



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

78 Powers of arrest etc. in relation to exclusion order.

- (1) The sheriff may, whether or not on an application such as is mentioned in subsection (2) below, attach a power of arrest to any interdict granted under section 77(2) of this Act by virtue of subsection (3) of that section.
- (2) A local authority may at any time while an exclusion order has effect apply for such attachment of a power of arrest as is mentioned in subsection (1) above.
- (3) A power of arrest attached to an interdict by virtue of subsection (1) above shall not have effect until such interdict, together with the attached power of arrest, is served on the named person.
- (4) If, by virtue of subsection (1) above, a power of arrest is attached to an interdict, the local authority shall, as soon as possible after the interdict, together with the attached power of arrest, is served on the named person, ensure that there is delivered [^{F1}to the chief constable of the Police Service of Scotland] —
 - ^{F2}(a)
 - ^{F2}(b)

a copy of the application for the interdict and of the interlocutor granting the interdict together with a certificate of service of the interdict and, where the application to attach

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the power of arrest was made after the interdict was granted, a copy of that application and of the interlocutor above granting it and a certificate of service of the interdict together with the attached power of arrest.

- (5) Where any interdict to which a power of arrest is attached by virtue of subsection (1) above is varied or recalled, the person who applied for the variation or recall shall ensure that there is delivered to [^{F3}the chief constable of the Police Service of Scotland] a copy of the application for such variation or recall and of the interlocutor granting the variation or recall.
- (6) A constable may arrest without warrant the named person if he has reasonable cause for suspecting that person to be in breach of an interdict to which a power of arrest has been attached by virtue of subsection (1) above.
- (7) Where a person has been arrested under subsection (6) above, the constable in charge of a police station may—
 - (a) if satisfied there is no likelihood of that person further breaching the interdict to which the power of arrest was attached under subsection (1) above, liberate him unconditionally; or
 - (b) refuse to liberate that person.
- (8) Such a refusal to liberate an arrested person as is mentioned in subsection (7)(b) above, and the detention of that person until his appearance in court by virtue of either subsection (11) below, or any provision of the [^{F4}Criminal Procedure (Scotland) Act 1995], shall not subject that constable to any claim whatsoever.
- (9) Where a person has been liberated under subsection (7)(a) above, the facts and circumstances which gave rise to the arrest shall be reported to the procurator fiscal forthwith.
- (10) Subsections (11) to (13) below apply only where—
 - (a) the arrested person has not been released under subsection (7)(a) above; ^{F5}...
 - ^{F5}(b)
- (11) A person arrested under subsection (6) above shall wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which he was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under [^{F6}section 8 of the said Act of 1995], on which the sheriff is not sitting for the disposal of criminal business.
- ^{F7}(12)
- [^{F8}(12A) Subsection (13) applies where—
 - (a) a person is brought before the sheriff under subsection (11) above; and
 - (b) the procurator fiscal has decided that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.]
 - (13) Where [^{F9}this subsection applies] —
 - (a) the procurator fiscal shall present to the court a petition containing—
 - (i) a statement of the particulars of the person arrested under subsection (6) above;
 - (ii) a statement of the facts and circumstances which gave rise to that arrest; and

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- (iii) a request that the person be detained for a further period not exceeding two days;
 - (b) the sheriff, if it appears to him that—
 - (i) the statement referred to in paragraph (a)(ii) above discloses *prima facie* breach of interdict by the arrested person;
 - (ii) proceedings for breach of interdict will be taken; and
 - (iii) there is a substantial risk of violence by the arrested person against any member of the family, or an appropriate person, resident in the family home,
 may order the arrested person to be detained for a period not exceeding two days; and
 - (c) the sheriff shall, in any case in which paragraph (b) above does not apply, order the release of the arrested person from custody (unless that person is in custody in respect of some other matter);
- and in computing the period of two days referred to in paragraphs (a) and (b) above, no account shall be taken of a Saturday, a Sunday or any holiday in the court in which proceedings for breach of interdict will require to be raised.

[^{F10}(13A) Subsection (14) applies where—

- (a) a person has been liberated under subsection (7)(a) above; or
 - (b) the following conditions are met—
 - (i) a person is to be brought before the sheriff under subsection (11) above; and
 - (ii) the procurator fiscal has decided that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.]
- (14) [^{F11}Where this subsection applies], the procurator fiscal shall at the earliest opportunity, and, [^{F12}where the conditions in subsection (13A)(b) above are met, before the] person is brought before the sheriff, take all reasonable steps to intimate to—
- (i) the local authority which made the application for the interdict;
 - (ii) an appropriate person who will reside in, or who remains in residence in, the family home mentioned in the order; and
 - (iii) any solicitor who acted for the appropriate person when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that person,
- that he has decided that no criminal proceedings should be taken in respect of the facts and circumstances which gave rise to the arrest of the named person.

Textual Amendments

- F1** Words in s. 78(4) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 11\(2\)\(a\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F2** S. 78(4)(a)(b) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 11\(2\)\(a\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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- F3** Words in s. 78(5) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 11(2)(b)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F4** Words in s. 78(8) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(7)(a)**
- F5** S. 78(10)(b) and word omitted (25.1.2018) by virtue of [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 2(a)**
- F6** Words in s. 78(11) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(7)(b)**
- F7** S. 78(12) repealed (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 2(b)**
- F8** S. 78(12A) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 2(c)**
- F9** Words in s. 78(13) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 2(d)**
- F10** S. 78(13A) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 2(e)**
- F11** Words in s. 78(14) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 2(f)(i)**
- F12** Words in s. 78(14) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 2(f)(ii)**

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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\(2\)](#)