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# Family Law Act 1986

## 1986 CHAPTER 55

### PART I

#### CHILD CUSTODY

#### CHAPTER IV

##### JURISDICTION OF COURTS IN NORTHERN IRELAND

#### 19 Jurisdiction in cases other than divorce, etc.

- (1) A court in Northern Ireland shall not have jurisdiction to make a [<sup>F1</sup>Part I order] within section 1(1)(c) of this Act, other than one under Article 45(1) of the <sup>M1</sup>Matrimonial Causes (Northern Ireland) Order 1978, unless the condition in section 20 of this Act is satisfied.
- (2) The High Court in Northern Ireland shall have jurisdiction to make a [<sup>F1</sup>Part I order] within [<sup>F2</sup>section 1(1)(e)] of this Act if, and only if,—
  - (a) the condition in section 20 of this Act is satisfied, or
  - (b) the ward is present in Northern Ireland on the relevant date (within the meaning of section 20(6) of this Act) and the court considers that the immediate exercise of its powers is necessary for his protection.

#### Textual Amendments

**F1** Words in s. 19(1)(2) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

**F2** Figure in S.19(2) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 69(a) (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M1** S.I. 1978/1045 (N.I. 15).

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VALID FROM 04/11/1996

**F<sup>3</sup>19A Jurisdiction in or in connection with matrimonial proceedings.**

- (1) The condition referred to in section 19(1) of this Act is that the matrimonial proceedings are proceedings in respect of the marriage of the parents of the child concerned and—
- (a) the proceedings—
    - (i) are proceedings for divorce or nullity of marriage, and
    - (ii) are continuing;
  - (b) the proceedings—
    - (i) are proceedings for judicial separation,
    - (ii) are continuing,
 and the jurisdiction of the court is not excluded by subsection (2) below; or
  - (c) the proceedings have been dismissed after the beginning of the trial but—
    - (i) the section 1(1)(c) order is being made forthwith, or
    - (ii) the application for the order was made on or before the dismissal.

For the purposes of subsection (1)(b) above, the jurisdiction of the court is excluded if, after the grant of a decree of judicial separation, on the relevant date, proceedings for divorce or nullity in respect of the marriage are continuing in England and Wales or Scotland.

- (3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
- (a) an order under section 2A(4) or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
  - (b) an order under section 5(2) or 14(2) of this Act which is recorded as being made for the purpose of enabling Part I proceedings to be taken in Northern Ireland with respect to the child concerned.
- (4) Where a court—
- (a) has jurisdiction to make a section 1(1)(c) order in or in connection with matrimonial proceedings, but
  - (b) considers that it would be more appropriate for Part I matters relating to the child to be determined outside Northern Ireland,

the court may by order direct that, while the order under this subsection is in force, no section 1(1)(c) order shall be made by any court in or in connection with those proceedings.

**Textual Amendments**

- F3** Ss. 19, 19A substituted for s. 19 (4.11.1996) by [S.I. 1995/755 \(N.I. 2\)](#), [art. 185\(1\)](#), [Sch. 9 para. 124](#); [S.R. 1996/297](#), [art. 2\(2\)](#)

**20 Habitual residence or presence of child.**

- (1) The condition referred to in section 19 of this Act is that on the relevant date the child concerned—

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- (a) is habitually resident in Northern Ireland, or
- (b) is present in Northern Ireland and is not habitually resident in any part of the United Kingdom,

and, in either case, the jurisdiction of the court is not excluded by subsection (2) below.

(2) For the purposes of subsection (1) above, the jurisdiction of the court is excluded if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in a court in England and Wales or Scotland in respect of the marriage of the parents of the child concerned.

(3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—

- (a) an order under section [F42A(4)] or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
- (b) an order under section 5(2) or 14(2) of this Act which is recorded as made for the purpose of enabling [F5Part I proceedings with respect to] the child concerned to be taken in Northern Ireland,

and that order is in force.

(4) Subject to subsection (5) and (6) below, in this section “the relevant date” means the date of the commencement of the proceedings in which the [F6Part I order] falls to be made.

(5) In the case of a [F6Part I order] under section 5 of the M2Guardianship of Infants Act 1886 “the relevant date” means the date of the application for the order (or first application, if two or more are determined together).

(6) In the case of a [F6Part I order] within [F7section 1(1)(e)] of this Act “the relevant date” means—

- (a) where an application is made for an order, 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 order.

#### Textual Amendments

- F4** Figure in s. 20(3)(a) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 68(c)** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F5** Words in s. 20(3)(b) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(b)** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F6** Words in s. 20 (4)-(6) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(a)**; S.I. 1991/828, **art. 3(2)** (with **Sch. 14 para. 1(1)**)
- F7** Figure in s. 20(6) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 69(b)** (With **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

- M2** 1986 c. 27.

## 21 Jurisdiction in divorce proceedings, etc.

(1) The enactments relating to the jurisdiction of courts in Northern Ireland to make orders under Article 45(1) of the M3Matrimonial Causes (Northern Ireland) Order 1978 shall have effect subject to the modifications provided for by this section.

