



# Social Work (Scotland) Act 1968

## 1968 CHAPTER 49

### PART II

#### PROMOTION OF SOCIAL WELFARE BY LOCAL AUTHORITIES

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

C1 Pt. II extended with modifications by [Guardianship Act 1973 \(c. 29\), s. 11\(5\)](#)

#### *General*

### 12 General social welfare services of local authorities.

- (1) It shall be the duty of every local authority to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area, and in that behalf to make arrangements and to provide or secure the provision of such facilities (including the provision or arranging for the provision of residential and other establishments) as they may consider suitable and adequate, and such assistance may be given to, or in respect of, the persons specified in the next following subsection in kind or in cash, subject to subsections (3) and (4) of this section.
- (2) The persons specified for the purposes of the foregoing subsection are—
- (a) a person, being a child under the age of eighteen, requiring assistance in kind, or in exceptional circumstances in cash, where such assistance appears to the local authority likely to diminish the need—
    - (i) to receive him into, or to keep him in, care under this Part of this Act, or
    - (ii) of his being referred to a children's hearing under Part III of this Act;
  - (b) a person in need requiring assistance in kind or, in exceptional circumstances constituting an emergency, in cash, where the giving of assistance in either form would avoid the local authority being caused greater expense in the

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giving of assistance in another form, or where probable aggravation of the person's need would cause greater expense to the local authority on a later occasion.

- (3) Before giving assistance to, or in respect of, a person in cash under subsection (1) of this section a local authority shall have regard to his eligibility for receiving assistance from any other statutory body and, if he is so eligible, to the availability to him of that assistance in his time of need.
- (4) Assistance given in kind or in cash to, or in respect of, persons under this section may be given unconditionally or subject to such conditions as to the repayment of the assistance, or of its value, whether in whole or in part, as the local authority may consider reasonable having regard to the means of the person receiving the assistance and to the eligibility of the person for assistance from any other statutory body.
- (5) Nothing in the provisions of this section shall affect the performance by a local authority of their functions under any other enactment.
- [<sup>F1</sup>(6) For the purposes of subsection (2) of this section “person in need” includes a person who is in need of care and attention arising out of drug or alcohol dependency or release from prison or other form of detention.]

#### Textual Amendments

- F1** S. 12(6) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 10\(5\)](#)

#### [<sup>F2</sup>12A Duty of local authority to assess needs.

- (1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority—
  - (a) shall make an assessment of the needs of that person for those services; and
  - (b) having regard to the results of that assessment, shall then decide whether the needs of that person call for the provision of any such services.
- (2) Before deciding, under subsection (1)(b) of this section, that the needs of any person call for the provision of nursing care, a local authority shall consult a medical practitioner.
- (3) If, while they are carrying out their duty under subsection (1) of this section, it appears to a local authority that there may be a need for the provision to any person to whom that subsection applies—
  - (a) of any services under the National Health Service (Scotland) Act 1978 by the Health Board—
    - (i) in whose area he is ordinarily resident; or
    - (ii) in whose area the services to be supplied by the local authority are, or are likely, to be provided; or
  - (b) of any services which fall within the functions of a housing authority (within the meaning of section 130 (housing) of the Local Government (Scotland) Act 1973) which is not the local authority carrying out the assessment,

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the local authority shall so notify that Health Board or housing authority, and shall request information from them as to what services are likely to be made available to that person by that Health Board or housing authority; and, thereafter, in carrying out their said duty, the local authority shall take into account any information received by them in response to that request.

- (4) Where a local authority are making an assessment under this section and it appears to them that the person concerned is a disabled person, they shall—
- (a) proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services Consultation and Representation) Act <sup>M1</sup>1986 without his requesting them to do so under that section; and
  - (b) inform him that they will be doing so and of his rights under that Act.
- (5) Nothing in this section shall prevent a local authority from providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.
- (6) If, by virtue of subsection (5) of this section, community care services have been provided for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.
- (7) This section is without prejudice to section 3 of the said Act of 1986.
- (8) In this section—
- “community care services” has the same meaning as in section 5A of this Act;
  - “disabled person” has the same meaning as in the said Act of 1986; and
  - “medical practitioner” means a fully registered person within the meaning of section 55 (interpretation) of the Medical Act 1983.]

#### Textual Amendments

**F2** S. 12A inserted (1.4.1993) by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\)](#), [s. 55](#); [S.I. 1992/2975](#), art. 2(2), [Sch.](#)

#### Marginal Citations

**M1** [1986 c.33 \(113:1\)](#).

VALID FROM 01/09/2002

### [<sup>F3</sup>12AA Assessment of ability to provide care

- (1) A person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over (“the person cared for”) may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for that person.

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- (2) The local authority to whom the request is made shall—
- (a) comply with the request where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and
  - (b) if they then or subsequently make an assessment under subsection (1)(a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer’s assessment—
    - (i) in the assessment of the person cared for; and
    - (ii) in making their decision under subsection (1)(b) of that section as respects that person.
- (3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—
- (a) by virtue of a contract of employment or other contract; or
  - (b) as a volunteer for a voluntary organisation.
- (4) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33)(duty of local authority to take into account abilities of carer in deciding whether to provide certain services to disabled person) shall not apply in a case where a local authority make an assessment, by virtue of subsection (2)(a) above, in respect of a carer of a disabled person.
- (5) Subsections (4) to (7) of section 12A of this Act apply to a local authority making an assessment by virtue of subsection (2)(a) of this section as they apply to a local authority making an assessment under subsection (1)(a) of that section.
- (6) In this section, “community care services”, “disabled person” and “person” have the same meanings as in section 12A of this Act.

#### Textual Amendments

**F3** Ss. 12AA, 12AB inserted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), s. [9\(2\)](#); S.S.I. 2002/170, [art. 2](#)

VALID FROM 01/09/2002

#### **12AB Duty of local authority to provide information to carer**

- (1) Where it appears to a local authority both that—
- (a) a person aged eighteen or over (“the person cared for”) is a person for whom the authority are under a duty or have a power to provide community care services; and
  - (b) another person (“the carer”) provides, or intends to provide, a substantial amount of care on a regular basis for the person cared for,
- the local authority shall notify the carer that he may be entitled under section 12AA of this Act to request an assessment of his ability to provide, or continue to provide, care for the person cared for.

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(2) In this section, “community care services” and “person” have the same meanings as in section 12A of this Act.]

