



Children (Scotland) Act 2020

2020 asp 16

Further provision about orders under section 11(1) of the Children (Scotland) Act 1995

15 Clarification of order-making power

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) In section 11 (court orders relating to parental responsibilities etc.), after subsection (2) insert—
 - “(2A) An order doing any of the things mentioned in subsection (2) is to be regarded as an order in relation to at least one of the matters mentioned in subsection (1).”.

Commencement Information

II S. 15 in force at 17.1.2021 by S.S.I. 2020/412, **reg. 2(1)(a)** (with **reg. 3**)

PROSPECTIVE

16 Factors to be considered before making order

- (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) In section 11ZA (paramourcy of child's welfare, and the non-intervention presumption) (which is inserted by section 1(4) of this Act), in subsection (3) after paragraph (e) insert—
 - “(f) the effect that the order the court is deciding whether or not to make might have on—
 - (i) the involvement of the child's parents in bringing the child up, and
 - (ii) the child's important relationships with other people.”.

Status: This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Children (Scotland) Act 2020, Cross Heading: Further provision about orders under section 11(1) of the Children (Scotland) Act 1995. (See end of Document for details)

17 Curators ad litem

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11C (which is inserted by section 8(2) of this Act) insert—

“11D Appointment of curator ad litem

- (1) Where a court is considering making an order under section 11(1), the court—
 - (a) may only appoint a person to act as curator ad litem to a child if the court is satisfied that it is necessary to do so to protect the child's interests,
 - (b) may only appoint a person who is included on the register maintained in accordance with section 101B,
 - (c) is to give reasons for the appointment.
 - (2) Where, in the course of considering making an order under section 11(1), a court has appointed a curator ad litem, the court must—
 - (a) decide whether to continue the appointment every 6 months, and
 - (b) if it decides to continue the appointment, give reasons for the decision.
 - (3) Subsection (2) does not apply in relation to a curator ad litem appointed before section 17 of the Children (Scotland) Act 2020 comes into force.”
- (3) After section 101A (which is inserted by section 9(2) of this Act) insert—

“101B Register of curators ad litem for the purposes of section 11D

- (1) The Scottish Ministers must establish and maintain a register of persons who may be appointed to act as a curator ad litem in accordance with section 11D.
- (2) The Scottish Ministers may by regulations make provision for or in connection with—
 - (a) the requirements that a person must satisfy in order to be included, and remain, on the register (including requirements as to training and qualifications),
 - (b) the processes for including a person on, and removing a person from, the register (including appeal rights),
 - (c) the process for how, and by whom, a registered person is to be selected as the appointed curator ad litem in a case,
 - (d) the remuneration by the Scottish Ministers of curators ad litem appointed in accordance with section 11D, including expenses and outlays (such as counsel's fees),
 - (e) the operation and management of the register.
- (3) Regulations under subsection (2) are subject to the negative procedure.”

Commencement Information

I2 S. 17(1)(3) in force at 25.10.2021 for specified purposes by S.S.I. 2021/339, reg. 2(d)

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Changes to legislation: There are currently no known outstanding effects for the Children (Scotland) Act 2020, Cross Heading: Further provision about orders under section 11(1) of the Children (Scotland) Act 1995. (See end of Document for details)

PROSPECTIVE

18 Duty to consider child's best interests when allowing access to information

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11D (which is inserted by section 17(2) of this Act) insert—

“11E Duty to consider child's best interests when allowing access to information

- (1) Where the court—
 - (a) is considering making an order under section 11(1), and
 - (b) has to decide whether a person should have access to anything in which private information about a child is recorded,in making that decision it must comply with subsections (2) and (3) in relation to that child.
- (2) The court must regard the best interests of the child as a primary consideration.
- (3) The court must—
 - (a) give the child an opportunity to express the child's views in—
 - (i) the manner that the child prefers, or
 - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
 - (b) have regard to any views expressed by the child, taking into account the child's age and maturity.
- (4) But the court is not required to comply with subsection (3) if satisfied that—
 - (a) the child is not capable of forming a view, or
 - (b) the location of the child is not known.
- (5) The child is to be presumed to be capable of forming a view unless the contrary is shown.
- (6) In this section, “private information” means information in which the child could have a reasonable expectation of privacy.”.

