

SCHEDULES

SCHEDULE 8

CUSTODY ORDERS, ETC.

Cessation of declarations of unfitness, etc.

3. Where, immediately before the commencement of Parts II and III, there was in force—
- (a) a declaration under Article 45(3) of the Matrimonial Causes (Northern Ireland) Order 1978^{F1} (declaration by court that party to marriage unfit to have custody of children of family); or
 - (b) an order under section 12 of the Criminal Law Amendment Act 1885^{F2} or section 1(4) of the Punishment of Incest Act 1908^{F3} divesting a person of authority over a girl;

the declaration or, as the case may be, the order shall cease to have effect on the commencement of those Parts.

F1	1978 NI 15
F2	1885 c. 69
F3	1908 c. 45

Orders to which paragraphs 5 to 10 apply

- 4.—(1) In paragraphs 5 to 10 “an existing order” means any order which—
- (a) is in force immediately before the commencement of Parts II and III;
 - (b) was made under any statutory provision mentioned in sub-paragraph (2);
 - (c) determines all or any of the following—
 - (i) who is to have custody of a child;
 - (ii) who is to have care and control of a child;
 - (iii) who is to have access to a child;
 - (iv) any matter with respect to a child's education or upbringing; and
 - (d) is not an order of a kind mentioned in paragraph 11(3).
- (2) The statutory provisions are—
- (a) the Domestic Proceedings (Northern Ireland) Order 1980^{F4};
 - (b) the Matrimonial Causes (Northern Ireland) Order 1978;
 - (c) the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945^{F5};
 - (d) the Matrimonial Causes Act (Northern Ireland) 1939^{F6};
 - (e) the Guardianship of Infants Act 1886^{F7}.

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(3) For the purposes of this paragraph and paragraphs 5 to 10 “custody” includes legal custody, joint as well as sole custody, and parental rights and duties retained under an order under Article 10(4) of the Domestic Proceedings (Northern Ireland) Order 1980, but does not include access.

F4	1980 NI 5
F5	1945 c. 14 (NI)
F6	1939 c. 13 (NI)
F7	1886 c. 27

Parental responsibility of parents

5.—(1) Where—

- (a) a child's father and mother were married to each other at the time of his birth; and
- (b) there is an existing order with respect to the child,

each parent shall have parental responsibility for the child in accordance with Article 5 as modified by sub-paragraph (3).

(2) Where—

- (a) a child's father and mother were not married to each other at the time of his birth; and
- (b) there is an existing order with respect to the child,

Article 5 shall apply as modified by sub-paragraphs (3) and (4).

(3) The modification is that for Article 5(7) there shall be substituted—

“(7) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or any order made under this Order with respect to the child.”.

(4) The modifications are that—

- (a) for the purposes of Article 5(2), where the father has custody or care and control of the child by virtue of any existing order, the court shall be deemed to have made (at the commencement of that Article) an order under Article 7(1) giving him parental responsibility for the child; and
- (b) where by virtue of head (a) a court is deemed to have made an order under Article 7(1) in favour of a father who has care and control of a child by virtue of an existing order, the court shall not bring the order under Article 7(1) to an end at any time while he has care and control of the child by virtue of the order.

Persons who are not parents but who have custody or care and control

6.—(1) Where a person who is not the parent or guardian of a child has custody or care and control of him by virtue of an existing order, that person shall have parental responsibility for him so long as he continues to have that custody or care and control by virtue of the order.

(2) Where sub-paragraph (1) applies, Parts II, III and V shall have effect as modified by this paragraph.

(3) The modifications are that—

- (a) for Article 5(7) there shall be substituted—

“(7) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or with any order made under this Order with respect to the child.”;

- (b) at the end of Article 10(4) there shall be inserted—
 - “(c) any person who has custody or care and control of a child by virtue of any existing order”; and
- (c) at the end of Article 53(1)(c) there shall be inserted—
 - “(cc) where immediately before the care order was made there was an existing order by virtue of which a person had custody or care and control of the child, that person;”

Persons who have care and control

7.—(1) Sub-paragraphs (2) to (6) apply where a person has care and control of a child by virtue of an existing order, but they shall cease to apply when that order ceases to have effect.

