STATUTORY INSTRUMENTS

1971 No. 184 (C.1) (S.20)

SOCIAL WORK, SCOTLAND

The Social Work (Scotland) Act 1968 (Commencement No. 5) Order 1971

Made - - - - 1*st February* 1971

In exercise of the powers conferred on me by section 98 of the Social Work (Scotland) Act 1968(**a**), as amended by paragraph 66 of Schedule 5 to the Children and Young Persons Act 1969(**b**), I hereby make the following order:—

1. This order may be cited as the Social Work (Scotland) Act 1968 (Commencement No. 5) Order 1971.

2. The provisions of the Social Work (Scotland) Act 1968 (hereinafter referred to as "the Act") specified in Schedules 1 and 2 to this order shall come into operation on the dates and to the extent specified therein.

3. The transitional provisions contained in Schedule 3 to this order shall have effect in connection with the provisions brought into force by this order which are referred to in that Schedule.

Gordon Campbell,
One of Her Majesty's
Principal Secretaries of State.

St. Andrew's House,
Edinburgh.
1st February 1971.

(a) 1968 c. 49. (b) 1969 c. 54.

SCHEDULE 1

PROVISIONS COMING INTO FORCE ON 1ST MARCH 1971

Provisions of the Act	Subject matter of provisions
Paragraph 4 of Schedule 7	Transitional provisions relating to certain court orders.

SCHEDULE 2

PROVISIONS COMING INTO FORCE ON 15TH APRIL 1971

Provisions of the Act	Subject matter of provisions
Section 1(5)	Transfer of functions from education authorities to local authorities.
Section 30	Definition of child and parent for Part III.
Section 31	Restriction on prosecution of children for offences.
Section 32	Children in need of compulsory measures of care.
Section 34(1) and (2) ...	Children's hearings.
Section 35(1) to (3) ...	Provisions as to privacy of children's hearings.
Section 37	Reports of cases of children who may require compulsory measures of care and the interim detention of such children in places of safety.
Section 38	Initial investigation of cases by reporter.
Section 39	Action on initial investigation by reporter.
Section 40	Attendance of child at children's hearing.
Section 41	Attendance of parent at children's hearing.
Section 42	Conduct of children's hearing and application to sheriff for findings.
Section 43	Discharge of referral and power of children's hearing to order further investigation after consideration of the facts.
Section 44	Disposal of case by children's hearing other than by discharge of referral.
Section 46	Children to whom Part IV of the Mental Health (Scotland) Act 1960(a) may apply.
Section 47	Duration of supervision requirements and their variation.
Section 48	Review of requirement of children's hearing.
Section 49	Appeal against decision of a children's hearing.
Section 50	Appeal to Court of Session.
Section 51	Reconsideration by hearing after appeal, and subsequent appeal.
Section 52	Power of Secretary of State to terminate a supervision requirement.
Section 53	Legal aid in proceedings before the sheriff and any appeals to the Court of Session.
Section 54	Transfer of case to another children's hearing.
Section 55	Presumption and determination of age.
Section 56	Reference and remit of children's cases by courts to children's hearings.
Section 57	Reference and remit of cases of certain young persons by courts to children's hearings.
Section 58	Prohibition of publication of proceedings.

(a) 1960 c. 61.

Provisions of the Act	Subject matter of provisions
Part V (Sections 69 to 77)	Return and removal of children within United Kingdom.
Part VI (Sections 78 to 83)	Contributions in respect of children in care, etc.
Section 97 insofar as not already brought into operation.	Extension of certain provisions to England and Wales, Northern Ireland and the Channel Islands.
Schedule 2	Amendment of Part IV of the Children and Young Persons (Scotland) Act 1937(a).
Schedule 4	Amendment of Legal Aid (Scotland) Act 1967(b).
Paragraphs 2, 5, 6 and 7 of Schedule 7.	Transitional provisions.
Schedule 8 to the extent set out in Appendix A hereto.	Minor and consequential amendments.
Schedule 9 to the extent set out in Appendix B hereto.	Enactments repealed.

APPENDIX A TO SCHEDULE 2

Provision of Schedule 8	Enactment amended
Paragraph 1	Section 9(4) of the Criminal Appeal (Scotland) Act 1926(c).
Paragraph 6	Section 38(3) of the Children and Young Persons (Scotland) Act 1937.
Paragraph 7	Section 87 of the Children and Young Persons (Scotland) Act 1937.
Paragraph 9	Section 103 of the Children and Young Persons (Scotland) Act 1937.
Paragraph 10	Section 110(1) of the Children and Young Persons (Scotland) Act 1937.
Paragraph 25	Section 8(1) of the Criminal Justice (Scotland) Act 1949(d).
Paragraph 26	Section 9(1) of the Criminal Justice (Scotland) Act 1949.
Paragraph 27 insofar as not already brought into operation.	Section 10 of the Criminal Justice (Scotland) Act 1949.
Paragraph 28	Section 28 of the Criminal Justice (Scotland) Act 1949.
Paragraph 29	Section 30(1) of the Criminal Justice (Scotland) Act 1949.
Paragraph 30 insofar as not already brought into operation.	Section 78(1) of the Criminal Justice (Scotland) Act 1949.
Paragraph 32	Section 8(1) of the Maintenance Orders Act 1950(e).
Paragraph 33	Section 9 of the Maintenance Orders Act 1950.
Paragraph 34	Section 16(2) of the Maintenance Orders Act 1950.
Paragraph 37 insofar as not already brought into operation.	Section 4(3) of the Adoption Act 1958(f).
Paragraph 39	Section 36(2) of the Adoption Act 1958.
Paragraph 55	Section 57(3) of the Mental Health (Scotland) Act 1960.
Paragraph 57	Section 66(7) of the Mental Health (Scotland) Act 1960.
Paragraph 58 insofar as not already brought into operation.	Section 72(1) of the Mental Health (Scotland) Act 1960.

