



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART I

MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

Powers of court as to the custody etc. of children

8 Orders for the custody of children

- (1) Where an application is made by a party to a marriage for an order under section 2, 6 or 7 of this Act, then, if there is a child of the family who is under the age of eighteen, the court shall not dismiss or make a final order on the application until it has decided whether to exercise its powers under this section and, if so, in what manner.
- (2) On an application for an order under section 2, 6 or 7 of this Act the court, whether or not it makes an order under the said section 2, 6 or 7, shall have power to make such order regarding—
 - (a) the legal custody of any child of the family who is under the age of eighteen, and
 - (b) access to any such child by either of the parties to the marriage or any other person who is a parent of that child,as the court thinks fit,
- (3) An order shall not be made under subsection (2) above giving the legal custody of a child to a person other than a party to the marriage or a parent of the child; but, where the court is of opinion that legal custody should be given to a person who is not a party to the marriage or a parent of the child, it may direct that that person shall be treated as if he had applied for a custodianship order under section 33 of the Children Act 1975.

Where a direction is given under this subsection in respect of a person who is not qualified to apply for a custodianship order under the said section 33, that person shall

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be treated as if he were so qualified and Part II of that Act (except section 40) shall have effect accordingly.

- (4) An order shall not be made under this section giving the legal custody of a child to more than one person ; but where the court makes an order giving the legal custody of a child to any person under this section, it may order that a party to the marriage in question who is not given the legal custody of the child shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the child) and shall have those rights and duties jointly with the person who is given the legal custody of the child.
- (5) An order made under subsection (2) above shall cease to have effect as respects any child when he attains the age of eighteen.
- (6) Where an order is made under subsection (2) above the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order, or any provision thereof, shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.
- (7) The court shall not have power to make—
 - (a) an order under subsection (2) above with respect to a child in respect of whose custody an order made by a court in England and Wales is for the time being in force;
 - (b) an order under subsection (2)(b) above with respect to a child who is already for the purposes of Part II of the Children Act 1948 in the care of a local authority.
- (8) In any proceedings in which the powers conferred on the court by subsection (2) above are or may be exercisable, the question whether, and if so in what manner, those powers should be exercised shall be excepted from the issues arising in the proceedings which, under the proviso to section 60(1) of the Magistrates' Courts Act 1952, must be determined by the court before the court may direct a probation officer to make to the court under that section a report on the means of the parties.

9 Powers of court to provide for supervision of children

- (1) Where the court makes an order under section 8(2) of this Act regarding the legal custody of a child and it appears to the court that there are exceptional circumstances which make it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a local authority specified by the court or under the supervision of a probation officer.
- (2) Where the court decides to make an order under this section providing for supervision by a probation officer, it shall provide for supervision by a probation officer appointed for or assigned to the petty sessions area in which, in the opinion of the court, the child is or will be resident, and the officer responsible for carrying out the order shall be selected in like manner as if the order were a probation order.
- (3) An order made under this section shall cease to have effect as respects any child when he attains the age of eighteen.

- (4) The court shall not have power to make an order under this section in respect of any child who is already for the purposes of Part II of the Children Act 1948 in the care of a local authority.
- (5) Without prejudice to section 21 of this Act, for the purposes of any order made under this section providing for a child to be under the supervision of a local authority or a probation officer, provision may be made by rules for substituting from time to time a different local authority or, as the case may be, a probation officer appointed for or assigned to a different petty sessions area, if in the opinion of the court the child is or will be resident in the area of that authority or, as the case may be, that petty sessions area.

10 Powers of court to commit children to care of local authority

- (1) Where a court has power by virtue of section 8(2) of this Act to make an order regarding the legal custody of a child and it appears to the court that there are exceptional circumstances which make 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 such local authority as may be specified in the order.
- (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 immediately before the order committing the child to the care of a local authority was made.
- (3) Before making an order under this section the court shall—
 - (a) notify the local authority of their intention to make such an order, and
 - (b) hear any representations from the local authority, including any representations as to the making of an order under section 11(4) of this Act for the making of periodical payments,but the court shall not be required to give any notification to the local authority under paragraph (a) above if an officer of the authority has already made to the court under section 12(3) of this Act a report which contains a recommendation that an order should be made under this section.
- (4) On the making of an order under this section—
 - (a) Part II of the Children Act 1948 (which relates to the treatment of children in the care of a local authority) except section 17 thereof (which relates to arrangements for the emigration of such children); and
 - (b) for the purposes only of contributions by the child himself at a time when he has attained the age of sixteen and is engaged in remunerative full-time work, Part III of that Act (which relates to contributions towards the maintenance of children in the care of a local authority),shall apply as if the child had been received by the local authority into their care under section 1 of that Act.
- (5) While an order made under 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.
- (6) An order made under this section shall cease to have effect as respects any child when he attains the age of eighteen.

