



Guardianship Act 1973

1973 CHAPTER 29

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

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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
 - (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;

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" 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.