



Family Law Act 1986

1986 CHAPTER 55

PART I

CHILD CUSTODY

CHAPTER I

PRELIMINARY

1 Orders to which Part I applies. **E+W+N.I.**

- (1) Subject to the following provisions of this section, in this Part “custody order” means—
- (a) an order made by a court in England and Wales under any of the following enactments—
 - (i) section 9(1), 10(1)(a), 11(a) or 14A(2) of the ^{M1} Guardianship of Minors Act 1971 or section 2(4)(b) or (2)(5) of the ^{M2} Guardianship Act 1973;
 - (ii) section 42(1) of the ^{M3} Matrimonial Causes Act 1973;
 - (iii) section 42(2) of the Matrimonial Causes Act 1973;
 - (iv) section 33(1) of the ^{M4} Children Act 1975 or section 2(4)(b) of the Guardianship Act 1973 as applied by section 34(5) of the Children Act 1975;
 - (v) section 8(2) or 19(1)(ii) of the ^{M5} Domestic Proceedings and Magistrates’ Courts Act 1978;
 - (b) an order made by a court of civil jurisdiction in Scotland under any enactment or rule of law with respect to the custody, care or control of a child, access to a child or the education or upbringing of a child, excluding—
 - (i) an order committing the care of a child to a local authority or placing a child under the supervision of a local authority;
 - (ii) an adoption order as defined in section 12(1) of the ^{M6} Adoption (Scotland) Act 1978;

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- (iii) an order freeing a child for adoption made under section 18 of the said Act of 1978;
 - (iv) an order for the custody of a child made in the course of proceedings for the adoption of the child (other than an order made following the making of a direction under section 53(1) of the Children Act 1975);
 - (v) an order made under the ^{M7}Education (Scotland) Act 1980;
 - (vi) an order made under Part II or III of the ^{M8}Social Work (Scotland) Act 1968;
 - (vii) an order made under the ^{M9}Child Abduction and Custody Act 1985;
 - (viii) an order for the delivery of a child or other order for the enforcement of a custody order;
 - (ix) an order relating to the tutory or curatory of a child;
 - (c) an order made by a court in Northern Ireland under any of the following enactments—
 - (i) section 5 of the ^{M10}Guardianship of Infants Act 1886 (except so far as it relates to costs);
 - (ii) Article 45(1) of the ^{M11}Matrimonial Causes (Northern Ireland) Order 1978;
 - (iii) Article 45(2) of the Matrimonial Causes (Northern Ireland) Order 1978;
 - (iv) Article 10(2) or 20(1)(ii) of the ^{M12}Domestic Proceedings (Northern Ireland) Order 1980;
 - (d) an order made by the High Court in the exercise of its jurisdiction relating to wardship so far as it gives the care and control of a child to any person or provides for the education of, or for access to, a child, excluding an order relating to a child of whom care or care and control is (immediately after the making of the order) vested in a local authority or in the Northern Ireland Department of Health and Social Services.
- (2) In this Part “custody order” does not include—
- (a) an order within subsection (1) (a) or (c) above which varies or revokes a previous order made under the same enactment;
 - (b) an order under section 14A(2) of the ^{M13}Guardianship of Minors Act 1971 which varies a previous custody order; or
 - (c) an order within paragraphs (d) of subsection (1) above which varies or revokes a previous order within that paragraph.
- (3) Subject to sections 32 and 40 of this Act, in this Part “custody order” does not include any order which—
- (a) was made before the date of the commencement of this Part;
 - (b) in the case of an order within subsection (1)(b) or (d) above or an order under any of the enactments mentioned in subsection (4) below, is made on or after that date on an application made before that date; or
 - (c) in any other case, is made on or after that date in proceedings commenced before that date.
- (4) The said enactments are—
- (a) sections 9(1) and 14A(2) of the Guardianship of Minors Act 1971 and section 33(1) of the ^{M14}Children Act 1975; and
 - (b) section 5 of the ^{M15}Guardianship of Infants Act 1886.

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- (5) For the purposes of subsection (3) above an order made on two or more applications which are determined together shall be regarded as made on the first of those applications.
- (6) Provision may be made by act of sederunt prescribing, in relation to orders within subsection (1)(b) above, what constitutes an application for the purposes of this Part.

Extent Information

E1 This version of this provision extends to England and Wales and Northern Ireland only; a separate version has been created for Scotland only

Marginal Citations

M1 1971 c. 3
M2 1973 c. 29
M3 1973 c. 18
M4 1975 c. 72
M5 1978 c. 22
M6 1978 c. 28
M7 1980 c. 44
M8 1968 c. 49
M9 1985 c. 60
M10 1886 c. 27
M11 S.I. 1978/1045 (N.I. 15)
M12 S.I. 1980/563 (N.I. 5)
M13 1971 c. 3
M14 1975 c. 72
M15 1886 c. 27

1 Orders to which Part I applies. **S**

- (1) Subject to the following provisions of this section, in this Part “custody order” means—
- (a) an order made by a court in England and Wales under any of the following enactments—
- (i) section 9(1), 10(1)(a), 11(a) or 14A(2) of the ^{M41}Guardianship of Minors Act 1971 or section 2(4)(b) or (2)(5) of the ^{M42}Guardianship Act 1973;
 - (ii) section 42(1) of the ^{M43}Matrimonial Causes Act 1973;
 - (iii) section 42(2) of the Matrimonial Causes Act 1973;
 - (iv) section 33(1) of the ^{M44}Children Act 1975 or section 2(4)(b) of the Guardianship Act 1973 as applied by section 34(5) of the Children Act 1975;
 - (v) section 8(2) or 19(1)(ii) of the ^{M45} Domestic Proceedings and Magistrates’ Courts Act 1978;
- (b) an order made by a court of civil jurisdiction in Scotland under any enactment or rule of law with respect to the custody, care or control of a child, access to a child or the education or upbringing of a child, excluding—
- (i) an order committing the care of a child to a local authority or placing a child under the supervision of a local authority;

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- (ii) an adoption order as defined in section 12(1) of the ^{M46}Adoption (Scotland) Act 1978;
 - (iii) an order freeing a child for adoption made under section 18 of the said Act of 1978;
 - (iv) an order for the custody of a child made in the course of proceedings for the adoption of the child (other than an order made following the making of a direction under section 53(1) of the Children Act 1975);
 - (v) an order made under the ^{M47}Education (Scotland) Act 1980;
 - (vi) an order made under Part II or III of the ^{M48}Social Work (Scotland) Act 1968;
 - (vii) an order made under the ^{M49}Child Abduction and Custody Act 1985;
 - (viii) an order for the delivery of a child or other order for the enforcement of a custody order;
 - (ix) an order relating to [^{F68} guardianship] a child;
 - (c) an order made by a court in Northern Ireland under any of the following enactments—
 - (i) section 5 of the ^{M50}Guardianship of Infants Act 1886 (except so far as it relates to costs);
 - (ii) Article 45(1) of the ^{M51}Matrimonial Causes (Northern Ireland) Order 1978;
 - (iii) Article 45(2) of the Matrimonial Causes (Northern Ireland) Order 1978;
 - (iv) Article 10(2) or 20(1)(ii) of the ^{M52} Domestic Proceedings (Northern Ireland) Order 1980;
 - (d) an order made by the High Court in the exercise of its jurisdiction relating to wardship so far as it gives the care and control of a child to any person or provides for the education of, or for access to, a child, excluding an order relating to a child of whom care or care and control is (immediately after the making of the order) vested in a local authority or in the Northern Ireland Department of Health and Social Services.
- (2) In this Part “custody order” does not include—
- (a) an order within subsection (1) (a) or (c) above which varies or revokes a previous order made under the same enactment;
 - (b) an order under section 14A(2) of the ^{M53}Guardianship of Minors Act 1971 which varies a previous custody order; or
 - (c) an order within paragraphs (d) of subsection (1) above which varies or revokes a previous order within that paragraph.
- (3) Subject to sections 32 and 40 of this Act, in this Part “custody order” does not include any order which—
- (a) was made before the date of the commencement of this Part;
 - (b) in the case of an order within subsection (1)(b) or (d) above or an order under any of the enactments mentioned in subsection (4) below, is made on or after that date on an application made before that date; or
 - (c) in any other case, is made on or after that date in proceedings commenced before that date.
- (4) The said enactments are—

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- (a) sections 9(1) and 14A(2) of the Guardianship of Minors Act 1971 and section 33(1) of the ^{M54}Children Act 1975; and
 - (b) section 5 of the ^{M55}Guardianship of Infants Act 1886.
- (5) For the purposes of subsection (3) above an order made on two or more applications which are determined together shall be regarded as made on the first of those applications.
- (6) Provision may be made by act of sederunt prescribing, in relation to orders within subsection (1)(b) above, what constitutes an application for the purposes of this Part.

Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales and Northern Ireland only

Textual Amendments

- F68** Words in s. 1(1)(b)(ix) substituted (S.) (25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991](#) (c. 50, SIF 49:8), ss. 10(1), 11(2), [Sch. 1 para. 44](#)

Marginal Citations

- M41** 1971 c. 3
M42 1973 c. 29
M43 1973 c. 18
M44 1975 c. 72
M45 1978 c. 22
M46 1978 c. 28
M47 1980 c. 44
M48 1968 c. 49
M49 1985 c. 60
M50 1886 c. 27
M51 S.I. 1978/1045 (N.I. 15)
M52 S.I. 1980/563 (N.I. 5)
M53 1971 c. 3
M54 1975 c. 72
M55 1886 c. 27

CHAPTER II

JURISDICTION OF COURTS IN ENGLAND AND WALES

[^{FIX12} Jurisdiction in cases other than divorce, etc.

- (1) A court in England and Wales shall not have jurisdiction to make a custody order within section 1(1)(a) of this Act, other than one under section 42(1) of the ^{M16}Matrimonial Causes Act 1973, unless the condition in section 3 of this Act is satisfied.
- (2) The High Court in England and Wales shall have jurisdiction to make a custody order within section 1(1)(d) of this Act if, and only if,—
 - (a) the condition in section 3 of this Act is satisfied, or

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- (b) the ward is present in England and Wales on the relevant date (within the meaning of section 3(6) of this Act) and the court considers that the immediate exercise of its powers is necessary for his protection.]

Editorial Information

X1 Ss. 2, 2A substituted (*prosp.*) for s. 2 by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 64 (with Sch. 14 para. 1(1))

Textual Amendments

F1 Ss. 2, 2A substituted (*prosp.*) for s. 2 by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 64 (with Sch. 14 para. 1(1))

Marginal Citations

M16 1973 c. 18.

[^{F2F3}2 Jurisdiction: general.

- (1) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order with respect to a child in or in connection with matrimonial proceedings in England and Wales unless the condition in section 2A of this Act is satisfied.
- (2) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order in a non-matrimonial case (that is to say, where the condition in section 2A of this Act is not satisfied) unless the condition in section 3 of this Act is satisfied.
- (3) A court in England and Wales shall not have jurisdiction to make a section 1(1)(d) order unless—
 - (a) the condition in section 3 of this Act is satisfied, or
 - (b) the child concerned is present in England and Wales on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.]

Textual Amendments

F2 Ss. 2, 2A substituted (*prosp.*) for s. 2 by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 64 (with Sch. 14 para. 1(1))

F3 Ss. 2, 2A substituted (*prosp.*) for s. 2 by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 64 (with Sch. 14 para. 1(1))

[^{F4F5}2A Jurisdiction in or in connection with matrimonial proceedings.

- (1) The condition referred to in section 2(1) of this Act is that the matrimonial proceedings are proceedings in respect of the marriage of the parents of the child concerned and—
 - (a) the proceedings—
 - (i) are proceedings for divorce or nullity of marriage, and
 - (ii) are continuing;
 - (b) the proceedings—
 - (i) are proceedings for judicial separation,
 - (ii) are continuing,

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- and the jurisdiction of the court is not excluded by subsection (2) below; or
- (c) the proceedings have been dismissed after the beginning of the trial but—
- (i) the section 1(1)(a) order is being made forthwith, or
 - (ii) the application for the order was made on or before the dismissal.
- (2) For the purposes of subsection (1)(b) above, the jurisdiction of the court is excluded if, after the grant of a decree of judicial separation, on the relevant date, proceedings for divorce or nullity in respect of the marriage are continuing in Scotland or Northern Ireland.
- (3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
- (a) an order under section 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
 - (b) an order under section 14(2) or 22(2) of this Act which is recorded as being made for the purpose of enabling Part I proceedings to be taken in England and Wales with respect to the child concerned.
- (4) Where a court—
- (a) has jurisdiction to make a section 1(1)(a) order in or in connection with matrimonial proceedings, but
 - (b) considers that it would be more appropriate for Part I matters relating to the child to be determined outside England and Wales,
- the court may by order direct that, while the order under this subsection is in force, no section 1(1)(a) order shall be made by any court in or in connection with those proceedings.]

Textual Amendments

- F4** Ss. 2, 2A substituted (*prosp.*) for s. 2 by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 64 (with Sch. 14 para. 1(1))
- F5** Ss. 2, 2A substituted (*prosp.*) for s. 2 by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 64 (with Sch. 14 para. 1(1))

3 Habitual residence or presence of child.

- (1) The condition referred to in [^{F6}section 2][^{F6}section 2(2)] of this Act is that on the relevant date the child concerned—
- (a) is habitually resident in England and Wales, or
 - (b) is present in England and Wales and is not habitually resident in any part of the United Kingdom,
- and, in either case, the jurisdiction of the court is not excluded by subsection (2) below.
- (2) For the purposes of subsection (1) above, the jurisdiction of the court is excluded if, on the relevant date, [^{F7}proceedings for divorce, nullity or judicial separation][^{F7}matrimonial proceedings] are continuing in a court in Scotland or Northern Ireland in respect of the marriage of the parents of the child concerned.
- (3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—

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- (a) an order under section 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
- (b) an order under section 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling [F8 proceedings with respect to the custody of] [F8 Part I proceedings with respect to] the child concerned to be taken in England and Wales,

and that order is in force.

[F9(4) Subject to subsections (5) and (6) below, in this section “the relevant date” means the date of the commencement of the proceedings in which the custody order falls to be made.

(5) In a case where an application is made for a custody order under [F10 section 9] or 14A(2) of the M17 Guardianship of Minors Act 1971 or section 33(1) of the M18 Children Act 1975, “the relevant date” means the date of the application (or first application, if two or more are determined together).

(6) In the case of a custody order within section 1(1)(d) of this Act “the relevant date” means—

- (a) where an application is made for an order, the date of the application (or first application, if two or more are determined together), and
- (b) where no such application is made, the date of the order.]

Textual Amendments

- F6** Words “section 2(2)” substituted (*prosp.*) for “section 2” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 65(1) (with Sch. 14 para. 1(1))
- F7** “matrimonial proceedings” substituted (*prosp.*) for “proceedings for divorce, nullity or judicial separation” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 65(2) (with Sch. 14 para. 1(1))
- F8** Words commencing “Part I proceedings” substituted (*prosp.*) for words commencing “proceedings with respect to” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(b) (with Sch. 14 para. 1(1))
- F9** S. 3(4)–(6) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))
- F10** Words substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1), Sch. 2 para. 95

Marginal Citations

- M17** 1971 c. 3.
M18 1975 c. 72.

[F11 4 Jurisdiction in divorce proceedings, etc.

- (1) The enactments relating to the jurisdiction of courts in England and Wales to make orders under section 42(1) of the M19 Matrimonial Causes Act 1973 shall have effect subject to the modifications provided for by this section.
- (2) In section 42(1)(b) of that Act (which enables orders as to custody and education to be made immediately, or within a reasonable period, after the dismissal of proceedings for divorce, etc.) for the words “within a reasonable period” there shall be substituted the words “(if an application for the order is made on or before the dismissal)”.

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- (3) A court shall not have jurisdiction to make a custody order under section 42(1)(a) of that Act after the grant of a decree of judicial separation if, on the relevant date, proceedings for divorce or nullity in respect of the marriage concerned are continuing in Scotland or Northern Ireland.
- (4) Subsection (3) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
- (a) an order under section 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
 - (b) an order under section 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in England and Wales,
- and that order is in force.
- (5) Where a court—
- (a) has jurisdiction to make a custody order under section 42(1) of the Matrimonial Causes Act 1973 in or in connection with proceedings for divorce, nullity of marriage or judicial separation, but
 - (b) considers that it would be more appropriate for matters relating to the custody of the child to be determined outside England and Wales,
- the court may by order direct that, while the order under this subsection is in force, no custody order under section 42(1) with respect to the child shall be made by any court in or in connection with those proceedings.
- (6) In this section “the relevant date” means—
- (a) where an application is made for a custody order under section 42(1)(a), the date of the application (or first application, if two or more are determined together), and
 - (b) where no such application is made, the date of the order.]

Textual Amendments

F11 S. 4 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

Marginal Citations

M19 1973 c. 18.

