



# Children Act 1975

## 1975 CHAPTER 72

### PART II

#### CUSTODY

##### *Custodianship orders*

### **35 Revocation and variation of orders.**

- (1) An authorised court may by order revoke a custodianship order on the application of—
    - (a) the custodian, or
    - (b) the mother or father, or a guardian, of the child, or
    - (c) any local authority in England or Wales.
  - (2) The court shall not proceed to hear an application made by any person for the revocation of a custodianship order where a previous such application made by the same person was refused by that or any other court unless—
    - (a) in refusing the previous application the court directed that this subsection should not apply, or
    - (b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.
  - (3) The custodian of a child may apply to an authorised court for the revocation or variation of any order made under section 34 [<sup>F1</sup>(other than an order under subsection (1)(c))] in respect of that child.
  - (4) Any other person on whose application an order under section 34 was made, or who was required by [<sup>F2</sup>an order made under that section (other than an order under subsection (1)(c))] to contribute towards the maintenance of the child, may apply to an authorised court for the revocation or variation of that order.
- [<sup>F3</sup>(4A) An application for the variation of [<sup>F3</sup>an order made under section 34(1)(b) may, if the child has attained the age of sixteen, be made by the child himself.]

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*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975, Section 35. (See end of Document for details)*

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- (5) Any order made under [<sup>F4</sup>section 34(1)(a), (b) or (e)] in respect of a child who is the subject of a custodianship order shall cease to have effect on the revocation of the custodianship order.
- (6) A custodianship order made in respect of a child, and any order made under [<sup>F5</sup>section 34(1)(a)] in respect of the child, shall cease to have effect when the child attains the age of 18 years.
- [<sup>F6</sup>(7) On an application under this section for the revocation or variation of an order made under section 34(1)(b), the court shall have power to suspend the operation of any provision of that order temporarily and to revive the operation of any provision so suspended.
- (8) In exercising its power under this section to revoke or vary an order made under section 34(1)(b), the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.
- (9) Where on an application under this section the court varies any payments required to be made under section 34(1)(b), the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.
- [ Where an order made under section 34(1)(b) ceases to have effect on the date on which  
<sup>X1</sup>(10) the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then, if at any time before he attains the age of twenty-one an application is made by the child to an authorised court for an order under this subsection, the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to vary or revoke under this section any order so revived.]
- [ Where an order under section 34(1)(b) ceases to have effect on the date on which  
<sup>F7</sup>(10) the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply to an authorised court, other than a magistrates' court, for an order for the revival of that order, and if, on such an application, it appears to the court that—
- (a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this subsection,
- the court shall have power by order to revive the order made under section 34(1)(b) from such date as the court may specify, not being earlier than the date of the making of the application and to vary or revoke under this section any order so revived.
- (10A) Any order made by a magistrates' court under section 34(1)(b) which is revived by an order under subsection (10) shall for the purposes of the enforcement of the order be treated as an order made by the magistrates' court by which the order was originally made.]
- (11) The powers of a magistrates' court to revoke, revive or vary under [<sup>F8</sup>section 60 of the <sup>M1</sup>Magistrates' Courts Act 1980] an order for the periodical payment of money and

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to suspend or rescind under [<sup>F8</sup>section 63(2)] of that Act certain other orders shall not apply in relation to a custodianship order or an order made under section 34.]

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#### Editorial Information

- X1** S. 35(10)(10A) commencing “Where an order under” substituted (E.W.) (in force 1.4.1989 subject to a saving in S.I. 1989/382, **art. 3 Sch. 2 para 2**) for subsection (10) commencing “Where an order made” by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1), **Sch. 2 para. 62**

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#### Textual Amendments

- F1** Words inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(2), **Sch. 1**
- F2** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(3), **Sch. 1**
- F3** S. 35(4A) inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(4), **Sch. 1**
- F4** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(5), **Sch. 1**
- F5** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(6), **Sch. 1**
- F6** S. 35(7)–(11) added by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 66(7), **Sch. 1**
- F7** S. 35(10)(10A) commencing “Where an order under” substituted (E.W.) (in force 1.4.1989 subject to a saving in S.I. 1989/382, **art. 3 Sch. 2 para 2**) for subsection (10) commencing “Where an order made” by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1), **Sch. 2 para. 62**
- F8** Words substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), **s. 17(2)(a)**

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#### Marginal Citations

- M1** 1980 c. 45(82).

**Changes to legislation:**

There are currently no known outstanding effects for the Children Act 1975, Section 35.