

SCHEDULES

SCHEDULE 1

Section 32.

TEXT OF 1971 ACT AS AMENDED

“ARRANGEMENT OF SECTIONS

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Status: This is the original version (as it was originally enacted).

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An Act to consolidate certain enactments relating to the guardianship and custody of minors.

(Formal enacting words)

General principles

1 Principle on which questions relating to custody, upbringing etc. of children are to be decided

- (1) Where in any proceedings before any court (whether or not a court as defined in section 15 of this Act)—
- (a) the legal custody or upbringing of a child; or
 - (b) the administration of any property belonging to or held on trust for a child, or the application of the income thereof,

is in question, the court, in deciding that question, shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father in respect of such legal custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

Appointment, removal and powers of guardians

3 Rights of surviving parent as to guardianship

- (1) On the death of the father of a child, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the child either alone or jointly with any guardian appointed by the father; and—
- (a) where no guardian has been appointed by the father; or
 - (b) in the event of the death or refusal to act of the guardian or guardians appointed by the father,
- the court may, if it thinks fit, appoint a guardian to act jointly with the mother.
- (2) On the death of the mother of a child, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the child either alone or jointly with any guardian appointed by the mother; and—
- (a) where no guardian has been appointed by the mother; or
 - (b) in the event of the death or refusal to act of the guardian or guardians appointed by the mother,
- the court may, if it thinks fit, appoint a guardian to act jointly with the father.

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- (3) Where the father and mother of a child were not married to each other at the time of his birth, this section does not apply unless the father satisfies the requirements of subsection (4) of this section.
- (4) The father of a child satisfies the requirements of this subsection if—
 - (a) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or
 - (b) he 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 Power of father and mother to appoint testamentary guardians

- (1) The father of a child may by deed or will appoint any person to be guardian of the child after his death.
- (2) The mother of a child may by deed or will appoint any person to be guardian of the child after her death.
- (3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the child so long as the mother or father remains alive unless the mother or father objects to his so acting.
- (4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the child, the guardian may apply to the court, and the court may either—
 - (a) refuse to make any order (in which case the mother or father shall remain sole guardian); or
 - (b) make an order that the guardian so appointed—
 - (i) shall act jointly with the mother or father; or
 - (ii) shall be the sole guardian of the child.
- (5) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.
- (6) If under section 3 of this Act a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but, if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.
- (7) Where the father and mother of a child were not married to each other at the time of his birth—
 - (a) subsection (1) of this section does not apply, and subsection (3) of this section does not apply in relation to a guardian appointed by the mother, unless the father satisfies the requirements of section 3(4) of this Act; and
 - (b) any appointment under subsection (1) of this section shall be of no effect unless the father satisfies those requirements immediately before his death.

5 Power of court to appoint guardian for child having no parent etc.

- (1) Where a child has no parent, no guardian of the person, and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the child.

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- (2) A court may entertain an application under this section to appoint a guardian of a child notwithstanding that parental rights and duties with respect to the child are vested in a local authority or a voluntary organisation by virtue of a resolution under section 3 or 64 of the Child Care Act 1980.
- (3) Where the father and mother of a child were not married to each other at the time of his birth, subsection (1) of this section shall have effect as if for the words "no parent" there were substituted the words "no mother, no father satisfying the requirements of section 3(4) of this Act".

6 Power of High Court to remove or replace guardian

The High Court may in its discretion on being satisfied that it is for the welfare of the child remove from his office any testamentary guardian or any guardian appointed or acting by virtue of this Act, and may also, if it deems it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

7 Disputes between joint guardians

Where two or more persons act as joint guardians of a child and they are unable to agree on any question affecting the welfare of the child, any of them may apply to the court for its direction and the court may make such order regarding the matters in difference that it may think proper.

Orders for custody and financial relief

9 Orders for custody on application of either parent

- (1) The court may, on the application of either parent of a child, make such order regarding—
 - (a) the legal custody of the child; and
 - (b) access to the child by either parent,
 as the court thinks fit; and an order under this section 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 appointed under this Act.
- (2) An order under this section—
 - (a) shall not give legal custody to a person other than a parent of the child; and
 - (b) shall not be made at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.

10 Orders for custody in guardianship cases

- (1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make such order regarding—
 - (a) the legal custody of the child; and
 - (b) access to the child by the parent,
 as the court thinks fit; and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order previously made.

