommodation;
- (b) make provision for the referral of cases to a children’s hearing for review; and
- (c) make provision for any person with parental responsibilities in relation to the child to be informed of the placing of the child in secure accommodation.

**Textual Amendments**

- F143** S. 75(1)(a) and word repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F144** Words in s. 75(1)(b) substituted (12.6.2013 for specified purposes, 24.6.2013 in so far as not already in force) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(8)(a)** (with s. 186); S.S.I. 2013/190, art. 2; S.S.I. 2013/195, arts. 2, 3
- F145** S. 75(2A) inserted (12.6.2013 for specified purposes, 24.6.2013 in so far as not already in force) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(8)(b)** (with s. 186); S.S.I. 2013/190, art. 2; S.S.I. 2013/195, arts. 2, 3
- F146** S. 75(4) substituted (12.6.2013 for specified purposes, 24.6.2013 in so far as not already in force) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(8)(c)** (with s. 186); S.S.I. 2013/190, art. 2; S.S.I. 2013/195, arts. 2, 3
- F147** S. 75(5) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3

**Commencement Information**

- I9** S. 75 wholly in force at 1.4.1997; s. 75 not in force at Royal Assent see s. 105(1); s. 75 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, **art. 3**)); s. 75 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, **art. 3(7)** (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, **arts. 2, 3**)

*[<sup>F148</sup>Parenting orders*

**Textual Amendments**

- F148** S. 75A and cross-heading inserted (4.4.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 116, 145(2)**; S.S.I. 2004/420, **art. 3, Sch. 5**

<sup>F149</sup>**75A Requirement on Principal Reporter to consider application for parenting order**  
 . . . . .]

Status: Point in time view as at 29/09/2021.

Changes to legislation: Children (Scotland) Act 1995 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**Textual Amendments**

**F149** Ss. 75A, 75B repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 6 (with s. 186); S.S.I. 2013/195, arts. 2, 3

*<sup>F150</sup> Failure to provide education for excluded pupils*

**Textual Amendments**

**F150** S. 75B and cross-heading inserted (31.1.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 137(3), 145(2); S.S.I. 2004/420, art. 3, Sch. 4

**<sup>F149</sup>75B Failure to provide education for excluded pupils: reference to Scottish Ministers**

.....]

**Textual Amendments**

**F149** Ss. 75A, 75B repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 6 (with s. 186); S.S.I. 2013/195, arts. 2, 3

*Exclusion orders*

**76 Exclusion orders.**

- (1) Subject to subsections (3) to (9) below, where on the application of a local authority the sheriff is satisfied, in relation to a child, that the conditions mentioned in subsection (2) below are met, he may grant an order under this section (to be known as “an exclusion order”) excluding from the child’s family home any person named in the order (in this Part of this Act referred to as the “named person”).
- (2) The conditions are—
  - (a) that the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably apprehended conduct, of the named person;
  - (b) that the making of an exclusion order against the named person—
    - (i) is necessary for the protection of the child, irrespective of whether the child is for the time being residing in the family home; and
    - (ii) would better safeguard the child’s welfare than the removal of the child from the family home; and
  - (c) that, if an order is made, there will be a person specified in the application who is capable of taking responsibility for the provision of appropriate care for the child and any other member of the family who requires such care and who is, or will be, residing in the family home (in this section, sections 77 to 79 and section 91(3)(f) of this Act referred to as an “appropriate person”).
- (3) No application under subsection (1) above for an exclusion order shall be finally determined under this section unless—

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- (a) the named person has been afforded an opportunity of being heard by, or represented before, the sheriff; and
  - (b) the sheriff has considered any views expressed by any person on whom notice of the application has been served in accordance with rules making such provision as is mentioned in section 91(3)(d) of this Act.
- (4) Where, on an application under subsection (1) above, the sheriff—
- (a) is satisfied as mentioned in that subsection; but
  - (b) the conditions mentioned in paragraphs (a) and (b) of subsection (3) above for the final determination of the application are not fulfilled,
- he may grant an interim order, which shall have effect as an exclusion order pending a hearing by the sheriff under subsection (5) below held within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act.
- (5) The sheriff shall conduct a hearing under this subsection within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act, and, if satisfied at that hearing as mentioned in subsection (1) above, he may, before finally determining the application, confirm or vary the interim order, or any term or condition on which it was granted, or may recall such order.
- (6) Where the conditions mentioned in paragraphs (a) and (b) of subsection (3) above have been fulfilled, the sheriff may, at any point prior to the final determination of the application, grant an interim order.
- (7) An order under subsection (5) or (6) above shall have effect as an exclusion order pending the final determination of the application.
- (8) Where—
- (a) an application is made under subsection (1) above; and
  - (b) the sheriff considers that the conditions for making a child protection order under <sup>F151</sup>Part 5 of the Children’s Hearings (Scotland) Act 2011] are satisfied,
- he may make <sup>F152</sup>a child protection order] as if the application had been duly made by the local authority under that <sup>F153</sup>Part] rather than under this section.
- (9) The sheriff shall not make an exclusion order if it appears to him that to do so would be unjustifiable or unreasonable, having regard to—
- (a) all the circumstances of the case, including without prejudice to the generality of this subsection the matters specified in subsection (10) below; and
  - (b) any requirement such as is specified in subsection (11) below and the likely consequences in the light of that requirement of the exclusion of the named person from the family home.
- (10) The matters referred to in subsection (9)(a) above are—
- (a) the conduct of the members of the child’s family (whether in relation to each other or otherwise);
  - (b) the respective needs and financial resources of the members of that family;
  - (c) the extent (if any) to which—
    - (i) the family home; and
    - (ii) any relevant item in that home,
 is used in connection with a trade, business or profession by any member of the family.

