



Children (Scotland) Act 1995

1995 CHAPTER 36

PART II

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

CHAPTER 4

PARENTAL RESPONSIBILITIES ORDERS, ETC.

Modifications etc. (not altering text)

C1 Pt. II Ch. 4 modified (1.4.1997) by S.I. 1996/3255, reg. 7(1)

Parental responsibilities orders

86 Parental responsibilities order: general.

F1

Textual Amendments

F1 Ss. 86-89 repealed (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 120(2), 121(2), Sch. 3; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21)

[^{F2}86A

F3]

Status: Point in time view as at 24/06/2013.

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Textual Amendments

- F2** S. 86A added (1.3.2005 with application in accordance with reg. 7 of the amending S.S.I.) by [The European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), **reg. 5(3)** (with reg. 6)
- F3** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

87 Further provision as respects parental responsibilities orders.

F4

Textual Amendments

- F4** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

88 Parental contact.

F5

Textual Amendments

- F5** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

89 Offences in relation to parental responsibilities orders.

F6

Textual Amendments

- F6** Ss. 86-89 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121(2), **Sch. 3**; S.S.I. 2009/267, arts. 1(2), **2** (with arts. 3-21)

Miscellaneous

F790 Consent of child to certain procedures.

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Textual Amendments

- F7** S. 90 repealed (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3

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91 Procedural rules in relation to certain applications etc.

- (1) All proceedings to which this section applies are civil proceedings for the purposes of section 32 of the ^{M1}Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate civil procedure in the sheriff court).
- (2) Any reference in this Part of this Act to regulation or prescription by rules in relation to any proceedings to which this section applies shall be construed, unless the context otherwise requires, as a reference to regulation or prescription by rules made under the said section 32.
- (3) Without prejudice to the generality of the said section 32, rules may make provision as to—
 - ^{F8}(a)
 - ^{F8}(b)
 - ^{F8}(c)
 - (d) the persons to whom notice of an application for an exclusion order or, under section 79(3) of this Act, for the recall or variation of such an order or of anything done under section 77(2) of this Act shall be given;
 - (e) the period within which a hearing shall be held under subsection (5) of section 76 of this Act after the granting of an order under subsection (4) of that section;
 - (f) the service of any exclusion order on the named person and the appropriate person within such period as may be specified in the rules.
- (4) In relation to any proceedings to which this section applies, rules may permit a party to such proceedings, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.
- (5) This section applies to any application made to the sheriff, and any other proceeding before the sheriff (whether on appeal or otherwise), under any provision of this Part of this Act.

Textual Amendments

F8 S. 91(3)(a)-(c) repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 6 (with s. 186); S.S.I. 2013/195, arts. 2, 3

Marginal Citations

M1 1971 c.58.

^{F9}92 Legal aid in respect of certain proceedings.

.....

Textual Amendments

F9 S. 92 repealed (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 6 (with s. 186); S.S.I. 2013/195, arts. 2, 3

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Interpretation of Part II

93 Interpretation of Part II.

(1) In this Part of this Act, unless the context otherwise requires,—

“accommodation” shall be construed in accordance with section 25(8) of this Act;

F10F11 ...

F10F11 ...

F10F11 ...

“children’s hearing” shall be construed in accordance with ^{F12}[^{F13}section 5 of the Children’s Hearings (Scotland) Act 2011];

F10F11 ...

“constable” means a constable of [^{F14}the Police Service of Scotland];

“contact order” has the meaning given by section 11(2)(d) of this Act;

“disabled” has the meaning given by section 23(2) of this Act;

F10F11 ...

“exclusion order” has the meaning given by section 76(12) of this Act;

“family”, in relation to a child, includes—

(a) any person who has parental responsibility for the child; and

(b) any other person with whom the child has been living;

“local authority” means a council constituted under section 2 of the ^{M2}Local Government etc. (Scotland) Act 1994;

F10F11 ...

“parental responsibilities” has the meaning given by section 1(3) of this Act;

F15 ...

“parental rights” has the meaning given by section 2(4) of this Act;

F10F11 ...

F10F11 ...

F10F11 ...