#### Textual Amendments

**F3** Ss. 12AA, 12AB inserted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), s. 9(2); S.S.I. 2002/170, art. 2

VALID FROM 01/04/1997

### [<sup>F4</sup>12B Direct payments in respect of community care services.

- (1) Where, as respects a person in need—
- (a) a local authority have decided under section 12A of this Act that his needs call for the provision of any service which is a community care service within the meaning of section 5A of this Act, and
  - (b) the person is of a description which is specified for the purposes of this subsection by regulations,
- the authority may, if the person consents, make to him, in respect of his securing the provision of the service, a payment of such amount as, subject to subsection (2) below, they think fit.
- (2) If—
- (a) an authority pay under subsection (1) above at a rate below their estimate of the reasonable cost of securing the provision of the service concerned, and
  - (b) the person to whom the payment is made satisfies the authority that his means are insufficient for it to be reasonably practicable for him to make up the difference,
- the authority shall so adjust the payment to him under that subsection as to avoid there being a greater difference than that which appears to them to be reasonably practicable for him to make up.
- (3) A payment under subsection (1) above shall be subject to the condition that the person to whom it is made shall not secure the provision of the service to which it relates by a person who is of a description specified for the purposes of this subsection by regulations.
- (4) Regulations may provide that the power conferred by subsection (1) above shall not be exercisable in relation to the provision of residential accommodation for any person for a period in excess of such period as may be specified in the regulations.
- (5) If the authority by whom a payment under subsection (1) above is made are not satisfied, in relation to the whole or any part of the payment—
- (a) that it has been used to secure the provision of the service to which it relates, or
  - (b) that the condition imposed by subsection (3) above, or any condition properly imposed by them, has been met in relation to its use,
- they may require the payment or, as the case may be, the part of the payment to be repaid.

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- (6) Regulations under this section shall be made by the Secretary of State and may—
- (a) make different provision for different cases; and
  - (b) include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit.]

**Textual Amendments**

**F4** S. 12B inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

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

**C2** S. 12B(1) restricted (1.4.1997) by S.I. 1997/693, reg. 4(1)

VALID FROM 01/04/1997

**[<sup>F5</sup>12C Further provisions relating to direct payments.**

- (1) Except as provided by subsection (2) below, the fact that a local authority make a payment under section 12B(1) of this Act shall not affect their functions with respect to the provision of the service to which the payment relates.
- (2) Subject to subsection (3) below, where an authority make a payment under section 12B(1) of this Act they shall not be under any obligation to the person to whom it is made with respect to the provision of the service to which it relates as long as they are satisfied that the need which calls for the provision of that service will be met by virtue of the person's own arrangements.
- (3) The fact that an authority make a payment under section 12B(1) of this Act shall not affect their functions under section 12 of this Act in relation to the provision, to the person to whom the payment is made, of assistance, in exceptional circumstances constituting an emergency, in cash in respect of the service to which the payment under section 12B(1) relates.]

**Textual Amendments**

**F5** S. 12C inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

**13 Power of local authorities to assist persons in need in disposal of produce of their work.**

Where, by virtue of the last foregoing section, a local authority make arrangements or provide or secure the provision of facilities for the engagement of persons in need (whether under a contract of service or otherwise) in suitable work, that local authority may assist such persons in disposing of the produce of their work.

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### *[<sup>F6</sup> Residential accommodation with nursing.]*

#### **Textual Amendments**

- F6** S. 13A and crossheading inserted (1.4.1993) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 56](#); S.I. 1992/2975, art. 2(2), [Sch.](#)

#### **13A** <sup>F7</sup>**Residential accommodation with nursing.**

- (1) Without prejudice to section 12 of this Act, a local authority shall make such arrangements as they consider appropriate and adequate for the provision of suitable residential accommodation where nursing is provided for persons who appear to them to be in need of such accommodation by reason of infirmity, age, illness or mental disorder, dependency on drugs or alcohol or being substantially handicapped by any deformity or disability.
- (2) The arrangements made by virtue of subsection (1) above shall be made with a voluntary or other organisation or other person, being an organisation or person managing premises which are—
  - (a) a nursing home within the meaning of section 10(2)(a) of the Nursing Homes Registration (Scotland) Act <sup>M2</sup>1938 in respect of which that organisation or person is registered or exempt from registration under that Act; or
  - (b) a private hospital registered under section 12 of the Mental Health (Scotland) Act <sup>M3</sup>1984,  
for the provision of accommodation in those premises.
- (3) The provisions of section 6 of this Act apply in relation to premises where accommodation is provided for the purposes of this section as they apply in relation to establishments provided for the purposes of this Act.

#### **Textual Amendments**

- F7** S. 13A and crossheading inserted (1.4.1993) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 56](#); S.I. 1992/2975, art. 2(2), [Sch.](#)

#### **Marginal Citations**

- M2** 1938 c. 73 (113:3).  
**M3** 1984 c. 36 (85).

### *<sup>F8</sup> Provision of care and after-care*

#### **Textual Amendments**

- F8** S. 13B and crossheading inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\)](#), [s. 56](#); S.I. 1990/2510, art. 2, [Sch.](#)

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### [13B] <sup>F9</sup> Provision of care and after-care

- (1) Subject to subsection (2) below, a local authority may, with the approval of the Secretary of State, and shall, if and to the extent that the Secretary of State so directs, make arrangements for the purpose of the prevention of illness, the care of persons suffering from illness and the after-care of such persons.
- (2) The arrangements which may be made under subsection (1) above do not include arrangements in respect of medical, dental or nursing care, or health visiting.]

#### Textual Amendments

- F9** S.13B and crossheading inserted (1.4.1991) by National Health Service and Community care Act 1990 (c.19, SIF 113:2), s. 56; S.I. 1990/2510, art. 2, Sch.

### *Home help*

## 14 Home help and laundry facilities.

- (1) It shall be the duty of every local authority to provide on such scale as is adequate for the needs of their area, or to arrange for the provision on such a scale as is so adequate of, [<sup>F10</sup>home help][<sup>F10</sup>domiciliary services] for households where such [<sup>F11</sup>help is][<sup>F11</sup>services are] required owing to the presence, or the proposed presence, of a person in need or a person who is an expectant mother or lying-in, and every such authority shall have power to provide or arrange for the provision of laundry facilities for households for which [<sup>F12</sup>home help is][<sup>F12</sup>domiciliary services are] being, or can be, provided under this subsection.
- (2) ..... <sup>F13</sup>
- (3) ..... <sup>F14</sup>
- (4) On the coming into operation of the provisions of this and the last two foregoing sections, the provisions of sections 13, 44 and 45 of the Health Services and Public Health Act 1968 <sup>M4</sup> shall cease to have effect.

