



# 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;
    - (iii) 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; or
  - (b) that although no such application 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 subsection (3)(a)(iii) above are that the parental responsibilities or parental rights have been—
- (a) extinguished on the making of an adoption order;
  - (b) transferred to an adoption agency on the making of an order declaring the child free for adoption;
  - (c) extinguished by virtue of subsection (9) of section 30 of the <sup>M1</sup>Human Fertilisation and Embryology Act 1990 (provision for enactments about adoption to have effect with modifications) on the making of a parental order under subsection (1) of that section; or
  - (d) transferred to a local authority by a parental responsibilities order.
- (5) In subsection (3)(a) 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—
- “adoption agency” and “adoption order” have the same meanings as they are given, in section 18 of the <sup>M2</sup>Adoption (Scotland) Act 1978, by section 65(1) of that Act; and
  - “parental responsibilities order” has the meaning given by section 86(1) of this Act.

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- (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.
- (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) 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](#))

#### 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(4)(d) extended (*temp.* from 22.8.1996 to 1.4.1997) by [S.I. 1996/2203](#), [art. 5\(b\)](#)

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#### Marginal Citations

- M1 1990 c. 37.  
 M2 1978 c. 28.

VALID FROM 28/09/2009

#### [<sup>F2</sup>11A Restriction on making of orders under section 11

- (1) Subsection (2) applies where a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)) is in force in respect of a child.
- (2) The court may not, under subsection (1) of section 11 of this Act, make an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section.]

#### Textual Amendments

- F2 S. 11A inserted (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 103, 121(2); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)

## 12 Restrictions on decrees for divorce, separation or annulment affecting children.

- (1) In any action for divorce, judicial separation or declarator of nullity of marriage, the court shall, where this section applies, consider (in the light of such information as is before the court as to the arrangements which have been, or are proposed to be, made for the upbringing of each child by virtue of which it applies) whether to exercise with respect to him the powers conferred by section 11 or 54 of this Act.
- (2) Where, in any case to which this section applies, the court is of the opinion that—
  - (a) the circumstances of the case require, or are likely to require, it to exercise any power under section 11 or 54 of this Act with respect to the child concerned;
  - (b) it is not in a position to exercise that power without giving further consideration to the case; and
  - (c) there are exceptional circumstances which make it desirable in the interests of that child that it should not grant decree in the action until it is in a position to exercise such a power,
 it shall postpone its decision on the granting of decree in the action until it is in such a position.
- (3) This section applies where a child of the family has not reached the age of sixteen years at the date when the question first arises as to whether the court should give such consideration as is mentioned in subsection (1) above.
- (4) In this section “child of the family”, in relation to the parties to a marriage, means—
  - (a) a child of both of them; or
  - (b) any other child, not being a child who is placed with them as foster parents by a local authority or voluntary organisation, who has been treated by both of them as a child of their family.

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### **13 Awards of damages to children.**

- (1) Where in any court proceedings a sum of money becomes payable to, or for the benefit of, a child under the age of sixteen years, the court may make such order relating to the payment and management of the sum for the benefit of the child as it thinks fit.
- (2) Without prejudice to the generality of subsection (1) above, the court may in an order under this section—
  - (a) appoint a judicial factor to invest, apply or otherwise deal with the money for the benefit of the child concerned;
  - (b) order the money to be paid—
    - (i) to the sheriff clerk or the Accountant of Court; or
    - (ii) to a parent or guardian of that child,to be invested, applied or otherwise dealt with, under the directions of the court, for the benefit of that child; or
  - (c) order the money to be paid directly to that child.
- (3) Where payment is made to a person in accordance with an order under this section, a receipt given by him shall be a sufficient discharge of the obligation to make the payment.

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