



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART I

#### PARENTS, CHILDREN AND GUARDIANS

##### *Court Orders*

#### **11 Court orders relating to parental responsibilities etc.**

- (1) In the relevant circumstances in proceedings in the Court of Session or sheriff court, whether those proceedings are or are not independent of any other action, an order may be made under this subsection in relation to—
- (a) parental responsibilities;
  - (b) parental rights;
  - (c) guardianship; or
  - (d) subject to section 14(1) and (2) of this Act, the administration of a child's property.

<sup>F1</sup>(1A) .....

- (2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders—
- (a) an order depriving a person of some or all of his parental responsibilities or parental rights in relation to a child;
  - (b) an order—
    - (i) imposing upon a person (provided he is at least sixteen years of age or is a parent of the child) such responsibilities; and
    - (ii) giving that person such rights;
  - (c) an order regulating the arrangements as to—
    - (i) with whom; or

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- (ii) if with different persons alternately or periodically, with whom during what periods,
    - a child under the age of sixteen years is to live (any such order being known as a “residence order”);
  - (d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age and a person with whom the child is not, or will not be, living (any such order being known as a “contact order”);
  - (e) an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in paragraphs (a) to (d) of subsection (1) of this section (any such order being known as a “specific issue order”);
  - (f) an interdict prohibiting the taking of any step of a kind specified in the interdict in the fulfillment of parental responsibilities or the exercise of parental rights relating to a child or in the administration of a child’s property;
  - (g) an order appointing a judicial factor to manage a child’s property or remitting the matter to the Accountant of Court to report on suitable arrangements for the future management of the property; or
  - (h) an order appointing or removing a person as guardian of the child.
- (3) The relevant circumstances mentioned in subsection (1) above are—
- (a) that application for an order under that subsection is made by a person who—
    - (i) not having, and never having had, parental responsibilities or parental rights in relation to the child, claims an interest;
    - (ii) has parental responsibilities or parental rights in relation to the child;
    - <sup>F2</sup>(iii) . . . . .
  - <sup>F3</sup>(aa) that application for a contact order is made with the leave of the court by a person whose parental responsibilities or parental rights in relation to the child were extinguished on the making of an adoption order;
  - (ab) that application for an order under subsection (1) above (other than a contact order) is made by a person who has had, but for a reason other than is mentioned in subsection (4) below, no longer has, parental responsibilities or parental rights in relation to the child;
  - (b) that although no <sup>F4</sup>application for an order under subsection (1) above] has been made, the court (even if it declines to make any other order) considers it should make such an order.
- (4) The reasons referred to in <sup>F5</sup>(3)(ab)] above are that the parental responsibilities or parental rights have been—
- (a) extinguished on the making of an adoption order;<sup>F6</sup> or]
  - <sup>F7</sup>(b) . . . . .
  - (c) extinguished by virtue of <sup>F8</sup>section 55(1) of the Human Fertilisation and Embryology Act 2008 (parental orders: supplementary provision)] on the making of a parental order under <sup>F9</sup>section 54 of that Act]; <sup>F10</sup>. . .
  - <sup>F10</sup>(d) . . . . .
- (5) In subsection (3)(a) <sup>F11</sup>and (ab)] above “person” includes (without prejudice to the generality of that subsection) the child concerned; but it does not include a local authority.
- (6) In subsection (4) above—

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<sup>F12</sup> . . . “adoption order” [<sup>F13</sup>has the meaning given by section 119 of the Adoption and Children (Scotland) Act 2007 (asp 4)].

(7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court—

- (a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and
- (b) taking account of the child’s age and maturity, shall so far as practicable—
  - (i) give him an opportunity to indicate whether he wishes to express his views;
  - (ii) if he does so wish, give him an opportunity to express them; and
  - (iii) have regard to such views as he may express.

<sup>F14</sup>(7A) In carrying out the duties imposed by subsection (7)(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below.

(7B) Those matters are—

- (a) the need to protect the child from—
  - (i) any abuse; or
  - (ii) the risk of any abuse,which affects, or might affect, the child;
- (b) the effect such abuse, or the risk of such abuse, might have on the child;
- (c) the ability of a person—
  - (i) who has carried out abuse which affects or might affect the child; or
  - (ii) who might carry out such abuse,to care for, or otherwise meet the needs of, the child; and
- (d) the effect any abuse, or the risk of any 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 subsection (1), would have) those responsibilities.

(7C) In subsection (7B) above—

“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 specified place or area.

