



Children Act 1989

1989 CHAPTER 41

PART XII

MISCELLANEOUS AND GENERAL

Jurisdiction and procedure etc.

92 Jurisdiction of courts.

- (1) The name “domestic proceedings”, given to certain proceedings in magistrates’ courts, is hereby changed to “family proceedings” and the names “domestic court” and “domestic court panel” are hereby changed to “family proceedings court” and “family panel”, respectively.
- (2) Proceedings under this Act shall be treated as family proceedings in relation to magistrates’ courts.
- (3) Subsection (2) is subject to the provisions of section 65(1) and (2) of the ^{M1}Magistrates’ Courts Act 1980 (proceedings which may be treated as not being family proceedings), as amended by this Act.
- (4) A magistrates’ court shall not be competent to entertain any application, or make any order, involving the administration or application of—
 - (a) any property belonging to or held in trust for a child; or
 - (b) the income of any such property.
- (5) The powers of a magistrates’ court under section 63(2) of the Act of 1980 to suspend or rescind orders shall not apply in relation to any order made under this Act.
- (6) Part I of Schedule 11 makes provision, including provision for the Lord Chancellor to make orders, with respect to the jurisdiction of courts and justices of the peace in relation to—
 - (a) proceedings under this Act; and
 - (b) proceedings under certain other enactments.

Status: Point in time view as at 01/09/1994.

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- (7) For the purposes of this Act “the court” means the High Court, a county court or a magistrates’ court.
- (8) Subsection (7) is subject to the provision made by or under Part I of Schedule 11 and to any express provision as to the jurisdiction of any court made by any other provision of this Act.
- (9) The Lord Chancellor may by order make provision for the principal registry of the Family Division of the High Court to be treated as if it were a county court for such purposes of this Act, or of any provision made under this Act, as may be specified in the order.
- (10) Any order under subsection (9) may make such provision as the Lord Chancellor thinks expedient for the purpose of applying (with or without modifications) provisions which apply in relation to the procedure in county courts to the principal registry when it acts as if it were a county court.
- (11) Part II of Schedule 11 makes amendments consequential on this section.

Modifications etc. (not altering text)

- C1** S. 92(2) excluded (14.10.1991) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), [s. 60\(3\)](#); S.I. 1991/2208, [art. 2\(1\)](#), [Sch. 1](#)
- C2** S. 92(7)–(10) applied by [Human Fertilisation and Embryology Act 1990 \(c. 37, SIF 83:1\)](#), [ss. 30\(8\)\(9\)](#), [39\(3\)](#), [43\(2\)](#)

Commencement Information

- I1** S. 92 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

Marginal Citations

- M1** [1980 c. 43](#).

93 Rules of court.

- (1) An authority having power to make rules of court may make such provision for giving effect to—
- (a) this Act;
 - (b) the provisions of any statutory instrument made under this Act; or
 - (c) any amendment made by this Act in any other enactment,
- as appears to that authority to be necessary or expedient.
- (2) The rules may, in particular, make provision—
- (a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);
 - (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;
 - (c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;

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- (d) applying (with or without modification) enactments which govern the procedure to be followed with respect to proceedings brought on a complaint made to a magistrates' court to relevant proceedings in such a court brought otherwise than on a complaint;
 - (e) with respect to preliminary hearings;
 - (f) for the service outside [^{F1}England and Wales], in such circumstances and in such manner as may be prescribed, of any notice of proceedings in a magistrates' court;
 - (g) for the exercise by magistrates' courts, in such circumstances as may be prescribed, of such powers as may be prescribed (even though a party to the proceedings in question is [^{F2}or resides] outside England and Wales);
 - (h) enabling the court, in such circumstances as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings;
 - (i) authorising a single justice to discharge the functions of a magistrates' court with respect to such relevant proceedings as may be prescribed;
 - (j) authorising a magistrates' court to order any of the parties to such relevant proceedings as may be prescribed, in such circumstances as may be prescribed, to pay the whole or part of the costs of all or any of the other parties.
- (3) In subsection (2)—
- “notice of proceedings” means a summons or such other notice of proceedings as is required; and “given”, in relation to a summons, means “served”;
 - “prescribed” means prescribed by the rules; and
 - “relevant proceedings” means any application made, or proceedings brought, under any of the provisions mentioned in paragraphs (a) to (c) of subsection (1) and any part of such proceedings.
- (4) This section and any other power in this Act to make rules of court are not to be taken as in any way limiting any other power of the authority in question to make rules of court.
- (5) When making any rules under this section an authority shall be subject to the same requirements as to consultation (if any) as apply when the authority makes rules under its general rule making power.