PROSPECTIVE

19 Local authority reporters

- (1) The Matrimonial Proceedings (Children) Act 1958 is modified as follows.
- (2) In section 11 (reports as to arrangements for future care and upbringing of children), after subsection (1A) insert—

“(1B) Where—

 - (a) the court is considering whether to make an order under section 11(1) of the Children (Scotland) Act 1995, and

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(b) a local authority is appointed under subsection (1) to investigate and report to the court,

the person that the local authority assigns to perform that task on its behalf must be a child welfare reporter.

(1C) In subsection (1B), “a child welfare reporter” means a person included on the register maintained in accordance with section 101A of the Children (Scotland) Act 1995.”.

PROSPECTIVE

20 Explanation of decisions to the child

(1) The Children (Scotland) Act 1995 is modified as follows.

(2) After section 11E (which is inserted by section 18(2) of this Act) insert—

“11F Explanation of court decisions to the child

(1) This section applies when—

- (a) the court decides whether or not to make an order under section 11(1),
- (b) the court decides to vary or discharge an order made under section 11(1),
- (c) the court—
 - (i) decides to decline to vary or discharge an order made under section 11(1), and
 - (ii) considers it appropriate to explain that decision to the child concerned.

(2) The court must ensure that the decision is explained to the child concerned in a way that the child can understand.

(3) But the court is not required to comply with subsection (2) if satisfied that—

- (a) the child would not be capable of understanding an explanation however given,
- (b) it is not in the best interests of the child to give an explanation, or
- (c) the location of the child is not known.

(4) The court may fulfil its duty under subsection (2) by—

- (a) giving the explanation to the child itself, or
- (b) arranging for it to be given by a child welfare reporter (see section 101A).

(5) In this section, references to a decision include an interim decision.

(6) The Scottish Ministers may by regulations modify subsection (4)(b) to—

- (a) add a description of a person,
- (b) vary a description of a person,
- (c) remove a description of a person.

(7) Regulations under subsection (6) are subject to the affirmative procedure.”.

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PROSPECTIVE

21 Duty to ensure availability of child advocacy services

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 100 insert—

“100A Duty to ensure availability of child advocacy services

- (1) The Scottish Ministers must make such provision as they consider necessary and sufficient to ensure that all children concerned in relevant proceedings have access to appropriate child advocacy services.
- (2) In this section—
 - “child advocacy services” means services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in relevant proceedings,
 - “relevant proceedings” means proceedings in which the court is considering making an order under section 11(1).”.

PROSPECTIVE

22 Failure to obey order

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11F (which is inserted by section 20(2) of this Act) insert—

“11G Duty to investigate failure to obey order under section 11

- (1) This section applies where a court is considering whether to—
 - (a) find a person in contempt of court for failing to obey an order under section 11, or
 - (b) vary or discharge an order under section 11 on the basis (solely or partly) that a person has failed to obey it.
- (2) If it is satisfied that the person has failed to obey the order, the court must—
 - (a) seek to establish the reasons for that failure, and
 - (b) in so doing—
 - (i) give the child concerned an opportunity to express the child's views in—
 - (A) the manner that the child prefers, or
 - (B) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
 - (ii) have regard to any views expressed by the child, taking into account the child's age and maturity.

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- (3) But the court is not required to comply with subsection (2)(b) if satisfied that—
 - (a) the child is not capable of forming a view, or
 - (b) the location of the child is not known.
- (4) The child is to be presumed to be capable of forming a view unless the contrary is shown.
- (5) The court may appoint a child welfare reporter to investigate and report to the court on the person's failure (or alleged failure) to obey the order (see section 101A).
- (6) References in this section to an order include an interim order.
- (7) The Scottish Ministers may by regulations modify subsection (5) to—
 - (a) add a description of person,
 - (b) vary a description of person,
 - (c) remove a description of person.
- (8) Regulations under subsection (7) are subject to the affirmative procedure.”.

Status:

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Changes to legislation:

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