



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

Status: This is the original version (as it was originally enacted).

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.