

Matrimonial Proceedings (Children) Act, 1958

6 & 7 ELIZ. 2 Ch. 40

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CH. 40

*Matrimonial Proceedings
(Children) Act, 1958*

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CHAPTER 40

An Act to extend the powers of courts to make orders in respect of children in connection with proceedings between husband and wife and to require arrangements with respect to children to be made to the satisfaction of the court before the making of a decree in such proceedings. [7th July, 1958]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

JURISDICTION IN ENGLAND AND WALES

1.—(1) Subject to the provisions of this section, section twenty-six of the Matrimonial Causes Act, 1950 (which enables the High Court to provide for the custody, maintenance and education of the children of the parties to matrimonial proceedings), shall apply in relation to a child of one party to the marriage (including an illegitimate or adopted child) who has been accepted as one of the family by the other party as it applies in relation to a child of both parties. Extension of jurisdiction of Divorce Court to further classes of children.

(2) In considering whether any and what provision should be made by virtue of the foregoing subsection for requiring any party to make any payment towards the maintenance or education of a child who is not his own, the court shall have regard to the extent, if any, to which that party had, on or after the acceptance of the child as one of the family, assumed responsibility for the child's maintenance and to the liability of any person other than a party to the marriage to maintain the child.

PART I
—cont.

(3) It is hereby declared that the reference in subsection (2) of the said section twenty-six to the children of the petitioner and respondent includes a reference to any illegitimate child of the petitioner and respondent.

(4) In subsection (1) of section twenty-three of the said Act (under which a husband guilty of wilful neglect to maintain his wife or the infant children of the marriage may be ordered to make periodical payments to his wife) the reference to the infant children of the marriage shall be construed as including a reference to an illegitimate child of both parties to the marriage.

(5) In this section “ adopted child ” means a child adopted in pursuance of an adoption order made under the Adoption Act, 1950, or any enactment repealed by that Act, or under any corresponding enactment of the Parliament of Northern Ireland.

(6) This section shall not apply in relation to proceedings instituted before the commencement of this Part of this Act.

Restrictions
on grant of
relief in
proceedings
for divorce
etc. involving
welfare of
children.

2.—(1) Subject to the provisions of this section, in any proceedings for divorce, nullity of marriage or judicial separation where the High Court has, by virtue of subsection (1) of section twenty-six of the Matrimonial Causes Act, 1950, jurisdiction in relation to any child, the court shall not make absolute any decree for divorce or nullity of marriage or pronounce a decree of judicial separation unless and until the court is satisfied as respects every such child who has not attained the age of sixteen years—

(a) that arrangements have been made for the care and upbringing of the child and that those arrangements are satisfactory or are the best which can be devised in the circumstances, or

(b) that it is impracticable for the party or parties appearing before the court to make any such arrangements.

(2) The court may if it thinks fit proceed without observing the requirements of the foregoing subsection if it appears that there are circumstances making it desirable that the decree nisi should be made absolute, or, as the case may be, that the decree for judicial separation should be pronounced, without delay and if the court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the court within a specified time.

(3) In subsection (2) of section two of the said Act (which requires the judge in determining an application for leave to present a petition for divorce before the expiration of three years from the date of the marriage to have regard to the interests of any children of the marriage) the reference to any children of the marriage shall be construed as including a reference to any other child in relation to whom the court would have jurisdiction by virtue of subsection (1) of the said section twenty-six in proceedings instituted by the petition.

(4) Subsection (1) of this section shall not apply in relation to proceedings instituted before the commencement of this Part of this Act.

PART I
—cont.

3.—(1) Where proceedings instituted after the commencement of this Part of this Act in the High Court for divorce, nullity of marriage or judicial separation are dismissed at any stage after the beginning of the trial, the court may, either forthwith or within a reasonable period after the proceedings have been dismissed, make such provision with respect to the custody, maintenance and education of any child as could be made in the case of that child under subsection (1) of section twenty-six of the Matrimonial Causes Act, 1950, if the proceedings were still before the court.

