STATUTORY INSTRUMENTS

1971 No. 493 (S. 61)

CHILDREN AND YOUNG PERSONS

The Social Work (Scotland) Act 1968 (Transitional Cases) Order 1971

Made - - -	12*th March* 1971
Coming into Operation	15*th April* 1971

In exercise of the powers conferred on me by sub-paragraphs (3) and (4) of paragraph 4 of Schedule 7 to the Social Work (Scotland) Act 1968(**a**) as read with paragraph 66 of Schedule 5 to the Children and Young Persons Act 1969(**b**) and article 3 of, and paragraph 1 of Schedule 3 to, the Social Work (Scotland) Act 1968 (Commencement No. 5) Order 1971(**c**) and with paragraph 64(1)(*c*) of said Schedule 5, and of all other powers enabling me in that behalf, I hereby make the following order:—

PART I

GENERAL

Citation and commencement

1. This order may be cited as the Social Work (Scotland) Act 1968 (Transitional Cases) Order 1971 and shall come into operation on 15th April 1971.

Interpretation

2.—(1) In this order, unless the context otherwise requires—

"the Act" means the Social Work (Scotland) Act 1968;

"the Act of 1937" means the Children and Young Persons (Scotland) Act 1937(**d**);

"the Act of 1963" means the Criminal Justice (Scotland) Act 1963(**e**);

"the appointed day" means the date of the coming into operation of Part III of the Act;

"approved school order" means an approved school order as defined by section 110(1) of the Act of 1937 and, except in article 5 below, includes—

(*a*) an order transferring a child to an approved school made under subsection (1) or subsection (3) of section 87 of the Act of 1937; and

(*b*) an order under paragraph 23 of Schedule 4 to the Children and Young Persons Act 1969;

"child" means a child to whom the provisions of paragraph 4 of Schedule 7 to the Act as read with article 3 of, and paragraph 1 of Schedule 3 to, the Social Work (Scotland) Act 1968 (Commencement No. 5) Order 1971 apply;

(**a**) 1968 c. 49. (**b**) 1969 c. 54. (**c**) S.I. 1971/184 (1971 I, p. 547).
(**d**) 1937 c. 37. (**e**) 1963 c. 39.

"establishment" means an establishment which was immediately before the appointed day an approved school within the meaning of the Act of 1937;

"fit person order" means an order by a court committing a child to the care of a fit person;

"the relevant local authority" has the meaning assigned to it by article 3 below;

"reporter", in relation to a local authority, means the reporter of that local authority;

"supervision order" has the meaning assigned to it by section 72 of the Criminal Justice (Scotland) Act 1949(a) and includes an order made either under section 51 of the Children and Young Persons Act 1963(b) as originally enacted or under that section as amended by paragraphs 20 and 21 of Schedule 4 to the Children and Young Persons Act 1969.

(2) Unless the context otherwise requires, any reference in this order to any enactment is a reference to that enactment as amended, and includes a reference thereto as extended, applied, saved or continued by or under any other enactment; and for the avoidance of doubt, it is hereby declared that for the purposes of this paragraph the expression "enactment" shall include any provision of any enactment.

(3) Unless the context otherwise requires, any reference in this order to any provision of any enactment repealed or excluded by or under the Act is a reference to that provision as existing immediately before it was so repealed or excluded.

(4) The Interpretation Act 1889(c) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

Ascertainment of the relevant local authority

3.—(1) The local authority having a duty under paragraph 4(3) of Schedule 7 to the Act to arrange for a child to be brought before a children's hearing for the consideration and disposal of his case under Part III of the Act (in this order called "the relevant local authority") shall be ascertained—

(*a*) in the case of a child subject to an approved school order, in accordance with the provisions of article 5 below;

(*b*) in the case of a child under a fit person order, or under a fit person order and a supervision order or under a supervision order, in accordance with the provisions of article 8 below.

(2) Any dispute between local authorities as to the ascertainment of the relevant local authority may be referred to the Secretary of State for determination and a determination of the Secretary of State on such a reference shall be final.

PART II

APPROVED SCHOOL ORDERS

Date of termination of certain approved school orders

4. In relation to a child subject to an approved school order the date prescribed for the purposes of paragraph 4(4) of Schedule 7 to the Act (which provides that the order ceases to have effect where the child has attained the age of 18 years on the prescribed date) shall be the date first occurring after the expiry of the period of three months beginning with the appointed day or the date of his 18th birthday, whichever is the later.

(a) 1949 c. 94. (b) 1963 c. 37. (c) 1889 c. 63.

Ascertainment of the relevant local authority in connection with approved school orders etc.

5.—(1) In the case of a child who immediately before the appointed day was—

(*a*) subject to—

(i) an approved school order which in accordance with section 74(2) of the Act of 1937 names an education authority within whose area the child was resident, or the offence was committed or the circumstances arose rendering him liable to be sent to an approved school; or

(ii) 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) which nominates an education authority within whose area it appears to the Secretary of State at the time that order is made that the child's parent or guardian resides or will reside; and

(*b*) not released from an establishment under section 18 of the Act of 1963, the relevant local authority shall, subject to article 6 below, be the local authority to whom the functions, as specified in section 1(5) of the Act, of the said education authority are transferred by virtue of said section 1(5).

(2) In the case of a child who immediately before the appointed day was—

(*a*) subject to—

(i) an approved school order which in accordance with section 74(7) of the Act of 1937 states that it is made by reason of the commission of an offence under section 21 of that Act (which relates to the punishment of vagrants preventing children from receiving education); or

(ii) an order transferring him to an approved school made under subsection (1) or subsection (3) of section 87 of the Act of 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); and

(*b*) not released from an establishment under section 18 of the Act of 1963; the relevant local authority shall, subject to article 6 below, be—

(i) where the child's parent has his ordinary residence in Scotland, the local authority in whose area that residence is situated;

(ii) where head (i) immediately above does not apply, the local authority for the area in which the establishment in which the child was resident immediately before the appointed day is situated.

