

THE CHILDREN (GUARDIANSHIP AND CUSTODY) ACT

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THE CHILDREN (GUARDIANSHIP AND CUSTODY)
ACT

[1st July, 1957.]

Law
69 of 1956,
Acts
42 of 1969,
3rd Sch.
41 of 1975
2nd Sch.,
1 of 1979,
2nd Sch.
11 of 1991,
7 of 2011
Sch.

1. This Act may be cited as the Children (Guardianship and Custody) Act. Short title.

2.—(1) In this Act, unless the context otherwise requires—

“Court” means—

Interpreta-
tion.
L.Nn.
149/78,
64/80.

(a) the Supreme Court; or

(b) where the respondent, or any of the respondents, or the applicant, or the child to whom the application relates resides in the parish of Kingston or the parish of St. Andrew, the Family Court—Corporate Area Region (as respects any time on or after the 13th day of November, 1978); or

(c) where the respondent, or any of the respondents, or the applicant, or the child to whom the application relates resides within the geographical jurisdiction of a Family Court established pursuant to Part II of the Judicature (Family Court) Act, that Family Court (as respects any time on or after the date of establishment of such Court); or

(d) where the respondent, or any of the respondents, or the applicant, or the child to whom the application relates resides in a parish other than those specified at (b) and (c), the Resident Magistrate’s Court;

“child” means a person under eighteen years of age but does not include a person who is or has been married; 1/1979
2nd Sch.

L.Nn.
149/78,
64/80.

“Resident Magistrate” means—

- (a) in reference to a Resident Magistrate for the parish of Kingston or the parish of St. Andrew, a Judge of the Family Court—Corporate Area Region; and
- (b) in reference to a Resident Magistrate for any parish within the geographical jurisdiction of a Family Court established pursuant to Part II of the Judicature (Family Court) Act, a Judge of that Family Court.

Rights of
surviving
parent as to
guardian-
ship.

3.—(1) On the death of the father of a child, the mother, if surviving, shall, subject to the provisions of this Act, be the guardian of the child, either alone or jointly with any guardian appointed by the father. When no guardian has been appointed by the father or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, 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. When no guardian has been appointed by the mother or if the guardian or guardians appointed by the mother is or are dead or refuses or refuse to act, the Court may if it thinks fit appoint a guardian to act jointly with the father.

Power of
father and
mother to
appoint testa-
mentary
guardians.

4.—(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 as aforesaid 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 refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the child, and in the latter case may make such order regarding the custody of the child and the right of access thereto of its mother or father as, having regard to the welfare of the child the Court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the child such weekly or other periodical sum as, having regard to the means of the mother or father, the Court may consider reasonable.

(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 a guardian has been appointed by the Court to act jointly with the 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.

5. Every guardian under sections 3 and 4 shall have all such powers over the estate and the person, or over the estate, as the case may be, of a child as a guardian appointed by will or otherwise has in England.

**Powers of
guardians.**

Equal right
of mother
to apply to
Court.

6. The mother of a child shall have the like powers to apply to the Court in respect of any matter affecting the child as are possessed by the father.

The Court
may make
order as to
custody.

7.—(1) The Court may, upon the application of the father or mother of a child, make such order as it may think fit regarding the custody of such child and the right of access thereto of either parent, having regard to the welfare of the child, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act; and in every case may make such order respecting costs as it may think just.

(2) The power of the Court under subsection (1) to make an order as to the custody of a child and the right of access thereto may be exercised notwithstanding that the mother of the child is then residing with the father of the child.

(3) Where the Court under subsection (1) makes an order giving the custody of the child to the mother, then, whether or not the mother is then residing with the father the Court may further order that the father shall pay to the mother towards the maintenance of the child such weekly or other periodical sum as the Court, having regard to the means of the father, may think reasonable.

(4) No such order, whether for custody or maintenance shall be enforceable, and no liability thereunder shall accrue, while the mother resides with the father, and any such order shall cease to have effect if for a period of three months after it is made the mother of the child continues to reside with the father.

(5) Any order so made may, on the application either of the father or mother of the child, be varied or discharged by a subsequent order.

7A. Any order made under subsection (3) of section 7 may provide, in addition to the matters specified in that subsection—

Order
may
extend
payments
after age
attained.
1/1979
2nd Sch.

- (a) that the sum ordered to be paid thereunder shall continue to be paid for any period after the child to whom the order relates attains the age of eighteen years but not extending beyond the date on which he attains the age of twenty-one years; and
- (b) that the sum shall, after the child to whom the order relates attains the age of eighteen years, be paid to him instead of the person to whom it was previously paid.

