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## STATUTORY INSTRUMENTS

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# 1996 No. 2203

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

### Citation

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

### Interpretation

2. In this Order—

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

“the 1968 Act” means the Social Work (Scotland) Act 1968<sup>(1)</sup>; and

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

### Commencement of provisions

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

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

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

### Transitional provisions

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

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

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(1) 1968 c. 49.

(2) 1994 c. 39.

(3) 1978 c. 30.

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

- (a) in section 7(5) of the Act, the reference to an order under section 86 of the Act shall be construed as including a reference to a resolution under section 16(5) or 16A(6) of the 1968 Act; and
  - (b) in section 11(4)(d) of the Act, the reference to a case in which the parental responsibilities or parental rights have been transferred to a local authority by a parental responsibilities order shall be construed as including a reference to a case in which the relevant parental rights and powers in relation to the child (as defined in section 16(3) of the 1968 Act) have vested in a local authority or a voluntary organisation by a resolution under section 16 or 16A of the 1968 Act.
6. Until the coming into force of sections 52 and 69 of the Act, and without prejudice to the then operation of section 17(2)(b) of the Interpretation Act 1978—
- (a) the reference in section 54(1) to a condition in section 52(2)(a) to (h), (j), (k) or (l) of the Act being satisfied with respect to a child shall be construed as including a reference to a condition in section 32(2)(a) to (f), (gg) and (i) of the 1968 Act(7) being satisfied with respect to a child; and
  - (b) the reference in section 54(3)—
    - (i) to compulsory measures of supervision shall be construed as including a reference to compulsory measures of care within the meaning of section 32 of the 1968 Act;
    - (ii) to arranging a children’s hearing to consider the case of the child under section 69 of the Act shall be construed as including a reference to arranging a children’s hearing to consider the case of the child under sections 43 and 44 of the 1968 Act; and
    - (iii) to the application of section 69(1) of the Act shall be construed as including a reference to the application of sections 43 and 44 of the 1968 Act as if the condition specified by the court under section 54(1) of the Act as read with paragraph (a) above were a ground of referral established in accordance with section 42(8) of the 1968 Act.
- 7.—(1) The following transitional provisions shall be made to each of the provisions of the Adoption (Scotland) Act 1978 (“the 1978 Act”)(9) until the repeal of that provision in Schedule 5 to the Act comes into force.
- (2) In section 2(d) of the 1978 Act, the reference to “custody proceedings” shall be construed as including a reference to proceedings regarding a residence order under section 11(2)(c) of the Act.
  - (3) In section 32(4)(c) of the 1978 Act, the reference to an order awarding custody of a child should be construed as including a reference to a residence order under section 11(2)(c) of the Act.

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

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

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

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

(9) 1978 c. 28.

St Andrew's House,  
Edinburgh  
22nd August 1996

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