



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART I

#### PARENTS, CHILDREN AND GUARDIANS

##### *Parental responsibilities and parental rights*

#### **1 Parental responsibilities.**

- (1) Subject to section 3(1)(b) and (3) of this Act, a parent has in relation to his child the responsibility—
  - (a) to safeguard and promote the child's health, development and welfare;
  - (b) to provide, in a manner appropriate to the stage of development of the child—
    - (i) direction;
    - (ii) guidance,to the child;
  - (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
  - (d) to act as the child's legal representative,but only in so far as compliance with this section is practicable and in the interests of the child.
- (2) "Child" means for the purposes of—
  - (a) paragraphs (a), (b)(i), (c) and (d) of subsection (1) above, a person under the age of sixteen years;
  - (b) paragraph (b)(ii) of that subsection, a person under the age of eighteen years.
- (3) The responsibilities mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental responsibilities"; and the child, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those responsibilities.

*Status: Point in time view as at 27/06/2003. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Children (Scotland) Act 1995, Cross Heading: Parental responsibilities and parental rights is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The parental responsibilities supersede any analogous duties imposed on a parent at common law; but this section is without prejudice to any other duty so imposed on him or to any duty imposed on him by, under or by virtue of any other provision of this Act or of any other enactment.

#### Commencement Information

- II** S. 1 wholly in force at 1.4.1997; s. 1 not in force at Royal Assent see s. 105(1); s. 1(1)-(3) in force for certain purposes at 1.11.1995 by S.I. 1995/2787, art. 3, Sch.; s. 1 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

## 2 Parental rights.

- (1) Subject to section 3(1)(b) and (3) of this Act, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right—
- (a) to have the child living with him or otherwise to regulate the child's residence;
  - (b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;
  - (c) if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and
  - (d) to act as the child's legal representative.
- (2) Subject to subsection (3) below, where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others, unless any decree or deed conferring the right, or regulating its exercise, otherwise provides.
- (3) Without prejudice to any court order, no person shall be entitled to remove a child habitually resident in Scotland from, or to retain any such child outwith, the United Kingdom without the consent of a person described in subsection (6) below.
- (4) The rights mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental rights"; and a parent, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those rights.
- (5) The parental rights supersede any analogous rights enjoyed by a parent at common law; but this section is without prejudice to any other right so enjoyed by him or to any right enjoyed by him by, under or by virtue of any other provision of this Act or of any other enactment.
- (6) The description of a person referred to in subsection (3) above is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1) above; except that, where both the child's parents are persons so described, the consent required for his removal or retention shall be that of them both.
- (7) In this section, "child" means a person under the age of sixteen years.

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### 3 Provisions relating both to parental responsibilities and to parental rights.

- (1) Notwithstanding section 1(1) of the <sup>M1</sup>Law Reform (Parent and Child) (Scotland) Act 1986 (provision for disregarding whether a person's parents are not, or have not been, married to one another in establishing the legal relationship between him and any other person)—
  - (a) a child's mother has parental responsibilities and parental rights in relation to him whether or not she is or has been married to his father; and
  - (b) without prejudice to any arrangements which may be made under subsection (5) below and subject to any agreement which may be made under section 4 of this Act, his father has such responsibilities and rights in relation to him only if married to the mother at the time of the child's conception or subsequently.
- (2) For the purposes of subsection (1)(b) above, the father shall be regarded as having been married to the mother at any time when he was a party to a purported marriage with her which was—
  - (a) voidable; or
  - (b) void but believed by them (whether by error of fact or of law) in good faith at that time to be valid.
- (3) Subsection (1) above is without prejudice to any order made under section 11 of this Act or section 3(1) of the said Act of 1986 (provision analogous to the said section 11 but repealed by this Act) or to any other order, disposal or resolution affecting parental responsibilities or parental rights; and nothing in subsection (1) above or in this Part of this Act shall affect any other—
  - (a) enactment (including any other provision of this Act or of that Act); or
  - (b) rule of law,by, under or by virtue of which a person may have imposed on him (or be relieved of) parental responsibilities or may be granted (or be deprived of) parental rights.
- (4) The fact that a person has parental responsibilities or parental rights in relation to a child shall not entitle that person to act in any way which would be incompatible with any court order relating to the child or the child's property, or with any supervision requirement made under section 70 of this Act.
- (5) Without prejudice to section 4(1) of this Act, a person who has parental responsibilities or parental rights in relation to a child shall not abdicate those responsibilities or rights to anyone else but may arrange for some or all of them to be fulfilled or exercised on his behalf; and without prejudice to that generality any such arrangement may be made with a person who already has parental responsibilities or parental rights in relation to the child concerned.
- (6) The making of an arrangement under subsection (5) above shall not affect any liability arising from a failure to fulfil parental responsibilities; and where any arrangements so made are such that the child is a foster child for the purposes of the <sup>M2</sup>Foster Children (Scotland) Act 1984, those arrangements are subject to the provisions of that Act.

