



Family Law Act 1986

1986 CHAPTER 55

PART I

CHILD CUSTODY

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

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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.
- (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—

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- (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.

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—

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- (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) 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 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 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 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.