5 Power of court to refuse application or stay proceedings.

- (1) A court in England and Wales which has jurisdiction to make a [F12custody order][F12Part I order] may refuse an application for the order in any case where the matter in question has already been determined in proceedings outside England and Wales.
- (2) Where, at any stage of the proceedings on an application made to a court in England and Wales for a [F12custody order][F12Part I order], or for the variation of a [F12custody order][F12Part I order], it appears to the court—
- (a) that proceedings with respect to the matters to which the application relates are continuing outside England and Wales, or

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- (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside England and Wales, the court may stay the proceedings on the application.
- (3) The court may remove a stay granted in accordance with subsection (2) above if it appears to the court that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or that those proceedings are stayed, sisted or concluded.
- (4) Nothing in this section shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

Textual Amendments

- F12** Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

6 Duration and variation of custody orders.

- (1) If a ^{F13}custody order][^{F13}Part I order] made by a court in Scotland or Northern Ireland (or a variation of such an order) comes into force with respect to a child at a time when a ^{F13}custody order][^{F13}Part I order] made by a court in England and Wales has effect with respect to him, the latter order shall cease to have effect so far as it makes provision for any matter for which the same or different provision is made by (or by the variation of) the order made by the court in Scotland or Northern Ireland.
- (2) Where by virtue of subsection (1) above a ^{F13}custody order][^{F13}Part I order] has ceased to have effect so far as it makes provision for any matter, a court in England or Wales shall not have jurisdiction to vary that order so as to make provision for that matter.
- ^{F14}(3) A court in England and Wales shall not have jurisdiction—
- (a) to vary a custody order, other than one made under section 42(1)(a) of the ^{M20}Matrimonial Causes Act 1973, or
 - (b) after the grant of a decree of judicial separation, to vary a custody order made under section 42(1)(a) of that Act,
- if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in Scotland or Northern Ireland in respect of the marriage of the parents of the child concerned.]
- ^{F14}(3) A court in England and Wales shall not have jurisdiction to vary a Part I order if, on the relevant date, matrimonial proceedings are continuing in Scotland or Northern Ireland in respect of the marriage of the parents of the child concerned.
- (3A) Subsection (3) above shall not apply if—
- (a) the Part I order was made in or in connection with proceedings for divorce or nullity in England and Wales in respect of the marriage of the parents of the child concerned; and
 - (b) those proceedings are continuing.
- (3B) Subsection (3) above shall not apply if—
- (a) the Part I order was made in or in connection with proceedings for judicial separation in England and Wales;

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- (b) those proceedings are continuing; and
 - (c) the decree of judicial separation has not yet been granted.]
- (4) Subsection (3) above shall not apply if the court in which the proceedings there referred to are continuing has made—
- (a) an order under section 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
 - (b) an order under section 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling [F15]proceedings with respect to the custody of [F15]Part I proceedings with respect to] the child concerned to be taken in England and Wales,
- and that order is in force.
- (5) Subsection (3) above shall not apply in the case of a [F16]variation of a custody order within section 1(1)(d) of this Act if the ward [F16]variation of a section 1(1)(d) order if the child concerned] is present in England and Wales on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.
- [F17](6) Where any person who is entitled to the actual possession of a child under a custody order made by a court in England and Wales ceases to be entitled by virtue of subsection (1) above, then, if there is in force an order for the supervision of that child made under—
- (a) section 7(4) of the M21Family Law Reform Act 1969,
 - (b) section 44 of the Matrimonial Causes Act 1973,
 - (c) section 2(2)(a) of the M22Guardianship Act 1973,
 - (d) section 34(5) or 36(3)(b) of the M23Children Act 1975, or
 - (e) section 9 of the M24Domestic Proceedings and Magistrates' Courts Act 1978,
- that order shall cease to have effect.
- (7) In this section “the relevant date” means—
- (a) where an application is made for a variation, the date of the application (or first application, if two or more are determined together), and
 - (b) where no such application is made, the date of the variation.]
- [F17](6) Subsection (7) below applies where a Part I order which is—
- (a) a residence order (within the meaning of the Children Act 1989) in favour of a person with respect to a child,
 - (b) an order made in the exercise of the High Court’s inherent jurisdiction with respect to children by virtue of which a person has care of a child, or
 - (c) an order—
 - (i) of a kind mentioned in section 1(3)(a) of this Act,
 - (ii) under which a person is entitled to the actual possession of a child,
- ceases to have effect in relation to that person by virtue of subsection (1) above.
- (7) Where this subsection applies, any family assistance order made under section 16 of the Children Act 1989 with respect to the child shall also cease to have effect.
- (8) For the purposes of subsection (7) above the reference to a family assistance order under section 16 of the Children Act 1989 shall be deemed to include a reference to an order for the supervision of a child made under—
- (a) section 7(4) of the Family Law Reform Act 1969,

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Family Law Act 1986, Part I is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) section 44 of the Matrimonial Causes Act 1973,
 - (c) section 2(2)(a) of the Guardianship Act 1973,
 - (d) section 34(5) or 36(3)(b) of the Children Act 1975, or
 - (e) section 9 of the Domestic Proceedings and Magistrates' Courts Act 1978;
- but this subsection shall cease to have effect once all such orders for the supervision of children have ceased to have effect in accordance with Schedule 14 to the Children Act 1989.]

Textual Amendments

- F13** Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with **Sch. 14 para. 1(1)**)
- F14** S. 6(3)–(3B) substituted (*prosp.*) for subsection (3) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 66(1) (with **Sch. 14 para. 1(1)**)
- F15** Words commencing “Part I proceedings” substituted (*prosp.*) for words commencing “proceedings with respect to” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(b) (with **Sch. 14 para. 1(1)**)
- F16** Words “variation of a section 1(1)(d) order if the child concerned” substituted (*prosp.*) for words commencing “variation of a custody” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 66(2) (with **Sch. 14 para. 1(1)**)
- F17** S. 6(6)–(8) substituted (*prosp.*) for subsections (6)(7) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 66(3) (with **Sch. 14 para. 1(1)**)

Marginal Citations

- M20** 1973 c. 18.
M21 1969 c. 46
M22 1973 c. 29.
M23 1975 c. 72.
M24 1978 c. 22.

[^{F18X2}7 Interpretation of Chapter II.

In this Chapter “child” means a person who has not attained the age of eighteen.]

Editorial Information

- X2** S. 7 commencing “In this Chapter—” substituted (*prosp.*) for s. 7 commencing “In this Chapter “child”” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 67 (with **Sch. 14 para. 1(1)**)

Textual Amendments

- F18** S. 7 commencing “In this Chapter—” substituted (*prosp.*) for s. 7 commencing “In this Chapter “child”” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 67 (with **Sch. 14 para. 1(1)**)

[^{F19X3}7 Interpretation of Chapter II.

In this Chapter—

- (a) “child” means a person who has not attained the age of eighteen;
- (b) “matrimonial proceedings” means proceedings for divorce, nullity of marriage or judicial separation;

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Family Law Act 1986, Part I is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) “the relevant date” means, in relation to the making or variation of an order—
- (i) where an application is made for an order to be made or varied, the date of the application (or first application, if two or more are determined together), and
 - (ii) where no such application is made, the date on which the court is considering whether to make or, as the case may be, vary the order; and
- (d) “section 1(1)(a) order” and “section 1(1)(d) order” mean orders falling within section 1(1)(a) and (d) of this Act respectively.]

Editorial Information

X3 S. 7 commencing “In this Chapter—” substituted (*prosp.*) for s. 7 commencing “In this Chapter “child”” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 67](#) (with [Sch. 14 para. 1\(1\)](#))

Textual Amendments

F19 S. 7 commencing “In this Chapter—” substituted (*prosp.*) for s. 7 commencing “In this Chapter “child”” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 67](#) (with [Sch. 14 para. 1\(1\)](#))

CHAPTER III

JURISDICTION OF COURTS IN SCOTLAND

8 Jurisdiction in independent proceedings.

A court in Scotland may entertain an application for a [^{F20}custody order][^{F20}Part I order] otherwise than in matrimonial proceedings only if it has jurisdiction under section 9, 10, 12 or 15(2) of this Act.

Textual Amendments

F20 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 62\(2\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))

9 Habitual residence.

Subject to section 11 of this Act, an application for a [^{F21}custody order][^{F21}Part I order] otherwise than in matrimonial proceedings may be entertained by—

- (a) the Court of Session if, on the date of the application, the child concerned is habitually resident in Scotland;
- (b) the sheriff if, on the date of the application, the child concerned is habitually resident in the sheriffdom.

Textual Amendments

F21 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 62\(2\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Family Law Act 1986, Part I is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

10 Presence of child.

Subject to section 11 of this Act, an application for a [F22custody order][F22Part I order] otherwise than in matrimonial proceedings may be entertained by—

- (a) the Court of Session if, on the date of the application, the child concerned—
 - (i) is present in Scotland; and
 - (ii) is not habitually resident in any part of the United Kingdom;
- (b) the sheriff if, on the date of the application,—
 - (i) the child is present in Scotland;
 - (ii) the child is not habitually resident in any part of the United Kingdom; and
 - (iii) either the pursuer or the defender in the application is habitually resident in the sheriffdom.

