



# Foster Children (Scotland) Act 1984

## 1984 CHAPTER 56

An Act to consolidate certain enactments relating to foster children as they have effect in Scotland [31st October 1984]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1** A Table showing the derivation of the provisions of this consolidation Act will be found at the end of the Act. The Table has no official status.
- C2** Act restricted (12.12.1996 for specified purposes and otherwise 1.4.1997) by 1995 c. 36, s. 38(6) (with ss. 90, 103(1)); S.I. 1996/3201, art. 3(1) (as amended by S.I. 1997/744, arts. 2, 3)

### Commencement Information

- I1** Act wholly in force at 31.1.1985 see s. 23(2)

### *Foster children for the purposes of the Act*

## 1 Foster children.

Subject to section 2, a child is a foster child for the purposes of this Act if

[<sup>F1</sup>(a)] below the upper limit of the compulsory school age, and

(b) his care is undertaken <sup>F2</sup> . . . by a person who is not a relative or guardian of his.

<sup>F2</sup> . . . .

### Textual Amendments

- F1** Words in s. 1 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(4)(6), Sch. 12 para. 41(a), Sch. 14 para. 1(1); S.I.1991/828, art. 3(2)

**Changes to legislation:** Foster Children (Scotland) Act 1984 is up to date with all changes known to be in force on or before 03 May 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) View outstanding changes

**F2** Words in s. 1 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(4)(6)(7), Sch. 12 para. 41(b), Sch. 14 para. 27(4), **Sch. 15**; S.I. 1991/828, **art. 3(2)**

## 2 Exceptions to section 1.

- (1) A child is not a foster child while he is [<sup>F3</sup>being looked after by a local authority] or is boarded out by an education authority.
- (2) A child is not a foster child while he is in the care of any person—
- in premises in which any parent, adult relative or guardian of his is for the time being residing;
  - in any residential establishment;
  - in any school within the meaning of the <sup>M1</sup>Education (Scotland) Act 1980;
  - in any hospital or in any [<sup>F4</sup>accommodation provided by a care home service registered under [<sup>F5</sup>Part 5 of the Public Services Reform (Scotland) Act 2010]]; or
  - in any home or institution not specified in this section but maintained by a public or local authority; or
  - <sup>F6</sup> if he has been in that person's care for a period of less than 28 days and that person does not intend to undertake his care for any longer period.]
- (3) A child is not a foster child while he is in the care of any person in compliance with a supervision order within the meaning of the <sup>M2</sup>Children and Young Persons Act 1969 or a supervision requirement <sup>F7</sup> . . . or a [<sup>F8</sup>community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46) ].
- (4) A child is not a foster child while he is liable to be detained [<sup>F9</sup>under the Mental Health (Care and Treatment) (Scotland) Act 2003.]
- (5) A child is not a foster child—
- while he is placed in the care <sup>F10</sup> . . . of a person who proposes to adopt him under arrangements made by an adoption agency within the meaning of section 1 of the <sup>M3</sup>Adoption Act 1976 or [<sup>F11</sup>section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4) ]<sup>F12</sup> . . .
  - <sup>F12</sup> . . . . .
- [<sup>F13</sup>(6) The reference in subsection (1) above to a child being looked after by a local authority shall be construed as if it were a reference to which section 17(6) of the Children (Scotland) Act 1995 applies.]

### Textual Amendments

- F3** Words in s. 2(1) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 35(2)(a)**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F4** Words in s. 2(2)(d) substituted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 12(2)**; S.S.I. 2002/162 arts. 2(f)(h) (subject to arts. 3-13)
- F5** Words in s. 2(2)(d) substituted (1.4.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211), art. 1, **Sch. 1 para. 5(a)**
- F6** S. 2(2)(f) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(4)(6), Sch. 12 para. 42, **Sch. 14 para. 1(1)**; S.I. 1991/828, **art. 3(2)**
- F7** Words in s. 2(3) repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 35(2)(b), **Sch. 5**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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- F8** Words in s. 2(3) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **Sch. 2 para. 36**; S.S.I. 2010/413, art. 2, Sch. (with art. 3(1))
- F9** Words in s. 2(4) substituted (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **Sch. 1 para. 16(2)**
- F10** Words in s. 2(5)(a) repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- F11** Words in s. 2(5)(a) substituted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **Sch. 2 para. 3**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- F12** S. 2(5)(b) and words immediately preceding it repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 35(2)(c), **Sch. 5**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F13** S. 2(6) added (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 35(2)(d)**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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

- C3** S. 2(5)(a) modified (1.11.1994) by S.I. 1994/2804, reg. 3, **Sch. 2 para. 3**
- C4** S. 2(5)(a) modified (6.4.2010) by The Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (S.I. 2010/985), regs. 1(1), 5, **Schs. 4**
- C5** S. 2(5)(a) modified (21.12.2018) by The Human Fertilisation and Embryology (Parental Orders) Regulations 2018 (S.I. 2018/1412), reg. 1(2), **Sch. 4 para. 12**

#### Marginal Citations

- M1** 1980 c. 44.
- M2** 1969 c. 54.
- M3** 1976 c. 36.

