



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART II

AMENDMENTS OF THE GUARDIANSHIP OF MINORS ACTS 1971 AND 1973

General provisions

45 Interim orders. ^{X1}

(1) The provisions of section 2 of the ^{M1}Guardianship Act 1973 relating to interim orders shall have effect subject to the provisions of this section.

(2) ^{F1}

(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,

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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,
 - (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 ;
 - (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.”

Editorial Information

X1 The text of ss. 42–47(1), 48–74 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Textual Amendments

F1 S. 45(2)(3) repealed by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(4), [Sch. 4](#)

Marginal Citations

M1 1973 c. 29.

46 Effect on certain orders of parents living together. ^{X2}

After section 5 of the ^{M2}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

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- (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.”.

Editorial Information

X2 The text of ss. 42–47(1), 48–74 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M2 1973 c. 29.

47 Provisions as to jurisdiction and powers of magistrates' courts.

^{x3}(1) In section 15 of the ^{M3}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 ^{M4}Administration of Justice Act 1973) ”.

(2) The powers of a magistrates’ court to revoke, revive or vary under [F²section 60 of the Magistrates’ Courts Act 1980] an order for the periodical payment of money and to suspend or rescind under [F²section 63(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 ^{M5}Guardianship Act 1973.

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Editorial Information

- X3** The text of ss. 42–47(1), 48–74 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Textual Amendments

- F2** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 166](#)

Marginal Citations

- M3** [1971 c. 3.](#)
M4 [1973 c. 15.](#)
M5 [1973 c. 29.](#)

48 Orders made appeal from a magistrates' court. ^{X4}

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.”.

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- X4** The text of ss. 42–47(1), 48–74 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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