



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.

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- (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.”.

Amendment of provisions relating to orders for maintenance

41 Extension of powers of court to make orders for maintenance

- (1) The provisions of sections 9, 10 and 11 of the Guardianship of Minors Act 1971 relating to orders for maintenance shall have effect subject to the provisions of this section.
- (2) In section 9 of that Act for subsection (2) there shall be substituted the following subsection—
 - “(2) Where by an order under subsection (1) of this section the right to the actual custody of a minor is given to one of the parents, the court may also, subject to section 12 of this Act, make one or both of the following orders, that is to say—
 - (a) an order requiring the parent excluded from having actual custody to make to the other parent for the benefit of the minor, or to the minor,

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such periodical payments, and for such term, as may be specified in the order ;

- (b) an order requiring the parent excluded from having actual custody to pay to the other parent for the benefit of the minor, or to the minor, such lump sum as may be so specified ; "

and in subsection (4) after the words "this section" there shall be inserted the words " (other than an order for the payment of a lump sum) ". "

- (3) In section 10(1) of that Act for paragraph (b) there shall be substituted the following paragraph—

“(b) may also, subject to section 12 of this Act, make one or both of the following orders, that is to say—

- (i) an order requiring the mother or father to pay to the guardian for the benefit of the minor, or to the minor, such periodical payments, and for such term, as may be specified in the order;
- (ii) an order requiring the mother or father to pay to the guardian for the benefit of the minor, or to the minor, such lump sum as may be so specified;”.

and in subsection (2) of that section after the words " any order " there shall be inserted the words " (other than an order for the payment of a lump sum) " .

- (4) In section 11 of that Act for paragraph (b) there shall be substituted the following paragraph—

“(b) to make, subject to section 12 of this Act, one or both of the following orders, that is to say—

- (i) an order requiring the mother or father to pay to the other guardian for the benefit of the minor, or to the minor, such periodical payments, and for such term, as may be specified in the order;
- (ii) an order requiring the mother or father to pay to the other guardian for the benefit of the minor, or to the minor, such lump sum as may be so specified ;”.

and in paragraph (c) after the words " any order " there shall be inserted the words " (other than an order for the payment of a lump sum) " .

42 Duration of orders for maintenance

For section 12 of the Guardianship of Minors Act 1971 (which relates to orders for the maintenance of persons between 18 and 21) there shall be substituted the following section—

“12 Duration of orders for maintenance.

- (1) The term to be specified in an order made under section 9, 10 or 11 of this Act for the making of periodical payments in favour of a minor may begin with the date of the making of an application for the order in question or any later date but—

- (a) shall not in the first instance extend beyond the date of the birthday of the minor next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the Education Act 1944 together with any Order

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- in Council made under that section) unless the court thinks it right in the circumstances of the case to specify a later date; and
- (b) shall not in any event, subject to subsection (2) below, extend beyond the date of the minor's eighteenth birthday.
- (2) Paragraph (b) of subsection (1) above shall not apply in the case of a minor if it appears to the court that—
- (a) the minor is, or will be, or if an order were made without complying with that paragraph would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (b) there are special circumstances which justify the making of an order without complying with that paragraph.
- (3) Any order made under section 9, 10 or 11 of this Act requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.”.

43 Further provisions as to orders for maintenance

In the Guardianship of Minors Act 1971 the following sections shall be inserted after section 12—

“12A Matters to which court is to have regard in making orders for maintenance.

In deciding whether to exercise its powers under section 9(2), 10(1)(b) or 11(b) of this Act and, if so, in what manner, the court shall have regard to all the circumstances of the case including the following matters, that is to say—

- (a) the income, earning capacity, property and other financial resources which each parent of the minor has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each parent of the minor has or is likely to have in the foreseeable future;
- (c) the financial needs of the minor;
- (d) the income, earning capacity (if any), property and other financial resources of the minor;
- (e) any physical or mental disability of the minor.

12B Provisions relating to lump sums.

- (1) Without prejudice to the generality of sections 9(2), 10(1)(b) and 11(b) of this Act, an order under any of those provisions for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the minor before the making of the order to be met.
- (2) The amount of any lump sum required to be paid by an order made by a magistrates' court under section 9(2), 10(1)(b) or 11(b) of this Act shall not exceed £500 or such larger amount as the Secretary of State may from time to time by order fix for the purposes of this subsection.

