



# Guardianship Act 1973

## 1973 CHAPTER 29

An Act to amend the law of England and Wales as to the guardianship of minors so as to make the rights of a mother equal with those of a father, and so as to make further provision with respect to applications and orders under section 9 of the Guardianship of Minors Act 1971 and with respect to the powers of a guardian under that Act in relation to the minor's property, and to amend section 4(2) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960; to make provision in relation to like matters for Scotland; and for purposes connected therewith. [5th July 1973]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### ENGLAND AND WALES

#### **1 Equality of parental rights**

- (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal and be exercisable by either without the other.
- (2) An agreement for a man or Woman to give up in whole or in part, in relation to any child of his or hers, the rights and authority referred to in subsection (1) above shall be unenforceable, except that an agreement made between husband and wife which is to operate only during their separation while married may, in relation to a child of theirs, provide for either of them to do so ; but no such agreement between husband and wife shall be enforced by any court if the court is of opinion that it will not be for the benefit of the child to give effect to it.

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- (3) Where a minor's father and mother disagree on any question affecting his welfare, either of them may apply to the court for its direction, and (subject to subsection (4) below) the court may make such order regarding the matters in difference as it may think proper.
- (4) Subsection (3) above shall not authorise the court to make any order regarding the custody of a minor or the right of access to him of his father or mother.
- (5) An order under subsection (3) above may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian under the Guardianship of Minors Act 1971, or (before or after the death of either parent) on the application of any other person having the custody of the minor.
- (6) Section 15(1) to (3) and section 16 of the Guardianship of Minors Act 1971 (jurisdiction and procedure) shall apply for the purposes of subsections (3) to (5) above as if they were contained in section 9 of that Act, except that section 15(3) shall not exclude any jurisdiction of a county court or a magistrates' court in proceedings against a person residing in Scotland or Northern Ireland for the revocation, revival or variation of any order under subsection (3) above.
- (7) Nothing in the foregoing provisions of this section shall affect the operation of any enactment requiring the consent of both parents in a matter affecting a minor, or be taken as applying in relation to a minor who is illegitimate.
- (8) In the Sexual Offences Act 1956 there shall be substituted for section 38 the provisions set out in Schedule 1 to this Act, and in the Mental Health Act 1959 in section 49(4) (d) (under which for purposes of that Act a man deprived under the said section 38 of authority over a patient is not to be treated as the patient's nearest relative) for the word " man " there shall be substituted the word " person " ; but, save as aforesaid, nothing in this section shall be taken to affect the provisions of the Mental Health Act 1959 as to the person who is " the nearest relative " for purposes of the Act.

## **2 Jurisdiction and orders on applications under s. 9 of Guardianship of Minors Act 1971**

- (1) In sections 9, 13, 15 and 16 of the Guardianship of Minors Act 1971 there shall be made the amendments provided for by Part I of Schedule 2 to this Act (being amendments providing for mother and father to be treated alike in relation to applications under section 9 of that Act, and amendments relating to cases in which custody is given to an individual other than one of the parents); and accordingly section 9 and section 15(3) to (6) shall have effect as they are set out in Part II of that Schedule with the amendments required by this subsection.
- (2) Where an application made under section 9 of the Guardianship of Minors Act 1971 relates to the custody of a minor under the age of sixteen, then subject to sections 3 and 4 below—
  - (a) if by an order made on that application any person is given the custody of the minor, but it appears to the court that there are exceptional circumstances making it desirable that the minor should be under the supervision of an independent person, the court may order that the minor shall be under the supervision of a specified local authority or under the supervision of a probation officer;