#### Textual Amendments

- F10** Words “domiciliary services” substituted (1.4.1991) for “home help” by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 10(6)(a)
- F11** Words “services are” substituted (1.4.1991) for “help is” by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 10(6)(b)
- F12** Words “domiciliary services are” substituted (1.4.1991) for “home help is” by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 10(6)(c)
- F13** S. 14(2) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 10 Pt. I
- F14** S. 14(3) repealed by National Health Service (Scotland) Act 1972 (c. 58, SIF 113:3), Sch. 7 Pt. II

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

- C3** The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 60, 68, 73, Sch. 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.



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## Marginal Citations

M4 1968 c. 46.

### *Special provisions as to the care of children in need*

## 15 Duty of local authority to provide for orphans, deserted children, etc.

(1) Without prejudice to the generality of the foregoing provisions of this Part of this Act, where it appears to a local authority with respect to a child in their area appearing to them to be under the age of seventeen—

- (a) that he has neither parent nor guardian or has been and remains abandoned by his parent or guardian or is lost; or
- (b) that his parent or guardian is, for the time being or permanently, prevented by reason of illness or mental disorder or bodily disease or infirmity or other incapacity or any other circumstances from providing for his proper accommodation, maintenance and upbringing; and
- (c) in either case, that the intervention of the local authority under this section is necessary in the interests of the welfare of the child,

it shall be the duty of the local authority to receive the child into their care under this section.

(2) Where a local authority have received a child into their care under this section, it shall, subject to the provisions of this Part of this Act, be their duty to keep the child in their care so long as the welfare of the child appears to them to require it and the child has not attained the age of eighteen.

(3) If, at the time when a child is received into the care of a local authority under this section, the whereabouts of any parent or guardian of his are unknown, it shall be the duty of the local authority to take all reasonable steps to discover them; and nothing in this section shall authorise a local authority to keep a child in their care under this section if any parent or guardian desires to take over the care of the child, and the local authority shall, in all cases where it appears to them consistent with the welfare of the child so to do, endeavour to secure that the care of the child is taken over either—

- (a) by a parent or guardian of his, or
- (b) by a relative or friend of his, being, where possible, a person of the same religious persuasion as the child or who gives an undertaking that the child will be brought up in that religious persuasion.

[<sup>F15</sup>(3A) Subsection (8) (penalty for taking away a child in care etc.) of section 17 of this Act shall apply to a child in the care of a local authority under this section, [<sup>F16</sup>whether or not a] resolution is in force under section 16 of this Act with respect to the child, if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away:

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

- (a) with the consent of the local authority, or
- [ by a parent or guardian of the child in relation to whom no resolution under
- <sup>F17</sup>(b) section 16 of this Act is in effect with respect to the child and who has given

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the local authority not less than 28 days' notice in writing of his intention to do it.]

- (3B) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (3A) of this section by substituting a different period for the period of 28 days or of six months mentioned in that sub-section (or for the period which by a previous order under this subsection, was substituted for that period).]
- (4) Where a local authority receive a child into their care under this section who is then ordinarily resident in the area of another local authority, that other local authority may within three months after the determination (whether by agreement between the authorities or under section 86 of this Act) of the ordinary residence of the child, or with the concurrence of the first-mentioned authority at any subsequent time, take over the care of the child; and a local authority shall not exercise their right to take over the care of a child under this subsection unless they are satisfied that the taking-over will not be detrimental to his welfare.
- (5) Where under the last foregoing subsection a local authority take over the care of a child from another local authority, that other authority shall where possible inform the parent of the child that the care of the child has been so taken over.

#### Textual Amendments

- F15** S. 15(3A)(3B) inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **s. 73**
- F16** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), **Sch. 2 para. 4(a)**
- F17** S. 15(3A) proviso (b) substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), **Sch. 2 para. 4(b)**

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

- C4** S. 15 extent by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), **ss. 34(3), 67(2)**
- C5** S. 15 extended by [Foster Children \(Scotland\) Act 1984 \(c. 56, SIF 20\)](#), **ss. 12(5), 23**

### <sup>F18</sup>16 **Resolution by local authority in respect of assumption and vesting of parental rights and powers.**

- (1) Subject to the provisions of this Part of this Act, a local authority may resolve—
- (a) that there shall vest in them the relevant parental rights and powers with respect to any child who is in their care under section 15 of this Act; or
  - (b) that there shall vest in a voluntary organisation which is an incorporated body, or a trust within the meaning of section 2(a) of the <sup>M5</sup>Trusts (Scotland) Act 1921, the relevant parental rights and powers with respect to any child who is in the care of that organisation,
- if it appears to the local authority—
- (i) that the parents of the child are dead and that he has no guardian; or
  - (ii) that there exists in respect of a parent or guardian of the child (the said parent or guardian being hereafter in this Part of this Act referred to as the person on whose account the resolution was passed) any of the circumstances specified in subsection (2) of this section; or
  - (iii) that a resolution under this subsection is in force in terms of sub-paragraph (ii) above in relation to one parent of the child and that parent is, or is likely to

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- become, a member of the household comprising the child and his other parent;  
or
- (iv) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation or partly the one and partly the other.
- (2) The circumstances referred to in sub-paragraph (ii) of subsection (1) of this section are that the person on whose account the resolution was passed—
- (a) has abandoned the child; or
- (b) suffers from some permanent disability rendering him incapable of caring for the child; or
- (c) while not falling within paragraph (b) of this subsection, suffers from a mental disorder (within the meaning of the <sup>F19M6</sup>Mental Health (Scotland) Act 1984] which renders him unfit to have the care of the child; or
- (d) is of such habits or mode of life as to be unfit to have the care of the child; or
- (e) has so persistently failed without reasonable cause to discharge the obligations of a parent or guardian as to be unfit to have the care of the child.
- (3) In this section “the relevant parental rights and powers” means all the rights and powers in relation to the child (other than the right to consent or refuse to consent to the making of an application under <sup>F20</sup>section 18 or 55 of the Adoption Act 1976 or under section 18 or 49 of the <sup>M7</sup>Adoption (Scotland) Act 1978] and the right to agree or refuse to agree to the making of an adoption order)—
- (a) where the resolution was passed by virtue of circumstances specified in sub-paragraph (i) of subsection (1) of this section, which the deceased parents would have if they were still living;
- (b) where the resolution was passed by virtue of circumstances specified in sub-paragraph (ii) of that subsection, of the person on whose account the resolution was passed;
- (c) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iii) of that subsection, of the parent other than the one on whose account the previous resolution was passed;
- (d) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iv) of that subsection, of the parents or guardian of the child.
- (4) A local authority shall not pass a resolution under paragraph (b) of subsection (1) of this section unless—
- (a) it is satisfied that the child is not in the care of any local authority under any enactment; and
- (b) it is satisfied that it is necessary in the interests of the welfare of the child for the parental rights and powers to be vested in the voluntary organisation; and
- (c) the child is living in the area of the local authority either in a residential establishment or with foster parents with whom he has been boarded out by the voluntary organisation in whose care he is; and
- (d) that organisation has requested the local authority to pass the resolution.
- (5) In the case of a resolution passed under sub-section (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof, . . . <sup>F21</sup> the local authority, if <sup>F22</sup>the whereabouts of the person whose parental rights and powers have under the resolution vested in the local authority or in the voluntary organisation as the case may be] are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.

