



# Matrimonial Proceedings (Children) Act 1958

1958 CHAPTER 40 6 and 7 Eliz 2

## PART II

### JURISDICTION IN SCOTLAND

#### Modifications etc. (not altering text)

C1 Pt. II extended by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1966 \(c. 19\), s. 8\(1\)](#)

7 ..... F1

#### Textual Amendments

F1 S. 7 repealed (S.) by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), ss. 9, 10(2), [Sch. 2](#)

#### [<sup>F2</sup>8] **Duty of court in actions of divorce, etc., to consider arrangements for children's welfare before granting decree.**

- (1) Subject to the provisions of this section, in any action for divorce, nullity of marriage or separation the court shall not grant decree of divorce, nullity of marriage or separation unless and until the court is satisfied as respects every child for whose [<sup>F3</sup>custody the court has power]] to make provision in that action—
- (a) that arrangements have been made for the care and upbringing of the child and that those arrangements are satisfactory or are the best which can be devised in the circumstances; or
  - (b) that it is impracticable for the party or parties appearing before the court to make any such arrangements.

*Status: Point in time view as at 01/11/1996.*

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[<sup>F4</sup>In this subsection “child” does not include a child with respect to whom the court has made an order under section 13(6) or 14(2) of the Family Law Act 1986]

- (2) The court may, if it thinks fit, proceed to grant decree of divorce, nullity of marriage or separation without observing the requirements of the foregoing subsection if it appears that there are circumstances making it desirable that decree should be granted without delay and if the court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the court within a specified time.
- (3) This section shall not apply in relation to actions commenced before the commencement of this Part of this Act.

#### Textual Amendments

- F2** S. 8 repealed (S.) (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5**; S.I. 1996/2203, art. 3(3), **Sch.** Table
- F3** Words substituted (S.) by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1), 69(6), **Sch. 1 para. 4(a)**
- F4** Words added (S.) by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1), 69(6), **Sch. 1 para. 4(b)**

#### [<sup>F5</sup>9 **Jurisdiction of court as respects children where action dismissed or in case of non-adherence.**

- (1) Where an action commenced after the commencement of this Part of this Act for divorce, nullity of marriage or separation is dismissed at any stage after proof on the merits of the action has been allowed or decree of absolutor is granted therein, the court before which the action was brought, may, [<sup>F6</sup> subject to section 13(2) of the Family Law Act 1986]], make such provision [<sup>F7</sup>relating to parental rights as could be made] if the action were still before the court.
- (2) . . . . . <sup>F8</sup>

#### Textual Amendments

- F5** S. 9 repealed (S.) (1.11.1996) by 1995 c. 36, s. 105(6), **Sch. 5**; S.I. 1996/2203, art. 3(3), **Sch.** Table
- F6** Words substituted (S.) by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1), 69(6), **Sch. 1 para. 5**
- F7** Words substituted (S.) by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(1), 11(4), **Sch. 1 para. 6**
- F8** S. 9(2) repealed (S.) by Law Reform (Husband and Wife) (Scotland) Act 1984 (c. 15, SIF 49:2), ss. 9(2), 10(3), **Sch. 2**

#### Modifications etc. (not altering text)

- C2** S. 9(1) restricted (S.) by Family Law Act 1986 (c. 55, SIF 49:3), ss. 13(2), 69(6)

#### [<sup>F9</sup>10 **Power of court in actions of divorce, etc., to commit care of child to local authority or an individual.**

- (1) Where it appears to the court as respects any child for whose [<sup>F10</sup>custody the court has power]] to make provision in connection with an action for divorce, nullity of marriage or separation brought before it that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the

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marriage, the court may, if it thinks fit, make an order committing the care of the child to any other individual or to a local authority.

- (2) Where the court commits the care of the child to a local authority the authority specified in the order shall be the council <sup>F11</sup>(constituted under section 2 of the Local Government etc. (Scotland) Act 1994) in whose area] the child was, in the opinion of the court, resident before the order was made; and the court shall before making the order hear any representations from the authority, including any representations as to the making of an order for payments for the maintenance and education of the child.
- (3) While an order under this section committing the care of a child to a local authority is in force with respect to any child, the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.
- <sup>F12</sup>(4) On the making of an order under this section committing the care of a child to a local authority, Part II of the <sup>M1</sup>Social Work (Scotland) Act 1968 (which relates to the treatment of children in care of local authorities) shall, subject to the provisions of this section, apply as if the child had been received by the local authority into their care under section 15 of that Act, so however that—
  - (a) the exercise by the local authority of their powers under or by virtue of sections 5, 20 to 22, 59 and 60 of that Act shall be subject to any directions given by the court; and
  - (b) section 23 of that Act (which relates to arrangements for the emigration of a child under the care of a local authority) shall not apply.]
- (5) ..... <sup>F13</sup>
- (6) It shall be the duty of any parent or guardian of a child committed to the care of a local authority under this section to secure that the local authority are informed of his address for the time being; and a person who knowingly fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding [<sup>F14</sup>£10].

#### Textual Amendments

- F9** S. 10 repealed (S.) (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5**; S.I. 1996/2203, art. 3(3), **Sch. Table**
- F10** Words substituted (S.) by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1), 69(6), **Sch. 1 para. 6**
- F11** Words in s. 10(2) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 50**; S.I. 1996/323, **art. 4(1)(c)**
- F12** S. 10(4) substituted by Social Work (Scotland) Act 1968 (c. 49), s. 97(1), **Sch. 8 para. 42**
- F13** S. 10(5) repealed by Mental Health (Scotland) Act 1960 (c. 61), s. 10(3), **Sch. 5**
- F14** Figures substituted by Criminal Justice Act 1967 (c. 80), **Sch. 3 Pt. I**

#### Marginal Citations

- M1** 1968 c. 49.