Textual Amendments

F1 Words in s. 93(2)(f) substituted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 22\(a\)](#); S.I. 1991/1883, art.3, [Sch.](#)

F2 Words in s. 93(2)(g) inserted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 22\(b\)](#); S.I. 1991/1883, art.3, [Sch.](#)

Commencement Information

I2 S. 93 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, [art. 3\(2\)](#)

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94 Appeals.

- (1) [^{F3}Subject to any express provisions to the contrary made by or under this Act, an appeal shall lie to the High Court against—
 - (a) the making by a magistrates' court of any order under this Act; or
 - (b) any refusal by a magistrates' court to make such an order.
- (2) Where a magistrates' court has power, in relation to any proceedings under this Act, to decline jurisdiction because it considers that the case can more conveniently be dealt with by another court, no appeal shall lie against any exercise by that magistrates' court of that power.
- (3) Subsection (1) does not apply in relation to an interim order for periodical payments made under Schedule 1.
- (4) On an appeal under this section, the High Court may make such orders as may be necessary to give effect to its determination of the appeal.
- (5) Where an order is made under subsection (4) the High Court may also make such incidental or consequential orders as appear to it to be just.
- (6) Where an appeal from a magistrates' court relates to an order for the making of periodical payments, the High Court may order that its determination of the appeal shall have effect from such date as it thinks fit to specify in the order.
- (7) The date so specified must not be earlier than the earliest date allowed in accordance with rules of court made for the purposes of this section.
- (8) Where, on an appeal under this section in respect of an order requiring a person to make periodical payments, the High Court reduces the amount of those payments or discharges the order—
 - (a) it may order the person entitled to the payments to pay to the person making them such sum in respect of payments already made as the High Court thinks fit; and
 - (b) if any arrears are due under the order for periodical payments, it may remit payment of the whole, or part, of those arrears.
- (9) Any order of the High Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes—
 - (a) of the enforcement of the order; and
 - (b) of any power to vary, revive or discharge orders,
 be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the High Court.
- (10) The Lord Chancellor may by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under paragraph 2 of Schedule 11.
- (11) Except to the extent provided for in any order made under subsection (10), no appeal may be made against any decision of a kind mentioned in that subsection.

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Textual Amendments

F3 Words in s. 94(1) substituted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 23](#); [S.I. 1991/1883](#), art.3, [Sch.](#)

Commencement Information

I3 [S. 94](#) in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

95 Attendance of child at hearing under Part IV or V.

- (1) In any proceedings in which a court is hearing an application for an order under Part IV or V, or is considering whether to make any such order, the court may order the child concerned to attend such stage or stages of the proceedings as may be specified in the order.
- (2) The power conferred by subsection (1) shall be exercised in accordance with rules of court.
- (3) Subsections (4) to (6) apply where—
 - (a) an order under subsection (1) has not been complied with; or
 - (b) the court has reasonable cause to believe that it will not be complied with.
- (4) The court may make an order authorising a constable, or such person as may be specified in the order—
 - (a) to take charge of the child and to bring him to the court; and
 - (b) to enter and search any premises specified in the order if he has reasonable cause to believe that the child may be found on the premises.
- (5) The court may order any person who is in a position to do so to bring the child to the court.
- (6) Where the court has reason to believe that a person has information about the whereabouts of the child it may order him to disclose it to the court.