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- (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the minor to be entrusted to either of the parents or to any other individual, the court may commit the care of the minor to a specified local authority.
- (3) Where the court makes an order under subsection (2)(b) above committing the care of a minor to a local authority, the court may make a further order requiring the payment by either parent to that authority while it has the care of the minor of such weekly or other periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of that parent.
- (4) On an application under section 9 of the Guardianship of Minors Act 1971 the court may, in any case where it adjourns the hearing of the application for more than seven days, make an interim order, to have effect until such date as may be specified in the order and containing—
- (a) provision for payment by either parent to the other, or to any person given the custody of the minor, of such weekly or other periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of the parent on whom the requirement is imposed; and
- (b) where by reason of special circumstances the court thinks it proper, any provision regarding the custody of the minor or the right of access to the minor of the mother or father;
- but an interim order under this subsection shall not be made to have effect after the end of the three months beginning with the date of the order or of any previous interim order made under this subsection with respect to the application, and shall cease to have effect on the making of a final order or on the dismissal of the application.
- (5) A magistrates' court may also make such an interim order where under section 16(4) of the Guardianship of Minors Act 1971 it refuses to make an order on an application under section 9 on the ground that the matter is one that would more conveniently be dealt with by the High Court; but an interim order under this subsection shall not be made so as to have effect after the end of the three months beginning with the date of the order.
- (6) Where an application under section 9 of the Guardianship of Minors Act 1971 relates to a minor who is illegitimate, references in subsections (2) and (4)(b) above and in sections 3 and 4 below to the father or mother or parent of the minor shall be construed accordingly (but subsections (3) and (4)(a) above shall not apply).
- (7) In section 16(2) of the Guardianship of Minors Act 1971 (which provides for appeals from orders made by a county court under that Act) for the words " made by a county court under this Act" there shall be substituted the words " made on an application under this Act by a county court ".
- (8) For purposes of this section " local authority" means the council of a non-metropolitan county or a metropolitan district or London borough, or the Common Council of the City of London, and, until the coming into force of the Local Government Act 1972, includes the council of any county or county borough; and the matters which under section 2 of the Local Authority Social Services Act 1970 are to stand referred to an authority's social services committee shall include all matters relating to the discharge by the authority of functions under this section.

### **3 Additional provisions as to supervision orders**

- (1) Where the court makes an order under section 2(2)(a) above (in this section referred to as a "supervision order"), and the order provides for supervision by a probation officer, then—
  - (a) if it is an order of the High Court, the officer responsible for carrying out the order shall be such probation officer as may be selected under arrangements made by the Secretary of State; and
  - (b) in any other case the order shall be for supervision by a probation officer appointed for or assigned to the petty sessions area in which, in the opinion of the court, the minor is or will be resident, and the officer responsible for carrying out the order shall be selected in like manner as if the order were a probation order.
- (2) A supervision order shall cease to have effect when the minor attains the age of 16; and where a supervision order is made at a time when the parents of the minor are residing together—
  - (a) the order may direct that it is to cease to have effect if for a period of three months after it is made they continue to reside together; and
  - (b) the order (whether or not it includes a direction under paragraph (a) above) may direct that it is not to operate while they are residing together.
- (3) A supervision order may be varied or discharged by a subsequent order made on the application of either parent or after the death of either parent, on the application of any guardian under the Guardianship of Minors Act 1971, or (before or after the death of either parent) on the application of any other person having the custody of the minor by virtue of an order under section 9(1) of that Act or on that of the probation officer or local authority having the supervision of the minor by virtue of the order; and section 16 of that Act shall have effect in relation to applications under this subsection as it has effect in relation to applications under that Act, and section 16(5) shall apply as it applies in relation to the applications there mentioned.
- (4) Without prejudice to subsection (3) above, in relation to supervision orders of magistrates' courts the rules made under section 15 of the Justices of the Peace Act 1949 may make provision for substituting from time to time a probation officer appointed for or assigned to a different petty sessions area or, as the case may be, a different local authority, if in the opinion of the court the minor is or will be resident in that petty sessions area or, as the case may be, in the area of that authority.
- (5) Section 15(4) to (6), except section 15(5)(a), of the Guardianship of Minors Act 1971 shall apply in relation to supervision orders as they apply in relation to orders under section 9(2) of that Act.

### **4 Additional provisions as to order committing care of minor to local authority**

- (1) An order under section 2(2)(b) above committing the care of a minor to a local authority shall commit him to the care (while a minor) of the authority in whose area he is, in the opinion of the court, resident immediately before being so committed.
- (2) Before making an order under section 2(2)(b) above the court shall inform the local authority of the court's proposal to make the order, and shall hear any representations from the authority, including any representations as to the making also of an order under section 2(3) above for payments to the authority.

