

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.