



# Children Act 1989

## 1989 CHAPTER 41

### PART II

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

##### *General*

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

(1) In this Act —

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

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

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

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

(2) In this Act “a section 8 order” means any of the orders mentioned in subsection (1) and any order varying or discharging such an order.

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

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

but does not include proceedings on an application for leave under section 100(3).

(4) The enactments are—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) Parts I, II and IV of this Act;
- (b) the Matrimonial Causes Act 1973;
- (c) the Domestic Violence and Matrimonial Proceedings Act 1976;
- (d) the Adoption Act 1976;
- (e) the Domestic Proceedings and Magistrates' Courts Act 1978;
- (f) sections 1 and 9 of the Matrimonial Homes Act 1983;
- (g) Part III of the Matrimonial and Family Proceedings Act 1984.

## **9 Restrictions on making section 8 orders**

- (1) No court shall make any section 8 order, other than a residence order, with respect to a child who is in the care of a local authority.
- (2) No application may be made by a local authority for a residence order or contact order and no court shall make such an order in favour of a local authority.
- (3) A person who is, or was at any time within the last six months, a local authority foster parent of a child may not apply for leave to apply for a section 8 order with respect to the child unless—
  - (a) he has the consent of the authority;
  - (b) he is a relative of the child; or
  - (c) the child has lived with him for at least three years preceding the application.
- (4) The period of three years mentioned in subsection (3)(c) need not be continuous but must have begun not more than five years before the making of the application.
- (5) No court shall exercise its powers to make a specific issue order or prohibited steps order—
  - (a) with a view to achieving a result which could be achieved by making a residence or contact order; or
  - (b) in any way which is denied to the High Court (by section 100(2)) in the exercise of its inherent jurisdiction with respect to children.
- (6) No court shall make any section 8 order which is to have effect for a period which will end after the child has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.
- (7) No court shall make any section 8 order, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

## **10 Power of court to make section 8 orders**

- (1) In any family proceedings in which a question arises with respect to the welfare of any child, the court may make a section 8 order with respect to the child if—
  - (a) an application for the order has been made by a person who—
    - (i) is entitled to apply for a section 8 order with respect to the child; or
    - (ii) has obtained the leave of the court to make the application; or
  - (b) the court considers that the order should be made even though no such application has been made.

---

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

---

- (2) The court may also make a section 8 order with respect to any child on the application of a person who—
  - (a) is entitled to apply for a section 8 order with respect to the child; or
  - (b) has obtained the leave of the court to make the application.
- (3) This section is subject to the restrictions imposed by section 9.
- (4) The following persons are entitled to apply to the court for any section 8 order with respect to a child—
  - (a) any parent or guardian of the child;
  - (b) any person in whose favour a residence order is in force with respect to the child.
- (5) The following persons are entitled to apply for a residence or contact order with respect to a child—
  - (a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;
  - (b) any person with whom the child has lived for a period of at least three years;
  - (c) any person who—
    - (i) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;
    - (ii) in any case where the child is in the care of a local authority, has the consent of that authority; or
    - (iii) in any other case, has the consent of each of those (if any) who have parental responsibility for the child.
- (6) A person who would not otherwise be entitled (under the previous provisions of this section) to apply for the variation or discharge of a section 8 order shall be entitled to do so if—
  - (a) the order was made on his application; or
  - (b) in the case of a contact order, he is named in the order.
- (7) Any person who falls within a category of person prescribed by rules of court is entitled to apply for any such section 8 order as may be prescribed in relation to that category of person.
- (8) Where the person applying for leave to make an application for a section 8 order is the child concerned, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application for the section 8 order.
- (9) Where the person applying for leave to make an application for a section 8 order is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to—
  - (a) the nature of the proposed application for the section 8 order;
  - (b) the applicant's connection with the child;
  - (c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and
  - (d) where the child is being looked after by a local authority—
    - (i) the authority's plans for the child's future; and
    - (ii) the wishes and feelings of the child's parents.

---

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

---

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

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

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

- (d) make such incidental, supplemental or consequential provision as the court thinks fit.

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

- (1) Where the court makes a residence order in favour of the father of a child it shall, if the father would not otherwise have parental responsibility for the child, also make an order under section 4 giving him that responsibility.
- (2) Where the court makes a residence order in favour of any person who is not the parent or guardian of the child concerned that person shall have parental responsibility for the child while the residence order remains in force.
- (3) Where a person has parental responsibility for a child as a result of subsection (2), he shall not have the right—
  - (a) to consent, or refuse to consent, to the making of an application with respect to the child under section 18 of the Adoption Act 1976;
  - (b) to agree, or refuse to agree, to the making of an adoption order, or an order under section 55 of the Act of 1976, with respect to the child; or
  - (c) to appoint a guardian for the child.
- (4) Where subsection (1) requires the court to make an order under section 4 in respect of the father of a child, the court shall not bring that order to an end at any time while the residence order concerned remains in force.

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

- (1) Where a residence order is in force with respect to a child, no person may—
  - (a) cause the child to be known by a new surname; or
  - (b) remove him from the United Kingdom;without either the written consent of every person who has parental responsibility for the child or the leave of the court.
- (2) Subsection (1)(b) does not prevent the removal of a child, for a period of less than one month, by the person in whose favour the residence order is made.
- (3) In making a residence order with respect to a child the court may grant the leave required by subsection (1)(b), either generally or for specified purposes.

## **14 Enforcement of residence orders**

- (1) Where—
  - (a) a residence order is in force with respect to a child in favour of any person; and
  - (b) any other person (including one in whose favour the order is also in force) is in breach of the arrangements settled by that order,the person mentioned in paragraph (a) may, as soon as the requirement in subsection (2) is complied with, enforce the order under section 63(3) of the Magistrates' Courts Act 1980 as if it were an order requiring the other person to produce the child to him.
- (2) The requirement is that a copy of the residence order has been served on the other person.

---

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

---

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