
STATUTORY INSTRUMENTS

1995 No. 755

The Children (Northern Ireland) Order 1995

PART XVI

JURISDICTION AND PROCEDURE

Jurisdiction

164.—(1) In this Order “the court” means the High Court, a county court or a court of summary jurisdiction.

(2) Paragraph (1) is subject to the provision made by or under Schedule 7 and to any express provision as to the jurisdiction of any court made by any other provision of this Order.

(3) A court of summary jurisdiction shall not be competent to entertain any application, or make any order, involving the administration or application of—

- (a) any property belonging to or held in trust for a child; or
- (b) the income of any such property.

(4) A juvenile court (that is to say, a court of summary jurisdiction constituted in accordance with Schedule 2 to the Children and Young Persons Act (Northern Ireland) 1968)⁽¹⁾ sitting for the purpose of exercising any jurisdiction conferred by or under this Order may be known as a family proceedings court.

(5) Schedule 7 which makes provision, including provision for the Lord Chancellor to make orders, principally with respect to the jurisdiction of courts in proceedings under this Order, shall have effect.

Rules of court

165.—(1) An authority having power to make rules of court may make such provision for giving effect to—

- (a) this Order;
- (b) the provisions of any regulations or order made under this Order; or
- (c) any amendment made by this Order in any other statutory provision,

as appears to that authority to be necessary or expedient.

(2) The rules may, in particular, make provision—

- (a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);
- (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;

(1) 1968 c. 34 (N.I.)

- (c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;
 - (d) applying (with or without modification) statutory provisions which govern proceedings brought on a complaint made to a court of summary jurisdiction to relevant proceedings in such a court brought otherwise than on a complaint or disapplying or modifying such statutory provisions in relation to relevant proceedings in a court of summary jurisdiction which would otherwise be brought on a complaint;
 - (e) with respect to preliminary hearings;
 - (f) for the service outside Northern Ireland, in such circumstances and in such manner as may be prescribed, of any notice of proceedings in a court of summary jurisdiction;
 - (g) for the exercise by a court of summary jurisdiction, in such circumstances as may be prescribed, of such powers as may be prescribed (even though a party to the proceedings in question is or resides outside Northern Ireland);
 - (h) enabling the court, in such circumstances as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings;
 - (i) authorising a resident magistrate or a member of a juvenile court panel to discharge the functions of a court of summary jurisdiction with respect to such relevant proceedings as may be prescribed;
 - (j) authorising a court of summary jurisdiction to order any of the parties to such relevant proceedings as may be prescribed, in such circumstances as may be prescribed, to pay the whole or part of the costs of all or any of the other parties.
- (3) In paragraph (2)—
- “notice of proceedings” means a summons or such other notice of proceedings as is required; and “given”, in relation to a summons, means “served”;
- “prescribed” means prescribed by the rules; and
- “relevant proceedings” means any application made, or proceedings brought, under any of the provisions mentioned in sub-paragraphs (a) to (c) of paragraph (1) and any part of such proceedings.
- (4) This Article and any other power in this Order to make rules of court are not to be taken as in any way limiting any other power of the authority in question to make rules of court.
- (5) When making any rules under this Article an authority shall be subject to the same requirements as to consultation (if any) as apply when the authority makes rules under its general rule making power.

Appeals

166.—(1) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the High Court against—

- (a) the making by a county court of any order under this Order; or
- (b) any refusal by a county court to make such an order,

as if the decision had been made in the exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980(2) and the appeal were brought under Article 60 of that Order.