### *Duties of local authorities*

## **3 Local authorities to ensure well being of and to visit foster children.**

- (1) It shall be the duty of every local authority to secure the welfare of children within their area who are foster children.
- (2) Every local authority shall cause such children to be visited by officers of the authority in accordance with regulations made under subsection (3), who shall give such advice as to the care and maintenance of the children as may appear to be necessary.
- (3) The Secretary of State may make regulations requiring foster children in a local authority's area to be visited by an officer of the local authority on specified occasions or within specified periods of time.
- (4) Subsections (1) and (2) are without prejudice to the provisions of [F<sup>14</sup>Part II of the Children (Scotland) Act 1995].

#### Textual Amendments

- F14** Words in s. 3(4) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 35(3)**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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### *Notification of fostering to local authorities*

#### **4 Notification by parents.**

- (1) The Secretary of State may by regulations make provision for requiring parents whose children are, or are going to be, maintained as foster children to give to the local authority for the area where the children are, or are going to be, living as foster children, such information about the fostering as may be specified in the regulations.
- (2) Regulations under this section may include such incidental and supplementary provisions as the Secretary of State thinks fit.

#### **5 Notification by persons maintaining or proposing to maintain foster children.**

- (1) A person who proposes to maintain as a foster child a child not already in his care shall give written notice thereof to the local authority in whose area the premises in which the child is to be kept are situated, not less than two weeks before he receives the child, unless he receives him in an emergency.
- (2) A person who maintains a foster child—
  - (a) whom he received in an emergency, or
  - (b) who became a foster child while in his care,
 shall give written notice thereof to the local authority in whose area the premises in which the child is being kept are situated not later than one week after he receives the child or, as the case may be, after the child becomes a foster child.
- (3) A notice under subsection (1) or (2) shall specify the premises in which the child is to be or is being kept.
- (4) Where a person who is maintaining a foster child changes his permanent address or the premises in which the child is kept, he shall give written notice to the local authority—
  - (a) not less than two weeks before the change or
  - (b) if the change is made in an emergency, not later than one week after the change,
 specifying the new address or premises; and if the new premises are in the area of another local authority, or of a local authority in England or Wales, the authority to whom the notice is given shall inform that other authority and give them such of the particulars mentioned in subsection (5) as are known to them.
- (5) At the request of the local authority, a person maintaining or proposing to maintain a foster child shall give them, so far as known to him, the following particulars—
  - (a) the name, sex and date and place of birth of the child; and
  - (b) the name and address of every person who is a parent or guardian or acts as a guardian of the child or from whom the child was or is to be received.
- (6) A person maintaining or proposing to maintain a foster child need not give a notice under subsection (1) or (2) if the child has within the last 3 months been maintained by him as a foster child but ceased to be a foster child while in his care or on removal from his care.
- (7) A local authority may exempt any person from the duty of giving notices under this section, and any such exemption may be granted as regards all or any such notices

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for a specified period, and may be revoked at any time by notice in writing served on that person.

## 6 Notification by persons ceasing to maintain foster children

- (1) If a foster child dies, the person who was maintaining him shall give, not later than 48 hours after the death, written notice of the death to the local authority and to the person from whom the child was received.
- (2) Where a foster child is removed or removes himself from the care of the person maintaining him, that person shall give, not later than 48 hours after the removal, the local authority and the person from whom the child was received the name and address, if known, of the person (if any) into whose care the child has been removed.
- (3) Where a foster child ceases to be a foster child on his removal from the care of the person maintaining him that person need not give notice under subsection (2) but shall at the request of the local authority give them the same particulars as would have been required to be stated in the notice.
- (4) A local authority may exempt from the duty of giving notices under this section, and any such exemption may be granted as regards all or any such notices for a specified period, and may be revoked at any time by notice in writing served on that person.

### *Disqualification for fostering*

## 7 Persons disqualified from keeping foster children.

- (1) A person shall not maintain a foster child if—
  - (a) an order removing a child from his care has been made against him under this Act or any Act repealed by this Act or under section 12 of the <sup>M4</sup>Foster Children Act 1980;
  - (b) an order has been made under the <sup>M5</sup>Children and Young Persons Act 1933, the <sup>M6</sup>Children and Young Persons Act 1969, or the <sup>M7</sup>Children and Young Persons (Scotland) Act 1937, or a supervision requirement has been made under the <sup>M8</sup>Social Work (Scotland) Act 1968 [<sup>F15</sup>or under section 70 of the Children (Scotland) Act 1995] and by virtue of the order or requirement a child was removed from his care;
  - <sup>F16</sup>(ba) by virtue of a compulsory supervision order or an interim compulsory supervision order, a child was removed from the person's care;]
  - (c) he has been convicted of any offence specified in Schedule 1 to the said Act of 1933 or Schedule 1 to the [<sup>F17</sup>Criminal Procedure (Scotland) Act 1995], or has been placed on probation or discharged absolutely or conditionally for any such offence;
  - <sup>F18</sup>(ca) the person has been convicted of a relevant offence;]
  - (d) his rights and powers with respect to a child have been vested in a local authority under section 2 of the <sup>M9</sup>Children Act <sup>M10</sup>1948 or under section 16 of the Social Work (Scotland) Act 1968 or in a local authority in England or Wales under the said section 2 or section 3 of the <sup>M11</sup>Child Care Act 1980;
  - <sup>F19</sup>(dd) his parental rights and parental responsibilities (within the meaning of the Children (Scotland) Act 1995) have been transferred, by an order under section 86(1) of that Act, to a local authority;]
  - <sup>F20</sup>(e) .....