- (3) In relation to an order under section 2(2)(b) above committing the care of a minor to a local authority, or to an order under section 2(3) requiring payments to be made to an authority to whom the care of a minor is so committed, the following provisions of the Guardianship of Minors Act 1971, that is to say, sections 9(3) and (4), 12(2), 13, 15(4) to (6) and 16(5), shall apply as if the order under section 2(2)(b) above were an order under section 9 of that Act giving custody of the minor to a person other than one of the parents (and the local authority were lawfully given that custody by the order), and any order for payment to the local authority were an order under section 9(2) requiring payment to be made to them as a person so given that custody.
- (4) On the making of an order under section 2(2)(b) above with respect to a minor, Parts II and III of the Children Act 1948 together with sections 30, 47 and 58 of the Children and Young Persons Act 1963 (which relate to the treatment of children in the care of a local authority and to contributions towards their maintenance) shall apply as if the minor had been received by the local authority into their care under section 1 of the Children Act 1948, except that—
  - (a) the exercise by the local authority of their powers under sections 12 and 13 of that Act shall, where the order is made by the High Court, be subject to any directions given by the court; and
  - (b) section 17 of that Act (which relates to arrangements for emigration) shall not apply; and
  - (c) section 24(2) of that Act (which provides for a child's father and mother to be liable to make contributions in respect of him) shall not apply, but so that references to the local authority who are entitled to receive contributions shall be construed as if section 24(2) did apply.
- (5) While an order under section 2(2)(b) above remains in force with respect to a minor, the minor shall continue in the care of the local authority notwithstanding any claim by a parent or other person.
- (6) Each parent or guardian of a child for the time being in the care of a local authority by virtue of an order under section 2(2)(b) above shall give notice to the authority of any change of address of that parent or guardian, and any person who without reasonable excuse fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding £10.

## **5 Additional provisions as to interim orders**

- (1) There shall be no appeal under section 16 of the Guardianship of Minors Act 1971 from an interim order under section 2(4) or (5) above if the appeal relates only to a provision requiring payments to be made towards the maintenance of a minor.
- (2) Section 9(3) and (4) and section 13 of the Guardianship of Minors Act 1971 shall apply to any such interim order as they apply to an order under section 9(1) or (2).
- (3) Where in the case of an application under section 9 of the Guardianship of Minors Act 1971 the applicant or the respondent (or any of the respondents) resides in Scotland or Northern Ireland, then—
  - (a) a county court or magistrates' court may exercise the jurisdiction to make, vary or discharge interim orders requiring payments to be made towards the maintenance of the minor or interim orders relating to the custody of the minor in any case in which, in accordance with section 15(4) or (5) of the Guardianship of Minors Act 1971, the court could make an order under

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section 9 of that Act relating to the custody of the minor or, as the case may be, could vary or discharge such an order ; and

- (b) a magistrates' court shall have jurisdiction to make an interim order on the application of the respondent in any case in which, in accordance with section 15(6) of that Act, the court could make an order under section 9 of that Act.

## **6 Evidence on applications under s. 9 of Guardianship of Minors Act 1971**

- (1) If the court dealing with an application under section 9 of the Guardianship of Minors Act 1971 or section 3(3) of this Act requests a local authority to arrange for an officer of the authority to make to the court a report, orally or in writing, with respect to any specified matter (being a matter appearing to the court to be relevant to the application), or requests a probation officer to make such a report to the court, it shall be the duty of the local authority or probation officer to comply with the request.
- (2) Any statement which is or purports to be a report in pursuance of subsection (1) above shall be made, or if in writing be read aloud, before the court at a hearing of the application, and immediately after it has been so made or read aloud the court shall ask whether any party to the proceedings who is present or represented by counsel or solicitor at the hearing objects to anything contained therein; and where objection is made—
  - (a) the court shall require the officer by whom the statement was or purported to be made to give evidence on or with respect to the matters referred to therein; and
  - (b) any party to the proceedings may give or call evidence with respect to any matter referred to in the statement or in any evidence given by the officer.
- (3) The court may take account of any statement made or read aloud under subsection (2) above and of any evidence given under paragraph (a) of that subsection, so far as that statement or evidence relates to the matters specified by the court under subsection (1), notwithstanding any enactment or rule of law relating to the admissibility of evidence.
- (4) Where for the purpose of subsection (1) above a magistrates' court adjourns the hearing of an application, then, subject to section 46(2) of the Magistrates' Courts Act 1952 (which provides for the notice required of a resumed hearing), the court may resume the hearing at the time and place appointed notwithstanding the absence of both or all of the parties.
- (5) Section 2(8) above shall apply in relation to this section as it applies in relation to section 2.