(a) 1937 c. 37. (b) 1967 c. 43. (c) 1926 c. 15. (d) 1949 c. 94.
(e) 1950 c. 37. (f) 7 & 8 Eliz. 2. c. 5.

Provision of Schedule 8	Enactment amended
Paragraph 59A	Section 32(2) of the Criminal Justice Act 1961(a).
Paragraph 61	Section 36(3) of the Education (Scotland) Act 1962(b).
Paragraph 62	Section 44 of the Education (Scotland) Act 1962.
Paragraph 65	Section 85(5) of the Education (Scotland) Act 1962.
Paragraph 66	Section 141(2) of the Education (Scotland) Act 1962.
Paragraph 67	Section 145 of the Education (Scotland) Act 1962.
Paragraph 68 insofar as not already brought into operation.	Section 55 of the Children and Young Persons Act 1963(c).
Paragraph 69(1)	Section 57(2) of the Children and Young Persons Act 1963.
Paragraph 70	Section 1(4) of the Criminal Justice (Scotland) Act 1963(d).
Paragraph 71	Section 7(1) of the Criminal Justice (Scotland) Act 1963.
Paragraph 72	Section 29 of the Criminal Justice (Scotland) Act 1963.
Paragraph 74(1) and (3)...	Section 11 of the Family Allowances Act 1965(e).

APPENDIX B TO SCHEDULE 2

(Provisions of Schedule 9 to the Act)

PART I

Chapter	Short Title	Extent of Repeal
1 Edw. 8 & 1 Geo. 6. c. 37.	The Children and Young Persons (Scotland) Act 1937.	In section 21(2), the words from " may take " to the end of the subsection. In section 42(1), the words " or is for any other reason brought before a court " and in subsection (2) the words " or taken to a place of safety " and the words " or the person by whom he is taken to the place of safety, as the case may be ". In section 47(1) the words " until he can be brought before a juvenile court ", wherever occurring. In section 49(1) the words " either as being in need of care or protection or ", the words " or otherwise ", and the words " and for securing that proper provision is made for his education and training ". Section 49(2). Section 51. Section 53(2) and (3). Section 59(1) and in subsection (4), the words " under this section, or ". Sections 60 and 61. In section 63(3) the words " under the Probation of Offenders Act 1907 ". Sections 65 and 66.

(a) 1961 c. 39. (b) 1962 c. 47. (c) 1963 c. 37. (d) 1963 c. 39. (e) 1965 c. 53.

Chapter	Short Title	Extent of Repeal
		Sections 68 to 86. In section 87(2) and (4) the words " England or " wherever they occur, in subsection (5) the words " in relation to England, the Secretary of State, and " and subsection (6). Sections 88 to 95. Section 101(5) and (6). Section 107(1)(*a*), and (2). Section 109. In section 110(1)— the following definitions— " Approved school " " Approved school order "; " Headmaster "; " In need of care or protection "; in the definition of " Justice " the words " (except in section 51 of this Act) "; and the definition of " Managers ". In section 110, in subsection (3)(*a*)(ii) the words " and the juvenile court for any area " and subsection (3)(*a*)(iv). Section 111. Section 112. Schedule 2. Schedule 3.
11 & 12 Geo. 6. c. 43.	The Children Act 1948...	Sections 5 and 6(3) and (4) and Part III.
12, 13 & 14 Geo. 6. c. 94.	The Criminal Justice (Scotland) Act 1949.	Section 5(3). In section 28, subsection (2), and in subsection (3), the words " a remand home or " and the words " home or ". Sections 50 and 51. Sections 69 to 73. Section 75 to the extent specified in Schedule 9 insofar as not already brought into operation. Section 78(1) to the extent specified in Schedule 9 insofar as not already brought into operation.
14 Geo. 6. c. 37.	The Maintenance Orders Act 1950.	Schedule 1, insofar as relating to the modification of the Children and Young Persons (Scotland) Act 1937.
15 & 16 Geo. 6. & 1 Eliz. 2. c. 61.	The Prisons (Scotland) Act 1952.	In section 32, in subsection (3), the words " who is not less than seventeen years of age ", and subsection (4).
4 & 5 Eliz. 2. c. 24.	The Children and Young Persons Act 1956.	The whole Act.
4 & 5 Eliz. 2. c. 50.	The Family Allowances and National Insurance Act 1956.	The whole Act.
6 & 7 Eliz. 2. c. 65.	The Children Act 1958...	In section 2, in subsection (4) the words from " or by virtue of " to " of an approved school ".