- (2) An appeal shall not lie to the High Court under paragraph (1)—
- (a) on an appeal from a court of summary jurisdiction; or

- (b) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978(3) in the same proceedings.
- (3) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the county court against—
 - (a) the making by a court of summary jurisdiction of any order under this Order; or
 - (b) any refusal by a court of summary jurisdiction to make such an order.
- (4) If the court of summary jurisdiction referred to in paragraph (3) is a family proceedings court—
 - (a) the county court to which the appeal under that paragraph lies shall be such county court as may be specified for the purposes of this paragraph;
 - (b) section 178 of the Children and Young Persons Act (Northern Ireland) 1968 shall not apply where such a county court deals with such an appeal;and in sub-paragraph (a) “specified” has the meaning given in paragraph 4(2) of Schedule 7.
- (5) Where a court of summary jurisdiction has power, in relation to any proceedings under this Order, to decline jurisdiction because it considers that the case can more conveniently be dealt with by another court, no appeal shall lie against any exercise of that power by that court of summary jurisdiction.
- (6) No appeal shall lie in relation to an interim order for periodical payments made under Schedule 1.
- (7) In paragraphs (8) to (13) “appellate court” means the High Court or the county court as the case may be.
- (8) On an appeal under this Article, the appellate court may make such orders as may be necessary to give effect to its determination of the appeal.
- (9) Where an order is made under paragraph (8) the appellate court may also make such incidental or consequential orders as appear to it to be just.
- (10) Where an appeal under this Article relates to an order for the making of periodical payments, the appellate court may order that its determination of the appeal shall have effect from such date as it thinks fit to specify in the order.
- (11) The date so specified must not be earlier than the earliest date allowed in accordance with rules of court made for the purposes of this Article.
- (12) Where, on an appeal under this Article in respect of an order requiring a person to make periodical payments, the appellate court reduces the amount of those payments or discharges the order—
 - (a) it may order the person entitled to the payments to pay to the person making them such sum in respect of payments already made as that court thinks fit; and
 - (b) if any arrears are due under the order for periodical payments, it may remit payment of the whole, or part, of those arrears.
- (13) Any order of the appellate court made on an appeal under this Article (other than one directing that an application be re-heard by the county court or a court of summary jurisdiction) shall, for the purposes—
 - (a) of the enforcement of the order; and
 - (b) of any power to vary, revive or discharge orders,be treated as if it were an order of the court from which the appeal was brought and not an order of the appellate court.

(14) The Lord Chancellor may by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under paragraph 2 of Schedule 7.

(15) Except to the extent provided for in any order made under paragraph (14), no appeal may be made against any decision of a kind mentioned in that paragraph.

Attendance of child and his parents, etc., at hearing under Part V or VI

167.—(1) In any proceedings in which a court is hearing an application for an order under Part V or VI, or is considering whether to make any such order, the court may order the child concerned to attend such stage or stages of the proceedings as may be specified in the order.

(2) In any proceedings in which a court is hearing an application for an order under Part V or VI, or is considering whether to make any such order, the court may order any person who is a parent of the child concerned or who has parental responsibility for or care of him to attend such stage or stages of the proceedings as may be specified in the order.

(3) The powers conferred by paragraphs (1) and (2) shall be exercised in accordance with rules of court.

(4) Paragraphs (5) to (7) apply where—

- (a) an order under paragraph (1) has not been complied with; or
- (b) the court has reasonable cause to believe that it will not be complied with.

(5) The court may make an order authorising a constable, or such person as may be specified in the order—

- (a) to take charge of the child and to bring him to the court; and
- (b) to enter and search any premises specified in the order if he has reasonable cause to believe that the child may be found on the premises.

(6) The court may order any person who is in a position to do so to bring the child to the court.

(7) Where the court has reason to believe that a person has information about the whereabouts of the child it may order him to disclose it to the court.

Power to clear court while child is giving evidence in certain proceedings

168.—(1) Where in any proceedings other than criminal proceedings the court considers that the evidence of a child is likely to involve matter of an indecent or immoral nature, the court may direct that during the taking of the evidence of that child all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court.

(2) The powers conferred on a court by paragraph (1) shall be in addition and without prejudice to any other powers of the court to hear proceedings in private or to exclude a witness until his evidence is required.