## **7 Powers of guardians**

- (1) Subject to subsection (2) below, a guardian under the Guardianship of Minors Act 1971, besides being guardian of the person of the minor, shall have all the rights, powers and duties of a guardian of the minor's estate, including in particular the right to receive and recover in his own name for the benefit of the minor property of whatever description and wherever situated which the minor is entitled to receive or recover.
- (2) Nothing in subsection (1) above shall restrict or affect the power of the High Court to appoint a person to be, or to act as, the guardian of a minor's estate either generally or for a particular purpose; and subsection (1) above shall not apply to a guardian under

the Guardianship of Minors Act 1971 so long as there is a guardian of the minor's estate alone.

## **8 Amendment of Matrimonial Proceedings (Magistrates' Courts) Act 1960 s. 4(2)**

Section 4(2) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (under which a magistrates' court has power in certain proceedings under that Act to call for a report by a probation officer or by an officer of a local authority employed in connection with functions specified in the now repealed section 39(1) of the Children Act 1948) shall be amended by omitting the words " or by such an officer of a local authority as is mentioned in subsection (7) of section 3 of this Act ", and by adding at the end the words " or for such a report by an officer of a local authority employed in connection with functions of the authority under the Children and Young Persons Acts 1933 to 1969 ".

## **9 Consequential amendments, and repeals**

- (1) In the enactments mentioned in the following subsections there shall be made the amendments there provided for (being amendments consequential on the foregoing provisions of this Act); and the enactments mentioned in Schedule 3 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.
- (2) The words " the Guardianship of Minors Acts 1971 and 1973 " shall be substituted for the words " the Guardianship of Infants Acts 1886 and 1925 " wherever they occurred in any of the following enactments as originally enacted, that is to say—
  - (a) in the Legal Aid and Advice Act 1949, in Schedule 1, in paragraph 3(b) of Part I (the proceedings for which legal aid may be given in magistrates' courts);
  - (b) in the Magistrates' Courts Act 1952, in sections 52(2), 56(1) and 57(4) (periodical payments through justices' clerk, and definition of " domestic proceedings ");
  - (c) in the Administration of Justice Act 1970, in Schedule 1 (High Court business assigned to Family Division).
- (3) The following enactments, as amended by the Guardianship of Minors Act 1971 (which as so amended relate to the enforcement of orders under that Act for the payment of money) shall be further amended as follows:—
  - (a) in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, in section 2(1)(d), after the words "the Guardianship of Minors Act 1971" there shall be inserted the words " or under section 2(4)(a) of the Guardianship Act 1973 ";
  - (b) in the Maintenance Orders Act 1950, in section 16(2)(a)(iii), and in the Administration of Justice Act 1970, in Schedule 8, in paragraph 4(a), and in the Attachment of Earnings Act 1971, in Schedule 1, in paragraph 5(a), after the words " the Guardianship of Minors Act 1971 " there shall in each case be inserted the words " or section 2(3) or 2(4)(a) of the Guardianship Act 1973 ";

## PART II

### SCOTLAND

#### 10 Equality of parental rights

- (1) In relation to a pupil or minor, and to the administration of any property belonging to or held in trust for a pupil or minor or the application of income of any such property, a mother shall have the same rights and authority as the law allows to a father (and shall accordingly hold the office of tutor to a pupil or, as the case may be, curator to a minor) and the rights and authority of mother and father shall be equal and be exercisable by either without the other.
- (2) An agreement for a man or woman to give up in whole or in part, in relation to any child of his or hers, the rights and authority referred to in subsection (1) above shall be unenforceable, except that an agreement made between husband and wife which is to operate only during their separation while married may, in relation to a child of theirs, provide for either of them to do so; but no such agreement between husband and wife shall be enforced by any court if the court is of the opinion that it will not be for the benefit of the child to give effect to it.
- (3) Where a father and mother of a pupil or minor disagree on any question affecting his welfare, either of them may apply to the Court of Session or to any sheriff court, having jurisdiction under the Guardianship of Infants Act 1886, for the court's direction, and (subject to subsection (4) below) the court may make such order regarding the matters in difference as it may think proper.
- (4) Subsection (3) above shall not authorise the court to make any order regarding the custody of a pupil or minor or the right of access to him of his father or mother.
- (5) An order under subsection (3) above may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian under the Guardianship of Infants Acts 1886 and 1925, or (before or after the death of either parent) on the application of any person having the custody of the pupil or minor; and the power conferred on the court by this subsection may be exercised in proceedings by or against a person residing in England or Wales or Northern Ireland.
- (6) Nothing in the foregoing provisions of this section shall affect the operation of any enactment requiring the consent of both parents in a matter affecting a pupil or minor or be taken as applying in relation to a pupil or minor who is illegitimate.
- (7) Nothing in the said provisions shall be taken to affect the provisions of the Mental Health (Scotland) Act 1960 as to the person who is " the nearest relative " for the purposes of that Act.
- (8) In the Guardianship of Infants Act 1925 in section 1 the words " or any right at common law possessed by the father " and section 2 are hereby repealed.