Commencement Information

I4 [S. 95](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

96 Evidence given by, or with respect to, children.

- (1) Subsection (2) applies where a child who is called as a witness in any civil proceedings does not, in the opinion of the court, understand the nature of an oath.
- (2) The child's evidence may be heard by the court if, in its opinion—
 - (a) he understands that it is his duty to speak the truth; and
 - (b) he has sufficient understanding to justify his evidence being heard.
- (3) The Lord Chancellor may by order make provision for the admissibility of evidence which would otherwise be inadmissible under any rule of law relating to hearsay.
- (4) An order under subsection (3) may only be made with respect to—

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- (a) civil proceedings in general or such civil proceedings, or class of civil proceedings, as may be prescribed; and
 - (b) evidence in connection with the upbringing, maintenance or welfare of a child.
- (5) An order under subsection (3)—
- (a) may, in particular, provide for the admissibility of statements which are made orally or in a prescribed form or which are recorded by any prescribed method of recording;
 - (b) may make different provision for different purposes and in relation to different descriptions of court; and
 - (c) may make such amendments and repeals in any enactment relating to evidence (other than in this Act) as the Lord Chancellor considers necessary or expedient in consequence of the provision made by the order.
- (6) Subsection (5)(b) is without prejudice to section 104(4).
- (7) In this section—
- “civil proceedings” and “court” have the same meaning as they have in the ^{M2}Civil Evidence Act 1968 by virtue of section 18 of that Act; and
 - “prescribed” means prescribed by an order under subsection (3).

Commencement Information

I5 S. 96 wholly in force at 14.10.1991; s. 96(3)-(7) in force at 16.11.1989 see s. 108(2); s. 96(1)(2) in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

Marginal Citations

M2 1968 c. 64.

97 Privacy for children involved in certain proceedings.

- (1) Rules made under section 144 of the ^{M3}Magistrates’ Courts Act 1980 may make provision for a magistrates’ court to sit in private in proceedings in which any powers under this Act may be exercised by the court with respect to any child.
- (2) No person shall publish any material which is intended, or likely, to identify—
 - (a) any child as being involved in any proceedings before a magistrates’ court in which any power under this Act may be exercised by the court with respect to that or any other child; or
 - (b) an address or school as being that of a child involved in any such proceedings.
- (3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.
- (4) The court or the [^{F4}Lord Chancellor] may, if satisfied that the welfare of the child requires it, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.
- (5) For the purposes of this section—
 - “publish” includes—

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[^{F5}(a) include in a programme service (within the meaning of the Broadcasting Act 1990);]

(b) cause to be published; and

“material” includes any picture or representation.

(6) Any person who contravenes this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(7) Subsection (1) is without prejudice to—

- (a) the generality of the rule making power in section 144 of the Act of 1980; or
- (b) any other power of a magistrates’ court to sit in private.

(8) [^{F6}Sections 69 (sittings of magistrates’; courts for family proceedings) and 71 (newspaper reports of certain proceedings) of the Act of 1980] shall apply in relation to any proceedings to which this section applies subject to the provisions of this section.

Textual Amendments

F4 Words in s. 97(4) substituted (1.4.1992) by S.I. 1992/709, art. 3(2), **Sch.2** (with art. 5(2)).

F5 Words in s. 97(5) substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 53**

F6 Words in s. 97(8) substituted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 24**; S.I. 1991/1883, art. 3, **Sch.**

Modifications etc. (not altering text)

C3 S. 97(4): functions of the Secretary of State transferred to the Lord Chancellor (1.4.1992) by S.I. 1992/709, art. 3(1), **Sch. 2** (with art. 5(2)).

Commencement Information

I6 S. 97 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

Marginal Citations

M3 1980 c. 43.

98 Self-incrimination.

(1) In any proceedings in which a court is hearing an application for an order under Part IV or V, no person shall be excused from—

- (a) giving evidence on any matter; or
- (b) answering any question put to him in the course of his giving evidence, on the ground that doing so might incriminate him or his spouse of an offence.

(2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it or his spouse in proceedings for an offence other than perjury.

Commencement Information

I7 S. 98 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

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99 Legal aid.

