



# Family Law Act 1986

## 1986 CHAPTER 55

### PART I

#### CHILD CUSTODY

#### CHAPTER I

##### PRELIMINARY

### **1 Orders to which Part I applies.**

- (1) Subject to the following provisions of this section, in this Part “custody order” means—
- (a) an order made by a court in England and Wales under any of the following enactments—
    - (i) section 9(1), 10(1)(a), 11(a) or 14A(2) of the Guardianship of Minors Act 1971 or section 2(4)(b) or 2(5) of the Guardianship Act 1973;
    - (ii) section 42(1) of the Matrimonial Causes Act 1973;
    - (iii) section 42(2) of the Matrimonial Causes Act 1973;
    - (iv) section 33(1) of the Children Act 1975 or section 2(4)(b) of the Guardianship Act 1973 as applied by section 34(5) of the Children Act 1975;
    - (v) section 8(2) or 19(1)(ii) of the Domestic Proceedings and Magistrates' Courts Act 1978;
  - (b) an order made by a court of civil jurisdiction in Scotland under any enactment or rule of law with respect to the custody, care or control of a child, access to a child or the education or upbringing of a child, excluding—
    - (i) an order committing the care of a child to a local authority or placing a child under the supervision of a local authority;
    - (ii) an adoption order as defined in section 12(1) of the Adoption (Scotland) Act 1978;

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- (iii) an order freeing a child for adoption made under section 18 of the said Act of 1978;
  - (iv) an order for the custody of a child made in the course of proceedings for the adoption of the child (other than an order made following the making of a direction under section 53(1) of the Children Act 1975);
  - (v) an order made under the Education (Scotland) Act 1980;
  - (vi) an order made under Part II or III of the Social Work (Scotland) Act 1968;
  - (vii) an order made under the Child Abduction and Custody Act 1985;
  - (viii) an order for the delivery of a child or other order for the enforcement of a custody order;
  - (ix) an order relating to the tutory or curatory of a child;
  - (c) an order made by a court in Northern Ireland under any of the following enactments—
    - (i) section 5 of the Guardianship of Infants Act 1886 (except so far as it relates to costs);
    - (ii) Article 45(1) of the Matrimonial Causes (Northern Ireland) Order 1978;
    - (iii) Article 45(2) of the Matrimonial Causes (Northern Ireland) Order 1978;
    - (iv) Article 10(2) or 20(1)(ii) of the Domestic Proceedings (Northern Ireland) Order 1980;
  - (d) an order made by the High Court in the exercise of its jurisdiction relating to wardship so far as it gives the care and control of a child to any person or provides for the education of, or for access to, a child, excluding an order relating to a child of whom care or care and control is (immediately after the making of the order) vested in a local authority or in the Northern Ireland Department of Health and Social Services.
- (2) In this Part “custody order” does not include—
- (a) an order within subsection (1)(a) or (c) above which varies or revokes a previous order made under the same enactment;
  - (b) an order under section 14A(2) of the Guardianship of Minors Act 1971 which varies a previous custody order; or
  - (c) an order within paragraph (d) of subsection (1) above which varies or revokes a previous order within that paragraph.
- (3) Subject to sections 32 and 40 of this Act, in this Part “custody order” does not include any order which—
- (a) was made before the date of the commencement of this Part;
  - (b) in the case of an order within subsection (1)(b) or (d) above or an order under any of the enactments mentioned in subsection (4) below, is made on or after that date on an application made before that date, or
  - (c) in any other case, is made on or after that date in proceedings commenced before that date.
- (4) The said enactments are—
- (a) sections 9(1) and 14A(2) of the Guardianship of Minors Act 1971 and section 33(1) of the Children Act 1975; and
  - (b) section 5 of the Guardianship of Infants Act 1886.

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- (5) For the purposes of subsection (3) above an order made on two or more applications which are determined together shall be regarded as made on the first of those applications.
- (6) Provision may be made by act of sederunt prescribing, in relation to orders within subsection (1)(b) above, what constitutes an application for the purposes of this Part.

## CHAPTER II

### JURISDICTION OF COURTS IN ENGLAND AND WALES

#### **2 Jurisdiction in cases other than divorce, etc.**

- (1) A court in England and Wales shall not have jurisdiction to make a custody order within section 1(1)(a) of this Act, other than one under section 42(1) of the Matrimonial Causes Act 1973, unless the condition in section 3 of this Act is satisfied.
- (2) The High Court in England and Wales shall have jurisdiction to make a custody order within section 1(1)(d) of this Act if, and only if,—
  - (a) the condition in section 3 of this Act is satisfied, or
  - (b) the ward is present in England and Wales on the relevant date (within the meaning of section 3(6) of this Act) and the court considers that the immediate exercise of its powers is necessary for his protection.

#### **3 Habitual residence or presence of child.**

- (1) The condition referred to in section 2 of this Act is that on the relevant date the child concerned—
  - (a) is habitually resident in England and Wales, or
  - (b) is present in England and Wales and is not habitually resident in any part of the United Kingdom,and, in either case, the jurisdiction of the court is not excluded by subsection (2) below.
- (2) For the purposes of subsection (1) above, the jurisdiction of the court is excluded if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in a court in Scotland or Northern Ireland in respect of the marriage of the parents of the child concerned.
- (3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
  - (a) an order under section 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(I)), or
  - (b) an order under section 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in England and Wales,and that order is in force.
- (4) Subject to subsections (5) and (6) below, in this section “the relevant date” means the date of the commencement of the proceedings in which the custody order falls to be made.

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- (5) In a case where an application is made for a custody order under section 9(1) or 14A(2) of the Guardianship of Minors Act 1971 or section 33(1) of the Children Act 1975, “the relevant date” means the date of the application (or first application, if two or more are determined together).
- (6) In the case of a custody order within section 1(1)(d) of this Act “the relevant date” means—
  - (a) where an application is made for an order, the date of the application (or first application, if two or more are determined together), and
  - (b) where no such application is made, the date of the order.

#### **4 Jurisdiction in divorce proceedings, etc.**

- (1) The enactments relating to the jurisdiction of courts in England and Wales to make orders under section 42(1) of the Matrimonial Causes Act 1973 shall have effect subject to the modifications provided for by this section.
- (2) In section 42(1)(b) of that Act (which enables orders as to custody and education to be made immediately, or within a reasonable period, after the dismissal of proceedings for divorce, etc.) for the words “within a reasonable period” there shall be substituted the words “(if an application for the order is made on or before the dismissal)”.
- (3) A court shall not have jurisdiction to make a custody order under section 42(1)(a) of that Act after the grant of a decree of judicial separation if on the relevant date, proceedings for divorce or nullity in respect of the marriage concerned are continuing in Scotland or Northern Ireland.
- (4) Subsection (3) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
  - (a) an order under section 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
  - (b) an order made under section 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in England and Wales,
 and that order is in force.
- (5) Where a court—
  - (a) has jurisdiction to make a custody order under section 42(1) of the Matrimonial Act 1973 in or in connection with proceedings for divorce, nullity of marriage or judicial separation, but
  - (b) considers that it would be more appropriate for matters relating to the custody of the child to be determined outside England and Wales,
 the court may by order direct that, while the order under this subsection is in force, no custody order under section 42(1) with respect to the child shall be made by any court in or in connection with those proceedings.
- (6) In this section “the relevant date” means—
  - (a) where an application is made for a custody order under section 42(1)(a), the date of the application (or first application, if two or more are determined together), and
  - (b) where no such application is made, the date of the order.

