Family Law Act 1986

1986 CHAPTER 55

PART I

CHILD CUSTODY

CHAPTER V

RECOGNITION AND ENFORCEMENT

25 Recognition of custody orders: general.

(1) Where a **[**[F1]custody order**]**[[F1]Part I order**]** made by a court in any part of the United Kingdom is in force with respect to a child who has not attained the age of sixteen, then, subject to subsection (2) below, the order shall be recognised in any other part of the United Kingdom as having the same effect in that other part as if it had been made by the appropriate court in that other part and as if that court had had jurisdiction to make it.

(2) Where a **[**[F1]custody order**]**[[F1]Part I order**]** includes provision as to the means by which rights conferred by the order are to be enforced, subsection (1) above shall not apply to that provision.

(3) A court in a part of the United Kingdom in which a **[**[F1]custody order**]**[[F1]Part I order**]** is recognised in accordance with subsection (1) above shall not enforce the order unless it has been registered in that part of the United Kingdom under section 27 of this Act and proceedings for enforcement are taken in accordance with section 29 of this Act.

Textual Amendments

F1 Words "Part I order" substituted (*prosp.*) for "custody order" by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with **Sch. 14 para. 1(1)**)

Status: *Point in time view as at 01/02/1991.*
Changes to legislation: *Family Law Act 1986, Chapter V is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

26 Recognition: special Scottish rule.

Any rule of law whereby an order for the custody of a child made outside the United Kingdom is recognised in Scotland shall continue to have effect, except that, after the commencement of this Part, the ground for such recognition shall be that the order was made in the country where the child was habitually resident and not where he was domiciled.

27 Registration.

(1) Any person on whom any rights are conferred by a **[**[F2]custody order**][**[F2]Part I order**]** may apply to the court which made it for the order to be registered in another part of the United Kingdom under this section.

(2) An application under this section shall be made in the prescribed manner and shall contain the prescribed information and be accompanied by such documents as may be prescribed.

(3) On receiving an application under this section the court which made the **[**[F2]custody order**][**[F2]Part I order**]** shall, unless it appears to the court that the order is no longer in force, cause the following documents to be sent to the appropriate court in the part of the United Kingdom specified in the application, namely—

(a) a certified copy of the order, and

(b) where the order has been varied, prescribed particulars of any variation which is in force, and

(c) a copy of the application and of any accompanying documents.

(4) Where the prescribed officer of the appropriate court receives a certified copy of a **[**[F2]custody order**][**[F2]Part I order**]** under subsection (3) above, he shall forthwith cause the order, together with particulars of any variation, to be registered in that court in the prescribed manner.

(5) An order shall not be registered under this section in respect of a child who has attained the age of sixteen, and the registration of an order in respect of a child who has not attained the age of sixteen shall cease to have effect on the attainment by the child of that age.

Textual Amendments

F2 Words "Part I order" substituted (*prosp.*) for "custody order" by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with **Sch. 14 para. 1(1)**)

28 Cancellation and variation of registration.

(1) A court which revokes, recalls or varies an order registered under section 27 of this Act shall cause notice of the revocation, recall or variation to be given in the prescribed manner to the prescribed officer of the court in which it is registered and, on receiving the notice, the prescribed officer—

(a) in the case of the revocation or recall of the order, shall cancel the registration, and

(b) in the case of the variation of the order, shall cause particulars of the variation to be registered in the prescribed manner.

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(2) Where—

(a) an order registered under section 27 of this Act ceases (in whole or in part) to have effect in the part of the United Kingdom in which it was made, otherwise than because of its revocation, recall or variation, or

(b) an order registered under section 27 of this Act in Scotland ceases (in whole or in part) to have effect there as a result of the making of an order in proceedings outside the United Kingdom,

the court in which the order is registered may, of its own motion or on the application of any person who appears to the court to have an interest in the matter, cancel the registration (or, if the order has ceased to have effect in part, cancel the registration so far as it relates to the provisions which have ceased to have effect).

