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Children (Scotland) Act 1995

1995 CHAPTER 36

PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL
AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

CHAPTER 3

PROTECTION AND SUPERVISION OF CHILDREN

VALID FROM 12/12/1996

Measures for the emergency protection of children

VALID FROM 01/04/1997

57 Child protection orders.

- (1) Where the sheriff, on an application by any person, is satisfied that—
- (a) there are reasonable grounds to believe that a child—
 - (i) is being so treated (or neglected) that he is suffering significant harm; or
 - (ii) will suffer such harm if he is not removed to and kept in a place of safety, or if he does not remain in the place where he is then being accommodated (whether or not he is resident there); and
 - (b) an order under this section is necessary to protect that child from such harm (or such further harm),
- he may make an order under this section (to be known as a “child protection order”).

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- (2) Without prejudice to subsection (1) above, where the sheriff on an application by a local authority is satisfied—
- (a) that they have reasonable grounds to suspect that a child is being or will be so treated (or neglected) that he is suffering or will suffer significant harm;
 - (b) that they are making or causing to be made enquiries to allow them to decide whether they should take any action to safeguard the welfare of the child; and
 - (c) that those enquiries are being frustrated by access to the child being unreasonably denied, the authority having reasonable cause to believe that such access is required as a matter of urgency,
- he may make a child protection order.
- (3) Without prejudice to any additional requirement imposed by rules made by virtue of section 91 of this Act, an application for a child protection order shall—
- (a) identify—
 - (i) the applicant; and
 - (ii) in so far as practicable, the child in respect of whom the order is sought;
 - (b) state the grounds on which the application is made; and
 - (c) be accompanied by such supporting evidence, whether in documentary form or otherwise, as will enable the sheriff to determine the application.
- (4) A child protection order may, subject to such terms and conditions as the sheriff considers appropriate, do any one or more of the following—
- (a) require any person in a position to do so to produce the child to the applicant;
 - (b) authorise the removal of the child by the applicant to a place of safety, and the keeping of the child at that place;
 - (c) authorise the prevention of the removal of the child from any place where he is being accommodated;
 - (d) provide that the location of any place of safety in which the child is being kept should not be disclosed to any person or class of person specified in the order.
- (5) Notice of the making of a child protection order shall be given forthwith by the applicant to the local authority in whose area the child resides (where that authority is not the applicant) and to the Principal Reporter.
- (6) In taking any action required or permitted by a child protection order or by a direction under section 58 of this Act the applicant shall only act where he reasonably believes that to do so is necessary to safeguard or promote the welfare of the child.
- (7) Where by virtue of a child protection order a child is removed to a place of safety provided by a local authority, they shall, subject to the terms and conditions of that order and of any direction given under section 58 of this Act, have the like duties in respect of the child as they have under section 17 of this Act in respect of a child looked after by them.

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VALID FROM 01/04/1997

58 Directions in relation to contact and exercise of parental responsibilities and parental rights.

- (1) When the sheriff makes a child protection order, he shall at that time consider whether it is necessary to give a direction to the applicant for the order as to contact with the child for—
 - (a) any parent of the child;
 - (b) any person with parental responsibilities in relation to the child; and
 - (c) any other specified person or class of persons;
 and if he determines that there is such a necessity he may give such a direction.
- (2) Without prejudice to the generality of subsection (1) above, a direction under that subsection may—
 - (a) prohibit contact with the child for any person mentioned in paragraphs (a) to (c) of that subsection;
 - (b) make contact with the child for any person subject to such conditions as the sheriff considers appropriate to safeguard and promote the welfare of the child.
- (3) A direction under subsection (1) above may make different provision in relation to different persons or classes of person.
- (4) A person applying for a child protection order under section 57(1) or (2) of this Act may at the same time apply to the sheriff for a direction in relation to the exercise or fulfilment of any parental responsibilities or parental rights in respect of the child concerned, if the person considers such a direction necessary to safeguard or promote the welfare of the child.
- (5) Without prejudice to the generality of subsection (4) above, a direction under that subsection may be sought in relation to—
 - (a) any examination as to the physical or mental state of the child;
 - (b) any other assessment or interview of the child; or
 - (c) any treatment of the child arising out of such an examination or assessment, which is to be carried out by any person.
- (6) The sheriff may give a direction sought under subsection (4) above where he considers there is a necessity such as is mentioned in that subsection; and such a direction may be granted subject to such conditions, if any, as the sheriff (having regard in particular to the duration of the child protection order to which it relates) considers appropriate.
- (7) A direction under this section shall cease to have effect when—
 - (a) the sheriff, on an application under section 60(7) of this Act, directs that it is cancelled; or
 - (b) the child protection order to which it is related ceases to have effect.