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

- (1) A court in England and Wales which has jurisdiction to make a custody 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 custody order, or for the variation of a custody order, it appears to the court—
  - (a) that proceedings with respect to the matters to which the application relates are continuing outside England and Wales, or
  - (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside England and Wales,the court may stay the proceedings on the application.
- (3) The court may remove a stay granted in accordance with subsection (2) 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.
- (4) Nothing in this section shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

## **6 Duration and variation of custody orders.**

- (1) If a custody order made by a court in Scotland or Northern Ireland (or a variation of such an order) comes into force with respect to a child at a time when a custody order made by a court in England and Wales has effect with respect to him, the latter order shall cease to have effect as far as it makes provision for any matter for which the same or different provision is made (or by the variation of) the order made by the court in Scotland and Northern Ireland.
- (2) Where by virtue of subsection (1) above a custody order has ceased to have effect so far as it makes provision for any matter, a court in England and Wales shall not have jurisdiction to vary that order so as to make provision for that matter.
- (3) A court in England and Wales shall not have jurisdiction—
  - (a) to vary a custody order, other than one made under section 42(1)(a) of the Matrimonial Causes Act 1973, or
  - (b) after the grant of a decree of judicial separation, to vary a custody order made under section 42(1)(a) of that Act,if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in Scotland and Northern Ireland in respect of the marriage of the parents of the child concerned.
- (4) Subxsection (3) above shall not apply if the court in which the proceedings there referred to are continuing has made—
  - (a) an order under section 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
  - (b) an order made under section 14(2) or 22(2) of this Act which is recorded ad made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in England and Wales,and that order in force.

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- (5) Subsection (3) above shall not apply in the case of a variation of a custody order within section 1(1)(d) of this Act if the ward is present in England and Wales on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.
- (6) Where any person who is entitled to the actual possession of a child under a custody order made by a court in England and Wales ceases to be so entitled by virtue of subsection (1) above, then, if there is in force an order for the supervision of that child made under—
- (a) section 7(4) of the Family Law Reform Act 1969,
  - (b) section 44 of the Matrimonial Causes Act 1973,
  - (c) section 2(2)(a) of the Guardianship Act 1973,
  - (d) section 34(5) or 36(3)(b) of the Children Act 1975, or
  - (e) section 9 of the Domestic Proceedings and Magistrates' Courts Act 1978,
- that order shall cease to have effect.
- (7) In this section “the relevant date” means—
- (a) where an application is made for a variation, the date of the application (or first application, if two or more are determined together), and
  - (b) where no such application is made, the date of the variation.

## 7 Interpretation of Chapter II.

In this Chapter “child” means a person who has not attained the age of eighteen.

## CHAPTER III

### JURISDICTION OF COURTS IN SCOTLAND

## 8 Jurisdiction in independent proceedings.

A court in Scotland may entertain an application for a custody order otherwise than in matrimonial proceedings only if it has jurisdiction under section 9, 10, 12 or 15(2) of this Act.

## 9 Habitual residence.

Subject to section 11 of this Act, an application for a custody order otherwise than in matrimonial proceedings may be entertained by—

- (a) the Court of Session if, on the date of the application, the child concerned is habitually resident in Scotland;
- (b) the sheriff if, on the date of the application, the child concerned is habitually resident in the sheriffdom.

## 10 Presence of child.

Subject to section 11 of this Act, an application for a custody order otherwise than in matrimonial proceedings may be entertained by—

- (a) the Court of Session if, on the date of the application, the child concerned—

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- (i) is present in Scotland; and
- (ii) is not habitually resident in any part of the United Kingdom;
- (b) the sheriff if, on the date of the application,—
  - (i) the child is present in Scotland;
  - (ii) the child is not habitually resident in any part of the United Kingdom; and
  - (iii) either the pursuer or the defender in the application is habitually resident in the sheriffdom.

## **11 Provisions supplementary to sections 9 and 10.**

- (1) Subject to subsection (2) below, the jurisdiction of the court to entertain an application for a custody order with respect to a child by virtue of section 9, 10 or 15(2) of this Act is excluded if, on the date of the application, matrimonial proceedings are continuing in a court in any part of the United Kingdom in respect of the marriage of the parents of the child.
- (2) Subsection (1) above shall not apply in relation to an application for a custody order if the court in which the matrimonial proceedings are continuing has made one of the following orders, that is to say—
  - (a) an order under section 4(5), 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(ii)); or
  - (b) an order under section 5(2), 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in Scotland or, as the case may be, in another court in Scotland,and that order is in force.

## **12 Emergency jurisdiction.**

Notwithstanding that any other court, whether within or outside Scotland, has jurisdiction to entertain an application for a custody order, the Court of Session or the sheriff shall have jurisdiction to entertain such an application if—

- (a) the child concerned is present in Scotland or, as the case may be, in the sheriffdom on the date of the application; and
- (b) the Court of Session or sheriff considers that, for the protection of the child, it is necessary to make such an order immediately.

## **13 Jurisdiction ancillary to matrimonial proceedings.**

- (1) The jurisdiction of a court in Scotland to entertain an application for a custody order in matrimonial proceedings shall be modified by the following provisions of this section.
- (2) A court in Scotland shall not have jurisdiction, after the dismissal of matrimonial proceedings or after decree of absolvitor is granted therein, to entertain an application for a custody order under section 9(1) of the Matrimonial Proceedings (Children) Act 1958 unless the application therefor was made on or before such dismissal or the granting of the decree of absolvitor.
- (3) Where, after a decree of separation has been granted, an application is made in the separation process for a custody order, a court in Scotland shall not have jurisdiction

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to entertain that application if, on the date of the application, proceedings for divorce or nullity of marriage in respect of the marriage concerned are continuing in another court in the United Kingdom.

- (4) A court in Scotland shall not have jurisdiction to entertain an application for the variation of a custody order made under section 9(1) of the Matrimonial Proceedings (Children) Act 1958 if, on the date of the application, matrimonial proceedings in respect of the marriage concerned are continuing in another court in the United Kingdom.
- (5) Subsections (3) and (4) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
- (a) an order under section 4(5) or 21(5) of this Act or under subsection (6) below (not being an order made by virtue of paragraph (a)(ii) of that subsection), or
  - (b) an order under section 5(2), 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in Scotland or, as the case may be, in another court in Scotland,
- and that order is in force.
- (6) A court in Scotland which has jurisdiction in matrimonial proceedings to entertain an application for a custody order with respect to a child may make an order declining such jurisdiction if—
- (a) it appears to the court with respect to that child that—
    - (i) but for section 11(1) of this Act, another court in Scotland would have jurisdiction to entertain an application for a custody order, or
    - (ii) but for section 3(2), 6(3), 20(2) or 23(3) of this Act, a court in another part of the United Kingdom would have jurisdiction to make a custody order or an order varying a custody order; and
  - (b) the court considers that it would be more appropriate for matters relating to the custody of that child to be determined in that other court or part.
- (7) The court may recall an order made under subsection (6) above.

