



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL  
AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

### CHAPTER 4

PARENTAL RESPONSIBILITIES ORDERS, ETC.

#### *Parental responsibilities orders*

#### **86 Parental responsibilities order: general**

- (1) On the application of a local authority the sheriff may make an order transferring (but only during such period as the order remains in force) the appropriate parental rights and responsibilities relating to a child to them; and any such order shall be known as a "parental responsibilities order".
- (2) A parental responsibilities order shall not be made unless the sheriff is satisfied that each relevant person either—
  - (a) freely, and with full understanding of what is involved, agrees unconditionally that the order be made; or
  - (b) is a person who—
    - (i) is not known, cannot be found or is incapable of giving agreement;
    - (ii) is withholding such agreement unreasonably;
    - (iii) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child, that is to say the responsibility to safeguard and promote the child's health, development and welfare or, if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis; or

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- (iv) has seriously ill-treated the child, whose reintegration into the same household as that person is, because of the serious ill-treatment or for other reasons, unlikely.
- (3) The reference in subsection (1) above to the appropriate parental rights and responsibilities relating to the child is to all parental rights and responsibilities except any right to agree, or decline to agree—
  - (a) to the making of an application in relation to the child under section 18 (freeing for adoption) or 55 (adoption abroad) of the Adoption Act 1976, under section 18 or 49 of the Adoption (Scotland) Act 1978 or under Article 17, 18 or 57 of the Adoption (Northern Ireland) Order 1987 (corresponding provision for Scotland and Northern Ireland); or
  - (b) to the making of an adoption order.
- (4) A person is a relevant person for the purposes of this section if he is a parent of the child or a person who for the time being has parental rights in relation to the child.
- (5) The sheriff may, in an order under this section impose such conditions as he considers appropriate; and he may vary or discharge such an order on the application of the local authority, of the child, of any person who immediately before the making of the order is a relevant person or of any other person claiming an interest.
- (6) An order under this section shall, if not first discharged by the sheriff, terminate on the occurrence of any of the following—
  - (a) the child attains the age of eighteen years;
  - (b) he becomes the subject—
    - (i) of an adoption order within the meaning of the Adoption (Scotland) Act 1978; or
    - (ii) of an order under section 18 (freeing for adoption) or 55 (adoption abroad) of the Adoption Act 1976 under section 18 or 49 of the said Act of 1978 or under Article 17, 18 or 57 of the Adoption (Northern Ireland) Order 1987 (corresponding provision for Scotland and Northern Ireland);
  - (c) an order is made for his return under Part I of the Child Abduction and Custody Act 1985; or
  - (d) a decision, other than a decision mentioned in section 25(2) of the said Act of 1985 (decisions relating to rights of access), is registered with respect to him under section 16 of that Act.

## **87 Further provision as respects parental responsibilities orders**

- (1) Subject to subsections (2) and (3) below, where a parental responsibilities order is made as respects a child it shall be the duty of the local authority which applied for it (in this section and in section 88 of this Act referred to as the “appropriate authority”) to fulfil the transferred responsibilities while the order remains in force.
- (2) Notwithstanding that a parental responsibilities order has been made as respects a child, the appropriate authority may allow, either for a fixed period or until the authority otherwise determine, the child to reside with a parent, guardian, relative or friend of his in any case where it appears to the authority that so to allow would be for the benefit of the child.

- (3) Without prejudice to any other provision of this Part of this Act, where by virtue of subsection (2) above a child is residing with a person, the appropriate authority may by notice in writing to the person require him to return the child to them by a time specified in the notice; and service of such notice shall be effected either by the authority leaving it in the person’s hands or by their sending it to him, at his and the child’s most recent known address, by recorded delivery service.
- (4) For the purposes of any application for a parental responsibilities order, rules shall provide for the appointment, in such cases as are prescribed by such rules—
- (a) of a person to act as curator *ad litem* to the child in question at the hearing of the application, safeguarding the interests of the child in such manner as may be so prescribed; and
  - (b) of a person (to be known as a “reporting officer”) to witness agreements to parental responsibilities orders and to perform such other duties as may be so prescribed,
- but one person may, as respects the child, be appointed both under paragraph (a) and under paragraph (b) above; so however that, where the applicant is a local authority, no employee of theirs shall be appointed under either or both of those paragraphs.
- (5) Rules may provide for a person to be appointed reporting officer before the application in question is made.

