



Family Law Act 1986

1986 CHAPTER 55

PART I

CHILD CUSTODY

CHAPTER II

JURISDICTION OF COURTS IN ENGLAND AND WALES

[^{F12} Jurisdiction: general.

- (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 the Council Regulation, or
 - (b) the Council Regulation does not apply but—
 - (i) the question of making the order arises in or in connection with matrimonial proceedings and the condition in section 2A of this Act is satisfied, or
 - (ii) the condition in section 3 of this Act is satisfied.]

- [^{F2}(3) A court in England and Wales shall not make a section 1(1)(d) order unless—**
- (a) it has jurisdiction under the Council Regulation, or
 - (b) the Council Regulation 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.]

Status: Point in time view as at 01/03/2005.

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Textual Amendments

- F1** 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)
- F2** 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)

[^{F3}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,
 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 [^{F4}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 [^{F5}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 [^{F6}by virtue of section 2(1)(b)(i) of this Act] .]

Textual Amendments

- F3** 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)**

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- F4** Words in s. 2A(3)(a) substituted (4.11.1996) by S.I. 1995/756, **art. 12(5)**; S.R. 1996/297, **para. 3**
- F5** 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)
- F6** 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.

- (1) The condition referred to in [^{F7}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, [^{F8}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—
 - (a) an order under section 13(6) or [^{F9}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 [^{F10}Part I proceedings with respect to] the child concerned to be taken in England and Wales,and that order is in force.

- ^{F11}(4)
- (5)
- (6)

Textual Amendments

- F7** 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)
- F8** 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)**
- F9** Words in s. 3(3)(a) substituted (4.11.1996) by S.I. 1995/756, **art. 12(5)**; S.R. 1996/297, **art. 3**
- F10** 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)**)
- F11** 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)**

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Textual Amendments

F12 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.

- (1) A court in England and Wales which has jurisdiction to make a [^{F13}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 [^{F13}Part I order], or for the variation of a [^{F13}Part I order], ^{F14}... 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
 - (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside England and Wales, [^{F15}or
 - (c) that it should exercise its powers under Article 15 of the Council Regulation (transfer to a court better placed to hear the case),]
 the court may stay the proceedings on the application [^{F16}or (as the case may be) exercise its powers under Article 15].
 - (3) The court may remove a stay granted [^{F17}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.
- [^{F18}(3A) The court may remove a stay granted under Article 15 of the Council Regulation only in accordance with that Article.]
- (4) Nothing in this section [^{F19}so far as it relates to proceedings not governed by the Council Regulation] shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

Textual Amendments

- F13** 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)**
- F14** 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)
- F15** S. 5(2)(c) and word 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(3)** (with reg. 20)
- F16** 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)
- F17** 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)

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- F18** S. 5(3A) 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(6)** (with reg. 20)
- F19** 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)

6 Duration and variation of custody orders.

- (1) [^{F20}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 [^{F20}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 [^{F20}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.
- [^{F21}(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—
- 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
 - those proceedings are continuing.
- (3B) Subsection (3) above shall not apply if—
- the Part I order was made in or in connection with proceedings for judicial separation in England and Wales;
 - those proceedings are continuing; and
 - 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—
- an order under section 13(6) or [^{F22}19A(4)] of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
 - an order under section 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling [^{F23}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 [^{F24}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.
- [^{F25}(6) Subsection (7) below applies where a Part I order which is—
- a residence order (within the meaning of the Children Act 1989) in favour of a person with respect to a child,

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- (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,
 - (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

- F20** 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)**
- F21** 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)**
- F22** Words in s. 6(4)(a) substituted (4.11.1996) by S.I. 1995/756, **art. 12(5)**; S.R. 1996/297, **para. 3**
- F23** 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)**
- F24** 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)**
- F25** 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)**

^{F267} 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;
- (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

F26 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)**

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