STATUTORY INSTRUMENTS

# 1980 No. 1478 (C. 63)

## CHILDREN AND YOUNG PERSONS

## MATRIMONIAL CAUSES

## The Domestic Proceedings and Magistrates' Courts Act 1978 (Commencement No. 4) Order 1980

*Made - - - -* 3*rd October* 1980

In exercise of the powers conferred on me by section 89(3) and (4) of the Domestic Proceedings and Magistrates' Courts Act 1978(a), I hereby make the following Order:—

**1.**—(1) This Order may be cited as the Domestic Proceedings and Magistrates' Courts Act 1978 (Commencement No. 4) Order 1980.

(2) In this Order "the Act of 1978" means the Domestic Proceedings and Magistrates' Courts Act 1978.

**2.** The provisions of the Act of 1978 specified in column 1 of Schedule 1 to this Order (which relate to the matters specified in column 2 thereof) shall come into force on 1st February 1981.

**3.** The transitional provisions in Schedule 2 to this Order shall have effect.

*W. S. I. Whitelaw,*
One of Her Majesty's Principal Secretaries of State.

Home Office.
3rd October 1980.

(a) 1978 c. 22.

## SCHEDULE 1 *Article 2*

PROVISIONS OF THE DOMESTIC PROCEEDINGS AND MAGISTRATES' COURTS ACT 1978 COMING INTO FORCE ON 1ST FEBRUARY 1981.

| 1<br>**Provisions of the Act** | 2<br>**Subject matter of provisions** |
|---|---|
| Part I (but not sections 16, 17, 18, 28, 29(1), (2) and (5) and 30 which came into force on 1st November 1979). | Matrimonial proceedings in magistrates' courts. |
| Part II (but not section 40 which came into force on 17th September 1979). | Amendments of Guardianship of Minors Acts 1971 and 1973 (c. 3 and c. 29). |
| Sections 49 to 53. | Amendments of Affiliation Proceedings Act 1957 (c. 55). |
| Sections 54 to 61. | Amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18). |
| Sections 62 and 63. | Amendments of Matrimonial Causes Act 1973 (c. 18). |
| Section 72. | Alteration in age limits for certain orders made on refusal of adoption order. |
| So much of Schedule 2 as is specified in Appendix A hereto. | Minor and consequential amendments. |
| So much of Schedule 3 as is specified in Appendix B hereto. | Repeals. |

## APPENDIX A TO SCHEDULE 1

PROVISIONS OF SCHEDULE 2 TO THE DOMESTIC PROCEEDINGS AND MAGISTRATES' COURTS ACT 1978 COMING INTO FORCE ON 1ST FEBRUARY 1981

Paragraph 1 (amendment of section 5 of the Sheriff Courts (Scotland) Act 1907 (c. 51)).

Paragraph 2 (amendment of section 3(4) of the Maintenance Orders (Facilities for Enforcement) Act 1920 (c. 33)).

Paragraphs 3, 4 and 5 (amendment of sections 87(1) and (4), 88(1), (2) and (4) and 107(1) of the Children and Young Persons Act 1933 (c. 12)).

Paragraphs 6 and 7 (amendment of sections 43(4) and 44(2) of the National Assistance Act 1948 (c. 29)).

Paragraph 8 (amendment of section 26(1) and (4) of the Children Act 1948 (c. 43)).

Paragraph 9 (amendment of section 3(5) of the Marriage Act 1949 (c. 76)).

Paragraphs 11, 13 and 14 (amendment of section 3(2), 16(2)(*a*) and 22(1) of the Maintenance Orders Act 1950 (c. 37)).

Paragraph 15 (amendment of section 52(2) of the Magistrates' Courts Act 1952 (c. 55)).

Paragraph 16 (amendment of section 9(2) of the Affiliation Proceedings Act 1957 (c. 55)).

Paragraph 19(*a*) (amendment of section 109(2)(*g*) of the County Courts Act 1959 (c. 22)).

Paragraph 20 (amendment of sections 47 and 58 of the Children and Young Persons Act 1963 (c. 37)).

Paragraphs 22 and 23 (amendment of sections 64(3)(*a*) and 65(3)(*b*) of the Health Services and Public Health Act 1968 (c. 46)).

Paragraph 24 (amendment of section 63(6)(*g*) of the Children and Young Persons Act 1969 (c. 54)).

Paragraph 26 (amendment of Schedule 8 to the Administration of Justice Act 1970 (c. 31)).

Paragraph 27 (amendment of Schedule 1 to the Local Authority Social Services Act 1970 (c. 42)).