Power of
Divorce Court
to provide for
children on
dismissal of
proceedings for
divorce etc.

(2) Where an order has been made under the foregoing subsection as respects a child, the court may from time to time make further provision with respect to his custody, maintenance and education.

4.—(1) Where the court makes an order after the commencement of this Part of this Act under subsection (1) of section twenty-three of the Matrimonial Causes Act, 1950, the court shall also have jurisdiction from time to time to make such provision as appears just with respect to the custody of any such child as is referred to in that subsection (and, as in a case under the last foregoing section, with respect to access to the child), but the jurisdiction conferred by this subsection, and any order made in exercise of that jurisdiction, shall have effect only as respects any period when an order is in force under subsection (1) of the said section twenty-three.

Power of
Divorce Court
to provide
for children
in proceedings
for main-
tenance.

(2) In any case where the court would have power, on an application made under subsection (1) of the said section twenty-three, to order the husband to make to the wife periodical payments for the maintenance of any such child as is referred to in that subsection, the court may, if it thinks fit, order those payments to be made to the child, or to any other person for the benefit of the child, instead of to the wife; and the reference to the wife in subsection (2) of that section (which relates to security for maintenance) shall be construed accordingly.

5.—(1) Where the court has jurisdiction to make provision as to the custody of a child, either by virtue of section twenty-six of the Matrimonial Causes Act, 1950, or of this Part of this Act and it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or to any other individual, the court may if it thinks fit make an order committing the care of the child to the council of a county or county borough (hereinafter referred to as the local authority) and thereupon Part II of the Children Act, 1948

Power of
Divorce Court
to commit
children to
care of local
authority.

PART I
—cont.

(which relates to the treatment of children in the care of a local authority), shall, subject to the provisions of this section, apply as if the child had been received by the local authority into their care under section one of that Act.

(2) The authority specified in an order under this section shall be the council of the county or county borough in which the child was, in the opinion of the court, resident before the order was made to commit the child to the care of a local authority, and the court shall before making an order under this section hear any representations from the local authority, including any representations as to the making of an order for payments for the maintenance and education of the child.

(3) While an order made by virtue of this section is in force with respect to any child, the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.

(4) An order made by virtue of this section shall cease to have effect as respects any child when that child attains the age of eighteen years and the court shall not make an order committing a child to the care of a local authority under this section after he has attained the age of seventeen years.

(5) In the application of the said Part II of the Children Act, 1948, under this section—

- (a) the exercise by the local authority of their powers under sections twelve to sixteen of that Act shall be subject to any directions given by the court, and
- (b) section seventeen of that Act (which relates to arrangements for the emigration of a child under the care of a local authority) shall not apply.

(6) If a child who is committed to the care of a local authority under this section comes under the control of any person or authority under the provisions of the Mental Deficiency Acts, 1913 to 1938, or the Lunacy and Mental Treatment Acts, 1890 to 1930, he shall thereupon cease to be committed to the care of the local authority under this section.

(7) It shall be the duty of any parent or guardian of a child committed to the care of a local authority under this section to secure that the local authority are informed of his address for the time being and a person who knowingly fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding five pounds.

(8) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

6.—(1) Where the court has jurisdiction to provide for the custody of a child under section twenty-six of the Matrimonial Causes Act, 1950, or this Part of this Act and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of an officer appointed under this section as a welfare officer or under the supervision of a local authority.

PART I
—cont.
Power of
Divorce Court
to provide for
supervision
of children.

(2) Where the court makes an order under this section for supervision by a welfare officer, the officer responsible for carrying out the order shall be such probation officer as may be selected under arrangements made by the Secretary of State and where an order is for supervision by a local authority, that authority shall be the council of a county or county borough selected by the court and specified in the order.