Chapter	Short Title	Extent of Repeal
7 & 8 Eliz. 2. c. 5.	The Adoption Act 1958.	Section 4(3)(*b*). In section 11(1), the words " or juvenile court ". In section 15(3), the words from " fit person by " to " care of a " and the words " fit person order or " and " as the case may be ". In section 37(3), the words " in an approved school or ".
8 & 9 Eliz. 2. c. 61.	The Mental Health (Scotland) Act 1960.	In section 10, in subsection (1), in paragraph (*a*), head (i), and at the end of head (ii) the word " or ". Section 46(*a*). In section 55(10) the words from " including " to the word " school ". Section 56. In section 57, in subsection 3(*b*), the words " or young person "; and subsection (5). Section 69(1)(*b*). Section 71. In section 72, the definitions of " approved school " and " remand home " and in the definition of " place of safety " the words " or young person " first occurring.
10 & 11 Eliz. 2. c. 47.	The Education (Scotland) Act 1962.	Section 36(4) and (5). Section 44(3) and (4).
1963 c. 39. ...	The Criminal Justice (Scotland) Act 1963.	In section 11, in subsection (2), the words from " if the offender " to the words " detention centre ", and subsection (3) and (5). Part II. Schedule 2.

PART II

Chapter	Short Title	Extent of Repeal
6 & 7 Eliz. 2. c. 65.	The Children Act 1958.	In section 2(4) the words from " or of " to " 1937 ".
7 & 8 Eliz. 2. c. 72.	The Mental Health Act 1959.	In section 10(1), in sub-paragraph (*a*), head (ii). In section 50, sub-paragraph (*b*).
1963 c. 37 ...	The Children and Young Persons Act 1963.	Sections 51 and 52.
1965 c. 53 ...	The Family Allowances Act 1965.	In section 11(2), the words " or the said Act of 1937 ".

SCHEDULE 3

TRANSITIONAL PROVISIONS

1.—(1) Paragraph 4 of Schedule 7 to the Act shall have effect as if there was included among the classes of children specified in sub-paragraph (1) of that paragraph any child who immediately before the commencement of Part III of the Act was subject to—

(*a*) an order transferring him to an approved school made under subsection (1) or subsection (3) of section 87 of the Children and Young Persons (Scotland) Act 1937 (power to send children and young persons from England and Wales, Northern Ireland, Isle of Man and Channel Islands to approved schools in Scotland); or

(*b*) an order under paragraph 23 of Schedule 4 to the Children and Young Persons Act 1969 (interim power to send persons subject to care orders from England and Wales to approved schools in Scotland); or

(*c*) an order made either under section 51 of the Children and Young Persons Act 1963 (supervision of persons moving from England and Wales to Scotland) as originally enacted or under that section as amended by paragraphs 20 and 21 of Schedule 4 to the said Act of 1969,

and any reference in the said paragraph 4 to a child to whom that paragraph applies shall be construed accordingly.

(2) Sub-paragraph (2) of the said paragraph 4 shall have effect as if at the end of that sub-paragraph there were inserted the following words:—

" with the substitution for any reference to an approved school of a reference to an establishment which was immediately before the coming into operation of the said Part III an approved school, and with any other necessary modifications.".

2.—(1) Where by virtue of paragraph 5 of Schedule 7 to the Act a court exercises jurisdiction in respect of a child or young person charged with an offence before the commencement of Part III of the Act, the powers conferred on certain courts by sections 56 and 57 of the Act (which relate to the reference and remit of the cases of children and certain young persons by courts to children's hearings, being children and young persons charged with an offence after the said commencement) shall, subject to sub-paragraph (2) below, be available to and exercisable by the said court in relation to the said child or young person.

(2) In the case of any juvenile court constituted under section 51 of the Children and Young Persons (Scotland) Act 1937, the provisions of sub-paragraph (1) above shall apply until such time as the Secretary of State makes a direction in relation to that court under sub-paragraph (2) of the said paragraph 5, and on any such direction being made any question arising from any remit or reference by the said court under section 56 or section 57 of the Act shall be dealt with by the sheriff having jurisdiction in the former area of that court as if the said remit or, as the case may be, the said reference had been made by him.

3. Where by virtue of paragraph 5 of Schedule 7 to the Act a sheriff exercises jurisdiction in respect of a child or young person charged with an offence before the commencement of Part III of the Act, the powers conferred on the sheriff by section 58A of the Children and Young Persons (Scotland) Act 1937 set out in paragraph 16 of Schedule 2 to the Act (committal for residential training of children charged with an offence after the said commencement) shall be available to and exercisable by the said sheriff in relation to the said child or young person.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order brings into force almost all the provisions of the Social Work (Scotland) Act 1968 not brought into force by earlier orders (other than those already obsolete and subject to the transitional provisions contained in Schedule 3 to the Order). The provisions brought into force include those relating to the establishment of the system of children's hearings for dealing with children who may need compulsory measures of care and those making consequential adjustments in the powers and duties of the courts and others.