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- (f) an order has been made under section 43 of the <sup>M12</sup>Adoption Act <sup>M13</sup>1958, section 34 of the Adoption Act 1976 or section 34 of the <sup>M14</sup>Adoption (Scotland) Act 1978 for the removal of a protected child who was being kept or was about to be received by him, <sup>F21</sup> ...
- (g) he is disqualified from fostering a child privately (within the meaning of the Children Act 1989) by regulations made under section 68 of that Act,
- (h) [<sup>F22</sup> all his parental responsibilities and parental rights have been extinguished by a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4)]

unless he has disclosed that fact to the local authority and obtained their written consent.

- (2) Where subsection (1) applies to any person, otherwise than by virtue of this subsection, it shall apply also to any other person who lives in the same premises as he does or who lives in premises at which he is employed.

[<sup>F23</sup>(3) A person who lives in the same premises as a barred person shall not maintain a foster child.

- (4) In subsection (3) (and in section 15(2A)), “barred person” means a person who is barred from regulated work with children (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)). ]

[<sup>F24</sup>(5) In this section, “compulsory supervision order” and “interim compulsory supervision order” have the meanings given by sections 83 and 86 of the Children’s Hearings (Scotland) Act 2011 (asp 1) . ]

[<sup>F25</sup>(6) In this section, “relevant offence” means any of the following offences when committed against, or in relation to, a child—

- (a) an offence under section 136, 140 or 144 of the Health and Care Act 2022 (virginity testing),
- (b) an offence under section 137, 141 or 145 of that Act (offering to carry out virginity testing),
- (c) an offence under section 138, 142 or 146 of that Act (aiding or abetting etc a person to carry out virginity testing),
- (d) an offence under section 148, 152 or 156 of that Act (carrying out hymenoplasty),
- (e) an offence under section 149, 153 or 157 of that Act (offering to carry out hymenoplasty), and
- (f) an offence under section 150, 154 or 158 of that Act (aiding or abetting etc a person to carry out hymenoplasty).]

#### Textual Amendments

**F15** Words in s. 7(1)(b) inserted (1.4.1997) by 1995 c. 36 , s. 105(4) , **Sch. 4 para. 35(4)(a)** ; S.I. 1996/3201 , **art. 3(7)** (as amended by S.I. 1997/744 , **arts. 2 , 3** )

**F16** Words in s. 7(1)(ba) inserted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 5(2)(a)**

**F17** Words in s. 7(1)(c) substituted (1.4.1996) by 1995 c. 40 , ss. 5 , 7(2) , **Sch. 4 para. 53(1)(2)**

**F18** S. 7(1)(ca) inserted (18.11.2022) by The Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022 (S.I. 2022/1200), regs. 1(1), **3(a)**

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- F19** S. 7(1)(dd) inserted (1.4.1997) by 1995 c. 36 , s. 105(4) , **Sch. 4 para. 35(4)(b)** ; S.I. 1996/3201 , **art. 3(7)** (as amended by S.I. 1997/744 , **arts. 2 , 3** )
- F20** S. 7(1)(e) repealed (1.4.2002) by 2001 asp 8 , s. 80(1) , **Sch. 4** ; S.S.I. 2002/162 art. 2(g)(i) (subject to arts 3-13)
- F21** Word in s. 7(1) repealed (27.1.2010) by Adoption and Children (Scotland) Act 2007 (Modification of Enactments) Order 2010 (S.S.I. 2010/21) , art. 1 , **Sch. para. 3(a)**
- F22** S. 7(1)(h) added (27.1.2010) by Adoption and Children (Scotland) Act 2007 (Modification of Enactments) Order 2010 (S.S.I. 2010/21) , art. 1 , **Sch. para. 3(b)**
- F23** S. 7(3)(4) inserted (28.2.2011) by Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) , s. 101(2) , **Sch. 4 para. 10** (with ss. 90, 99); S.S.I. 2011/157, art. 2(a)
- F24** S. 7(5) inserted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211) , art. 1 , **Sch. 1 para. 5(2)(b)**
- F25** S. 7(6) inserted (18.11.2022) by The Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022 (S.I. 2022/1200) , regs. 1(1) , **3(b)**

#### Marginal Citations

- M4** 1980 c. 6 .  
**M5** 1933 c. 12 .  
**M6** 1969 c. 54 .  
**M7** 1937 c. 37 .  
**M8** 1968 c. 49 .  
**M9** 1948 c. 43 .  
**M10** 1968 c. 49 .  
**M11** 1980 c. 5 .  
**M12** 1958 c. 5 .  
**M13** 1976 c. 36 .  
**M14** 1978 c. 28 .