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- (6) Every notice served by a local authority under subsection (5) of this section shall inform the person on whom the notice is served of his right to object to the resolution and of the effect of any objection made by him.
- (7) If, not later than one month after notice is served on a person under subsection (5) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (8) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.
- (8) Where a counter-notice has been served on a local authority under subsection (7) of this section, the authority may, not later than fourteen days after the receipt by them of the counter-notice, make a summary application in respect thereto to the sheriff having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the application; and the sheriff may, on the hearing of the application, order that the resolution shall not lapse by reason of the service of the counter-notice:

Provided that the sheriff shall not so order unless satisfied—

- (a) that it is in the interests of the child to do so; and
  - (b) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out; and
  - (c) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded.
- (9) While a resolution passed under subsection (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof is in force with respect to a child, that part of subsection (3) of section 15 of this Act from the words “and nothing in this section shall authorise” onwards shall not apply in relation to the person who, but for the resolution, would have the relevant parental rights and powers in relation to the child.
- (10) Any notice under this section (including a counter-notice) may be served by post, but a notice served by a local authority under subsection (5) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.
- (11) A resolution under this section shall cease to have effect if—
- (a) the child becomes the subject of an adoption order within the meaning of [F23]section 38 of the M8Adoption (Scotland) Act 1978]; or
  - (b) an order in respect of the child is made under [F20]section 18 or 55 of the Adoption Act 1976 or under section 18 or 49 of the Adoption (Scotland) Act 1978]; or
  - [ F24] (c) a[F25] guardian]to the child is appointed under the Law Reform (Parent and Child) (Scotland) Act 1986; or]
  - (d) it is a resolution under paragraph (b) of subsection (1) of this section and a resolution is passed under subsection (1) of section 16A of this Act in respect of the child [F26; or]
  - [ F26] (e) an event mentioned in paragraph (a) or (b) of section 25(1) of the Child Abduction and Custody Act 1985 occurs with respect to the child.]
- (12) If the whereabouts of any parent or guardian of a child have remained unknown for twelve months, and throughout that period the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation, or

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partly the one and partly the other, then for the purposes of this section that parent or guardian shall be deemed to have abandoned the child.

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

#### Textual Amendments

- F18** S. 16 substituted by Children Act 1975 (c. 72, SIF 49:9,10), s. 74
- F19** Words in s. 16(2)(c) substituted by virtue of Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), Sch. 3 para. 15 where the substitution is expressed to relate to words in s. 16(3)
- F20** Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras. 3, 5, Sch. 3 para. 13
- F21** Words repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 7(1)(a)
- F22** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 7(1)(b)
- F23** Words substituted by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 67(2), Sch. 2 paras. 3, 5, Sch. 3 para. 14
- F24** S. 16(11)(c) substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), Sch. 1 para. 9
- F25** Word in s. 16(11)(c) substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), Sch. 1 para.31 (with s. 1(3)).
- F26** S. 16(11)(e) and the word “; or” preceding it inserted by Child Abduction and Custody Act 1985 (c. 60, SIF 20), Pt. III, ss. 25(6), 29(2)

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

- C6** S. 16 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)
- C7** S. 16(8) restricted by Child Abduction and Custody Act 1985 (c. 60, SIF 20), Pt. I, ss. 9(d), 20(2)(d), 29(2), Sch. 1 art. 16

#### Marginal Citations

- M5** 1921 c. 58.
- M6** 1984 c. 36
- M7** 1978 c. 28.
- M8** 1978 c. 28.

### [<sup>F27</sup>16A Duty of local authority to assume parental rights and powers vested in a voluntary organisation.

- (1) If it appears to a local authority, having regard to the interests of the welfare of a child living within their area, the parental rights and powers in respect of whom are by virtue of a resolution under section 16(1)(b) of this Act (hereafter in this section referred to as “the earlier resolution”) vested in a voluntary organisation, that it is necessary that the said parental rights and powers should no longer be vested in the organisation, the local authority shall resolve that the said parental rights and powers shall vest in them; and the said parental rights and powers shall so vest from the date of the resolution under this subsection.

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

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### Textual Amendments

**F27** S. 16A inserted by Children Act 1975 (c. 72 SIF 49:9,10), s. 75

### Modifications etc. (not altering text)

**C8** S. 16A applied by (Criminal Procedure (Scotland) Act 1975 (c. 21 SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41 SIF 39:1), s. 59(3)

**C9** S. 16A(3) restricted by Child Abduction and Custody Act 1985 (c. 60, SIF 20), Pt. I, ss. 9(d), 20(2)(d), 29(2), Sch. 1 art. 16

## 17 Effect of assumption by local authority of parental rights.

(1) ..... **F28**

(3) A resolution under [<sup>F29</sup>section 16(1)(a)] of this Act shall not prevent the local authority from allowing, either for a fixed period or until the local authority [<sup>F30</sup>, in whom are vested in accordance with the resolution the parental rights and powers in respect of a child,] otherwise determine, the care of the child to be taken over by, and the child to be under the control of, a parent, guardian, relative or friend in any case where it appears to the authority to be for the benefit of the child.

[<sup>F31</sup>(3A) A resolution under section 16(1)(b) of this Act shall not prevent the voluntary organisation, in whom are vested in accordance with the resolution the parental rights and powers in respect of a child, from allowing, either for a fixed period or until the voluntary organisation otherwise determine, the care of the child to be taken over by, and the child to be under the control of, a parent, guardian, relative or friend in any case where it appears to the voluntary organisation to be for the benefit of the child.]

(4) Where a resolution under [<sup>F32</sup>section 16(1)(a)] of this Act is in force in respect of a child and the child has ceased to be in the care of the local authority by whom the resolution was passed, then (without prejudice to the provisions of section 15 of this Act if those provisions apply) the local authority by whom the resolution was passed shall have power to receive the child back into their care in any circumstances in which it appears to them that their intervention under this subsection is necessary in the interests of the welfare of the child.

(5) Where a local authority receive a child into their care under the last foregoing subsection, the provisions of this Act, except subsection (4) of section 15 thereof, shall apply as if the child had been received into their care under the said section 15.

(6) A resolution under [<sup>F33</sup>section 16 of this Act] shall not relieve any person from any liability to maintain, or contribute to the maintenance of, the child.

