



# Children Act 1975

## 1975 CHAPTER 72

### PART II

#### CUSTODY

##### *Custody in Scotland*

#### 47 Granting of custody

- (1) Without prejudice to any existing enactment or rule of law conferring a—
  - (a) right to apply for custody of a child ;
  - (b) power to grant custody of a child ;any relative, step-parent or foster parent of the child is qualified to apply for, and subject to subsection (2) may be granted, such custody in the same manner as any person so qualified before the commencement of this Act.
- (2) Except in the case of an application under section 2 of the Illegitimate Children (Scotland) Act 1930, custody of a child shall not be granted in any proceedings to a person other than a parent or guardian of the child unless that person—
  - (a) being a relative or step-parent of the child, has the consent of a parent or guardian of the child and has had care and possession of the child for the three months preceding the making of the application for custody; or
  - (b) has the consent of a parent or guardian of the child and has had care and possession of the child for a period or periods, before such application, which amounted to at least twelve months and included the three months preceding such application ; or
  - (c) has had care and possession of the child for a period or periods before such application which amounted to at least three years and included the three months preceding such application ; or
  - (d) while not falling within paragraph (a), (b) or (c), can show cause, having regard to section 1 of the Guardianship of Infants Act 1925 (the principle on which questions relating to custody, upbringing etc. of children are to be decided) why an order should be made awarding him custody of the child.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Nothing in this section shall prejudice any ancillary power of the court in any proceedings relative to custody.
- (4) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (2)(c) to substitute a different period for the period of three years mentioned in that paragraph (or the period which by a previous order under this subsection was substituted for that period).
- (5) In relation to a grant of custody to which this section applies,
  - (a) " guardian " has the same meaning as in the 1958 Act;
  - (b) " foster parent" means a person who, at the commencement of the proceedings in which the grant is made, has had care and possession of the child for a period or periods amounting to at least twelve months, whether or not that person continues to have care and possession of the child;
  - (c) " relative " has the same meaning as in the 1958 Act, except that, where the child is illegitimate, " relative " does not include the father of the child.
- (6) The form and manner of any consent required in terms of subsection (2) (a) or (b) may be prescribed by act of sederunt.

#### **48 Miscellaneous provisions relative to custody**

- (1) A person making an application relating to the custody of a child shall, so far as practicable and in such manner as may be prescribed by act of sederunt, give notice of that application to each known parent of the child, and for this purpose the father of an illegitimate child shall be regarded as a parent of the child.
- (2) Any order made by virtue of this Part of this Act may be varied or discharged by a subsequent order, either by the Court ex proprio motu or on the application of any person concerned.
- (3) In section 11(1) of the Guardianship Act 1973, for the words from " Where an application " to " relates to the custody of a child " there is substituted " Where an application relating to the custody of a child, other than an application to which Part II of the Matrimonial Proceedings (Children) Act 1958 applies, is made to a court ".
- (4) In section 12(2)(a) of the Guardianship Act 1973, for the words from " Where an application " to " by virtue of section 11 of this Act" there is substituted " Where any application, other than one to which Part II of the Matrimonial Proceedings (Children) Act 1958 applies, is made to a court for custody of a child or for the variation or discharge of any order (including an order made by virtue of section 11 above) relating to the custody of a child ".

#### **49 Notice to local authority of certain custody applications**

- (1) Where an applicant for custody of a child is a relative, step-parent or foster parent of the child, an order awarding custody to that applicant shall not except on cause shown be made unless the applicant—
  - (a) in any case where at the time of the application he resided in Scotland, has, within the seven days following the making of the application, given notice thereof to the local authority within whose area he resided at that time;

- (b) in any other case, has within such time as the court may direct given, to such local authority in Scotland as the court may specify, notice of the making of the application.
- (2) On receipt of a notice under subsection (1) the local authority shall investigate and report to the court on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.
- (3) Paragraphs (b) and (c) of subsection (2) of section 12 of the Guardianship Act 1973 shall apply in relation to an investigation and report in terms of this section as they apply in relation to an investigation and report in terms of paragraph (a) of subsection (2) of that section.