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- (7) The court shall not have power to make an order under this section with respect to a child who has attained the age of seventeen.
- (8) The court shall not have power to make an order under this section with respect to a child who is already for the purposes of Part II of the Children Act 1948 in the care of a local authority.
- (9) Where the court makes an order under this section with respect to a child, the court shall not have power to make an order under section 8(2)(b) of this Act with respect to that child.
- (10) Each parent or guardian of a child for the time being in the care of a local authority by virtue of an order made under this section shall give notice to the authority of any change of address of that parent or guardian, and any person who without reasonable excuse fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding £50.
- (11) The Secretary of State may by order repeal subsection (7) above, and any such order shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

11 Provision for maintenance for children in case of certain orders under ss. 8 to 10

- (1) Where on an application under section 1 of this Act the court, although not satisfied of any ground mentioned in that section, makes an order under section 8(2) of this Act giving to the applicant the right to the actual custody of a child of the family, the court shall have the same powers to make an order in respect of that child under section 2(1) (c) and (d) of this Act as the court would have if it were so satisfied.
- (2) Where by an order made under section 8(2) of this Act the right to the actual custody of a child is given to the respondent, the court may make one or both of the following orders, that is to say—
 - (a) an order that the applicant shall make to the respondent for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order;
 - (b) an order that the applicant shall pay to the respondent for the benefit of the child or to the child such lump sum as may be so specified.
- (3) Where by an order made under section 8(2) of this Act the legal custody of a child is given to a person who is a parent of that child but not a party to the marriage in question, the court may make one or more of the following orders, that is to say—
 - (a) an order that a party to the marriage shall make to that parent for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order;
 - (b) an order that a party to the marriage shall make to that parent for the benefit of the child or to the child such lump sum as may be so specified.
- (4) Where an order under section 10(1) of this Act commits the care of a child to a local authority the court may make a further order requiring a party to the marriage in question to make to that authority or to the child such periodical payments, and for such term, as may be specified in the order.
- (5) The court in deciding whether to exercise its powers under subsection (2), (3) or (4) above in relation to any child and, if so, in what manner, shall have regard to all the

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circumstances of the case including the matters to which the court is required to have regard under section 3(2) of this Act, and, in deciding whether to make an order against a party to the marriage who is not a parent of that child, shall also have regard (among the circumstances of the case)—

- (a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed that responsibility and to the length of time for which he discharged that responsibility ;
 - (b) to whether in assuming and discharging that responsibility that party did so knowing that the child was not his own child ;
 - (c) to the liability of any other person to maintain the child.
- (6) The provisions of section 5 of this Act (other than subsection (3)(a)) shall apply in relation to an order under subsection (2)(a), (3)(a) or (4) above as they apply in relation to an order under section 2(1)(c) of this Act.
- (7) The provisions of section 2(2) and (3) of this Act shall apply in relation to an order under subsection (2)(b) or (3)(b) above as they apply in relation to an order under section 2(1)(d) of this Act and no order shall be made under subsection (2)(b) or (3)(b) above in respect of a child who has attained the age of eighteen.
- (8) Where the court, by virtue of subsection (6) of section 8 of this Act, directs that an order made under subsection (2) of that section in respect of a child, or the provision thereof providing for the custody of the child, shall not have effect until the expiration of a specified period or the occurrence of a specified event, an order made in respect of that child under subsection (2)(a) or (3)(a) above shall only require payments to be made from the date on which the order made under section 8(2) of this Act, or that provision thereof, takes effect.

12 Supplementary provisions with respect to powers of court under ss. 8 to 10

- (1) Where an application is made by a party to a marriage for an order under section 2, 6 or 7 of this Act the court, before exercising its powers under sections 8 to 10 of this Act in respect of any child of the family, shall give each party to the marriage and any other person who, as a parent of that child, is present or represented by counsel or solicitor at the hearing, an opportunity of making representations; and any reference in this section to a party to the proceedings shall include a reference both to a party to the marriage and to any other such person who is present or represented.
- (2) Where in the case of such an application there is a child of the family who is not the child of both parties to the marriage in question, the court shall not exercise its powers under the said sections 8 to 10 in relation to that child unless either—
- (a) any person who is a parent of that child, though not a party to the marriage, is present or represented by counsel or solicitor at the hearing ; or
 - (b) it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed by rules, that such steps have been taken as may be so prescribed with a view to giving notice to that person of the making of the application and of the time and place appointed for the hearing;

except that notice shall not be required to be given under paragraph (b) above to any person as the father of an illegitimate child unless that person has been adjudged by a court to be the father of that child.