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

C1 S. 3(4) extended (*temp.* from 22.8.1996 to 1.4.1997) by S.I. 1996/2203, art. 4

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#### Marginal Citations

- M1** 1986 c.9.  
**M2** 1984 c. 56.

#### 4 Acquisition of parental rights and responsibilities by natural father.

- (1) Where a child's mother has not been deprived of some or all of the parental responsibilities and parental rights in relation to him and, by virtue of subsection (1) (b) of section 3 of this Act, his father has no parental responsibilities or parental rights in relation to him, the father and mother, whatever age they may be, may by agreement provide that, as from the appropriate date, the father shall have the parental responsibilities and parental rights which (in the absence of any order under section 11 of this Act affecting those responsibilities and rights) he would have if married to the mother.
- (2) No agreement under subsection (1) above shall have effect unless—
  - (a) in a form prescribed by the Secretary of State; and
  - (b) registered in the Books of Council and Session while the mother still has the parental responsibilities and parental rights which she had when the agreement was made.
- (3) The date on which such registration as is mentioned in subsection (2)(b) above takes place shall be the “appropriate date” for the purposes of subsection (1) above.
- (4) An agreement which has effect by virtue of subsection (2) above shall, subject only to section 11(11) of this Act, be irrevocable.

#### Commencement Information

- I2** S. 4 wholly in force at 1.4.1997; s. 4 not in force at Royal Assent see s. 105(1); s. 4 in force for certain purposes at 1.9.1996 by S.I. 1996/2203, art. 3(1) (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); s. 4 in force at 1.4.1997 insofar as not already in force by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

VALID FROM 06/04/2009

#### [<sup>F1</sup>4A Acquisition of parental responsibilities and parental rights by second female parent by agreement with mother

- (1) Where—
  - (a) a child's mother has not been deprived of some or all of the parental responsibilities and parental rights in relation to the child; and
  - (b) the child has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and that parent is not registered as such under any of the enactments mentioned in section 3(3A),
 the mother and the other parent may by agreement provide that, as from the appropriate date, the other parent shall have the parental responsibilities and rights (in the absence of any order under section 11 of this Act affecting responsibilities and rights) as if the other parent were treated as a parent by virtue of section 42 of that Act of 2008.

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(2) Section 4(2), (3) and (4) applies in relation to an agreement under subsection (1) of this section as it applies in relation to an agreement under subsection (1) of section 4.]

#### Textual Amendments

**F1** S. 4A 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. 51**; S.I. 2009/479, **art. 6(1)(e)(2)** (as amended by S.I. 2009/2232, art. 3)

## 5 Care or control of child by person without parental responsibilities or parental rights.

- (1) Subject to subsection (2) below, it shall be the responsibility of a person who has attained the age of sixteen years and who has care or control of a child under that age, but in relation to him either has no parental responsibilities or parental rights or does not have the parental responsibility mentioned in section 1(1)(a) of this Act, to do what is reasonable in all the circumstances to safeguard the child's health, development and welfare; and in fulfilling his responsibility under this section the person may in particular, even though he does not have the parental right mentioned in section 2(1)(d) of this Act, give consent to any surgical, medical or dental treatment or procedure where—
- (a) the child is not able to give such consent on his own behalf; and
  - (b) it is not within the knowledge of the person that a parent of the child would refuse to give the consent in question.
- (2) Nothing in this section shall apply to a person in so far as he has care or control of a child in a school ("school" having the meaning given by section 135(1) of the <sup>M3</sup>Education (Scotland) Act 1980).

#### Marginal Citations

**M3** 1980 c. 44.

## 6 Views of children.

- (1) A person shall, in reaching any major decision which involves—
- (a) his fulfilling a parental responsibility or the responsibility mentioned in section 5(1) of this Act; or
  - (b) his exercising a parental right or giving consent by virtue of that section,
- have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and to those of any other person who has parental responsibilities or parental rights in relation to the child (and wishes to express those views); and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (2) A transaction entered into in good faith by a third party and a person acting as legal representative of a child shall not be challengeable on the ground only that the child, or a person with parental responsibilities or parental rights in relation to the child, was

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not consulted or that due regard was not given to his views before the transaction was entered into.

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