#### **14 Power of court to refuse application or sist proceedings.**

- (1) A court in Scotland which has jurisdiction to entertain an application for a custody order may refuse the application in any case where the matter in question has already been determined in other proceedings.
- (2) Where, at any stage of the proceedings on an application made to a court in Scotland for a custody order, it appears to the court—
- (a) that proceedings with respect to the matters to which the application relates are continuing outside Scotland or in another court in Scotland; or
  - (b) that it would be more appropriate for those matters to be determined in proceedings outside Scotland or in another court in Scotland and that such proceedings are likely to be taken there,
- the court may sist the proceedings on that application.



## **15 Duration, variation and recall of orders.**

- (1) Where, after the making by a court in Scotland of a custody order (“the existing order”) with respect to a child,—
  - (a) a custody order, or an order varying a custody order, competently made by another court in any part of the United Kingdom with respect to that child; or
  - (b) an order for the custody of that child which is made outside the United Kingdom and recognised in Scotland by virtue of section 26 of this Act,comes into force, the existing 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 the order of the other court in the United Kingdom or, as the case may be, the order so recognised.
- (2) Subject to sections 11(1) and 13(3) and (4) of this Act, a court in Scotland which has made a custody order (“the original order”) may, notwithstanding that it would no longer have jurisdiction to make the original order, make an order varying or recalling the original order; but if the original order has by virtue of subsection (1) above ceased to have effect so far as it makes provision for any matter, the court shall not have power to vary that order under this subsection so as to make provision for that matter.
- (3) In subsection (2) above, an order varying an original order means any custody order made with respect to the same child as the original order was made.
- (4) Where any person who is entitled to the custody of a child under a custody order made by a court in Scotland ceases to be so entitled by virtue of subsection (1) above, then, if there is in force an order made by a court in Scotland under section 12(1) of the Matrimonial Proceedings (Children) Act 1958 or section 11(1)(b) of the Guardianship Act 1973 providing for the supervision of that child by a local authority, that order shall cease to have effect.

## **16 Tutory and curatory.**

- (1) Subject to subsections (2) and (3) below, an application made after the commencement of this Part for an order relating to the tutory or curatory of a pupil or minor may be entertained by—
  - (a) the Court of Session if, on the date of the application, the pupil or minor is habitually resident in Scotland,
  - (b) the sheriff if, on the date of the application, the pupil or minor is habitually resident in the sheriffdom.
- (2) Subsection (1) above shall not apply to an application for the appointment or removal of a factor loco tutoris or of a curator bonis or any application made by such factor or curator.
- (3) Subsection (1) above is without prejudice to any other ground of jurisdiction on which the Court of Session or the sheriff may entertain an application mentioned therein.
- (4) Provision may be made by act of sederunt prescribing, in relation to orders relating to the tutory or curatory of a pupil or minor, what constitutes an application for the purposes of this Chapter.

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## **17 Orders for delivery of child.**

- (1) Subject to subsection (2) below, an application by one parent of a child for an order for the delivery of the child from the other parent, where the order is not sought to implement a custody order, may be entertained by the Court of Session or a sheriff if, but only if, the Court of Session or, as the case may be, the sheriff would have jurisdiction under this Chapter to make a custody order with respect to the child concerned.
- (2) Subsection (1) above is without prejudice to the grounds of jurisdiction on which the Court of Session or a sheriff may entertain an application by a parent who is entitled to the custody of a child for an order for the delivery of the child from a parent who is not so entitled.
- (3) Subsection (1) above shall apply to an application by one party to a marriage for an order for the delivery of the child concerned from the other party where the child is the child of one of the parties and has been accepted as one of the family by the other party as it applies to an application by one parent of a child for an order for the delivery of the child from the other parent.

## **18 Interpretation of Chapter III.**

- (1) In this Chapter—
  - “child” means a person who has not attained the age of sixteen;
  - “matrimonial proceedings” means proceedings for divorce, nullity of marriage or judicial separation.
- (2) In this Chapter, “the date of the application” means, where two or more applications are pending, the date of the first of those applications; and, for the purposes of this subsection, an application is pending until a custody order or, in the case of an application mentioned in section 16(1) of this Act, an order relating to the tutory or curatory of a pupil or minor, has been granted in pursuance of the application or the court has refused to grant such an order.

## **CHAPTER IV**

### JURISDICTION OF COURTS IN NORTHERN IRELAND

## **19 Jurisdiction in cases other than divorce, etc.**

- (1) A court in Northern Ireland shall not have jurisdiction to make a custody order within section 1(1)(c) of this Act, other than one under section 45(1) of the Matrimonial Causes (Northern Ireland) Act 1978, unless the condition in section 20 of this Act is satisfied.
- (2) The High Court in Northern Ireland shall have jurisdiction to make a custody order within section 1(1)(d) of this Act if, and only if,—
  - (a) the condition in section 20 of this Act is satisfied, or
  - (b) the ward is present in Northern Ireland on the relevant date (within the meaning of section 20(6) of this Act) and the court considers that the immediate exercise of its powers is necessary for his protection.

## **20 Habitual residence or presence of child.**

- (1) The condition referred to in section 19 of this Act is that on the relevant date the child concerned—
  - (a) is habitually resident in Northern Ireland, or
  - (b) is present in Northern Ireland and is not habitually resident in any part of the United Kingdom,and, in either case, the jurisdiction of the court is not excluded by subsection (2) below.
- (2) For the purposes of subsection (1) above, the jurisdiction of the court is excluded if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in a court in England and Wales or Scotland in respect of the marriage of the parents of the child concerned.
- (3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
  - (a) an order under section 4(5) 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 proceedings with respect to the custody of the child concerned to be taken in Northern Ireland,and that order is in force.
- (4) Subject to subsections (5) and (6) below, in this section “the relevant date” means the date of the commencement of the proceedings in which the custody order falls to be made.
- (5) In the case of a custody order under section 5 of the Guardianship of Infants Act 1886 “the relevant date” means the date of the application for the order (or first application, if two or more are determined together).
- (6) In the case of a custody order within section 1(1)(d) of this Act “the relevant date” means—
  - (a) where an application is made for an order, the date of the application (or first application, if two or more are determined together), and
  - (b) where no such application is made, the date of the order.

## **21 Jurisdiction in divorce proceedings, etc.**

- (1) The enactments relating to the jurisdiction of courts in Northern Ireland to make orders under section 45(1) of the Matrimonial Causes (Northern Ireland) Order 1978 shall have effect subject to the modifications provided for by this section.
- (2) In section 45(1)(b) of that Order (which enables orders as to custody and education to be made immediately, or within a reasonable period, after the dismissal of proceedings for divorce, etc.) for the words “within a reasonable period” there shall be substituted the words “(if an application for the order is made on or before the dismissal)”.
- (3) A court shall not have jurisdiction to make a custody order under section 45(1)(a) of that Order after the grant of a decree of judicial separation if on the relevant date, proceedings for divorce or nullity in respect of the marriage concerned are continuing in England and Wales or Scotland.