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- (3) Where the court on such an application is of the opinion that it has not sufficient information to decide whether to exercise its powers under the said sections 8 to 10 and, if so, in what manner, the court may, at any stage of the proceedings on that application, request a local authority to arrange for an officer of the authority to make to the court a report, orally or in writing, with respect to any such matter as the court may specify (being a matter appearing to the court to be relevant to the decision) or may request a probation officer to make such a report to the court; and it shall be the duty of the local authority or probation officer to comply with the request.
- (4) Any report made in pursuance of subsection (3) above shall be made or, if in writing, furnished to the court at the hearing of the application, and, if the report is in writing—
- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during the hearing, and
 - (b) the court may, if it thinks fit, require that the report, or such part thereof as the court may specify, shall be read aloud at the hearing.
- (5) The court may, and if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor shall, require the officer by whom the report was made to give evidence on or with respect to the matters referred to in the report, and, if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any matter referred to either in the report or in the evidence given by the officer.
- (6) Subject to subsection (7) below, the court may take account of—
- (a) any statement contained in a report made or furnished to the court under subsection (4) above, and
 - (b) any evidence given under subsection (5) above by the officer by whom the report was made,
- so far as that statement or evidence relates to any of the matters specified by the court under subsection (3) above, notwithstanding any enactment or rule of law relating to the admissibility of evidence.
- (7) A report made in pursuance of subsection (3) above shall not include anything said by either of the parties to a marriage in the course of an interview which took place with, or in the presence of, a probation officer with a view to the reconciliation of those parties, unless both parties have consented to its inclusion ; and if anything so said is included without the consent of both those parties in any such report then, unless both those parties agree otherwise, that part of the report shall, for the purposes of the giving of evidence under subsection (5) above and for the purposes of subsection (6) above, be treated as not forming part of the report.
- (8) Where for the purposes of this section the court adjourns the hearing of any application, then, subject to section 46(2) of the Magistrates' Courts Act 1952 (which requires adequate notice of the time and place of the resumption of the hearing to be given to the parties), the court may resume the hearing at the time and place appointed notwithstanding the absence of any or all of the parties.
- (9) The power of the court under subsection (3) above to request a report may, at any time before the hearing of the application, be exercised by a single justice, and, if any such request is made by a single justice, the report shall be made or furnished to the court which hears the application and the foregoing provisions of this section shall apply accordingly.

13 Disputes between persons holding parental rights and duties jointly

- (1) Where two persons who have a parental right or duty jointly by virtue of an order under section 8(2) of this Act disagree on any question affecting the child's welfare, either of them may apply to a magistrates' court for its direction, and the court may make such order regarding the matters in difference as it thinks fit.
- (2) Where the court makes an order under subsection (1) above with respect to any child, the court may, on an application made by either of the persons who have a parental right or duty jointly, by order vary or revoke that order.
- (3) The power of the court under section 12(3) of this Act to request a local authority to arrange for an officer of the authority to make a report, or to request a probation officer to make a report, shall apply in relation to the exercise by the court of its powers under this section as it applies in relation to the exercise by the court of its powers under sections 8 to 10 of this Act, and the provisions of subsections (4) to (9) of the said section 12 shall apply accordingly.

14 Access to children by grandparents

- (1) A magistrates' court, on making an order under section 8(2) of this Act regarding the legal custody of a child or at any time while such an order is in force, shall have power, on an application made by a grandparent of the child, to make such order requiring access to the child to be given to that grandparent as the court thinks fit.
- (2) Subsections (5), (6), (7)(b) and (8) of section 8 and subsection (9) of section 10 of this Act shall apply in relation to an order under this section as they apply in relation to an order under section 8(2)(b) of this Act.
- (3) Where a magistrates' court has made an order under subsection (1) above requiring access to a child to be given to a grandparent, the court shall have power to vary or revoke that order on an application made—
 - (a) by that grandparent, or
 - (b) by either party to the marriage in question, or
 - (c) if the child is not a child of both the parties to the marriage, by any person who though not a party to the marriage is a parent of that child.
- (4) Section 12 of this Act shall apply in relation to the exercise by a court of its powers under this section on an application under subsection (1) or (3) above as it applies in relation to the exercise by the court of its powers under sections 8 to 10 of this Act on an application under section 1 of this Act, and any reference to a party to the proceedings in subsection (4) or (5) of section 12 of this Act shall include—
 - (a) in the case of an application under subsection (1) above, a reference to the grandparent who has made an application under that subsection ; and
 - (b) in the case of an application under subsection (3) above, a reference to the grandparent who has access to the child under the order for the variation or revocation of which the application is made.
- (5) Where an order made under section 8(2)(a) of this Act in relation to a child ceases to have effect, whether by virtue of an order or direction of a magistrates' court or by virtue of any provision of this Part of this Act, any order made under this section regarding access to the child by a grandparent shall also cease to have effect.

- (6) A court shall have power to make an order under this section in favour of a grandparent of a child notwithstanding that the child is illegitimate.

15 Principle on which questions relating to custody and upbringing of children are to be decided

For the avoidance of doubt it is hereby declared that the provisions of section 1 of the Guardianship of Minors Act 1971 (which require a court in deciding any question relating to the custody or upbringing of a minor to have regard to the welfare of the minor as the first and paramount consideration) apply in relation to the exercise by a magistrates' court of its powers under this Part of this Act.