



Children (Scotland) Act 1995

1995 CHAPTER 36

PART I

PARENTS, CHILDREN AND GUARDIANS

Court Orders

12 Restrictions on decrees for divorce, separation or annulment affecting children.

(1) In any action for

- [^{F1}(a)] divorce, judicial separation or declarator of nullity of marriage,^[F2] or
- (b) dissolution or declarator of nullity of a civil partnership or separation of civil partners,]

the court shall, where this section applies, consider (in the light of such information as is before the court as to the arrangements which have been, or are proposed to be, made for the upbringing of each child by virtue of which it applies) whether to exercise with respect to him the powers conferred by section 11 [^{F3}of this Act or section 62 of the Children's Hearings (Scotland) Act 2011] .

(2) Where, in any case to which this section applies, the court is of the opinion that—

- (a) the circumstances of the case require, or are likely to require, it to exercise any power under section 11 [^{F4}of this Act or section 62 of the Children's Hearings (Scotland) Act 2011] with respect to the child concerned;
- (b) it is not in a position to exercise that power without giving further consideration to the case; and
- (c) there are exceptional circumstances which make it desirable in the interests of that child that it should not grant decree in the action until it is in a position to exercise such a power,

it shall postpone its decision on the granting of decree in the action until it is in such a position.

Changes to legislation: Children (Scotland) Act 1995, Section 12 is up to date with all changes known to be in force on or before 20 April 2024. 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

(3) This section applies where a child of the family has not reached the age of sixteen years at the date when the question first arises as to whether the court should give such consideration as is mentioned in subsection (1) above.

[^{F5}(4) In this section “child of the family”, in relation to the parties to a marriage or civil partnership, means a child—

- (a) of both of them; or
- (b) who has been treated by both of them as a child of their family, not being a child who is placed with them as foster parents by a local authority or voluntary organisation.]

Textual Amendments

- F1** Words in s. 12(1) renumbered as s. 12(1)(a) (5.12.2005) by virtue of [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 60\(2\)](#); S.S.I. 2005/604, [art. 2\(c\)](#)
- F2** S. 12(1)(b) and preceding word inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 60\(2\)](#); S.S.I. 2005/604, [art. 2\(c\)](#)
- F3** Words in s. 12(1) substituted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 2\(2\)\(a\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F4** Words in s. 12(2)(a) substituted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 2\(2\)\(b\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F5** S. 12(4) substituted (1.6.2021) by [Civil Partnership \(Scotland\) Act 2020 \(asp 15\)](#), s. 16, [sch. 2 para. 4\(3\)](#); S.S.I. 2021/23, reg. 2, sch. (with reg. 3)

Changes to legislation:

Children (Scotland) Act 1995, Section 12 is up to date with all changes known to be in force on or before 20 April 2024. 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.

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Changes and effects yet to be applied to :

- s. 12(4) words in s. 12(4) renumbered as s. 12(4)(a) by [2004 c. 33 Sch. 28 para. 60\(3\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 28 para. 60(3) repealed (4.5.2006) by 2006 asp 2, ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13))
- s. 12(4)(a)(b) s. 12(4)(a)(b) renumbered as s. 12(4)(a)(i)(ii) by [2004 c. 33 Sch. 28 para. 60\(3\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 28 para. 60(3) repealed (4.5.2006) by 2006 asp 2, ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13))
- s. 12(4)(b) and word inserted by [2004 c. 33 Sch. 28 para. 60\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 28 para. 60(3) repealed (4.5.2006) by 2006 asp 2, ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13))

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2010/875 reg. 16Sch. 2](#) (This amendment not applied to legislation.gov.uk. These Regulations never came into effect, having been revoked before coming into force by S.I. 2010/1906, reg. 2)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(3A)(ba) inserted by [2009 c. 24 Sch. 6 para. 25](#)
- s. 4B inserted by [2020 asp 16 s. 28\(2\)](#)
- s. 6(1A)-(1D) inserted by [2020 asp 16 s. 1\(2\)\(b\)](#)
- s. 10(1A) inserted by [2024 asp 2 Sch. 1 para. 18\(b\)](#)
- s. 11(14) inserted by [2020 asp 16 s. 10\(2\)\(b\)](#)
- s. 11B11C inserted by [2020 asp 16 s. 8\(2\)](#)
- s. 11B(2) power to amend conferred by [2020 asp 16 s. 32](#)
- s. 11D inserted by [2020 asp 16 s. 17\(2\)](#)
- s. 11D(3) power to amend conferred by [2020 asp 16 s. 32](#)
- s. 11E inserted by [2020 asp 16 s. 18\(2\)](#)
- s. 11F inserted by [2020 asp 16 s. 20\(2\)](#)
- s. 11G inserted by [2020 asp 16 s. 22\(2\)](#)
- s. 11ZA11ZB inserted by [2020 asp 16 s. 1\(4\)](#)
- s. 11ZA(2A) inserted by [2020 asp 16 s. 30\(2\)](#)
- s. 11ZA(3)(f) inserted by [2020 asp 16 s. 16\(2\)](#)
- s. 16(1A) inserted by [2020 asp 16 s. 30\(3\)](#)
- s. 16(2)-(2B) substituted for s. 16(2) by [2020 asp 16 s. 1\(6\)](#)
- s. 100A inserted by [2020 asp 16 s. 21\(2\)](#)
- s. 101D inserted by [2020 asp 16 s. 11\(2\)](#)
- s. 101E inserted by [2020 asp 16 s. 12\(2\)](#)