- (2) Article 10 shall have effect as if for paragraph (5)(c)(i) there were substituted—
 - “(i) in any case where by virtue of an existing order any person or persons has or have care and control of the child, has the consent of that person or each of those persons;”.
- (3) Article 22 shall have effect as if for paragraph (3)(a) there were substituted—
 - “(a) who has care and control of the child by virtue of an existing order; or”.
- (4) Article 27 shall have effect as if for paragraph (4)(c) there were substituted—
 - “(c) where the child is in care and immediately before the care order was made there was an existing order by virtue of which a person had care and control of the child, that person.”
- (5) Articles 159 and 160 shall have effect as if—
 - (a) for any reference to a residence order in favour of a parent or guardian there were substituted a reference to any existing order by virtue of which the parent or guardian has care and control of the child;
 - (b) for Article 159(3) there were substituted—
 - “(3) Paragraph (1) shall not apply if the existing order referred to in sub-paragraph (b) of that paragraph was one by virtue of which a surviving parent of the child also had care and control of him.”;
 - (c) for Article 160(7) there were substituted—
 - “(7) Paragraph (5) shall not apply if the existing order referred to in sub-paragraph (b) of that paragraph was one by virtue of which a surviving parent also had care and control of him.”.
- (6) In Schedule 1, paragraphs 2(1) and 16(1) shall have effect as if for the words “in whose favour a residence order is in force with respect to the child” there were substituted the words “who has been given care and control of the child by virtue of an existing order”.

Persons who have access

- 8.—(1) Sub-paragraphs (2) to (4) apply where a person has access by virtue of an existing order.
- (2) Article 10 shall have effect as if after paragraph (5) there were inserted—
 - “(5A) Any person who has access to a child by virtue of an existing order is entitled to apply for a contact order.”.
- (3) Article 16(2) shall have effect as if after sub-paragraph (b) there were inserted—

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“(bb) any person who has access to the child by virtue of an existing order;”.

(4) Articles 62(11), 63(13) and 65(10) shall have effect as if in each case after sub-paragraph (d) there were inserted—

“(dd) any person who has been given access to him by virtue of an existing order;”.

Enforcement of certain existing orders

9.—(1) Sub-paragraph (2) applies in relation to any existing order which, but for the repeal by this Order of Article 37 of the Domestic Proceedings (Northern Ireland) Order 1980^{F8} (enforcement of custody orders) might have been enforced as if it were an order requiring a person to give up a child to another person.

(2) Where this sub-paragraph applies, the existing order may, after the repeal mentioned in sub-paragraph (1), be enforced under Article 14 as if—

- (a) any reference to a residence order were a reference to the existing order; and
- (b) any reference to a person in whose favour the residence order is in force were a reference to a person to whom actual custody of the child is given by an existing order which is in force.

(3) In sub-paragraph (2) “actual custody”, in relation to a child, means the actual possession of his person.

F8 1980 NI 5

Discharge of existing orders

10.—(1) The making of a residence order or care order with respect to a child who is the subject of an existing order discharges the existing order.

(2) Where the court makes any Article 8 order (other than a residence order) with respect to a child with respect to whom any existing order is in force, the existing order shall have effect subject to the Article 8 order.

- (3) The court may discharge an existing order which is in force with respect to a child—
- (a) in any family proceedings relating to the child or in which any question arises with respect to the child's welfare; or
 - (b) on the application of—
 - (i) any parent or guardian of the child;
 - (ii) the child himself; or
 - (iii) any person named in the order.

(4) A child may not apply for the discharge of an existing order except with the leave of the court.

(5) The power in sub-paragraph (3) to discharge an existing order includes the power to discharge any part of the order.

(6) In considering whether to discharge an order under the power conferred by sub-paragraph (3) the court shall, if the discharge of the order is opposed by any party to the proceedings, have regard in particular to the matters mentioned in Article 3(3).

