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STATUTORY INSTRUMENTS

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**1996 No. 2203 (C. 53) (S.179)**

**CHILDREN AND YOUNG PERSONS  
FAMILY LAW  
SOCIAL WORK, SCOTLAND**

**The Children (Scotland) Act 1995 (Commencement  
No.2 and Transitional Provisions) Order 1996**

*Made - - - - 22nd August 1996*

The Secretary of State, in exercise of the powers conferred upon him by section 105(1) and (2) of the Children (Scotland) Act 1995<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation**

1. This Order may be cited as the Children (Scotland) Act 1995 (Commencement No.2 and Transitional Provisions) Order 1996.

**Interpretation**

2. In this Order—

“the Act” means the Children (Scotland) Act 1995;

“the 1968 Act” means the Social Work (Scotland) Act 1968<sup>(2)</sup>; and

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(3)</sup>.

**Commencement of provisions**

3.—(1) Section 4 of the Act shall come into force on 1st September 1996 but only for the purpose of enabling regulations to be made under that section so as to come into force on or after 1st November 1996.

(2) Section 91 of the Act shall come into force on 1st October 1996.

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(1) 1995 c. 36.  
(2) 1968 c. 49.  
(3) 1994 c. 39.

(3) Subject to the provisions of articles 4 to 7 of this Order, the provisions of the Act which are specified in column 1 of the Schedule to this Order and described by reference to the subject matter in column 2 of that Schedule shall, insofar as they are not then in force, come into force on 1st November 1996 but, where a particular purpose is specified in relation to any provision in column 3 of that Schedule, that provision shall come into force on that day only for that purpose.

### Transitional provisions

4. Until the coming into force of section 70 of the Act, and without prejudice to the then operation of section 17(2)(b) of the Interpretation Act 1978(4), the reference in section 3(4) of the Act to a supervision requirement made under section 70 of the Act shall be construed as including a reference to a supervision requirement made under section 44(5) of the 1968 Act.

5. Until the coming into force of section 86 of the Act, and without prejudice to the then operation of section 17(2)(b) of the Interpretation Act 1978—

- (a) in section 7(5) of the Act, the reference to an order under section 86 of the Act shall be construed as including a reference to a resolution under section 16(6) or 16A(7) of the 1968 Act; and
- (b) in section 11(4)(d) of the Act, the reference to a case in which the parental responsibilities or parental rights have been transferred to a local authority by a parental responsibilities order shall be construed as including a reference to a case in which the relevant parental rights and powers in relation to the child (as defined in section 16(3) of the 1968 Act) have vested in a local authority or a voluntary organisation by a resolution under section 16 or 16A of the 1968 Act.

6. Until the coming into force of sections 52 and 69 of the Act, and without prejudice to the then operation of section 17(2)(b) of the Interpretation Act 1978—

- (a) the reference in section 54(1) to a condition in section 52(2)(a) to (h), (j), (k) or (l) of the Act being satisfied with respect to a child shall be construed as including a reference to a condition in section 32(2)(a) to (f), (gg) and (i) of the 1968 Act(8) being satisfied with respect to a child; and
- (b) the reference in section 54(3)—
  - (i) to compulsory measures of supervision shall be construed as including a reference to compulsory measures of care within the meaning of section 32 of the 1968 Act;
  - (ii) to arranging a children's hearing to consider the case of the child under section 69 of the Act shall be construed as including a reference to arranging a children's hearing to consider the case of the child under sections 43 and 44 of the 1968 Act; and
  - (iii) to the application of section 69(1) of the Act shall be construed as including a reference to the application of sections 43 and 44 of the 1968 Act as if the condition

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(4) 1978 c. 30.

(5) Section 44 was amended by the Children and Young Persons Act 1969 (c. 54) Schedule 5, paragraph 57, by the Children Act 1975 (c. 72), Schedule 3, paragraph 56, by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 28, and by the Local Government etc. (Scotland) Act 1994, Schedule 13, paragraph 76(15).

(6) Section 16 was substituted by the Children Act 1975, section 74 and amended by the Adoption Act 1976 (c. 36), Schedule 3, paragraph 34; the Adoption (Scotland) Act 1978 (c. 28), Schedule 3, paragraphs 13 and 14; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 7(1); the Mental Health (Scotland) Act 1984 (c. 36), Schedule 3, paragraph 15; the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 9 and the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 31; section 16(11)(e) was inserted by the Child Abduction and Custody Act 1985 (c. 60), section 25(6).

(7) Section 16A was inserted by the Children Act 1975, section 75.

(8) In section 32(2), paragraphs (b) and (c) were substituted by the Children Act 1975, Schedule 3, paragraph 54(a); paragraph (d) was amended by the Children Act 1975, Schedule 3, paragraph 54(b); paragraph (dd) was added by the Children Act 1975, Schedule 3, paragraph 54(c); paragraph (gg) was inserted by the Solvent Abuse (Scotland) Act 1983 (c. 33), section 1 and paragraph (i) was added by the Health and Social Services and Social Security Adjudications Act 1983, section 8(1).

specified by the court under section 54(1) of the Act as read with paragraph (a) above were a ground of referral established in accordance with section 42(9) of the 1968 Act.