29 Enforcement.

(1) Where a **[**[F3]custody order**][**[F3]Part I order**]** has been registered under section 27 of this Act, the court in which it is registered shall have the same powers for the purpose of enforcing the order as it would have if it had itself made the order and had jurisdiction to make it; and proceedings for or with respect to enforcement may be taken accordingly.

(2) Where an application has been made to any court for the enforcement of an order registered in that court under section 27 of this Act, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.

(3) The references in subsection (1) above to a **[**[F3]custody order**][**[F3]Part I order**]** do not include references to any provision of the order as to the means by which rights conferred by the order are to be enforced.

Textual Amendments

F3 Words "Part I order" substituted (*prosp.*) for "custody order" by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with **Sch. 14 para. 1(1)**)

30 Staying or sisting of enforcement proceedings.

(1) Where in accordance with section 29 of this Act proceedings are taken in any court for the enforcement of an order registered in that court, any person who appears to the court to have an interest in the matter may apply for the proceedings to be stayed or sisted on the ground that he has taken or intends to take other proceedings (in the United Kingdom or elsewhere) as a result of which the order may cease to have effect, or may have a different effect, in the part of the United Kingdom in which it is registered.

(2) If after considering an application under subsection (1) above the court considers that the proceedings for enforcement should be stayed or sisted in order that other proceedings may be taken or concluded, it shall stay or sist the proceedings for enforcement accordingly.

(3) The court may remove a stay or recall a sist granted in accordance with subsection (2) above if it appears to the court—

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(a) that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or

(b) that those other proceedings are concluded and that the registered order, or a relevant part of it, is still in force.

(4) Nothing in this section shall affect any power exercisable apart from this section to grant, remove or recall a stay or sist.

31 Dismissal of enforcement proceedings.

(1) Where in accordance with section 29 of this Act proceedings are taken in any court for the enforcement of an order registered in that court, any person who appears to the court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in the part of the United Kingdom in which it was made.

(2) Where in accordance with section 29 of this Act proceedings are taken in the Court of Session for the enforcement of an order registered in that court, any person who appears to the court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in Scotland as a result of the making of an order in proceedings outside the United Kingdom.

(3) If, after considering an application under subsection (1) or (2) above, the court is satisfied that the registered order has ceased to have effect, it shall dismiss the proceedings for enforcement (or, if it is satisfied that the order has ceased to have effect in part, it shall dismiss the proceedings so far as they relate to the enforcement of provisions which have ceased to have effect).

32 Interpretation of Chapter V.

(1) In this Chapter—

"the appropriate court", in relation to England and Wales or Northern Ireland, means the High Court and, in relation to Scotland, means the Court of Session;

"**[**[F4]custody order**][**[F4]Part I order**]**" includes (except where the context otherwise requires) any order within section 1(3) of this Act which, on the assumptions mentioned in subsection (3) below—

(a) could have been made notwithstanding the provisions of this Part;

(b) would have been a **[**[F4]custody order**][**[F4]Part I order**]** for the purposes of this Part; and

(c) would not have ceased to have effect by virtue of section 6, 15 or 23 of this Act.

(2) In the application of this Chapter to Scotland, "**[**[F4]custody order**][**[F4]Part I order**]**" also includes (except where the context otherwise requires) any order within section 1(3) of this Act which, on the assumptions mentioned in subsection (3) below—

(a) would have been a **[**[F4]custody order**][**[F4]Part I order**]** for the purposes of this Part; and

(b) would not have ceased to have effect by virtue of section 6 or 23 of this Act,

and which, but for the provisions of this Part, would be recognised in Scotland under any rule of law.

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(3) The said assumptions are—

(a) that this Part had been in force at all material times; and

(b) that any reference in section 1 of this Act to any enactment included a reference to any corresponding enactment previously in force.

Textual Amendments

F4 Words "Part I order" substituted (*prosp.*) for "custody order" by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 62(2)(a) (with **Sch. 14 para. 1(1)**)

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