



# Guardianship Act 1973 (repealed 1.11.1996)

## 1973 CHAPTER 29

### PART I

#### ENGLAND AND WALES

**Modifications etc. (not altering text)**

C1 Pt. I (ss. 1–9) amended by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. **2(1)(d)**, 34(2)(5)

#### 1 Equality of parental rights.

- (1) In relation to the [<sup>F1</sup>legal custody] or upbringing of a [<sup>F2</sup>child], and in relation to the administration of any property belonging to or held in trust for a [<sup>F2</sup>child] 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.

[<sup>F3</sup>In this Act “legal custody” shall be construed in accordance with Part IV of the Children Act 1975.]

- [<sup>F4</sup>(2) Notwithstanding anything in section 85(2) of the Children Act 1975, an agreement may be made between the father and mother of a child as to the exercise by either of them, during any period when they are not living with each other in the same household, of any of the parental rights and duties with respect to the child; but no such agreement 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.]
- (3) [<sup>F5</sup>Subject to subsection (3A) below] where a [<sup>F2</sup>child]’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.

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*Changes to legislation: There are currently no known outstanding effects for the Guardianship Act 1973 (repealed 1.11.1996), Part 1. (See end of Document for details)*

- [<sup>F6</sup>(3A) Where a child's father and mother were not married to each other at the time of his birth, subsection (3) above does not apply unless—
- (a) an order is in force under section 4 of the Family Law Reform Act 1987 giving the father all the parental rights and duties with respect to the child; or
  - (b) the father has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any other enactment.]
- (4) Subsection (3) above shall not authorise the court to make any order regarding the [<sup>F1</sup>legal custody] of a [<sup>F2</sup>child] 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 <sup>M1</sup>Guardianship of Minors Act 1971, or (before or after the death of either parent) on the application of any other person having the [<sup>F1</sup>legal custody] of the [<sup>F2</sup>child].
- (6) Section [<sup>F7</sup>15(1) to (2A), section 15(2C)] and section 16 of the <sup>M2</sup>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, . . . <sup>F8</sup>.
- (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 [<sup>F2</sup>child][<sup>F9</sup>or to be taken as applying in relation to a [<sup>F2</sup>child] who is illegitimate], [<sup>F9</sup>and nothing in subsection (1) above shall be taken as applying in relation to a child whose father and mother were not married to each other at the time of his birth]
- (8) In the <sup>M3</sup>Sexual Offences Act 1956 there shall be substituted for section 38 the provisions set out in Schedule 1 to this Act, . . . <sup>F10</sup>.
- [<sup>F11</sup>(9) Nothing in this section shall be taken to affect the provisions of the Mental Health Act 1983 as to the person who is “the nearest relative” for the purposes of that Act.]

#### Textual Amendments

- F1** Words “legal custody” substituted (E.W.) for word “custody” by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), **s. 36(2)**
- F2** Word substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. 33(1), 34(2)(5), **Sch. 2 para. 53**
- F3** Words added by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), **s. 36(2)**
- F4** [S. 1\(2\)](#) substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), **ss. 3, 32(4)(5)**
- F5** Words inserted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), **ss. 5, 32(4)(5)**
- F6** [S. 1\(3A\)](#) inserted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), **ss. 5, 32(4)(5)**
- F7** Words substituted by [Family Law Act 1986 \(c. 55 SIF 49:3\)](#), ss. 68(1), 69(5), Sch. 1 para. 17
- F8** Words repealed by [Family Law Act 1986 \(c. 55 SIF 49:3\)](#), ss. 68(1)(2), 69(5), Sch. 1 para. 16(a), Sch. 2
- F9** Words substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), **ss. 2(2), 34(2)(5)**
- F10** Words repealed by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), ss. 146, 147, 148, **Sch. 4 para. 35(a)**, Sch. 6
- F11** [S. 1\(9\)](#) inserted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), ss. 146, 147, 148, **Sch. 4 para. 35(b)**

#### Modifications etc. (not altering text)

- C2** [Pt. I \(ss. 1–9\)](#) amended by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), **ss. 2(1)(d), 34(2)(5)**

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Guardianship Act 1973 (repealed 1.11.1996), Part 1. (See end of Document for details)*

#### Marginal Citations

M1 1971 c. 3.

