



Family Law Act 1986

1986 CHAPTER 55

PART I

CHILD CUSTODY

CHAPTER III

JURISDICTION OF COURTS IN SCOTLAND

8 Jurisdiction in independent proceedings.

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

9 Habitual residence.

Subject to section 11 of this Act, an application for a custody 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.

10 Presence of child.

Subject to section 11 of this Act, an application for a custody 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,—

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- (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.

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 custody 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 custody 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 4(5), 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 proceedings with respect to the custody of 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.

12 Emergency jurisdiction.

Notwithstanding that any other court, whether within or outside Scotland, has jurisdiction to entertain an application for a custody 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.

13 Jurisdiction ancillary to matrimonial proceedings.

- (1) The jurisdiction of a court in Scotland to entertain an application for a custody 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 absolvitor is granted therein, to entertain an application for a custody order under section 9(1) of the Matrimonial Proceedings (Children) Act 1958 unless the application therefor was made on or before such dismissal or the granting of the decree of absolvitor.
- (3) Where, after a decree of separation has been granted, an application is made in the separation process for a custody 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.

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- (4) A court in Scotland shall not have jurisdiction to entertain an application for the variation of a custody 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 4(5) 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 proceedings with respect to the custody of 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.
- (6) A court in Scotland which has jurisdiction in matrimonial proceedings to entertain an application for a custody 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 custody 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 custody order or an order varying a custody order; and
 - (b) the court considers that it would be more appropriate for matters relating to the custody of that child to be determined in that other court or part.
- (7) The court may recall an order made under subsection (6) above.

14 Power of court to refuse application or sist proceedings.

- (1) A court in Scotland which has jurisdiction to entertain an application for a custody 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 custody 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.

15 Duration, variation and recall of orders.

- (1) Where, after the making by a court in Scotland of a custody order (“the existing order”) with respect to a child,—
- (a) a custody order, or an order varying a custody order, competently made by another court in any part of the United Kingdom with respect to that child; or

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(b) 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 custody 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 custody 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 custody 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 Matrimonial Proceedings (Children) Act 1958 or section 11(1)(b) of the Guardianship Act 1973 providing for the supervision of that child by a local authority, that order shall cease to have effect.

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 tutory or curatory of a pupil or minor 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 factor loco tutoris 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 tutory or curatory of a pupil or minor, what constitutes an application for the purposes of this Chapter.

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 custody 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 custody order with respect to the child concerned.

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- (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.

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 tutory or curatory of a pupil or minor, has been granted in pursuance of the application or the court has refused to grant such an order.