



# Family Law Act 1986

## 1986 CHAPTER 55

### PART I

#### CHILD CUSTODY

#### 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

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- (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—
  - (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.
- (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.

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- (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.

### **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;

“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;

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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.

#### **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.