



Guardianship of Minors Act 1971

1971 CHAPTER 3

General principles

1 Principle on which questions relating to custody, upbringing etc. of minors are to be decided

Where in any proceedings before any court (whether or not a court as defined in section 15 of this Act)—

- (a) the custody or upbringing of a minor; or
- (b) the administration of any property belonging to or held on trust for a minor, or the application of the income thereof,

is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

2 Equal right of mother to apply to court

The mother of a minor shall have the like powers to apply to the court in respect of any matter affecting the minor as are possessed by the father.

Appointment, removal and powers of guardians

3 Rights of surviving parent as to guardianship

- (1) On the death of the father of a minor, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the minor either alone or jointly with any guardian appointed by the father ; and—

- (a) where no guardian has been appointed by the father; or
- (b) in the event of the death or refusal to act of the guardian or guardians appointed by the father,

Status: This is the original version (as it was originally enacted).

the court may, if it thinks fit, appoint a guardian to act jointly with the mother.

- (2) On the death of the mother of a minor, the father, if surviving, shall, subject to the provisions of (this Act, be guardian of the minor either alone or jointly with any guardian appointed by the mother; and—
 - (a) where no guardian has been appointed by the mother; or
 - (b) in the event of the death or refusal to act of the guardian or guardians appointed by the mother,

the court may, if it thinks fit, appoint a guardian to act jointly with the father.

4 Power of father and mother to appoint testamentary guardians

- (1) The father of a minor may by deed or will appoint any person to be guardian of the minor after his death.
- (2) The mother of a minor may by deed or will appoint any person to be guardian of the minor after her death.
- (3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the minor so long as the mother or father remains alive unless the mother or father objects to his so acting.
- (4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the minor, the guardian may apply to the court, and the court may either—
 - (a) refuse to make any order (in which case the mother or father shall remain sole guardian); or
 - (b) make an order (that the guardian so appointed—
 - (i) shall act jointly with the mother or father; or
 - (ii) shall be the sole guardian of the minor.
- (5) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.
- (6) If under section 3 of this Act a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but, if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

5 Power of court to appoint guardian for minor having no parent etc.

- (1) Where a minor has no parent, no guardian of the person, and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the minor.
- (2) A court may entertain an application under this section to appoint a guardian of a minor notwithstanding that, by virtue of a resolution under section 2 of the Children Act 1948, a local authority have parental rights with respect to him; but where on such an application the court appoints a guardian the resolution shall cease to have effect.

6 Power of High Court to remove or replace guardian

The High Court may, in its discretion, on being satisfied that it is for the welfare of the minor, remove from his office any testamentary guardian or any guardian appointed or acting by virtue of this Act, and may also, if it deems it to be for the welfare of the minor, appoint another guardian in place of the guardian so removed.

7 Disputes between joint guardians

Where two or more persons act as joint guardians of a minor and they are unable to agree on any question affecting the welfare of the minor, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper.

8 Continuation of certain powers of guardians

Every guardian under this Act shall have all such powers over the estate and person or over the estate (as the case may be) of a minor as any guardian appointed by will or otherwise has under the Tenures Abolition Act 1660 or otherwise.

Orders for custody and maintenance

9 Orders for custody and maintenance on application of mother or father

- (1) The court may, on the application of the mother or father of a minor (who may apply without next friend), make such order regarding—
 - (a) the custody of the minor; and
 - (b) the right of access to the minor of his mother or father,as the court thinks fit having regard to the welfare of the minor and to the conduct and wishes of the mother and father.
- (2) Where the court makes an order under subsection (1) of this section giving the custody of the minor to the mother, the court may make a further order requiring the father to pay to the mother such weekly or other periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of the father.
- (3) An order may be made under subsection (1) or (2) of this section notwithstanding that the parents of the minor are then residing together, but—
 - (a) no such order shall be enforceable, and no liability thereunder shall accrue, while they are residing together; and
 - (b) any such order shall cease to have effect if for a period of three months after it is made they continue to reside together.
- (4) An order under subsection (1) or (2) of this section may be varied or discharged by a subsequent order made on the application of either parent or (in the case of an order under subsection (1)) after the death of either parent on the application of any guardian under this Act.

10 Orders for custody and maintenance where person is guardian to exclusion of surviving parent

- (1) Where the court makes an order under section 4(4) of this Act that a person shall be the sole guardian of a minor to the exclusion of his mother or father, the court may—
 - (a) make such order regarding—
 - (i) the custody of the minor; and
 - (ii) the right of access to the minor of his mother or father,as the court thinks fit having regard to the welfare of the minor; and
 - (b) make a further order requiring the mother or father to pay to the guardian such weekly or other periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of the mother or father.
- (2) The powers conferred by subsection (1) of this section may be exercised at any time and include power to vary or discharge any order previously made under those powers.