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- (11) The requirement referred to in subsection (9)(b) above is a requirement that the named person (whether alone or with any other person) must reside in the family home, where that home—
- [<sup>F154</sup>(a) is on or comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or in a lease constituting a short limited duration tenancy [<sup>F155</sup>, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] (within the meaning of that Act); or]
  - (b) is let, or is a home in respect of which possession is given, to the named person (whether alone or with any other person) by an employer as an incident of employment.
- (12) In this Part of this Act—
- “caravan” has the meaning given to it by section 29(1) of the <sup>M27</sup>Caravan Sites and Control of Development Act 1960;
  - “exclusion order”, includes an interim order granted under subsection (4) above and such an order confirmed or varied under subsection (5) above and an interim order granted under subsection (6) above; except that in subsection (3) above and in section 79 of this Act, it does not include an interim order granted under subsection (4) above;
  - “family” has the meaning given in section 93(1) of this Act;
  - “family home” means any house, caravan, houseboat or other structure which is used as a family residence and in which the child ordinarily resides with any person described in subsection (13) below and the expression includes any garden or other ground or building attached to and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure.
- (13) The description of person referred to in the definition of “family home” in subsection (12) above, is a person who has parental responsibilities in relation to the child, or who ordinarily (and other than by reason only of his employment) has charge of, or control over him.

#### Textual Amendments

- F151** Words in s. 76(8)(b) substituted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 2\(9\)\(a\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F152** Words in s. 76(8) substituted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 2\(9\)\(b\)\(i\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F153** Word in s. 76(8) inserted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 2\(9\)\(b\)\(ii\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F154** S. 76(11)(a) substituted (27.11.2003) by [The Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), arts. 1, 2, [Sch. para. 12](#)
- F155** Words in s. 76(11)(a) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 5\(2\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 10)

#### Marginal Citations

- M27** 1960 c.62.



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## **77 Effect of, and orders etc. ancillary to, exclusion order.**

- (1) An exclusion order shall, in respect of the home to which it relates, have the effect of suspending the named person’s rights of occupancy (if any) and shall prevent him from entering the home, except with the express permission of the local authority which applied for the order.
- (2) The sheriff, on the application of the local authority, may, if and in so far as he thinks fit, when making an exclusion order do any of the things mentioned in subsection (3) below.
- (3) The things referred to in subsection (2) above are—
  - (a) grant a warrant for the summary ejection of the named person from the home;
  - (b) grant an interdict prohibiting the named person from entering the home without the express permission of the local authority;
  - (c) grant an interdict prohibiting the removal by the named person of any relevant item specified in the interdict from the home, except either—
    - (i) with the written consent of the local authority, or of an appropriate person; or
    - (ii) by virtue of a subsequent order of the sheriff;
  - (d) grant an interdict prohibiting the named person from entering or remaining in a specified area in the vicinity of the home;
  - (e) grant an interdict prohibiting the taking by the named person of any step of a kind specified in the interdict in relation to the child;
  - (f) make an order regulating the contact between the child and the named person, and the sheriff may make any other order which he considers is necessary for the proper enforcement of a remedy granted by virtue of paragraph (a), (b) or (c) of this subsection.
- (4) No warrant, interdict or order (except an interdict granted by virtue of paragraph (b) of subsection (3) above) shall be granted or made under subsection (2) above if the named person satisfies the sheriff that it is unnecessary to do so.
- (5) Where the sheriff grants a warrant of summary ejection under subsection (2) above in the absence of the named person, he may give directions as to the preservation of any of that person’s goods and effects which remain in the family home.
- (6) The sheriff may make an order of the kind specified in subsection (3)(f) above irrespective of whether there has been an application for such an order.
- (7) On the application of either the named person or the local authority, the sheriff may make the exclusion order, or any remedy granted under subsection (2) above, subject to such terms and conditions as he considers appropriate.
- (8) In this Part of this Act references to a “relevant item” are references to any item within the home which both—
  - (a) is owned or hired by any member of the family concerned or an appropriate person or is being acquired by any such member or person under a hire purchase agreement or conditional sale agreement; and
  - (b) is reasonably necessary to enable the home to be used as a family residence, but does not include any such vehicle, caravan or houseboat or such other structure so used as is mentioned in the definition of “family home” in section 76(12) of this Act.

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## 78 Powers of arrest etc. in relation to exclusion order.

- (1) The sheriff may, whether or not on an application such as is mentioned in subsection (2) below, attach a power of arrest to any interdict granted under section 77(2) of this Act by virtue of subsection (3) of that section.
- (2) A local authority may at any time while an exclusion order has effect apply for such attachment of a power of arrest as is mentioned in subsection (1) above.
- (3) A power of arrest attached to an interdict by virtue of subsection (1) above shall not have effect until such interdict, together with the attached power of arrest, is served on the named person.
- (4) If, by virtue of subsection (1) above, a power of arrest is attached to an interdict, the local authority shall, as soon as possible after the interdict, together with the attached power of arrest, is served on the named person, ensure that there is delivered [<sup>F156</sup>to the chief constable of the Police Service of Scotland] —
  - <sup>F157</sup>(a) .....
  - <sup>F157</sup>(b) .....