## 11 Reports as to arrangements for future care and upbringing of children. **E+W**

- (1) For the purpose of satisfying itself as to the proposed arrangements for the care and upbringing of any child as to whose <sup>F15</sup>custody the court has power] to make orders, the court may, without prejudice to its power to appoint any other person <sup>F16</sup>, not being an officer of the local authority for the purpose, appoint an appropriate local authority] to investigate and report to the court on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.

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[<sup>F17</sup>(1A) In this section “local authority” has the same meaning as in the <sup>M2</sup>Social Work (Scotland) Act 1968.]

(2) ..... <sup>F18</sup>

(4) If on consideration of a report furnished in pursuance of subsection (1) of this section the court, either *ex proprio motu* or on the application of any person concerned, thinks it expedient to do so, it may require the person who furnished the report to appear and to be examined on oath regarding any matter dealt with in the report, and such person may be examined or cross-examined accordingly.

(5) Any expenses incurred in connection with the preparation of a report by a [<sup>F19</sup>local authority or other person appointed] under this section shall form part of the expenses of the action and be defrayed by such party to the action as the court may direct, and the court may certify the amount of the expenses so incurred.

#### Extent Information

**E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F15** Words substituted (S.) by virtue of [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(1), 69(6), [Sch. 1 para. 7](#)

**F16** Words substituted by [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), s. 97(1), [Sch. 8 para. 43\(1\)](#)

**F17** [S. 11\(1A\)](#) added by [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), s. 97(1), [Sch. 8 para. 43\(1\)](#)

**F18** [Ss. 11\(2\)\(3\), 12\(3\)](#) repealed by [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), [Sch. 9 Pt. I](#)

**F19** Words substituted by [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), s. 97(1), [Sch. 8 para. 43\(2\)](#)

#### Marginal Citations

**M2** [1968 c. 49](#).

## 11 Reports as to arrangements for future care and upbringing of children. **S**

(1) [<sup>F27</sup>Where the court is considering any question relating to the care and upbringing of a child, it may], without prejudice to its power to appoint any other person [<sup>F28</sup>, not being an officer of the local authority for the purpose, appoint an appropriate local authority] to investigate and report to the court on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.

[<sup>F29</sup>(1A) In this section “local authority” has the same meaning as in the <sup>M3</sup>Social Work (Scotland) Act 1968.]

(2) ..... <sup>F30</sup>

(4) If on consideration of a report furnished in pursuance of subsection (1) of this section the court, either *ex proprio motu* or on the application of any person concerned, thinks it expedient to do so, it may require the person who furnished the report to appear and to be examined on oath regarding any matter dealt with in the report, and such person may be examined or cross-examined accordingly.

(5) Any expenses incurred in connection with the preparation of a report by a [<sup>F31</sup>local authority or other person appointed] under this section shall form part of the expenses

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of the action and be defrayed by such party to the action as the court may direct, and the court may certify the amount of the expenses so incurred.

**Extent Information**

**E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

**Textual Amendments**

- F27** Words in s. 11(1) substituted (S.) (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 9**; S.I. 1996/2203, art. 3(3), **Sch.**
- F28** Words substituted by **Social Work (Scotland) Act 1968 (c. 49)**, s. 97(1), **Sch. 8 para. 43(1)**
- F29** S. 11(1A) added by **Social Work (Scotland) Act 1968 (c. 49)**, s. 97(1), **Sch. 8 para. 43(1)**
- F30** Ss. 11(2)(3), 12(3) repealed by **Social Work (Scotland) Act 1968 (c. 49)**, **Sch. 9 Pt. I**
- F31** Words substituted by **Social Work (Scotland) Act 1968 (c. 49)**, s. 97(1), **Sch. 8 para. 43(2)**

**Marginal Citations**

**M3** 1968 c. 49.

**[<sup>F20</sup>12 Power of court to provide for supervision of child.**

- (1) If it appears to the court as respects any child for whose custody it has power to make provision in connection with an action for divorce, nullity of marriage or separation that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is committed to the custody of any person, make an order placing the child under the supervision . . . <sup>F21</sup> of a local authority.
- (2) Where the court makes an order under this section for supervision by a local authority that authority shall be [<sup>F22</sup>a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994]] selected by the court and specified in the order.
- (3) . . . . . <sup>F23</sup>
- (4) The court shall not have power to make an order under this section as respects a child who in pursuance of an order under section ten of this Act is in the care of a local authority.

**Textual Amendments**

- F20** S. 12 repealed (S.) (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5**; S.I. 1996/2203, art. 3(3), **Sch. Table**
- F21** Words repealed (S.) by **Social Work (Scotland) Act 1968 (c. 49)**, **Sch. 9 Pt. I**
- F22** Words in s. 12(2) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 50**; S.I. 1996/323, **art. 4(1)(c)**
- F23** Ss. 11(2)(3), 12(3) repealed by **Social Work (Scotland) Act 1968 (c. 49)**, **Sch. 9 Pt. I**

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**Textual Amendments**

**F24** S. 13 repealed by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(2), 69, [Sch. 2](#)

14 ..... <sup>F25</sup>

**Textual Amendments**

**F25** S. 14 repealed (S.) by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), ss. 10(2), 11(4), [Sch. 2](#)

**15 Interpretation of Part II.**

In this Part of this Act, the expression “the court” means the Court of Session or the sheriff, the expression “child” means a child under sixteen years of age, . . . <sup>F26</sup>

**Textual Amendments**

**F26** Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), s. 214(2), [Sch. 27 Pt. II para. 138](#), [Sch. 29](#)

**Status:**

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