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**Changes to legislation:** Children Act 1989, Cross Heading: The Family Law Act 1986 (c. 55) is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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## SCHEDULES

### SCHEDULE 13 **U.K.**

#### CONSEQUENTIAL AMENDMENTS

##### *The Family Law Act 1986 (c. 55)*

- 62 (1) The Family Law Act 1986 shall be amended as follows.
- (2) Subject to paragraphs 63 to 71, in Part I—
- (a) for the words “custody order”, in each place where they occur, there shall be substituted “ Part I order ”;
  - (b) for the words “proceedings with respect to the custody of”, in each place where they occur, there shall be substituted “ Part I proceedings with respect to ”; and
  - (c) for the words “matters relating to the custody of”, in each place where they occur, there shall be substituted “ Part I matters relating to ”.
- (3) For section 42(7) (general interpretation of Part I) there shall be substituted—
- “(7) In this Part—
- (a) references to Part I proceedings in respect of a child are references to any proceedings for a Part I order or an order corresponding to a Part I order and 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 Part I matters; and
  - (b) references to Part I matters are references to matters that might be determined by a Part I order or an order corresponding to a Part I order.”

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#### Commencement Information

**II** Sch. 13 para. 62 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 63 (1) In section 1 (orders to which Part I of the Act of 1986 applies), in subsection (1)—
- (a) for paragraph (a) there shall be substituted—
    - “(a) a section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such an order”; and
  - (b) for paragraph (d) there shall be substituted the following paragraphs—
    - “(d) an order made by a court in England and Wales in the exercise of the inherent jurisdiction of the High Court with respect to children—

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- (i) so far as it gives care of a child to any person or provides for contact with, or the education of, a child; but
- (ii) excluding an order varying or revoking such an order;
- (e) an order made by the High Court in Northern Ireland in the exercise of its jurisdiction relating to wardship—
  - (i) so far as it gives care and control of a child to any person or provides for the education of or access to a child; but
  - (ii) excluding an order relating to a child of whom care or care and control is (immediately after the making of the order) vested in the Department of Health and Social Services or a Health and Social Services Board.”

F1(2) .....

(3) For subsections (3) to (5) of that section there shall be substituted—

“(3) In this Part, “Part I order”—

- (a) includes any order which would have been a custody order by virtue of this section in any form in which it was in force at any time before its amendment by the Children Act 1989; and
- (b) (subject to sections 32 and 40 of this Act) excludes any order which would have been excluded from being a custody order by virtue of this section in any such form.”

<b>Textual Amendments</b>	
<b>F1</b>	SCh. 13 para. 63(2) repealed (4.11.1996) by <a href="#">S.I. 1995/756, arts. 1(2), 15</a> ,Sch.; <a href="#">S.R. 1996/297, art. 3</a>
<b>Commencement Information</b>	
<b>I2</b>	<a href="#">Sch. 13 para. 63</a> wholly in force at 14.10.1991 see <a href="#">s. 108(2)(3)</a> and <a href="#">S.I. 1991/828, art. 3(2)</a>

64 For section 2 there shall be substituted the following sections—

**“2 Jurisdiction: general.**

- (1) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order with respect to a child in or in connection with matrimonial proceedings in England and Wales unless the condition in section 2A of this Act is satisfied.
- (2) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order in a non-matrimonial case (that is to say, where the condition in section 2A of this Act is not satisfied) unless the condition in section 3 of this Act is satisfied.
- (3) A court in England and Wales shall not have jurisdiction to make a section 1(1)(d) order unless—
  - (a) the condition in section 3 of this Act is satisfied, or

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- (b) the child concerned 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.

## **2A Jurisdiction in or in connection with matrimonial proceedings.**

- (1) The condition referred to in section 2(1) of this Act is that the matrimonial proceedings are proceedings in respect of the marriage of the parents of the child concerned and—
  - (a) the proceedings—
    - (i) are proceedings for divorce or nullity of marriage, and
    - (ii) are continuing;
  - (b) the proceedings—
    - (i) are proceedings for judicial separation,
    - (ii) are continuing,and the jurisdiction of the court is not excluded by subsection (2) below; or
  - (c) the proceedings have been dismissed after the beginning of the trial but—
    - (i) the section 1(1)(a) order is being made forthwith, or
    - (ii) the application for the order was made on or before the dismissal.
- (2) For the purposes of subsection (1)(b) above, the jurisdiction of the court is excluded if, after the grant of a decree of judicial separation, on the relevant date, proceedings for divorce or nullity in respect of the marriage are continuing in Scotland or Northern Ireland.
- (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 being made for the purpose of enabling Part I proceedings to be taken in England and Wales with respect to the child concerned.
- (4) Where a court—
  - (a) has jurisdiction to make a section 1(1)(a) order in or in connection with matrimonial proceedings, but
  - (b) considers that it would be more appropriate for Part I matters relating to 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 section 1(1)(a) order shall be made by any court in or in connection with those proceedings.”

### **Commencement Information**

**I3** Sch. 13 para. 64 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 65 (1) In section 3 (habitual residence or presence of child concerned) in subsection (1) for “section 2” there shall be substituted “section 2(2)”.

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- (2) In subsection (2) of that section for the words “proceedings for divorce, nullity or judicial separation” there shall be substituted “matrimonial proceedings”.