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- (2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—
 - (a) power to make such order regarding—
 - (i) the legal custody of the child; and
 - (ii) access to the child by the parent, as the court thinks fit; and
 - (b) power to vary or discharge any order previously made by virtue of this subsection.
- (3) An order shall not be made under or by virtue of this section at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.

11A Further provisions relating to orders for custody

- (1) An order shall not be made under section 9 or 10 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 child to any person it may order that a parent of the child who is not given the legal custody of the child 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 child) and shall have those rights and duties jointly with the person who is given the legal custody of the child.
- (2) Where the court makes an order under section 9 or 10 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 child under section 9 or 10 of this Act shall cease to have effect when the child attains the age of eighteen.

11B Orders for financial relief on application of either parent

- (1) The court may, on the application of either parent of a child, make—
 - (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (2) of this section;
 - (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;and an order mentioned in paragraph (a) or (b) of that subsection may be varied or discharged on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.
- (2) The orders referred to in subsection (1) of this section are—
 - (a) an order requiring one parent to make to the other parent for the benefit of the child, or to the child, such periodical payments, and for such terms, as may be specified in the order;

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- (b) an order requiring one parent to secure to the other parent for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;
- (c) an order requiring one parent to pay to the other parent for the benefit of the child, or to the child, such lump sum as may be so specified;
- (d) an order requiring either parent to transfer to the other parent for the benefit of the child, or to the child, such property as may be so specified, being property to which the first-mentioned parent is entitled, either in possession or reversion;
- (e) an order requiring that a settlement of such property as may be so specified, being property to which either parent is so entitled, be made to the satisfaction of the court for the benefit of the child.

11C Orders for financial relief in guardianship cases

- (1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make—
 - (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;
 - (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;
 and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.
- (2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—
 - (a) power to make—
 - (i) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;
 - (ii) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection; and
 - (b) power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.
- (3) The orders referred to in subsections (1) and (2) of this section are—
 - (a) an order requiring the parent to make to the guardian or other guardian for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;
 - (b) an order requiring the parent to secure to the guardian or other guardian for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;
 - (c) an order requiring the parent to pay to the guardian or other guardian for the benefit of the child, or to the child, such lump sum as may be so specified;
 - (d) an order requiring the parent to transfer to the guardian or other guardian for the benefit of the child, or to the child, such property as may be so specified, being property to which the parent is entitled, either in possession or reversion;
 - (e) an order requiring that a settlement of such property as may be so specified, being property to which the parent is so entitled, be made to the satisfaction of the court for the benefit of the child.

11D Orders for financial relief for persons over eighteen

- (1) If, on an application by a person who has attained the age of eighteen and whose parents are not living with each other in the same household, it appears to the High Court or a county court—
 - (a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or
 - (b) that there are special circumstances which justify the making of an order under this section,the court may make one or both of the orders mentioned in subsection (2) of this section.
- (2) The orders referred to in subsection (1) of this section are—
 - (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments, and for such term, as may be specified in the order; and
 - (b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.
- (3) An application may not be made under this section by any person if, immediately before he attained the age of sixteen, a periodical payments order was in force with respect to him.
- (4) No order shall be made under this section at a time when the parents of the applicant are living with each other in the same household.
- (5) Any order made under this section 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.
- (6) An order under this section requiring the making of periodical payments may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (7) In subsection (3) of this section "periodical payments order" means an order made under—
 - (a) this Act,
 - (b) section 6(3) of the Family Law Reform Act 1969,
 - (c) section 23 or 27 of the Matrimonial Causes Act 1973,
 - (d) section 34 of the Children Act 1975, or
 - (e) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978,for the making or securing of periodical payments.

12 Duration of orders for periodical payments

- (1) The term to be specified in an order for periodical payments made by virtue of section 11B(2)(a) or (b) or 11C(3)(a) or (b) of this Act in favour of a child 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 child 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

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of the Education Act 1944 together with any Order in Council made under that section) unless the court thinks it right in the circumstances in 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 child's eighteenth birthday.
- (2) Paragraph (b) of subsection (1) above shall not apply in the case of a child if it appears to the court that—
- (a) the child is, 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 also is, will be or would be in gainful employment; or
 - (b) there are special circumstances which justify the making of an order without complying with that paragraph.
- (3) An order for periodical payments made by virtue of section 11B(2)(a) or 11C(3)(a) of this Act shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

12A Matters to which court is to have regard in making order for financial relief

In deciding whether to exercise its powers under section 11B, 11C or 11D 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 the mother or father of the child has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which the mother or father of the child has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity (if any), property and other financial resources of the child;
- (e) any physical or mental disability of the child.