Paragraph 28 (amendment of section 30(2) of the Matrimonial Proceedings and Property Act 1970 (c. 45)).

Paragraph 29 (amendment of section 13(2) of the Guardianship of Minors Act 1971 (c. 3)).

Paragraph 32 (amendment of Schedule 1 to the Attachment of Earnings Act 1971 (c. 32)).

Paragraphs 33 to 37 (amendment of sections 8(3), 27, 35(1), 41 and 42(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18)).

Paragraphs 41 to 44 (amendment of sections 4(2), (3) and (6) and 5(2) of the Guardianship Act 1973 (c. 29)).

Paragraph 45(*a*) (amendment of Schedule 1 to the Legal Aid Act 1974 (c. 4)).

Paragraph 54 (amendment of section 19(2) of the Supplementary Benefits Act 1976 (c. 71)).

## APPENDIX B TO SCHEDULE 1

REPEALS TAKING EFFECT ON 1ST FEBRUARY 1981

| Chapter | Short Title | Extent of repeal |
|---|---|---|
| 1950 c. 37. | Maintenance Orders Act 1950. | In section 2, subsection (3). |
| 1952 c. 55. | Magistrates' Courts Act 1952. | Section 59. |
| 1957 c. 55. | Affiliation Proceedings Act 1957. | In section 7, subsections (1) to (3). |
| 1960 c. 48. | Matrimonial Proceedings (Magistrates' Courts) Act 1960. | The whole Act (but not section 8(3) the repeal of which came into force on 1st November 1979). |
| 1964 c. 42. | The Administration of Justice Act 1964. | In Schedule 3, paragraph 27. |
| 1965 c. 72. | Matrimonial Causes Act 1965. | Section 42. |
| 1967 c. 80. | Criminal Justice Act 1967. | In Schedule 3, the entry relating to the Matrimonial Proceedings (Magistrates' Courts) Act 1960. |
| 1968 c. 36. | Maintenance Orders Act 1968. | In the Schedule, the entry relating to the Matrimonial Proceedings (Magistrates' Courts) Act 1960. |
| 1969 c. 46. | Family Law Reform Act 1969. | In section 5, subsection (2). |

| Chapter | Short Title | Extent of repeal |
|---|---|---|
| 1970 c. 42. | Local Authority Social Services Act 1970. | In Schedule 1, the entry relating to the Matrimonial Proceedings (Magistrates' Courts) Act 1960. |
| 1970 c. 45. | Matrimonial Proceedings and Property Act 1970. | In section 30, subsection (1). Sections 31 to 33. |
| 1971 c. 3. | Guardianship of Minors Act 1971. | In section 9, subsection (3). In section 14, subsection (4). |
| 1971 c. 38. | Misuse of Drugs Act 1971. | Section 34. |
| 1972 c. 18. | Maintenance Orders (Reciprocal Enforcement) Act 1972. | In section 27, subsection (3). |
| 1972 c. 70. | Local Government Act 1972. | In Schedule 23, paragraph 10. |
| 1973 c. 18. | Matrimonial Causes Act 1973. | In section 27, subsection (8). |
| 1973 c. 29. | Guardianship Act 1973. | In section 2, in subsection (5) the words from "but an interim order" to the end of the subsection. In section 3, in subsection (2) the words from "and where a supervision order" to the end of the subsection. Section 8. In Schedule 2, paragraph 1 (2). |
| 1974 c. 4. | Legal Aid Act 1974. | In Schedule 1, paragraph 3 (*a*). |
| 1975 c. 72. | Children Act 1975. | In section 17(1), the words "under the age of 16". Section 91. |
| 1976 c. 36. | Adoption Act 1976. | In section 26(1), the words "under the age of 16 years". |

## SCHEDULE 2

Article 3

TRANSITIONAL PROVISIONS

1. In this Schedule "the relevant date" means the date on which section 33 of the Children Act 1975(**a**) comes into force.

2. In relation to an application made before the relevant date for an order under section 2, 6 or 7 of the Act of 1978, section 8 of that Act shall have effect as if subsection (3) were omitted.

3. In relation to an application made before the relevant date for an order under section 2, 6 or 7 of the Act of 1978, section 11 (3) of that Act shall have effect as if the words "a parent of that child but" were omitted and for the words "that parent" in both places where they occur there were substituted the words "that person".

(**a**) 1975 c. 72.

4. In relation to an application under subsection (3) of section 14 of the Act of 1978 for the variation or revocation of an order under subsection (1) thereof relating to an order under section 8(2) of that Act pursuant to an application made before the relevant date, the said subsection (3) shall have effect as if, at the end, there were inserted the words "or (*d*) any other person who has the legal custody of the child".