7.—(1) The following transitional provisions shall be made to each of the provisions of the Adoption (Scotland) Act 1978 (“the 1978 Act”)(10) until the repeal of that provision in Schedule 5 to the Act comes into force.

(2) In section 2(d) of the 1978 Act, the reference to “custody proceedings” shall be construed as including a reference to proceedings regarding a residence order under section 11(2)(c) of the Act.

(3) In section 32(4)(c) of the 1978 Act, the reference to an order awarding custody of a child should be construed as including a reference to a residence order under section 11(2)(c) of the Act.

St Andrew’s House,Edinburgh  
22nd August 1996

*James Douglas-Hamilton*  
Minister of State, Scottish Office

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(9) Section 42 was amended by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraph 8 and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, section 25; section 42(2A) was inserted by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraph 21.

(10) 1978 c. 28.

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## SCHEDULE

Article 3

## PROVISIONS OF THE ACT WHICH COME INTO FORCE ON 1ST NOVEMBER 1996

Column 1 Provisions of the Act	Column 2 Subject matter	Column 3 Purpose
Part I	Parents, Children and Guardians	
Section 54	Reference to the Principal Reporter by court	
Section 93	Interpretation of Part II	
Section 98(1)	Amendments of the Adoption (Scotland) Act 1978	Only for the purpose of bringing into force the provisions of Schedule 2 to the Act specified in column 1
Section 98(2)	Interpretation of Part III	
Section 105(3)	Transitional provisions and savings	Only for the purpose of bringing into force the provisions of Schedule 3 to the Act specified in column 1
Section 105(4)	Amendments	Only for the purpose of bringing into force the provisions of Schedule 4 to the Act specified in column 1
Section 105(5)	Repeals	Only for the purpose of bringing into force the repeals in Schedule 5 to the Act which are referred to in column 1 below
In Schedule 2, paragraphs— 1 7(a)(i), (b) and (c) 8(a) 9(a) 11(b) and (c) 12(b)(i) 13(a)(ii), (c)(ii) and (d) 14 17(b) 23 26	Amendments of the Adoption (Scotland) Act 1978	

Column 1 Provisions of the Act	Column 2 Subject matter	Column 3 Purpose
29(a)(iii), (v) and (vi)		
In Schedule 3, paragraph 7	Transitional provisions and savings	
In Schedule 4, paragraphs— 1 to 6	Amendment of enactments	
7(1) to (5) and (6)(a)		
8 and 9		
10(b)		
11		
14		
15(1),(5), (17)(a)(ii), (20)(c) and (28)(d) and (e)		
18(3)		
19 and 20		
23(1)		
23(4)(a)		Only for the purpose of inserting paragraph (c) into section 7(2) of the Rehabilitation of Offenders Act 1974
23(4)(c)		
24(1), (4), (5), (10) and (11)		
26(1), (2), (3), (4)(a) and (c), and (5) to (7)		
27		
28(1) and (5)(a)		
29(1) and (2)		
30 and 31		
33(1) and (4)		
34		
36		
37(1), (5) and (6)(a)(i) and (ii)		
38		
39(1), (2)(a), (3)(a), (4) and (5) (b)		
41		

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Column 1 Provisions of the Act	Column 2 Subject matter	Column 3 Purpose
43		
46 and 47		
48(1) and (4)		
50 to 52		
53(2), (4) and (5)		
54(1) and (5)		
In Schedule 5, the repeals specified in the Table below	Repeals	

TABLE

REPEALS

Chapter	Short title	Extent of repeal
8 & 9 Vict. c.19.	Lands Clauses Consolidation (Scotland) Act 1845.	In section 7, the words “persons under legal disability by reason of nonage” in each place where they occur.  In section 67, the words “persons under legal disability by reason of nonage”.  In section 69, the words “persons under legal disability by reason of nonage”.
12 & 13 Vict. c.51.	Judicial Factors Act 1849.	In section 1, the words from “the word “Guardian” ” to “years;”.  Section 25(2).  In section 27, the words “guardians and”.  In section 31, the word “guardian;”.  In section 32, the word “guardian;”.  In section 33, the words “guardians or”.