(7) A resolution under the said section 16 shall not authorise a local authority [<sup>F34</sup>or a voluntary organisation] to cause a child to be brought up in any religious persuasion other than that in which he would have been brought up but for the resolution.

(8) Any person who—

(a) knowingly assists or induces or persistently attempts to induce n a child [<sup>F35</sup>, in respect of when a resolution under section 16 of this Act is in effect,] to run away, or

(b) without lawful authority takes away such a child, or

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- (c) knowingly harbours or conceals such a child who has run away or who has been taken away or prevents him from returning,

shall be liable on summary conviction to a fine not exceeding [<sup>F36</sup>level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

- (9) [<sup>F37</sup>Where—

- (a) a local authority have, in accordance with subsection (3) of this section; or  
 (b) a voluntary organisation have, in accordance with subsection (3A) of this section,

allowed] any person to take over the care of a child with respect to whom a resolution under the said section 16 is in force and have by notice in writing required that person to return the child at a time specified in the notice (which, if that person has been allowed to take over the care of the child for a fixed period, shall not be earlier than the end of that period) any person who harbours or conceals the child after that time or prevents him from returning as required by the notice shall be liable on summary conviction to a fine not exceeding [<sup>F38</sup>level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

- [<sup>F39</sup>(10) Where an offence under subsection (8) or (9) of this section has been or is believed to have been committed, a constable, or any person authorised by any court or by any justice of the peace, may take and return the child to the local authority or voluntary organisation in whom are vested the parental rights and powers relating to the child.]

#### Textual Amendments

- F28** S. 17(1)(2) repealed by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 4 Pt. V**  
**F29** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(a)**  
**F30** Words inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(a)**  
**F31** S. 17(3A) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(b)**  
**F32** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(c)**  
**F33** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(d)**  
**F34** Words inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52 (e)**  
**F35** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(f)(i)**  
**F36** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(f)** and by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G** (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 54**)  
**F37** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(g)(i)**  
**F38** Words substituted by Children Act 1975 (c. 72, SIF 49:9, 10), **Sch. 3 para. 52(g)(ii)** and by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G** (as inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 54**)  
**F39** S. 17(10) inserted by Children Act 1975 (c. 72, SIF 49:9, 10), **s. 76**

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

- C10** SS. 17, 17A, 17B, 17C applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), **s. 413(3)** as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **s. 59(3)**

#### 17A [<sup>F40</sup>Termination of access to child subject to resolution under section 16.

- (1) A local authority or voluntary organisation may not terminate arrangements for access to a child who is the subject of a resolution under section 16 of this Act by his parent or



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guardian or refuse to make such arrangements unless they have first given the parent or guardian notice of termination or refusal in a form prescribed by order made by the Secretary of State.

- (2) A notice under this section shall contain a statement that the parent or guardian has a right to apply to the sheriff for an order under section 17B of this Act.
- (3) A notice terminating access shall state that access will be terminated as from the date of service of the notice.
- (4) A local authority or voluntary organisation are not to be taken to terminate arrangements for access for the purposes of this section in a case where they propose to substitute new arrangements for access for existing arrangements.
- (5) A local authority or voluntary organisation are not to be taken to refuse to make arrangements for access for the purposes of this section in a case where they postpone access for such reasonable period as appears to them to be necessary to enable them to consider what arrangements for access (if any) are to be made.
- (6) A notice under this section may be served on a parent or guardian either by delivering it to him or by leaving it at his proper address or by sending it by post.
- (7) For the purposes of this section, and of section 7 of the <sup>M9</sup>Interpretation Act 1978 in its application to this section, the proper address of a person shall be his last known address.

#### Textual Amendments

**F40** Ss. 17A-17E inserted (30.1.1984) by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 7(2)

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

**C11** Ss. 17, 17A, 17B, 17C applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), s. 413(3) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), s. 59(3)

#### Marginal Citations

**M9** 1978 c. 30.

## 17B Access Orders

- (1) A parent or guardian on whom a notice under section 17A of this Act is served may apply by way of summary application to the sheriff (in the case of a local authority, the sheriff having jurisdiction in their area) for an order under this section (hereinafter referred to as an “access order”).
- (2) An access order shall be an order requiring the authority or organisation to allow the child’s parent or guardian access to the child subject to such conditions as the order may specify with regard to commencement, frequency, duration or place of access or to any other matter for which it appears to the sheriff that provision ought to be made in connection with the requirement to allow access.
- (3) Where an access order has been made—
  - (a) the parent or guardian named in the order; or

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- (b) the local authority or voluntary organisation may apply by way of summary application to the sheriff for the variation or discharge of the order.

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

**C12** Ss. 17, 17A, 17B, 17C applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **s. 413(3)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(3)**

**17C Emergency order.**

- (1) The sheriff may make an order under this subsection where he is satisfied that continued access to a child by his parent or guardian in accordance with the terms of an access order will put the child's welfare seriously at risk.
- (2) Subject to subsection (3) below, an order under subsection (1) of this section shall be an order suspending the operation of the access order for 7 days beginning with the date of the order under subsection (1) of this section, or for such shorter period beginning with that date as may be specified in that order.
- (3) If during the period for which the operation of the access order is suspended the local authority or voluntary organisation make an application for its variation or discharge to the sheriff, its operation shall be suspended until the date on which the application to vary or discharge it is determined or abandoned.

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

**C13** Ss. 17, 17A, 17B, 17C applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **S. 413(3)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(3)**

**17D Safeguarding of interest of child.**

—A court to which an application for an access order or any other application under section 17B or 17C of this Act or any appeal relating thereto is made shall regard the welfare of the child as the first and paramount consideration in determining the matter.

**17E Code of practice.**

- (1) The Secretary of State shall prepare, and from time to time revise, a code of practice with regard to access to children who are in care or who are subject to a supervision requirement under section 44 of this Act.
- (2) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.
- (3) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.
- (4) No resolution shall be passed by either House of Parliament under subsection (3) above in respect of a code or alteration after the expiration of the period of forty days

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beginning with the day on which a copy of the code or alteration was laid before that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(5) The Secretary of State shall publish the code as for the time being in force.

## 18 Duration and rescission of resolutions under section 16.

(1) Subject to the provisions of this Part of this Act, a resolution under section 16 of this Act shall continue in force until the child with respect to whom it was passed attains the age of eighteen.

(2) A resolution under the said [F41]section 16(1)(a)] may be rescinded by resolution of the local authority if it appears to them that the rescinding of the resolution will be for the benefit of the child.