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- (4) Subsection (3) above shall not apply if the court in which the other proceedings there referred to are continuing has made—
- (a) an order under section 4(5) or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
  - (b) an order made under section 5(2) or 14(2) of this Act which is recorded as made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in Northern Ireland,
- and that order is in force.
- (5) Where a court—
- (a) has jurisdiction to make a custody order under section 45(1) of the Matrimonial Causes (Northern Ireland) Order 1978 in or in connection with proceedings for divorce, nullity of marriage or judicial separation, but
  - (b) considers that it would be more appropriate for matters relating to the custody of the child to be determined outside Northern Ireland,
- the court may by order direct that, while the order under this subsection is in force, no custody order under section 45(1) with respect to the child shall be made by any court in or in connection with those proceedings.
- (6) In this section “the relevant date” means—
- (a) where an application is made for a custody order under section 45(1)(a), the date of the application (or first application, if two or more are determined together), and
  - (b) where no such application is made, the date of the order.

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

- (1) A court in Northern Ireland which has jurisdiction to make a custody order may refuse an application for the order in any case where the matter in question has already been determined in proceedings outside Northern Ireland.
- (2) Where, at any stage of the proceedings on an application made to a court in Northern Ireland for a custody order, or for the variation of a custody order, it appears to the court—
  - (a) that proceedings with respect to the matters to which the application relates are continuing outside Northern Ireland, or
  - (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside Northern Ireland,
 the court may stay the proceedings on the application.
- (3) The court may remove a stay granted in accordance with subsection (2) 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.
- (4) Nothing in this section shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

## **23 Duration and variation of custody orders.**

- (1) If a custody 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 custody order made by a court in Northern Ireland has effect with respect to him, the latter order shall cease to have effect as far as it makes provision for any matter for which the same or different provision is made (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 custody 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.
- (3) A court in Northern Ireland shall not have jurisdiction—
  - (a) to vary a custody order, other than one made under Article 45(1)(a) of the Matrimonial Causes (Northern Ireland) Order 1978, or
  - (b) after the grant of a decree of judicial separation, to vary a custody order made under Article 45(1)(a) of that Order,if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in England and Wales or Scotland in respect of the marriage of the parents of the child concerned.
- (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 4(5) or 13(6) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
  - (b) an order made under section 5(2) or 14(2) of this Act which is recorded and made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in Northern Ireland,and that order in force.
- (5) Subsection (3) above shall not apply in the case of a variation of a custody order within section 1(1)(d) of this Act if the ward 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.
- (6) Where any person who is entitled to the actual possession of a child under a custody order made by a court in Northern Ireland ceases to be so entitled by virtue of subsection (1) above, then, if there is in force an order for the supervision of that 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,that order shall also cease to have effect.
- (7) In this section “the relevant date” means—
  - (a) where an application is made for a variation, the date of the application (or first application, if two or more are determined together), and
  - (b) where no such application is made, the date of the variation.

## **24 Interpretation of Chapter IV.**

In this Chapter “child” means a person who has not attained the age of eighteen.

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*Status: This is the original version (as it was originally enacted).*

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## CHAPTER V

### RECOGNITION AND ENFORCEMENT

#### **25 Recognition of custody orders: general.**

- (1) Where a custody 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 custody 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 custody 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.

#### **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 custody 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 custody 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 custody 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.

## **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.
- (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 custody 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 custody 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.

## **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.

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- (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—
  - (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;

“custody 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 custody 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, “custody 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 custody 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.
- (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.

## CHAPTER VI

### MISCELLANEOUS AND SUPPLEMENTAL

#### **33 Power to order disclosure of child’s whereabouts.**

- (1) Where in proceedings for or relating to a custody order in respect of a child there is not available to the court adequate information as to where the child is, the court may order any person who it has reason to believe may have relevant information to disclose it to the court.
- (2) A person shall not be excused from complying with an order under subsection (1) above by reason that to do so may incriminate him or his spouse of an offence; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.
- (3) A court in Scotland before which proceedings are pending for the enforcement of an order for the custody of a child made outside the United Kingdom which is recognised in Scotland shall have the same powers as it would have under subsection (1) above if the order were its own.

#### **34 Power to order recovery of child.**

- (1) Where—
- (a) a person is required by a custody order, or an order for the enforcement of a custody order, to give up a child to another person (“the person concerned”), and
  - (b) the court which made the order imposing the requirement is satisfied that the child has not been given up in accordance with the order,
- the court may make an order authorising an officer of the court or a constable to take charge of the child and deliver him to the person concerned.
- (2) The authority conferred by subsection (1) above includes authority—
- (a) to enter and search any premises where the person acting in pursuance of the order has reason to believe the child may be found, and
  - (b) to use such force as may be necessary to give effect to the purpose of the order.
- (3) Where by virtue of—

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- (a) section 13(1) of the Guardianship of Minors Act 1971, section 43(1) of the Children Act 1975 or section 33 of the Domestic Proceedings and Magistrates' Courts Act 1978, or
  - (b) Article 37 of the Domestic Proceedings (Northern Ireland) Order 1980,
- a custody order (or a provision of a custody order) may be enforced as if it were an order requiring a person to give up a child to another person, subsection (1) above shall apply as if the custody order had included such a requirement.
- (4) This section is without prejudice to any power conferred on a court by or under any other enactment or rule of law.

### **35 Powers to restrict removal of child from jurisdiction.**

- (1) In each of the following enactments (which enable courts to restrict the removal of a child from England and Wales)—
- (a) section 13A(1) of the Guardianship of Minors Act 1971,
  - (b) section 43A(1) of the Children Act 1975, and
  - (c) section 34(1) of the Domestic Proceedings and Magistrates' Courts Act 1978,
- for the words “England and Wales” there shall be substituted the words “the United Kingdom, or out of any part of the United Kingdom specified in the order,”.
- (2) In Article 38(1) of the Domestic Proceedings (Northern Ireland) Order 1980 (which enables courts to restrict the removal of a child from Northern Ireland) for the words “Northern Ireland” there shall be substituted the words “the United Kingdom, or out of any part of the United Kingdom specified in the order,”.
- (3) A court in Scotland—
- (a) at any time after the commencement of proceedings in connection with which the court would have jurisdiction to make a custody order, or
  - (b) in any proceedings in which it would be competent for the court to grant an interdict prohibiting the removal of a child from its jurisdiction,
- may, on an application by any of the persons mentioned in subsection (4) below, grant interdict or interim interdict prohibiting the removal of the child from the United Kingdom or any part of the United Kingdom, or out of the control of the person in whose custody the child is.
- (4) The said persons are—
- (a) any party to the proceedings,
  - (b) the tutor or curator of the child concerned, and
  - (c) any other person who has or wishes to obtain the custody or care of the child.
- (5) In subsection (3) above “the court” means the Court of Session or the sheriff; and for the purposes of subsection (3)(a) above, proceedings shall be held to commence—
- (a) in the Court of Session, when a summons is signeted or a petition is presented;
  - (b) in the sheriff court, when the warrant of citation is signed.

### **36 Effect of orders restricting removal.**

- (1) This section applies to any order made by a court in the United Kingdom prohibiting the removal of a child from the United Kingdom or from any specified part of it.

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- (2) An order to which this section applies shall have effect in each part of the United Kingdom other than the part in which it was made—
  - (a) as if it had been made by the appropriate court in that other part, and
  - (b) in the case of an order which has the effect of prohibiting the child's removal to that other part, as if it had included a prohibition on his further removal to any place except one to which he could be removed consistently with the order.
- (3) The references in subsections (1) and (2) above to prohibitions on a child's removal include references to prohibitions subject to exceptions; and in a case where removal is prohibited except with the consent of the court, nothing in subsection (2) above shall be construed as affecting the identity of the court whose consent is required.
- (4) In this section "child" means a person who has not attained the age of sixteen; and this section shall cease to apply to an order relating to a child when he attains the age of sixteen.

