



Family Law Act 1986

1986 CHAPTER 55

PART I

CHILD CUSTODY

CHAPTER II

JURISDICTION OF COURTS IN ENGLAND AND WALES

6 Duration and variation of custody orders.

- (1) If a [^{F1}custody order][^{F1}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 [^{F1}custody order][^{F1}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 [^{F1}custody order][^{F1}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.
- [^{F2}(3) A court in England and Wales shall not have jurisdiction—
 - (a) to vary a custody order, other than one made under section 42(1)(a) of the ^{M1}Matrimonial Causes Act 1973, or
 - (b) after the grant of a decree of judicial separation, to vary a custody order made under section 42(1)(a) of that Act,if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in Scotland or Northern Ireland in respect of the marriage of the parents of the child concerned.]

Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.

Changes to legislation: Family Law Act 1986, Section 6 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F2}(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—

- (a) 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
- (b) those proceedings are continuing.

(3B) Subsection (3) above shall not apply if—

- (a) the Part I order was made in or in connection with proceedings for judicial separation in England and Wales;
- (b) those proceedings are continuing; and
- (c) 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—

- (a) an order under section 13(6) or 21(5) 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 [^{F3}proceedings with respect to the custody of][^{F3}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 [^{F4}variation of a custody order within section 1(1)(d) of this Act if the ward][^{F4}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.

[^{F5}(6) Where any person who is entitled to the actual possession of a child under a custody order made by a court in England and Wales ceases to be entitled by virtue of subsection (1) above, then, if there is in force an order for the supervision of that child made under—

- (a) section 7(4) of the ^{M2}Family Law Reform Act 1969,
 - (b) section 44 of the Matrimonial Causes Act 1973,
 - (c) section 2(2)(a) of the ^{M3}Guardianship Act 1973,
 - (d) section 34(5) or 36(3)(b) of the ^{M4}Children Act 1975, or
 - (e) section 9 of the ^{M5}Domestic Proceedings and Magistrates' Courts Act 1978,
- that order shall cease to have effect.

(7) In this section “the relevant date” means—

- (a) where an application is made for a variation, the date of the application (or first application, if two or more are determined together), and
- (b) where no such application is made, the date of the variation.]

[^{F5}(6) Subsection (7) below applies where a Part I order which is—

- (a) 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

- F1** Words “Part I order” substituted (*prosp.*) for “custody order” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with **Sch. 14 para. 1(1)**)
- F2** S. 6(3)–(3B) substituted (*prosp.*) for subsection (3) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 66(1) (with **Sch. 14 para. 1(1)**)
- F3** Words commencing “Part I proceedings” substituted (*prosp.*) for words commencing “proceedings with respect to” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(b) (with **Sch. 14 para. 1(1)**)
- F4** Words “variation of a section 1(1)(d) order if the child concerned” substituted (*prosp.*) for words commencing “variation of a custody” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 66(2) (with **Sch. 14 para. 1(1)**)
- F5** S. 6(6)–(8) substituted (*prosp.*) for subsections (6)(7) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 66(3) (with **Sch. 14 para. 1(1)**)

Marginal Citations

- M1** 1973 c. 18.
- M2** 1969 c. 46
- M3** 1973 c. 29.
- M4** 1975 c. 72.
- M5** 1978 c. 22.

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