“residence order” has the meaning given by section 11(2)(c) of this Act;

“residential establishment”—

(a) in relation to a place in Scotland, means an establishment (whether managed by a local authority, by a voluntary organisation or by any other person) which provides residential accommodation for children for the purposes of this Act or the ^{M3}Social Work (Scotland) Act 1968; [^{F16}or the Children’s Hearings (Scotland) Act 2011;]

(b) in relation to a place in England and Wales, means a community home, voluntary home or [^{F17}private] children’s home (within the meaning of the Children Act 1989); and

(c) in relation to a place in Northern Ireland, means

(i) [^{F18}a private children’s home within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),

(ii) an authority home provided under Part VII of that Order, or

(iii) a voluntary home provided under Part VIII of that Order,]

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“school age” shall be construed in accordance with section 31 of the ^{M4}Education (Scotland) Act 1980;

“secure accommodation” means accommodation provided [^{F19}for the purpose of restricting the liberty of children which—

- (a) in Scotland, is provided in a residential establishment approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010 (asp 8),
- (b) in England, is provided in a children’s home (within the meaning of the Care Standards Act 2000 (c.14) (“the 2000 Act”)) in respect of which a person is registered under Part 2 of that Act, except that before the coming into force of section 107(2) of the Health and Social Care (Community Health Standards) Act 2003 (c.43), “secure accommodation” means accommodation in relation to England which—
 - (i) is provided in a children’s home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act, and
 - (ii) is approved by the Secretary of State for the purpose of restricting the liberty of children,
- (c) in Wales, is provided in a children’s home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act,]

^{F11}
...

“voluntary organisation” means a body (other than a public or local authority) whose activities are not carried on for profit; and

^{F11}
...

(2) For the purposes of—

- (a) Chapter 1 and this Chapter (except this section) of this Part [^{F20}and section 44], “child” means a person under the age of eighteen years; and
- (b) [^{F21}Chapter 2 (except section 44) and Chapter] 3 ^{F22}... of this Part—
 - ^{F23}“child” means—
 - (i) a child who has not attained the age of sixteen years;
 - (ii) a child over the age of sixteen years who has not attained the age of eighteen years and in respect of whom a supervision requirement is in force; or
 - (iii) a child whose case has been referred to a children’s hearing by virtue of section 33 of this Act;

and for the purposes of the application of those Chapters to a person who has failed to attend school regularly without reasonable excuse includes a person who is over sixteen years of age but is not over school age; and]

^{F23}“child” means—

- (i) in relation to section 75, a person under the age of 18 years,
- (ii) in relation to any other section, a person under the age of 16 years;]

^{F24F25}
...

(3) Where, in the course of any proceedings under Chapter 2 or 3 of this Part, a child ceases to be a child within the meaning of subsection (2) above the provisions of those Chapters of this Part and of any statutory instrument made under those provisions, shall continue to apply to him as if he had not so ceased to be a child.

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- (4) Any reference in this Part of this Act to a child—
- (a) being “in need”, is to his being in need of care and attention because—
 - (i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;
 - (ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;
 - (iii) he is disabled; or
 - (iv) he is affected adversely by the disability of any other person in his family;
 - (b) who is “looked after” by a local authority, shall be construed in accordance with section 17(6) of this Act.
- (5) Any reference to any proceedings under this Part of this Act, whether on an application or on appeal, being heard by the sheriff, shall be construed as a reference to such proceedings being heard by the sheriff in chambers.

Textual Amendments

- F10** Words in s. 93(1) repealed (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 2 Pt. 2**
- F11** Words in s. 93(1) repealed (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F12** Words in s. 93(1) substituted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 2 Pt. 1**
- F13** Words in s. 93(1) substituted (24.6.2013 for specified purposes) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), **sch. 5 para. 2(10)** (with s. 186); S.S.I. 2013/195, arts. 2, 3(d)
- F14** Words in s. 93(1) substituted (S.) (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 11(3)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F15** S. 93(1): definition of "parental responsibility order" repealed (S.) (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)
- F16** Words in s. 93(1) inserted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), art. 1(2), **Sch. 1 para. 5**
- F17** Word in the definition of "residential establishment" in s. 93 substituted (1.4.2002 for E. and otherwise prosp.) by [2000 c. 14](#), ss. 116, 122, **Sch. 4 para. 23(a)**; S.I. 2001/4150, **art. 3(3)(a)** (subject to transitional provisions in art. 4)
- F18** Words in s. 93(1) substituted (S.) (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 9(4)(a)**
- F19** Words in s. 93(1) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 9(4)(b)**
- F20** Words in s. 93(2)(a) inserted (S.) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. **52(b)(i)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F21** Words in s. 93(2)(b) substituted (S.) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. **52(b)(ii)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F22** Words in s. 93(2)(b) repealed (S.) (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 2**

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- F23** Words in s. 93(2)(b) substituted (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 2(11)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F24** Words in s. 93(2)(b) repealed (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 2 Pt. 2**
- F25** Words in s. 93(2)(b) repealed (S.) (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 6** (with s. 186); S.S.I. 2013/195, arts. 2, 3

Modifications etc. (not altering text)

- C2** S. 93(1): saving for effect of 2011 asp 1, sch. 6 (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), arts. 1(2), **4(6)**

Marginal Citations

- M2** 1994 c.39.
M3 1968 c.49.
M4 1980 c.44.

Status:

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