
Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

SCHEDULES

SCHEDULE 1

TEXT OF 1971 ACT AS AMENDED

Orders for custody and financial relief

Orders for custody on application of either parent.

- 9 (1) The court may, on the application of either parent of a child, make such order regarding—
- (a) the legal custody of the child; and
 - (b) access to the child by either parent,
- as the court thinks fit; and an order under this section may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.
- (2) An order under this section—
- (a) shall not give legal custody to a person other than a parent of the child; and
 - (b) shall not be made at any time when the child is free for adoption by virtue of an order made under section 18 of the ^{M1}Adoption Act 1976 or section 18 of the ^{M2}Adoption (Scotland) Act 1978.

Marginal Citations

M1 1976 c.36.

M2 1978 c. 28.

Orders for custody in guardianship cases.

- 10 (1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make such order regarding—
- (a) the legal custody of the child; and
 - (b) access to the child by the parent,
- as the court thinks fit; and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order previously made.
- (2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—
- (a) power to make such order regarding—
 - (i) the legal custody of the child; and
 - (ii) access to the child by the parent,

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

- as the court thinks fit; and
- (b) powers to vary or discharge any order previously made by virtue of this subsection.
- (3) An order shall not be made under or by virtue of this section at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.

Further provisions relating to orders for custody.

- 11A (1) An order shall not be made under section 9 or 10 of this Act giving the legal custody of a child to more than one person; but where the court makes an order under one of those sections giving legal custody of a child to any person it may order that a parent of the child who is not given the legal custody of the child shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the child) and shall have those rights and duties jointly with the person who is given the legal custody of the child.
- (2) Where the court makes an order under section 9 or 10 of this Act the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order or any provision thereof shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.
- (3) Any order made in respect of a child under section 9 or 10 of this Act shall cease to have effect when the child attains the age of eighteen.

Orders for financial relief on application of either parent.

- 11B (1) The court may, on the application of either parent of a child, make—
- (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (2) of this section;
 - (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;
- and an order mentioned in paragraph (a) or (b) of that subsection may be varied or discharged on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.
- (2) The orders referred to in subsection (1) of this section are—
- (a) an order requiring one parent to make to the other parent for the benefit of the child, or to the child, such periodical payments, and for such terms, as may be specified in the order;
 - (b) an order requiring one parent to secure to the other parent for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;
 - (c) an order requiring one parent to pay to the other parent for the benefit of the child, or to the child, such lump sum as may be so specified;
 - (d) an order requiring either parent to transfer to the other parent for the benefit of the child, or to the child, such property as may be so specified, being

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

- property to which the first-mentioned parent is entitled, either in possession or reversion;
- (e) an order requiring that a settlement of such property as may be so specified, being property to which either parent is so entitled, be made to the satisfaction of the court for the benefit of the child.

Orders for financial relief in guardianship cases.

- 11C (1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make—
- (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;
 - (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;
- and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.
- (2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—
- (a) power to make—
 - (i) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;
 - (ii) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection; and
 - (b) power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.
- (3) The orders referred to in subsections (1) and (2) of this section are—
- (a) an order requiring the parent to make to the guardian or other guardian for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;
 - (b) an order requiring the parent to secure to the guardian or other guardian for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;
 - (c) an order requiring the parent to pay to the guardian or other guardian for the benefit of the child, or to the child, such lump sum as may be so specified;
 - (d) an order requiring the parent to transfer to the guardian or other guardian for the benefit of the child, or to the child, such property as may be so specified, being property to which the parent is entitled, either in possession or reversion;
 - (e) an order requiring that a settlement of such property as may be so specified, being property to which the parent is so entitled, be made to the satisfaction of the court for the benefit of the child.

Orders for financial relief for persons over eighteen.

- 11D (1) If, on an application by a person who has attained the age of eighteen and whose parents are not living with each other in the same household, it appears to the High Court or a county court—

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

- (a) that the applicant is, will be or (if an order were made under this section) 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) that there are special circumstances which justify the making of an order under this section,

the court may make one or both of the orders mentioned in subsection (2) of this section.

- (2) The orders referred to in subsection (1) of this section are—
 - (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments and for such term, as may be specified in the order; and
 - (b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.
- (3) An application may not be made under this section by any person if, immediately before he attained the age of sixteen, a periodical payments order was in force with respect to him.
- (4) No order shall be made under this section at a time when the parents of the applicant are living with each other in the same household.
- (5) Any order made under this section requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.
- (6) An order under this section requiring the making of periodical payments may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (7) In subsection (3) of this section "periodical payments order" means an order made under—
 - (a) this Act,
 - (b) section 6(3) of the ^{M3}Family Law Reform Act 1969,
 - (c) section 23 or 27 of the ^{M4}Matrimonial Causes Act 1973,
 - (d) section 34 of the ^{M5}Children Act 1975, or
 - (e) Part I of the ^{M6}Domestic Proceedings and Magistrates' Courts Act 1978,
 for the making or securing of periodical payments.

Marginal Citations

- M3** 1969 c. 46.
- M4** 1973 c. 18.
- M5** 1975 c. 72.
- M6** 1978 c. 22.

Duration of orders for periodical payments.

- 12 (1) The term to be specified in an order for periodical payments made by virtue of section 11B(2)(a) or (b) or 11C(3)(a) or (b) of this Act in favour of a child may begin

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

with the date of the making of an application for the order in question or any later date; but—

- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the ^{M7}Education Act 1944 together with any Order in Council made under that section) unless the court thinks it right in the circumstances in the case to specify a later date: and
- (b) shall not in any event, subject to subsection (2) below, extend beyond the date of the child's eighteenth birthday.

