



# Family Law Act 1986

## 1986 CHAPTER 55

### PART I **U.K.**

#### CHILD CUSTODY

### CHAPTER II **E+W**

#### JURISDICTION OF COURTS IN ENGLAND AND WALES

#### **[<sup>F1</sup>[<sup>F2</sup> Jurisdiction: general. **E+W****

(1) A court in England and Wales shall not make a section 1(1)(a) order with respect to a child unless—

- (a) it has jurisdiction under <sup>F3</sup>...[<sup>F4</sup> the Hague Convention] , or
- (b) [<sup>F5</sup>the Hague Convention does not apply] but—

- (i) the question of making the order arises in or in connection with matrimonial proceedings [<sup>F6</sup>or civil partnership proceedings] and the condition in section 2A of this Act is satisfied, or
- (ii) the condition in section 3 of this Act is satisfied.]

[ A court in England and Wales shall not have jurisdiction to make a special <sup>F7</sup>(2A) guardianship order under the Children Act 1989 unless the condition in section 3 of this Act is satisfied.

(2B) A court in England and Wales shall not have jurisdiction to make an order under section 26 of the Adoption and Children Act 2002 unless the condition in section 3 of this Act is satisfied.]

[ A court in England and Wales shall not have jurisdiction to make an order under <sup>F8</sup>(2C) section 51A of the Adoption and Children Act 2002 unless—

- (a) it has jurisdiction under <sup>F9</sup>... the Hague Convention, or
- (b) [<sup>F10</sup>the Hague Convention does not apply] but the condition in section 3 of this Act is satisfied.]

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- [<sup>F11</sup>(3) A court in England and Wales shall not make a section 1(1)(d) order unless—
- (a) it has jurisdiction under <sup>F12</sup>...[<sup>F13</sup> the Hague Convention] , or
  - (b) [<sup>F14</sup>the Hague Convention does not apply] but—
    - (i) the condition in section 3 of this Act is satisfied, or
    - (ii) 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

- F1** S. 2 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 64** (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)
- F2** S. 2(1) substituted for s. 2(1)(2) (1.3.2005) by The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **8(2)** (with reg. 20)
- F3** Words in s. 2(1)(a) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(2)(a)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in s. 2(1)(a) inserted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 5(a)**
- F5** Words in s. 2(1)(b) substituted (31.12.2020) by The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(2)(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in s. 2(1)(b)(i) inserted (5.12.2005) by The Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 (S.I. 2005/3336), arts. 1, **5** (with art. 2(4))
- F7** S. 2(2A)(2B) inserted (30.12.2005) by Adoption and Children Act 2002 (c. 38), s. 148(1), **Sch. 3 para. 48** (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(o)
- F8** S. 2(2C) inserted (22.4.2014) by Children and Families Act 2014 (c. 6), **ss. 9(6)**, 139(6); S.I. 2014/889, art. 4(a) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F9** Words in s. 2(2C)(a) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(2)(a)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in s. 2(2C)(b) substituted (31.12.2020) by The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(2)(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F11** S. 2(3) substituted (1.3.2005) by The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **8(3)** (with reg. 20)
- F12** Words in s. 2(3)(a) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(2)(a)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in s. 2(3)(a) inserted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 5(c)**
- F14** Words in s. 2(3)(b) substituted (31.12.2020) by The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(2)(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

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**[<sup>F15</sup>2A Jurisdiction in or in connection with matrimonial proceedings [<sup>F16</sup>or civil partnership proceedings] . **E+W****

- (1) The condition referred to in section 2(1) of this Act is that the <sup>F17</sup>... proceedings are proceedings in respect of the marriage [<sup>F18</sup>or civil partnership] of the parents of the child concerned and—
- (a) the proceedings—
    - (i) are proceedings for divorce or nullity of marriage [<sup>F19</sup>, or dissolution or annulment of a civil partnership], and
    - (ii) are continuing;
  - (b) the proceedings—
    - (i) are proceedings for judicial separation [<sup>F20</sup>or legal separation of civil partners],
    - (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)(a) order is being made forthwith, or
    - (ii) the application for the order was made on or before the dismissal.

