

# **CHILDREN (SCOTLAND) ACT 2020**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Detailed provisions*

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

66. Where the court is deciding whether to make an order under section 11(1) of the 1995 Act, it must have regard to the child's welfare as the paramount consideration. Orders under section 11(1) relate to PRRs and matters such as where a child should live (residence order) and who should have contact with the child (contact order).
67. Section 16 of the Act amends section 11ZA of the 1995 Act (which is itself inserted by section 1(4) of the Act) to list as a factor that the court is to take into account as part of its consideration of a child's welfare the effect that the order the court is considering might have on the child's parents' involvement in bringing the child up and the effect it might have on the child's important relationships with other people.
68. The list of factors, to which section 16 adds (the other factors being those related to protection from abuse, which are currently stated in section 11 (7A) to (7C) of the 1995 Act), is not hierarchical. Nor is it an exhaustive list of the matters the court should take into consideration when making an order under section 11(1) of the 1995 Act. The factors must be considered only as part of all the relevant factors and circumstances arising in each case. Factors other than those specified on the list can be given greater weight when coming to a decision. The paramount consideration remains the welfare of the child. This paramount consideration has been restated in section 11ZA(1) of the 1995 Act, inserted by section 1 of the Act.