a copy of the application for the interdict and of the interlocutor granting the interdict together with a certificate of service of the interdict and, where the application to attach the power of arrest was made after the interdict was granted, a copy of that application and of the interlocutor above granting it and a certificate of service of the interdict together with the attached power of arrest.
- (5) Where any interdict to which a power of arrest is attached by virtue of subsection (1) above is varied or recalled, the person who applied for the variation or recall shall ensure that there is delivered to [<sup>F158</sup>the chief constable of the Police Service of Scotland] a copy of the application for such variation or recall and of the interlocutor granting the variation or recall.
- (6) A constable may arrest without warrant the named person if he has reasonable cause for suspecting that person to be in breach of an interdict to which a power of arrest has been attached by virtue of subsection (1) above.
- (7) Where a person has been arrested under subsection (6) above, the constable in charge of a police station may—
  - (a) if satisfied there is no likelihood of that person further breaching the interdict to which the power of arrest was attached under subsection (1) above, liberate him unconditionally; or
  - (b) refuse to liberate that person.
- (8) Such a refusal to liberate an arrested person as is mentioned in subsection (7)(b) above, and the detention of that person until his appearance in court by virtue of either subsection (11) below, or any provision of the [<sup>F159</sup>Criminal Procedure (Scotland) Act 1995], shall not subject that constable to any claim whatsoever.
- (9) Where a person has been liberated under subsection (7)(a) above, the facts and circumstances which gave rise to the arrest shall be reported to the procurator fiscal forthwith.
- (10) Subsections (11) to (13) below apply only where—
  - (a) the arrested person has not been released under subsection (7)(a) above; <sup>F160</sup> ...
  - <sup>F160</sup>(b) .....

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- (11) A person arrested under subsection (6) above shall wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which he was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under [F161 section 8 of the said Act of 1995], on which the sheriff is not sitting for the disposal of criminal business.

F162(12) .....

[F163(12A) Subsection (13) applies where—

- (a) a person is brought before the sheriff under subsection (11) above; and
- (b) the procurator fiscal has decided that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.]

(13) Where [F164 this subsection applies] —

- (a) the procurator fiscal shall present to the court a petition containing—
  - (i) a statement of the particulars of the person arrested under subsection (6) above;
  - (ii) a statement of the facts and circumstances which gave rise to that arrest; and
  - (iii) a request that the person be detained for a further period not exceeding two days;
- (b) the sheriff, if it appears to him that—
  - (i) the statement referred to in paragraph (a)(ii) above discloses *aprima facie* breach of interdict by the arrested person;
  - (ii) proceedings for breach of interdict will be taken; and
  - (iii) there is a substantial risk of violence by the arrested person against any member of the family, or an appropriate person, resident in the family home,
 may order the arrested person to be detained for a period not exceeding two days; and
- (c) the sheriff shall, in any case in which paragraph (b) above does not apply, order the release of the arrested person from custody (unless that person is in custody in respect of some other matter);

and in computing the period of two days referred to in paragraphs (a) and (b) above, no account shall be taken of a Saturday, a Sunday or any holiday in the court in which proceedings for breach of interdict will require to be raised.

[F165(13A) Subsection (14) applies where—

- (a) a person has been liberated under subsection (7)(a) above; or
- (b) the following conditions are met—
  - (i) a person is to be brought before the sheriff under subsection (11) above; and
  - (ii) the procurator fiscal has decided that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.]

(14) [F166 Where this subsection applies], the procurator fiscal shall at the earliest opportunity, and, [F167 where the conditions in subsection (13A)(b) above are met, before the] person is brought before the sheriff, take all reasonable steps to intimate to—

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- (i) the local authority which made the application for the interdict;
  - (ii) an appropriate person who will reside in, or who remains in residence in, the family home mentioned in the order; and
  - (iii) any solicitor who acted for the appropriate person when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that person,
- that he has decided that no criminal proceedings should be taken in respect of the facts and circumstances which gave rise to the arrest of the named person.

#### Textual Amendments

- F156** Words in s. 78(4) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 11\(2\)\(a\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F157** S. 78(4)(a)(b) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 11\(2\)\(a\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F158** Words in s. 78(5) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 11\(2\)\(b\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F159** Words in s. 78(8) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), [Sch. 4 para. 97\(7\)\(a\)](#)
- F160** S. 78(10)(b) and word omitted (25.1.2018) by virtue of [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 2\(a\)](#)
- F161** Words in s. 78(11) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), [Sch. 4 para. 97\(7\)\(b\)](#)
- F162** S. 78(12) repealed (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 2\(b\)](#)
- F163** S. 78(12A) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 2\(c\)](#)
- F164** Words in s. 78(13) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 2\(d\)](#)
- F165** S. 78(13A) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 2\(e\)](#)
- F166** Words in s. 78(14) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 2\(f\)\(i\)](#)
- F167** Words in s. 78(14) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 2\(f\)\(ii\)](#)

#### 79 Duration, variation and recall of exclusion order.

- (1) Subject to subsection (2) below, an exclusion order shall cease to have effect on a date six months after being made.
- (2) An exclusion order shall cease to have effect on a date prior to the date mentioned in subsection (1) above where—
  - (a) the order contains a direction by the sheriff that it shall cease to have effect on that prior date;
  - (b) the sheriff, on an application under subsection (3) below, recalls the order before the date so mentioned; or

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- (c) any permission given by a third party to the spouse or partner of the named person, or to an appropriate person, to occupy the home to which the order relates is withdrawn.
- (3) The sheriff may, on the application of the local authority, the named person, an appropriate person or the spouse or partner of the named person, if that spouse or partner is not excluded from the family home and is not an appropriate person, vary or recall an exclusion order and any warrant, interdict, order or direction granted or made under section 77 of this Act.
- (4) For the purposes of this section, partners are persons who live together in a family home as if they were husband and wife.