M2 1971 c. 3.

M3 1956 c. 69.

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

- (1) In sections 9, 13, . . . <sup>F12</sup> and 16 of the <sup>M4</sup>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 [<sup>F13</sup>legal custody] is given to an individual other than one of the parents); and accordingly section 9 . . . <sup>F12</sup> shall have effect as . . . <sup>F12</sup> set out in Part II of that Schedule with the amendments required by this subsection.
- [<sup>F14</sup>(2) Where an application is made under section 9 of the Guardianship of Minors Act 1971 for the legal custody of a child, then subject to sections 3 and 4 below—
- (a) if by virtue of the making of, or refusal to make, an order on that application the actual custody of a child is given to, or retained by, a parent 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 an independent person, the court may make an order that the child shall be under the supervision of a specified local authority or under the supervision of a probation officer;
  - (b) 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, the court may commit the care of the child to a specified local authority.]
- [<sup>F15</sup>(3) Where the court makes an order under section (2)(b) above committing the care of a [<sup>F16</sup>child] to a local authority, the court may make a further order requiring either parent to make to that authority or to the [<sup>F16</sup>child] 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 [<sup>F16</sup>child]
- (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 [<sup>F17</sup>section 11B] of that Act.]
- [<sup>F18</sup>(4) Subject to the provisions of this section, where an application is made under section 9 of the Guardianship of Minors Act 1971 the court, at any time before it makes a final order or dismisses the application, may, if by reason of special circumstances the court thinks it proper, make an interim order containing any such provision regarding the legal custody of and right of access to the child as the court has power to make under that section.

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(4A) Subject to the provisions of this section, where an application is made under section 11B of the Guardianship of Minors Act 1971, the court, at any time before it makes a final order or dismisses the application, may make an interim order requiring either parent to make to the other or to the child such periodical payments towards the maintenance of the child as the court thinks fit.

(5) Where under section 16(4) of the Guardianship of Minors Act 1971 the court refuses to make an order on an application under section 9 or 11B of that Act on the ground that the matter is one that would more conveniently be dealt with by the High Court, the court shall have power—

- (a) in the case of an application under section 9 of that Act, to make an order under subsection (4) above,
- (b) in the case of an application under section 11B of that Act, to make an order under subsection (4A) above]

[<sup>F19</sup>(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 [<sup>F16</sup>child] as it applies 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 [<sup>F16</sup>child] 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 [<sup>F20</sup>section 11B] 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 occur first, that is to say—

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

[ On an application under section 9 or 11B of the Guardianship of Minors Act 1971 the <sup>F21</sup>(5E) court shall not have power to make more than one interim order under this section with respect to that application, but without prejudice to the powers of the court under this section on any further such application.]]

(6) ..... <sup>F22</sup>

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- (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<sup>M5</sup>Local Government Act 1972, includes the council of any county or county borough; and the matters which under section 2 of the<sup>M6</sup>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.

#### Textual Amendments

- F12** Words repealed by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1)(2), 69(5), **Sch. 1 para. 16(b)**, Sch. 2
- F13** Words “legal custody” substituted (E.W.) for word “custody” by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), **s. 36(2)**
- F14** Ss. 2(2) substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 54(2)**
- F15** S. 2(3)(3A)(3B) substituted for S. 2(3) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), **s. 44(1)**
- F16** Word substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 53**
- F17** Words substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 54(3)**
- F18** S. 2(4)(4A)(5) substituted for s. 2(4)(5) by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 54(4)**
- F19** S. 2(5A)–(5E) added by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), **s. 45(4)**
- F20** Words substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 54(5)**
- F21** S. 2(5E) substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 54(6)**
- F22** S. 2(6) repealed by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1)(4), 34(2)(5), Sch 2 para. 54(7), **Sch. 4**

#### Modifications etc. (not altering text)

- C3** Pt. I (ss. 1–9) amended by Family Law Reform Act 1987 (c. 42, SIF 49:7), **ss. 2(1)(d)**, 34(2)(5)
- C4** S. 2(2)(3)(3A)(3B)(4)(5A)(5B)(5C)(5D)(5E) applied with modifications by Children Act 1975 (c. 72, SIF 49:9, 10), **S. 34(4)(5)**; Domestic Proceedings and Magistrates Courts Act 1978 (c. 22), **s. 64**
- C5** The text of s. 2(7), 9(3), 14, Sch. 1, 3, 5 paras. 4–7 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

- M4** 1971 c. 3.  
**M5** 1972 c. 70.  
**M6** 1970 c. 42.