[<sup>F21</sup>(2) For the purposes of subsection (1)(b) above, the jurisdiction of the court is excluded if—

- (a) after the grant of a decree of judicial separation [<sup>F22</sup>or the making of a judicial separation order], on the relevant date, proceedings for divorce or nullity in respect of the marriage, or
- (b) after the making of a separation order, on the relevant date, proceedings for dissolution or annulment in respect of the civil partnership,

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 [<sup>F23</sup>19A(4)] 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 [<sup>F24</sup>by virtue of section 2(1)(b)(i) of this Act], 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 [<sup>F25</sup>by virtue of section 2(1)(b)(i) of this Act].]

**Textual Amendments**

**F15** S. 2A substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 64](#) (with [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), [art. 3\(2\)](#)

**F16** Words in s. 2A heading inserted (5.12.2005) by [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005 \(S.I. 2005/3336\)](#), arts. 1, 6 (with art. 2(4))

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- F17** Word in s. 2A(1) omitted (5.12.2005) by virtue of [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005 \(S.I. 2005/3336\)](#), arts. 1, **7(2)(a)** (with art. 2(4))
- F18** Words in s. 2A(1) inserted (5.12.2005) by [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005 \(S.I. 2005/3336\)](#), arts. 1, **7(2)(b)** (with art. 2(4))
- F19** Words in s. 2A(1)(a)(i) inserted (5.12.2005) by [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005 \(S.I. 2005/3336\)](#), arts. 1, **7(2)(c)** (with art. 2(4))
- F20** Words in s. 2A(1)(b)(i) inserted (5.12.2005) by [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005 \(S.I. 2005/3336\)](#), arts. 1, **7(2)(d)** (with art. 2(4))
- F21** S. 2A(2) substituted (5.12.2005) by [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005 \(S.I. 2005/3336\)](#), arts. 1, **7(3)** (with art. 2(4))
- F22** Words in s. 2A(2)(a) inserted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 51(2)**; S.I. 2022/283, reg. 2
- F23** Words in s. 2A(3)(a) substituted (4.11.1996) by S.I. 1995/756, **art. 12(5)**; S.R. 1996/297, **para. 3**
- F24** Words in s. 2A(4) substituted (1.3.2005) by [The European Communities \(Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters\) Regulations 2005 \(S.I. 2005/265\)](#), regs. 1, **9(a)** (with reg. 20)
- F25** Words in s. 2A(4) substituted (1.3.2005) by [The European Communities \(Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters\) Regulations 2005 \(S.I. 2005/265\)](#), regs. 1, **9(b)** (with reg. 20)

**3 Habitual residence or presence of child. E+W**

(1) The condition referred to in <sup>F26</sup>section 2(1)(b)(ii) 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, <sup>F27</sup>matrimonial proceedings<sup>F28</sup> or civil partnership proceedings<sup>F29</sup> are continuing in a court in Scotland or Northern Ireland in respect of the marriage <sup>F29</sup>or civil partnership 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 13(6) or <sup>F30</sup>19A(4) 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 <sup>F31</sup>Part I proceedings with respect to the child concerned to be taken in England and Wales,

and that order is in force.

- <sup>F32</sup>(4) .....
- (5) .....
- (6) .....

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### Textual Amendments

- F26** Words in s. 3(1) substituted (1.3.2005) by [The European Communities \(Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters\) Regulations 2005](#) (S.I. 2005/265), regs. 1, **10** (with reg. 20)
- F27** Words in s. 3(2) substituted (14.10.1991) by [Children Act 1989](#) (c. 41, SIF 20), s. 108, **Sch. 13 para. 65(2)** (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, **art. 3(2)**
- F28** Words in s. 3(2) inserted (5.12.2005) by [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005](#) (S.I. 2005/3336), arts. 1, **8(a)** (with art. 2(4))
- F29** Words in s. 3(2) inserted (5.12.2005) by [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005](#) (S.I. 2005/3336), arts. 1, **8(b)** (with art. 2(4))
- F30** Words in s. 3(3)(a) substituted (4.11.1996) by S.I. 1995/756, **art. 12(5)**; S.R. 1996/297, **art. 3**
- F31** Words in s. 3(3)(b) substituted (14.10.1991) by [Children Act 1989](#) (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(b)** (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, **art. 3(2)**
- F32** S. 3(4)–(6) repealed (14.10.1991) by [Children Act 1989](#) (c. 41, SIF 20), s. 108, **Sch. 15** (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); S.I. 1991/828, **art. 3(2)**