11 Orders for custody and maintenance where joint guardians disagree

The powers of the court under section 7 of this Act shall, where one of the joint guardians is the mother or father of the minor, include power—

- (a) to make such order regarding—
 - (i) the custody of the minor; and
 - (ii) the right of access to the minor of his mother or father,as the court thinks fit having regard to the welfare of the minor;
- (b) to make an order requiring the mother or father to pay such weekly or other periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of the mother or father ;
- (c) to vary or discharge any order previously made under that section.

12 Orders for maintenance of persons between 18 and 21

- (1) An order under section 9, 10 or 11 of this Act for the payment of sums towards the maintenance of a minor may require such sums to continue to be paid in respect of any period after the date on which he ceases to be a minor but not extending beyond the date on which he attains the age of twenty-one; and any order which is made as aforesaid may provide that any sum which is payable thereunder for the benefit of a person who has ceased to be a minor shall be paid to that person himself.
- (2) Subject to subsection (3) of this section and to section 14(4) of this Act. where a person who has ceased to be a minor but has not attained the age of twenty-one has, while a minor, been the subject of an order under this Act or under any enactment repealed by this Act, the court may, on the application of either parent of that person or of that person himself, make an order requiring either parent to pay—
 - (a) to the other parent;
 - (b) to anyone else for the benefit of that person ; or
 - (c) to that person himself,

in respect of any period not extending beyond the date when he attains the said age, such weekly or other periodical sum towards his maintenance as the court thinks reasonable having regard to the means of the person on whom the requirement is imposed.

- (3) No order shall be made under subsection (2) of this section, and no liability under such an order shall accrue, at a time when the parents of the person in question are residing together, and if they so reside for a period of three months after such an order has been made it shall cease to have effect.
- (4) An order under subsection (2) of this section may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

13 Enforcement of orders for custody and maintenance

- (1) Where an order made by a magistrates' court under this Act contains a provision committing to the applicant the legal custody of any minor, a copy of the order may be served on any person in whose actual custody the minor may for the time being be, and thereupon the provision may, without prejudice to any other remedy open to the applicant, be enforced under section 54(3) of the Magistrates' Courts Act 1952 as if it were an order of the court requiring that person to give up the minor to the applicant.
- (2) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Act shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding £10.
- (3) An order of a magistrates' court for the payment of money under this Act may be enforced in like manner as an affiliation order, and the enactments relating to affiliation orders shall apply accordingly with the necessary modifications.

Illegitimate children

14 Application of Act to illegitimate children

- (1) Subject to the provisions of this section, subsection (1) of section 9 of this Act shall apply in relation to a minor who is illegitimate as it applies in relation to a minor who is legitimate, and references in that subsection, and in any other provision of this Act so far as it relates to proceedings under that subsection, to the father or mother or parent of a minor shall be construed accordingly.
- (2) No order shall be made by virtue of subsection (1) of this section under subsection (2) of the said section 9.
- (3) For the purposes of sections 3, 4, 5 and 10 of this Act, a person being the natural father of an illegitimate child and being entitled to his custody by virtue of an order in force under section 9 of this Act, as applied by this section, shall be treated as if he were the lawful father of the minor; but any appointment of a guardian made by virtue of this subsection under section 4(1) of this Act shall be of no effect unless the appointor is entitled to the custody of the minor as aforesaid immediately before his death.
- (4) No order shall be made under section 12(2) of this Act requiring any person to pay any sum towards the maintenance of an illegitimate child of that person.

