Children (Scotland) Act 2020

2020 asp 16

PROSPECTIVE

Regard to be had to child's views

1 Proceedings under Children (Scotland) Act 1995

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

(2) In section 6 (views of children)—

(a) in subsection (1)—

(i) after "shall" insert " comply with subsections (1A) and (1D) ",

(ii) the words after paragraph (b) are repealed,

(b) after subsection (1) insert—

"(1A) The person 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.

(1B) But the person is not required to comply with subsection (1A) if the person is satisfied that—

(a) the child is not capable of forming a view, or

(b) the location of the child is not known.

(1C) In considering whether the child is capable of forming a view, the person is to start with the presumption that the child is.

(1D) The person must, so far as is practicable, have regard to the views of any other person who has parental responsibilities or parental rights in relation to the child.".

Status: *Point in time view as at 02/10/2020. 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: Regard to be had to child's views. (See end of Document for details)*

(3) In section 11 (court orders relating to parental responsibilities etc.)—

(a) subsections (7) to (7E) are repealed,

(b) in subsection (8), the words “, notwithstanding subsection (7) above,” are repealed,

(c) subsections (9) and (10) are repealed.

(4) After section 11 insert—

“**11ZA Paramountcy of child's welfare, and the non-intervention presumption**

(1) In deciding whether or not to make an order under section 11(1) and what order (if any) to make, the court must regard the welfare of the child concerned as its paramount consideration.

(2) The court must not make an order under section 11(1) unless it considers that it would be better for the child concerned that the order be made than that none should be made at all.

(3) When considering the child's welfare and whether it would be better for the child to make an order than not, the court must have regard to the following matters in particular—

(a) the need to protect the child from abuse, or the risk of abuse, which affects, or might affect, the child,

(b) the effect that abuse, or the risk of abuse, might have on the child,

(c) the ability of a person to care for, or otherwise meet the needs of, the child, where that person has carried out, or might carry out, abuse which affects, or might affect, the child,

(d) the effect that abuse, or the risk of abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under section 11(1), would have) those responsibilities,

(e) whether it is, or would be, appropriate for an order to require that two or more persons co-operate with one another with regard to matters affecting the child.

(4) In subsection (3)—

“abuse” includes—

(a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress,

(b) abuse of a person other than the child, and

(c) domestic abuse,

“conduct” includes—

(a) speech, and

(b) presence in a particular place or area.

11ZB Regard to be had to the child's views

(1) In deciding whether or not to make an order under section 11(1) and what order (if any) to make, the court must—

(a) give the child concerned 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.

(2) But the court is not required to comply with subsection (1) if satisfied that—

(a) the child is not capable of forming a view, or

(b) the location of the child is not known.

(3) The child is to be presumed to be capable of forming a view unless the contrary is shown.

(4) Nothing in this section requires a child to be legally represented in any proceedings in which the child's views are sought, if the child does not wish to be.”.

(5) In section 14 (jurisdiction and choice of law in relation to certain matters), in subsection (4), for “subsection (7) of that section” substitute “ sections 11ZA and 11ZB ”.

(6) In section 16 (welfare of child and consideration of his views), for subsection (2) substitute—

“(2) In the circumstances mentioned in subsection (4), the sheriff must—

(a) give the child concerned 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.

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

(a) the child is not capable of forming a view, or

(b) the location of the child is not known.

(2B) The child is to be presumed to be capable of forming a view unless the contrary is shown.”.

(7) The italic heading preceding section 11 becomes “ *Court orders relating to parental responsibilities etc.* ”.

(8) Before section 12, insert as an italic heading “ *Exercise of court functions relating to children* ”.

2 Proceedings under Adoption and Children (Scotland) Act 2007

(1) The Adoption and Children (Scotland) Act 2007 is modified as follows.

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(2) In section 14 (considerations applying to the exercise of powers)—

(a) in subsection (1), for "(4)" substitute " (4C) ",

(b) subsection (4)(b) is repealed,

(c) after subsection (4) insert—

"(4A) The court or adoption agency 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.

(4B) But the court or adoption agency is not required to comply with subsection (4A) if satisfied that the child is not capable of forming a view.

(4C) The child is to be presumed to be capable of forming a view unless the contrary is shown.",

(d) in subsection (6), for "(4)" substitute " (4C) ",

(e) subsection (8) is repealed.

(3) In section 84 (conditions and considerations application to making of order)—

(a) for subsection (5)(a) substitute—

"(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,",

(b) for subsection (5)(b)(i) substitute—

"(i) any views expressed by the child, taking into account the child's age and maturity,",

(c) after subsection (5) insert—

"(5A) But the court is not required to comply with subsection (5)(a) if satisfied that the child is not capable of forming a view.

(5B) The child is to be presumed to be capable of forming a view unless the contrary is shown.",

(d) subsection (6) is repealed.

3 Proceedings under Children's Hearings (Scotland) Act 2011

(1) The Children's Hearings (Scotland) Act 2011 is modified as follows.

(2) In section 27 (views of the child), for subsections (3) and (4) substitute—

"(3) The children's hearing, pre-hearing panel or the sheriff 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 children's hearing, pre-hearing panel or the sheriff 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.

(4A) The child is to be presumed to be capable of forming a view unless the contrary is shown.”.

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Changes to legislation:
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