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VALID FROM 01/04/1997

59 Initial hearing of case of child subject to child protection order.

- (1) This section applies where—
 - (a) a child in respect of whom a child protection order has been made—
 - (i) has been taken to a place of safety by virtue of section 57(4)(b) of this Act; or
 - (ii) is prevented from being removed from any place by virtue of section 57(4)(c) of this Act;
 - (b) the Principal Reporter has not exercised his powers under section 60(3) of this Act to discharge the child from the place of safety; and
 - (c) the Principal Reporter has not received notice, in accordance with section 60(9) of this Act, of an application under subsection (7) of that section.
- (2) Where this section applies, the Principal Reporter shall arrange a children’s hearing to conduct an initial hearing of the child’s case in order to determine whether they should, in the interests of the child, continue the child protection order under subsection (4) below.
- (3) A children’s hearing arranged under subsection (2) above shall take place on the second working day after that order is implemented.
- (4) Where a children’s hearing arranged under subsection (2) above are satisfied that the conditions for the making of a child protection order under section 57 of this Act are established, they may continue the child protection order and any direction given under section 58 of this Act (whether with or without variation of the order or, as the case may be, the direction) until the commencement of a children’s hearing in relation to the child arranged in accordance with section 65(2) of this Act.
- (5) In subsection (3) above, section 60 and section 65(2) of this Act any reference, in relation to the calculation of any period, to the time at which a child protection order is implemented shall be construed as a reference—
 - (a) in relation to such an order made under paragraph (b) of subsection (4) of section 57 of this Act, to the day on which the child was removed to a place of safety in accordance with the order; and
 - (b) in relation to such an order made under paragraph (c) of that subsection, to the day on which the order was made,
 and “implement” shall be construed accordingly.

Modifications etc. (not altering text)

- C1** S. 59(4) amended (forms prescribed) (1.4.1997) by [S.I. 1996/3261, Rule 27, Sch.](#)

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VALID FROM 01/04/1997

60 Duration, recall or variation of child protection order.

- (1) Where, by the end of twenty-four hours of a child protection order being made (other than by virtue of section 57(4)(c) of this Act), the applicant has made no attempt to implement the order it shall cease to have effect.
- (2) Where an application made under subsection (7) below has not been determined timeously in accordance with subsection (8) below, the order to which the application relates shall cease to have effect.
- (3) A child shall not be—
 - (a) kept in a place of safety under a child protection order;
 - (b) prevented from being removed from any place by such an order; or
 - (c) subject to any term or condition contained in such an order or a direction given under section 58 of this Act,

where the Principal Reporter, having regard to the welfare of the child, considers that, whether as a result of a change in the circumstances of the case or of further information relating to the case having been received by the Principal Reporter, the conditions for the making of a child protection order in respect of the child are no longer satisfied or that the term, condition or direction is no longer appropriate and notifies the person who implemented the order that he so considers.
- (4) The Principal Reporter shall not give notice under subsection (3) above where—
 - (a) proceedings before a children’s hearing arranged under section 59(2) of this Act in relation to the child who is subject to the child protection order have commenced; or
 - (b) the hearing of an application made under subsection (7) of this section has begun.
- (5) Where the Principal Reporter has given notice under subsection (3) above, he shall also, in such manner as may be prescribed, notify the sheriff who made the order.
- (6) A child protection order shall cease to have effect—
 - (a) where an initial hearing arranged under section 59(2) of this Act does not continue the order under subsection (4) of that section;
 - (b) where an application is made to the sheriff under subsection (7) below, on the sheriff recalling such order under subsection (13) below;
 - (c) on the person who implemented the order receiving notice from the Principal Reporter that he has decided not to refer the case of a child who is subject to the order to a children’s hearing arranged in accordance with section 65(2) of this Act;
 - (d) on the Principal Reporter giving notice in accordance with subsection (3) above in relation to the order that he considers that the conditions for the making of it are no longer satisfied; or
 - (e) where such order is continued under section 59(4) of this Act or subsection (12)(d) below, on the commencement of a children’s hearing arranged under section 65(2) of this Act.
- (7) An application to the sheriff to set aside or vary a child protection order made under section 57 of this Act or a direction given under section 57 of this Act or such an

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order or direction continued (whether with or without variation) under section 59(4) of this Act, may be made by or on behalf of—

- (a) the child to whom the order or direction relates;
- (b) a person having parental rights over the child;
- (c) a relevant person;
- (d) any person to whom notice of the application for the order was given by virtue of rules; or
- (e) the applicant for the order made under section 57 of this Act.

(8) An application under subsection (7) above shall be made—

- (a) in relation to a child protection order made under section 57, or a direction given under section 58, of this Act, before the commencement of a children’s hearing arranged in accordance with section 59(2) of this Act; and
- (b) in relation to such an order or direction continued (whether with or without variation) by virtue of subsection (4) of the said section 59, within two working days of such continuation,

and any such application shall be determined within three working days of being made.

(9) Where an application has been made under subsection (7) above, the applicant shall forthwith give notice, in a manner and form prescribed by rules, to the Principal Reporter.

