



# 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.

##### *Parental responsibilities orders*

#### **86 Parental responsibilities order: general.**

- (1) On the application of a local authority the sheriff may make an order transferring (but only during such period as the order remains in force) the appropriate parental rights and responsibilities relating to a child to them; and any such order shall be known as a "parental responsibilities order".
- (2) A parental responsibilities order shall not be made unless the sheriff is satisfied that each relevant person either—
  - (a) freely, and with full understanding of what is involved, agrees unconditionally that the order be made; or
  - (b) is a person who—
    - (i) is not known, cannot be found or is incapable of giving agreement;
    - (ii) is withholding such agreement unreasonably;
    - (iii) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child, that is to say the responsibility to safeguard and promote the child's health, development and welfare or, if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis; or

*Status: Point in time view as at 30/12/2005.*

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- (iv) has seriously ill-treated the child, whose reintegration into the same household as that person is, because of the serious ill-treatment or for other reasons, unlikely.
- (3) The reference in subsection (1) above to the appropriate parental rights and responsibilities relating to the child is to all parental rights and responsibilities except any right to agree, or decline to agree—
- (a) to the making of an application in relation to the child under [<sup>F1</sup>section 19 (placing children with parental consent) or 84 (giving parental responsibility prior to adoption abroad) of the Adoption and Children Act 2002], under section 18 or 49 of the <sup>M1</sup>Adoption (Scotland) Act 1978 or under Article 17, 18 or 57 of the <sup>M2</sup>Adoption (Northern Ireland) Order 1987 (corresponding provision for Scotland and Northern Ireland); or
  - (b) to the making of an adoption order.
- (4) A person is a relevant person for the purposes of this section if he is a parent of the child or a person who for the time being has parental rights in relation to the child.
- (5) The sheriff may, in an order under this section impose such conditions as he considers appropriate; and he may vary or discharge such an order on the application of the local authority, of the child, of any person who immediately before the making of the order is a relevant person or of any other person claiming an interest.
- (6) An order under this section shall, if not first discharged by the sheriff, terminate on the occurrence of any of the following—
- (a) the child attains the age of eighteen years;
  - [<sup>F2</sup>(b) he becomes the subject of an adoption order within the meaning of the Adoption (Scotland) Act 1978;
  - (bb) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, is authorised to place him for adoption under section 19 of that Act (placing children with parental consent) or he becomes the subject of an order under section 21 of that Act (placement orders) or under section 84 of that Act (giving parental responsibility prior to adoption abroad)]under section 18 or 49 of the said Act of 1978 or under Article 17, 18 or 57 of the Adoption (Northern Ireland) Order 1987 (corresponding provision for Scotland and Northern Ireland);
  - (c) an order is made for his return under Part I of the <sup>M3</sup>Child Abduction and Custody Act 1985; or
  - (d) a decision, other than a decision mentioned in section 25(2) of the said Act of 1985 (decisions relating to rights of access), is registered with respect to him under section 16 of that Act.

#### Textual Amendments

- F1** Words in s. 86(3)(a) substituted (30.12.2005) by 2002 c. 38, ss. 139, 148(5)(c), Sch. 3 para. 83 (with Sch. 4 paras. 6-8); S.S.I. 2005/643, art. 2(c)
- F2** S. 86(6)(b)(bb) substituted for words in s. 86(6)(b) (30.12.2005) by 2002 c. 38, ss. 139(1), 148(5)(c), Sch. 3 para. 84 (with Sch. 4 paras. 6-8); S.S.I. 2005/643, art. 2(c)

#### Marginal Citations

- M1** 1978 c.28.
- M2** S.I. 1987/2203 (N.I.22)

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**M3** 1985 c.60.

## 86A

The provisions of this Chapter are subject to Sections 2 and 3 of Chapter II of Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

## 87 Further provision as respects parental responsibilities orders.

- (1) Subject to subsections (2) and (3) below, where a parental responsibilities order is made as respects a child it shall be the duty of the local authority which applied for it (in this section and in section 88 of this Act referred to as the “appropriate authority”) to fulfil the transferred responsibilities while the order remains in force.
- (2) Notwithstanding that a parental responsibilities order has been made as respects a child, the appropriate authority may allow, either for a fixed period or until the authority otherwise determine, the child to reside with a parent, guardian, relative or friend of his in any case where it appears to the authority that so to allow would be for the benefit of the child.
- (3) Without prejudice to any other provision of this Part of this Act, where by virtue of subsection (2) above a child is residing with a person, the appropriate authority may by notice in writing to the person require him to return the child to them by a time specified in the notice; and service of such notice shall be effected either by the authority leaving it in the person’s hands or by their sending it to him, at his and the child’s most recent known address, by recorded delivery service.
- (4) For the purposes of any application for a parental responsibilities order, rules shall provide for the appointment, in such cases as are prescribed by such rules—
  - (a) of a person to act as *curator ad litem* to the child in question at the hearing of the application, safeguarding the interests of the child in such manner as may be so prescribed; and
  - (b) of a person (to be known as a “reporting officer”) to witness agreements to parental responsibilities orders and to perform such other duties as may be so prescribed,
 but one person may, as respects the child, be appointed both under paragraph (a) and under paragraph (b) above; so however that, where the applicant is a local authority, no employee of theirs shall be appointed under either or both of those paragraphs.
- (5) Rules may provide for a person to be appointed reporting officer before the application in question is made.

### Commencement Information

- II** S. 87 wholly in force at 1.4.1997; s. 87 not in force at Royal Assent see s. 105(1); s. 87 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. 87 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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## **88 Parental contact.**

- (1) This section applies where a parental responsibilities order is being made, or as the case may be is in force, as respects a child.
- (2) The child shall, subject to subsection (3) below, be allowed reasonable contact by the appropriate authority with—
  - (a) each person who, immediately before the making of the parental responsibilities order, is a relevant person for the purposes of section 86 of this Act as respects the child; and
  - (b) where, immediately before that order was made—
    - (i) a residence order or contact order was in force with respect to the child, the person in whose favour the residence order or contact order was made;
    - (ii) a person was entitled to have the child residing with him under an order by a court of competent jurisdiction, that person.
- (3) Without prejudice to subsection (4) below, on an application made to him by the child, by the appropriate authority or by any person with an interest, the sheriff may make such order as he considers appropriate as to the contact, if any, which is to be allowed between the child and any person specified in the order (whether or not a person described in paragraphs (a) and (b) of subsection (2) above).
- (4) A sheriff, on making a parental responsibilities order, or at any time while such an order remains in force as respects a child, may make an order under subsection (3) above as respects the child even where no application has been made to him in that regard.
- (5) An order under this section may impose such conditions as the sheriff considers appropriate; and he may vary or discharge such an order on the application of the child, the appropriate authority or any person with an interest.
- (6) An order under this section shall, if not first discharged by the sheriff, terminate when the parental responsibilities order to which it is referable does.

## **89 Offences in relation to parental responsibilities orders.**

Any person who, knowingly and without lawful authority or reasonable excuse—

- (a) fails to comply with a notice under section 87(3) of this Act;
- (b) harbours or conceals a child—
  - (i) as respects whom a parental responsibilities order has been made; and
  - (ii) who has run away, or been taken away or whose return is required by such a notice; or
- (c) induces, assists or incites a child as respects whom any such order has been made to run away, or stay away, from a place where he is looked after or who takes away such a child from that place,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

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