## **88 Parental contact**

- (1) This section applies where a parental responsibilities order is being made, or as the case may be is in force, as respects a child.
- (2) The child shall, subject to subsection (3) below, be allowed reasonable contact by the appropriate authority with—
- (a) each person who, immediately before the making of the parental responsibilities order, is a relevant person for the purposes of section 86 of this Act as respects the child; and
  - (b) where, immediately before that order was made—
    - (i) a residence order or contact order was in force with respect to the child, the person in whose favour the residence order or contact order was made;
    - (ii) a person was entitled to have the child residing with him under an order by a court of competent jurisdiction, that person.
- (3) Without prejudice to subsection (4) below, on an application made to him by the child, by the appropriate authority or by any person with an interest, the sheriff may make such order as he considers appropriate as to the contact, if any, which is to be allowed between the child and any person specified in the order (whether or not a person described in paragraphs (a) and (b) of subsection (2) above).
- (4) A sheriff, on making a parental responsibilities order, or at any time while such an order remains in force as respects a child, may make an order under subsection (3) above as respects the child even where no application has been made to him in that regard.
- (5) An order under this section may impose such conditions as the sheriff considers appropriate; and he may vary or discharge such an order on the application of the child, the appropriate authority or any person with an interest.

- (6) An order under this section shall, if not first discharged by the sheriff, terminate when the parental responsibilities order to which it is referable does.

## **89 Offences in relation to parental responsibilities orders**

Any person who, knowingly and without lawful authority or reasonable excuse—

- (a) fails to comply with a notice under section 87(3) of this Act;
- (b) harbours or conceals a child—
  - (i) as respects whom a parental responsibilities order has been made; and
  - (ii) who has run away, or been taken away or whose return is required by such a notice; or
- (c) induces, assists or incites a child as respects whom any such order has been made to run away, or stay away, from a place where he is looked after or who takes away such a child from that place,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

### *Miscellaneous*

## **90 Consent of child to certain procedures**

Nothing in this Part of this Act shall prejudice any capacity of a child enjoyed by virtue of section 2(4) of the Age of Legal Capacity (Scotland) Act 1991 (capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment; and without prejudice to that generality where a condition contained, by virtue of—

- (a) section 66(4)(a), section 67(2) or section 69(9)(a) of this Act, in a warrant; or
- (b) section 70(5)(a) of this Act, in a supervision requirement,

requires a child to submit to any examination or treatment but the child has the capacity mentioned in the said section 2(4), the examination or treatment shall only be carried out if the child consents.

## **91 Procedural rules in relation to certain applications etc**

- (1) All proceedings to which this section applies are civil proceedings for the purposes of section 32 of the Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate civil procedure in the sheriff court).
- (2) Any reference in this Part of this Act to regulation or prescription by rules in relation to any proceedings to which this section applies shall be construed, unless the context otherwise requires, as a reference to regulation or prescription by rules made under the said section 32.
- (3) Without prejudice to the generality of the said section 32, rules may make provision as to—
  - (a) the functions of a person appointed by the sheriff under section 41(1) of this Act and any right of that person to information relating to the proceedings;
  - (b) the circumstances in which any person who has been given notice in accordance with such rules of an application for a child assessment order, or

- any other person specified in the rules, may apply to the court to have that order varied or discharged;
- (c) the persons to whom notice of the making of a child protection order shall be given by the applicant for that order, and without prejudice to that generality may in making such provision require such notice to be given to either or both of the child and any relevant person in relation to that child;
  - (d) the persons to whom notice of an application for an exclusion order or, under section 79(3) of this Act, for the recall or variation of such an order or of anything done under section 77(2) of this Act shall be given;
  - (e) the period within which a hearing shall be held under subsection (5) of section 76 of this Act after the granting of an order under subsection (4) of that section;
  - (f) the service of any exclusion order on the named person and the appropriate person within such period as may be specified in the rules.
- (4) In relation to any proceedings to which this section applies, rules may permit a party to such proceedings, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.
- (5) This section applies to any application made to the sheriff, and any other proceeding before the sheriff (whether on appeal or otherwise), under any provision of this Part of this Act.