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### 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 [F23child] 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 [F23child] attains [F24the age of 18] . . . F25
- (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 <sup>M7</sup>Guardianship of Minors Act 1971, . . . F26 or on that of the probation officer or local authority having the supervision of the [F23child] 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, . . . F26.
- (4) Without prejudice to subsection (3) above, in relation to supervision orders of magistrates’ courts the rules made under [F27section 144 of the Magistrates’ Courts Act 1980] 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 [F23child] is or will be resident in that petty sessions area or, as the case may be, in the area of that authority.
- (5) . . . . . F28

#### Textual Amendments

- F23** Word substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. 33(1), 34(2)(5), [Sch. 2 para. 53](#)
- F24** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. [38\(3\)](#)
- F25** Words repealed by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), [Sch. 3](#)
- F26** Words repealed by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 4 Pt. XII](#)
- F27** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 116](#)
- F28** [S. 3\(5\)](#) repealed by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [Sch. 4 Pt. 111](#)

#### Modifications etc. (not altering text)

- C6** [Pt. I \(ss. 1–9\)](#) amended by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. [2\(1\)\(d\)](#), [34\(2\)\(5\)](#)
- C7** [S. 3](#) extended by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), [17\(3\)](#), [36\(6\)](#)
- C8** [S. 3](#) applied with modification by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), s. [34\(5\)](#); [Domestic Proceedings and Magistrates Courts Act 1978 \(c. 22\)](#), s. [64](#)

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**Marginal Citations**

M7 1971 c. 3.

**4 Additional provisions as to order committing care of [F<sup>29</sup> child] to local authority.**

- (1) An order under section 2(2)(b) above committing the care of a [F<sup>29</sup> child] to a local authority shall commit him to the care (while a [F<sup>29</sup> child]) 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 [F<sup>30</sup> but the court shall not be required by virtue of this subsection to inform the local authority of their proposal to make such an order if an officer of the authority has already made to the court under section 6 of this Act a report which contains a recommendation that an order should be made under the said section 2(2)(b)].

[F<sup>31</sup>(2A) The court shall not make an order committing a [F<sup>29</sup> child] to the care of a local authority under section 2(2)(b) above after he has attained the age of seventeen.]

- (3) In relation to an order under section 2(2)(b) above committing the care of a [F<sup>29</sup> child] 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 [F<sup>29</sup> child] is so committed, [F<sup>32</sup>[F<sup>33</sup> section] 13 of the Guardianship of Minors Act 1971 shall apply as if the order made under section 2 of this Act were an order under section 9 [F<sup>34</sup> or 11B] of the Guardianship of Minors Act 1971.]

[F<sup>35</sup>(3A) An order under section 2(2)(b) or (3) above relating to a [F<sup>29</sup> child] 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 on the application of the local authority to whose care the [F<sup>29</sup> child] was committed by the order under section 2(2)(b)] [F<sup>36</sup> and in the case of an order under section 2(3) above requiring payments to be made to or in respect of a [F<sup>29</sup> child] an application for the variation of the order may, if the [F<sup>29</sup> child] has attained the age of sixteen, be made by the [F<sup>29</sup> child] himself.]