**80 Exclusion orders: supplementary provisions.**

- (1) The Secretary of State may make regulations with respect to the powers, duties and functions of local authorities in relation to exclusion orders.
- (2) An application for an exclusion order, or under section 79(3) of this Act for the variation or recall of such an order or of any thing done under section 77(2) of this Act, shall be made to the sheriff for the sheriffdom within which the family home is situated.

*Offences in connection with orders etc. for protection of children*

**<sup>F168</sup>81 Offences in connection with orders etc. for protection of children.**

.....

**Textual Amendments**

**F168** Ss. 81-85 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186) (with savings and transitional provisions in [S.S.I. 2013/150](#), art. 19); [S.S.I. 2013/195](#), arts. 2, 3

**Modifications etc. (not altering text)**

**C20** Ss. 81-85: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), [19](#) (with art. 4(2)); [S.S.I. 2013/195](#)

**C21** Ss. 81-85: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), [4\(3\)-\(5\)](#)

*Fugitive children and harbouring*

**<sup>F168F169</sup>82 Recovery of certain fugitive children.**

.....

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### Textual Amendments

- F168** Ss. 81-85 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (with savings and transitional provisions in S.S.I. 2013/150, art. 19); S.S.I. 2013/195, arts. 2, 3
- F169** S. 82 repealed (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 2 Pt. 2**

### Modifications etc. (not altering text)

- C20** Ss. 81-85: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **19** (with art. 4(2)); S.S.I. 2013/195
- C21** Ss. 81-85: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(3)-(5)**

## <sup>F168F170</sup> **83 Harbours.**

.....

### Textual Amendments

- F168** Ss. 81-85 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (with savings and transitional provisions in S.S.I. 2013/150, art. 19); S.S.I. 2013/195, arts. 2, 3
- F170** S. 83 repealed (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 2 Pt. 2**

### Modifications etc. (not altering text)

- C20** Ss. 81-85: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **19** (with art. 4(2)); S.S.I. 2013/195
- C21** Ss. 81-85: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(3)-(5)**

*Implementation of authorisations etc.*

## <sup>F168</sup> **84 Implementation of authorisations etc.**

.....

### Textual Amendments

- F168** Ss. 81-85 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (with savings and transitional provisions in S.S.I. 2013/150, art. 19); S.S.I. 2013/195, arts. 2, 3

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**Modifications etc. (not altering text)**

**C20** Ss. 81-85: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **19** (with art. 4(2)); S.S.I. 2013/195

**C21** Ss. 81-85: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(3)-(5)**

*New evidence: review of establishment of grounds of referral*

**F168 85 Application for review of establishment of grounds of referral.**

.....

**Textual Amendments**

**F168** Ss. 81-85 repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186) (with savings and transitional provisions in S.S.I. 2013/150, art. 19); S.S.I. 2013/195, arts. 2, 3

**Modifications etc. (not altering text)**

**C20** Ss. 81-85: savings for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children s Hearings \(Scotland\) Act 2011 \(Transitional, Savings and Supplementary Provisions\) Order 2013 \(S.S.I. 2013/150\)](#), arts. 1(1), **19** (with art. 4(2)); S.S.I. 2013/195

**C21** Ss. 81-85: saving for effects of 2011 asp 1, sch. 6 (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(3)-(5)**

**CHAPTER 4**

**PARENTAL RESPONSIBILITIES ORDERS, ETC.**

**Modifications etc. (not altering text)**

**C22** [Pt. II Ch. 4](#) modified (1.4.1997) by [S.I. 1996/3255, reg. 7\(1\)](#)

*Parental responsibilities orders*

**86 Parental responsibilities order: general.**

**F171** .....

**Textual Amendments**

**F171** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

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[<sup>F172</sup> **86A**.....]

<sup>F173</sup> .....

**Textual Amendments**  
**F172** S. 86A added (1.3.2005 with application in accordance with reg. 7 of the amending S.S.I.) by [The European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), **reg. 5(3)** (with reg. 6)  
**F173** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

**87 Further provision as respects parental responsibilities orders.**

<sup>F174</sup> .....

**Textual Amendments**  
**F174** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

**88 Parental contact.**

<sup>F175</sup> .....

**Textual Amendments**  
**F175** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

**89 Offences in relation to parental responsibilities orders.**

<sup>F176</sup> .....

**Textual Amendments**  
**F176** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

*Miscellaneous*

<sup>F177</sup> **90 Consent of child to certain procedures.**

.....



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**Textual Amendments**

**F177** S. 90 repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3

**91 Procedural rules in relation to certain applications etc.**

- (1) All proceedings to which this section applies are civil proceedings for the purposes of section 32 of the <sup>M28</sup>Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate civil procedure in the sheriff court).
- (2) Any reference in this Part of this Act to regulation or prescription by rules in relation to any proceedings to which this section applies shall be construed, unless the context otherwise requires, as a reference to regulation or prescription by rules made under the said section 32.
- (3) Without prejudice to the generality of the said section 32, rules may make provision as to—
  - <sup>F178</sup>(a) .....
  - <sup>F178</sup>(b) .....
  - <sup>F178</sup>(c) .....
  - (d) the persons to whom notice of an application for an exclusion order or, under section 79(3) of this Act, for the recall or variation of such an order or of anything done under section 77(2) of this Act shall be given;
  - (e) the period within which a hearing shall be held under subsection (5) of section 76 of this Act after the granting of an order under subsection (4) of that section;
  - (f) the service of any exclusion order on the named person and the appropriate person within such period as may be specified in the rules.
- (4) In relation to any proceedings to which this section applies, rules may permit a party to such proceedings, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.
- (5) This section applies to any application made to the sheriff, and any other proceeding before the sheriff (whether on appeal or otherwise), under any provision of this Part of this Act.