5. In relation to an application made before the relevant date for an order under section 2, 6 or 7 of the Act of 1978, section 19(2) of that Act shall have effect as if the words "a parent of the child but" were omitted and for the words "that parent" there were substituted the words "that person".

6. In relation to an applicant under section 20 of the Act of 1978 for the variation or revocation of an order under section 11(3) of that Act pursuant to an application made before the relevant date, subsection (12)(*b*) of the said section 20 shall have effect as if the words "a parent of that child but" were omitted and for the words "that parent" there were substituted the words "that person".

7. In relation to an application under section 21 of the Act of 1978 for the variation or revocation of an order under section 8, 9, 10 or 19 of that Act pursuant to an application made before the relevant date, subsection (7)(*a*) of the said section 21 shall have effect as if, at the end, there were inserted the words "or has the legal custody of that child".

8. In relation to an order under section 8(2) of the Act of 1978 pursuant to an application made before the relevant date, section 25(2)(*c*) of that Act shall have effect as if the words "a parent of that child but" were omitted.

9. In relation to an order under section 8(2) or 19 of the Act of 1978 pursuant to an application made before the relevant date, section 34(3) of that Act shall have effect as if, at the end, there were inserted the words "or has the legal custody of that child".

10. In relation to an order under section 9(1), 10(1)(*a*) or 11(*a*) of the Guardianship of Minors Act 1971(**a**) or section 2(4) of the Guardianship Act 1973(**b**) pursuant to an application made before the relevant date, section 39 of the Act of 1978 shall have effect as if, in subsection (3) of the new section 13A thereby inserted in the said Act of 1971, there were inserted at the end the words "or by any other person who has the legal custody of the minor concerned by virtue of the order so mentioned".

11. In relation to an application made before the relevant date for an order under section 9 of the Guardianship of Minors Act 1971, section 41(2) of the Act of 1978 shall have effect as if, in the new subsection thereby substituted for subsection (2) of the said section 9, for the words "one of the parents" there were substituted the words "any person (whether or not one of the parents)", for the words "the parent" in both places where they occur there were substituted the words "any parent" and for the words "the other parent" in both places where they occur there were substituted the words "the person given the right to actual custody"; and, if paragraph 75(1)(*c*) of Schedule 3 to the Children Act 1975 is not in force on the date specified in Article 2 of this Order the said section 41(2) shall also have effect in relation to such an application as if, after the words "and in subsection (4) after the words 'this section' " there were inserted the words "in the first place where they occur".

12. In relation to an application made before the relevant date for an order under section 9 of the Guardianship of Minors Act 1971, section 45(2) of the Act of 1978 shall have effect as if, in the new subsection thereby substituted for section 2(4) of the Guardianship Act 1973, there were inserted after the word "other" the words "or to any person given the right to the actual custody of the minor".

13. In relation to an order under section 9(2) of the Guardianship of Minors Act 1971 or section 2 of the Guardianship Act 1973 pursuant to an application made before the relevant date, section 46 of the Act of 1978 shall have effect as if, in subsection (2) of the new section 5A thereby inserted in the said Act of 1973, for sub-paragraphs (*a*) to (*c*) there were substituted the following sub-paragraphs:—

(**a**) 1971 c. 3. (**b**) 1973 c. 29.

"(*a*) an order under section 9(1) of the Guardianship of Minors Act 1971 which gives the right to the actual custody of a minor to a person who is not a parent of the minor,

(*b*) an order under section 9(2) of that Act which requires periodical payments to be made to a minor or to a person who has the right to the actual custody of a minor but who is not a parent of the minor,

(*c*) an order under section 2(2)(*a*), (2)(*b*) or (3) above,

(*d*) an interim order under section 2(4) or (5) above containing a provision requiring periodical payments to be made to a minor or to a person who has the right to the actual custody of a minor but who is not a parent of the minor or a provision giving the right to the actual custody of a minor to a person who is not a parent of the minor,".

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order brings into force on 1st February 1981 the provisions of the Domestic Proceedings and Magistrates' Courts Act 1978 mentioned in Schedule 1 to this Order.

Schedule 2 to this Order contains transitional provisions adapting certain provisions of the Act of 1978 under section 89(4) in consequence of the partial operation of the Children Act 1975, and in particular in consequence of the fact that Part II of the Act of 1975 (which deals with the custody of children) has not yet been brought into force.

Other Orders bringing into force provisions of the Act of 1978 were made by S.I. 1978/997, 1489 and 1490 (for Scotland) and 1979/731.

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