(3) In the case of a child who immediately before the appointed day was—

(*a*) subject to any such order as is mentioned in paragraph (1) or (2) above; and

(*b*) released from an establishment under section 18 of the Act of 1963, the relevant local authority shall, subject to article 6 below, be—

(i) where the person with whom the child was immediately before the appointed day required to live by virtue of Part I of Schedule 2 to the Act of 1963 has his ordinary residence in Scotland, the local authority in whose area that residence is situated;

(ii) where head (i) immediately above does not apply, the local authority for the area in which the establishment from which the child was released is situated.

Subsequent agreement as to relevant local authority in connection with approved school orders

6.—(1) Where in accordance with the provisions of article 5 above a local authority has been ascertained as the relevant local authority in relation to any child, nothing in the provisions of this order shall prevent that authority, where it appears to them to be appropriate by reason of the release of the child from an establishment or from any other circumstance, from making an agreement with another local authority under which the second mentioned local authority will become the relevant local authority in relation to the child. On the making of such an agreement the second mentioned local authority shall become the relevant local authority in relation to the child and they shall as soon as may be thereafter give notice of the making of the said agreement to the parent of the child and to the managers of the establishment in which the child is required to reside or, as the case may be, from which he has been released.

(2) Where in relation to any child a local authority becomes the relevant local authority by virtue of paragraph (1) above, or by virtue of that paragraph as extended by this paragraph, the provisions of the said paragraph (1) shall be extended to apply to that local authority as they apply to a local authority which is the relevant local authority by virtue of article 5 above and as if the reference in the said paragraph (1) to a local authority which, in relation to a child, is the relevant local authority by virtue of article 5 above included a reference to a local authority which, in relation to a child, is the relevant local authority either by virtue of the said paragraph (1) or, as the case may be, by virtue of that paragraph as extended by this paragraph.

Duty of relevant local authority in relation to certain approved school orders

7.—(1) Where at any time occurring after the appointed day the relevant local authority are satisfied, in relation to any child subject to an approved school order, that there are grounds for considering whether the child should be transferred to England, Wales or Northern Ireland or be required to reside in a place in England or Wales it shall be the duty of the authority forthwith to make a recommendation to the reporter that the child shall be referred to a children's hearing for consideration and disposal of his case under Part III of the Act.

(2) At any time occurring after the expiry of the period of three months beginning with the appointed day but before the expiry of the period of ten months beginning with that day and subject to paragraph (3) below, it shall be the duty of the relevant local authority to make such a recommendation to the reporter as is mentioned in paragraph (1) above in the case of any other child subject to an approved school order.

(3) Where at any time after the expiry of the period of three months beginning with the appointed day—

(*a*) the Secretary of State has ordered a child under the care of the managers of an establishment to be transferred to the care of the managers of another establishment; or

(*b*) the managers of an establishment have by order in writing recalled a child under Part I of Schedule 2 to the Act of 1963,

the Secretary of State or, as the case may be, the said managers shall forthwith notify the relevant local authority, and on receipt of that notification that local authority shall forthwith make such a recommendation to the reporter as is mentioned in paragraph (1) above.

PART III

FIT PERSON ORDERS AND SUPERVISION ORDERS

Ascertainment of relevant local authority in connection with fit person orders and supervision orders

8.—(1) In the case of a child who immediately before the appointed day is under a fit person order or under a fit person order and a supervision order, the relevant local authority shall be—

(*a*) where the fit person order commits the child to the care of a local authority, that local authority;

(*b*) where the fit person order commits the child to the care of an officer of a local authority, the local authority employing that officer;

(*c*) where head (*a*) or (*b*) immediately above does not apply, the local authority in whose area the child is for the time being residing.

(2) In the case of a child who immediately before the appointed day is not under a fit person order but who is by virtue of a supervision order under the supervision of a person who is an officer of a local authority, the relevant local authority shall be that local authority.

Duty of relevant local authority in relation to fit person orders and supervision orders

9.—(1) Where at any time occurring after the appointed day, the relevant local authority are satisfied, in relation to any child under a fit person order or under a fit person order and a supervision order or under a supervision order, that in the best interests of the child it is necessary that the child be referred to a children's hearing for consideration and disposal of his case under Part III of the Act, it shall be the duty of the authority forthwith to make a recommendation to the reporter that the child be so referred.

(2) Where at any time occurring after the appointed day, the relevant local authority, in relation to any child under a fit person order or under a fit person order and a supervision order or under a supervision order, are requested by a parent or other relative or by a guardian or friend of the child, or by any local authority, voluntary organisation or other person responsible for the management of the residential establishment or other place in which the child is under care or supervision, to have the child referred to a children's hearing for consideration and disposal of his case under Part III of the Act, it shall be the duty of the authority forthwith to make a recommendation to the reporter that the child be so referred.

(3) At any time occurring after the appointed day but before the expiry of the period of ten months beginning with that day it shall be the duty of the relevant local authority, in relation to any other child under a fit person order or under a fit person order and a supervision order or under a supervision order, except a child to whom article 8(1)(*c*) above applies, to make a recommendation to the reporter that the child shall be referred to a children's hearing for consideration and disposal of his case under Part III of the Act.

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

St. Andrew's House,
Edinburgh.
12th March 1971.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order specifies the relevant local authorities who have a duty to bring children who immediately before commencement of Part III of the Social Work (Scotland) Act 1968 are subject to approved school orders, fit person orders or supervision orders, before a children's hearing within prescribed periods of time; and defines in each case how the relevant local authority is to be ascertained.