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Any order made by the Secretary of State under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) The power of the court under section 9, 10 or 11 of this Act to vary or discharge an order for the making of periodical payments by a parent of a minor shall include power to make an order under the said section 9, 10 or 11, as the case may be, for the payment of a lump sum by that parent.
- (4) The amount of any lump sum which a parent may be required to pay by virtue of subsection (3) above shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under subsection (2) above, but a magistrates' court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the parent was required to pay a lump sum by a previous order under this Act.
- (5) An order made under section 9, 10 or 11 of this Act for the payment of a lump sum may provide for the payment of that sum by instalments, and where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

12C Variation etc. of orders for periodical payments.

- (1) In exercising its powers under section 9, 10 or 11 of this Act to vary or discharge an order for the making of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.
- (2) The power of the court under section 9, 10 or 11 of this Act to vary an order for the making of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.
- (3) Where on an application under section 9, 10 or 11 of this Act for the variation or discharge of an order for the making of periodical payments the court varies the payments required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.
- (4) An application for the variation of an order made under section 9, 10 or 11 of this Act for the making of periodical payments to or for the benefit of a minor may, if the minor has attained the age of sixteen, be made by the minor himself.
- (5) Where an order for the making of periodical payments made under sections 9, 10 or 11 of this Act ceases to have effect on the date on which the minor attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then, if at any time before he attains the age of twenty-one an application is made by the minor for an order under this subsection, the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date

of the making of the application, and to vary or discharge under section 9, 10 or 11 of this Act, as the case may be, any order so revived.”.

44 Maintenance for minors in care of local authorities

(1) In section 2 of the Guardianship Act 1973 the following subsections shall be substituted for subsection (3)—

“(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 either parent to make to that authority or to the minor such periodical payments, and for such term, as may be specified in the order; but the order shall only require payments to be made to a local authority while it has the care of the minor.

(3A) The court in deciding whether to exercise its power under subsection (3) above and, if so, in what manner, shall have regard to all the circumstances of the case including the matters to which the court is required to have regard under section 12A of the Guardianship of Minors Act 1971.

(3B) The provisions of section 12 of the Guardianship of Minors Act 1971 shall apply in relation to an order made under subsection (3) above as they apply in relation to an order made under section 9(2) of that Act.”

(2) At the end of subsection (3A) of section 4 of the Guardianship Act 1973 there shall be inserted—

“and in the case of an order under section 2(3) above requiring payments to be made to or in respect of a minor an application for the variation of the order may, if the minor has attained the age of sixteen, be made by the minor himself.

(3B) The court in exercising its powers under subsection (3A) above in relation to an order made under section 2(3) above shall have regard to all the circumstances of the case including any change in any of the matters to which the court was required to have regard when making the order.

(3C) Where, on an application under subsection (3A) above for the variation or discharge of an order for the making of periodical payments made under section 2(3) above, the court varies the payments required to be made under the order, the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.

(3D) Section 12C(5) of the Guardianship of Minors Act 1971 shall apply for the purposes of the revival of an order made under section 2(3) above as it applies for the purposes of the revival of an order made under section 9 of that Act, and subsection (3A) above (except the reference therein to the local authority to whose care the minor was committed) shall apply in relation to an order which is revived by virtue of this subsection.”.

General provisions

45 Interim orders

(1) The provisions of section 2 of the Guardianship Act 1973 relating to interim orders shall have effect subject to the provisions of this section.

(2) For subsection (4) of the said section 2 there shall be substituted the following subsection—

“(4) Subject to subsection (5C) below, where an application is made under section 9 of the Guardianship of Minors Act 1971 the court may, at any time before it makes a final order or dismisses the application, make an interim order containing—

- (a) provision requiring either parent to make to the other or to the minor such periodical payments towards the maintenance of the minor as the court thinks reasonable, and
- (b) where by reason of special circumstances the court thinks it proper, any such provision regarding the legal custody of and right of access to the minor as the court has power to make under the said section 9.”.

(3) In subsection (5) of the said section 2 the words from " but an interim order " to the end of the subsection shall be omitted.

(4) At the end of subsection (5) of the said section 2 there shall be inserted the following subsections—

“(5A) Section 11A(2) of the Guardianship of Minors Act 1971 shall apply in relation to an interim order made under this section which contains provision regarding the custody of a minor as it applies in relation to an order made under section 9(1) of that Act.

(5B) An interim order made under this section which requires the making of payments for the maintenance of a minor may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application for an order under section 9 of the Guardianship of Minors Act 1971.