7B.—(1) Subject to subsection (2), where a person who has attained the age of eighteen years but has not attained the age of twenty-one years, had while he was a minor, been the subject of an order under any of the provisions of this Act, the Court may, on the application of either parent of that person or on the application of that person himself, make an order requiring either parent to pay to the other parent or to the said person, for any period not extending beyond the date on which that person attains the age of twenty-one years, such sums towards his maintenance as, having regard to the means of the person ordered to make the payment, the Court thinks reasonable.

Court may
order main-
tenance
payments
in cases
where
order pre-
viously in
force.
1/1979
2nd Sch.

(2) No order shall be made under this section, no order previously made shall be enforceable and no liability thereunder shall accrue while the parents are residing together and such order shall cease to have effect if, for a period of three months continuously after it was made, the parents continue to reside together.

Power of Court to remove guardian.

8.—(1) The 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 the Court shall deem it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

(2) In this section the expression "Court" means the Supreme Court.

Disputes between joint guardians.

9. 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 as it may think proper.

10. [*Repealed by Act 11 of 1991.*]

In case of separation deed between father and mother.

11. No agreement contained in any separation deed made between the father and the mother of a child shall be held to be invalid by reason only of its providing that the father of such child shall give up the custody or control thereof to the mother :

Provided always, that the Court shall not enforce any such agreement if it is of opinion that it will not be for the benefit of the child to give effect thereto.

Power of Court as to production of child.

12. Where the parent of a child applies to the Court for a writ or order for the production of the child, and the Court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child, the Court may, in its discretion, decline to issue the writ or make the order.

13. If at the time of the application for a writ or order for the production of the child, the child is being brought up by another person, the Court may, in its discretion, if it orders the child to be given up to the parent, further order that the parent shall pay to such person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the Court to be just and reasonable, having regard to the circumstances of the case.

Power of Court to order repayment of costs of bringing up child.

14. Where the parent has—

- (a) abandoned or deserted his child; or
- (b) allowed his child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties,

Court in making order to have regard to conduct of parent.

the Court shall not make an order for the delivery of the child to the parent, unless the parent has satisfied the Court that, having regard to the welfare of the child, he or she is a fit person to have the custody of the child.

15.—(1) Upon any application by the parent for the production or custody of a child, if the Court is of opinion that the parent ought not to have the custody of the child, and that the child is being brought up in a different religion to that in which the parent has a legal right to require that the child should be brought up, the Court shall have power to make such order as it may think fit to secure that the child be brought up in the religion in which the parent has a legal right to require that the child should be brought up.

Power of Courts as to child's religious education.

(2) Nothing contained in this section or in sections 12 to 14 (inclusive) shall interfere with or affect the power of the Court to consult the wishes of the child in considering what order ought to be made under this section, or diminish the right which any child now possesses to the exercise of its own free choice.

Definition
of "Court",
"parent"
and "person".

16. For the purposes of sections 12 to 15 (inclusive) the expression—

"Court" means the Supreme Court;

"parent" of a child includes any person at law liable to maintain such child or entitled to its custody;

"person" includes any local authority, school or institution.

Enforcement
of orders for
payment of
money.

17.—(1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money 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 before a Resident Magistrate to a fine not exceeding two hundred and fifty thousand dollars or imprisonment for a term not exceeding three months.

7/2011
Sch.

(2) Where the Court has made any such order, the Court shall, in addition to any other powers for enforcing compliance with the order, have power, in any case where there is any pension or income payable to the person against whom the order is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as the Court may think fit of any such pension or income, be attached and paid to the person named by the Court, and such further order shall be an authority to the person by whom such pension or income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

Minister
may amend
monetary
penalties.
7/2011
Sch.

17A. The Minister may, by order subject to affirmative resolution, amend the monetary penalties specified in this Act.

18. Where in any proceeding before any Court the custody or upbringing of a child or 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, or any right at common law possessed by the father, in respect of such 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.

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

19.—(1) Rules of court shall be made directing the manner in which applications to the Supreme Court are to be made and dealing generally with all the matters of procedure therein and incidental matters arising out of this Act and for carrying this Act into effect shall be made by the Rules Committee of the Supreme Court.

Rules of court. 42/1969 3rd Sch.

(2) Rules directing the manner in which applications to the Resident Magistrate's Court are to be made and dealing generally with all matters of procedure therein shall be made by Resident Magistrates authorized to make rules under section 135 of the Judicature (Resident Magistrates) Act.

(3) Rules made under this section may provide for applications being heard and determined otherwise than in open Court.

20. Nothing in this Act contained shall restrict or affect the jurisdiction of the Supreme Court to appoint or remove guardians.

Saving.