<sup>F33</sup> 4 ..... **E+W**

### Textual Amendments

- F33** S. 4 repealed (14.10.1991) by [Children Act 1989](#) (c. 41, SIF 20), s. 108, **Sch. 15** (with [Sch. 14 para. 1\(1\), 27\(4\)](#)); S.I. 1991/828, **art. 3(2)**

## 5 Power of court to refuse application or stay proceedings. **E+W**

- (1) A court in England and Wales which has jurisdiction to make a [<sup>F34</sup>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 England and Wales.
  - (2) Where, at any stage of the proceedings on an application made to a court in England and Wales for a [<sup>F34</sup>Part I order], or for the variation of a [<sup>F34</sup>Part I order], <sup>F35</sup>... it appears to the court—
    - (a) that proceedings with respect to the matters to which the application relates are continuing outside England and Wales, <sup>F36</sup>...
    - (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside England and Wales, [<sup>F37</sup>or]
    - <sup>F38</sup>(c) .....
    - <sup>F39</sup>(d) that it should exercise its powers under Article 8 of the Hague Convention (request to authority in another Contracting State to assume jurisdiction),  
the court may stay the proceedings on the application [<sup>F40</sup>or (as the case may be) exercise its powers under <sup>F41</sup>... [<sup>F42</sup>Article 8 of the Hague Convention]].
- [<sup>F43</sup>(2A) If the proceedings on the application are proceedings in which [<sup>F44</sup>an] activity direction has been made under section 11A of the Children Act 1989 (or an enforcement order has been made under section 11J of that Act), the court may when granting a stay under or by virtue of subsection (2) also suspend [<sup>F45</sup>the] activity direction (or the enforcement order).]

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(3) The court may remove a stay granted [<sup>F46</sup>by virtue of subsection (2)(a) or (b) 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.

<sup>F47</sup>(3A) . . . . .

[<sup>F48</sup>(3AA) The court may remove a stay granted in order for it to exercise its powers under Article 8 of the Hague Convention, and withdraw any request made by it to an authority in another Contracting State to assume jurisdiction, if—

- (a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the stay, or
- (b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.]

[<sup>F49</sup>(3B) If the stay removed under subsection (3) <sup>F50</sup>... is a stay in relation to which the court suspended [<sup>F51</sup>an] activity direction made under section 11A of the Children Act 1989 (or an enforcement order made under section 11J of that Act), the court may when removing the stay under subsection (3) <sup>F52</sup>[<sup>F53</sup>... or (3AA)] also bring the suspension to an end.]

(4) Nothing in this section [<sup>F54</sup>so far as it relates to proceedings not governed by the [<sup>F55</sup>Hague Convention]] shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

#### Textual Amendments

- F34** Words in S. 5(1)(2) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(a)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F35** Words in s. 5(2) omitted (1.3.2005) by virtue of The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **11(2)** (with reg. 20)
- F36** Word in s. 5(2)(a) left out (1.11.2012) by virtue of The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(1)(a)**
- F37** Word in s. 5(2)(b) inserted (31.12.2020) by The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(a)(i)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F38** S. 5(2)(c) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(a)(ii)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F39** S. 5(2)(d) and word inserted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(1)(c)**
- F40** Words in s. 5(2) inserted (1.3.2005) by The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **11(4)** (with reg. 20)
- F41** Words in s. 5(2) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(a)(iii)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F42** Words in s. 5(2) inserted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(1)(d)**

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- F43** S. 5(2A) inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), s. 17(2), **Sch. 2 para. 3(2)**; S.I. 2008/2870, art. 2(2)(e)
- F44** Word in s. 5(2A) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 50(2)(a)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F45** Word in s. 5(2A) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 50(2)(b)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F46** Words in s. 5(3) substituted (1.3.2005) by The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **11(5)** (with reg. 20)
- F47** S. 5(3A) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F48** S. 5(3AA) inserted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(2)**
- F49** S. 5(3B) inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), s. 17(2), **Sch. 2 para. 3(3)**; S.I. 2008/2870, art. 2(2)(e)
- F50** Words in s. 5(3B) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(c)(i)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F51** Word in s. 5(3B) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 50(3)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F52** Word in s. 5(3B) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(c)(ii)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F53** Words in s. 5(3B) substituted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(3)**
- F54** Words in s. 5(4) inserted (1.3.2005) by The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **11(7)** (with reg. 20)
- F55** Words in s. 5(4) substituted (31.12.2020) by S.I. 2019/519, **Sch. para. 15(3)(d)** (as amended by The Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1574), regs. 1, **5(3)(f)(i)**)