Textual Amendments

F22 Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with Sch. 14 para. 1(1))

11 Provisions supplementary to sections 9 and 10.

- (1) Subject to subsection (2) below, the jurisdiction of the court to entertain an application for a [F23custody order][F23Part I order] with respect to a child by virtue of section 9, 10 or 15(2) of this Act is excluded if, on the date of the application, matrimonial proceedings are continuing in a court in any part of the United Kingdom in respect of the marriage of the parents of the child.
- (2) Subsection (1) above shall not apply in relation to an application for a [F23custody order][F23Part I order] if the court in which the matrimonial proceedings are continuing has made one of the following orders, that is to say—
 - (a) an order under section [F244(5)][F242A(4)], 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(ii)); or
 - (b) an order under section 5(2), 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling [F25proceedings with respect to the custody of][F25Part I proceedings with respect to] the child concerned to be taken in Scotland or, as the case may be, in another court in Scotland, and that order is in force.

Textual Amendments

F23 Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with Sch. 14 para. 1(1))

F24 “2A(4)” substituted (*prosp.*) for “4(5)” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 68(a) (with Sch. 14 para. 1(1))

F25 Words commencing “Part I proceedings” substituted (*prosp.*) for words commencing “proceedings with respect to” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(b) (with Sch. 14 para. 1(1))

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

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12 Emergency jurisdiction.

Notwithstanding that any other court, whether within or outside Scotland, has jurisdiction to entertain an application for a [^{F26}custody order][^{F26}Part I order], the Court of Session or the sheriff shall have jurisdiction to entertain such an application if—

- (a) the child concerned is present in Scotland or, as the case may be, in the sheriffdom on the date of the application; and
- (b) the Court of Session or sheriff considers that, for the protection of the child, it is necessary to make such an order immediately.

Textual Amendments

- F26** Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

13 Jurisdiction ancillary to matrimonial proceedings.

- (1) The jurisdiction of a court in Scotland to entertain an application for a [^{F27}custody order][^{F27}Part I order] in matrimonial proceedings shall be modified by the following provisions of this section.
- (2) A court in Scotland shall not have jurisdiction, after the dismissal of matrimonial proceedings or after decree of absolutor is granted therein, to entertain an application for a [^{F27}custody order][^{F27}Part I order] under section 9(1) of the ^{M25}Matrimonial Proceedings (Children) Act 1958 unless the application therefor was made on or before such dismissal or the granting of the decree of absolutor.
- (3) Where, after a decree of separation has been granted, an application is made in the separation process for a [^{F27}custody order][^{F27}Part I order], a court in Scotland shall not have jurisdiction to entertain that application if, on the date of the application, proceedings for divorce or nullity of marriage in respect of the marriage concerned are continuing in another court in the United Kingdom.
- (4) A court in Scotland shall not have jurisdiction to entertain an application for the variation of a [^{F27}custody order][^{F27}Part I order] made under section 9(1) of the Matrimonial Proceedings (Children) Act 1958 if, on the date of the application, matrimonial proceedings in respect of the marriage concerned are continuing in another court in the United Kingdom.
- (5) Subsections (3) and (4) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
 - (a) an order under section [^{F28}4(5)][^{F28}2A(4)] or 21(5) of this Act or under subsection (6) below (not being an order made by virtue of paragraph (a)(ii) of that subsection), or
 - (b) an order under section 5(2), 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling [^{F29}proceedings with respect to the custody of][^{F29}Part I proceedings with respect to] the child concerned to be taken in Scotland or, as the case may be, in another court in Scotland,and that order is in force.

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Family Law Act 1986, Part I is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) A court in Scotland which has jurisdiction in matrimonial proceedings to entertain an application for a [F27 custody order][F27 Part I order] with respect to a child may make an order declining such jurisdiction if—
- (a) it appears to the court with respect to that child that—
 - (i) but for section 11(1) of this Act, another court in Scotland would have jurisdiction to entertain an application for a [F27 custody order][F27 Part I order], or
 - (ii) but for section 3(2), 6(3), 20(2) or 23(3) of this Act, a court in another part of the United Kingdom would have jurisdiction to make a [F27 custody order][F27 Part I order] or an order varying a [F27 custody order][F27 Part I order]; and
 - (b) the court considers that it would be more appropriate for [F30 matters relating to the custody of][F30 Part I matters relating to] that child to be determined in that other court or part.
- (7) The court may recall an order made under subsection (6) above.

Textual Amendments

- F27** Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with Sch. 14 para. 1(1))
- F28** “2A(4)” substituted (*prosp.*) for “4(5)” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 68(b) (with Sch. 14 para. 1(1))
- F29** Words commencing “Part I proceedings” substituted (*prosp.*) for words commencing “proceedings with respect to” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(b) (with Sch. 14 para. 1(1))
- F30** Words commencing “Part I matters relating to” substituted (*prosp.*) for words “matters relating to the custody of” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(c) (with Sch. 14 para. 1(1))

Marginal Citations

- M25** 1958 c. 40.

14 Power of court to refuse application or sist proceedings.

- (1) A court in Scotland which has jurisdiction to entertain an application for a [F31 custody order][F31 Part I order] may refuse the application in any case where the matter in question has already been determined in other proceedings.
- (2) Where, at any stage of the proceedings on an application made to a court in Scotland for a [F31 custody order][F31 Part I order], it appears to the court—
 - (a) that proceedings with respect to the matters to which the application relates are continuing outside Scotland or in another court in Scotland; or
 - (b) that it would be more appropriate for those matters to be determined in proceedings outside Scotland or in another court in Scotland and that such proceedings are likely to be taken there,
 the court may sist the proceedings on that application.

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.
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Textual Amendments

- F31** Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

15 Duration, variation and recall of orders.

- (1) Where, after the making by a court in Scotland of a [^{F32}custody order][^{F32}Part I order] (“the existing order”) with respect to a child,—
- a [^{F32}custody order][^{F32}Part I order], or an order varying a [^{F32}custody order][^{F32}Part I order], competently made by another court in any part of the United Kingdom with respect to that child; or
 - an order for the custody of that child which is made outside the United Kingdom and recognised in Scotland by virtue of section 26 of this Act,
- comes into force, the existing order shall cease to have effect so far as it makes provision for any matter for which the same or different provision is made by the order of the other court in the United Kingdom or, as the case may be, the order so recognised.
- (2) Subject to sections 11(1) and 13(3) and (4) of this Act, a court in Scotland which has made a [^{F32}custody order][^{F32}Part I order] (“the original order”) may, notwithstanding that it would no longer have jurisdiction to make the original order, make an order varying or recalling the original order; but if the original order has by virtue of subsection (1) above ceased to have effect so far as it makes provision for any matter, the court shall not have power to vary that order under this subsection so as to make provision for that matter.
- (3) In subsection (2) above, an order varying an original order means any [^{F32}custody order][^{F32}Part I order] made with respect to the same child as the original order was made.
- (4) Where any person who is entitled to the custody of a child under a [^{F32}custody order][^{F32}Part I order] made by a court in Scotland ceases to be so entitled by virtue of subsection (1) above, then, if there is in force an order made by a court in Scotland under section 12(1) of the ^{M26}Matrimonial Proceedings (Children) Act 1958 or section 11(1)(b) of the ^{M27}Guardianship Act 1973 providing for the supervision of that child by a local authority, that order shall cease to have effect.

Textual Amendments

- F32** Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

Marginal Citations

- M26** 1958 c. 40.
M27 1973 c. 29.

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

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16 Tutor and curatory.

- (1) Subject to subsections (2) and (3) below, an application made after the commencement of this Part for an order relating to the [^{F33}guardianship] of a [^{F33}child] may be entertained by—
 - (a) the Court of Session if, on the date of the application, the pupil or minor is habitually resident in Scotland,
 - (b) the sheriff if, on the date of the application, the pupil or minor is habitually resident in the sheriffdom.
- (2) Subsection (1) above shall not apply to an application for the appointment or removal of a [^{F34}judicial factor] or of a curator bonis or any application made by such factor or curator.
- (3) Subsection (1) above is without prejudice to any other ground of jurisdiction on which the Court of Session or the sheriff may entertain an application mentioned therein.
- (4) Provision may be made by act of sederunt prescribing, in relation to orders relating to the [^{F33}guardianship] of a [^{F33}child], what constitutes an application for the purposes of this Chapter.

Textual Amendments

- F33** Words in s. 16(1)(4) substituted (25. 9. 1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), ss.10(1), 11(2), [Sch. 1 para. 45](#).
- F34** Words in s. 16(2) substituted (25. 9. 1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), ss. 10(1), 11(2), [Sch. 1 para. 45](#).