### *Control by local authorities of fostering*

#### **8 Power to inspect premises.**

Any officer of a local authority authorised to visit foster children may, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, inspect any premises in the area of the authority in which foster children are to be or are being kept.

#### **9 Power to impose requirements as to the keeping of foster children.**

- (1) Where a person is keeping or proposes to keep foster children in premises used (while foster children are kept in them) wholly or mainly for that purpose, the local authority may impose on him requirements as to—
- the number, age and sex of the foster children who may be kept at any one time in the premises or any part of them;
  - the accommodation and equipment to be provided for the children;
  - the medical arrangements to be made for protecting the health of the children;
  - the giving of particulars of the person for the time being in charge of the children;
  - the number, qualifications or experience of the persons employed in looking after the children;

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- (f) the keeping of records.
- (2) A requirement imposed under paragraphs (b) to (f) of subsection (1) may be limited by the authority so as to apply only when the number of foster children kept in the premises exceeds a specified number.
- (3) A person shall, after such time as the local authority may specify, comply with any requirement imposed on him under this section whenever a foster child is kept in the premises in question.
- (4) A requirement imposed under this section shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of his right under section 11(1) to appeal against the requirement and of the time within which he may do so.

## **10 Power to prohibit the keeping of foster children.**

- (1) Where a person proposes to keep a foster child in any premises and the local authority are of opinion that it would be detrimental to that child to be kept by him in those premises, the local authority may prohibit him from doing so; and if the premises are not for the time being used by him for the keeping of any foster child and the local authority are of opinion that it would be detrimental to any foster child to be kept by him in those premises, the local authority may prohibit his use of the premises or the keeping of any foster child.
- (2) Where a local authority impose a requirement on any person under section 9 as respects any premises, they may prohibit him from keeping foster children in the premises after the time specified for compliance with the requirement unless the requirement is complied with.
- (3) A prohibition imposed under this section shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of his right under section 11(1) to appeal against the prohibition and of the time within which he may do so.

### *Proceedings*

## **11 Appeal to sheriff against requirement or prohibition imposed under section 9 or 10.**

- (1) A person aggrieved by a requirement imposed under section 9, or by a prohibition imposed under section 10, may appeal to the sheriff within 14 days from the date on which he is notified of the requirement or prohibition; and where the appeal is against a requirement imposed under section 9, the requirement shall not have effect while the appeal is pending.
- (2) Where the sheriff allows an appeal under subsection (1), the sheriff, instead of cancelling the requirement or prohibition—
  - (a) may vary the requirement or allow more time for compliance with it; or
  - (b) if an absolute prohibition has been imposed, may substitute for it a prohibition on using the premises after such time as the sheriff may specify unless such specified requirements as the local authority had power to impose under section 9 are complied with.



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- (3) Any requirement or prohibition specified or substituted under this section by the sheriff shall be deemed for the purposes of this Act, other than this section, to have been imposed by the local authority under section 9 or, as the case may be, section 10.

## 12 Removal of foster children kept in unsuitable surroundings.

- (1) If the sheriff is satisfied, on a complaint of a local authority, that a foster child is being kept or is about to be received—
- (a) by any person who is unfit to have his care, or
  - (b) in contravention of section 7 or of any prohibition imposed by a local authority under section 10, or
  - (c) in any premises or environment detrimental or likely to be detrimental to him,
- the sheriff may make an order for his removal to a place of safety until he can be restored to a parent, relative or guardian of his or until other arrangements can be made with respect to him.
- (2) On proof that there is imminent danger to the health or well-being of the child, the power to make an order under this section may be exercised by a justice of the peace acting on the application of a person authorised to visit foster children.
- (3) An order under this section made on the ground that a prohibition of a local authority under section 10 has been contravened may require the removal from the premises of all the foster children kept there.
- (4) An order under this section may be executed by any person authorised to visit foster children or by any constable.
- [<sup>F26</sup>(5) For the purposes of section 25 of the Children (Scotland) Act 1995 (and for the reason mentioned in subsection (1)(c) of that section) a child removed under this section shall be regarded as requiring accommodation.]
- (6) Where a child is removed under this section, the local authority shall, if practicable, inform a parent or guardian of the child, or any person who acts as guardian.

### Textual Amendments

**F26** S. 12(5) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 35(5)**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

## 13 Search warrants.

A refusal to allow the visiting of a foster child or the inspection of any premises by a person authorised to do so under under this Act shall be treated, for the purposes of [<sup>F27</sup>[<sup>F28</sup>36 of the Children's Hearings (Scotland) Act 2011 (**asp 1**)](child assessment orders) as giving the local authority reasonable cause for the suspicion mentioned in subsection [<sup>F29</sup>(2)(a)] of that section.]