### **37 Surrender of passports.**

- (1) Where there is in force an order prohibiting or otherwise restricting the removal of a child from the United Kingdom or from any specified part of it, the court by which the order was in fact made, or by which it is treated under section 36 of this Act as having been made, may require any person to surrender any United Kingdom passport which has been issued to, or contains particulars of, the child.
- (2) In this section "United Kingdom passport" means a current passport issued by the Government of the United Kingdom.

### **38 Automatic restriction on removal of wards of court.**

- (1) The rule of law which (without any order of the court) restricts the removal of a ward of court from the jurisdiction of the court shall, in a case to which this section applies, have effect subject to the modifications in subsection (3) below.
- (2) This section applies in relation to a ward of court if—
  - (a) proceedings for divorce, nullity or judicial separation in respect of the marriage of his parents are continuing in a court in another part of the United Kingdom (that is to say, in a part of the United Kingdom outside the jurisdiction of the court of which he is a ward), or
  - (b) he is habitually resident in another part of the United Kingdom, except where that other part is Scotland and he has attained the age of sixteen.
- (3) Where this section applies, the rule referred to in subsection (1) above shall not prevent—
  - (a) the removal of the ward of court, without the consent of any court, to the other part of the United Kingdom mentioned in subsection (2) above, or
  - (b) his removal to any other place with the consent of either the appropriate court in that other part of the United Kingdom or the court mentioned in subsection (2)(a) above.

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**39 Duty to furnish particulars of other proceedings.**

Parties to proceedings for or relating to a custody order shall, to such extent and in such manner as may be prescribed, give particulars of other proceedings known to them which relate to the child concerned (including proceedings instituted abroad and proceedings which are no longer continuing).

**40 Interpretation of Chapter VI.**

- (1) In this Chapter—
- “the appropriate court” has the same meaning as in Chapter V;
  - “custody order” includes (except where the context otherwise requires) any such order as is mentioned in section 32(1) of this Act.
- (2) In the application of this Chapter to Scotland, “custody order” also includes (except where the context otherwise requires) any such order as is mentioned in section 32(2) of this Act.

**41 Habitual residence after removal without consent, etc.**

- (1) Where a child who—
- (a) has not attained the age of sixteen, and
  - (b) is habitually resident in a part of the United Kingdom,
- becomes habitually resident outside that part of the United Kingdom in consequence of circumstances of the kind specified in subsection (2) below, he shall be treated for the purposes of this Part as continuing to be habitually resident in that part of the United Kingdom for the period of one year beginning with the date on which those circumstances arise.
- (2) The circumstances referred to in subsection (1) above exist where the child is removed from or retained outside, or himself leaves or remains outside, the part of the United Kingdom in which he was habitually resident before his change of residence—
- (a) without the agreement of the person or all the persons having, under the law of that part of the United Kingdom, the right to determine where he is to reside, or
  - (b) in contravention of an order made by a court in any part of the United Kingdom.
- (3) A child shall cease to be treated by virtue of subsection (1) above as habitually resident in a part of the United Kingdom if, during the period there mentioned—
- (a) he attains the age of sixteen, or
  - (b) he becomes habitually resident outside that part of the United Kingdom with the agreement of the person or persons mentioned in subsection (2)(a) above and not in contravention of an order made by a court in any part of the United Kingdom.

**42 General interpretation of Part I.**

- (1) In this Part—
- “certified copy”, in relation to an order of any court, means a copy certified by the prescribed officer of the court to be a true copy of the order or of the official record of the order;

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“part of the United Kingdom” means England and Wales, Scotland or Northern Ireland;

“prescribed” means prescribed by rules of court or act of sederunt.

- (2) For the purposes of this Part proceedings in England and Wales or in Northern Ireland for divorce, nullity or judicial separation in respect of the marriage of the parents of a child shall, unless they have been dismissed, be treated as continuing until the child concerned attains the age of eighteen (whether or not a decree has been granted and whether or not, in the case of a decree of divorce or nullity of marriage, that decree has been made absolute).
- (3) For the purposes of this Part, matrimonial proceedings in a court in Scotland which has jurisdiction in those proceedings to make a custody order with respect to a child shall, unless they have been dismissed or decree of absolvitor has been granted therein, be treated as continuing until the child concerned attains the age of sixteen.
- (4) Any reference in this Part to proceedings in respect of the marriage of the parents of a child shall, in relation to a child who, although not a child of both parties to the marriage, is a child of the family of those parties, be construed as a reference to proceedings in respect of that marriage; and for this purpose “child of the family”—
  - (a) if the proceedings are in England and Wales, means any child who has been treated by both parties as a child of their family, except a child who has been boarded out with those parties by a local authority or a voluntary organisation;
  - (b) if the proceedings are in Scotland, means any child of one of the parties who has been accepted as one of the family by the other party;
  - (c) if the proceedings are in Northern Ireland, means any child who has been treated by both parties as a child of their family, except a child who has been boarded out with those parties by or on behalf of the Department of Health and Social Services or a voluntary organisation.
- (5) References in this Part to custody orders include (except where the context otherwise requires) references to custody orders as varied.
- (6) For the purposes of this Part each of the following orders shall be treated as varying the custody order to which it relates—
  - (a) an order which provides for a person to be given access to a child who is the subject of a custody order, or which makes provision for the education of such a child,
  - (b) an order under section 42(6) of the Matrimonial Causes Act 1973 or Article 45(6) of the Matrimonial Causes (Northern Ireland) Order 1978,
  - (c) an order under section 42(7) of that Act or Article 45(7) of that Order, and
  - (d) an order under section 19(6) of the Domestic Proceedings and Magistrates' Courts Act 1978 or Article 20(6) of the Domestic Proceedings (Northern Ireland) Order 1980;

and for the purposes of Chapter V of this Part and this Chapter, this subsection shall have effect as if any reference to any enactment included a reference to any corresponding enactment previously in force.

- (7) References in this Part to proceedings in respect of the custody of a child include, in relation to proceedings outside the United Kingdom, references to proceedings before a tribunal or other authority having power under the law having effect there to determine questions relating to the custody of children.

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**43 Application of Part I to dependent territories.**

- (1) Her Majesty may by Order in Council make provision corresponding to or applying any of the foregoing provisions of this Part, with such modifications as appear to Her Majesty to be appropriate, for the purpose of regulating—
- (a) in any dependent territory;
  - (b) as between any dependent territory and any part of the United Kingdom; or
  - (c) as between any dependent territory and any other such territory,
- the jurisdiction of courts to make custody orders, or orders corresponding to custody orders, and the recognition and enforcement of such orders.
- (2) In subsection (1) above “dependent territory” means any of the following territories—
- (a) the Isle of Man,
  - (b) any of the Channel Islands, and
  - (c) any colony.
- (3) An Order in Council under subsection (1) above may contain such consequential, incidental and supplementary provisions as appear to Her Majesty to be necessary or expedient.
- (4) An Order in Council under subsection (1)(b) above which makes provision affecting the law of any part of the United Kingdom shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**PART II**

RECOGNITION OF DIVORCES, ANNULMENTS AND LEGAL SEPARATIONS

*Divorces, annulments and judicial separations granted in the British Islands*

**44 Recognition in United Kingdom of divorces, annulments and judicial separations granted in the British Islands.**

- (1) Subject to section 52(4) and (5)(a) of this Act, no divorce or annulment obtained in any part of the British Islands shall be regarded as effective in any part of the United Kingdom unless granted by a court of civil jurisdiction.
- (2) Subject to section 51 of this Act, the validity of any divorce, annulment or judicial separation granted by a court of civil jurisdiction in any part of the British Islands shall be recognised throughout the United Kingdom.