(2) Paragraph (b) of subsection (1) above shall not apply in the case of a child if it appears to the court that—

- (a) the child is, will be or (if an order were made without complying with that paragraph) 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 without complying with that paragraph.

(3) An order for periodical payments made by virtue of section 11B(2)(a) or 11C(3)(a) of this Act shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

Marginal Citations

M7 1944 c. 31.

Matters to which court is to have regard in making orders for financial relief.

12A In deciding whether to exercise its powers under section 11B, 11C or 11D of this Act and, if so, in what manner, the court shall have regard to all the circumstances of the case including the following matters, that is to say—

- (a) the income, earning capacity, property and other financial resources which the mother or father of the child has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which the mother or father of the child has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity (if any), property and other financial resources of the child;
- (e) any physical or mental disability of the child.

Provisions relating to lump sums.

12B (1) Without prejudice to the generality of sections 11B and 11C of this Act, an order under any of those provisions for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred before the making of the order to be met, being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child.

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

- (2) The amount of any lump sum required to be paid by an order made by the magistrates' court under section 11B, 11C or 11D of this Act shall not exceed £500 or such larger amount as the Secretary of State may from time to time by order fix for the purposes of this subsection.

Any order made by the Secretary of State under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) The power of the court under section 11B, 11C or 11D of this Act to vary or discharge an order for the making or securing of periodical payments by a parent shall include power to make an order under the said section 11B, 11C or 11D, as the case may be, for the payment of a lump sum by that parent.
- (4) The amount of any lump sum which a parent may be required to pay by virtue of subsection (3) above shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under subsection (2) above, but a magistrates court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the parent was required to pay a lump sum by a previous order under this Act.
- (5) An order made under section 11B, 11C or 11D of this Act for the payment of a lump sum may provide for the payment of that sum by instalments and where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable

Variation etc, of orders for periodical payments.

- 12C (1) In exercising its powers under section 11B, 11C or 11D of this Act to vary or discharge an order for the making or securing of periodical payments 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.
- (2) The power of the court under section 11B, 11C or 11D of this Act to vary an order for the making or securing of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.
- (3) Where on an application under section 11B, 11C or 11D of this Act for the variation or discharge of an order for the making or securing of periodical payments the court varies the payment required to be made under that order, 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.
- (4) An application for the variation of an order made under section 11B or 11C of this Act for the making or securing of periodical payments to or for the benefit of a child may, if the child has attained the age of sixteen, be made by the child himself.
- (5) Where an order for the making of periodical payments made under section 11B or 11C of this Act ceases to have effect on the date on which 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, the child may apply—

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

- (a) in the case of an order made by the High Court of a county court, to the court which made the order, or
 - (b) in the case of an order made by a magistrates' court, to the High Court or a county court,
- for an order for the revival of the first mentioned order.
- (6) If on such an application it appears to the High Court or county 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 first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application.
- (7) Any order made under section 11B or 11C of this Act by the High Court or a county court which is revived by an order under subsection (5) above may be varied or discharged under section 11B or 11C of this Act, as the case may be, on the application of any person by whom or to whom payments are required to be made under the order.
- (8) Any order made under section 11B or 11C of this Act by a magistrates' court which is revived by an order of the High Court or a county court under subsection (5) above—
 - (a) for the purposes of the variation and discharge of the order, shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order; and
 - (b) for the purposes of the enforcement of the order, shall be treated as an order of the magistrates' court by which the order was originally made.

Variation of order for secured periodical payments after death of parent.

- 12D
- (1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent, and no application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.
 - (2) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (1) of this section on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this section.
 - (3) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

which the court is required to have regard under section 12C(1) of this Act shall include the changed circumstances resulting from the death of that parent.

- (4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- (5) In this section “secured periodical payments order” means an order for secured periodical payments made by virtue of section 11B(2)(b) or 11C(3)(b) of this Act.

Enforcement of orders for custody and maintenance.

- 13 (1) Where an order made by a magistrates’ court under this Act contains a provision committing to any person the actual custody of any child, a copy of the order may be served on any person in whose actual custody the child may for the time being be, and thereupon the provision may, without prejudice to any other remedy open to the person given the custody, be enforced under section 63(3) of the Magistrates’ Courts Act 1980 as if it were an order of the court requiring the person so served to give up the child to the person given the custody.
- (2) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a magistrates’ court under this Act shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Any order for the payment of money made by a magistrates’ court under this Act shall be enforceable as a magistrates’ court maintenance order within the meaning of section 150(1) of the ^{M8}Magistrates’ Courts Act 1980.

Marginal Citations

M8 1980 c. 43.

Restriction on removal of child from England and Wales.

- 13A (1) Where the court makes—
 - (a) an order under section 9 or 10 of this Act regarding the legal custody of a child, or
 - (b) an interim order under section 2(4) of the Guardianship Act 1973 containing provision regarding the legal custody of a child, the court, on making the order or at any time while the order is in force, may, if an application is made under this section, by order direct that no person shall take the child out of England and Wales while the order under this section is in force, except with the leave of the court.
- (2) An order made under subsection (1) above may be varied or discharged by a subsequent order.

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Orders for custody and financial relief. (See end of Document for details)

- (3) An application for an order under subsection (1) above, or for the variation or discharge of such an order, may be made by any party to the proceedings in which the order mentioned in paragraph (a) or (b) of that subsection was made.

Direction for settlement of instrument by conveyancing counsel.

- 13B —Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties.

Changes to legislation:

There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross
Heading: Orders for custody and financial relief.