(3) This section shall be included among the enactments specified in subsection (1) of section thirty-nine of the Children Act, 1948 (which lists the functions which are matters for the children's committee of a local authority and in respect of which grants are payable under section forty-seven of that Act), and a local authority shall discharge the duties conferred on them by an order under this section through an officer employed in connection with those functions.

(4) The court shall not have power to make an order under this section as respects a child who in pursuance of an order under the last foregoing section is in the care of a local authority.

(5) Where a child is under the supervision of any person in pursuance of this section the jurisdiction possessed by a court to vary any order made with respect to the child's custody, maintenance or education under section twenty-six of the Matrimonial Causes Act, 1950, or this Part of this Act shall, subject to any rules of court, be exercisable at the instance of the court itself.

(6) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

PART II

JURISDICTION IN SCOTLAND

7.—(1) Subject to the provisions of this section, the power of the court in an action for divorce, nullity of marriage or separation to make orders providing for the custody, maintenance and

Extension of
jurisdiction of
the court to
further classes
of children.

PART II
—cont.

education of any child of the marriage to which the action relates shall apply in relation to any child who—

(a) is the illegitimate child of both parties to the marriage, or

(b) is the child of one party to the marriage (including an illegitimate or an adopted child) and has been accepted as one of the family by the other party,

as it applies in relation to a child of the marriage.

(2) In considering whether any and what provision should be made by virtue of the foregoing subsection for requiring any party to make any payment towards the maintenance or education of a child who is not his own, the court shall have regard to the extent, if any, to which that party had, on or after the acceptance of the child as one of the family, assumed responsibility for the child's maintenance and to the liability of any person other than a party to the marriage to maintain the child.

(3) In this section "adopted child" means a child adopted in pursuance of an adoption order made under the Adoption Act, 1950, or any enactment repealed by that Act, or under any corresponding enactment of the Parliament of Northern Ireland.

(4) This section shall not apply in relation to actions commenced before the commencement of this Part of this Act.

Duty of court in actions of divorce, etc., to consider arrangements for children's welfare before granting decree.

8.—(1) Subject to the provisions of this section, in any action for divorce, nullity of marriage or separation the court shall not grant decree of divorce, nullity of marriage or separation unless and until the court is satisfied as respects every child for whose custody, maintenance and education the court has jurisdiction to make provision in that action—

(a) that arrangements have been made for the care and upbringing of the child and that those arrangements are satisfactory or are the best which can be devised in the circumstances; or

(b) that it is impracticable for the party or parties appearing before the court to make any such arrangements.

(2) The court may, if it thinks fit, proceed to grant decree of divorce, nullity of marriage or separation without observing the requirements of the foregoing subsection if it appears that there are circumstances making it desirable that decree should be granted without delay and if the court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the court within a specified time.

(3) This section shall not apply in relation to actions commenced before the commencement of this Part of this Act.

9.—(1) Where an action commenced after the commencement of this Part of this Act for divorce, nullity of marriage or separation is dismissed at any stage after proof on the merits of the action has been allowed or decree of absolutor is granted therein, the court before which the action was brought, may, either forthwith or within a reasonable time after the action has been dismissed or decree of absolutor granted therein, make such provision with respect to the custody, maintenance and education of any child as could be made in the case of that child if the action were still before the court.

PART II
—cont.

Jurisdiction of court as respects children where action dismissed or in case of non-adherence.

(2) Where one party to a marriage is in default in obtempering a decree of adherence the court by which the decree was granted shall have power to make, on the application of the other party, such provision with respect to the custody, maintenance and education of any child as could be made in the case of that child in an action for separation between the parties.

10.—(1) Where it appears to the court as respects any child for whose custody, maintenance and education it has jurisdiction to make provision in connection with an action for divorce, nullity of marriage or separation brought before it that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage, the court may, if it thinks fit, make an order committing the care of the child to any other individual or to a local authority.

Power of court in actions of divorce, etc., to commit care of child to local authority or an individual.