*Overseas divorces, annulments and legal separations*

**45 Recognition in the United Kingdom of overseas divorces, annulments and legal separations.**

Subject to sections 51 and 52 of this Act, the validity of a divorce, annulment or legal separation obtained in a country outside the British Islands (in this Part referred to as an overseas divorce, annulment or legal separation) shall be recognised in the United Kingdom if, and only if, it is entitled to recognition—

- (a) by virtue of sections 46 to 49 of this Act, or

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(b) by virtue of any enactment other than this Part.

#### **46 Grounds for recognition.**

- (1) The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if—
  - (a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and
  - (b) at the relevant date either party to the marriage—
    - (i) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
    - (ii) was domiciled in that country; or
    - (iii) was a national of that country.
- (2) The validity of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings shall be recognised if—
  - (a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained;
  - (b) at the relevant date—
    - (i) each party to the marriage was domiciled in that country; or
    - (ii) either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce, annulment or legal separation is recognised as valid; and
  - (c) neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.
- (3) In this section “the relevant date” means—
  - (a) in the case of an overseas divorce, annulment or legal separation obtained by means of proceedings, the date of the commencement of the proceedings;
  - (b) in the case of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings, the date on which it was obtained.
- (4) Where in the case of an overseas annulment, the relevant date fell after the death of either party to the marriage, any reference in subsection (1) or (2) above to that date shall be construed in relation to that party as a reference to the date of death.
- (5) For the purpose of this section, a party to a marriage shall be treated as domiciled in a country if he was domiciled in that country either according to the law of that country in family matters or according to the law of the part of the United Kingdom in which the question of recognition arises.

#### **47 Cross-proceedings and divorces following legal separations.**

- (1) Where there have been cross-proceedings, the validity of an overseas divorce, annulment or legal separation obtained either in the original proceedings or in the cross-proceedings shall be recognised if—
  - (a) the requirements of section 46(1)(b)(i), (ii) or (iii) of this Act are satisfied in relation to the date of the commencement either of the original proceedings or of the cross-proceedings, and
  - (b) the validity of the divorce, annulment or legal separation is otherwise entitled to recognition by virtue of the provisions of this Part.

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- (2) Where a legal separation, the validity of which is entitled to recognition by virtue of the provisions of section 46 of this Act or of subsection (1) above is converted, in the country in which it was obtained, into a divorce which is effective under the law of that country, the validity of the divorce shall be recognised whether or not it would itself be entitled to recognition by virtue of those provisions.

#### **48 Proof of facts relevant to recognition.**

- (1) For the purpose of deciding whether an overseas divorce, annulment or legal separation obtained by means of proceedings is entitled to recognition by virtue of section 46 and 47 of this Act, any finding of fact made (whether expressly or by implication) in the proceedings and on the basis of which jurisdiction was assumed in the proceedings shall—
- (a) if both parties to the marriage took part in the proceedings, be conclusive evidence of the fact found; and
  - (b) in any other case, be sufficient proof of that fact unless the contrary is shown.
- (2) In this section “finding of fact” includes a finding that either party to the marriage—
- (a) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
  - (b) was under the law of that country domiciled there; or
  - (c) was a national of that country.
- (3) For the purposes of subsection (1)(a) above, a party to the marriage who has appeared in judicial proceedings shall be treated as having taken part in them.

#### *Supplemental*

#### **49 Modifications of Part II in relation to countries comprising territories having different systems of law.**

- (1) In relation to a country comprising territories in which different systems of law are in force in matters of divorce, annulment or legal separation, the provisions of this Part mentioned in subsections (2) to (5) below shall have effect subject to the modifications there specified.
- (2) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (1)(b)(i) or (ii) of section 46 of this Act are satisfied, that section and, in the case of a legal separation, section 47(2) of this Act shall have effect as if each territory were a separate country.
- (3) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (1)(b)(iii) of section 46 of this Act are satisfied—
- (a) that section shall have effect as if for paragraph (a) of subsection (1) there were substituted the following paragraph—
    - “(a) the divorce, annulment or legal separation is effective throughout the country in which it was obtained;”;
  - (b) in the case of a legal separation, section 47(2) of this Act shall have effect as if for the words “is effective under the law of that country” there were substituted the words “is effective throughout that country”.



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- (4) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (2)(b) of section 46 of this Act are satisfied, that section and section 52(3) and (4) of this Act and, in the case of a legal separation, section 47(2) of this Act shall have effect as if each territory were a separate country.
- (5) Paragraphs (a) and (b) of section 48(2) of this Act shall each have effect as if each territory were a separate country.

**50 Non-recognition of divorce or annulment in another jurisdiction no bar to remarriage.**

Where, in any part of the United Kingdom—

- (a) a divorce or annulment has been granted by a court of civil jurisdiction, or  
(b) the validity of a divorce or annulment is recognised by virtue of this Part,

the fact that the divorce or annulment would not be recognised elsewhere shall not preclude either party to the marriage from re-marrying in that part of the United Kingdom or cause the re-marriage of either party (wherever the re-marriage takes place) to be treated as invalid in that part.

**51 Refusal of recognition.**

- (1) Subject to section 52 of this Act, recognition of the validity of—
- (a) a divorce, annulment or judicial separation granted by a court of civil jurisdiction in any part of the British Islands, or  
(b) an overseas divorce, annulment or legal separation,
- may be refused in any part of the United Kingdom if the divorce, annulment or separation was granted or obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the marriage of the parties previously given (whether before or after the commencement of this Part) by a court of civil jurisdiction in that part of the United Kingdom or by a court elsewhere and recognised or entitled to be recognised in that part of the United Kingdom.
- (2) Subject to section 52 of this Act, recognition of the validity of—
- (a) a divorce or judicial separation granted by a court of civil jurisdiction in any part of the British Islands, or  
(b) an overseas divorce or legal separation,
- may be refused in any part of the United Kingdom if the divorce or separation was granted or obtained at a time when, according to the law of that part of the United Kingdom (including its rules of private international law and the provisions of this Part), there was no subsisting marriage between the parties.
- (3) Subject to section 52 of this Act, recognition by virtue of section 45 of this Act of the validity of an overseas divorce, annulment or legal separation may be refused if—
- (a) in the case of a divorce, annulment or legal separation obtained by means of proceedings, it was obtained—
- (i) without such steps having been taken for giving notice of the proceedings to a party to the marriage as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or

