

*Changes to legislation:* There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: The Guardianship Act 1973 (c.29). (See end of Document for details)

## SCHEDULES

### SCHEDULE 2

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Guardianship Act 1973 (c.29)*

- 53 Without prejudice to any other amendment of Part I of the 1973 Act made by this Act, for the words “minor” and “minors”, wherever occurring in that Part otherwise than in the expression “the <sup>M1</sup>Guardianship of Minors Act 1971”, there shall be substituted the words “child” and “children” respectively.

#### Marginal Citations

**M1** 1971 c. 3.

- 54 (1) Section 2 of that Act shall be amended as follows.
- (2) For subsection (2) there shall be substituted the following subsection—
- “(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 the 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.”
- (3) In subsection (3B) for the words “section 9(2)” there shall be substituted the words “section 11B”.
- (4) For subsections (4) and (5) there shall be substituted the following subsections—
- “(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”.
- (5) In subsection (5B) for the words “section 9” there shall be substituted the words “section 11B”.
- (6) For subsection (5E) there shall be substituted the following subsection—
- “(5E) On an application under section 9 or 11B of the Guardianship of Minors Act 1971 the 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.”
- (7) Subsection (6) shall cease to have effect.
- 55 In section 4 of that Act—
- (a) in subsection (3) after the words “section 9” there shall be inserted the words “ or 11B ”, and
  - (b) subsection (3D) shall cease to have effect.
- 56 (1) Section 5 of that Act shall be amended as follows.
- (2) For subsections (1) and (2) there shall be substituted the following subsections—
- “(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.”
- 57 In section 5A of that Act for subsections (1) and (2) there shall be substituted the following subsections—
- “(1) Where any of the following orders is made, that is to say—
- (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.

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- (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,
  - (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, they subsequently live with each other.

- (2A) Where an order is made under section 11D of the 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.”

58 Before section 9 of that Act there shall be inserted the following section—

**“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.”

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