## 92 Legal aid in respect of certain proceedings

For section 29 of the Legal Aid (Scotland) Act 1986 substitute the following section—

### “29 Legal aid in respect of certain proceedings relating to children

- (1) This section applies to legal aid in connection with—
- (a) proceedings before the sheriff (including, without prejudice to that generality, proceedings on an appeal to the sheriff principal from a decision of the sheriff) in respect of any matter arising under Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995 (in this section referred to as “the 1995 Act”); or
  - (b) an appeal to the Court of Session in connection with such proceedings.
- (2) Subject to subsections (3) to (5) below, legal aid to which this section applies shall be available to a child and any relevant person in relation to him in connection with—
- (a) proceedings before the sheriff on an application for a child protection order or child assessment order, or for the variation or recall of such an order;
  - (b) an appeal to the sheriff under section 51 of the 1995 Act against—
    - (i) a decision of a children’s hearing to grant a warrant such as is mentioned in subsection (5)(a) of that subsection; or
    - (ii) any other decision of a children’s hearing;
  - (c) an application—
    - (i) by virtue of section 65(7) or (9) of the 1995 Act for a finding as to whether the grounds for a referral are established; or
    - (ii) under section 85 of the 1995 Act for a review of such a finding;

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- (d) an appeal to the sheriff principal or to Court of Session under section 51 of the 1995 Act.
- (3) Legal aid shall be available under subsection (2)(b)(i) above on an application made to the sheriff without inquiry into the resources of the child or the relevant person.
- (4) Legal aid shall be available under subsection (2)(a),(b)(ii) or (c) above on an application made to the sheriff if the sheriff is satisfied—
  - (a) that it is in the interests of the child that legal aid be made available; and
  - (b) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the case cannot be met without undue hardship to the child or to any relevant person in relation to him or the dependants of any of them.
- (5) Legal aid shall be available under subsection (2)(d) above on an application made to the Board if it is satisfied—
  - (a) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the appeal cannot be met without undue hardship to the child or to any relevant person in relation to him or the dependants of any of them; and
  - (b) that the child, or as the case may be the relevant person has substantial grounds for making or responding to the appeal and it is reasonable, in the particular circumstances of the case, that legal aid should be made available accordingly.
- (6) The Board may require a person receiving legal aid under subsection (2)(d) above or subsection (9) below to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive such legal aid.
- (7) Subject to subsection (8) below, legal aid to which this section applies shall be available in connection with proceedings before the sheriff on an application for an exclusion order (or for the variation or recall of such an order) to—
  - (a) a child;
  - (b) a relevant person in relation to a child;
  - (c) a person who is a named person, or will be such a person if the application is granted;
  - (d) a spouse or partner of a person mentioned in paragraph (c) above; and
  - (e) a person who is an appropriate person, or will be such a person if the application is granted.
- (8) Legal aid shall be available under subsection (7) above on an application to the sheriff if the sheriff is satisfied after consideration of the financial circumstances of the applicant and, where the applicant is a child, of any relevant person or appropriate person in relation to him that the expenses of the case cannot be met without undue hardship to the applicant or any dependant of the applicant.
- (9) Legal aid shall be available in connection with any appeal from a decision of the sheriff on an application for an exclusion order or for the variation or recall of such an order to any of the persons mentioned in paragraphs (a) to (e) of subsection (7) above on an application to the Board if it is satisfied—

- (a) after consideration of the financial circumstances of the applicant and, where the applicant is a child, of any relevant person or appropriate person in relation to him, that the expenses of the appeal cannot be met without undue hardship to the applicant or any dependant of the applicant; and
  - (b) that the applicant has substantial grounds for making or responding to the appeal and that it is reasonable, in the particular circumstances of the case, that legal aid should be made available accordingly.
- (10) Where in connection with any proceedings—
- (a) the sheriff has been satisfied as is mentioned in subsection (4)(b) or subsection (8) above; or
  - (b) the Board has been satisfied as is mentioned in subsection (5)(a) or subsection (9)(a) above,
- and has made legal aid available to any person, it shall not be necessary for the sheriff or, as the case may be, the Board to be so satisfied in respect of an application for legal aid by such a person in connection with any subsequent proceedings arising from such proceedings.
- (11) Legal aid to which this section applies shall consist of representation by a solicitor and, where appropriate, by counsel in any proceedings (including any appeal) mentioned in subsection (1) above and shall include all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to such proceedings.
- (12) In this section—
- (a) “child” and “relevant person” have the meanings given by section 93(2)(b) of the 1995 Act;
  - (b) “child protection order”, “child assessment order” and “exclusion order” have the meanings given by section 93(1) of that Act;
  - (c) “named person” and “appropriate person” have the meanings given by section 76 of that Act; and
  - (d) “partner” shall be construed in accordance with section 79(4) of that Act.”.