**Textual Amendments**

**F178** S. 91(3)(a)-(c) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3

**Marginal Citations**

**M28** 1971 c.58.

<sup>F179</sup>**92 Legal aid in respect of certain proceedings.**

.....

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### Textual Amendments

**F179** S. 92 repealed (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 6](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3

## *Interpretation of Part II*

### 93 Interpretation of Part II.

(1) In this Part of this Act, unless the context otherwise requires,—

“accommodation” shall be construed in accordance with section 25(8) of this Act;

F180F181  
 ...  
 F180F181  
 ...  
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 ...

“children’s hearing” shall be construed in accordance with <sup>F182</sup>[<sup>F183</sup>section 5 of the Children’s Hearings (Scotland) Act 2011];

F180F181  
 ...

“constable” means a constable of [<sup>F184</sup>the Police Service of Scotland];

“contact order” has the meaning given by section 11(2)(d) of this Act;

“disabled” has the meaning given by section 23(2) of this Act;

F180F181  
 ...

“exclusion order” has the meaning given by section 76(12) of this Act;

“family”, in relation to a child, includes—

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child has been living;

“local authority” means a council constituted under section 2 of the <sup>M29</sup>Local Government etc. (Scotland) Act 1994;

F180F181  
 ...

“parental responsibilities” has the meaning given by section 1(3) of this Act;

F185  
 ...

“parental rights” has the meaning given by section 2(4) of this Act;

F180F181  
 ...

F180F181  
 ...

F180F181  
 ...

“residence order” has the meaning given by section 11(2)(c) of this Act;

“residential establishment”—

- (a) in relation to a place in Scotland, means an establishment (whether managed by a local authority, by a voluntary organisation or by any other person) which provides residential accommodation for children for the purposes of this Act or the <sup>M30</sup>Social Work (Scotland) Act 1968; [<sup>F186</sup>or the Children’s Hearings (Scotland) Act 2011];
- (b) in relation to a place in England and Wales, means a community home, voluntary home or [<sup>F187</sup>private] children’s home (within the meaning of the Children Act 1989); and

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- (c) in relation to a place in Northern Ireland, means
  - (i) <sup>F188</sup>a private children’s home within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),
  - (ii) an authority home provided under Part VII of that Order, or
  - (iii) a voluntary home provided under Part VIII of that Order.]

“school age” shall be construed in accordance with section 31 of the <sup>M31</sup>Education (Scotland) Act 1980;

“secure accommodation” means accommodation provided <sup>F189</sup>for the purpose of restricting the liberty of children which—

- (a) in Scotland, is provided in a residential establishment approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010 (asp 8),
- (b) in England, is provided in a children’s home (within the meaning of the Care Standards Act 2000 (c.14) (“the 2000 Act”)) in respect of which a person is registered under Part 2 of that Act, except that before the coming into force of section 107(2) of the Health and Social Care (Community Health Standards) Act 2003 (c.43), “secure accommodation” means accommodation in relation to England which—
  - (i) is provided in a children’s home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act, and
  - (ii) is approved by the Secretary of State for the purpose of restricting the liberty of children,
- (c) in Wales, is provided in a children’s home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act.]

<sup>F181</sup> ...

“voluntary organisation” means a body (other than a public or local authority) whose activities are not carried on for profit; and

<sup>F181</sup> ...

(2) For the purposes of—

- (a) Chapter 1 and this Chapter (except this section) of this Part <sup>F190</sup>[<sup>F191</sup>and section 44], “child” means a person under the age of eighteen years; and
- (b) <sup>F192</sup>[<sup>F193</sup>Chapter 2 (except section 44) and Chapter] 3 <sup>F194</sup>... of this Part—
  - <sup>F195</sup>“child” means—
    - (i) a child who has not attained the age of sixteen years;
    - (ii) a child over the age of sixteen years who has not attained the age of eighteen years and in respect of whom a supervision requirement is in force; or
    - (iii) a child whose case has been referred to a children’s hearing by virtue of section 33 of this Act;

and for the purposes of the application of those Chapters to a person who has failed to attend school regularly without reasonable excuse includes a person who is over sixteen years of age but is not over school age; and]

<sup>F195</sup>“child” means—

- (i) in relation to section 75, a person under the age of 18 years,
- (ii) in relation to any other section, a person under the age of 16 years;]

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F196F197  
...

- (3) Where, in the course of any proceedings under Chapter 2 or 3 of this Part, a child ceases to be a child within the meaning of subsection (2) above the provisions of those Chapters of this Part and of any statutory instrument made under those provisions, shall continue to apply to him as if he had not so ceased to be a child.
- (4) Any reference in this Part of this Act to a child—
- (a) being “in need”, is to his being in need of care and attention because—
    - (i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;
    - (ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;
    - (iii) he is disabled; or
    - (iv) he is affected adversely by the disability of any other person in his family;
  - (b) who is “looked after” by a local authority, shall be construed in accordance with section 17(6) of this Act.
- (5) Any reference to any proceedings under this Part of this Act, whether on an application or on appeal, being heard by the sheriff, shall be construed as a reference to such proceedings being heard by the sheriff in chambers.