Evidence given by, or with respect to, children

169.—(1) Subject to paragraph (2), in relation to any oath administered to and taken by a child in any civil proceedings, section 1 of the Oaths Act 1978(4) shall have effect as if the words “I promise before Almighty God” were set out in it instead of the words “I swear by Almighty God that”.

(4) 1978 c. 19

(2) Where, in any oath otherwise duly administered to and taken by any person in any civil proceedings, either of the forms mentioned in paragraph (1) is used instead of the other, the oath shall nevertheless be deemed to have been duly administered and taken.

(3) Paragraph (4) applies where a child who is called as a witness in any civil proceedings does not, in the opinion of the court, understand the nature of an oath.

(4) The child's evidence may be heard by the court if, in its opinion—

- (a) he understands that it is his duty to speak the truth; and
- (b) he has sufficient understanding to justify his evidence being heard.

(5) The Lord Chancellor may by order make provision for the admissibility of evidence which would otherwise be inadmissible under any rule of law relating to hearsay.

(6) An order under paragraph (5) may only be made with respect to—

- (a) civil proceedings in general or such civil proceedings as may be prescribed; and
- (b) evidence in connection with the upbringing, maintenance or welfare of a child.

(7) An order under paragraph (5)—

- (a) may, in particular, provide for the admissibility of statements which are made orally or in a prescribed form or which are recorded by any prescribed method of recording; and
- (b) may make such amendments and repeals in any statutory provision relating to evidence (other than in this Order) as the Lord Chancellor considers necessary or expedient in consequence of the provision made by the order.

(8) In this Article—

“civil proceedings” and “court” have the same meaning as they have in the Civil Evidence Act (Northern Ireland) 1971⁽⁵⁾ by virtue of section 14 of that Act; and

“prescribed” means prescribed by an order under paragraph (5).

Privacy for children involved in certain proceedings

170.—(1) Rules of court may make provision for the court to sit in private in proceedings in which any powers under this Order may be exercised by the court with respect to any child.

(2) No person shall publish any material which is intended, or likely, to identify—

- (a) any child as being involved in any proceedings in which any power under this Order may be exercised by the court with respect to that or any other child; or
- (b) an address or school as being that of a child involved in any such proceedings.

(3) In any proceedings for an offence under this Article it shall be a defence for a person to prove that he did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.

(4) The court may, if satisfied that the welfare of the child requires it, by order dispense with the requirements of paragraph (2) to such extent as may be specified in the order.

(5) The Lord Chancellor may, if satisfied that the welfare of the child requires it, make a direction dispensing with the requirements of paragraph (2) to such extent as may be specified in the direction.

(6) This paragraph applies to any proceedings other than criminal proceedings or proceedings to which paragraph (2) applies.

(7) In relation to any proceedings to which paragraph (6) applies, the court may direct that no person shall publish any material which is intended, or likely, to identify—

(5) 1971 c. 36 (N.I.)

- (a) any child as being involved in those proceedings; or
 - (b) an address or school as being that of a child involved in any such proceedings,
- except in so far (if at all) as may be permitted by the direction of the court.
- (8) For the purposes of this Article—
- “publish” includes—
- (a) include in a programme service (within the meaning of the Broadcasting Act 1990⁽⁶⁾);
 - (b) cause to be published; and
- “material” includes any picture or representation.
- (9) Any person who contravenes this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (10) Paragraph (1) is without prejudice to—
- (a) the generality of any other power to make rules of court; or
 - (b) any other power of the court to sit in private.
- (11) Articles 89 and 90 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁷⁾ (domestic proceedings—sitting of court and newspaper reports) shall apply in relation to any proceedings to which this Article applies subject to the provisions of this Article.