(3) On a summary application for the determining of a resolution being made—

(a) in the case of a resolution passed by virtue of [F42]sub-paragraph (i)] of subsection (1) of the said section 16, by a person claiming to be a parent or guardian of the child;

[F43](b) in the case of a resolution passed by virtue of circumstances specified in sub-paragraph (ii), (iii), or (iv) of subsection (1) of the said section 16, by the person who, but for the resolution, would have the parental rights and powers in relation to the child,]

the sheriff, having jurisdiction where the applicant resides, if satisfied that there was no ground for the making of the resolution or that the resolution should in the interests of the child be determined, may by order determine the resolution, and the resolution shall thereupon cease to have effect:

Provided that, if the sheriff thinks fit, he may, in lieu of determining the resolution, order that, either for a fixed period or until he, or, if the order so provides, the local authority, otherwise direct, the local authority [F44], and any voluntary organisation having parental rights and powers with respect to the child,] shall allow the care of the child to be taken over by, and the child to be under the control of, the applicant.

(4) A court may entertain an application under [F45]the Law Reform (Parent and Child) (Scotland) Act 1986] to appoint a [F46]guardian of a child ] notwithstanding that, by virtue of a resolution under section 16 of this Act, a local authority [F47]or voluntary organisation] have parental rights with respect to him; . . . F48

[F49](4A) A court may entertain an application under—

(a) [F50]section 12 of the M10 Adoption (Scotland) Act 1978] for an adoption order in respect of a child;

(b) [F51]section 18 of the said Act of 1978] for an order declaring a child free for adoption;

(c) [F52]section 49 of the said Act of 1978] for an order vesting the parental rights and duties relating to a child;

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

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### Textual Amendments

- F41** Words substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 53\(a\)](#)
- F42** Words substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 53 \(b\)\(i\)](#)
- F43** [S. 18\(3\)\(b\)](#) substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 53\(b\)\(ii\)](#)
- F44** Words inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 53\(b\)\(iii\)](#)
- F45** Words in [s. 18\(4\)](#) substituted by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), [s. 10\(1\)](#), [Sch. 1 para. 9\(2\)](#)
- F46** Words in [s. 18\(4\)](#) substituted (25.9.1991) by virtue of [Age of Capacity \(Scotland\) Act 1991 \(c. 50, SIF 81:3\)](#), [ss. 10\(1\), 11\(2\)](#), [Sch. 1 para.32](#) (with [s. 1\(3\)](#)).
- F47** Words inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 3 para. 53\(c\)](#)
- F48** Words repealed by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 4 Pt V](#)
- F49** [S. 18\(4A\)](#) inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [ss. 77](#)
- F50** Words substituted by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), [s. 67\(2\)](#), [Sch. 2 paras. 3, 5](#), [Sch. 3 para. 15](#)
- F51** Words in [s. 18\(4A\)\(b\)](#) substituted by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), [Sch. 2 paras. 3, 5](#), [Sch. 3 para. 15](#)
- F52** Words in [s. 18\(4A\)\(c\)](#) substituted by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), [Sch. 2 paras 3, 5](#) [Sch. 3 para. 15](#)

### Modifications etc. (not altering text)

- C14** [S. 18](#) applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), [s. 413\(3\)](#) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [s. 59\(3\)](#)
- C15** [S. 18\(3\)](#) restricted by [Child Abduction and Custody Act 1985 \(c. 60, SIF 20\)](#), [Pt. I](#), [ss. 9\(d\), 20\(2\)\(d\)](#), [29\(2\)](#), [Sch. 1 art. 16](#)

### Marginal Citations

- M10** [1978 c. 28](#).

## [<sup>F53</sup>18A Safeguarding of interests of children in proceedings relating to the assumption of parental rights.

- (1) In any proceedings under section 16(8), 16A(3) [<sup>F54</sup>, 17B, 17C] or 18(3) of this Act, the sheriff—
- (a) shall consider whether it is necessary to appoint a person for the purpose of safe-guarding the interests of the child in the proceedings; and
  - (b) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (a) above.
- (2) The power to make rules under section 32 of the <sup>M11</sup>Sheriff Courts (Scotland) Act 1971 shall include power to make rules providing for—
- (a) the procedure in relation to the disposal of matters arising under this section;
  - (b) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.]

### Textual Amendments

- F53** [S. 18A](#) inserted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [ss. 78, 108\(2\)](#)

**Status:** Point in time view as at 01/04/1993. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Social Work (Scotland) Act 1968, Part II is up to date with all changes known to be in force on or before 09 September 2023. 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)

**F54** Words inserted (30.1.1984) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113: 3), s. 7(3)

#### Marginal Citations

**M11** 1971 c. 58.

19 ..... F55

#### Textual Amendments

**F55** S. 19 repealed by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), s. 22, Sch. 3 and expressed to be repealed (1.4.1997) by 1995 c. 36, s. 105(5), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(7)

## 20 **Duty of local authority to further the best interests of a child in their care and to afford opportunity for his proper development.**

[<sup>F56</sup>(1) Where a child is in the care of a local authority under any enactment [<sup>F57</sup>or of a voluntary organisation, they] shall, in reaching any decision relating to the child, give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.]

(2) In providing for a child in their care as aforesaid, [<sup>F58</sup>they] shall make such use of facilities and services available for children in the care of their own parents as appears to the local authority [<sup>F59</sup>or voluntary organisation] reasonable in his case.

(3) Where a local authority [<sup>F60</sup>or voluntary organisation] allow the care of a child to be taken over under [<sup>F61</sup>sections 17(3), 17(3A)] or 18(3) of this Act, their duties in respect of the child under this section shall not be affected by that take-over.

#### Textual Amendments

**F56** S. 20(1) substituted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 79

**F57** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(a)

**F58** Word substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(b)

**F59** Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(b)

**F60** Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(c)

**F61** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), Sch. 2 para. 5(e)

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

**C16** S. 20 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)

*Status: Point in time view as at 01/04/1993. This version of this part contains provisions that are not valid for this point in time.*

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## **[<sup>F62</sup>20A Review of case of child in care.**

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

### **Textual Amendments**

**F62** S. 20A inserted by [Children Act 1975 \(c. 72, SIF 49:1, 10\)](#), **s. 80**

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

**C17** S. 20A applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **s. 413(3)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(3)**

**C18** S. 20A extended by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), **s. 413(6)** as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **s. 59(1)**

## **21 Mode of provision of accommodation and maintenance.**

- (1) Subject to the provisions of this section, a local authority shall discharge their duty to provide accommodation and maintenance for a child in their care—
  - (a) by boarding him out on such terms as to payment by the authority and otherwise as the authority may, subject to the provisions of this Act and regulations thereunder, determine; or
  - (b) by maintaining the child in a residential establishment.
- (2) Nothing in the foregoing subsection shall be construed as preventing a local authority from making use, in the case of any child, of any such facilities and services as are referred to in subsection (2) of [<sup>F63</sup>section 20 of this Act], and for that purpose arranging for his accommodation and maintenance in any suitable manner not specified in the last foregoing subsection.
- (3) Arrangements may be made by a local authority under this section for boarding out a child in England or Wales or for maintaining him in any accommodation in England or Wales which a local authority in those countries is authorised to use for that purpose by virtue of [<sup>F64</sup>section 23 of the Children Act 1989.]