*Jurisdiction and procedure***15 Courts having jurisdiction under this Act**

- (1) Subject to the provisions of this section, "the court" for the purposes of this Act means—
 - (a) the High Court;
 - (b) the county court of the district in which the respondent (or any of the respondents) or the applicant or the minor to whom the application relates resides; or
 - (c) a magistrates' court having jurisdiction in the place in which any of the said persons resides.
- (2) A magistrates' court shall not be competent to entertain—
 - (a) any application (other than an application for the variation or discharge of an existing order under this Act) relating to a minor who has attained the age of sixteen unless the minor is physically or mentally incapable of self-support; or
 - (b) any application involving the administration or application of any property belonging to or held in trust for a minor, or the income thereof.
- (3) A county court or magistrates' court shall not have jurisdiction under this Act in any case where the respondent or any of the respondents resides in Scotland or Northern Ireland—
 - (a) except in so far as such jurisdiction may be exercisable by virtue of the following provisions of this section ; or
 - (b) unless a summons or other originating process can be served and is served on the respondent or, as the case may be, on the respondents in England or Wales.
- (4) An order under this Act giving the custody of a minor to the mother, whether with or without an order requiring the father to make payments to the mother towards the minor's maintenance, may be made, if the father resides in Scotland or Northern Ireland and the mother and the minor in England or Wales, by a magistrates' court having jurisdiction in the place in which the mother resides.
- (5) It is hereby declared that a magistrates' court has jurisdiction—
 - (a) in proceedings under this Act by a person residing in Scotland or Northern Ireland against a person residing in England or Wales for an order relating to the custody of a minor (including, in the case of proceedings by the mother, an order requiring the father to make payments to the mother towards the minor's maintenance);
 - (b) in proceedings by or against a person residing in Scotland or Northern Ireland for the revocation, revival or variation of any such order.
- (6) Where proceedings for an order under subsection (1) of section 9 of this Act relating to the custody of a minor are brought in a magistrates' court by a woman residing in Scotland or Northern Ireland, the court shall have jurisdiction to make any order in respect of the minor under that subsection on the application of the respondent in the proceedings.

16 Appeals and procedure

- (1) Where any application has been made under this Act to a county court, the High Court shall, at the instance of any party to the application, order the application to be removed to the High Court and there proceeded with on such terms as to costs as it thinks proper.
- (2) An appeal shall lie to the High Court from any order made by a county court under this Act.
- (3) Subject to subsection (4) of this section, where on an application to a magistrates' court under this Act the court makes or refuses to make an order, an appeal shall lie to the High Court.
- (4) Where an application is made to a magistrates' court under this Act, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court may refuse to make an order, and in that case no appeal shall lie to the High Court.

17 Saving for powers of High Court and other courts

- (1) Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians or otherwise in respect of minors.
- (2) Nothing in section 15(4), (5) or (6) of this Act shall be construed as derogating from any jurisdiction exercisable, apart from those provisions, by any court in England or Wales; and it is hereby declared that any jurisdiction conferred by those provisions is exercisable notwithstanding that any party to the proceedings is not domiciled in England and Wales.

Supplementary

18 Consequential amendments, repeals and savings

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to "the amendments there specified, being amendments consequential on this Act.
- (2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Any application, order or other thing made, done or having effect under or for the purposes of an enactment repealed by this Act and pending or in force immediately before the commencement of this Act shall be deemed to have been made or done under or for the purposes of the corresponding enactment in this Act; and any proceeding or other thing begun under any enactment so repealed may be continued under this Act as if begun thereunder.
- (4) So much of any document as refers expressly or by implication to any enactment repealed by this Act shall, if and so far as the nature of the subject-matter of the document permits, be construed as referring to this Act or the corresponding enactment therein, as the case may require.
- (5) Nothing in this section shall be taken as prejudicing the general application of section 38 of the Interpretation Act 1889 with regard to the effect of repeals.

19 Transitory provisions pending coming into force of s.1(2) of Administration of Justice Act 1970

Until the coming into force of section 1(2) of the Administration of Justice Act 1970 this Act shall have effect subject to the following modifications, that is to say—

- (a) in section 6 after the words " High Court" there shall be inserted the words " in any division thereof ";
- (b) after section 15(1) there shall be inserted the words " Any application under this Act to the High Court shall be made to the Chancery Division in such manner as may be prescribed by rules of court ";
- (c) in subsection (1) of section 16 after the words " proceeded with " there shall be inserted the words " before a judge of the Chancery Division ", at the end of subsection (2) of that section there shall be added the words " and subject to rules of court any such appeal shall be heard by a judge of the Chancery Division in chambers or in court as he shall direct " and in subsection (3) of that section after the word " shall" there shall be inserted the words " in accordance with rules of court ";
- (d) in section 17(1) after the words " High Court" there shall be inserted the words " or of any division thereof ".

20 Short title, interpretation, extent and commencement

- (1) This Act may be cited as the Guardianship of Minors Act 1971.
- (2) In this Act " maintenance " includes education.
- (3) References in this Act to any enactment are references thereto as amended, and include references thereto as applied, by any other enactment.
- (4) This Act—
 - (a) so far as it amends the Maintenance Orders Act 1950, extends to Scotland and Northern Ireland;
 - (b) so far as it amends the Army Act 1955 and the Air Force Act 1955, extends to Northern Ireland,but, save as aforesaid, extends to England and Wales only.
- (5) This Act shall come into force at the expiration of the period of one month beginning with the day on which it is passed.