



Family Law Act 1986

1986 CHAPTER 55

PART I

CHILD CUSTODY

CHAPTER IV

JURISDICTION OF COURTS IN NORTHERN IRELAND

23 Duration and variation of custody orders.

(1) If a [^{F1}Part 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 [^{F1}Part 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 [^{F1}Part 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.

[^{F2}(3) A court in Northern Ireland shall not have jurisdiction to vary a Part I order if, on the relevant date, matrimonial proceedings [^{F3}or civil partnership proceedings] are continuing in England and Wales or Scotland in respect of the marriage [^{F4}or civil partnership] of the parents of the child concerned.

[^{F5}(3A) Subsection (3) shall not apply if—

(a) the Part 1 order was made in or in connection with proceedings—

(i) for divorce or nullity in Northern Ireland in respect of the marriage of the parents of the child concerned; or

(ii) for dissolution or annulment in Northern Ireland in respect of the civil partnership of the parents of the child concerned; and

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(b) those proceedings are continuing.]

[^{F5}(3B) Subsection (3) shall not apply if—

- (a) the Part 1 order was made in or in connection with proceedings—
 - (i) for judicial separation in Northern Ireland; or
 - (ii) for a separation order in Northern Ireland; and
- (b) those proceedings are continuing; and
- (c) as the case may be, the decree of judicial separation has not yet been granted or the separation order has not yet been made.]]

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

- (a) an order under section [^{F6}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 made for the purpose of enabling [^{F7}Part 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 [^{F8}variation of a section 1(1) (e) order if the child concerned] 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.

[^{F9}(6) Subsection (7) below applies where a Part I order which is—

- (a) a residence order (within the meaning of the Children (Northern Ireland) Order 1995) in favour of a person with respect to a child,
- (b) an order made in the exercise of the High Court's inherent jurisdiction with respect to children by virtue of which a person has care of a child, or
- (c) an order—
 - (i) of a kind mentioned in section 1(3)(a) of this Act,
 - (ii) under which a person is entitled to the actual possession of a child,

ceases to have effect in relation to that person by virtue of subsection (1) above.

(7) Where this subsection applies, any family assistance order made under Article 16 of the Children (Northern Ireland) Order 1995 with respect to the child shall also cease to have effect.

(8) For the purposes of subsection (7) above the reference to a family assistance order under Article 16 of the Children (Northern Ireland) Order 1995 shall be deemed to include a reference to an order for the supervision of a child made under—

- (a) Article 47 of the Matrimonial Causes (Northern Ireland) Order 1978, or
- (b) Article 11 of the Domestic Proceedings (Northern Ireland) Order 1980;

but this subsection shall cease to have effect once all such orders for the supervision of children have ceased to have effect in accordance with Schedule 8 to the Children (Northern Ireland) Order 1995.]

Textual Amendments

- F1** 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\(2\)](#)

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- F2** S. 23(3)(3A)(3B) substituted for s. 23(3) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9 para. 126(2)**; S.R. 1996/297, **art. 2(2)**
- F3** Words in s. 23(3) inserted (5.12.2005) by The Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 (S.I. 2005/3336), arts. 1, **16(2)(a)** (with art. 2(4))
- F4** Words in s. 23(3) inserted (5.12.2005) by The Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 (S.I. 2005/3336), arts. 1, **16(2)(b)** (with art. 2(4))
- F5** S. 23(3A)(3B) substituted (5.12.2005) by The Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 (S.I. 2005/3336), arts. 1, **16(3)** (with art. 2(4))
- F6** 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)**
- F7** 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)**
- F8** Words in s. 23(5) substituted (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9 para. 126(3)**; S.R. 1996/297, **art. 2(2)**
- F9** S. 23(6)-(8) substituted for s. 23(6)(7) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9 para. 126(4)**; S.R. 1996/297, **art. 2(2)**

Changes to legislation:

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

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

- s. 1(1)(ca)-(cc) inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 7](#)
- s. 2A(1)(1A) substituted for s. 2(1) by [1996 c. 27 Sch. 8 para. 37\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(2)(e), 139(4))
- s. 19(1A)-(1C) inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 8](#)
- s. 29A inserted by [2020 asp 16 s. 29\(2\)](#)
- s. 38(4) inserted by [1996 c. 27 Sch. 8 para. 37\(9\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(2)(e), 139(4))