[F<sup>37</sup>(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) ..... F<sup>38</sup>]

[F<sup>39</sup>(4) On the making of an order under section 2(2)(b) above with respect to a [F<sup>29</sup> child], Parts 111 and V of the Child Care Act 1980 (which relate to the treatment of children in the care of a local authority and to contributions towards their maintenance) shall

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apply as if the [<sup>F29</sup>child] had been received by the local authority into their care under section 2 of that Act except that—

- (a) the exercise by the local authority of their powers under sections 18 and 21 of that Act shall, where the order is made by the High Court, be subject to any directions given by the court;
  - (b) section 24 of that Act (which relates to arrangements for emigration) shall not apply;
  - (c) section 28 of that Act (which relates to the after-care of a child in the care of a local authority under section 2 of that Act) shall not apply; and
  - (d) section 45(1) of that Act so far as it requires a child's father [<sup>F40</sup>and] mother 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 45(1) did so apply.]
- (5) While an order under section 2(2)(b) above remains in force with respect to a [<sup>F29</sup>child], the [<sup>F29</sup>child] 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 [<sup>F41</sup>level 2 on the standard scale].

#### Textual Amendments

- F29** Word substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. 33(1), 34(2)(5), **Sch. 2 para. 53**
- F30** Words added by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), **Sch. 2 para. 41**
- F31** [S. 4\(2A\)](#) added by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), **s. 38(4)**
- F32** Words substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\)](#), **Sch. 3 para. 80(1)**
- F33** Word substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), **Sch. 2 para. 42**
- F34** Words inserted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. 33(1), 34(2)(5), **Sch. 2**, para. 55(a)
- F35** [S. 4\(3A\)](#) inserted by [Children Act 1975 \(c.72, SIF 49:9, 10\)](#), **s. 108(1)(a)**, Sch. 3 para. 80(2)
- F36** Words added by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), **s. 44(2)** (subject to savings in [Schedule 1](#))
- F37** [S. 4\(3B\)–\(3D\)](#) added by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), **s. 44(2)** (subject to savings in [Schedule 1](#))
- F38** [S. 4\(3D\)](#) repealed [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. 33(1), 34(2)(5), **Sch. 2 para. 55(b)**, Sh. 4
- F39** [S. 4\(4\)](#) substituted by [Child Act 1980 \(c. 5, SIF 20\)](#), **Sch. 5 para.35**
- F40** Word substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113\)](#), s. 29, **Sch. 9 Pt. I para. 17**
- F41** Words substituted by virtue of [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), ss. 89, 90, [Sch. 1](#), **Sch. 2 para. 43**, [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 46**

#### Modifications etc. (not altering text)

- C9** [Pt. I](#) (ss. 1–9) amended by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), **ss. 2(1)(d)**, 34(2)(5)



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*Changes to legislation: There are currently no known outstanding effects for the Guardianship Act 1973 (repealed 1.11.1996), Part 1. (See end of Document for details)*

- C10** S. 4 applied with modification by Children Act 1975 (c. 72, SIF 49:9, 10), **S. 34(4)**; Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), **s. 64**
- C11** S. 4 extended (26.11.1976 (E. W.) and (15.12.1985 (S.)) by Children Act 1975 (c. 72, SIF 49:9, 10), **s. 36(6)**

## 5 Additional provisions as to interim orders.

- [<sup>F42</sup>(1) There shall be no appeal under section 16 of the Guardianship of Minors Act 1971 from an interim order under subsection (4A) of section 2 above.
- (2) Section 9 of the Guardianship of Minors Act 1971 shall apply in relation to an interim order made under this Act on an application under that section as if the interim order had been made under that section.
- (2A) Section 13 of the Guardianship of Minors Act 1971 shall apply in relation to an interim order made under this Act as if the interim order had been made under that Act.]
- (3) ..... <sup>F43</sup>

### Textual Amendments

- F42** S. 5(1)(2)(2A) substituted for s. 5(1)(2) by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 56(2)**
- F43** S. 5(3) repealed (4.4.1988) by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1)(2), 69, **Sch. 1 para. 16(c)**, Sch. 2

### Modifications etc. (not altering text)

- C12** Pt. I (ss. 1–9) amended by Family Law Reform Act 1987 (c. 42, SIF 49:7), **ss. 2(1)(d)**, 34(2)(5)