(10) At any time which is—

- (a) after the giving of the notice required by subsection (9) above; but
- (b) before the sheriff has determined the application in accordance with subsection (11) below,

the Principal Reporter may arrange a children’s hearing the purpose of which shall be to provide any advice they consider appropriate to assist the sheriff in his determination of the application.

(11) The sheriff shall, after hearing the parties to the application and, if he wishes to make representations, the Principal Reporter, determine whether—

- (a) the conditions for the making of a child protection order under section 57 of this Act are satisfied; or
- (b) where the application relates only to a direction under section 58 of this Act, the direction should be varied or cancelled.

(12) Where the sheriff determines that the conditions referred to in subsection (11)(a) above are satisfied, he may—

- (a) confirm or vary the order, or any term or condition on which it was granted;
- (b) confirm or vary any direction given, in relation to the order, under section 58 of this Act;
- (c) give a new direction under that section; or
- (d) continue in force the order and any such direction until the commencement of a children’s hearing arranged in accordance with section 65(2) of this Act.

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- (13) Where the sheriff determines that the conditions referred to in subsection (11)(a) above are not satisfied he shall recall the order and cancel any direction given under section 58 of this Act.

Modifications etc. (not altering text)

- C2** S. 60(3) amended (form prescribed) (1.4.1997) by [S.I. 1996/3261, Rule 28\(2\), Sch.](#)
C3 S. 60(5) amended (form prescribed) (1.4.1997) by [S.I. 1996/3261, Rule 28\(3\), Sch.](#)
C4 S. 60(10) amended (form prescribed) (1.4.1997) by [S.I. 1996/3261, Rule 28\(4\), Sch.](#)

VALID FROM 01/04/1997

61 Emergency protection of children where child protection order not available.

- (1) Where, on the application of any person, a justice of the peace is satisfied—
- (a) both that the conditions laid down for the making of a child protection order in section 57(1) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but
 - (b) that it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application,
- he may grant to the applicant an authorisation under this section.
- (2) Where on the application for a local authority a justice of the peace is satisfied—
- (a) both that the conditions laid down for the making of a child protection order in section 57(2) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but
 - (b) that it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application,
- he may grant an authorisation under this section.
- (3) An authorisation under this section may—
- (a) require any person in a position to do so to produce the child to the applicant;
 - (b) prevent any person from removing a child from a place where he is then being accommodated;
 - (c) authorise the applicant to remove the child to a place of safety and to keep him there until the expiration of the authorisation.
- (4) An authorisation under this section shall cease to have effect—
- (a) twelve hours after being made, if within that time—
 - (i) arrangements have not been made to prevent the child’s removal from any place specified in the authorisation; or
 - (ii) he has not been, or is not being, taken to a place of safety; or

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- (b) where such arrangements have been made or he has been so taken when—
- (i) twenty-four hours have expired since it was so given; or
 - (ii) an application for a child protection order in respect of the child is disposed of,
- whichever is the earlier.
- (5) Where a constable has reasonable cause to believe that—
- (a) the conditions for the making of a child protection order laid down in section 57(1) are satisfied;
 - (b) that it is not practicable in the circumstances for him to make an application for such an order to the sheriff or for the sheriff to consider such an application; and
 - (c) that, in order to protect the child from significant harm (or further such harm), it is necessary for him to remove the child to a place of safety,
- he may remove the child to such a place and keep him there.
- (6) The power conferred by subsection (5) above shall not authorise the keeping of a child in a place of safety for more than twenty four hours from the time when the child is so removed.
- (7) The authority to keep a child in a place of safety conferred by subsection (5) above shall cease on the disposal of an application in relation to the child for a child protection order.
- (8) A child shall not be—
- (a) kept in a place of safety; or
 - (b) prevented from being removed from any place,
- under this section where the Principal Reporter considers that the conditions for the grant of an authorisation under subsection (1) or (2) above or the exercise of the power conferred by subsection (5) above are not satisfied, or that it is no longer in the best interests of the child that he should be so kept.

Modifications etc. (not altering text)

C5 S. 61(1)(2)(5) applied (1.4.1997) by [S.I. 1996/3258](#), [regs. 12-16](#)

62 Regulations in respect of emergency child protection measures.

- (1) The Secretary of State may make regulations concerning the duties in respect of a child of any person removing him to, and keeping him in, a place of safety under section 61 above.
- (2) Regulations under this section may make provision requiring—
 - (a) notification of the removal of a child to be given to a person specified in the regulations;
 - (b) intimation to be given to any person of the place of safety at which a child is being kept;
 - (c) notification to be given to any person of the ceasing to have effect, under section 61(4)(a) of this Act, of an authorisation.

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Commencement Information

- II** S. 62 wholly in force at 1.4.1997; s. 62 not in force at Royal Assent see s. 105(1); s. 62 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, **art. 3(1)** (with **arts. 4-6** (as inserted (7.3.1997) by S.I. 1997/744, **art. 3**)); s. 62 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**))

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