17 Orders for delivery of child.

- (1) Subject to subsection (2) below, an application by one parent of a child for an order for the delivery of the child from the other parent, where the order is not sought to implement a [^{F35}custody order][^{F35}Part I order], may be entertained by the Court of Session or a sheriff if, but only if, the Court of Session or, as the case may be, the sheriff would have jurisdiction under this Chapter to make a [^{F35}custody order][^{F35}Part I order] with respect to the child concerned.
- (2) Subsection (1) above is without prejudice to the grounds of jurisdiction on which the Court of Session or a sheriff may entertain an application by a parent who is entitled to the custody of a child for an order for the delivery of the child from a parent who is not so entitled.
- (3) Subsection (1) above shall apply to an application by one party to a marriage for an order for the delivery of the child concerned from the other party where the child is the child of one of the parties and has been accepted as one of the family by the other party as it applies to an application by one parent of a child for an order for the delivery of the child from the other parent.

Textual Amendments

- F35** Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 62\(2\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Family Law Act 1986, Part I is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

18 Interpretation of Chapter III.

(1) In this Chapter—

“child” means a person who has not attained the age of sixteen;

“matrimonial proceedings” means proceedings for divorce, nullity of marriage or judicial separation.

(2) In this Chapter, “the date of the application” means, where two or more applications are pending, the date of the first of those applications; and, for the purposes of this subsection, an application is pending until a custody order or, in the case of an application mentioned in section 16(1) of this Act, an order relating to the [F36 guardianship of a child], has been granted in pursuance of the application or the court has refused to grant such an order.

Textual Amendments

F36 Words in s. 18(2) substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), Sch. 1 para. 46

CHAPTER IV

JURISDICTION OF COURTS IN NORTHERN IRELAND

19 Jurisdiction in cases other than divorce, etc.

(1) A court in Northern Ireland shall not have jurisdiction to make a [F37 custody order][F37 Part I order] within section 1(1)(c) of this Act, other than one under Article 45(1) of the M28 Matrimonial Causes (Northern Ireland) Order 1978, unless the condition in section 20 of this Act is satisfied.

(2) The High Court in Northern Ireland shall have jurisdiction to make a [F37 custody order][F37 Part I order] within [F38 section 1(1)(d)][F38 section 1(1)(e)] of this Act if, and only if,—

(a) the condition in section 20 of this Act is satisfied, or

(b) the ward is present in Northern Ireland on the relevant date (within the meaning of section 20(6) of this Act) and the court considers that the immediate exercise of its powers is necessary for his protection.

Textual Amendments

F37 Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with Sch. 14 para. 1(1))

F38 “section 1(1)(e)” substituted (*prosp.*) for “section 1(1)(d)” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 69(a) (with Sch. 14 para. 1(1))

Marginal Citations

M28 S.I. 1978/1045 (N.I. 15.).

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Family Law Act 1986, Part I is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 04/11/1996

F39 19A Jurisdiction in or in connection with matrimonial proceedings.

- (1) The condition referred to in section 19(1) of this Act is that the matrimonial proceedings are proceedings in respect of the marriage of the parents of the child concerned and—
- (a) the proceedings—
 - (i) are proceedings for divorce or nullity of marriage, and
 - (ii) are continuing;
 - (b) the proceedings—
 - (i) are proceedings for judicial separation,
 - (ii) are continuing,
 and the jurisdiction of the court is not excluded by subsection (2) below; or
 - (c) the proceedings have been dismissed after the beginning of the trial but—
 - (i) the section 1(1)(c) order is being made forthwith, or
 - (ii) the application for the order was made on or before the dismissal.

For the purposes of subsection (1)(b) above, the jurisdiction of the court is excluded if, after the grant of a decree of judicial separation, on the relevant date, proceedings for divorce or nullity in respect of the marriage are continuing in England and Wales or Scotland.

- (3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
- (a) an order under section 2A(4) or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
 - (b) an order under section 5(2) or 14(2) of this Act which is recorded as being made for the purpose of enabling Part I proceedings to be taken in Northern Ireland with respect to the child concerned.
- (4) Where a court—
- (a) has jurisdiction to make a section 1(1)(c) order in or in connection with matrimonial proceedings, but
 - (b) considers that it would be more appropriate for Part I matters relating to the child to be determined outside Northern Ireland,

the court may by order direct that, while the order under this subsection is in force, no section 1(1)(c) order shall be made by any court in or in connection with those proceedings.

Textual Amendments

F39 Ss. 19, 19A substituted for s. 19 (4.11.1996) by [S.I. 1995/755 \(N.I. 2\)](#), [art. 185\(1\)](#), [Sch. 9 para. 124](#); [S.R. 1996/297](#), [art. 2\(2\)](#)

20 Habitual residence or presence of child.

- (1) The condition referred to in section 19 of this Act is that on the relevant date the child concerned—

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- (a) is habitually resident in Northern Ireland, or
- (b) is present in Northern Ireland and is not habitually resident in any part of the United Kingdom,

and, in either case, the jurisdiction of the court is not excluded by subsection (2) below.

(2) For the purposes of subsection (1) above, the jurisdiction of the court is excluded if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in a court in England and Wales or Scotland in respect of the marriage of the parents of the child concerned.

(3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—

- (a) an order under section [F404(5)][F42A(4)] or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
- (b) an order under section 5(2) or 14(2) of this Act which is recorded as made for the purpose of enabling [F41proceedings with respect to the custody of][F41Part I proceedings with respect to] the child concerned to be taken in Northern Ireland,

and that order is in force.

(4) Subject to subsection (5) and (6) below, in this section “the relevant date” means the date of the commencement of the proceedings in which the [F42custody order][F42Part I order] falls to be made.

(5) In the case of a [F42custody order][F42Part I order] under section 5 of the M29Guardianship of Infants Act 1886 “the relevant date” means the date of the application for the order (or first application, if two or more are determined together).

(6) In the case of a [F42custody order][F42Part I order] within [F43section 1(1)(d)][F43section 1(1)(e)] of this Act “the relevant date” means—

- (a) where an application is made for an order, the date of the application (or first application, if two or more are determined together), and
- (b) where no such application is made, the date of the order.

Textual Amendments

F40 “2A(4)” substituted (*prosp.*) for “4(5)” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 68(c) (with **Sch. 14 para. 1(1)**)

F41 Words commencing “Part I proceedings” substituted (*prosp.*) for words commencing “proceedings with respect to” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(b) (with **Sch. 14 para. 1(1)**)

F42 Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with **Sch. 14 para. 1(1)**)

F43 “section 1(1)(e)” substituted (*prosp.*) for “section 1(1)(d)” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 69(b) (with **Sch. 14 para. 1(1)**)

Marginal Citations

M29 1986 c. 27.

Status: Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

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21 Jurisdiction in divorce proceedings, etc.

- (1) The enactments relating to the jurisdiction of courts in Northern Ireland to make orders under Article 45(1) of the ^{M30}Matrimonial Causes (Northern Ireland) Order 1978 shall have effect subject to the modifications provided for by this section.
- (2) In Article 45(1)(b) of that Order (which enables orders as to custody and education to be made immediately, or within a reasonable period, after the dismissal of proceedings for divorce, etc.), for the words “within a reasonable period” there shall be substituted the words “(if an application for the order is made on or before the dismissal)”.
- (3) A court shall not have jurisdiction to make a [F44custody order][F44Part I order] under Article 45(1)(a) of that Order after the grant of a decree of judicial separation if, on the relevant date, proceedings for divorce or nullity in respect of the marriage concerned are continuing in England and Wales or Scotland.
- (4) Subsection (3) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
 - (a) an order under section [F454(5)][F452A(4)] or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i), or
 - (b) an order under section 5(2) or 14(2) of this Act which is recorded as made for the purpose of enabling [F46proceedings with respect to the custody of][F46Part I proceedings with respect to] the child concerned to be taken in Northern Ireland,
 and that order is in force.
- (5) Where a court—
 - (a) has jurisdiction to make a [F44custody order][F44Part I order] under Article 45(1) of the Matrimonial Causes (Northern Ireland) Order 1978 in or in connection with proceedings for divorce, nullity of marriage or judicial separation, but
 - (b) considers that it would be more appropriate for [F47matters relating to the custody of][F47Part I matters relating to] the child to be determined outside Northern Ireland,
 the court may by order direct that, while the order under this subsection is in force, no [F44custody order][F44Part I order] under Article 45(1) with respect to the child shall be made by any court in or in connection with those proceedings.
- (6) In this section “the relevant date” means—
 - (a) where an application is made for a [F44custody order][F44Part I order] under Article 45(1)(a), the date of the application (or first application, if two or more are determined together), and
 - (b) where no such application is made, the date of the order.

