



Children (Scotland) Act 1995

1995 CHAPTER 36

PART II

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

CHAPTER 3

PROTECTION AND SUPERVISION OF CHILDREN

Exclusion orders

76 Exclusion orders.

- (1) Subject to subsections (3) to (9) below, where on the application of a local authority the sheriff is satisfied, in relation to a child, that the conditions mentioned in subsection (2) below are met, he may grant an order under this section (to be known as "an exclusion order") excluding from the child's family home any person named in the order (in this Part of this Act referred to as the "named person").
- (2) The conditions are—
 - (a) that the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably apprehended conduct, of the named person;
 - (b) that the making of an exclusion order against the named person—
 - (i) is necessary for the protection of the child, irrespective of whether the child is for the time being residing in the family home; and
 - (ii) would better safeguard the child's welfare than the removal of the child from the family home; and
 - (c) that, if an order is made, there will be a person specified in the application who is capable of taking responsibility for the provision of appropriate care for the child and any other member of the family who requires such care and

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who is, or will be, residing in the family home (in this section, sections 77 to 79 and section 91(3)(f) of this Act referred to as an “appropriate person”).

- (3) No application under subsection (1) above for an exclusion order shall be finally determined under this section unless—
- (a) the named person has been afforded an opportunity of being heard by, or represented before, the sheriff; and
 - (b) the sheriff has considered any views expressed by any person on whom notice of the application has been served in accordance with rules making such provision as is mentioned in section 91(3)(d) of this Act.
- (4) Where, on an application under subsection (1) above, the sheriff—
- (a) is satisfied as mentioned in that subsection; but
 - (b) the conditions mentioned in paragraphs (a) and (b) of subsection (3) above for the final determination of the application are not fulfilled,
- he may grant an interim order, which shall have effect as an exclusion order pending a hearing by the sheriff under subsection (5) below held within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act.
- (5) The sheriff shall conduct a hearing under this subsection within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act, and, if satisfied at that hearing as mentioned in subsection (1) above, he may, before finally determining the application, confirm or vary the interim order, or any term or condition on which it was granted, or may recall such order.
- (6) Where the conditions mentioned in paragraphs (a) and (b) of subsection (3) above have been fulfilled, the sheriff may, at any point prior to the final determination of the application, grant an interim order.
- (7) An order under subsection (5) or (6) above shall have effect as an exclusion order pending the final determination of the application.
- (8) Where—
- (a) an application is made under subsection (1) above; and
 - (b) the sheriff considers that the conditions for making a child protection order under [F1Part 5 of the Children’s Hearings (Scotland) Act 2011] are satisfied,
- he may make [F2a child protection order] as if the application had been duly made by the local authority under that [F3Part] rather than under this section.
- (9) The sheriff shall not make an exclusion order if it appears to him that to do so would be unjustifiable or unreasonable, having regard to—
- (a) all the circumstances of the case, including without prejudice to the generality of this subsection the matters specified in subsection (10) below; and
 - (b) any requirement such as is specified in subsection (11) below and the likely consequences in the light of that requirement of the exclusion of the named person from the family home.
- (10) The matters referred to in subsection (9)(a) above are—
- (a) the conduct of the members of the child’s family (whether in relation to each other or otherwise);
 - (b) the respective needs and financial resources of the members of that family;
 - (c) the extent (if any) to which—
 - (i) the family home; and

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- (ii) any relevant item in that home,
is used in connection with a trade, business or profession by any member of the family.
- (11) The requirement referred to in subsection (9)(b) above is a requirement that the named person (whether alone or with any other person) must reside in the family home, where that home—
- [^{F4}(a) is on or comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or in a lease constituting a short limited duration tenancy [^{F5}, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] (within the meaning of that Act); or]
- (b) is let, or is a home in respect of which possession is given, to the named person (whether alone or with any other person) by an employer as an incident of employment.
- (12) In this Part of this Act—
- “caravan” has the meaning given to it by section 29(1) of the ^{M1}Caravan Sites and Control of Development Act 1960;
- “exclusion order”, includes an interim order granted under subsection (4) above and such an order confirmed or varied under subsection (5) above and an interim order granted under subsection (6) above; except that in subsection (3) above and in section 79 of this Act, it does not include an interim order granted under subsection (4) above;
- “family” has the meaning given in section 93(1) of this Act;
- “family home” means any house, caravan, houseboat or other structure which is used as a family residence and in which the child ordinarily resides with any person described in subsection (13) below and the expression includes any garden or other ground or building attached to and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure.
- (13) The description of person referred to in the definition of “family home” in subsection (12) above, is a person who has parental responsibilities in relation to the child, or who ordinarily (and other than by reason only of his employment) has charge of, or control over him.

Textual Amendments

- F1** Words in s. 76(8)(b) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(9)(a)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F2** Words in s. 76(8) substituted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(9)(b)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F3** Word in s. 76(8) inserted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(9)(b)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F4** S. 76(11)(a) substituted (27.11.2003) by The Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), arts. 1, 2, **Sch. para. 12**
- F5** Words in s. 76(11)(a) substituted (30.11.2017) by Land Reform (Scotland) Act 2016 (asp 18), s. 130(1), **sch. 2 para. 5(2)** (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 10)

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Marginal Citations

M1 1960 c.62.

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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\(2\)](#)