#### Textual Amendments

- F180** Words in s. 93(1) repealed (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 2 Pt. 2**
- F181** Words in s. 93(1) repealed (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F182** Words in s. 93(1) substituted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 2 Pt. 1**
- F183** Words in s. 93(1) substituted (24.6.2013 for specified purposes) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 5 para. 2(10)** (with s. 186); S.S.I. 2013/195, arts. 2, 3(d)
- F184** Words in s. 93(1) substituted (S.) (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 11(3)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F185** S. 93(1): definition of “parental responsibility order” repealed (S.) (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F186** Words in s. 93(1) inserted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 1 para. 5**
- F187** Word in the definition of “residential establishment” in s. 93 substituted (1.4.2002 for E. and otherwise prosp.) by [2000 c. 14](#), ss. 116, 122, **Sch. 4 para. 23(a)**; S.I. 2001/4150, **art. 3(3)(a)** (subject to transitional provisions in art. 4)
- F188** Words in s. 93(1) substituted (S.) (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. 9(4)(a)**
- F189** Words in s. 93(1) 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. 9(4)(b)**

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- F190** Words in s. 93(2)(a) inserted (E.W.N.I.) (30.9.2015) by [The Children and Young People \(Scotland\) Act 2014 \(Consequential and Saving Provisions\) Order 2015 \(S.I. 2015/907\)](#), arts. 1(3), **2(3)(a)** (with art. 4)
- F191** Words in s. 93(2)(a) inserted (S.) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. **52(b)(i)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F192** Words in s. 93(2)(b) substituted (E.W.N.I.) (30.9.2015) by [The Children and Young People \(Scotland\) Act 2014 \(Consequential and Saving Provisions\) Order 2015 \(S.I. 2015/907\)](#), arts. 1(3), **2(3)(b)** (with art. 4)
- F193** Words in s. 93(2)(b) substituted (S.) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. **52(b)(ii)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F194** Words in s. 93(2)(b) repealed (S.) (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. 2**
- F195** Words in s. 93(2)(b) substituted (S.) (24.6.2013) by [Children's Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 5 para. 2(11)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F196** Words in s. 93(2)(b) repealed (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 2 Pt. 2**
- F197** Words in s. 93(2)(b) repealed (S.) (24.6.2013) by [Children's Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3

**Modifications etc. (not altering text)**

- C23** S. 93(1): saving for effect of 2011 asp 1, sch. 6 (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), arts. 1(2), **4(6)**

**Marginal Citations**

- M29** 1994 c.39.  
**M30** 1968 c.49.  
**M31** 1980 c.44.

**PART III**

ADOPTION

**94 Approval of adoption society for specific services.**

**F198** .....

**Textual Amendments**

- F198** Ss. 94-98 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

**95 Welfare of child paramount consideration.**

**F199** .....

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**Textual Amendments**

**F199** Ss. 94-98 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), [Sch. 3](#); S.S.I. 2009/267, arts. 1(2), [2](#) (with arts. 3-21)

**96 Duty of adoption agency to consider alternatives to adoption.**

**F200** .....

**Textual Amendments**

**F200** Ss. 94-98 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), [Sch. 3](#); S.S.I. 2009/267, arts. 1(2), [2](#) (with arts. 3-21)

**97 Adoption by person married to natural parent.**

**F201** .....

**Textual Amendments**

**F201** Ss. 94-98 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), [Sch. 3](#); S.S.I. 2009/267, arts. 1(2), [2](#) (with arts. 3-21)

**98 Further amendments of the 1978 Act; and interpretation of Part III.**

**F202** .....

**Textual Amendments**

**F202** Ss. 94-98 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), [Sch. 3](#); S.S.I. 2009/267, arts. 1(2), [2](#) (with arts. 3-21)

**PART IV**

GENERAL AND SUPPLEMENTAL

**99 Registration of births by persons who are themselves children.**

- (1) In paragraph (a) of section 14(1) of the <sup>M32</sup>Registration of Births, Deaths and Marriages (Scotland) Act 1965 (duty of father and mother to give information of particulars of birth), for the words “father or mother of the child” substitute “child’s father or mother (whether or not they have attained the age of sixteen years)”.
- (2) Where, at any time after the coming into force of the <sup>M33</sup>Age of Legal Capacity (Scotland) Act 1991 but before the coming into force of subsection (1) above, a person mentioned in the said paragraph (a) who had not at that time attained the age of sixteen years purported to fulfill the duty mentioned in the said section 14(1), he shall be presumed to have had legal capacity to fulfill that duty.

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(3) In section 18 of the said Act of 1965 (registration of birth of child born out of wedlock), after subsection (2) add—

“(3) A person under the age of sixteen years has legal capacity—

- (a) to make a request, declaration or statutory declaration under subsection (1) or (2)(b) above if, in the opinion of the registrar; or
- (b) to make an application under subsection (2)(c) above if, in the opinion of the sheriff,

that person understands the nature of the request or, as the case may be, of the declaration, statutory declaration or application; and without prejudice to the generality of this subsection a person twelve years of age or more shall be presumed to be of sufficient age and maturity to have such understanding.”.

(4) Where, at any time after the coming into force of the <sup>M34</sup>Age of Legal Capacity (Scotland) Act 1991 but before the coming into force of subsection (3) above, a person who had not at that time attained the age of sixteen years made a request, declaration, statutory declaration or application mentioned in subsection (1) or (2) of the said section 18 in relation to a child in respect of whose birth an entry was consequently made under the said subsection (1) in a register of births, or as the case may be under the said subsection (2) in the Register of Corrections etc., the person shall be presumed to have had legal capacity to make the request, declaration, statutory declaration, or application in question.