Textual Amendments

- F44** Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 62\(2\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F45** “2A(4)” substituted (*prosp.*) for “4(5)” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 68\(d\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F46** Words commencing “Part I proceedings” substituted (*prosp.*) for words commencing “proceedings with respect to” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 62\(2\)\(b\)](#) (with [Sch. 14 para. 1\(1\)](#))

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F47 Words commencing “Part I matters relating to” substituted (*prosp.*) for words “matters relating to the custody of” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(c) (with [Sch. 14 para. 1\(1\)](#))

Marginal Citations

M30 [S.I. 1978/1045 \(N.I. 15\)](#).

22 Power of court to refuse application or stay proceedings.

- (1) A court in Northern Ireland which has jurisdiction to make a [^{F48}custody order][^{F48}Part I order] may refuse an application for the order in any case where the matter in question has already been determined in proceedings outside Northern Ireland.
- (2) Where, at any stage of the proceedings on an application made to a court in Northern Ireland for a [^{F48}custody order][^{F48}Part I order], or for the variation of a [^{F48}custody order][^{F48}Part I order], it appears to the court—
 - (a) that proceedings with respect to the matters to which the application relates are continuing outside Northern Ireland, or
 - (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside Northern Ireland,the court may stay the proceedings on the application.
- (3) The court may remove a stay granted in accordance with subsection (2) above if it appears to the court that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or that those proceedings are stayed, sisted or concluded.
- (4) Nothing in this section shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

Textual Amendments

F48 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

23 Duration and variation of custody orders.

- (1) If a [^{F49}custody order][^{F49}Part I order] made by a court in England and Wales or Scotland (or a variation of such an order) comes into force with respect to a child at a time when a [^{F49}custody order][^{F49}Part I order] made by a court in Northern Ireland has effect with respect to him, the latter order shall cease to have effect so far as it makes provision for any matter for which the same or different provision is made by (or by the variation of) the order made by the court in England and Wales or Scotland.
- (2) Where by virtue of subsection (1) above a [^{F49}custody order][^{F49}Part I order] has ceased to have effect so far as it makes provision for any matter, a court in Northern Ireland shall not have jurisdiction to vary that order so as to make provision for that matter.
- (3) A court in Northern Ireland shall not have jurisdiction—
 - (a) to vary a [^{F49}custody order][^{F49}Part I order], other than one made under Article 45(1)(a) of the ^{M31}Matrimonial Causes (Northern Ireland) Order 1978, or

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- (b) after the grant of a decree of judicial separation, to vary a [F49custody order][F49Part I order] made under Article 45(1)(a) of that Order, if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in England and Wales or Scotland in respect of the marriage of the parents of the child concerned.
- (4) Subsection (3) above shall not apply if the court in which the proceedings there referred to are continuing has made—
- (a) an order under section [F504(5)][F502A(4)] or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
- (b) an order under section 5(2) or 14(2) of this Act which is recorded as made for the purpose of enabling [F51proceedings with respect to the custody of][F51Part I proceedings with respect to] the child concerned to be taken in Northern Ireland, and that order is in force.
- (5) Subsection (3) above shall not apply in the case of a variation of a [F49custody order][F49Part I order] within [F52section 1(1)(d)][F52section 1(1)(e)] of this Act if the ward is present in Northern Ireland on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.
- (6) Where any person who is entitled to the actual possession of a child under a [F49custody order][F49Part I order] made by a court in Northern Ireland ceases to be so entitled by virtue of subsection (1) above, then, if there is in force an order for the supervision of that child made under—
- (a) Article 47 of the Matrimonial Causes (Northern Ireland) Order 1978, or
- (b) Article 11 of the M32Domestic Proceedings (Northern Ireland) Order 1980, that order shall also cease to have effect.
- (7) In this section “the relevant date” means—
- (a) where an application is made for a variation, the date of the application (or first application, if two or more are determined together), and
- (b) where no such application is made, the date of the variation.

Textual Amendments

- F49** Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with Sch. 14 para. 1(1))
- F50** “2A(4)” substituted (*prosp.*) for “4(5)” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 68(e) (with Sch. 14 para. 1(1))
- F51** Words commencing “Part I proceedings” substituted (*prosp.*) for words commencing “proceedings with respect to” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(b) (with Sch. 14 para. 1(1))
- F52** “section 1(1)(e)” substituted (*prosp.*) for “section 1(1)(d)” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 69(b) (with Sch. 14 para. 1(1))

Marginal Citations

- M31** S.I. 1978/1045 (N.I. 15).
- M32** S.I. 1980/563 (N.I. 5).

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24 Interpretation of Chapter IV.

In this Chapter “child” means a person who has not attained the age of eighteen.

CHAPTER V

RECOGNITION AND ENFORCEMENT

25 Recognition of custody orders: general.

- (1) Where a [^{F53}custody order][^{F53}Part I order] made by a court in any part of the United Kingdom is in force with respect to a child who has not attained the age of sixteen, then, subject to subsection (2) below, the order shall be recognised in any other part of the United Kingdom as having the same effect in that other part as if it had been made by the appropriate court in that other part and as if that court had had jurisdiction to make it.
- (2) Where a [^{F53}custody order][^{F53}Part I order] includes provision as to the means by which rights conferred by the order are to be enforced, subsection (1) above shall not apply to that provision.
- (3) A court in a part of the United Kingdom in which a [^{F53}custody order][^{F53}Part I order] is recognised in accordance with subsection (1) above shall not enforce the order unless it has been registered in that part of the United Kingdom under section 27 of this Act and proceedings for enforcement are taken in accordance with section 29 of this Act.

Textual Amendments

F53 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

26 Recognition: special Scottish rule.

Any rule of law whereby an order for the custody of a child made outside the United Kingdom is recognised in Scotland shall continue to have effect, except that, after the commencement of this Part, the ground for such recognition shall be that the order was made in the country where the child was habitually resident and not where he was domiciled.

27 Registration.

- (1) Any person on whom any rights are conferred by a [^{F54}custody order][^{F54}Part I order] may apply to the court which made it for the order to be registered in another part of the United Kingdom under this section.
- (2) An application under this section shall be made in the prescribed manner and shall contain the prescribed information and be accompanied by such documents as may be prescribed.
- (3) On receiving an application under this section the court which made the [^{F54}custody order][^{F54}Part I order] shall, unless it appears to the court that the order is no longer in

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force, cause the following documents to be sent to the appropriate court in the part of the United Kingdom specified in the application, namely—

- (a) a certified copy of the order, and
 - (b) where the order has been varied, prescribed particulars of any variation which is in force, and
 - (c) a copy of the application and of any accompanying documents.
- (4) Where the prescribed officer of the appropriate court receives a certified copy of a [^{F54}custody order][^{F54}Part I order] under subsection (3) above, he shall forthwith cause the order, together with particulars of any variation, to be registered in that court in the prescribed manner.
- (5) An order shall not be registered under this section in respect of a child who has attained the age of sixteen, and the registration of an order in respect of a child who has not attained the age of sixteen shall cease to have effect on the attainment by the child of that age.

Textual Amendments

F54 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

28 Cancellation and variation of registration.

- (1) A court which revokes, recalls or varies an order registered under section 27 of this Act shall cause notice of the revocation, recall or variation to be given in the prescribed manner to the prescribed officer of the court in which it is registered and, on receiving the notice, the prescribed officer—
- (a) in the case of the revocation or recall of the order, shall cancel the registration, and
 - (b) in the case of the variation of the order, shall cause particulars of the variation to be registered in the prescribed manner.
- (2) Where—
- (a) an order registered under section 27 of this Act ceases (in whole or in part) to have effect in the part of the United Kingdom in which it was made, otherwise than because of its revocation, recall or variation, or
 - (b) an order registered under section 27 of this Act in Scotland ceases (in whole or in part) to have effect there as a result of the making of an order in proceedings outside the United Kingdom,

the court in which the order is registered may, of its own motion or on the application of any person who appears to the court to have an interest in the matter, cancel the registration (or, if the order has ceased to have effect in part, cancel the registration so far as it relates to the provisions which have ceased to have effect).

29 Enforcement.

- (1) Where a [^{F55}custody order][^{F55}Part I order] has been registered under section 27 of this Act, the court in which it is registered shall have the same powers for the purpose of enforcing the order as it would have if it had itself made the order and had

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jurisdiction to make it; and proceedings for or with respect to enforcement may be taken accordingly.

- (2) Where an application has been made to any court for the enforcement of an order registered in that court under section 27 of this Act, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.
- (3) The references in subsection (1) above to a [^{F55}custody order][^{F55}Part I order] do not include references to any provision of the order as to the means by which rights conferred by the order are to be enforced.