(7D) Where—

- (a) the court is considering making an order under subsection (1) above; and
  - (b) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child,
- the court shall consider whether it would be appropriate to make the order.

(7E) In subsection (7D) above, “relevant person”, in relation to a child, means—

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- (a) a person having parental responsibilities or parental rights in respect of the child; or
  - (b) where a parent of the child does not have parental responsibilities or parental rights in respect of the child, a parent of the child.]
- (8) The court shall, notwithstanding subsection (7) above, endeavour to ensure that any order which it makes, or any determination by it not to make an order, does not adversely affect the position of a person who has, in good faith and for value, acquired any property of the child concerned, or any right or interest in such property.
- (9) Nothing in paragraph (b) of subsection (7) above requires a child to be legally represented, if he does not wish to be, in proceedings in the course of which the court implements that paragraph.
- (10) Without prejudice to the generality of paragraph (b) of subsection (7) above, a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view for the purposes both of that paragraph and of subsection (9) above.
- (11) An order under subsection (1) above shall have the effect of depriving a person of a parental responsibility or parental right only in so far as the order expressly so provides and only to the extent necessary to give effect to the order; but in making any such order as is mentioned in paragraph (a) or (b) of subsection (2) above the court may revoke any agreement which, in relation to the child concerned, has effect by virtue of section 4(2) [F15 or 4A(2)] of this Act.
- (12) Where the court makes a residence order which requires that a child live with a person who, immediately before the order is made does not have in relation to the child all the parental responsibilities mentioned in paragraphs (a), (b) and (d) of section 1(1), and the parental rights mentioned in paragraphs (b) and (d) of section 2(1), of this Act (those which he does not so have being in this subsection referred to as the “relevant responsibilities and rights”) that person shall, subject to the provisions of the order or of any other order made under subsection (1) above, have the relevant responsibilities and rights while the residence order remains in force.
- (13) Any reference in this section to an order includes a reference to an interim order or to an order varying or discharging an order.

#### Textual Amendments

- F1** S. 11(1A) repealed (1.3.2005) by [The European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), **reg. 9** (with [reg. 6](#))
- F2** S. 11(3)(a)(iii) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 107(a), 121(2)**; [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#))
- F3** S. 11(3)(aa)(ab) inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 107(b), 121(2)**; [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#))
- F4** Words in s. 11(3)(b) inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 107(c), 121(2)**; [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#))
- F5** Words in s. 11(4) substituted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 120(1), 121(2), Sch. 2 para. 9(2)(a)(i)**; [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#))
- F6** Word in s. 11(4) inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 120(1), 121(2), Sch. 2 para. 9(2)(a)(ii)**; [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#))
- F7** S. 11(4)(b) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), **ss. 120(2), 121(2), Sch. 3**; [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#))

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- F8** Words in s. 11(4)(c) substituted (6.4.2009 for certain purposes, otherwise 6.4.2010) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 52(2)(a)**; S.I. 2009/479, **art. 6(1)(e)** (as amended by S.I. 2009/2232, art. 3); S.I. 2010/987, **art. 2(g)**
- F9** Words in s. 11(4)(c) substituted (6.4.2009 for certain purposes, otherwise 6.4.2010) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 52(2)(b)**; S.I. 2009/479, **art. 6(1)(e)** (as amended by S.I. 2009/2232, art. 3); S.I. 2010/987, **art. 2(g)**
- F10** S. 11(4)(d) and preceding word repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F11** Words in s. 11(5) inserted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(1), 121(2), **Sch. 2 para. 9(2)(b)**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F12** Words in s. 11(6) repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F13** Words in s. 11(6) substituted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(1), 121(2), **Sch. 2 para. 9(2)(c)**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)
- F14** S. 11(7A)-(7E) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 24, 46(2)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F15** Words in s. 11(11) inserted (6.4.2009 for certain purposes, otherwise 1.9.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 56, 68, **Sch. 6 para. 52(3)**; S.I. 2009/479, **art. 6(1)(e)(2)** (as amended by S.I. 2009/2232, art. 3)

**Modifications etc. (not altering text)**

- C1** S. 11(1) restricted (30.12.2005) by 1978 c. 28, s. 53C(2) (as inserted by 2002 c. 38, ss. 139(1), 148(5) (c), **Sch. 3 para. 30**) (with Sch. 4 paras. 6-8); S.S.I. 2005/643, **art. 2(c)**
- C2** S. 11(1) restricted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), **ss. 79(2), 121(2)**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

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