#### 11 Jurisdiction and orders relating to care and custody of children

- (1) Where an application made under section 5 of the Guardianship of Infants Act 1886, as read with section 3 of the Guardianship of Infants Act 1925, section 16 of the Administration of Justice Act 1928 and section 1 of the Custody of Children (Scotland)



Act 1939, or under section 2(1) of the Illegitimate Children (Scotland) Act 1930 relates to the custody of a child—

- (a) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may commit the care of the child to a specified local authority;
- (b) if by an order made on that application either parent or any other person (other than a local authority) is given the custody of the child, but it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of a local authority, the court may order that the child shall be under the supervision of a specified local authority, subject to any directions given by the court;

but any order made by virtue of the above paragraphs shall cease to have effect when the child attains the age of sixteen.

- (2) While an order made by virtue of this section committing the care of a child to a local authority is in force with respect to any child the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.
- (3) Where the court makes an order by virtue of subsection (1)(a) above committing the care of a child to a local authority, the court may make a further order requiring the payment by either parent to that authority while it has the care of the child of such weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable having regard to the means of that parent.
- (4) Before making an order by virtue of subsection (1)(a) above, the court shall hear any representations from the local authority, including any representations as to the making of an order under subsection (3) above for payments to the authority.
- (5) On the making of an order by virtue of this section committing the care of a child to a local authority Part II of the Social Work (Scotland) Act 1968 (which relates to the treatment of children in care of local authorities) shall, subject to the provisions of this section, apply as if the child had been received by the local authority into their care under section 15 of that Act, so however that—
  - (a) the exercise by the local authority of their powers under or by virtue of sections 20 to 22 of that Act shall be subject to any directions given by the court; and
  - (b) section 23 of that Act (which relates to arrangements for the emigration of a child under the care of a local authority) shall not apply.
- (6) In section 3 of the Guardianship of Infants Act 1925 and in section 7 of the Maintenance Orders Act 1950 there shall be made the amendments provided for in Part I of Schedule 4 to this Act (being amendments providing for mother and father to be treated alike for the purposes of the said section 3 and amendments relating to cases in which custody is given to an individual other than one of the parents); and accordingly section 3 and section 7 shall have effect as they are set out in Part II of the Schedule with the amendments required by this subsection.

## 12 Provisions supplementary to section 11

- (1) Any order made by virtue of section 11 above may from time to time be varied or may be discharged by a subsequent order on the application of—
  - (a) either parent, or

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- (b) (after the death of either parent) any guardian under the Guardianship of Infants Act 1886, or
  - (c) any other person having custody of the child, or
  - (d) the specified local authority having the care or supervision of the child.
- (2) (a) Where an application is made under section 5 of the Guardianship of Infants Act 1886 or under section 2(1) of the Illegitimate Children (Scotland) Act 1930 or for the variation or discharge of any order made under the said Acts or by virtue of section 11 of this Act, the court shall have power to appoint a specified local authority or an individual not being an officer of the local authority to investigate and report to the court on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.
- (b) If on consideration of a report furnished in pursuance of this subsection the court, either *ex proprio motu* or on the application of any person concerned, thinks it expedient to do so, it may require the person who furnished the report to appear and be examined on oath regarding any matter dealt with in the report, and such person may be examined or cross-examined accordingly.
- (c) Any expenses incurred in connection with the preparation of a report by a local authority or other person appointed under this subsection shall form part of the expenses of the action and be defrayed by such party to the action as the court may direct, and the court may certify the amount of the expenses so incurred.
- (3) Each parent or guardian of a child for the time being in the care of a local authority by virtue of an order under section 11(1)(a) above shall give notice to the authority of any change of address of that parent or guardian and any person who without reasonable excuse fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding £10.