Textual Amendments

F55 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

30 Staying or sisting of enforcement proceedings.

- (1) Where in accordance with section 29 of this Act proceedings are taken in any court for the enforcement of an order registered in that court, any person who appears to the court to have an interest in the matter may apply for the proceedings to be stayed or sisted on the ground that he has taken or intends to take other proceedings (in the United Kingdom or elsewhere) as a result of which the order may cease to have effect, or may have a different effect, in the part of the United Kingdom in which it is registered.
- (2) If after considering an application under subsection (1) above the court considers that the proceedings for enforcement should be stayed or sisted in order that other proceedings may be taken or concluded, it shall stay or sist the proceedings for enforcement accordingly.
- (3) The court may remove a stay or recall a sist granted in accordance with subsection (2) above if it appears to the court—
 - (a) that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or
 - (b) that those other proceedings are concluded and that the registered order, or a relevant part of it, is still in force.
- (4) Nothing in this section shall affect any power exercisable apart from this section to grant, remove or recall a stay or sist.

31 Dismissal of enforcement proceedings.

- (1) Where in accordance with section 29 of this Act proceedings are taken in any court for the enforcement of an order registered in that court, any person who appears to the court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in the part of the United Kingdom in which it was made.
- (2) Where in accordance with section 29 of this Act proceedings are taken in the Court of Session for the enforcement of an order registered in that court, any person who

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appears to the court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in Scotland as a result of the making of an order in proceedings outside the United Kingdom.

- (3) If, after considering an application under subsection (1) or (2) above, the court is satisfied that the registered order has ceased to have effect, it shall dismiss the proceedings for enforcement (or, if it is satisfied that the order has ceased to have effect in part, it shall dismiss the proceedings so far as they relate to the enforcement of provisions which have ceased to have effect).

32 Interpretation of Chapter V.

- (1) In this Chapter—

“the appropriate court”, in relation to England and Wales or Northern Ireland, means the High Court and, in relation to Scotland, means the Court of Session;

“^{F56}custody order][^{F56}Part I order]” includes (except where the context otherwise requires) any order within section 1(3) of this Act which, on the assumptions mentioned in subsection (3) below—

- (a) could have been made notwithstanding the provisions of this Part;
- (b) would have been a ^{F56}custody order][^{F56}Part I order] for the purposes of this Part; and
- (c) would not have ceased to have effect by virtue of section 6, 15 or 23 of this Act.

- (2) In the application of this Chapter to Scotland, “^{F56}custody order][^{F56}Part I order]” also includes (except where the context otherwise requires) any order within section 1(3) of this Act which, on the assumptions mentioned in subsection (3) below—

- (a) would have been a ^{F56}custody order][^{F56}Part I order] for the purposes of this Part; and
- (b) would not have ceased to have effect by virtue of section 6 or 23 of this Act, and which, but for the provisions of this Part, would be recognised in Scotland under any rule of law.

- (3) The said assumptions are—

- (a) that this Part had been in force at all material times; and
- (b) that any reference in section 1 of this Act to any enactment included a reference to any corresponding enactment previously in force.

Textual Amendments

F56 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 62\(2\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))

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CHAPTER VI

MISCELLANEOUS AND SUPPLEMENTAL

33 Power to order disclosure of child’s whereabouts.

- (1) Where in proceedings for or relating to a [^{F57}custody order][^{F57}Part I order] in respect of a child there is not available to the court adequate information as to where the child is, the court may order any person who it has reason to believe may have relevant information to disclose it to the court.
- (2) A person shall not be excused from complying with an order under subsection (1) above by reason that to do so may incriminate him or his spouse of an offence; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.
- (3) A court in Scotland before which proceedings are pending for the enforcement of an order for the custody of a child made outside the United Kingdom which is recognised in Scotland shall have the same powers as it would have under subsection (1) above if the order were its own.

Textual Amendments

F57 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 62\(2\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))

34 Power to order recovery of child.

- (1) Where—
 - (a) a person is required by a [^{F58}custody order][^{F58}Part I order], or an order for the enforcement of a [^{F58}custody order][^{F58}Part I order], to give up a child to another person (“the person concerned”), and
 - (b) the court which made the order imposing the requirement is satisfied that the child has not been given up in accordance with the order,the court may make an order authorising an officer of the court or a constable to take charge of the child and deliver him to the person concerned.
- (2) The authority conferred by subsection (1) above includes authority—
 - (a) to enter and search any premises where the person acting in pursuance of the order has reason to believe the child may be found, and
 - (b) to use such force as may be necessary to give effect to the purpose of the order.
- (3) Where by virtue of—
 - [^{F59}(a) section 13(1) of the ^{M33}Guardianship of Minors Act 1971, section 43(1) of the ^{M34}Children Act 1975 or section 33 of the ^{M35}Domestic Proceedings and Magistrates’ Courts Act 1978, or]
 - [^{F59}(a) section 14 of the Children Act 1989]
 - (b) Article 37 of the ^{M36}Domestic Proceedings (Northern Ireland) Order 1980,a [^{F58}custody order][^{F58}Part I order] (or a provision of a [^{F58}custody order][^{F58}Part I order]) may be enforced as if it were an order requiring a person to give up a child to

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another person, subsection (1) above shall apply as if the [F58custody order][F58Part I order] had included such a requirement.

- (4) This section is without prejudice to any power conferred on a court by or under any other enactment or rule of law.

Textual Amendments

- F58** Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with Sch. 14 para. 1(1))
- F59** S. 34(3)(a) commencing “section 14” substituted (E.W. N.I.) (*prosp.*) for s. 34(3)(a) commencing “13(1)” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 70 (with Sch. 14 para. 1(1))

Marginal Citations

- M33** 1971 c. 3.
M34 1975 c. 72.
M35 1978 c. 22.
M36 S.I. 1980/563 (N.I. 5).

35 Powers to restrict removal of child from jurisdiction.

- (1) In each of the following enactments (which enable courts to restrict the removal of a child from England and Wales)—
- (a) section 13A(1) of the Guardianship of Minors Act 1971,
 - (b) section 43A(1) of the Children Act 1975, and
 - (c) section 34(1) of the Domestic Proceedings and Magistrates’ Courts Act 1978,
- for the words “England and Wales” there shall be substituted the words “the United Kingdom, or out of any part of the United Kingdom specified in the order.”
- (2) In Article 38(1) of the Domestic Proceedings (Northern Ireland) Order 1980 (which enables courts to restrict the removal of a child from Northern Ireland) for the words “Northern Ireland” there shall be substituted the words “the United Kingdom”, or out of any part of the United Kingdom specified in the order,
- (3) A court in Scotland—
- (a) at any time after the commencement of proceedings in connection with which the court would have jurisdiction to make a custody order, or
 - (b) in any proceedings in which it would be competent for the court to grant an interdict prohibiting the removal of a child from its jurisdiction,
- may, on an application by any of the persons mentioned in subsection (4) below, grant interdict or interim interdict prohibiting the removal of the child from the United Kingdom or any part of the United Kingdom, or out of the control of the person in whose custody the child is.
- (4) The said persons are—
- (a) any party to the proceedings,
 - (b) the [F60guardian] of the child concerned, and
 - (c) any other person who has or wishes to obtain the custody or care of the child.
- (5) In subsection (3) above “the court” means the Court of Session or the sheriff; and for the purposes of subsection (3)(a) above, proceedings shall be held to commence—

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- (a) in the Court of Session, when a summons is signeted or a petition is presented;
- (b) in the sheriff court, when the warrant of citation is signed.

Textual Amendments

F60 Words in s. 35(4)(b) substituted (S.) (25. 9. 1991) by [Age of Legal Capacity \(Scotland\) Act 1991](#) (c. 50, SIF 49:8), ss. 10(1), 11(2), [Sch. 1 para. 47](#)

36 Effect of orders restricting removal.

- (1) This section applies to any order made by a court in the United Kingdom prohibiting the removal of a child from the United Kingdom or from any specified part of it.
- (2) An order to which this section applies shall have effect in each part of the United Kingdom other than the part in which it was made—
 - (a) as if it had been made by the appropriate court in that other part, and
 - (b) in the case of an order which has the effect of prohibiting the child’s removal to that other part, as if it had included a prohibition on his further removal to any place except one to which he could be removed consistently with the order.
- (3) The references in subsections (1) and (2) above to prohibitions on a child’s removal include references to prohibitions subject to exceptions; and in a case where removal is prohibited except with the consent of the court, nothing in subsection (2) above shall be construed as affecting the identity of the court whose consent is required.
- (4) In this section “child” means a person who has not attained the age of sixteen; and this section shall cease to apply to an order relating to a child when he attains the age of sixteen.

