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STATUTORY INSTRUMENTS

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**1995 No. 755**

**The Children (Northern Ireland) Order 1995**

**PART III**

**ORDERS WITH RESPECT TO CHILDREN IN FAMILY PROCEEDINGS**

*General*

**Residence, contact and other orders with respect to children**

**8.—(1) In this Order—**

“contact order” means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

“prohibited steps order” means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;

“residence order” means an order settling the arrangements to be made as to the person with whom a child is to live; and

“specific issue order” means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) In this Order “Article 8 order” means any of the orders mentioned in paragraph (1) and any order varying or discharging such an order.

(3) For the purposes of this Order “family proceedings” means any proceedings—

- (a) under the inherent jurisdiction of the High Court in relation to children; and
- (b) under the provisions mentioned in paragraph (4),

but does not include proceedings on an application for leave under Article 173(2) (restriction on use of wardship jurisdiction).

(4) The provisions are—

- (a) Part II, this Part, Part V (care and supervision) and Part XV (guardians);
- (b) the Matrimonial Causes (Northern Ireland) Order 1978(1);
- (c) the Domestic Proceedings (Northern Ireland) Order 1980(2);
- (d) Articles 4 and 13 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984(3);
- (e) the Adoption Order;

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(1) 1978 NI 15

(2) 1980 NI 5

(3) 1984 NI 14

- (f) Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989<sup>(4)</sup>;
- (g) section 30 of the Human Fertilisation and Embryology Act 1990<sup>(5)</sup>.

### **Restrictions on making Article 8 orders**

**9.**—(1) No court shall make any Article 8 order, other than a residence order, with respect to a child who is in the care of an authority.

(2) No application may be made by an authority for a residence order or contact order and no court shall make such an order in favour of an authority.

(3) A person who is, or was at any time within the last six months, an authority foster parent of a child may not apply for leave to apply for an Article 8 order with respect to the child unless—

- (a) he has the consent of the authority;
- (b) he is a relative of the child; or
- (c) the child has lived with him for at least three years preceding the application.

(4) The period of three years mentioned in paragraph (3)(c) need not be continuous but must have begun not more than five years before the making of the application.

(5) No court shall exercise its powers to make a specific issue order or prohibited steps order—

- (a) with a view to achieving a result which could be achieved by making a residence or contact order; or
- (b) in any way which is denied to the High Court (by Article 173(1)) in the exercise of its inherent jurisdiction with respect to children.

(6) No court shall make any Article 8 order which is to have effect for a period which will end after the child has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.

(7) No court shall make any Article 8 order, other than one varying or discharging such an order, with respect to a child who has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.

### **Power of court to make Article 8 orders**

**10.**—(1) In any family proceedings in which a question arises with respect to the welfare of any child, the court may make an Article 8 order with respect to the child if—

- (a) an application for the order has been made by a person who—
  - (i) is entitled to apply for an Article 8 order with respect to the child; or
  - (ii) has obtained the leave of the court to make the application; or
- (b) the court considers that the order should be made even though no such application has been made.

(2) The court may also make an Article 8 order with respect to any child on the application of a person who—

- (a) is entitled to apply for an Article 8 order with respect to the child; or
- (b) has obtained the leave of the court to make the application.

(3) This Article is subject to the restrictions imposed by Article 9.

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(4) 1989 NI 4

(5) 1990 c. 37

(4) The following persons are entitled to apply to the court for any Article 8 order with respect to a child—

- (a) any parent or guardian of the child;
- (b) any person in whose favour a residence order is in force with respect to the child.

(5) The following persons are entitled to apply for a residence or contact order with respect to a child—

- (a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;
- (b) any person with whom the child has lived for a period of at least three years;
- (c) any person who—
  - (i) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;
  - (ii) in any case where the child is in the care of an authority, has the consent of that authority; or
  - (iii) in any other case, has the consent of each of those (if any) who have parental responsibility for the child.

(6) A person who would not otherwise be entitled (under paragraphs (1) to (5)) to apply for the variation or discharge of an Article 8 order shall be entitled to do so if—

- (a) the order was made on his application; or
- (b) in the case of a contact order, he is named in the order.

(7) Any person who falls within a category of person prescribed by rules of court is entitled to apply for any such Article 8 order as may be so prescribed in relation to that category of person.

(8) Where the person applying for leave to make an application for an Article 8 order is the child concerned, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application for the Article 8 order.

(9) Where the person applying for leave to make an application for an Article 8 order is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to—

- (a) the nature of the proposed application for the Article 8 order;
- (b) the applicant's connection with the child;
- (c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and
- (d) where the child is being looked after by an authority—
  - (i) the authority's plans for the child's future; and
  - (ii) the wishes and feelings of the child's parents.

(10) The period of three years mentioned in paragraph (5)(b) need not be continuous but must not have begun more than five years before, or ended more than three months before, the making of the application.