12B Provisions relating to lump sums

- (1) Without prejudice to the generality of sections 11B and 11C 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 before the making of the order to be met, being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child.
- (2) The amount of any lump sum required to be paid by an order made by the magistrates' court under section 11B, 11C or 11D 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.

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 11B, 11C or 11D of this Act to vary or discharge an order for the making or securing of periodical payments by a parent shall include

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power to make an order under the said section 11B, 11C or 11D, 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 11B, 11C or 11D 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 11B, 11C or 11D of this Act to vary or discharge an order for the making or securing 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 11B, 11C or 11D of this Act to vary an order for the making or securing 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 11B, 11C or 11D of this Act for the variation or discharge of an order for the making or securing of periodical payments the court varies the payment 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 11B or 11C of this Act for the making or securing of periodical payments to or for the benefit of a child may, if the child has attained the age of sixteen, be made by the child himself.
- (5) Where an order for the making of periodical payments made under section 11B or 11C of this Act ceases to have effect on the date on which the child 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, the child may apply—
 - (a) in the case of an order made by the High Court or a county court, to the court which made the order, or
 - (b) in the case of an order made by a magistrates' court, to the High Court or a county court,for an order for the revival of the first mentioned order.
- (6) If on such an application it appears to the High Court or county court that—
 - (a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or

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- (b) there are special circumstances which justify the making of 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.
- (7) Any order made under section 11B or 11C of this Act by the High Court or a county court which is revived by an order under subsection (5) above may be varied or discharged under section 11B or 11C of this Act, as the case may be, on the application of any person by whom or to whom payments are required to be made under the order.
- (8) Any order made under section 11B or 11C of this Act by a magistrates' court which is revived by an order of the High Court or a county court under subsection (5) above—
- (a) for the purposes of the variation and discharge of the order, shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order; and
- (b) for the purposes of the enforcement of the order, shall be treated as an order of the magistrates' court by which the order was originally made.

12D Variation of orders for secured periodical payments after death of parent

- (1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent, and no application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.
- (2) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (1) of this section on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this section.
- (3) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under section 12C(1) of this Act shall include the changed circumstances resulting from the death of that parent.
- (4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- (5) In this section "secured periodical payments order" means an order for secured periodical payments made by virtue of section 11B(2)(b) or 11C(3)(b) of this Act.

13 Enforcement of orders for custody and maintenance

- (1) Where an order made by a magistrates' court under this Act contains a provision committing to any person the actual custody of any child, a copy of the order may be served on any person in whose actual custody the child may for the time being be, and thereupon the provision may, without prejudice to any other remedy open to the person given the custody, be enforced under section 63(3) of the Magistrates' Courts Act 1980 as if it were an order of the court requiring the person so served to give up the child to the person given the custody.
- (2) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a magistrates' court under this Act shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Any order for the payment of money made by a magistrates' court under this Act shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980.

13A Restriction on removal of child from England and Wales

- (1) Where the court makes—
 - (a) an order under section 9 or 10 of this Act regarding the legal custody of a child, or
 - (b) an interim order under section 2(4) of the Guardianship Act 1973 containing provision regarding the legal custody of a child,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 child out of England and Wales while the order 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.

13B Direction for settlement of instrument by conveyancing counsel

Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties.

Access to children by grandparents

14A Access to children by grandparents

- (1) The court, on making an order under section 9 of this Act, or at any time while such an order is in force, may on the application of a grandparent of the child make such order requiring access to the child to be given to the grandparents as the court thinks fit.