37 Surrender of passports.

- (1) Where there is in force an order prohibiting or otherwise restricting the removal of a child from the United Kingdom or from any specified part of it, the court by which the order was in fact made, or by which it is treated under section 36 of this Act as having been made, may require any person to surrender any United Kingdom passport which has been issued to, or contains particulars of, the child.
- (2) In this section “United Kingdom passport” means a current passport issued by the Government of the United Kingdom.

38 Automatic restriction on removal of wards of court.

- (1) The rule of law which (without any order of the court) restricts the removal of a ward of court from the jurisdiction of the court shall, in a case to which this section applies, have effect subject to the modifications in subsection (3) below.
- (2) This section applies in relation to a ward of court if—
 - (a) proceedings for divorce, nullity or judicial separation in respect of the marriage of his parents are continuing in a court in another part of the United Kingdom (that is to say, in a part of the United Kingdom outside the jurisdiction of the court of which he is a ward), or
 - (b) he is habitually resident in another part of the United Kingdom,

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except where that other part is Scotland and he has attained the age of sixteen.

- (3) Where this section applies, the rule referred to in subsection (1) above shall not prevent—
- (a) the removal of the ward of court, without the consent of any court, to the other part of the United Kingdom mentioned in subsection (2) above, or
 - (b) his removal to any other place with the consent of either the appropriate court in that other part of the United Kingdom or the court mentioned in subsection (2)(a) above.

39 Duty to furnish particulars of other proceedings.

Parties to proceedings for or relating to a ^{F61}custody order][^{F61}Part I order] shall, to such extent and in such manner as may be prescribed, give particulars of other proceedings known to them which relate to the child concerned (including proceedings instituted abroad and proceedings which are no longer continuing).

Textual Amendments

F61 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

40 Interpretation of Chapter VI.

- (1) In this Chapter—
- “the appropriate court” has the same meaning as in Chapter V;
 - “^{F62}custody order][^{F62}Part I order]” includes (except where the context otherwise requires) any such order as is mentioned in section 32(1) of this Act.
- (2) In the application of this Chapter to Scotland, “^{F62}custody order][^{F62}Part I order]” also includes (except where the context otherwise requires) any such order as is mentioned in section 32(2) of this Act.

Textual Amendments

F62 Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))

41 Habitual residence after removal without consent, etc.

- (1) Where a child who—
- (a) has not attained the age of sixteen, and
 - (b) is habitually resident in a part of the United Kingdom,
- becomes habitually resident outside that part of the United Kingdom in consequence of circumstances of the kind specified in subsection (2) below, he shall be treated for the purposes of this Part as continuing to be habitually resident in that part of the United Kingdom for the period of one year beginning with the date on which those circumstances arise.

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- (2) The circumstances referred to in subsection (1) above exist where the child is removed from or retained outside, or himself leaves or remains outside, the part of the United Kingdom in which he was habitually resident before his change of residence—
 - (a) without the agreement of the person or all the persons having, under the law of that part of the United Kingdom, the right to determine where he is to reside, or
 - (b) in contravention of an order made by a court in any part of the United Kingdom.
- (3) A child shall cease to be treated by virtue of subsection (1) above as habitually resident in a part of the United Kingdom if, during the period there mentioned—
 - (a) he attains the age of sixteen, or
 - (b) he becomes habitually resident outside that part of the United Kingdom with the agreement of the person or persons mentioned in subsection (2)(a) above and not in contravention of an order made by a court in any part of the United Kingdom.

42 General interpretation of Part I.

- (1) In this Part—
 - “certified copy”, in relation to an order of any court, means a copy certified by the prescribed officer of the court to be a true copy of the order or of the official record of the order;
 - “part of the United Kingdom” means England and Wales, Scotland or Northern Ireland;
 - “prescribed” means prescribed by rules of court or act of sederunt.
- (2) For the purposes of this Part proceedings in England and Wales or in Northern Ireland for divorce, nullity or judicial separation in respect of the marriage of the parents of a child shall, unless they have been dismissed, be treated as continuing until the child concerned attains the age of eighteen (whether or not a decree has been granted and whether or not, in the case of a decree of divorce or nullity of marriage, that decree has been made absolute).
- (3) For the purposes of this Part, matrimonial proceedings in a court in Scotland which has jurisdiction in those proceedings to make a [^{F63}custody order][^{F63}Part I order] with respect to a child shall, unless they have been dismissed or decree of absolutor has been granted therein, be treated as continuing until the child concerned attains the age of sixteen.
- (4) Any reference in this Part to proceedings in respect of the marriage of the parents of a child shall, in relation to a child who, although not a child of both parties to the marriage, is a child of the family of those parties, be construed as a reference to proceedings in respect of that marriage; and for this purpose “child of the family”—
 - (a) if the proceedings are in England and Wales, means any child who has been treated by both parties as a child of their family, except a child who [^{F64}has been boarded out with those parties][^{F64}is placed with those parties as foster parents] by a local authority or a voluntary organisation;
 - (b) if the proceedings are in Scotland, means any child of one of the parties who has been accepted as one of the family by the other party;
 - (c) if the proceedings are in Northern Ireland, means any child who has been treated by both parties as a child of their family, except a child who has been

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boarded out with those parties by or on behalf of the Department of Health and Social Services or a voluntary organisation.

- (5) References in this Part to custody orders include (except where the context otherwise requires) references to custody orders as varied.
- (6) For the purposes of this Part each of the following orders shall be treated as varying the [F63 custody order][F63 Part I order] to which it relates—
- (a) an order which provides for a person [F65 to be allowed contact with or] to be given access to a child who is the subject of a [F63 custody order][F63 Part I order], or which makes provision for the education of such a child,
 - (b) an order under [F66 section 42(6) of the M37 Matrimonial Causes Act 1973 or] Article 45(6) of the M38 Matrimonial Causes (Northern Ireland) Order 1978,
 - (c) an order under [F66 section 42(7) of that Act or] Article 45(7) of that Order, and
 - (d) an order under [F66 section 19(6) of the M39 Domestic Proceedings and Magistrates' Courts Act 1978 or] Article 20(6) of the M40 Domestic Proceedings (Northern Ireland) Order 1980;

and for the purposes of Chapter V of this Part and this Chapter, this subsection shall have effect as if any reference to any enactment included a reference to any corresponding enactment previously in force.

[F67(7) References in this Part to proceedings in respect of the custody of a child include, in relation to proceedings outside the United Kingdom, references to proceedings before a tribunal or other authority having power under the law having effect there to determine questions relating to the custody of children.]

[F67(7) In this Part—

- (a) references to Part I proceedings in respect of a child are references to any proceedings for a Part I order or an order corresponding to a Part I order and include, in relation to proceedings outside the United Kingdom, references to proceedings before a tribunal or other authority having power under the law having effect there to determine Part I matters; and
- (b) references to Part I matters are references to matters that might be determined by a Part I order or an order corresponding to a Part I order.]

Textual Amendments

- F63** Words “Part I order” substituted (*prosp.*) for “custody order” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(2)(a) (with [Sch. 14 para. 1\(1\)](#))
- F64** Words commencing “is placed” substituted (*prosp.*) for words commencing “has been boarded” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 71(1) (with [Sch. 14 para. 1\(1\)](#))
- F65** Words inserted (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 71(2) (with [Sch. 14 para. 1\(1\)](#))
- F66** Words repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 15 (with [Sch. 14 paras. 1\(1\), 27\(4\)](#))
- F67** S. 42(7) commencing “In this Part” substituted (*prosp.*) for s. 42(7) commencing “References in this Part” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 13 para. 62(3) (with [Sch. 14 para. 1\(1\)](#))

Marginal Citations

- M37** 1973 c. 18.
M38 S.I. 1978/1045 (N.I. 15).
M39 1978 c. 22.

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M40 [S.I. 1980/563 \(N.I. 5\)](#).

43 Application of Part I to dependent territories.

- (1) Her Majesty may by Order in Council make provision corresponding to or applying any of the foregoing provisions of this Part, with such modifications as appear to Her Majesty to be appropriate, for the purpose of regulating—
 - (a) in any dependent territory;
 - (b) as between any dependent territory and any part of the United Kingdom; or
 - (c) as between any dependent territory and any other such territory,the jurisdiction of courts to make custody orders, or orders corresponding to custody orders, and the recognition and enforcement of such orders.
- (2) In subsection (1) above “dependent territory” means any of the following territories—
 - (a) the Isle of Man,
 - (b) any of the Channel Islands, and
 - (c) any colony.
- (3) An Order in Council under subsection (1) above may contain such consequential, incidental and supplementary provisions as appear to Her Majesty to be necessary or expedient.
- (4) An Order in Council under subsection (1)(b) above which makes provision affecting the law of any part of the United Kingdom shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Subordinate Legislation Made

P1 [S. 43](#): s. 43 power exercised by [S.I. 1991/1723](#).

Status:

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Changes to legislation:

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