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#### Textual Amendments

- F63** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), ss. 23, 59, [Sch. 2 para. 9](#)
- F64** Words in s. 21(3) substituted (14.10.1991) by virtue of [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para.20](#); S.I. 1991/828, [art. 3\(2\)](#)

## 22 Removal of children in residential establishments.

Notwithstanding any agreement made in connection with the placing of a child in a residential establishment under this Part of this Act by a local authority, the authority may at any time, and shall if required so to do by . . . <sup>F65</sup> the person responsible for the establishment, remove the child from the establishment.

#### Textual Amendments

- F65** Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), [Sch. 29](#)

## 23 Power of local authorities and voluntary organisations to arrange for emigration of children.

- (1) A local authority or a voluntary organisation may, with the consent of the Secretary of State, arrange or assist in arranging the emigration of any child in their care.
- (2) The Secretary of State shall not give his consent under this section unless he is satisfied that emigration would benefit the child, and that suitable arrangements have been or will be made for the child's reception and welfare in the country to which he is going, that the parent of the child has been consulted or that it is not practicable to consult him, and that the child consents:

Provided that where a child is too young to form or express a proper opinion on the matter, the Secretary of State may consent to his emigration notwithstanding that the child is unable to consent thereto in any case where the child is to emigrate in company with a parent [<sup>F66</sup>relative or friend] of his, or is to emigrate for the purpose of joining a parent, relative or friend.

#### Textual Amendments

- F66** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [Sch. 2 para. 6](#)

## 24 Financial assistance towards expenses of maintenance, education or training of persons over school age .

- (1) Without prejudice to the provisions of section 12 of this Act a local authority may make contributions to the cost of the accommodation and maintenance of any person—
  - (a) who is over school age but has not attained the age of twenty-one; and
  - (b) who is, or has at any time after ceasing to be of school age been, in the care of a local authority,

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in any place near the place where he may be employed, or seeking employment, or in receipt of education or training.

- (2) A local authority may make grants to persons who are over school age, but have not attained the age of twenty-one, and who at or after the time when they ceased to be of school age were in the care of a local authority, to enable them to meet expenses connected with their receiving suitable education or training.
- (3) Where a person—
- (a) is engaged in a course of education or training at the time when he attains the age of twenty-one; or
  - (b) having previously been engaged in a course of education or training which has been interrupted by any circumstances, resumes the course as soon as practicable,

then if a local authority are at the said time, or were at the time when the course was interrupted, as the case may be, making any contributions or grants in respect of him under any of the foregoing provisions of this section, their powers under those provisions shall continue with respect to him until the completion of the course.

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

**C19** Ss. 24–26 applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), s. 413(3) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), s. 59(3)

**25 Power of local authority to guarantee indentures and other deeds of apprenticeship etc., of persons in their care.**

While a person is in the care of a local authority by virtue of any enactment, the local authority may undertake any obligation by way of guarantee under any indentures or other deed of apprenticeship or articles of clerkship entered into by that person; and where the local authority have undertaken any such obligation under any such deed or articles they may at any time (whether or not the person concerned is still in their care) undertake the like obligation under any such deed or articles supplemental thereto.

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

**C20** Ss. 24–26 applied by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:2\)](#), s. 413(3) as substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), s. 59(3)

**[<sup>F67</sup>25A Restriction on removal of child from care of voluntary organisation.**

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



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#### Textual Amendments

**F67** S. 25A inserted by Children Act 1975 (c. 72, SIF 49:9, 10), s. 81

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

**C21** Ss. 24–26 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)

## 26 After-care of children formerly in care of local authorities or voluntary organisations.

(1) Where it comes to the knowledge of a local authority that there is in their area any child over school age who at the time when he ceased to be of that age or at any subsequent time was, but is no longer,—

- (a) in the care of a local authority, or
- (b) in the care of a voluntary organisation,

then, unless the authority are satisfied that the welfare of the child does not require it, they shall be under a duty so long as he has not attained the age of eighteen to advise, guide or assist him:

Provided that where in a case falling within paragraph (b) of this subsection the local authority are satisfied that the voluntary organisation have the necessary facilities, the local authority may make arrangements whereby, while the arrangements continue in force, he shall be advised, guided or assisted by the voluntary organisation instead of by the local authority.

(2) Where a child over school age—

- (a) ceases to be in the care of a local authority under section 15 of this Act and proposes to reside in the area of another local authority, or
- (b) ceases to be in the care of a voluntary organisation,

the authority or organisation shall inform the local authority for the area in which the child proposes to reside.

(3) Where it comes to the knowledge of a local authority or a voluntary organisation that a child whom they have been advising, guiding or assisting in pursuance of this section proposes to transfer or has transferred his residence to the area of another local authority, the first-mentioned local authority or, as the case may be, the voluntary organisation shall inform the other local authority.

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

**C22** S. 24-26 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)

*Supervision and care of persons put on probation or released from prisons etc.*

## [<sup>F68</sup>27] Supervision and care of persons put on probation or released from prisons etc.

(1) It shall be a function of every local authority under this Part of this Act to provide a service for the following purposes, that is to say—