**Commencement Information**

**I4** Sch. 13 para. 65 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 66 (1) In section 6 (duration and variation of Part I orders), for subsection (3) there shall be substituted the following subsections—

“(3) A court in England and Wales shall not have jurisdiction to vary a Part I order if, on the relevant date, matrimonial proceedings are continuing in Scotland or Northern Ireland in respect of the marriage of the parents of the child concerned.

(3A) Subsection (3) above shall not apply if—

- (a) the Part I order was made in or in connection with proceedings for divorce or nullity in England and Wales in respect of the marriage of the parents of the child concerned; and
- (b) those proceedings are continuing.

(3B) Subsection (3) above shall not apply if—

- (a) the Part I order was made in or in connection with proceedings for judicial separation in England and Wales;
- (b) those proceedings are continuing; and
- (c) the decree of judicial separation has not yet been granted.”

- (2) In subsection (5) of that section for the words from “variation of” to “if the ward” there shall be substituted “variation of a section 1(1)(d) order if the child concerned”.

- (3) For subsections (6) and (7) of that section there shall be substituted the following subsections—

“(6) Subsection (7) below applies where a Part I order which is—

- (a) a residence order (within the meaning of the Children Act 1989) in favour of a person with respect to a child,
- (b) an order made in the exercise of the High Court’s inherent jurisdiction with respect to children by virtue of which a person has care of a child, or
- (c) an order—
  - (i) of a kind mentioned in section 1(3)(a) of this Act,
  - (ii) under which a person is entitled to the actual possession of a child,

ceases to have effect in relation to that person by virtue of subsection (1) above.

- (7) Where this subsection applies, any family assistance order made under section 16 of the Children Act 1989 with respect to the child shall also cease to have effect.

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(8) For the purposes of subsection (7) above the reference to a family assistance order under section 16 of the Children Act 1989 shall be deemed to include a reference to an order for the supervision of a 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;

but this subsection shall cease to have effect once all such orders for the supervision of children have ceased to have effect in accordance with Schedule 14 to the Children Act 1989.”

#### Commencement Information

**I5** Sch. 13 para. 66 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

67 For section 7 (interpretation of Chapter II) there shall be substituted—

#### “7 Interpretation of Chapter II.

In this Chapter—

- (a) “child” means a person who has not attained the age of eighteen;
- (b) “matrimonial proceedings” means proceedings for divorce, nullity of marriage or judicial separation;
- (c) “the relevant date” means, in relation to the making or variation of an order—
  - (i) where an application is made for an order to be made or varied, the date of the application (or first application, if two or more are determined together), and
  - (ii) where no such application is made, the date on which the court is considering whether to make or, as the case may be, vary the order; and
- (d) “section 1(1)(a) order” and “section 1(1)(d) order” mean orders falling within section 1(1)(a) and (d) of this Act respectively.”

#### Commencement Information

**I6** Sch. 13 para. 67 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

68 In each of the following sections—

- (a) section 11(2)(a) (provisions supplementary to sections 9 and 10),
  - (b) section 13(5)(a) (jurisdiction ancillary to matrimonial proceedings),
  - (c) section 20(3)(a) (habitual residence or presence of child),
  - (d) section 21(4)(a) (jurisdiction in divorce proceedings, etc.), and
  - (e) section 23(4)(a) (duration and variation of custody orders),
- for “4(5)” there shall be substituted “2A(4)”.

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**Extent Information**

**E1** Sch. 13 para. 68(a)(b) extends to Scotland and para. 68(c)-(e) extends to Northern Ireland see s. 108(11) (12)

**Commencement Information**

**I7** Sch. 13 para. 68 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 69 In each of the following sections—
- [<sup>F2</sup>(a) section 19(2) (jurisdiction in cases other than divorce, etc.),]
  - (b) section 20(6) (habitual residence or presence of child), and
  - (c) section 23(5) (duration and variation of custody orders),
- for “section 1(1)(d)” there shall be substituted “ section 1(1)(e)” ”.

**Textual Amendments**

**F2** Sch. 13 para. 69(a) repealed (N.I.) (4.11.1996) by S.I. 1995/755, art. 185(2), Sch. 10; S.R. 1996/297, art. 2(2)

**Commencement Information**

**I8** Sch. 13 para. 69 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 70 In section 34(3) (power to order recovery of child) for paragraph (a) there shall be substituted—
- “(a) section 14 of the Children Act 1989”.

**Commencement Information**

**I9** Sch. 13 para. 70 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 71 (1) In section 42 (general interpretation of Part I), in subsection (4)(a) for the words “has been boarded out with those parties” there shall be substituted “ is placed with those parties as foster parents” ”.
- (2) In subsection (6) of that section, in paragraph (a) after the word “person” there shall be inserted “ to be allowed contact with or” ”.

**Commencement Information**

**I10** Sch. 13 para. 71 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(1A)(aa) inserted by 2009 c. 24 Sch. 6 para. 21(3)
- s. 4(1C) inserted by 2009 c. 24 Sch. 6 para. 21(4)
- s. 4ZA(2)(aa) inserted by 2009 c. 24 Sch. 6 para. 22(3)
- s. 4ZA(3A) inserted by 2009 c. 24 Sch. 6 para. 22(4)
- s. 8(4)(k) inserted by 2021 c. 17 s. 52(1)
- s. 31A(4A) inserted by 2014 c. 6 s. 15(2)(b)