



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 “[^{F1}Part I order]” means—

- [^{F2}(a) a section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such an order]
- (b) an order made by a court of civil jurisdiction in Scotland under any enactment or rule of law with respect to the [^{F3}residence, custody, care or control of a child, contact with or], 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 ^{M1}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 [^{F4}giving parental responsibilities and parental rights in relation to] 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 ^{M2}Education (Scotland) Act 1980;
 - (vi) an order made under Part II or III of the ^{M3}Social Work (Scotland) Act 1968;

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- (vii) an order made under the ^{M4}Child Abduction and Custody Act 1985;
 - (viii) an order for the delivery of a child or other order for the enforcement of a [^{F1}Part I order];
 - (ix) an order relating to the tutory or curatory of a child;
 - [^{F5}(c) an Article 8 order made by a court in Northern Ireland under the Children (Northern Ireland) Order 1995, other than an order varying or discharging such an order;]
 - [^{F6}(d) an order made by a court in England and Wales in the exercise of the inherent jurisdiction of the High Court with respect to children—
 - (i) so far as it gives care of a child to any person or provides for contact with, or the education of, a child; but
 - (ii) excluding an order varying or revoking such an order;]
 - [^{F7}(e) an order made by the High Court in Northern Ireland in the exercise of its inherent jurisdiction with respect to children—
 - (i) so far as it gives care of a child to any person or provides for contact with, or the education of, a child; but
 - (ii) excluding an order varying or discharging such an order;]
- (2) In this Part “[^{F1}Part I order]” does not include—
- ^{F8}(a)
 - ^{F9}(b)
 - ^{F10}(c)
- [^{F11}(3) In this Part, “Part I order”—
- (a) includes any order which would have been a custody order by virtue of this section in any form in which it was in force at any time before its amendment by the Children Act 1989 [^{F12}or the Children (Northern Ireland) Order 1995, as the case may be]; and
 - (b) (subject to section 32 and 40 of this Act) excludes any order which would have been excluded from being a custody order by virtue of this section in any such form.]
- (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

Textual Amendments

- F1** Words in S. 1(1) 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\(2\)](#)
- F2** S. 1(1)(a) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 63\(1\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), [art. 3\(2\)](#)
- F3** Words in s. 1(1)(b) substituted (1.11.1996) by [1995 c. 36](#), s. 105(4), [Sch. 4 para. 41\(2\)\(a\)](#); [S.I. 1996/2203](#), [art. 3](#), [Sch.](#)
- F4** Words in s. 1(1)(b)(iv) substituted (1.11.1996) by [1995 c. 36](#), s. 105(4), [Sch. 4 para. 41\(2\)\(b\)](#); [S.I. 1996/2203](#), [art. 3](#), [Sch.](#)
- F5** S. 1(1)(c) substituted (4.11.1996) by [S.I. 1995/756](#), [art. 12\(2\)\(a\)\(i\)](#); [S.R. 1996/297](#), [para. 3](#)

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- F6** S. 1(1)(d)(e) substituted (14.10.1991) for s. 1(1)(d) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 63(1)(b)** (with Sch. 14 para. 1(1); S.I. 1991/828, **art. 3(2)**)
- F7** S. 1(1)(e) substituted (4.11.1996) by S.I. 1995/756, **art. 12(2)(a)(ii)**; S.R. 1996/297, **para. 3**
- F8** S. 1(2)(a) repealed (4.11.1996) by S.I. 1995/756, **art. 15, Sch.**; S.R. 1996/297, **para. 3**
- F9** S. 1(2)(b) 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)**
- F10** S. 1(2)(c) repealed (4.11.1996) by S.I. 1995/756, **art. 15, Sch.**; S.R. 1996/297, **para. 3**
- F11** S. 1(3) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 63(3)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F12** Words in s. 1(3) inserted (4.11.1996) by S.I. 1995/756, **art. 12(2)(b)**; S.R. 1996/297, **para. 3**

Marginal Citations

- M1** 1978 c. 28.
M2 1980 c. 44.
M3 1968 c. 49.
M4 1985 c. 60.

