



Family Law Act 1986

1986 CHAPTER 55

PART I

CHILD CUSTODY

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.

Status: This is the original version (as it was originally enacted).

- (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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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 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 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.