



# Family Law Act 1986

## 1986 CHAPTER 55

### PART I

#### CHILD CUSTODY

### CHAPTER II

#### JURISDICTION OF COURTS IN ENGLAND AND WALES

#### **5 Power of court to refuse application or stay proceedings.**

(1) A court in England and Wales which has jurisdiction to make a [<sup>F1</sup>Part I order] may refuse an application for the order in any case where the matter in question has already been determined in proceedings outside England and Wales.

(2) Where, at any stage of the proceedings on an application made to a court in England and Wales for a [<sup>F1</sup>Part I order], or for the variation of a [<sup>F1</sup>Part I order], <sup>F2</sup>... it appears to the court—

(a) that proceedings with respect to the matters to which the application relates are continuing outside England and Wales, <sup>F3</sup>...

(b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside England and Wales, [<sup>F4</sup>or]

<sup>F5</sup>(c) .....

[<sup>F6</sup>(d) that it should exercise its powers under Article 8 of the Hague Convention (request to authority in another Contracting State to assume jurisdiction),]

the court may stay the proceedings on the application [<sup>F7</sup>or (as the case may be) exercise its powers under <sup>F8</sup>... [<sup>F9</sup> Article 8 of the Hague Convention]].

[<sup>F10</sup>(2A) If the proceedings on the application are proceedings in which [<sup>F11</sup>an] activity direction has been made under section 11A of the Children Act 1989 (or an enforcement order has been made under section 11J of that Act), the court may when granting a stay under or by virtue of subsection (2) also suspend [<sup>F12</sup>the] activity direction (or the enforcement order).]

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*Changes to legislation: Family Law Act 1986, Section 5 is up to date with all changes known to be in force on or before 15 March 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) View outstanding changes*

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(3) The court may remove a stay granted [<sup>F13</sup>by virtue of subsection (2)(a) or (b) 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.

<sup>F14</sup>(3A) . . . . .

[<sup>F15</sup>(3AA) The court may remove a stay granted in order for it to exercise its powers under Article 8 of the Hague Convention, and withdraw any request made by it to an authority in another Contracting State to assume jurisdiction, if—

- (a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the stay, or
- (b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.]

[<sup>F16</sup>(3B) If the stay removed under subsection (3) <sup>F17</sup>... is a stay in relation to which the court suspended [<sup>F18</sup>an] activity direction made under section 11A of the Children Act 1989 (or an enforcement order made under section 11J of that Act), the court may when removing the stay under subsection (3) <sup>F19</sup>[<sup>F20</sup>... or (3AA)] also bring the suspension to an end.]

(4) Nothing in this section [<sup>F21</sup>so far as it relates to proceedings not governed by the [<sup>F22</sup>Hague Convention]] shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

#### Textual Amendments

- F1** Words in S. 5(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** Words in s. 5(2) omitted (1.3.2005) by virtue of The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **11(2)** (with reg. 20)
- F3** Word in s. 5(2)(a) left out (1.11.2012) by virtue of The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(1)(a)**
- F4** Word in s. 5(2)(b) inserted (31.12.2020) by The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(a)(i)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F5** S. 5(2)(c) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(a)(ii)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F6** S. 5(2)(d) and word inserted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(1)(c)**
- F7** Words in s. 5(2) inserted (1.3.2005) by The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **11(4)** (with reg. 20)
- F8** Words in s. 5(2) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(a)(iii)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in s. 5(2) inserted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(1)(d)**

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- F10** S. 5(2A) inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), s. 17(2), **Sch. 2 para. 3(2)**; S.I. 2008/2870, art. 2(2)(e)
- F11** Word in s. 5(2A) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 50(2)(a)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F12** Word in s. 5(2A) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 50(2)(b)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F13** Words in s. 5(3) substituted (1.3.2005) by The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **11(5)** (with reg. 20)
- F14** S. 5(3A) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F15** S. 5(3AA) inserted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(2)**
- F16** S. 5(3B) inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), s. 17(2), **Sch. 2 para. 3(3)**; S.I. 2008/2870, art. 2(2)(e)
- F17** Words in s. 5(3B) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(c)(i)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Word in s. 5(3B) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 50(3)**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F19** Word in s. 5(3B) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 15(3)(c)(ii)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in s. 5(3B) substituted (1.11.2012) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 1(2), **Sch. para. 6(3)**
- F21** Words in s. 5(4) inserted (1.3.2005) by The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 (S.I. 2005/265), regs. 1, **11(7)** (with reg. 20)
- F22** Words in s. 5(4) substituted (31.12.2020) by S.I. 2019/519, **Sch. para. 15(3)(d)** (as amended by The Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1574), regs. 1, **5(3)(f)(i)**)

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**Changes and effects yet to be applied to :**

- s. 5(4) words omitted by [S.I. 2019/519 Sch. para. 15\(3\)\(d\)](#) (This amendment not applied to legislation.gov.uk. S.I. 2019/519, Sch. para. 15(3)(d) amended (17.12.2020) by S.I. 2020/1574, regs. 1, 5(3)(f)(i))
- s. 5(4) words substituted in earlier amending provision S.I. 2019/519, Sch. para. 15(3)(d) by [S.I. 2019/1338 reg. 3\(3\)\(f\)\(i\)](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)

**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))