- (1) The ^{M4}Legal Aid Act 1988 is amended as mentioned in subsections (2) to (4).
- (2) In section 15 (availability of, and payment for, representation under provisions relating to civil legal aid), for the words “and (3)” in subsection (1) there shall be substituted “to (3B)”; and the following subsections shall be inserted after subsection (3)—
 - “(3A) Representation under this Part shall not be available—
 - (a) to any local authority; or
 - (b) to any other body which falls within a prescribed description, for the purposes of any proceedings under the Children Act 1989.
 - (3B) Regardless of subsection (2) or (3), representation under this Part must be granted where a child who is brought before a court under section 25 of the 1989 Act (use of accommodation for restricting liberty) is not, but wishes to be, legally represented before the court.”
- (3) In section 19(5) (scope of provisions about criminal legal aid), at the end of the definition of “criminal proceedings” there shall be added “and also includes proceedings under section 15 of the ^{M5}Children and Young Persons Act 1969 (variation and discharge of supervision orders) and section 16(8) of that Act (appeals in such proceedings)”.
- (4) Sections 27, 28 and 30(1) and (2) (provisions about legal aid in care, and other, proceedings in relation to children) shall cease to have effect.
- (5) The Lord Chancellor may by order make such further amendments in the Legal Aid Act 1988 as he considers necessary or expedient in consequence of any provision made by or under this Act.

Commencement Information

I8 S. 99 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

Marginal Citations

M4 1988 c. 34.

M5 1969 c. 54.

100 Restrictions on use of wardship jurisdiction.

- (1) Section 7 of the ^{M6}Family Law Reform Act 1969 (which gives the High Court power to place a ward of court in the care, or under the supervision, of a local authority) shall cease to have effect.
- (2) No court shall exercise the High Court’s inherent jurisdiction with respect to children—
 - (a) so as to require a child to be placed in the care, or put under the supervision, of a local authority;
 - (b) so as to require a child to be accommodated by or on behalf of a local authority;
 - (c) so as to make a child who is the subject of a care order a ward of court; or

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- (d) for the purpose of conferring on any local authority power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.
- (3) No application for any exercise of the court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court.
- (4) The court may only grant leave if it is satisfied that—
 - (a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and
 - (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.
- (5) This subsection applies to any order—
 - (a) made otherwise than in the exercise of the court's inherent jurisdiction; and
 - (b) which the local authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

Commencement Information

I9 S. 100 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

Marginal Citations

M6 1969 c. 46.

101 Effect of orders as between England and Wales and Northern Ireland, the Channel Islands or the Isle of Man.

- (1) The Secretary of State may make regulations providing—
 - (a) for prescribed orders which—
 - (i) are made by a court in Northern Ireland; and
 - (ii) appear to the Secretary of State to correspond in their effect to orders which may be made under any provision of this Act,to have effect in prescribed circumstances, for prescribed purposes of this Act, as if they were orders of a prescribed kind made under this Act;
 - (b) for prescribed orders which—
 - (i) are made by a court in England and Wales; and
 - (ii) appear to the Secretary of State to correspond in their effect to orders which may be made under any provision in force in Northern Ireland, to have effect in prescribed circumstances, for prescribed purposes of the law of Northern Ireland, as if they were orders of a prescribed kind made in Northern Ireland.
- (2) Regulations under subsection (1) may provide for the order concerned to cease to have effect for the purposes of the law of Northern Ireland, or (as the case may be) the law of England and Wales, if prescribed conditions are satisfied.
- (3) The Secretary of State may make regulations providing for prescribed orders which—
 - (a) are made by a court in the Isle of Man or in any of the Channel Islands; and

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- (b) appear to the Secretary of State to correspond in their effect to orders which may be made under this Act,
to have effect in prescribed circumstances for prescribed purposes of this Act, as if they were orders of a prescribed kind made under this Act.
- (4) Where a child who is in the care of a local authority is lawfully taken to live in Northern Ireland, the Isle of Man or any of the Channel Islands, the care order in question shall cease to have effect if the conditions prescribed in regulations made by the Secretary of State are satisfied.
- (5) Any regulations made under this section may—
- (a) make such consequential amendments (including repeals) in—
 - (i) section 25 of the ^{M7}Children and Young Persons Act 1969 (transfers between England and Wales and Northern Ireland); or
 - (ii) section 26 (transfers between England and Wales and Channel Islands or Isle of Man) of that Act,
 as the Secretary of State considers necessary or expedient; and
 - (b) modify any provision of this Act, in its application (by virtue of the regulations) in relation to an order made otherwise than in England and Wales.

Extent Information

E1 S. 101 extends to England and Wales only except for s. 101(1)(b)(2)(5)(a)(i) which also extend to Northern Ireland. See s. 108(11)(12)

Commencement Information

I10 S. 101 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

Marginal Citations

M7 [1969 c. 54.](#)

Status:

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