## 6 Duration and variation of custody orders. **E+W**

- (1) [<sup>F56</sup>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 [<sup>F56</sup>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 [<sup>F56</sup>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.
- [<sup>F57</sup>(3) A court in England and Wales shall not have jurisdiction to vary a Part I order if, on the relevant date, matrimonial proceedings [<sup>F58</sup>or civil partnership proceedings] are continuing in Scotland or Northern Ireland in respect of the marriage [<sup>F59</sup>or civil partnership] of the parents of the child concerned.

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[<sup>F60</sup>(3A) Subsection (3) shall not apply if—

- (a) the Part 1 order was made in or in connection with proceedings—
  - (i) for divorce or nullity in England and Wales in respect of the marriage of the parents of the child concerned; or
  - (ii) for dissolution or annulment in England and Wales in respect of the civil partnership of the parents of the child concerned; and
- (b) those proceedings are continuing.]

[<sup>F60</sup>(3B) Subsection (3) shall not apply if—

- (a) the Part 1 order was made in or in connection with proceedings—
  - (i) for judicial separation in England and Wales; or
  - (ii) for a separation order in England and Wales; and
- (b) those proceedings are continuing; and
- (c) as the case may be, the [<sup>F61</sup>judicial separation order] or the separation order has not yet been made.]]

(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 [<sup>F62</sup>19A(4)] 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 [<sup>F63</sup>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 [<sup>F64</sup>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.

[<sup>F65</sup>(5A) Subsection (7) below applies where a Part I order which is a child arrangements order (within the meaning of section 8(1) of the Children Act 1989) ceases by virtue of subsection (1) above to name a person as someone with whom a child is to live.]

[<sup>F66</sup>(6) Subsection (7) below [<sup>F67</sup>also] applies where a Part I order which is—

- <sup>F68</sup>(a) .....
- (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,
- (b) section 44 of the Matrimonial Causes Act 1973,



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- (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

- F56** Words in S. 6(1)(2) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(a)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F57** S. 6(3)–(3B) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 66(1)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F58** Words in s. 6(3) inserted (5.12.2005) by The Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 (S.I. 2005/3336), arts. 1, **9(2)(a)** (with art. 2(4))
- F59** Words in s. 6(3) inserted (5.12.2005) by The Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 (S.I. 2005/3336), arts. 1, **9(2)(b)** (with art. 2(4))
- F60** S. 6(3A)(3B) substituted (5.12.2005) by The Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 (S.I. 2005/3336), arts. 1, **9(3)** (with art. 2(4))
- F61** Words in s. 6(3B)(c) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 51(3)** (with s. 8(5)); S.I. 2022/283, reg. 2
- F62** Words in s. 6(4)(a) substituted (4.11.1996) by S.I. 1995/756, **art. 12(5)**; S.R. 1996/297, **para. 3**
- F63** Words in S. 6(4) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(b)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F64** Words in S. 6(5) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 66(2)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F65** S. 6(5A) inserted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 51(2)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F66** S. 6(6)–(8) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 66(3)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F67** Word in s. 6(6) inserted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 51(3)(a)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F68** S. 6(6)(a) omitted (22.4.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 51(3)(b)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)

#### <sup>F697</sup> Interpretation of Chapter II. **E+W**

In this Chapter—

- (a) “child” means a person who has not attained the age of eighteen;
- <sup>F70</sup> [ “civil partnership proceedings” means proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners;]
- (b) “matrimonial proceedings” means proceedings for divorce, nullity of marriage or judicial separation;
- (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

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- (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.]

**Textual Amendments**

- F69** S. 7 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 67** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F70** S. 7(aa) inserted (5.12.2005) by The Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 (S.I. 2005/3336), arts. 1, **10** (with art. 2(4))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(1)(ca)-(cc) inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 7](#)
- s. 2A(1)(1A) substituted for s. 2(1) by [1996 c. 27 Sch. 8 para. 37\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(2)(e), 139(4))
- s. 19(1A)-(1C) inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 8](#)
- s. 29A inserted by [2020 asp 16 s. 29\(2\)](#)
- s. 38(4) inserted by [1996 c. 27 Sch. 8 para. 37\(9\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(2)(e), 139(4))