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- (2) In Article 45(1)(b) of that Order (which enables orders as to custody and education to be made immediately, or within a reasonable period, after the dismissal of proceedings for divorce, etc.), for the words “within a reasonable period” there shall be substituted the words “(if an application for the order is made on or before the dismissal)”.
- (3) A court shall not have jurisdiction to make a [F8Part I order] under Article 45(1)(a) of that Order after the grant of a decree of judicial separation if, on the relevant date, proceedings for divorce or nullity in respect of the marriage concerned are continuing in England and Wales or Scotland.
- (4) Subsection (3) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
- (a) an order under section [F92A(4)] or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i), or
  - (b) an order under section 5(2) or 14(2) of this Act which is recorded as made for the purpose of enabling [F10Part I proceedings with respect to] the child concerned to be taken in Northern Ireland,
- and that order is in force.
- (5) Where a court—
- (a) has jurisdiction to make a [F8Part I order] under Article 45(1) of the Matrimonial Causes (Northern Ireland) Order 1978 in or in connection with proceedings for divorce, nullity of marriage or judicial separation, but
  - (b) considers that it would be more appropriate for [F11Part I matters relating to] the child to be determined outside Northern Ireland,
- the court may by order direct that, while the order under this subsection is in force, no [F8Part I order] under Article 45(1) with respect to the child shall be made by any court in or in connection with those proceedings.
- (6) In this section “the relevant date” means—
- (a) where an application is made for a [F8Part I order] under Article 45(1)(a), 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 order.

#### Textual Amendments

- F8** Words in s. 21(3)(5)-(6) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(a)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F9** Figure in s. 21(4)(a) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 68(d)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F10** Words in s. 21(4)(b) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(b)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F11** Words in s. 21(5)(b) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(c)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

- M3** S.I. 1978/1045 (N.I. 15).

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## 22 Power of court to refuse application or stay proceedings.

- (1) A court in Northern Ireland which has jurisdiction to make a [F12Part I order] may refuse an application for the order in any case where the matter in question has already been determined in proceedings outside Northern Ireland.
- (2) Where, at any stage of the proceedings on an application made to a court in Northern Ireland for a [F12Part I order], or for the variation of a [F12Part I order], it appears to the court—
  - (a) that proceedings with respect to the matters to which the application relates are continuing outside Northern Ireland, or
  - (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside Northern Ireland,the court may stay the proceedings on the application.
- (3) The court may remove a stay granted in accordance with subsection (2) above if it appears to the court that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or that those proceedings are stayed, sisted or concluded.
- (4) Nothing in this section shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

### Textual Amendments

**F12** Words in s. 22 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

## 23 Duration and variation of custody orders.

- (1) If a [F13Part I order] made by a court in England and Wales or Scotland (or a variation of such an order) comes into force with respect to a child at a time when a [F13Part I order] made by a court in Northern Ireland 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 England and Wales or Scotland.
- (2) Where by virtue of subsection (1) above a [F13Part I order] has ceased to have effect so far as it makes provision for any matter, a court in Northern Ireland shall not have jurisdiction to vary that order so as to make provision for that matter.
- (3) A court in Northern Ireland shall not have jurisdiction—
  - (a) to vary a [F13Part I order], other than one made under Article 45(1)(a) of the M4Matrimonial Causes (Northern Ireland) Order 1978, or
  - (b) after the grant of a decree of judicial separation, to vary a [F13Part I order] made under Article 45(1)(a) of that Order,if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in England and Wales or Scotland in respect of the marriage of the parents of the child concerned.
- (4) Subsection (3) above shall not apply if the court in which the proceedings there referred to are continuing has made—

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- (a) an order under section [F142A(4)] or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
  - (b) an order under section 5(2) or 14(2) of this Act which is recorded as made for the purpose of enabling [F15Part I proceedings with respect to] the child concerned to be taken in Northern Ireland,
- and that order is in force.
- (5) Subsection (3) above shall not apply in the case of a variation of a [F13Part I order] within [F16section 1(1)(e)] of this Act if the ward is present in Northern Ireland on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.
- (6) Where any person who is entitled to the actual possession of a child under a [F13Part I order] made by a court in Northern Ireland ceases to be so entitled by virtue of subsection (1) above, then, if there is in force an order for the supervision of that child made under—
- (a) Article 47 of the Matrimonial Causes (Northern Ireland) Order 1978, or
  - (b) Article 11 of the M5Domestic Proceedings (Northern Ireland) Order 1980,
- that order shall also 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.

#### Textual Amendments

- F13** Words in s. 23(1)-(3)(5)-(6) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(a)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F14** Figure in s. 23(4)(a) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 68(e)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F15** Words in s. 23(4)(b) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 62(2)(b)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F16** Figure in s. 23(5) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 69(b)** (with Sch. 14 para. 1(1); S.I. 1991/828, **art. 3(2)**)

#### Marginal Citations

- M4** S.I. 1978/1045 (N.I. 15).  
**M5** S.I. 1980/563 (N.I. 5).

## 24 Interpretation of Chapter IV.

In this Chapter “child” means a person who has not attained the age of eighteen.

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