### **General principles and supplementary provisions**

**11.**—(1) In proceedings in which any question of making an Article 8 order, or any other question with respect to such an order, arises, the court shall (in the light of any rules made by virtue of paragraph (2))—

- (a) draw up a timetable with a view to determining the question without delay; and

- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.
- (2) Rules of court may—
  - (a) specify periods within which specified steps must be taken in relation to proceedings in which such questions arise; and
  - (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that such questions are determined without delay.
- (3) Where a court has power to make an Article 8 order, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.
- (4) Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.
- (5) Where—
  - (a) a residence order has been made with respect to a child; and
  - (b) as a result of the order the child lives, or is to live, with one of two parents who each have parental responsibility for him,
 the residence order shall cease to have effect if the parents live together for a continuous period of more than six months.
- (6) A contact order which requires the parent with whom a child lives to allow the child to visit, or otherwise have contact with, his other parent shall cease to have effect if the parents live together for a continuous period of more than six months.
- (7) An Article 8 order may—
  - (a) contain directions about how it is to be carried into effect;
  - (b) impose conditions which must be complied with by any person—
    - (i) in whose favour the order is made;
    - (ii) who is a parent of the child concerned;
    - (iii) who is not a parent of his but who has parental responsibility for him; or
    - (iv) with whom the child is living;
 and to whom the conditions are expressed to apply;
  - (c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period;
  - (d) make such incidental, supplemental or consequential provision as the court thinks fit.

### **Residence orders and parental responsibility**

- 12.**—(1) Where the court makes a residence order in favour of the father of a child it shall, if the father would not otherwise have parental responsibility for the child, also make an order under Article 7 giving him that responsibility.
- (2) Where the court makes a residence order in favour of any person who is not the parent or guardian of the child concerned that person shall have parental responsibility for the child while the residence order remains in force.
- (3) Where a person has parental responsibility for a child as a result of paragraph (2), he shall not have the right—

- (a) to consent, or refuse to consent, to the making of an application with respect to the child under Article 17 of the Adoption Order;
- (b) to agree, or refuse to agree, to the making of an adoption order, or an order under Article 57 of the Adoption Order, with respect to the child; or
- (c) to appoint a guardian for the child.

(4) Where paragraph (1) requires the court to make an order under Article 7 in respect of the father of a child, the court shall not bring that order to an end at any time while the residence order concerned remains in force.

### **Change of child's name or removal from jurisdiction**

**13.—**(1) Where a residence order is in force with respect to a child, no person shall—

- (a) cause the child to be known by a new surname; or
- (b) remove him from the United Kingdom;

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(2) Paragraph (1)(b) shall not prevent the removal of a child, for a period of less than one month, by the person in whose favour the residence order is made.

(3) In making a residence order with respect to a child the court may grant the leave required by paragraph (1)(b), either generally or for specified purposes.

### **Enforcement of residence orders**

**14.—**(1) Where—

- (a) a residence order is in force with respect to a child in favour of any person; and
- (b) any other person (including one in whose favour the order is also in force) is in breach of the arrangements settled by the order,

the person mentioned in sub-paragraph (a) may, as soon as a copy of the order has been served on the other person, enforce it under Article 112(3) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(6)</sup> as if it were an order requiring the other person to produce the child to him.

(2) Paragraph (1) is without prejudice to any other remedy open to the person in whose favour the residence order is in force.

### *Financial relief*

### **Orders for financial relief with respect to children**

**15.—**(1) Schedule 1 (which makes provision in relation to financial relief for children) shall have effect.

(2) The powers of a court of summary jurisdiction under Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981 to revoke, suspend, review, vary or discharge an order for the periodical payment of money and the power of the clerk of petty sessions to vary such an order shall not apply in relation to an order made under Schedule 1.

(3) Schedule 1 is without prejudice to the Child Support (Northern Ireland) Order 1991<sup>(7)</sup>.

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<sup>(6)</sup> 1981 NI 26

<sup>(7)</sup> 1991 NI 23

*Family assistance orders***Family assistance orders**

**16.**—(1) Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order requiring an authority to make a suitably qualified person available, to advise, assist and (where appropriate) befriend any person named in the order.

(2) The persons who may be named in an order under this Article (a “family assistance order”) are—

- (a) any parent or guardian of the child;
- (b) any person with whom the child is living or in whose favour a contact order is in force with respect to the child;
- (c) the child himself.

(3) No court may make a family assistance order unless—

- (a) it is satisfied that the circumstances of the case are exceptional; and
- (b) it has obtained the consent of every person to be named in the order other than the child.

(4) A family assistance order may direct—

- (a) the person named in the order; or
- (b) such of the persons named in the order as may be specified in the order,

to take such steps as may be so specified with a view to enabling the suitably qualified person mentioned in paragraph (1) to be kept informed of the address of any person named in the order and to be allowed to visit him.

(5) Unless it specifies a shorter period, a family assistance order shall have effect for a period of six months beginning with the day on which it is made.

(6) Where—

- (a) a family assistance order is in force with respect to a child; and
- (b) an Article 8 order is also in force with respect to the child,

the suitably qualified person mentioned in paragraph (1) may refer to the court the question whether the Article 8 order should be varied or discharged.

(7) A family assistance order shall not be made so as to require an authority to make a suitably qualified person available under paragraph (1) unless—

- (a) the authority agrees; or
- (b) the child concerned lives or will live within its area.