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- (ii) without a party to the marriage having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given; or
  - (b) in the case of a divorce, annulment or legal separation obtained otherwise than by means of proceedings—
    - (i) there is no official document certifying that the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; or
    - (ii) where either party to the marriage was domiciled in another country at the relevant date, there is no official document certifying that the divorce, annulment or legal separation is recognised as valid under the law of that other country; or
  - (c) in either case, recognition of the divorce, annulment or legal separation would be manifestly contrary to public policy.
- (4) In this section—
- “official”, in relation to a document certifying that a divorce, annulment or legal separation is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;
- “the relevant date” has the same meaning as in section 46 of this Act;
- and subsection (5) of that section shall apply for the purposes of this section as it applies for the purposes of that section.
- (5) Nothing in this Part shall be construed as requiring the recognition of any finding of fault made in any proceedings for divorce, annulment or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

## **52 Provisions as to divorces, annulments etc. obtained before commencement of Part II.**

- (1) The provisions of this Part shall apply—
- (a) to a divorce, annulment or judicial separation granted by a court of civil jurisdiction in the British Islands before the date of the commencement of this Part, and
  - (b) to an overseas divorce, annulment or legal separation obtained before that date,
- as well as to one granted or obtained on or after that date.
- (2) In the case of such a divorce, annulment or separation as is mentioned in subsection (1) (a) or (b) above, the provisions of this Part shall require or, as the case may be, preclude the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time, but those provisions shall not—
- (a) affect any property to which any person became entitled before that date, or
  - (b) affect the recognition of the validity of the divorce, annulment or separation if that matter has been decided by any competent court in the British Islands before that date.
- (3) Subsections (1) and (2) above shall apply in relation to any divorce or judicial separation granted by a court of civil jurisdiction in the British Islands before the date

of the commencement of this Part whether granted before or after the commencement of section 1 of the Recognition of Divorces and Legal Separations Act 1971.

- (4) The validity of any divorce, annulment or legal separation mentioned in subsection (5) below shall be recognised in the United Kingdom whether or not it is entitled to recognition by virtue of any of the foregoing provisions of this Part.
- (5) The divorces, annulments and legal separations referred to in subsection (4) above are—
- (a) a divorce which was obtained in the British Islands before 1st January 1974 and was recognised as valid under rules of law applicable before that date;
  - (b) an overseas divorce which was recognised as valid under the Recognition of Divorces and Legal Separations Act 1971 and was not affected by section 16(2) of the Domicile and Matrimonial Proceedings Act 1973 (proceedings otherwise than in a court of law where both parties resident in United Kingdom);
  - (c) a divorce of which the decree was registered under section 1 of the Indian and Colonial Divorce Jurisdiction Act 1926;
  - (d) a divorce or annulment which was recognised as valid under section 4 of the Matrimonial Causes (War Marriages) Act 1944; and
  - (e) an overseas legal separation which was recognised as valid under the Recognition of Divorces and Legal Separations Act 1971.

### **53 Effect of divorces and annulments on wills.**

In subsection (1) of section 18A of the Wills Act 1837 (effect of a decree of divorce or nullity of marriage on wills)—

- (a) after the word “court” there shall be inserted the words “of civil jurisdiction in England and Wales”; and
- (b) for the words “or declares it void” there shall be substituted the words “or his marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in England and Wales by virtue of Part II of the Family Law Act 1986”.

### **54 Interpretation of Part II.**

- (1) In this Part—
- “annulment” includes any decree or declarator of nullity of marriage, however expressed;
- “part of the United Kingdom” means England and Wales, Scotland or Northern Ireland;
- “proceedings” means judicial or other proceedings.
- (2) In this Part “country” includes a colony or other dependent territory of the United Kingdom but for the purposes of this Part a person shall be treated as a national of such a territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that territory under that law.

## PART III

### DECLARATIONS OF STATUS

#### 55 **Declarations as to marital status.**

- (1) Subject to the following provisions of this section, any person may apply to the court for one or more of the following declarations in relation to a marriage specified in the application, that is to say—
  - (a) a declaration that the marriage was at its inception a valid marriage;
  - (b) a declaration that the marriage subsisted on a date specified in the application;
  - (c) a declaration that the marriage did not subsist on a date so specified;
  - (d) a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside England and Wales in respect of the marriage is entitled to recognition in England and Wales;
  - (e) a declaration that the validity of a divorce, annulment or legal separation so obtained in respect of the marriage is not entitled to recognition in England and Wales.
- (2) A court shall have jurisdiction to entertain an application under subsection (1) above if, and only if, either of the parties to the marriage to which the application relates—
  - (a) is domiciled in England and Wales on the date of the application, or
  - (b) has been habitually resident in England and Wales throughout the period of one year ending with that date, or
  - (c) died before that date and either—
    - (i) was at death domiciled in England and Wales, or
    - (ii) had been habitually resident in England and Wales throughout the period of one year ending with the date of death.
- (3) Where an application under subsection (1) above is made by any person other than a party to the marriage to which the application relates, the court shall refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of that application.

#### 56 **Declarations as to legitimacy or legitimation.**

- (1) Any person may apply to the court for a declaration that he is the legitimate child of his parents.
- (2) Any person may apply to the court for one (or for one or, in the alternative, the other) of the following declarations, that is to say—
  - (a) a declaration that he has become a legitimated person;
  - (b) a declaration that he has not become a legitimated person.
- (3) A court shall have jurisdiction to entertain an application under subsection (1) or (2) above if, and only if, the applicant—
  - (a) is domiciled in England and Wales on the date of the application, or
  - (b) has been habitually resident in England and Wales throughout the period of one year ending with that date.
- (4) In this section “legitimated person” means a person legitimated or recognised as legitimated—

- (a) under section 2 or 3 of the Legitimacy Act 1976; or
- (b) under section 1 or 8 of the Legitimacy Act 1926; or
- (c) by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of England and Wales and effected under the law of any other country.

## **57 Declarations as to adoptions effected overseas.**

- (1) Any person whose status as an adopted child of any person depends on whether he has been adopted by that person by either—
  - (a) an overseas adoption as defined by section 72(2) of the Adoption Act 1976, or
  - (b) an adoption recognised by the law of England and Wales and effected under the law of any country outside the British Islands,may apply to the court for one (or for one or, in the alternative, the other) of the declarations mentioned in subsection (2) below.
- (2) The said declarations are—
  - (a) a declaration that the applicant is for the purposes of section 39 of the Adoption Act 1976 the adopted child of that person;
  - (b) a declaration that the applicant is not for the purposes of that section the adopted child of that person.
- (3) A court shall have jurisdiction to entertain an application under subsection (1) above if, and only if, the applicant—
  - (a) is domiciled in England and Wales on the date of the application, or
  - (b) has been habitually resident in England and Wales throughout the period of one year ending with that date.
- (4) Until the Adoption Act 1976 comes into force—
  - (a) subsection (1) above shall have effect as if for the reference to section 72(2) of that Act there were substituted a reference to section 4(3) of the Adoption Act 1968; and
  - (b) subsection (2) above shall have effect as if for the reference to section 39 of that Act there were substituted a reference to Part II of Schedule I to the Children Act 1975.

## **58 General provisions as to the making and effect of declarations.**

- (1) Where on an application for a declaration under this Part the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy.
- (2) Any declaration made under this Part shall be binding on Her Majesty and all other persons.
- (3) The court, on the dismissal of an application for a declaration under this Part, shall not have power to make any declaration for which an application has not been made.
- (4) No declaration which may be applied for under this Part may be made otherwise than under this Part by any court.
- (5) No declaration may be made by any court, whether under this Part or otherwise—
  - (a) that a marriage was at its inception void;

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(b) that any person is or was illegitimate.