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Chapter	Short title	Extent of repeal
		In section 34, in both places where it occurs, the word “guardian,”.
		In section 36, the word “guardianships,”.
		In section 37, the word “guardian,”.
		In section 40, the word “guardians,” in both places where it occurs.
27 & 28 Vict. c.114.	Improvement of Land Act 1864.	In section 18, the words from “nor shall they” to the end.  In section 21, the words from “or if the landowner” to “minors”; and the words “or circumstance” in both places where they occur.
43 & 44 Vict. c.4.	Judicial Factors (Scotland) Act 1880.	In section 3, in the definition of “judicial factor”, the words from “and” to “required”.
7 Edw.7 c.51.	Sheriff Courts (Scotland) Act 1907.	Section 5(2C).  Section 38C.
11 & 12 Geo.5 c.58.	Trusts (Scotland) Act 1921.	In section 2, in the definition of “trustee”, the words from “guardian” to “years”.
1 Edw.8 & 1 Geo.6 c.37.	Children and Young Persons (Scotland) Act 1937.	In section 27, the first paragraph.
1 & 2 Geo.6 c.73.	Nursing Homes Registration (Scotland) Act 1938.	In section 4(1)(b)(iii), the words “custody or”.
14 & 15 Geo.6 c.65.	Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951.	In section 8(1)(d), the words from “or any order” to the end.
6 & 7 Eliz.2 c.40.	Matrimonial Proceedings (Children) Act 1958.	Sections 8 to 10.  Section 12.
1968 c. 49.	Social Work (Scotland) Act 1968.	In section 94(1), the definition of “guardian”. In section 5B(5), the words from “and” at the end of the

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Chapter	Short title	Extent of repeal
		definition of child to the end of the subsection.
1972 c. 18.	Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 4(3).
1973 c. 29.	Guardianship Act 1973.	The whole Act.
1974 c. 53.	Rehabilitation of Offenders Act 1974.	In section 7(2) the words from “In the application” to the end.
1975 c. 72.	Children Act 1975.	Sections 47 to 49. Section 53.
1978 c. 28.	Adoption (Scotland) Act 1978.	In section 12, in subsection (3) (b), the words “or by”; and in subsection (4) the word “— (a)” and paragraph (b).  In section 14(1), the words from “Subject” to “certain cases”).  In section 15, in subsection (1), the words from “Subject” to “certain cases”); and in subsection (3), the word “natural” wherever it occurs.  In section 65(1), in the definition of “guardian”, paragraph (b).
1984 c. 15.	Law Reform (Husband and Wife) (Scotland) Act 1984.	Section 3(2).
1984 c. 36.	Mental Health (Scotland) Act 1984.	Section 55(4).
1985 c. 37.	Family Law (Scotland) Act 1985.	In section 21, the words from “or an order” to “child”.
1986 c. 9.	Law Reform (Parent and Child) (Scotland) Act 1986.	Sections 2 to 4.  In section 8, the definitions of “child” and “parental rights”.  In Schedule 1, paragraph 3.
1986 c. 33.	Disabled Persons (Services, Consultation and Representation) Act 1986.	In section 16, in the definition of “guardian”, paragraph (b).
1986 c. 55.	Family Law Act 1986.	In section 15(4), the words from “under section” to “1973”.



Chapter	Short title	Extent of repeal
		In section 17, in subsection (1), the words “Subject to subsection (2) below”; and subsection (2). In section 35(4) (c), the words “custody or”.
1988 c. 36.	Court of Session Act 1988.	Section 20.
1989 c. 41.	Children Act 1989.	In Schedule 13, paragraph 13.
1991 c. 48.	Child Support Act 1991.	In section 5(1), the words “(or, in Scotland, parental rights over)” in both places where they occur.
		In section 54, the definition of “parental rights”.
1991 c. 50.	Age of Legal Capacity (Scotland) Act 1991.	In section 5(1), the words “or tutory”.
		In section 9, the definition of “parental rights”. In Schedule 1, paragraphs 3 to 5 and 7 to 15.
1993 c. 35.	Education Act 1993.	In Schedule 19, paragraph 36.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force various provisions of the Children (Scotland) Act 1995 (“the Act”).

Article 3(1) of the Order brings into force on 1st September 1996 section 4 of the Act but only for the purpose of enabling regulations to be made under that section to come into force on 1st November 1996.

Article 3(2) of the Order brings into force on 1st October 1996 section 91 of the Act (procedural rules in the sheriff court in relation to applications under Part II of the Act).

Article 3(3) of, and the Schedule to, the Order bring into force on 1st November 1996 the provisions listed in that Schedule, insofar as they are not then in force. These are mainly concerned with Part I of the Act and related provisions in Part II (sections 54 and 93), together with consequential amendments to the Adoption (Scotland) Act 1978 in Schedule 2 to the Act, certain transitional and savings provisions in Schedule 3 to the Act and minor and consequential amendments and repeals in Schedules 4 and 5 to the Act.

Articles 4 to 7 make transitional provisions.

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## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The following provisions of the Act have been brought into force by a Commencement Order made before the date of this Order.

Provisions	Date of Commencement	S.I.No.
Sections 1(1)-(3) (partially), 15, 35, 37, 99, 103, 104, 105(4) (partially), 105(5) (partially) and Schedules 4 and 5 (both partially)	1.11.95	<a href="#">1995/2787</a>