## [<sup>F44</sup>5A Effect on certain orders of parents living together.

- [ Where any of the following orders is made, that is to say—
- <sup>F45</sup>(1) (a) an order under section 9 of the Guardianship of Minors Act 1971 which gives the right to the actual custody of a child to one of the parents of the child.
- (b) an order under section 11B of that Act which requires periodical payments to be made or secured to a parent of the child,
- (c) an interim order under section 2(4) above which gives the right to the actual custody of a child to a parent of the child,
- (d) an interim order under section 2(4A) above which requires periodical payments to be made to a parent of the child, that order shall be enforceable notwithstanding that the parents of the child 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 live with each other; but that order shall cease to have effect if after that date the parents of the child marry each other or live with each other for a period exceeding six months.
- (2) Where any of the following orders is made, that is to say—
- (a) an order under section 11B of the Guardianship of Minors Act 1971 which requires periodical payments to be made or secured to a child,
- (b) an order under section 2(2) or (3) above,

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*Changes to legislation: There are currently no known outstanding effects for the Guardianship Act 1973 (repealed 1.11.1996), Part 1. (See end of Document for details)*

- (c) an interim order under section 2(4A) requiring periodical payments to be made to a child,
- then, unless the court otherwise directs, that order shall be enforceable notwithstanding that the parents of the child 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, subsequently live with each other.
- (2A) Where an order is made under section 11D of the <sup>M8</sup>Guardianship of Minors Act 1971 requiring periodical payments to be made to a person who has attained the age of eighteen, then unless the court otherwise directs, that order shall be enforceable notwithstanding that the parents of that person, although they are not living with each other at the date of the order, subsequently live with each other.]
- (3) References in this section to the parents of a [<sup>F46</sup>child] living with each other shall be construed as references to their living with each other in the same household.]

#### Textual Amendments

- F44** S. 5A added by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 46
- F45** S. 5A(1)(2)(2A) substituted for s. 5A(1)(2) by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), Sch. 2 para. 57
- F46** Word substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), Sch. 2 para. 53

#### Modifications etc. (not altering text)

- C13** Pt. I (ss. 1–9) amended by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 2(1)(d), 34(2)(5)

#### Marginal Citations

- M8** 1971 c. 3 (49:9.)

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

- (1) If the court dealing with an application under [<sup>F47</sup>section 5 or 9 of the Guardianship of Minors Act 1971 or section 1(3) or] 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.
- [<sup>F48</sup>(2) A report made in pursuance of subsection (1) above to a magistrates' court shall be made to the court at a hearing of the application unless it is in writing in which case—
- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during a hearing of the application; and
  - (b) if the court thinks fit, the report or such part of the report as the court requires, shall be read aloud at a hearing of the application.
- (3) A magistrates' court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor, shall, require the officer by whom the report is made to give evidence of or with respect to the matters referred to in the report and if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any such matter or any matter referred to in the officer's evidence.
- (3A) A magistrates' court may take account of—

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- (a) any statement contained in a report made at a hearing of the application or of which copies have been given to the parties or their representatives in accordance with subsection (2)(a) above; and
- (b) any evidence given by the officer under subsection (3) above,
- in so far as the statement or evidence is, in the opinion of the court, relevant to the application, notwithstanding any enactment or rule of law to the contrary.]
- (4) Where for the purpose of subsection (1) above a magistrates' court adjourns the hearing of an application, then, subject to [F49 section 54(2) of the Magistrates' Courts Act 1980] (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.
- [F50(6) A single justice may request a report under subsection (1) of this section before the hearing of the application, but in such a case the report shall be made to the court which hears the application, and the foregoing provisions of this section shall apply accordingly.]