### *Interpretation of Part II*

## **93 Interpretation of Part II**

- (1) In this Part of this Act, unless the context otherwise requires,—
- “accommodation” shall be construed in accordance with section 24(8) of this Act;
  - “chief social work officer” means an officer appointed under section 3 of the Social Work (Scotland) Act 1968;
  - “child assessment order” has the meaning given by section 55(1) of this Act;
  - “child protection order” has the meaning given by section 57(1) of this Act;
  - “children’s hearing” shall be construed in accordance with section 39(3), but does not include a business meeting arranged under section 64, of this Act;
  - “compulsory measures of supervision” means, in respect of a child, such measures of supervision as may be imposed upon him by a children’s hearing;

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“constable” means a constable of a police force within the meaning of the Police (Scotland) Act 1967;

“contact order” has the meaning given by section 11(2)(d) of this Act;

“disabled” has the meaning given by section 23(2) of this Act;

“exclusion order” has the meaning given by section 76(12) of this Act;

“family”, in relation to a child, includes—

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child has been living;

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

“local government area” shall be construed in accordance with section 1 of the said Act of 1994;

“parental responsibilities” has the meaning given by section 1(3) of this Act;

“parental responsibilities order” has the meaning given by section 86(1) of this Act;

“parental rights” has the meaning given by section 2(4) of this Act;

“place of safety”, in relation to a child, means—

- (a) a residential or other establishment provided by a local authority;
- (b) a community home within the meaning of section 53 of the Children Act 1989;
- (c) a police station; or
- (d) a hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive the child;

“the Principal Reporter” means the Principal Reporter appointed under section 127 of the said Act of 1994 or any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of that Act, any function of the Principal Reporter under this Act;

“relevant local authority”, in relation to a child who is subject to a warrant granted under this Part of this Act or to a supervision requirement, means the local authority for whose area the children’s panel from which the children’s hearing which granted the warrant or imposed the supervision requirement was formed;

“residence order” has the meaning given by section 11(2)(c) of this Act;

“residential establishment”—

- (a) in relation to a place in Scotland, means an establishment (whether managed by a local authority, by a voluntary organisation or by any other person) which provides residential accommodation for children for the purposes of this Act or the Social Work (Scotland) Act 1968;
- (b) in relation to a place in England and Wales, means a community home, voluntary home or registered children’s home (within the meaning of the Children Act 1989); and
- (c) in relation to a place in Northern Ireland, means a home provided under Part VIII of the Children (Northern Ireland) Order 1995, or a voluntary home, or a registered children’s home (which have respectively the meanings given by that Order);

“school age” shall be construed in accordance with section 31 of the Education (Scotland) Act 1980;



“secure accommodation” means accommodation provided in a residential establishment, approved by the Secretary of State in accordance with regulations made under section 60(1)(bb) of the Social Work (Scotland) Act 1968 or under paragraph 4(2)(i) of Schedule 4 to the Children Act 1989, for the purpose of restricting the liberty of children;

“supervision requirement” has the meaning given by 69(1) of this Act, and includes any condition contained in such a requirement or related to it;

“voluntary organisation” means a body (other than a public or local authority) whose activities are not carried on for profit; and

“working day” means every day except—

- (a) Saturday and Sunday;
- (b) December 25th and 26th; and
- (c) January 1st and 2nd.

(2) For the purposes of—

(a) Chapter 1 and this Chapter (except this section) of this Part, “child” means a person under the age of eighteen years; and

(b) Chapters 2 and 3 of this Part—

“child” means—

- (i) a child who has not attained the age of sixteen years;
- (ii) a child over the age of sixteen years who has not attained the age of eighteen years and in respect of whom a supervision requirement is in force; or
- (iii) a child whose case has been referred to a children’s hearing by virtue of section 33 of this Act;

and for the purposes of the application of those Chapters to a person who has failed to attend school regularly without reasonable excuse includes a person who is over sixteen years of age but is not over school age; and “relevant person” in relation to a child means—

- (a) any parent enjoying parental responsibilities or parental rights under Part I of this Act;
- (b) any person in whom parental responsibilities or rights are vested by, under or by virtue of this Act; and
- (c) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child.

(3) Where, in the course of any proceedings under Chapter 2 or 3 of this Part, a child ceases to be a child within the meaning of subsection (2) above the provisions of those Chapters of this Part and of any statutory instrument made under those provisions, shall continue to apply to him as if he had not so ceased to be a child.

(4) Any reference in this Part of this Act to a child—

(a) being “in need”, is to his being in need of care and attention because—

- (i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;
- (ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;

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- (iii) he is disabled; or
    - (iv) he is affected adversely by the disability of any other person in his family;
  - (b) who is “looked after” by a local authority, shall be construed in accordance with section 17(6) of this Act.
- (5) Any reference to any proceedings under this Part of this Act, whether on an application or on appeal, being heard by the sheriff, shall be construed as a reference to such proceedings being heard by the sheriff in chambers.