### Textual Amendments

**F27** Words in s. 13 substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 35(6)**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**) (which substitution fell (1.8.1997) by 1997 c. 48,

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- s. 62(1)(2), Sch. 1 para. 19(3)(d), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.**) and those words substituted (1.8.1997) by virtue of 1997 c. 48, s. 62(1), **Sch. 1 para. 11**; S.I. 1997/1712, art. 3, **Sch.**
- F28** Words in s. 13 substituted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 5(3)(a)**
- F29** Words in s. 13 substituted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 5(3)(b)**

### *Advertisements*

#### **14 Prohibition of advertisements relating to the fostering of children.**

- (1) No advertisement indicating that a person will undertake, or will arrange for, the care and maintenance of a child shall be published, unless it truly states that person's name and address.
- (2) The Secretary of State may by regulations prohibit the parent or guardian of any child from publishing or causing to be published any advertisement indicating that foster parents are sought for the child.
- (3) The Secretary of State may by regulations prohibit—
  - (a) a member of a class of persons specified in the regulations, or
  - (b) a person other than a person specified in the regulations, or other than a member of a class of persons so specified,
 from publishing or causing to be published any advertisement indicating that he is willing to undertake, or to arrange for, the care and maintenance of a child.
- (4) Regulations made under this section—
  - (a) may make different provision for different cases or classes of cases, and
  - (b) may exclude certain cases or classes of cases.

### *Offences*

#### **15 Offences relating to foster children.**

- (1) A person shall be guilty of an offence if—
  - (a) being required under any provision of this Act or of regulations made under section 4, to give any notice or information, he—
    - (i) fails to give the notice within the time specified in that provision, or
    - (ii) fails to give the information within a reasonable time, or
    - (iii) knowingly makes, or causes or procures another person to make, any false or misleading statement in the notice or information;
  - (b) he refuses to allow—
    - (i) the visiting of any foster child by a duly authorised officer of a local authority, or
    - (ii) the inspection under section 8 of any premises;
  - (c) he maintains a foster child in contravention of section 7;
  - (d) he fails to comply with any requirement imposed by a local authority under this Act or keeps any foster child in any premises in contravention of a prohibition so imposed;

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- (e) he refuses to comply with an order under this Act for the removal of any child or obstructs any person in the execution of such an order; or
  - (f) he causes to be published or knowingly publishes an advertisement in contravention of section 14 or of regulations made under that section.
- (2) Where subsection (1) of section 7 applies to any person by virtue only of subsection (2) of that section he shall not be guilty of an offence under subsection (1)(c) above if he proves that he did not know, and had no reasonable ground for believing, that a person living or employed in the premises in which he lives was a person to whom subsection (1) of that section applies.
- [<sup>F30</sup>(2A) A person shall not be guilty of an offence under subsection (1)(c) above in relation to a contravention of section 7(3) if the person proves that he did not know, and had no reasonable ground for believing, that any other person living in the premises in which the person lives was a barred person.]
- (3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.

#### Textual Amendments

**F30** S. 15(2A) inserted (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [Sch. 4 para. 11](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a)

#### *Extension of provisions of the Act to other children*

### **16 Extension of Act to certain school children during holidays.**

- (1) Where a child below the upper limit of the compulsory school age resides during school holidays in a school to which this section applies, then, if he so resides for a period exceeding one month, the provisions of this Act shall apply in relation to him as if section 2(2)(c) were omitted, but subject to the modifications specified in subsection (2).
- (2) Where this Act applies to a child by virtue of subsection (1)—
- (a) subsections (1) to (4) of section 5, sections 6, 9 and 10 and section 17 shall not apply ; but
  - (b) the person undertaking the care and maintenance of children in the school during the school holidays shall, not less than 2 weeks before this Act first applies to a child in that school during those holidays, give written notice to the local authority that children to whom this Act applies will reside in the school during those holidays, and any such notice shall state the estimated number of the children.
- (3) A local authority may exempt any person from the duty of giving notice under this section; and any such exemption may be granted for a specified period or indefinitely, and may be revoked at any time by notice in writing given to that person.
- (4) This section applies to any school within the meaning of the <sup>M15</sup>Education (Scotland) Act 1980 which is not a school maintained by an education authority.

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#### Marginal Citations

M15 1980 c. 44.

### 17 Extension of Act to certain children above compulsory school age.

Where a child is a foster child on attaining the upper limit of the compulsory school age, this Act shall apply in relation to him as it applies in relation to a foster child, until

- (a) he would, apart from that limit have ceased to be a foster child, or
- (b) he reaches the age of 18, or
- (c) he lives elsewhere than with the person with whom he was living when he attained the said limit,

whichever first occurs.

*Miscellaneous and supplementary*

### 18 Avoidance of insurances on lives of foster children.

A person who maintains a foster child for reward shall be deemed for the purposes of the <sup>M16</sup>Life Assurance Act 1774 to have no interest in the life of the child.

#### Marginal Citations

M16 1774 c. 48.

### 19 Service of notices by post.

Any notice or information required to be given under this Act may be given by post.

### 20 Regulations

Any power to make regulations conferred on the Secretary of State by this Act shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 21 Interpretation.