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- (a) making available to any court such social background reports and other reports relating to persons appearing before the court which the court may require for the disposal of a case
  - (b) the supervision of, and the provision of advice, guidance and assistance for—
    - (i) persons in their area who are under supervision by order of a court made in exercise of its criminal jurisdiction by virtue of any enactment, and
    - (ii) persons in their area who, following on release from prison or any other form of detention, are required to be under supervision under any enactment or by the terms of an order or licence of the Secretary of State or of a condition or requirement imposed in pursuance of any enactment.
  - <sup>F69</sup>(and) without prejudice to sub-paragraphs (i) and (ii) above, persons in the area who are subject to a community service order under the <sup>M12</sup>Community Service by Offenders (Scotland) Act 1978 or a probation order which includes a requirement that the offender shall perform unpaid work]<sup>F70</sup>; and]
  - <sup>F70</sup>(iv) without prejudice to paragraphs (i) to (iii) above, persons in their area who are subject to supervised attendance orders under section 62 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.]<sup>F71</sup>; and]
  - <sup>F71</sup>(c) the provision of advice, guidance and assistance for persons in their area who, within 12 months of their release from prison or any other form of detention, request such advice, guidance or assistance.]
- (2) For the purposes of the foregoing subsection every local authority shall, after consultation with the sheriffs having jurisdiction in their area, prepare a scheme (hereinafter referred to as a [<sup>F72</sup>probation, community service and supervised attendance scheme]) and submit it by such date, as he may require, to the Secretary of State for his approval.
- (3) A [<sup>F72</sup>probation, community service and supervised attendance scheme] shall make provision with regard to the following matters—
- (a) the manner in which any report requested by the court from the local authority is to be prepared and submitted to the court;
  - <sup>F73</sup>(aa) the matters to be included in such a report;]
  - (b) arrangements for the attendance of officers of the local authority at the court;
  - (c) arrangements for the co-operation of the local authorities with the courts, and such arrangements may include the appointment of one or more sheriffs having jurisdiction in their areas to the social work committee and to any sub-committee thereof;
  - (d) arrangements for the keeping of adequate records and statistics regarding the performance of functions under this section; and
  - (e) such other matters as the local authority considers relevant to the service to be provided.
- (4) The Secretary of State may approve a [<sup>F72</sup>probation, community service and supervised attendance scheme] with or without modifications.
- (5) A local authority may apply to the Secretary of State for the revision of a [<sup>F72</sup>probation, community service and supervised attendance scheme] and, if the Secretary of State so

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requires, shall prepare and submit to the Secretary of State for his approval a revised scheme or a modification of an existing scheme.

- (6) Any function required by any enactment to be performed by a probation officer shall, after the coming into operation of this Part of this Act, be performed by an officer of the appropriate local authority.
- (7) Section 11 of and Schedule 3 to the <sup>M13</sup>Criminal Justice (Scotland) Act 1949 (administrative provisions as to probation) shall cease to have effect.]

#### Textual Amendments

- F68** Word and s. 27(1)(b)(iii) added by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [Sch. 2 para. 1\(a\)](#)
- F69** Word and s. 27(1)(b)(iii) added by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [Sch. 2 para. 1\(a\)](#)
- F70** S. 27(1)(b)(iv) and the word “; and” immediately preceding it inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), s. 62(5), [Sch. 6 para. 8\(a\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F71** S. 27(1)(c) and the word “; and” immediately preceding it added (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), s. 61(4)(a); S.I. 1991/850, [art. 3](#), Schedule
- F72** Words in s. 27(4) substituted (1.4.1991) by virtue of [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), s. 62(5), [Sch. 6 para. 8\(b\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F73** S. 27(3)(aa) inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), s. 61(4)(b); S.I. 1991/850, [art. 3](#), Schedule

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

- C23** The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 60, 68, 73, Sch. 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

- M12** 1978 c. 49.  
**M13** 1949 c. 94.

### [<sup>F74</sup>27A Grants in respect of community service facilities

[ The Secretary of State may make to a local authority grants of such amount and subject <sup>F75</sup>(1)] to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in providing a service

[ for the purposes mentioned in section 27(1) of this Act; and <sup>F76</sup>(a)

(b) for such other similar purposes as the Secretary of State may prescribe.

(2) Before exercising his power under subsection (1)(b) above the Secretary of State shall consult local authorities and such other bodies as he considers appropriate.]]

**Status:** Point in time view as at 01/04/1993. This version of this part contains provisions that are not valid for this point in time.

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#### Textual Amendments

- F74** S. 27A inserted by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\), s. 9](#)
- F75** In s. 27A “(1)” inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\), s. 61\(5\)\(a\); S.I. 1991/850, art. 3, Schedule](#)
- F76** S. 27A(1)(a)(b)(2) substituted (1.4.1991) for words by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\), s. 61\(5\)\(b\); S.I. 1991/850, art. 3, Schedule](#)

### [<sup>F77</sup> 27B Grants in respect of hostel accommodation for persons under supervision.

[ The Secretary of State may make to a local authority grants of such amount and subject <sup>F78</sup>(1)] to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority under this Act in—

- (a) providing; or
- (b) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of,

residential accommodation wholly or mainly for the persons mentioned in [<sup>F79</sup>subsection (2) below.

(2) The persons referred to in subsection (1) above are—

- (a) persons mentioned in section 27(1)(b)(i) and (ii) of this Act;
- (b) persons who have been charged with an offence and are on bail;
- (c) persons who have been released from prison or any other form of detention but do not fall within section 27(1)(b)(ii) of this Act; and
- (d) such other classes of persons as the Secretary of State may prescribe.

(3) Before exercising his power under subsection (2)(d) above the Secretary of State shall consult local authorities and such other persons as he considers appropriate.]]

#### Textual Amendments

- F77** S. 27B inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 79](#)
- F78** In s. 27B “(1)” inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\), s. 61\(6\)\(a\); S.I. 1991/850, art. 3, Schedule](#)
- F79** S. 27B(2)(3) and the words “subsection (2) below.” preceding them substituted (1.4.1991) for words by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\), s. 61\(6\)\(b\); S.I. 1991/850, art. 3, Schedule](#)

### *Ancillary*

## 28 Burial or cremation of the dead.

(1) A local authority may cause to be buried or cremated the body of any deceased person who immediately before his death was in the care of, or receiving assistance from, the authority:

Provided that the authority shall not cause the body to be cremated where cremation is not in accordance with the practice of the person’s religious persuasion.

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- (2) An authority may recover from the estate of the deceased person or from any person who was liable to maintain the deceased person immediately before his death expenses incurred under subsection (1) of this section . . . <sup>F80</sup>

**Textual Amendments**

**F80** Words repealed by Social Security Act 1986 (c. 50, SIF 113:1), ss. 86, 88, Sch. 11

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

**C24** S. 28 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)

**29 Power of local authority to defray expenses of parent, etc., visiting persons or attending funerals.**

- (1) A local authority may make payments to any parent, relative or other person connected with a person in their care, or receiving assistance from them, in respect of travelling, subsistence or other expenses incurred by the parent, relative or other person in visiting the person, if it appears to the authority that the parent, relative or other person would not otherwise be able to visit the person without undue hardship and that the circumstances warrant the making of the payments.
- (2) A local authority may make the like payments and in the like circumstances to any parent, relative or other person connected with a person who was in their care, or was receiving assistance from them, for the purpose of that parent, relative or other person attending the funeral of the person.

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

**C25** S. 29 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)

**Status:**

Point in time view as at 01/04/1993. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Social Work (Scotland) Act 1968, Part II is up to date with all changes known to be in force on or before 09 September 2023. 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.