

## Children (Scotland) Act 1995

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Drawing on a number of inquiries, reviews and reports on child care law and policy, the Children (Scotland) Act 1995 was the first major piece of children's legislation to be passed in Scotland since 1968. The passing of the Act also followed the UK's ratification of the United Nations Convention on the Rights of the Child, some of the principles of which are to be found in the Scottish legislation. In setting out a legislative framework for matters relating to children, the Act focuses on the needs and rights of children.

#### CONTENT AND STRUCTURE

The Act features 105 sections and five schedules, and is divided into four main parts.

##### *Part I - Children, Parents and Guardians*

The first Part of the Act (sections 1 to 15) defines the responsibilities and rights of parents and guardians in relation to children. It also deals with decisions about family matters, for example, where children should live when their parents separate.

##### *Part II - Promotion of Children's Welfare by Local Authorities and Children's Hearings*

Part II (sections 16 to 93) deals with the promotion of children's welfare by local authorities, covering such matters as the provision of support and services to children and families. Part II also governs the operation of the children's hearings system.

##### *PART III - Adoption*

Part III (sections 94 to 98) makes changes to the law on adoption and requires, for example, the courts to have regard to the child's views.

##### *PART IV - General Provision*

Part IV (sections 99 to 105) makes general provisions in relation to the Act.

#### PRINCIPLES AND THEMES

The Act is founded on the principles that:

- each child has the right to be treated as an individual;
- each child who can form views on matters affecting him or her has the right to express those views if he or she wishes;
- parents should normally be responsible for the upbringing of their children and should share that responsibility;
- each child has the right to protection from all forms of abuse, neglect and exploitation; and
- in decisions relating to the protection of the child, every effort should be made to keep the child in the family home.

In support of these principles, the following three themes are present throughout the Act.

##### *1. Welfare paramount*

The welfare of the child is the most important consideration when his or her needs are considered by courts and children's hearings.

##### *2. No order principle*

No court should make an order relating to a child and no children's hearing should make a supervision requirement unless the court or hearing considers that to do so would be better for the child than making no order or supervision at all.

##### *3. The child's views must be considered*

The child's views should be taken into account where major decisions are to be made about his or her future.

#### KEY PROVISIONS

Some of the key provisions from Parts I and II of the Act are noted below.

## *Part I - Children, Parents and Guardians*

- Parents have responsibilities towards children, including the responsibility to maintain contact if the child is not living with the parent. Parents also have rights, but only in order that they can fulfil their responsibilities towards their children.
- When making any major decision affecting a child, parents should consider the views of the child, taking into account the child's age and maturity.
- When dealing with cases concerning children, courts must take account of the views of the child. In doing so, they should have regard to the child's age and maturity. A child of 12 years of age would normally be considered sufficiently mature to form and express views.
- When making an order relating to parental responsibilities or rights, a court must make the welfare of the child its paramount concern.
- A child has the right to sue if he or she has sufficient maturity – legal aid will be available.
- When the parents of a child are not married, only the mother automatically acquires parental responsibilities and rights. However, unmarried fathers can obtain parental responsibilities and rights by agreement.
- The Act replaces 'custody' and 'access' orders with 'residence' and 'contact' orders. These are thought to be more child-centred.

## *Part II - Promotion of Children's Welfare by Local Authorities and Children's Hearings*

- When a local authority, children's hearing

or court makes a decision affecting a child, the child's welfare is their paramount consideration.

- Local authorities, children's hearings and courts must take account of the views of the child.
- The term 'in care' for those children in the care of the local authority has been replaced with 'looked after'.
- Local authorities have a duty to publish information about children's services and to publish children's service plans.
- Local authorities have a duty to provide services for 'children in need' and the power to promote early years services to all children.
- Children with or affected by disabilities are specifically provided for in the Act. Local authorities are obliged to provide services which will minimise the effects of the disability and give children the opportunity to live as normal lives as possible.
- Local authorities have extended duties to provide support to young people up to the age of 19 who have previously been in care. Local authorities have further powers to provide support to such young people until they reach the age of 21 and beyond that age to finish a course of education.
- Children and young people have the right to attend their own children's hearing.
- Protective measures for children are introduced through Child Protection Orders, Child Assessment Orders and Exclusion Orders. Legal aid will be available for children in respect of proceedings relating to these Orders.

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