(1) In this Act—

[<sup>F31</sup> “ barred person ” has the meaning given by section 7(4); ]

[<sup>F32</sup> “ care home service ” has the meaning given by [<sup>F33</sup> paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010]; ]

“child” means a person under the age of 18;

“compulsory school age” means school age within the meaning of the <sup>M17</sup>Education (Scotland) Act 1980;

“local authority” means [<sup>F34</sup> a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];

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“local authority in England or Wales” means the Council of a non-metropolitan county, metropolitan district or London borough, or the Common Council of the City of London;

“place of safety” [<sup>F35</sup>has the meaning given by section [<sup>F36</sup>202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1)]];

“relative” in relation to a child, means a grandparent, brother, sister, uncle or aunt whether of the full blood or half blood or by affinity <sup>F37</sup> ...;

“residential establishment” means

[<sup>F38</sup>(a)]an establishment managed by a local authority, voluntary organisation or any other person which provides residential accommodation for the purposes of the <sup>M18</sup>Social Work (Scotland) Act 1968 [<sup>F39</sup>or of Part II of the Children (Scotland) Act 1995] whether for reward or not [<sup>F40</sup>; or

(b) a residential establishment as defined in section 202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1)];

<sup>F41</sup>[ “supervision requirement” has the meaning given by section 70(1) of the Children (Scotland) Act 1995; ]

- (a) to submit to supervision in accordance with such conditions as they may impose; or
- (b) to reside in a residential establishment named in the requirement and be subject to such conditions as they may impose;

“voluntary organisation” means a body the activities of which are carried on otherwise than for profit.

(2) In this Act, except insofar as the context otherwise requires,—

- (a) any reference to a numbered section or Schedule is a reference to the section of, or the Schedule to, this Act so numbered;
- (b) a reference in a section to a numbered subsection is a reference to the subsections of that section so numbered;
- (c) a reference in a section, subsection or Schedule to a numbered or lettered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered or lettered.

#### Textual Amendments

- F31** Words in s. 21 inserted (28.2.2011) by Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), s. 101(2), **Sch. 4 para. 12** (with ss. 90, 99); S.S.I. 2011/157, art. 2(a)
- F32** Definition of “care home service” in s. 21(1) inserted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 12(3)(a)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F33** Words in s. 21(1) substituted (1.4.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211), art. 1, **Sch. 1 para. 5(b)**
- F34** S. 21(1): words in definition of “local authority” substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 136**; S.I. 1996/323, **art. 4(1)(e)**
- F35** Words in the definition of “place of safety” in s. 21(1) substituted (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 12(3)(b)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F36** Words in s. 21(1) substituted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 5(4)(a)**
- F37** Words in s. 21(1) repealed (30.6.2006) by Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 (S.S.I. 2006/384), arts. 1, 7

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- F38** Words in s. 21(1) inserted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 5(4)(b)(i)**
- F39** S. 21(1): words in definition of "residential establishment" inserted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 35(7)(a)**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F40** Words in s. 21(1) inserted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 5(4)(b)(ii)**
- F41** s. 21(1): definition of "supervision requirement" substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 35(7)(b)**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

#### Marginal Citations

- M17** 1980 c. 44.  
**M18** 1968 c. 49.

## 22 Transitional provisions, consequential amendments and repeals.

- (1) This Act shall have effect subject to the transitional provisions set out in Schedule 1 to this Act.
- (2) The enactments mentioned in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act.
- (3) The enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The inclusion in this Act of any express saving or amendment shall not be taken as prejudicing the operation of section 16 or 17 of the <sup>M19</sup>Interpretation Act 1978 (which relate to the effect of repeals).

#### Marginal Citations

- M19** 1978 c. 70.

## 23 Citation

- (1) This Act may be cited as the Foster Children (Scotland) Act 1984.
- (2) This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.
- (3) This Act (except paragraph 8 of Schedule 2) extends to Scotland only.

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## SCHEDULES

### SCHEDULE 1

Section 22.

#### TRANSITIONAL PROVISIONS

##### *General*

- 1 Insofar as—
- (a) any requirement, prohibition, determination, order or regulation made by virtue of an enactment repealed by this Act, or
  - (b) any direction or notice given by virtue of such an enactment, or
  - (c) any proceedings begun by virtue of such an enactment, or
  - (d) anything done or having effect as if done,
- could, if a corresponding enactment in this Act were in force at the relevant time, have been made, given, begun or done by virtue of the corresponding enactment, it shall, if effective immediately before the corresponding enactment comes into force, continue to have effect thereafter as if made, given, begun or done by virtue of that corresponding enactment.
- 2 Where any enactment passed before this Act, or any instrument or document refers either expressly or by implication to an enactment repealed by this Act, the reference shall (subject to its context) be construed as or as including a reference to the corresponding provision of this Act.
- 3 Where any period of time specified in any enactment repealed by this Act is current at the commencement of this Act, this Act has effect as if its corresponding provision had been in force when that period began to run.

##### *Visits by local authority officers under section 3(2)*

- 4 Until such time as the Secretary of State may by order made by statutory instrument appoint, subsection (2) of section 3 shall have effect with the substitution for the words “in accordance with regulations made under subsection (3)” of the words “from time to time where the local authority considers such a course to be necessary or expedient for the purposes of subsection (1)”

##### *Notification under section 5*

- 5 (1) In this paragraph “the relevant date” means the date on which regulations made under section 3(3) come into force.
- (2) Every person who is maintaining a foster child within the area of a local authority on the relevant date and who before that date has not given notice in respect of the child to the local authority under subsection (1) or (2) of section 5 shall within 8 weeks of that date give written notice to the local authority that he is maintaining the child.