(2) Where the court commits the care of the child to a local authority the authority specified in the order shall be the council of the county or large burgh in which the child was, in the opinion of the court, resident before the order was made; and the court shall before making the order hear any representations from the authority, including any representations as to the making of an order for payments for the maintenance and education of the child.

(3) While an order under this section committing the care of a child to a local authority is in force with respect to any child, the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.

(4) On the making of an order under this section committing the care of a child to a local authority, Part II of the Children Act, 1948 (which relates to the treatment of children in care of local authorities) shall, subject to the provisions of this section, apply as if the child had been received by the local authority into their care under section one of that Act, so however that—

(a) the exercise by the local authority of their powers under sections twelve to sixteen of that Act shall be subject to any directions given by the court; and

PART II
—cont.

(b) section seventeen of that Act (which relates to arrangements for the emigration of a child under the care of a local authority) shall not apply.

(5) If a child who is committed to the care of a local authority under this section comes under the control of any person or authority under the provisions of the Mental Deficiency (Scotland) Acts, 1913 and 1940, or the Lunacy (Scotland) Acts, 1857 to 1919, he shall thereupon cease to be committed to the care of the local authority under this section.

(6) It shall be the duty of any parent or guardian of a child committed to the care of a local authority under this section to secure that the local authority are informed of his address for the time being; and a person who knowingly fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding five pounds.

Reports as to
arrangements
for future
care and
upbringing
of children.

11.—(1) For the purpose of satisfying itself as to the proposed arrangements for the care and upbringing of any child as to whose custody, maintenance and education the court has jurisdiction to make orders, the court may, without prejudice to its power to appoint any other person for the purpose, appoint an officer designated under this section to investigate and report to the court on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.

(2) For the purposes of this section the sheriff shall, after consultation with the county council or the town council, as the case may be, designate for each county and for each large burgh one or more suitable officers, being probation officers or, if the council consents to their being so designated, officers employed by the council, and shall from time to time cause to be furnished to the Principal Clerk of Session and to each sheriff clerk a list of the officers so designated by him.

In this subsection the expression “sheriff” does not include a sheriff substitute.

(3) Notwithstanding anything in any enactment or in his terms of appointment a probation officer may be designated for the purposes of this section and, if so designated, shall act accordingly.

(4) If on consideration of a report furnished in pursuance of subsection (1) of this section the court, either *ex proprio motu* or on the application of any person concerned, thinks it expedient to do so, it may require the person who furnished the report to appear and to be examined on oath regarding any matter dealt with in the report, and such person may be examined or cross-examined accordingly.

(5) Any expenses incurred in connection with the preparation of a report by a designated officer under this section shall form part of the expenses of the action and be defrayed by such party to the action as the court may direct, and the court may certify the amount of the expenses so incurred.

PART II
—cont.

12.—(1) If it appears to the court as respects any child for whose custody it has power to make provision in connection with an action for divorce, nullity of marriage or separation that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is committed to the custody of any person, make an order placing the child under the supervision of a probation officer or of a local authority.

Power of court
to provide for
supervision
of child

(2) Where the court makes an order under this section for supervision by a local authority that authority shall be the council of a county or large burgh selected by the court and specified in the order.

(3) This section shall be included among the enactments specified in subsection (1) of section thirty-nine of the Children Act, 1948 (which lists the functions which are matters for the children's committee of a local authority and in respect of which grants are payable under section forty-seven of that Act), and a local authority shall discharge the duties conferred on them by an order under this section through an officer employed in connection with those functions.

(4) The court shall not have power to make an order under this section as respects a child who in pursuance of an order under section ten of this Act is in the care of a local authority.