## **50 Payments towards maintenance of children**

Without prejudice to any existing powers and duties to make payments in respect of the maintenance of children, where custody of a child has been awarded to a person other than a parent of the child any local authority may make to that person payments for or towards the maintenance of the child.

## **51 Restriction on removal of child where applicant has provided home for three years**

- (1) Where a person has applied for custody of a child, it shall be an offence, except with the authority of a court or under authority conferred by any enactment or on the arrest of the child, to remove the child from the custody of the applicant against the will of the applicant if—
  - (a) the child has been in the care and possession of that person for a period or periods before the making of the application which amount to at least three years; and
  - (b) the application is pending in any court.
- (2) In any case where subsection (1) applies, and
  - (a) the child was in the care of a local authority before he began to have his home with the applicant, and
  - (b) the child remains in the care of a local authority,the authority in whose care the child is shall not remove the child from the applicant's custody except—
  - (i) with the applicant's consent;
  - (ii) with the leave of a court; or
  - (iii) with the authority, in terms of Part III of the Social Work (Scotland) Act 1968, of a justice of the peace or a children's hearing.
- (3) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.
- (4) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (1) to substitute a different period for the period mentioned in that subsection (or for the period which, by a previous order under this subsection, was substituted for that period).

## **52 Return of child taken away in breach of section 51**

A court in which an application for custody of a child is pending may—

- (a) on the application of a person from whose custody the child has been removed in breach of section 51, order the person who has so removed the child to return the child to the applicant;
- (b) on the application of a person who has reasonable grounds for believing that another person is intending to remove the child from the applicant's custody in breach of section 51, by order direct that other person not to remove the child from the applicant's custody in breach of that section.

## **53 Custody order on application for adoption in Scotland**

- (1) Without prejudice to the provisions of section 19 (power to make an interim order giving custody), where on an application for an adoption order in respect of a child the applicant is a person qualified to apply for custody of the child, and the court is of opinion—
  - (a) in the case of an applicant who is a relative of the child or a husband or wife of the mother or father of the child (whether applying alone or jointly with his or her spouse)—
    - (i) that the child's welfare would not be better safeguarded and promoted by the making of an adoption order in favour of the applicant than it would be by the making of a custody order in his favour; and
    - (ii) that it would be appropriate to make a custody order in favour of the applicant; or
  - (b) in any other case, that the making of a custody order in favour of the applicant would be more appropriate than the making of an adoption order in his favour, the court shall direct that the application is to be treated as if it had been made for custody of the child; but where such a direction is made the court shall not cease to have jurisdiction by reason only that it would not have had jurisdiction to hear an application by the applicant for custody of the child.
- (2) In the application of this Part of this Act to any case where a direction under subsection (1) has been made—
  - (a) for references in section 47(2) to the making of an application for custody there shall be substituted references to the making of an application for an adoption order;
  - (b) for the references in section 49 and paragraph (a) of subsection (1) of section 51 to the making of an application there shall be substituted references to the making of a direction in terms of subsection (1) of this section;
  - (c) in section 51(1) for the words "for custody of" there shall be substituted the words " for an adoption order in respect of ".
- (3) For the purposes of section 11 of the Guardianship Act 1973, any application in respect of which a direction has been made under subsection (1) of this section, is an application for custody of a child.

## **54 Jurisdiction of Scottish courts in certain applications for custody**

- (1) Without prejudice to any existing grounds of jurisdiction, the court shall have jurisdiction in proceedings for custody of a child if at the time of application for such custody—

- (a) the child resides in Scotland ; and
  - (b) the child is domiciled in England and Wales ; and
  - (c) the person applying for custody is a person qualified, in terms of subsections (3) to (8) of section 33 of this Act, to apply in England or Wales for a custodianship order in respect of the child.
- (2) For the purposes of this section, " the court" means—
- (a) the Court of Session ; or
  - (b) the sheriff court of the sheriffdom within which the child resides.

## **55 Interpretation and extent of sections 47 to 55**

- (1) In sections 47 to 54 " child " means a person under the age of sixteen.
- (2) Sections 47 to 54 and this section apply to Scotland only.