### **13 Interpretation of Part II**

- (1) In this Part of this Act—
- " child " means a child under sixteen years of age;
  - " specified local authority " means a local authority within the meaning of the Social Work (Scotland) Act 1968.

### **14 Consequential amendments**

The enactments specified in Schedule 5 to this Act shall have effect subject to the amendments set out in the Schedule, being amendments consequential on the foregoing provisions of this Part of this Act.

## **PART III**

### **GENERAL**

### **15 Short title, citation, extent and commencement**

- (1) This Act may be cited as the Guardianship Act 1973 ; and—

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- (a) Part I of this Act and the Guardianship of Minors Act 1971 may be cited together as the Guardianship of Minors Acts 1971 and 1973 ; and
  - (b) Part II of this Act and the Guardianship of Infants Acts 1886 and 1925 may be cited together as the Guardianship of Children (Scotland) Acts 1886 to 1973.
- (2) Part I of this Act shall not extend to Scotland or to Northern Ireland, and Part II shall not extend to England and Wales or to Northern Ireland, except that each Part shall extend throughout the United Kingdom in so far as it amends section 16 of the Maintenance Orders Act 1950.
- (3) This Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for the coming into force of different provisions.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### PROVISIONS SUBSTITUTED FOR SEXUAL OFFENCES ACT 1956 S. 38

- (1) On a person's conviction of an offence under section 10 of this Act against a girl under the age of eighteen, or of an offence under section 11 of this Act against a boy under that age, or of attempting to commit such an offence, the court may by order divest that person of all authority over the girl or boy.
- (2) An order divesting a person of authority over a girl or boy under the foregoing subsection may, if that person is the guardian of the girl or boy, remove that person from the guardianship.
- (3) An order under this section may appoint a person to be the guardian of the girl or boy during his or her minority or any less period.
- (4) An order under this section may be varied from time to time or rescinded by the High Court and, if made on conviction of an offence against a girl or boy who is a defective, may, so far as it has effect for any of the purposes of the Mental Health Act 1959, be rescinded either before or after the girl or boy has attained the age of eighteen.

### SCHEDULE 2

Section 2.

#### AMENDMENTS OF GUARDIANSHIP OF MINORS ACT 1971 SS. 9, 13, AND 16, AND AMENDED TEXT OF S. 9 AND S. 15(3)—(6)

### PART I

#### AMENDMENTS

- 1 (1) Section 9 of the Guardianship of Minors Act 1971 is to be amended in accordance with sub-paragraphs (2) to (4) below.
- (2) In section 9(2) there shall be substituted—
  - (a) for the words "the mother", where they first occur, the words " any person (whether or not one of the parents)" ; and
  - (b) for the words " the father to pay to the mother " the words "payment to that person by the parent or either of the parents excluded from having that custody of " ; and
  - (c) for the words " the father ", where they last occur, the words " that parent".
- (3) At the end of section 9(3) there shall be added—
 

“Provided that, unless the court in making the order directs otherwise, paragraphs (a) and (b) above shall not apply to any provision of the order

giving the custody of the minor to a person other than one of the parents or made with respect to a minor of whom custody is so given”.

- (4) In section 9(4) the words "(in the case of an order under subsection (1))" shall be omitted, and at the end of section 9(4) there shall be added the words " or (before or after the death of either parent) on the application of any other person having the custody of the minor by virtue of an order under subsection (1) of this section ".
- 2 In section 13(1) of the Guardianship of Minors Act 1971 (which provides for the enforcement of orders of a magistrates' court committing to the applicant the legal custody of a minor) for the words " the applicant" there shall be substituted the words " any person " ; at the first place where the applicant is mentioned, and the words " the person given the custody " at the other two places ; and for the words " that person " there shall be substituted the words " the person so served.
- 3 (1) Section 15 of the Guardianship of Minors Act 1971 is to be amended in accordance with sub-paragraphs (2) to (4) below.
- (2) In section 15(4) there shall be substituted—
- (a) for the words " to the mother " where they first occur, the words " to a person resident in England or Wales " ; and
  - (b) for the words "requiring the father to make payments to the mother " the words " requiring payments to be made " ; and
  - (c) for the words " the father ", where they last occur, the words " one parent" and for the words " the mother", in the last two places where they occur, the words "the other parent".
- (3) In section 15(5) the words " in the case of proceedings by the mother " shall be omitted, and for the words " requiring the father to make payments to the mother " there shall be substituted the words " requiring payments to be made ".
- (4) In section 15(6) for the words " a woman " there shall be substituted the words " a person ",  
and for the words " that subsection " there shall be substituted the words " that section ".
- 4 At the end of section 16 of the Guardianship of Minors Act 1971 there shall be added as subsection (5)—
- “(5) In relation to applications made to a magistrates' court under section 9 of this Act for the discharge or variation of an order giving the custody of a minor to a person other than one of the parents or made with respect to a minor of whom custody is so given, rules made under section 15 of the Justices of the Peace Act 1949 may make provision as to the persons who are to be made defendants on the application ; and if on any such application there are two or more defendants, the power of the court under section 55(1) of the Magistrates' Courts Act 1952 shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole or part of the costs of all or any of the other parties.”