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*Children above compulsory school age*

- 6 Where immediately before the commencement of this Act Part I of the Children Act 1958 applied in relation to a child by virtue only of section 13 of that Act, this Act shall apply in relation to him as it applies in relation to a foster child, until—
  - (a) he would, apart from the upper limit of the compulsory school age, have ceased to be a foster child, or
  - (b) he reaches the age of 18, or
  - (c) he lives elsewhere than with the person with whom he was living when he reached the said limit,
 whichever first occurs.

*References to provisions of Adoption (Scotland) Act 1978*

F42<sup>7</sup> .....

**Textual Amendments**  
 F42 Sch. 1 para. 7 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.VIII.

*Reference to Mental Health (Scotland) Act 1984*

F43<sup>8</sup> .....

**Textual Amendments**  
 F43 Sch. 1 para. 8 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.VIII.

SCHEDULE 2

*Consequential Amendments*

F44 . . .

**Textual Amendments**  
 F44 Sch. 2 paras. 1–3, 8 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(6)(7), Sch. 14 para. 27(4), Sch. 15 ; S.I. 1991/828, art. 3(2)

F45<sup>1</sup> .....

**Textual Amendments**  
 F45 Sch. 2 paras. 1-3, 8 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(6)(7), Sch. 14 para. 27(4), Sch.15; S.I. 1991/828, art. 3(2)



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F46<sup>2</sup> .....

**Textual Amendments**

**F46** Sch. 2 paras. 1-3, 8 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(6)(7), Sch. 14 para. 27(4), **Sch. 15**; S.I. 1991/828, **art. 3(2)**

*Health Services and Public Health Act 1968 (c. 46)*

F47<sup>3</sup> .....

**Textual Amendments**

**F47** Sch. 2 paras. 1-3, 8 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(6)(7), Sch. 14 para. 27(4), **Sch. 15**; S.I. 1991/828, **art. 3(2)**

*Social Work (Scotland) Act 1968 (c. 49)*

4 In section 2(2)(d) (the social work committee), for “Part 1 of the Children Act 1958” substitute “ the Foster Children (Scotland) Act 1984 ”.

F48<sup>5</sup> .....

**Textual Amendments**

**F48** Sch. 2 para. 5 repealed (23.2.2006) by Joint Inspection of Childrens Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3), **ss. 8(4)(d)**, 10(2)

*Adoption (Scotland) Act 1978 (c. 28)*

F49<sup>6</sup> .....

**Textual Amendments**

**F49** Sch. 2 para. 6 repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

F50<sup>7</sup> .....

**Textual Amendments**

**F50** Sch. 2 para. 7 repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

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F51 . . .

#### Textual Amendments

**F51** Sch. 2 paras. 1–3, 8 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(6)(7), Sch. 14 para. 27(4), **Sch. 15**; S.I. 1991/828, **art. 3(2)**

8 . . . . .

### SCHEDULE 3

Section 22.

#### REPEALS

Chapter	Short Title	Extent of Repeal
6 & 7 Eliz. 2 c.65.	Children Act 1958.	The whole Act.
8 & 9 Eliz. 2 c. 61.	Mental Health (Scotland) Act 1960.	In Schedule 4, the entry relating to the Children Act 1958.
1968 c. 49.	Social Work (Scotland) Act 1968.	Section 19, Schedule 1 and in Schedule 8, paragraphs 44 to 47.
1969 c. 54.	Children and Young Persons Act 1969.	Sections 56 and 57(1).
1973 c. 65.	Local Government (Scotland) Act 1973.	In Schedule 27, paragraph 140.
1975 c. 72.	Children Act 1975.	Sections 95, 96, 97. In Schedule 3, paragraphs 17 to 20.
1976 c. 36.	Adoption Act 1976.	In Schedule 3, Part II, paragraphs 25 and 26.
1978 c. 28.	Adoption (Scotland) Act 1978.	In Schedule 3, paragraphs 1 to 3.
1980 c. 5.	Child Care Act 1980.	In Schedule 5, paragraphs 9 to 11.
1980 c. 6.	Foster Children Act 1980.	In Schedule 2, Part II.
1980 c. 44.	Education (Scotland) Act 1980.	In Schedule 4, paragraph 1.
1983 c. 41.	Health and Social Services and Social Security Adjudications Act 1983.	In Schedule 2, paragraph 2.