Self-incrimination

- 171.**—(1) In any proceedings in which a court is hearing an application for an order under Part V or VI, no person shall be excused from—
- (a) giving evidence on any matter; or
 - (b) answering any question put to him in the course of his giving evidence,
- on the ground that doing so might incriminate him or his spouse of an offence.
- (2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it or his spouse in proceedings for an offence other than perjury.

Legal aid, advice and assistance

- 172.**—(1) The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981⁽⁸⁾ shall be amended in accordance with paragraphs (2) and (3).
- (2) In Article 5 (representation in proceedings), after paragraph (4) there shall be inserted the following paragraph—
- “(4A) Without prejudice to paragraphs (3) and (4), regulations may make provision in relation to assistance by way of representation for purposes corresponding to those of Article 10(5A) to (5E) (legal aid for proceedings under the Children (Northern Ireland) Order 1995).”.
- (3) In Article 10 (scope and general conditions of legal aid), after paragraph (5) there shall be inserted the following paragraphs—
- “(5A) Legal aid shall not be available—
 - (a) to any Health and Social Services Board; or
 - (b) to any Health and Social Services trust; or

(6) 1990 c. 42
(7) 1981 NI 26
(8) 1981 NI 8

- (c) to any other prescribed body; or
- (d) to a guardian ad litem,

for the purposes of any proceedings under the Children (Northern Ireland) Order 1995.

(5B) Regardless of paragraphs (4) and (5) and Articles 9 and 12, legal aid must be granted where a child who is brought before a court under Article 44 of the Children (Northern Ireland) Order 1995 (secure accommodation) is not, but wishes to be, legally represented before the court.

(5C) Subject to paragraph (5A) but regardless of paragraphs (4) and (5) and Articles 9 and 12, legal aid must be granted to the child in respect of whom the application is made, to any parent of such a child and to any person with parental responsibility for him within the meaning of the Children (Northern Ireland) Order 1995 to cover proceedings relating to an application for the following orders under that Order—

- (a) an order under Article 50 (a care or supervision order);
- (b) an order under Article 62 (a child assessment order);
- (c) an order under Article 63 (an emergency protection order); or
- (d) an order under Article 64 (extension or discharge of an emergency protection order).

(5D) Subject to paragraphs (4) and (5) but regardless of Articles 9 and 12, legal aid must be granted to cover proceedings relating to an appeal against an order made under Article 50 of the Children (Northern Ireland) Order 1995 to a person who has been granted legal aid by virtue of paragraph (5C).

(5E) Subject to paragraph (5A) and Articles 9 and 12 but regardless of paragraphs (4) and (5), legal aid must be granted where a person applies to be or has been joined as a party to any of the proceedings mentioned in paragraph (5C).”.

- (4) The Lord Chancellor may by order make—
- (a) such further amendments in the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 as he considers necessary or expedient in consequence of any provision made by or under this Order;
 - (b) such transitional and saving provisions as appear to him to be necessary or expedient in consequence of any provision made by or under this Order in connection with the operation of any provisions of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (including any provision amended by this Article).

Restrictions on use of wardship jurisdiction

173.—(1) The court shall not exercise its inherent jurisdiction with respect to children—

- (a) so as to require a child to be placed in the care, or put under the supervision, of a Board or Health and Social Services trust;
- (b) so as to require a child to be accommodated by or on behalf of a Board or Health and Social Services trust;
- (c) so as to make a child who is the subject of a care order a ward of court; or
- (d) for the purpose of conferring on any Board or Health and Social Services trust power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) No application for any exercise of the court’s inherent jurisdiction with respect to children may be made by an authority unless the authority has obtained the leave of the court.

(3) The court may only grant leave if it is satisfied that—

- (a) the result which the authority wishes to achieve could not be achieved through the making of any order of a kind to which paragraph (4) applies; and
 - (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.
- (4) This paragraph applies to any order—
- (a) made otherwise than in the exercise of the court's inherent jurisdiction; and
 - (b) which the authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).
- (5) In this Article "the court" means the High Court.