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

(1) Subject to the following provisions of this section, in this Part “[^{F13}Part I order]” means—

- [^{F14}(a) a section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such an order]
- (b) an order made by a court of civil jurisdiction in Scotland under any enactment or rule of law with respect to the [^{F15}residence, custody, care or control of a child, contact with or], 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 ^{M5}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 [^{F16}giving parental responsibilities and parental rights in relation to] 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 ^{M6}Education (Scotland) Act 1980;
 - (vi) an order made under Part II or III of the ^{M7}Social Work (Scotland) Act 1968;
 - (vii) an order made under the ^{M8}Child Abduction and Custody Act 1985;
 - (viii) an order for the delivery of a child or other order for the enforcement of a [^{F13}Part I order];
 - (ix) an order relating to the [^{F17}guardianship]of a child;
- [^{F18}(c) an Article 8 order made by a court in Northern Ireland under the Children (Northern Ireland) Order 1995, other than an order varying or discharging such an order;]
- [^{F19}(d) an order made by a court in England and Wales in the exercise of the inherent jurisdiction of the High Court with respect to children—

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- (i) so far as it gives care of a child to any person or provides for contact with, or the education of, a child; but
- (ii) excluding an order varying or revoking such an order;]
- [^{F20}(e) an order made by the High Court in Northern Ireland in the exercise of its inherent jurisdiction with respect to children—
 - (i) so far as it gives care of a child to any person or provides for contact with, or the education of, a child; but
 - (ii) excluding an order varying or discharging such an order;]
- (2) In this Part “[^{F13}Part I order]” does not include—
 - ^{F21}(a)
 - ^{F22}(b)
 - ^{F23}(c)
- [^{F24}(3) In this Part, “Part I order”—
 - (a) includes any order which would have been a custody order by virtue of this section in any form in which it was in force at any time before its amendment by the Children Act 1989 [^{F25}or the Children (Northern Ireland) Order 1995, as the case may be]; and
 - (b) (subject to section 32 and 40 of this Act) excludes any order which would have been excluded from being a custody order by virtue of this section in any such form.]
- (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

- F13** Words in S. 1(1) 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)**
- F14** S. 1(1)(a) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 63(1)(a)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F15** Words in s. 1(1)(b) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 41(2)(a)**; S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F16** Words in s. 1(1)(b)(iv) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 41(2)(b)**; S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F17** 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.**
- F18** S. 1(1)(c) substituted (4.11.1996) by S.I. 1995/756, **art. 12(2)(a)(i)**; S.R. 1996/297, **para. 3**
- F19** S. 1(1)(d)(e) substituted (14.10.1991) for s. 1(1)(d) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 63(1)(b)** (with Sch. 14 para. 1(1); S.I. 1991/828, **art. 3(2)**)
- F20** S. 1(1)(e) substituted (4.11.1996) by S.I. 1995/756, **art. 12(2)(a)(ii)**; S.R. 1996/297, **para. 3**
- F21** S. 1(2)(a) repealed (4.11.1996) by S.I. 1995/756, **art. 15**, **Sch.**; S.R. 1996/297, **para. 3**
- F22** S. 1(2)(b) 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)**
- F23** S. 1(2)(c) repealed (4.11.1996) by S.I. 1995/756, **art. 15**, **Sch.**; S.R. 1996/297, **para. 3**
- F24** S. 1(3) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 63(3)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

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F25 Words in s. 1(3) inserted (4.11.1996) by S.I. 1995/756, **art. 12(2)(b)**; S.R. 1996/297, **para. 3**

Marginal Citations

M5 1978 c. 28.

M6 1980 c. 44.

M7 1968 c. 49.

M8 1985 c. 60.

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