(6) Nothing in this section shall effect the powers of any court to grant a decree of nullity of marriage.

**59 Provisions relating to the Attorney General.**

(1) On an application for a declaration under this Part the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney-General.

(2) The Attorney-General, whether or not he is sent papers in relation to an application for a declaration under this Part, may—

(a) intervene in the proceedings on that application in such manner as he thinks necessary or expedient, and

(b) argue before the court any question in relation to the application which the court considers it necessary to have fully argued.

(3) Where any costs are incurred by the Attorney-General in connection with any application for a declaration under this Part, the court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

**60 Supplementary provisions as to declarations.**

(1) Any declaration made under this Part, and any application for such a declaration, shall be in the form prescribed by rules of court.

(2) Rules of court may make provision—

(a) as to the information required to be given by any applicant for a declaration under this Part;

(b) as to the persons who are to be parties to proceedings on application under this Part;

(c) requiring notice of an application under this Part to be served on the Attorney-General.

(3) No proceedings under this Part shall affect any final judgement or decree already pronounced or made by any court of competent jurisdiction.

(4) The court hearing an application under this Part may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the court otherwise directs.

**61 Abolition of right to petition for jactitation of marriage.**

No person shall after the commencement of this Part be entitled to petition the High Court or a county court for jactitation of marriage.

**62 Repeal of Greek Marriages Act 1884.**

(1) The Greek Marriages Act 1884 shall cease to have effect.

(2) Any marriage in respect of which a declaration that it was a valid marriage could before the commencement of this Part have been made under the Greek Marriages Act

1884 is hereby declared to have been a valid marriage; but nothing in this subsection shall affect any status or right which would not have been affected by a declaration under that Act.

**63 Interpretation of Part III.**

In this Part “the court” means the High Court or a county court.

**PART IV**

MISCELLANEOUS AND GENERAL

**64 Family proceedings rules.**

- (1) Rules of court made by the rule-making authority constituted by section 40 of the Matrimonial and Family Proceedings Act 1984 (family proceedings rules) which relate to the costs of proceedings—
  - (a) may amend or repeal any statutory provision relating to the practice and procedure of the Supreme Court or county courts so far as may be necessary in consequence of provision made by the rules; and
  - (b) may make different provision for different cases or descriptions of cases, for different circumstances or for different areas.
- (2) Notwithstanding anything in the Legal Aid Act 1974, the power conferred by subsection (1)(b) above includes power to make different provision according to whether each or any of the parties is entitled to legal aid in connection with the proceedings.
- (3) In this section—

“legal aid” means legal aid under Part I of the Legal Aid Act 1974;

“statutory provision” means any enactment, whenever passed, or any provision contained in subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978), whenever made.
- (4) In relation to any time before the coming into force of section 40 of the Matrimonial and Family Proceedings Act 1984, this section shall have effect as if the reference in subsection (1) above to that section were a reference to section 50 of the Matrimonial Causes Act 1973 (matrimonial causes rules).

**65 Amendments of Child Abduction Act 1984.**

In section 1(2)(b), (3)(a) and (5) of the Child Abduction Act 1984 (offence of abduction of child by parent etc.), for the words “a court in England and Wales” there shall be substituted the words “a court in the United Kingdom”.

**66 Amendments of Child Abduction (Northern Ireland) Order 1985.**

In Article 3(2)(b), (3) and (5)(a) of the Child Abduction (Northern Ireland) Order 1985 (offence of abduction of child by parents etc.), for the words “a court in Northern Ireland” there shall be substituted the words “a court in the United Kingdom”.

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**67 Amendments of Child Abduction and Custody Act 1985.**

- (1) The Child Abduction and Custody Act 1985 shall be amended as follows.
- (2) In section 20 (suspension of court’s powers), after subsection (2) there shall be inserted the following subsection—
  - “(2A) Where it appears to the Secretary of State—
    - (a) that an application has been made for the registration of a decision in respect of a child under section 16 above (other than a decision mentioned in subsection (3) below); or
    - (b) that such a decision is registered,
 the Secretary of State shall not make, vary or revoke any custody order in respect of the child unless, in the case of an application for registration, the application is refused.”
- (3) In subsection (3) of that section, after the words “subsection (1)” there shall be inserted the words “or (2A)”.
- (4) Immediately before section 25 there shall be inserted the following section—

**“24A Power to order disclosure of child’s whereabouts.**

- (1) Where—
  - (a) in proceedings for the return of a child under Part I of this Act; or
  - (b) on an application for the recognition, registration or enforcement of a decision in respect of a child under Part II of this Act,
 there is not available to the court adequate information as to where the child is, the court may order any person who it has reason to believe may have relevant information to disclose it to the court.
- (2) A person shall not be excused from complying with an order under subsection (1) above by reason that to do so may incriminate him or his spouse of an offence; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.”
- (5) In section 27(1) (interpretation), in the definition of “custody proceedings” for the words from “made” onwards there shall be substituted the words “made, varied or revoked”.

**68 Minor and consequential amendments, repeals and savings.**

- (1) The enactments and orders mentioned in Schedule 1 to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential on the provisions of this Act.
- (2) The enactments mentioned in Schedule 2 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Nothing in this Act shall affect—
  - (a) any proceedings under section 45 of the Matrimonial Causes Act 1973 begun before the date of the commencement of Part III of this Act;



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- (b) any proceedings for jactitation of marriage begun before that date; or
  - (c) any proceedings for a declaration begun in the High Court before that date by virtue of rules of court relating to declaratory judgments.
- (4) The repeal of section 2 of the Legitimacy Declaration Act (Ireland) 1868 shall not affect any proceedings under that section begun before the commencement of that repeal.

**69 Short title, commencement and extent.**

- (1) This Act may be cited as the Family Law Act 1986.
- (2) Sections 64 to 67 of this Act shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) Subject to subsection (2) above, this Act shall come into force on such day as the relevant Minister or Ministers may by order made by statutory instrument appoint; and different days may be so appointed for different provisions or for different purposes.
- (4) In subsection (3) above “the relevant Minister or Ministers” means—
- (a) in the case of an order which appoints a day only for Part III of this Act and its associated amendments and repeals, the Lord Chancellor;
  - (b) in any other case, the Lord Chancellor and the Lord Advocate.
- (5) The following provisions of this Act, namely—  
Chapter II of Part I;  
section 53;  
Part III;  
sections 64 and 65;  
section 68 (3); and  
paragraphs 9 to 17, 19 and 23 to 27 of Schedule 1 and section 68(1) so far as relating to those paragraphs,  
extend to England and Wales only.
- (6) The following provisions of this Act, namely—  
Chapter III of Part I;  
section 26; and  
paragraphs 1, 3 to 8, 18, 21 and 22 of Schedule 1 and section 68(1) so far as relating to those paragraphs,  
extend to Scotland only; and sections 34 and 38 of this Act do not extend to Scotland.
- (7) The following provisions of this Act, namely—  
Chapter IV of Part I;  
section 66;  
section 68(4); and  
paragraphs 2 and 32 to 34 of Schedule 1 and section 68(1) so far as relating to those paragraphs,  
extend to Northern Ireland only; and paragraph 20 of Schedule 1 to this Act and section 68(1) of this Act so far as relating to that paragraph do not extend to Northern Ireland.