



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART II

AMENDMENTS OF THE GUARDIANSHIP OF MINORS ACTS 1971 AND 1973

Amendment of provisions relating to the custody of minors

36 Meaning of custody in Guardianship of Minors Acts 1971 and 1973

- (1) In the Guardianship of Minors Act 1971—
- (a) for the word " custody " in each place (except in section 13) where that word occurs there shall be substituted the words " legal custody ";
 - (b) in section 13(1) for the words "legal custody" there shall be substituted the words " actual custody ";
 - (c) in section 20(2) after the word "Act" there shall be inserted the words "' actual custody', as respect a child, means the actual possession of the person of the child,' legal custody ' shall be construed in accordance with Part IV of the Children Act 1975 and "
- (2) In the Guardianship Act 1973 for the word " custody " in each place where that word occurs there shall be substituted the words " legal custody " and at the end of section 1(1) of that Act there shall be added the following paragraph—
- “In this Act ' legal custody ' shall be construed in accordance with Part IV of the Children Act 1975.”.

37 Further provisions relating to orders for custody

In the Guardianship of Minors Act 1971 the following section shall be inserted after section 11—

“11A Further provisions relating to orders for custody.

- (1) An order shall not be made under section 9(1), 10(1)(a) or 11(a) of this Act, giving the legal custody of a child to more than one person ; but where the court makes an order under one of those sections giving the legal custody of a minor to any person, it may order that a parent of the minor who is not given the legal custody of the minor shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the minor) and shall have those rights and duties jointly with the person who is given the legal custody of the minor.
- (2) Where the court makes an order under section 9(1), 10(1)(a) or 11(a) of this Act the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order or any provision thereof shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.
- (3) Any order made in respect of a minor under section 9(1), 10(1)(a) or 11(a) of this Act shall cease to have effect when the minor attains the age of eighteen.”.

38 Amendment of provisions relating to age limits on orders for custody etc.

- (1) Section 15(2)(a) of the Guardianship of Minors Act 1971 (which provides that a magistrates' court shall not entertain an application relating to a minor over sixteen unless the minor is physically or mentally incapable of self-support) shall cease to have effect.
- (2) In section 2(2) of the Guardianship Act 1973 (which provides that supervision orders and orders committing the care of a minor to a local authority shall only be made in relation to a minor who is under sixteen) for the words "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 " there shall be substituted the words " where an application is made under section 9 of the Guardianship of Minors Act 1971 for an order regarding the custody of a minor ".
- (3) In section 3(2) of the Guardianship Act 1973 (which provides that a supervision order shall cease to have effect when a minor becomes sixteen) for the words " age of sixteen " there shall be substituted the words " age of eighteen ".
- (4) In section 4 of the Guardianship Act 1973 (which relates to orders committing the care of a minor to a local authority) after subsection (2) there shall be inserted the following subsection—
 - “(2A) The court shall not make an order committing a minor to the care of a local authority under section 2(2)(b) above after he has attained the age of seventeen.”.

39 Restriction on removal of minor from England and Wales

In the Guardianship of Minors Act 1971 the following section shall be inserted after section 13—

“13A Restriction on removal of minor from England and Wales.

- (1) Where the court makes—
 - (a) an order under section 9(1), 10(1)(a) or 11(a) of this Act regarding the legal custody of a minor, or
 - (b) an interim order under section 2(4) of the Guardianship Act 1973 containing provision regarding the legal custody of a minor,the court, on making the order or at any time while the order is in force, may, if an application is made under this section, by order direct that no person shall take the minor out of England and Wales while the order made under this section is in force, except with the leave of the court.
- (2) An order made under subsection (1) above may be varied or discharged by a subsequent order.
- (3) An application for an order under subsection (1) above, or for the variation or discharge of such an order, may be made by any party to the proceedings in which the order mentioned in paragraph (a) or (b) of that subsection was made.”

40 Access to minors by grandparents

In the Guardianship of Minors Act 1971 the following heading and section shall be inserted after section 14—

“Access to minors by grandparents

14A Access to minors by grandparents.

- (1) The court, on making an order under section 9(1) of this Act or at any time while such an order is in force, may on the application of a grandparent of the minor make such order requiring access to the minor to be given to the grandparent as the court thinks fit.
- (2) Where one parent of a minor is dead, or both parents are dead, the court may, on an application made by a parent of a deceased parent of the minor, make such order requiring access to the minor to be given to the applicant as the court thinks fit.
- (3) Section 11A(2) of this Act shall apply in relation to an order made under this section as it applies in relation to an order made under section 9(1), 10(1)(a), or 11(a) of this Act.
- (4) The court shall not make an order under this section with respect to a minor who is for the purposes of Part II of the Children Act 1948 in the care of a local authority.

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

- (5) Where the court has made an order under subsection (1) above requiring access to a minor to be given to a grandparent, the court may vary or discharge that order on an application made—
- (a) by that grandparent, or
 - (b) by either parent of the minor, or
 - (c) if the court has made an order under section 9(1)(a) of this Act giving the legal custody of the minor to a person other than one of the parents, by that person.
- (6) Where the court has made an order under subsection (2) above requiring access to a minor to be given to a grandparent, the court may vary or discharge that order on an application made—
- (a) by that grandparent, or
 - (b) by any surviving parent of the minor, or
 - (c) by any guardian of the minor.
- (7) Section 6 of the Guardianship Act 1973 shall apply in relation to an application under this section as it applies in relation to an application under section 5 or 9 of this Act, and any reference to a party to the proceedings in subsection (2) or (3) of the said section 6 shall include—
- (a) in the case of an application under subsection (1) or (2) above, a reference to the grandparent who has made an application under either of those subsections,
 - (b) in the case of an application under subsection (5) or (6) above, a reference to the grandparent who has access to the minor under the order for the variation or discharge of which the application is made.
- (8) Where, at any time after an order with respect to a minor has been made under subsection (1) above, no order is in force under section 9 of this Act with respect to that minor, the order made under subsection (1) above shall cease to have effect.
- (9) A court may make an order under this section in favour of a grandparent of a minor notwithstanding that the minor is illegitimate.”.