13.—(1) At any time after the commencement of an action in connection with which the court would have jurisdiction to make orders with respect to the custody, maintenance and education of any child, either party to the action or the guardian of the child in relation to whom such orders may be made or any person who has or who wishes to obtain under an order of the court the custody or care of such child may apply to the Court of Session to grant interim interdict prohibiting the removal of the child furth of Scotland or out of the control of the person in whose custody the child is; and on such application that Court, if it is satisfied that there is a likelihood that the child will be so removed, shall have power to grant interim interdict accordingly.

Power to
prohibit in
certain cases
removal of
child furth
of Scotland
or out of
control of
person having
custody of him.

(2) For the purposes of this section an action shall be held to commence in the Court of Session when the summons is signed and in the sheriff court when the warrant of citation is signed.

PART II
—cont.

Provisions as to actions of nullity of marriage, as to custody and access, and as to orders.

14.—(1) In any action for declarator of nullity of marriage the Court of Session shall have the like power to make orders providing for the custody, maintenance and education of children as it has under section nine of the Conjugal Rights (Scotland) Amendment Act, 1861, in any action for separation or divorce.

(2) Any power exercisable by the court to make provision as to the custody of a child shall include power to commit the custody of the child to a person other than his parent and to make provision as to access whether or not provision is made for legal custody.

(3) Any order made by the court under this Part of this Act may from time to time be varied or may be revoked by a subsequent order made thereunder by the court either *ex proprio motu* or on the application of any person concerned.

Interpretation of Part II.

15. In this Part of this Act, the expression “the court” means the Court of Session or the sheriff, the expression “child” means a child under sixteen years of age, and the expression “large burgh” has the like meaning as in the Local Government (Scotland) Act, 1947; and for the purposes of this Part of this Act a small burgh shall be included in the county in which it is situated.

PART III

GENERAL

Expenses.

16. There shall be paid out of moneys provided by Parliament any increase attributable to this Act in the sums payable out of moneys so provided—

- (a) under section forty-seven of the Children Act, 1948, or
- (b) under Part I of the Local Government Act, 1948, or the Local Government (Financial Provisions) (Scotland) Act 1954, as amended by the Valuation and Rating (Scotland) Act, 1956.

Application of enactments regulating the enforcement of maintenance orders.

17. Any order for maintenance or other payments made by virtue of this Act or any corresponding enactment of the Parliament of Northern Ireland shall be included among the orders to which section sixteen of the Maintenance Orders Act, 1950, applies (which section specifies the maintenance orders which are enforceable under Part II of that Act) and, in the case of an order made by virtue of Part I of this Act, shall be a maintenance order within the meaning of the Maintenance Orders Act, 1958.

Short title, extent and commencement.

18.—(1) This Act may be cited as the Matrimonial Proceedings (Children) Act, 1958.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended or extended by any other Act, including this Act.

(3) This Act (except so far as it affects Part II of the Maintenance Orders Act, 1950) shall not extend to Northern Ireland.

PART III
—cont.

(4) Part I of this Act shall come into force on such day as may be appointed by the Lord Chancellor by an order contained in a statutory instrument and Part II of this Act shall come into force on such day as may be appointed by the Secretary of State by such an order.



Tables of Statutes referred to in this Act

Short Title	Session and Chapter
Conjugal Rights (Scotland) Amendment Act, 1861	24 & 25 Vict. c. 86.
Local Government (Scotland) Act, 1947 ...	10 & 11 Geo. 6. c. 43.
Local Government Act, 1948	11 & 12 Geo. 6. c. 26.
Children Act, 1948	11 & 12 Geo. 6. c. 43.
Matrimonial Causes Act, 1950	14 Geo. 6. c. 25.
Adoption Act, 1950	14 Geo. 6. c. 26.
Maintenance Orders Act, 1950	14 Geo. 6. c. 37.
Local Government (Financial Provisions) (Scotland) Act, 1954.	2 & 3 Eliz. 2. c. 13.
Valuation and Rating (Scotland) Act, 1956 ...	4 & 5 Eliz. 2. c. 60.
Maintenance Orders Act, 1958	6 & 7 Eliz. 2. c. 39.

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