

CHILDREN (SCOTLAND) ACT 2020

EXPLANATORY NOTES

THE ACT

Detailed provisions

Clarification of order-making power

60. Section 15 aims to capture the effect of the Inner House of the Court of Session decision in the case of *Knox v S*¹, in addressing the question of whether the requirement that an order under section 11(2) of the 1995 Act must be “in relation to” parental rights and responsibilities (PRRs) means that the order itself must involve the granting or withdrawing of PRRs.
61. In *Knox v S*, the Inner House held (paragraph 45) that “residence orders and contact orders, and indeed specific issue orders.... could properly be described as ‘orders in relation to’ parental responsibilities and rights in so far as they relate to matters encompassed in such responsibilities and rights and are likely to affect the exercise of such responsibilities and rights by anyone who has, or who might obtain, them.” The court found (paragraph 42) that “it is plain that certain persons who cannot apply for an order imposing or granting parental responsibilities and rights can apply for residence or contact orders” under section 11(2) of the 1995 Act.
62. Section 15 of the Act inserts new subsection (2A) into section 11 of the 1995 Act. This provision makes it clear that an order under section 11(2) of the 1995 Act is to be regarded as relating to at least one of the matters mentioned in section 11(1) (that is parental responsibilities, parental rights, guardianship or the administration of a child’s property). An order under section 11(2) includes at (d) a “contact order” which regulates the arrangements for maintaining personal relations between a child under 16 and any person with whom the child is not, or will not be, living.
63. This puts beyond doubt that a person under the age of 16 can seek and obtain a contact order under section 11(2)(d) of the 1995 Act, despite the fact that, under section 11(2)(b) of the 1995 Act, a person under 16 cannot obtain an order granting the person parental responsibilities and rights (PRRs), unless the person is a parent of the child.
64. Section 11 also puts beyond doubt that a person over the age of 16 may seek and obtain a contact order without also obtaining PRRs.
65. Section 11 provides clarification by deeming, for the avoidance of doubt, an order doing any of the specific things listed in section 11(2) of the 1995 Act to be an order in relation to at least one of the matters mentioned in section 11(1) of that Act. In practice, this will remove any doubt that it is open to a court to grant a contact order under section 11(2) even where the person being granted contact is too young to be granted PRRs or where the court does not consider it would be appropriate to grant the person PRRs.

¹ *Knox v S* [2010] CSIH 45