## PART II

### TEXT OF S. 9 AND S. 15(3) TO (6), AS AMENDED

#### *Section 9, as amended*

- “9 (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 any person (whether or not one of the parents), the court may make a further order requiring payment to that person by the parent or either of the parents excluded from having that custody of such weekly or other periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of that parent.
- (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:

Provided that, unless the court in making the order directs otherwise, paragraphs (a) and (b) above shall not apply to any provision of the order giving the custody of the minor to a person other than one of the parents or made with respect to a minor of whom custody is so given.

- (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 after the death of either parent on the application of any guardian under this Act, or (before or after the death of either parent) on the application of any other person having the custody of the minor by virtue of an order under subsection (1) of this section.”

#### *Section 15(3) to (6), as amended*

- “(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 a person resident in England or Wales, whether with or without an order requiring payments to be made towards the minor's maintenance, may be made, if one parent resides in Scotland or Northern Ireland and the other parent and the minor in England or Wales, by a magistrates' court having jurisdiction in the place in which the other parent resides.

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

- (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 an order requiring payments to be made 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 person residing in Scotland or Northern Ireland, the court shall have jurisdiction to make any order in respect of the minor under that section on the application of the respondent in the proceedings.”

SCHEDULE 3

Section 9.

REPEALS UNDER PART I OF THIS ACT

Chapter	Short Title	Extent of Repeal
12 Chas. 2. c. 24.	The Tenures Abolition Act 1660.	Section 9.
36 & 37 Vict. c. 12.	The Custody of Infants Act 1873.	The preamble, and section 2.
7 & 8 Eliz. 2. c. 72.	The Mental Health Act 1959.	Section 127(2).
1969 c. 46.	The Family Law Reform Act 1969.	In Part I of Schedule 1 the entry relating to the Sexual Offences Act 1956 and that relating to the Mental Health Act 1959.
1971 c. 3.	The Guardianship of Minors Act 1971.	In section 1 the words " or any right at common law possessed by the father ". Section 2. Section 8. In Schedule 1 the entry relating to the Legal Aid and Advice Act 1949 and that relating to the Magistrates' Courts Act 1952, and in the entry relating to the Administration of Justice Act 1970 the words from " for " where first occurring to " 1971 " where next occurring.

## SCHEDULE 4

Section 11.

### AMENDMENTS OF GUARDIANSHIP OF INFANTS ACT 1925 S. 3, AND OF MAINTENANCE ORDERS ACT 1950 S. 7, AND TEXTS AS AMENDED

#### PART I

##### *Guardianship of Infants Act 1925, S. 3*

- 1 (1) Section 3 of the Guardianship of Infants Act 1925 is to be amended in accordance with sub-paragraphs (2) to (6) below.
- (2) In section 3(1) for the words "mother of the infant is then residing with the father of the infant", there shall be substituted the words " parents are then residing together ".
- (3) In section 3(2) there shall be substituted—
- (a) for the words "the mother", where they first occur, the words " any person (whether or not one of the parents)"; and
  - (b) for the words " the mother is then residing with the father ", the words " the parents are residing together " ; and
  - (c) for the words " the father shall pay to the mother " the words " the parent or either of the parents excluded from having that custody shall pay to that person " ; and
  - (d) for the words " the father ", where they last occur, the words " that parent".
- (4) In section 3(3) there shall be substituted—
- (a) for the words " mother resides with the father ", the words " parents are residing together " ; and
  - (b) for the words " the mother of the infant continues to reside with the father", the words " they continue to reside together ".
- (5) At the end of section 3(3) there shall be added—
- “Provided that unless the court in making the order directs otherwise, this subsection shall not apply to any provisions of the order giving the custody of the child to a person other than one of the parents or made with respect to a child of whom custody is so given.”
- (6) In section 3(4), for the words " either of the father or the mother of the infant" there shall be substituted the words " of either parent or of any other person having the custody of the child by virtue of an order made under section 5 of the Guardianship of Infants Act 1886. ".

