



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.

Miscellaneous

90 Consent of child to certain procedures.

Nothing in this Part of this Act shall prejudice any capacity of a child enjoyed by virtue of section 2(4) of the ^{M1}Age of Legal Capacity (Scotland) Act 1991 (capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment; and without prejudice to that generality where a condition contained, by virtue of—

- (a) section 66(4)(a), section 67(2) or section 69(9)(a) of this Act, in a warrant; or
- (b) section 70(5)(a) of this Act, in a supervision requirement,

requires a child to submit to any examination or treatment but the child has the capacity mentioned in the said section 2(4), the examination or treatment shall only be carried out if the child consents.

Marginal Citations

M1 1991 c.50.

Status: Point in time view as at 01/04/1997.

Changes to legislation: Children (Scotland) Act 1995, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 12 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)

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 ^{M2}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—
 - (a) the functions of a person appointed by the sheriff under section 41(1) of this Act and any right of that person to information relating to the proceedings;
 - (b) the circumstances in which any person who has been given notice in accordance with such rules of an application for a child assessment order, or any other person specified in the rules, may apply to the court to have that order varied or discharged;
 - (c) the persons to whom notice of the making of a child protection order shall be given by the applicant for that order, and without prejudice to that generality may in making such provision require such notice to be given to either or both of the child and any relevant person in relation to that child;
 - (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.

Marginal Citations

M2 1971 c.58.

92 Legal aid in respect of certain proceedings.

For section 29 of the ^{M3}Legal Aid (Scotland) Act 1986 substitute the following section—

“29 Legal aid in respect of certain proceedings relating to children.

- (1) This section applies to legal aid in connection with—

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- (a) proceedings before the sheriff (including, without prejudice to that generality, proceedings on an appeal to the sheriff principal from a decision of the sheriff) in respect of any matter arising under Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995 (in this section referred to as “the 1995 Act”); or
 - (b) an appeal to the Court of Session in connection with such proceedings.
- (2) Subject to subsections (3) to (5) below, legal aid to which this section applies shall be available to a child and any relevant person in relation to him in connection with—
- (a) proceedings before the sheriff on an application for a child protection order or child assessment order, or for the variation or recall of such an order;
 - (b) an appeal to the sheriff under section 51 of the 1995 Act against—
 - (i) a decision of a children’s hearing to grant a warrant such as is mentioned in subsection (5)(a) of that subsection; or
 - (ii) any other decision of a children’s hearing;
 - (c) an application—
 - (i) by virtue of section 65(7) or (9) of the 1995 Act for a finding as to whether the grounds for a referral are established; or
 - (ii) under section 85 of the 1995 Act for a review of such a finding;
 - (d) an appeal to the sheriff principal or to Court of Session under section 51 of the 1995 Act.
- (3) Legal aid shall be available under subsection (2)(b)(i) above on an application made to the sheriff without inquiry into the resources of the child or the relevant person.
- (4) Legal aid shall be available under subsection (2)(a),(b)(ii) or (c) above on an application made to the sheriff if the sheriff is satisfied—
- (a) that it is in the interests of the child that legal aid be made available; and
 - (b) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the case cannot be met without undue hardship to the child or to any relevant person in relation to him or the dependants of any of them.
- (5) Legal aid shall be available under subsection (2)(d) above on an application made to the Board if it is satisfied—
- (a) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the appeal cannot be met without undue hardship to the child or to any relevant person in relation to him or the dependants of any of them; and
 - (b) that the child, or as the case may be the relevant person has substantial grounds for making or responding to the appeal and it is reasonable, in the particular circumstances of the case, that legal aid should be made available accordingly.
- (6) The Board may require a person receiving legal aid under subsection (2)(d) above or subsection (9) below to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive such legal aid.

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- (7) Subject to subsection (8) below, legal aid to which this section applies shall be available in connection with proceedings before the sheriff on an application for an exclusion order (or for the variation or recall of such an order) to—
- (a) a child;
 - (b) a relevant person in relation to a child;
 - (c) a person who is a named person, or will be such a person if the application is granted;
 - (d) a spouse or partner of a person mentioned in paragraph (c) above; and
 - (e) a person who is an appropriate person, or will be such a person if the application is granted.
- (8) Legal aid shall be available under subsection (7) above on an application to the sheriff if the sheriff is satisfied after consideration of the financial circumstances of the applicant and, where the applicant is a child, of any relevant person or appropriate person in relation to him that the expenses of the case cannot be met without undue hardship to the applicant or any dependant of the applicant.
- (9) Legal aid shall be available in connection with any appeal from a decision of the sheriff on an application for an exclusion order or for the variation or recall of such an order to any of the persons mentioned in paragraphs (a) to (e) of subsection (7) above on an application to the Board if it is satisfied—
- (a) after consideration of the financial circumstances of the applicant and, where the applicant is a child, of any relevant person or appropriate person in relation to him, that the expenses of the appeal cannot be met without undue hardship to the applicant or any dependant of the applicant; and
 - (b) that the applicant has substantial grounds for making or responding to the appeal and that it is reasonable, in the particular circumstances of the case, that legal aid should be made available accordingly.
- (10) Where in connection with any proceedings—
- (a) the sheriff has been satisfied as is mentioned in subsection (4)(b) or subsection (8) above; or
 - (b) the Board has been satisfied as is mentioned in subsection (5)(a) or subsection (9)(a) above,
- and has made legal aid available to any person, it shall not be necessary for the sheriff or, as the case may be, the Board to be so satisfied in respect of an application for legal aid by such a person in connection with any subsequent proceedings arising from such proceedings.
- (11) Legal aid to which this section applies shall consist of representation by a solicitor and, where appropriate, by counsel in any proceedings (including any appeal) mentioned in subsection (1) above and shall include all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to such proceedings.
- (12) In this section—
- (a) “child” and “relevant person” have the meanings given by section 93(2) (b) of the 1995 Act;
 - (b) “child protection order”, “child assessment order” and “exclusion order” have the meanings given by section 93(1) of that Act;

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- (c) “named person” and “appropriate person” have the meanings given by section 76 of that Act; and
- (d) “partner” shall be construed in accordance with section 79(4) of that Act.”.

Marginal Citations

M3 1986 c.47.

Status:

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Changes to legislation:

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