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### TABLE OF DERIVATIONS

*Note: The following abbreviations are used in this Table:—*

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1958 =	The Children Act 1958 (1958 c. 65)
1968 =	The Social work (Scotland) Act 1968 (1968 c. 49)
1969 =	The Children and Young Persons Act 1969 (1969 c. 54)
1975 =	The Children Act 1975 (1975 c. 72)
1978 =	The Adoption (Scotland) Act 1978 (1978 c. 28)
1980 =	The Foster Children Act 1980 (1980 c. 6)

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<b>Provision</b>	<b>Derivation</b>
1	1958 s. 2(1); 1968 s. 19, Sch. 1 para. 2(1).
2( 1)	1958 s. 2(2).
(2)	1958 s. 2(3); 1968 ss. 19,95(1), Sch. 1 para. 2(2), Sch. 8 para. 44(1); Child Care Act 1980 (c.5) s. 89(2) and Sch. 5 para. 9.
(3)	1958 s. 2(4); 1968 s. 95(1), Sch. 8 para. 44(2).
(4)	1958 s. 2(4); Mental Health (Scotland) Act 1960 (c. 61) s. 113(1), Sch. 4.
(5)	1958 s. 2(4A); 1978 s. 66(2), Sch. 3.
3(1), (2)	1958 s. 1A; 1968 s. 19, Sch. 1 para. 1; 1975 s. 95(2).
(3)	1958 s. 2A(1); 1975 s. 95(3).
(4)	1958 s. 1A; 1968 s. 19, Sch. 1 para. 1.
4(1 )	1958 s. 3A(1); 1975 s. 96(1).
(2)	1958 s. 3A(2)(a); 1975 s. 96(1).
5( 1)	1958 s. 3(1), (2).
(2)	1958 s. 3(1), (2)
(3)	1958 s. 3(2).
(4)	1958 s. 3(3).
(5)	1958 s. 3(7).

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(6)	1958 s. 3(5).
(7)	1958 s. 3(6).
6(1), (2)	1958 s. 3(4).
(3)	1958 s. 3(5).
(4)	1958 s. 3(6).
7(1)	1958 s. 6(1); 1968 s. 95(1), Sch. 8 para. 45; 1969 s. 56(1); 1975 s. 108(1), Sch. 3 para. 18; 1978 s. 66(2), Sch. 3; 1980 s. 23(2), Sch. 2 Part II, The Child Care Act 1980 (c. 5) s. 89(2), Sch. 5.
(2)	1958 s. 6(2); 1969 s. 56(2).
8	1958 s. 4(1).
9(1)-(3)	1958 s. 4(2).
(4)	1958 ss. 4(5), 5(3).
10(1)	1958 s. 4(3).
(2)	1958 s. 4(4).
(3)	1958 ss. 4(5), 5(3).
11(1)	1958 s. 5(1), (5).
(2)	1958 s. 5(2), (5).
(3)	1958 s. 5(4), (5).
12(1)	1958 s. 7(1), (6).
(2)	1958 s. 7(1).
(3)	1958 s. 7(3).
(4)	1958 s. 7(2).
(5)	1958 s. 7(4); 1968 s. 95(1), Sch. 8; Child Care Act 1980 (c. 5) s. 89(2); Sch. 5 para. 11; Health and Social Services and Social Security Adjudications Act 1983 (c. 41) Sch. 2.
(6)	1958 s. 7(5).
13	1958 s. 8.
14(1)	1958 s. 37(1).
(2)	1958 s. 37(1A); 1975 s. 97.
(3)	1958 s. 37(1B); 1975 s. 97.
(4)	1958 s. 37(1C); 1975 s. 97.
15(1)	1958 ss. 14(1), 37(2); 1975 s. 96(2).
(2)	1958 s. 14(1A); 1969 s. 57(1).

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(3)	1958 s. 14(2), 37(2); 1975 s. 108(1), Sch. 3 paras. 19, 20; Criminal Justice Act 1982 (c. 48) s. 54.
16(1)	1958 s. 12(1).
(2)	1958 s. 12(2).
(3)	1958 s. 12(3).
(4)	1958 s. 12(4); Education (Scotland) Act 1980 (c. 44) s. 135(1).
17	1958 s. 13.
18	1958 s. 9; 1968 s. 19, Sch. 1 para. 3.
19	1958 s. 15.
20	1958 s. 2A(3), 3A(2)(b), 37(1C); 1975 ss. 75(3), 96(1), 97(1).
21(1)	“child” 1958 s. 17. “compulsory school age” 1958 s. 17; Education (Scotland) Act 1980 (c. 44) s. 136(2), Sch. 4 para. 1. “local authority” 1958 s. 17; Local Government (Scotland) Act 1973 s. 214(2), Sch. 27 Part II. “local authority in England and Wales” 1958 s. 17; 1980 s. 22. “place of safety” 1958 s. 17; 1968 s. 95(1), Sch. 8. “relative” 1958 s. 17; 1978 s. 66(2), Sch. 3. “residential establishment” 1958 s. 17; 1968 s. 95(1), Sch. 8. “supervision requirement” 1958 s. 17; 1968 s. 95(1), Sch. 8. “voluntary organisation” 1958 s. 17.
(2)	[references].
22	[Transitional provisions, consequential amendments and repeals.]
23	[Citation, etc.]
Sch. 1	[Transitional provisions]
paras. 1 to 4 and 6.	
para. 5.	1958 s. 2A(2); 1975 s. 95(3).
para. 7.	1958 s. 2(4A); 1978 s. 66(2), Sch. 3.
Sch. 2.	[Consequential amendments]
Sch. 3.	[Repeals]

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**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 7(4) word substituted by [2020 asp 13 sch. 5 para. 9](#)