



# 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 “[<sup>F1</sup>Part I order]” means—

- [<sup>F2</sup>(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 [<sup>F3</sup>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 <sup>M1</sup>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 [<sup>F4</sup>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 <sup>M2</sup>Education (Scotland) Act 1980;
  - (vi) an order made under Part II or III of the <sup>M3</sup>Social Work (Scotland) Act 1968;

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- (vii) an order made under the <sup>M4</sup>Child Abduction and Custody Act 1985;
  - (viii) an order for the delivery of a child or other order for the enforcement of a [<sup>F1</sup>Part I order];
  - (ix) an order relating to the tutory or curatory of a child;
  - (c) an order made by a court in Northern Ireland under any of the following enactments—
    - (i) section 5 of the <sup>M5</sup>Guardianship of Infants Act 1886 (except so far as it relates to costs);
    - (ii) Article 45(1) of the <sup>M6</sup>Matrimonial Causes (Northern Ireland) Order 1978;
    - (iii) Article 45(2) of the Matrimonial Causes (Northern Ireland) Order 1978;
    - (iv) Article 10(2) or 20(1)(ii) of the <sup>M7</sup>Domestic Proceedings (Northern Ireland) Order 1980;
  - [<sup>F5</sup>(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;
  - (e) an order made by the High Court in Northern Ireland in the exercise of its jurisdiction relating to wardship—
    - (i) so far as it gives care and control of a child to any person or provides for the education of or access to a child; but
    - (ii) excluding an order relating to a child of whom care or care and control is (immediately after the making of the order) vested in the Department of Health and Social Services or a Health and Social Services Board.]
- (2) In this Part “[<sup>F1</sup>Part I order]” does not include—
- (a) an order within subsection (1) <sup>F6</sup> . . . (c) above which varies or revokes a previous order made under the same enactment;
  - <sup>F7</sup>(b) . . . . .
  - (c) an order within paragraphs [<sup>F8</sup>(e)] of subsection (1) above which varies or revokes a previous order within that paragraph.
- [<sup>F9</sup>(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; 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

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### 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)(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)**)
- F6** Words in S. 1(2)(a) 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)**
- F7** 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)**
- F8** Word in S. 1(2)(c) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 63(2)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F9** 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)**

### Modifications etc. (not altering text)

- C2** S. 1(1)(b)(ii) modified (1.11.1994) by S.I. 1994/2804, reg. 3, **Sch. 2 para. 5**

### Marginal Citations

- M1** 1978 c. 28.  
**M2** 1980 c. 44.  
**M3** 1968 c. 49.  
**M4** 1985 c. 60.  
**M5** 1886 c. 27.  
**M6** S.I. 1978/1045 (N.I. 15).  
**M7** S.I. 1980/563 (N.I. 5).

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

(1) Subject to the following provisions of this section, in this Part “[<sup>F10</sup>Part I order]” means—

- [<sup>F11</sup>(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 [<sup>F12</sup>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 <sup>M8</sup>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 [<sup>F13</sup>giving parental responsibilities and parental rights in relation to] a child made in the course of proceedings for the adoption

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- 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 <sup>M9</sup>Education (Scotland) Act 1980;
  - (vi) an order made under Part II or III of the <sup>M10</sup>Social Work (Scotland) Act 1968;
  - (vii) an order made under the <sup>M11</sup>Child Abduction and Custody Act 1985;
  - (viii) an order for the delivery of a child or other order for the enforcement of a [<sup>F10</sup>Part I order];
  - (ix) an order relating to the [<sup>F14</sup>guardianship]of a child;
- (c) an order made by a court in Northern Ireland under any of the following enactments—
- (i) section 5 of the <sup>M12</sup>Guardianship of Infants Act 1886 (except so far as it relates to costs);
  - (ii) Article 45(1) of the <sup>M13</sup>Matrimonial Causes (Northern Ireland) Order 1978;
  - (iii) Article 45(2) of the Matrimonial Causes (Northern Ireland) Order 1978;
  - (iv) Article 10(2) or 20(1)(ii) of the <sup>M14</sup>Domestic Proceedings (Northern Ireland) Order 1980;
- [<sup>F15</sup>(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;
- (e) an order made by the High Court in Northern Ireland in the exercise of its jurisdiction relating to wardship—
- (i) so far as it gives care and control of a child to any person or provides for the education of or access to a child; but
  - (ii) excluding an order relating to a child of whom care or care and control is (immediately after the making of the order) vested in the Department of Health and Social Services or a Health and Social Services Board.]

(2) In this Part “[<sup>F10</sup>Part I order]” does not include—

    - (a) an order within subsection (1) <sup>F16</sup> . . . (c) above which varies or revokes a previous order made under the same enactment;
    - <sup>F17</sup>(b) . . . . .
    - (c) an order within paragraphs [<sup>F18</sup>(e)] of subsection (1) above which varies or revokes a previous order within that paragraph.

[<sup>F19</sup>(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; 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.

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### 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

- F10** 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)**
- F11** 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)**
- F12** 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.**
- F13** 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.**
- F14** 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**.
- F15** 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)**
- F16** Words in S. 1(2)(a) 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)**
- F17** 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)**
- F18** Word in S. 1(2)(c) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 63(2)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F19** 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)**

### Modifications etc. (not altering text)

- C3** S. 1(1)(b)(ii) modified (1.11.1994) by S.I. 1994/2804, reg. 3, **Sch. 2 para. 5**

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**M12** 1886 c. 27.  
**M13** S.I. 1978/1045 (N.I. 15).  
**M14** S.I. 1980/563 (N.I. 5).

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