



# 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).”.

### **16 Factors to be considered before making order**

- (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) In section 11ZA (paramountcy 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.”.

### **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—

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- (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.”.

**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.”.

## **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
  - (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.”.

## **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),

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- (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.”.

## **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).”.

## **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.
- (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.”.