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- (2) Where one parent of a child is dead, or both parents are dead, the court may, on an application made by a parent of a deceased parent of the child, make such order requiring access to the child 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 under section 9 or 10 of this Act.
- (4) The court shall not make an order under this section with respect to a child who is for the purposes of Part III of the Child Care Act 1980 in the care of a local authority.
- (5) Where the court has made an order under subsection (1) above requiring access to a child 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 child, or
 - (c) if before 1st December 1985 the court has made an order under section 9 of this Act giving the legal custody of the child 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 child 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 child, or
 - (c) by any guardian of the child.
- (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 child 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 child has been made under subsection (1) above, no order is in force under section 9 of this Act with respect to that child, the order made under subsection (1) above shall cease to have effect.

Jurisdiction and Procedure

15 Courts having jurisdiction under this Act

- (1) Subject to the provisions of this section "the court" for the purposes of this Act means the High Court, any county court or any magistrates' court, except that provision may be made by rules of court that in the case of such applications to a county court, or such applications to a magistrates' court, as are prescribed, only such county courts, or as the case may be such magistrates' courts, as are prescribed shall be authorised to hear those applications.
- (2) A magistrates' court shall not be competent to entertain—

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- (b) any application involving the administration or application of any property belonging to or held in trust for a child or the income thereof.
- (2A) It is hereby declared that any power conferred on a magistrates' court under this Act is exercisable notwithstanding that any party to the proceedings is residing outside England and Wales.
- (2B) Where any party to the proceedings on an application to a magistrates' court under this Act resides outside the United Kingdom and does not appear at the time and place appointed for the hearing of the application, the court shall not hear the application unless it is proved to the satisfaction of the court, in such manner as is prescribed, that such steps as are prescribed have been taken to give to that party notice of the application and of the time and place appointed for the hearing of it.
- (2C) In this section "prescribed" means prescribed by rules of court.

15A Financial provision for child resident in country outside England and Wales

- (1) Where one parent of a child resides in England and Wales and the other parent and the child reside outside England and Wales, the court shall have power, on an application made by that other parent, to make one or both of the orders mentioned in section 11B(2) (a) and (b) of this Act against the parent resident in England and Wales; and in relation to such an application section 11B(2)(a) and (b) shall have effect as if for any reference to the parent excluded from actual custody there were substituted a reference to the parent resident in England and Wales.
- (2) Any reference in this Act to the powers of the court under section 11B(2) of this Act or to an order made under the said section 11B(2) shall include a reference to the powers which the court has by virtue of subsection (1) above or, as the case may be, to an order made by virtue of subsection (1) above.

16 Appeals and procedure

- (3) Subject to subsection (4) of this section, where on an application to a magistrates' court under this Act the court makes or refuses to make an order, an appeal shall lie to the High Court.
- (4) Where an application is made to a magistrates' court under this Act, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court shall refuse to make an order, and in that case no appeal shall lie to the High Court.
- (5) In relation to applications made to a magistrates' court under section 14A of this Act regarding access to a child by a grandparent or under section 3(3) or 4(3A) of the Guardianship Act 1973 for the discharge or variation of a supervision order or, as the case may be, an order giving the care of a child to a local authority or an order requiring payments to be made to an authority to whom care of a child is so given, rules made under section 144 of the Magistrates' Courts Act 1980 may make provision as to the persons who are to be made defendants on the application; and if on any such application there are two or more defendants, the power of the court under section 64(1) of the Magistrates' Courts Act 1980 shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole part of the costs of all or any of the other parties.

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

- (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 child 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(1), 10(1) or (2)(b), 11B(1), 11C(1) or (2)(b), 11D(6), 12B(5) or 12C(2) of this Act or section 3(3) or 4(3A) 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.

17 Saving for powers of High Court and other courts

- (1) Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians or otherwise in respect of children.

Supplementary

20 Short title, interpretation, extent and commencement

- (1) This Act may be cited as the Guardianship of Minors Act 1971.
- (2) In this Act, unless the context otherwise requires—
- "actual custody", as respects a child, means the actual possession of the person of the child;
 - "child", except where used to express a relationship, means a person who has not attained the age of eighteen;
 - "legal custody" shall be construed in accordance with Part IV of the Children Act 1975;
 - "maintenance" includes education.
- (2A) In 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.

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

- (3) References in this Act to any enactment are references thereto as amended, and include references thereto as applied, by any other enactment.
- (4) This Act—
 - (a) so far as it amends the Maintenance Orders Act 1950 extends to Scotland and Northern Ireland,
but. save as aforesaid, extends to England and Wales only.”