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 45(2)(e) words repealed by 2022 c. 18 (N.I.) Sch. 5
- art. 7(2A)(ba) substituted for word by 2009 c. 24 Sch. 6 para. 26(2)
- art. 7(2B)(ba) substituted for word by 2009 c. 24 Sch. 6 para. 26(3)
- art. 8(4)(ha) applied by 2022 c. 18 (N.I.) s. 116
- art. 10(5A) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 26(b)
- art. 10(7A) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 26(c)
- art. 14A?-14F and cross-heading inserted by 2022 c. 18 (N.I.) s. 119(1)
- art. 14A(7) applied (with modifications) for specified purposes by 2022 c. 18 (N.I.) s. 26(6)
- art. 14C(1)(b) applied (with modifications) for specified purposes by 2022 c. 18 (N.I.) s. 26(7)(a)
- art. 14C(3)(4) excluded by 2022 c. 18 (N.I.) s. 26(7)(b)
- art. 18(4A) inserted by 2022 c. 18 (N.I.) s. 120(1)
- art. 18(6)-(6C) substituted for art. 18(6) by 2022 c. 18 (N.I.) s. 121(1)
- art. 22(3)(aa) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 29
- art. 26(1A) inserted by 2022 c. 18 (N.I.) s. 122(1)
- art. 26A inserted by 2022 c. 18 (N.I.) s. 123
- art. 27(7A) inserted by 2022 c. 18 (N.I.) s. 125(3)
- art. 27(8)(c) and word added by 2022 c. 18 (N.I.) s. 122(2)(b)
- art. 27(9A)-(9D) inserted by 2022 c. 18 (N.I.) s. 124
- art. 28(4) inserted by 2022 c. 18 (N.I.) s. 125(4)
- art. 28A inserted by 2022 c. 18 (N.I.) s. 126
- art. 28B inserted by 2022 c. 18 (N.I.) s. 127
- art. 33(9) added by 2022 c. 18 (N.I.) Sch. 3 para. 31(c)
- art. 34E(1)(d) and word inserted by 2022 c. 18 (N.I.) Sch. 3 para. 32(a)(iii)
- art. 34E(3)(4) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 32(b)
- art. 34F(1)(aa) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 33(a)(i)
- art. 34F(1A)-(1D) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 33(b)
- art. 34G inserted by 2022 c. 18 (N.I.) s. 129
- art. 34AA inserted by 2022 c. 18 (N.I.) s. 128(1)
- art. 34DA inserted by 2022 c. 18 (N.I.) s. 128(2)
- art. 34DB34DC inserted by 2022 c. 18 (N.I.) s. 128(3)
- art. 35(1)-(1B) substituted for art. 35(1) by 2022 c. 18 (N.I.) Sch. 3 para. 34(a)
- art. 35(5)(za) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 34(c)
- art. 35D(1)(aa)(ab) inserted by 2022 c. 18 (N.I.) s. 128(4)
- art. 35D(1A) inserted by 2022 c. 18 (N.I.) s. 130(1)
- art. 45(2)(e)(i)(ii) inserted by 2022 c. 18 (N.I.) s. 131(a)
- art. 45(2)(f)(i)-(iii) inserted by 2022 c. 18 (N.I.) s. 131(b)
- art. 45(3A)-(3C) inserted by 2022 c. 18 (N.I.) s. 130(4)
- art. 45(4A) inserted by 2022 c. 18 (N.I.) s. 130(6)
- art. 45(5A) inserted by 2022 c. 18 (N.I.) s. 130(7)
- art. 45A?? inserted by 2022 c. 18 (N.I.) s. 132
- art. 50A?? inserted by 2022 c. 18 (N.I.) s. 134(1)
- art. 53(1)(ba) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 38(b)
- art. 53(6A) inserted by 2022 c. 18 (N.I.) s. 135(3)
- art. 53(8)(za) inserted by 2022 c. 18 (N.I.) s. 135(4)
- art. 57(3A) inserted by 2022 c. 18 (N.I.) s. 119(3)

- art. 60(6)(ha) inserted by 2022 c. 18 (N.I.) s. 138
- art. 66(5A) inserted by 2022 c. 18 (N.I.) s. 120(3)
- art. 107(7)(c) added by 2022 c. 18 (N.I.) s. 139(4)
- art. 108(2A) inserted by 2022 c. 18 (N.I.) s. 140(3)
- art. 108(3)(c) and word added by 2022 c. 18 (N.I.) s. 140(4)(c)
- art. 112A inserted by 2022 c. 18 (N.I.) s. 141
- art. 159(1)(c) and word added by 2022 c. 18 (N.I.) s. 119(4)(b)
- art. 165(2)(k) inserted by 2011 c. 24 (N.I.) s. 95(3)
- art. 170(2)-(9A) modified by 2022 c. 18 (N.I.) s. 105(3)
- art. 170(9A) inserted by 2022 c. 18 (N.I.) s. 142
- art. 179(5A) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 42
- art. 181(1) art. 181 renumbered as art. 181 (1) by 2022 c. 18 (N.I.) s, 143(3)
- art. 181(1) words substituted by 2022 c. 18 (N.I.) s. 143(4)
- art. 181(2) added by 2022 c. 18 (N.I.) s. 143(5)
- art. 183(2A) inserted by 2022 c. 18 (N.I.) s. 130(8)