##### *Maintenance Orders Act 1950, s. 7*

- 2 In section 7 of the Maintenance Orders Act 1950 there shall be substituted—
- (a) for the words " to the mother ", where they first occur, the words " to a person resident in Scotland " ; and
  - (b) for the words " requiring the father to make payments to the mother " the words " requiring payments to be made " ; and



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

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- (c) for the words " the father", where they last occur, the words " one parent" and for the words " the mother ", in the last two places where they occur, the words " the other parent".

## PART II

### TEXTS OF S. 3 AND S. 7 AS AMENDED

#### *Guardianship of Infants Act 1925, s. 3, as amended*

- “3 (1) The power of the court under section five of the Guardianship of Infants Act 1886 to make an order as to the custody of an infant and the right of access thereto may be exercised notwithstanding that the parents are then residing together.
- (2) Where the court under the said section as so amended makes an order giving the custody of the infant to any person (whether or not one of the parents), then, whether or not the parents are residing together, the court may further order that the parent or either of the parents excluded from having that custody shall pay to that person towards the maintenance of the infant such weekly or other periodical sum as the court, having regard to the means of that parent, may think reasonable.
- (3) No such order, whether for custody or maintenance, shall be enforceable and no liability thereunder shall accrue while the parents are residing together, and any such order shall cease to have effect if for a period of three months after it is made they continue to reside together:
- Provided that unless the court in making the order directs otherwise, this subsection shall not apply to any provisions of the order giving the custody of the child to a person other than one of the parents or made with respect to a child of whom custody is so given.
- (4) Any order so made may, on the application of either parent or of any other person having the custody of the child by virtue of an order made under section five of the Guardianship of Infants Act 1886, be varied or discharged by a subsequent order.”

#### *Maintenance Orders Act 1950, s. 7, as amended*

- “7 An order under the Guardianship of Infants Acts 1886 and 1925, giving the custody of a pupil child to a person resident in Scotland, whether with or without an order requiring payments to be made towards the maintenance of the pupil child, may be made, if one parent resides in England or Northern Ireland and the other parent and the pupil child in Scotland, by the sheriff within whose jurisdiction the other parent resides.”

## SCHEDULE 5

Section 14.

### CONSEQUENTIAL AMENDMENTS RELATING TO SCOTLAND

- 1 In section 5 of the Guardianship of Infants Act 1886, at the end there shall be added—
- “or (whether before or after the death of either parent) of any other person having the custody of the child by virtue of an order made under this section”.

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

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- 2 In section 8 of the Guardianship of Infants Act 1925, for the words " as amended by this Act" there shall be substituted the words " by virtue of section 3 of this Act or under section 11(3) of the Guardianship Act 1973 ".
- 3 In section 2(1) of the Illegitimate Children (Scotland) Act 1930, after the words " either parent", where they last occur, there shall be inserted the words " or of any other person having the custody of the child by virtue of an order made under this section ",
- 4 In section 16(2)(b) of the Maintenance Orders Act 1950, after sub-paragraph (vi) there shall be inserted the following sub-paragraph—  
“(vii) an order for the payment of weekly or other periodical sums under subsection (3) of section 11 of the Guardianship Act 1973 ;”.
- 5 In section 8(1)(d) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, after " 1925 " there shall be inserted the words " or under subsection (3) of section 11 of the Guardianship Act 1973 ".
- 6 In section 8(1)(d) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966, after " 1958 " there shall be inserted the words " or by virtue of Part II of the Guardianship Act 1973 ".
- 7 In section 2(2) of the Social Work (Scotland) Act 1968, in sub-paragraph (c), at the end there shall be added " and sections 11 and 12 of the Guardianship Act 1973 ".