#### Marginal Citations

M32 1965 c.49.

M33 1991 c.50.

M34 1991 c.50.

## 100 Inquiries into matters affecting children.

After section 6A of the <sup>M35</sup>Social Work (Scotland) Act 1968 there shall be inserted—

### “6B Local authority inquiries into matters affecting children.

- (1) Without prejudice to section 6A(1) of this Act, a local authority may cause an inquiry to be held into their functions under this Act, or any of the enactments mentioned in section 5(1B) of this Act, in so far as those functions relate to children.
- (2) The local authority may, before an inquiry under this section is commenced, direct that it be held in private; but where no such direction is given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (3) Subsections (2) to (6) of section 210 of the <sup>M36</sup>Local Government (Scotland) Act 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section, so however that, for the purposes of the application, any reference in those subsections to a Minister shall be construed as a reference to the local authority and any reference to an officer of his Department as a reference to an officer of that authority.

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- (4) The expenses incurred by a local authority in relation to an inquiry under this section (including such reasonable sum as the authority may determine for the services of any of their officers engaged in the inquiry) shall, unless the authority are of the opinion that those expenses should be defrayed in whole or in part by them, be paid by such party to the inquiry as they may direct; and the authority may certify the amount of the expenses so incurred.
- (5) Any sum certified under subsection (4) above and to be defrayed in accordance with a direction under that subsection shall be a debt due by the party directed and shall be recoverable accordingly.
- (6) The local authority may make an award as to the expenses of the parties at the inquiry and as to the parties by whom such expenses shall be paid.”.

#### Marginal Citations

**M35** 1968 c.49.

**M36** 1973 c.45.

### 101 Panel for curators *ad litem*, reporting officers and safeguarders.

- [<sup>F203</sup>(1) The Scottish Ministers may by regulations make provision for the establishment of one or more of each of the following—
- (a) a panel of persons from which curators *ad litem* may be appointed [<sup>F204</sup>by virtue of section 108 of the Adoption and Children (Scotland) Act 2007 (asp 4)]<sup>F205</sup> ...;
  - (b) a panel of persons from which reporting officers may be appointed under either of those sections; <sup>F206</sup> ...
  - <sup>F206</sup>(c) .....
- (2) Regulations under subsection (1) above may provide, without prejudice to generality of that subsection—
- (a) for the appointment, qualifications and training of persons who may be appointed to [<sup>F207</sup>those panels]; and
  - (b) for the management and organisation of persons available for appointment from [<sup>F207</sup>those panels].
- [<sup>F208</sup>(3) Regulations under subsection (1) above may provide—
- (a) for the defrayment by local authorities of expenses incurred by members of any panel established by virtue of that subsection; and
  - (b) for the payment by local authorities of fees and allowances for such members.
- <sup>F209</sup>(4) .....

#### Textual Amendments

**F203** S. 101(1) substituted (19.7.2001) by 2001 asp 8, ss. 75(a), 81(2)

**F204** Words in s. 101(1)(a) substituted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(1), 121(2), Sch. 2 para. 9(9); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)

**F205** Words in s. 101(1)(a) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 6 (with s. 186); S.S.I. 2013/195, arts. 2, 3



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- F206** S. 101(1)(c) and word repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F207** Words in s. 101(2)(a)(b) substituted (19.7.2001) by virtue of 2001 asp 8, **ss. 75(b)**, 81(2)
- F208** S. 101: subsections (3) and (4) substituted for subsection (3) (19.7.2001) by 2001 asp 8, **ss. 75(c)**, 81(2)
- F209** S. 101(4) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3

#### Commencement Information

- I10** S. 101 wholly in force at 22.1.2002; s. 101 not in force at Royal Assent see s. 105(1); s. 101 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, **art. 3**)); s. 101 wholly in force at 22.1.2002 by S.S.I. 2001/475, **art. 2**

### 102 Removal of duty to report on operation of Children Act 1975.

Section 105 of the <sup>M37</sup>Children Act 1975 (which among other things provides that every five years there shall be laid before Parliament by the Secretary of State a report on the operation of such sections of that Act as are for the time being in force) shall cease to have effect.

#### Marginal Citations

- M37** 1975 c.42.

### 103 Interpretation, rules, regulations and Parliamentary control.

- (1) Any reference in this Act, or in any enactment amended by this Act, to a person having, or to there being vested in him, parental responsibilities or parental rights shall, unless the context otherwise requires, be construed as a reference to his having, or to there being so vested, any of those rights or as the case may be responsibilities.
- (2) Any reference in this Act to something being “prescribed” is, unless the context otherwise requires, a reference to its being prescribed by regulations; and any power conferred by this Act on the Secretary of State or the Lord Advocate to make rules or regulations shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Rules or regulations made under this Act—
  - (a) may make different provision for different cases or classes of case; and
  - (b) may exclude certain cases or classes of case.

