



Matrimonial Causes Act 1973

1973 CHAPTER 18

PART III

PROTECTION, CUSTODY, ETC., OF CHILDREN

41 Restriction on decrees for dissolution, annulment or separation affecting children

- (1) The Court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied—
 - (a) that for the purposes of this section there are no children of the family to whom this section applies ; or
 - (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or
 - (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or
 - (c) that there are circumstances making it desirable that the decree should be made absolute or should be granted, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b) above.
- (2) The court shall not make an order declaring that it is satisfied as mentioned in subsection (1)(c) above unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the court within a specified time.
- (3) If the court makes absolute a decree of divorce or of nullity of marriage, or grants a decree of judicial separation, without having made an order under subsection (1) above the decree shall be void but, if such an order was made, no person shall be entitled to

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challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) above were not fulfilled.

- (4) If the court refuses to make an order under subsection (1) above in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.
- (5) This section applies to the following children of the family, that is to say—
- (a) any minor child of the family who at the date of the order under subsection (1) above is—
 - (i) under the age of sixteen, or
 - (ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and
 - (b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply;
- and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to him.
- (6) In this section "welfare", in relation to a child, includes the custody and education of the child and financial provision for him.

42 Orders for custody and education of children in cases of divorce, etc., and for custody in cases of neglect

- (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen—
- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);
 - (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal;
- and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court.
- (2) Where the court makes an order under section 27 above, the court shall also have power to make such order as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this subsection and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.
- (3) Where the court grants or makes absolute a decree of divorce or grants a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.
- (4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3) above, then, if the party to whom the declaration relates

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is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

- (5) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.
- (6) The power of the court under subsection (1)(a) or (2) above to make an order with respect to a child shall be exercisable from time to time ; and where the court makes an order under subsection (1)(b) above with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.
- (7) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

43 Power to commit children to care of local authority

- (1) Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or to any other individual, the court may if it thinks fit make an order committing the care of the child to the council of a county other than a metropolitan county, or of a metropolitan district or London borough or the Common Council of the City of London (hereafter in this section referred to as " the local authority "); and thereupon Part II of the Children Act 1948 (which relates to the treatment of children in the care of a local authority) shall, subject to the provisions of this section, apply as if the child had been received by the local authority into their care under section 1 of that Act.
- (2) The authority specified in an order under this section shall be the local authority for the area in which the child was, in the opinion of the court, resident before the order was made to commit the child to the care of a local authority, and the court shall before making an order under this section hear any representations from the local authority, including any representations as to the making of a financial provision order in favour of the child.
- (3) While an order made by virtue of this section is in force with respect to a child, the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.
- (4) An order made by virtue of this section shall cease to have effect as respects any child when he becomes eighteen, and the court shall not make an order committing a child to the care of a local authority under this section after he has become seventeen.
- (5) In the application of Part II of the Children Act 1948 by virtue of this section—
 - (a) the exercise by the local authority of their powers under sections 12 to 14 of that Act (which among other things relate to the accommodation and welfare of a child in the care of a local authority) shall be subject to any directions given by the court; and
 - (b) section 17 of that Act (which relates to arrangements for the emigration of such a child) shall not apply.

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- (6) It shall be the duty of any parent or guardian of a child committed to the care of a local authority under this section to secure that the local authority are informed of his address for the time being, and a person who knowingly fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding ten pounds.
- (7) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.
- (8) So long as by virtue of paragraph 13 of Schedule 4 to the Children and Young Persons Act 1969 sections 15 and 16 of the Children Act 1948 continue to apply in relation to a local authority, subsection (5)(a) above shall have effect in relation to that authority as if for the reference to sections 12 to 14 of the last-mentioned Act there were substituted a reference to sections 12 to 16 of that Act.
- (9) Subject to the following provisions of this subsection, until 1st April 1974 subsection (1) above shall have effect as if for the words " other than a metropolitan county, or of a metropolitan district" there were substituted the words " county borough "

An order (or orders) made under section 273(2) of the Local Government Act 1972 (orders bringing provisions of that Act into force before 1st April 1974) may appoint an earlier date (or, as the case may be, different dates for different purposes or areas) on which subsection (1) above shall cease to have effect as mentioned above.

44 Power to provide for supervision of children

- (1) Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of an officer appointed under this section as a welfare officer or under the supervision of a local authority.
- (2) Where the court makes an order under this section for supervision by a welfare officer, the officer responsible for carrying out the order shall be such probation officer as may be selected under arrangements made by the Secretary of State ; and where the order is for supervision by a local authority, that authority shall be the council of a county other than a metropolitan county, or of a metropolitan district or London borough selected by the court and specified in the order or, if the Common Council of the City of London is so selected and specified, that Council.
- (3) The court shall not have power to make an order under this section as respects a child who in pursuance of an order under section 43 above is in the care of a local authority.
- (4) Where a child is under the supervision of any person in pursuance of this section the jurisdiction possessed by a court to vary any financial provision order in the child's favour or any order made with respect to his custody or education under this Part of this Act shall, subject to any rules of court, be exercisable at the instance of that court itself.
- (5) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

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- (6) Subject to the following provisions of this subsection, until 1st April 1974 subsection (2) above shall have effect as if for the words " other than a metropolitan county, or of a metropolitan district" there were substituted the words " county borough " .

An order (or orders) made under section 273(2) of the Local Government Act 1972 may appoint an earlier date (or, as the case may be, different dates for different purposes or areas) on which subsection (2) above shall cease to have effect as mentioned above.