#### Textual Amendments

- F47** Words substituted by [Children Act 1975 \(c. 72, SIF 49:9, 10\), s. 108\(1\)\(a\)](#), Sch. 3 para. 81
- F48** [S. 6\(2\)\(3\)\(3A\)](#) substituted for s. 6(2)(3) by [Children Act 1975 \(c. 72, SIF 49:9, 10\), s. 90\(1\)](#)
- F49** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\), Sch. 7 para. 117](#)
- F50** [S. 6\(6\)](#) added by [Children Act 1975 \(c. 72, SIF 49:9, 10\), s. 90\(2\)](#)

#### Modifications etc. (not altering text)

- C14** Pt. I (ss. 1–9) amended by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\), ss. 2\(1\)\(d\), 34\(2\)\(5\)](#)
- C15** [S. 6](#) extended by [Child Care Act 1980 \(c. 5, SIF 20\), s. 7\(3\)](#)
- C16** [S. 6\(2\)–\(6\)](#) extended by [Children Act 1975 \(c. 72, SIF 49:9, 10\), ss. 36\(7\), 39\(2\)](#)
- C17** [S. 6\(2\)\(3\)\(3A\)](#) extended by [Children Act 1975 \(c. 72, SIF 49:9, 10\), s. 40\(4\)](#)

## 7 Powers of guardians.

- (1) Subject to subsection (2) below, a guardian under the <sup>M9</sup>Guardianship of Minors Act 1971, besides being guardian of the person of the [F51child], shall have all the rights, powers and duties of a guardian of the [F51child]'s estate, including in particular the right to receive and recover in his own name for the benefit of the [F51child] property of whatever description and wherever situated which the [F51child] 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 [F51child]'s estate either generally or for a particular purpose; and subsection (1) above shall not apply to a guardian under the <sup>M10</sup>Guardianship of Minors Act 1971 so long as there is a guardian of the [F51child]'s estate alone.

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*Changes to legislation: There are currently no known outstanding effects for the Guardianship Act 1973 (repealed 1.11.1996), Part I. (See end of Document for details)*

**Textual Amendments**

**F51** Word substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 53**

**Modifications etc. (not altering text)**

**C18** Pt. I (ss. 1–9) amended by Family Law Reform Act 1987 (c. 42, SIF 49:7), **ss. 2(1)(d), 34(2)(5)**

**Marginal Citations**

**M9** 1971 c. 3.

**M10** 1971 c. 3.

**8** <sup>F52</sup> .....

**Textual Amendments**

**F52** S. 8 repealed by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 89, **Sch. 3**

[<sup>F53</sup>**8A Interpretation of Part I.**

- (1) In this Part of this Act “child”, except where used to express a relationship, means a person who has not attained the age of eighteen.
- (2) In this Part of this Act—
  - (a) references (however expressed) to any relationship between two persons; and
  - (b) references to the father and mother of a child not being married to each other at the time of his birth,
 shall be construed in accordance with section 1 of the Family Law Reform Act 1987.]

**Textual Amendments**

**F53** S. 8A inserted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), 34(2)(5), **Sch. 2 para. 58**

**Modifications etc. (not altering text)**

**C19** Pt. I (ss. 1–9) amended by Family Law Reform Act 1987 (c. 42, SIF 49:7), **ss. 2(1)(d), 34(2)(5)**

**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) (a) ..... **F54**
- (b) ..... **F55**
- (c) ..... **F56**

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- (3) The following enactments, as amended by the <sup>M11</sup>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 <sup>M12</sup>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 <sup>M13</sup>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 <sup>M14</sup>Attachement of Earnings Act 1971, in Schedule I, 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”;

#### Textual Amendments

**F54** S. 9(2)(a) repealed by [Legal Aid Act 1974 \(c. 4\), s. 42\(1\) Sch. 5 Pt. I](#)

**F55** S. 9(2)(b) repealed by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\), s. 154, Sch. 9](#)

**F56** S. 9(2)(c) repealed by [Supreme Court Act 1981 \(c. 54 SIF:37\), s. 152\(4\), Sch. 7](#)

#### Modifications etc. (not altering text)

**C20** Pt. I (ss. 1–9) amended by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\), ss. 2\(1\)\(d\), 34\(2\)\(5\)](#)

**C21** The text of s. 2(7), 9(3), 14, Sch. 1, 3, 5 paras. 4–7 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

**M11** 1971 c. 3

**M12** 1951 c. 65

**M13** 1950 c. 37

**M14** 1971 c. 32

**Status:**

Point in time view as at 01/02/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Guardianship Act 1973 (repealed 1.11.1996), Part I.