(5C) An interim order made under this section shall cease to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date, if any, specified for the purpose in the order,
- (b) the date of the expiration of the period of three months beginning with the date of the making of the order,
- (c) the date on which the court either makes a final order on, or dismisses, the application.

(5D) Where an interim order made under this section would, but for this subsection, cease to have effect by virtue of subsection (5C)(a) or (b) above, the court which made the order may by order provide that the interim order shall continue in force for a further period, and any order continued in force under this subsection shall cease to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date, if any, specified for the purpose in the order made under this subsection ;

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- (b) the date of the expiration of the period of three months beginning with the date of the making of the order under this subsection or, if more than one order has been made under this subsection with respect to the application, the date of the making of the first of those orders;
- (c) the date on which the court either makes a final order on, or dismisses, the application.

(5E) On an application under section 9 of the Guardianship of Minors Act 1971 the court shall not have power to make more than one order under subsection (4) or (5) above with respect to that application, but without prejudice to the powers of the court under this section on any further such application.”.

46 Effect on certain orders of parents living together

After section 5 of the Guardianship Act 1973 there shall be inserted the following section—

“5A Effect on certain orders of parents living together.

(1) Where—

- (a) the right to the actual custody of a minor is given to one of the parents of the minor by an order made under section 9(1) of the Guardianship of Minors Act 1971 or by a provision of an interim order made under section 2(4) or (5) above, or
- (b) periodical payments are required to be made to a parent of a minor by an order made under section 9(2) of that Act or by a provision of an interim order made under section 2(4) or (5) above,

the order made under the said section 9 or, as the case may be, that provision of the interim order shall be enforceable notwithstanding that the parents of the minor are living with each other at the date of the making of the order under the said section 9 or the interim order or that, although they are not living with each other at that date, they subsequently resume living with each other ; but that order or provision shall cease to have effect if after that date the parents of the minor continue to live with each other, or resume living with each other, for a continuous period exceeding six months.

(2) Where any of the following orders is made, that is to say—

- (a) an order under section 9(2) of the Guardianship of Minors Act 1971 which requires periodical payments to be made to a minor,
- (b) an order under section 2(2)(a), (2)(b) or (3) above,
- (c) an interim order under section 2(4) or (5) above containing a provision requiring periodical payments to be made to a minor,

then, unless the court otherwise directs, the order or, in the case of an interim order, that provision thereof shall be enforceable notwithstanding that the parents of the minor are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other.

(3) References in this section to the parents of a minor living with each other shall be construed as references to their living with each other in the same household.”.

47 Provisions as to jurisdiction and powers of magistrates' courts

- (1) In section 15 of the Guardianship of Minors Act 1971 (which relates to the courts which have jurisdiction under that Act) in subsections (1) and (4) for the words "magistrates' court having jurisdiction in the place" there shall be substituted the words "magistrates' court appointed for the commission area (within the meaning of the Administration of Justice Act 1973)".
- (2) The powers of a magistrates' court to revoke, revive or vary under section 53 of the Magistrates' Courts Act 1952 an order for the periodical payment of money and to suspend or rescind under section 54(2) of that Act certain other orders shall not apply in relation to an order made under the Guardianship of Minors Act 1971 or under the Guardianship Act 1973.

48 Orders made on appeal from a magistrates' court

At the end of section 16 of the Guardianship of Minors Act 1971 (which relates to appeals) there shall be added the following subsections—

- “(6) On an appeal under subsection (3) of this section the High Court shall have power to make such orders as may be necessary to give effect to its determination of the appeal including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from a decision of a magistrates' court made on an application for or in respect of an order for the making of periodical payments, the High Court shall have power to order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the magistrates' court.
- (7) Without prejudice to the generality of subsection (6) above, where, on an appeal under subsection (3) of this section in respect of an order of a magistrates' court requiring a parent of a minor to make periodical payments, the High Court reduces the amount of those payments or discharges the order, the High Court shall have power to order the person entitled to payments under the order of the magistrates' court to pay to that parent such sum in respect of payments already made by the parent in compliance with the order as the High Court thinks fit and, if any arrears are due under the order of the magistrates' court, the High Court shall have power to remit the payment of those arrears or any part thereof.
- (8) Any order of the High Court made on an appeal under subsection (3) of this section (other than an order directing that an application shall be re-heard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of any power to vary, revive or discharge orders conferred by section 9(4), 10(2), 11(c), 12B(5) or 12C(5) of this Act or section 3(3) or 4(3A) or (3D) of the Guardianship Act 1973 be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.”.