### 104 Financial provision.

There shall be paid out of money provided by Parliament—

- (a) any expenses of the Secretary of State incurred in consequence of the provisions of this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

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## **105 Extent, short title, minor and consequential amendments, repeals and commencement.**

- (1) This Act, which subject to subsections (8) to (10) below extends to Scotland only—
  - (a) may be cited as the Children (Scotland) Act 1995; and
  - (b) except for subsections (1), (2) and (6) to (10) of this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint;
 

and different days may be appointed under paragraph (b) above for different purposes.
- (2) An order under subsection (1)(b) above may contain such transitional and consequential provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions brought into force.
- (3) The transitional provisions and savings contained in Schedule 3 to this Act shall have effect but are without prejudice to sections 16 and 17 of the <sup>M38</sup>Interpretation Act 1978 (effect of repeals).
- (4) Schedule 4 to this Act, which contains minor amendments and amendments consequential upon the provisions of this Act, shall have effect.
- (5) The enactments mentioned in Schedule 5 to this Act (which include spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (6) The Secretary of State may by order made by statutory instrument make such further amendments or repeals, in such enactments as may be specified in the order, as appear to him to be necessary or expedient in consequence of any provision of this Act.
- (7) A statutory instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Sections 18, 26(2), 33, 44, <sup>F210F211</sup> ..., 93 and 104 of this Act and this section extend to England and Wales, and those sections and this section <sup>F211</sup> ... also extend to Northern Ireland; but—
  - (a) subsection (4) of this section so extends—
    - (i) to England and Wales, only in so far as it relates to paragraphs 8, 10, 19, 31, 37, 41(1), (2) and (7) to (9), 48 to 52, 54 and 55 of Schedule 4; and
    - (ii) to Northern Ireland, only in so far as it relates to paragraphs 31, 37, 41(1), (2) and (7) to (9), 54, 55 and 58 of that Schedule; and
  - (b) subsection (5) of this section so extends—
    - (i) to England and Wales, only in so far as it relates to the entries in Schedule 5 in respect of Part V of the <sup>M39</sup>Social Work (Scotland) Act 1968, the <sup>M40</sup>Maintenance Orders (Reciprocal Enforcement) Act 1972, section 35(4)(c) of the <sup>M41</sup>Family Law Act 1986, the <sup>M42</sup>Children Act 1989, the <sup>M43</sup>Child Support Act 1991 and the <sup>M44</sup>Education Act 1993; and
    - (ii) to Northern Ireland, only in so far as it relates to the entries in that Schedule in respect of Part V of the Social Work (Scotland) Act 1968, the Maintenance Orders (Reciprocal Enforcement) Act 1972 and section 35(4)(c) of the Family Law Act 1986.
- (9) This section, so far as it relates to the repeal of Part V of the Social Work (Scotland) 1968, also extends to the Channel Islands.

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F212F213(10) .....

### Subordinate Legislation Made

- P1** S. 105(1)(b) power partly exercised (24.10.1995): 1.11.1995 appointed for specified provisions by [S.I. 1995/2787, art. 3, Sch.](#)
- S. 105(1)(b) power partly exercised (22.8.1996): different dates appointed for specified provisions by [S.I. 1996/2203, art. 3, Sch.](#) (with [arts. 4-7](#)) (as amended (18.10.1996) by [S.I. 1996/2708, art. 2](#) and (19.1.1997) by [S.I. 1997/137, art. 2](#))
- S. 105(1)(b) power partly exercised (11.12.1996): different dates appointed for specified provisions by [S.I. 1996/3201, art. 3\(1\)-\(7\)](#) (with [arts. 4-6](#)) (as amended (11.12.1996) by [S.I. 1997/744, arts. 2, 3](#))
- S. 105(1) power partly exercised (20.12.2001): 22.1.2002 appointed for specified provisions by [S.S.I. 2001/475, art. 2](#)
- S. 105(1) power partly exercised (21.1.2002): 22.1.2002 appointed for specified provisions and certain purposes by [S.S.I. 2002/12 art. 2](#)

### Textual Amendments

- F210** Words in [s. 105\(8\)](#) repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\), s. 206\(2\), sch. 6](#) (with [s. 186](#)) (as amended (30.9.2015) by virtue of [Children and Young People \(Scotland\) Act 2014 \(asp 8\), s. 102\(3\), Sch. 5 para. 12\(10\)\(b\)](#); [S.S.I. 2015/317, art. 2, Sch.](#)); [S.S.I. 2013/195, arts. 2, 3\(e\)\(iii\)](#)
- F211** Words in [s. 105\(8\)](#) repealed (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\), art. 1\(2\), Sch. 2 Pt. 2](#)
- F212** [S. 105\(10\)](#) repealed (S.) (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\), s. 206\(2\), sch. 6](#) (with [s. 186](#)); [S.S.I. 2013/195, arts. 2, 3](#)
- F213** [S. 105\(10\)](#) repealed (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\), art. 1\(2\), Sch. 2 Pt. 2](#)

### Commencement Information

- I11** S. 105 wholly in force at 1.4.1997: [s. 105\(1\)\(2\)\(6\)-\(10\)](#) in force at Royal Assent see [s. 105\(1\)](#); [s. 105\(4\)\(5\)](#) in force for certain purposes at 1.11.1995 by [S.I. 1995/2787, art. 3, Sch.](#); [s. 105\(3\)-\(5\)](#) in force for certain purposes at 1.11.1996 by [S.I. 1996/2203, art. 3\(3\), Sch.](#) (with [arts. 4-7](#)) (as amended (19.1.1997) by [S.I. 1997/137, art. 2](#)); [s. 105\(4\)](#) in force for certain purposes at 12.12.1996 by [S.I. 1996/3201, art. 3\(6\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by [S.I. 1997/744, art. 3](#))); [s. 105](#) in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201, art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by [S.I. 1997/744, arts. 2, 3](#))

### Marginal Citations

- M38** 1978 c.30.  
**M39** 1968 c.49.  
**M40** 1972 c.18.  
**M41** 1986 c.55.  
**M42** 1989 c.41.  
**M43** 1991 c.48.  
**M44** 1993 c.35.

**Status:**

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