



BERMUDA

MINORS ACT 1950

1950 : 14

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[preamble and words of enactment omitted]

Division of Act into Parts

1 *[omitted]*

Interpretation

2 (1) In this Act—

“minor” means a person who has not attained the age of eighteen years;

“Special Court” means a Special Court constituted under the Magistrates Act 1948 [*title 8 item 15*].

(2) For the purposes of this Act, any power conferred upon a court to make an order (including an appointment) shall be deemed to include a power to vary or discharge any order so made.

(3) For the purposes of this Act a person who has adopted a child by virtue of an adoption order made whether within or outside Bermuda by a court of competent jurisdiction or other competent authority, or by virtue of an instrument (wherever executed) the effect of which is equivalent to that of such an adoption order, shall be deemed to be the parent of that child.

[Section 2 “minor” amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

Saving for other rights and liabilities as to minors

3 Except as otherwise provided in this Act, nothing in this Act shall be construed so as to affect any right or liability arising by operation of law out of the relations between any person and a minor.

Supreme Court may make rules

4 (1) The Supreme Court may make rules for regulating the practice and procedure of the Supreme Court (including fees of court and the fees of barristers and attorneys) in the exercise of its jurisdiction in any proceedings under this Act.

(2) The affirmative resolution procedure shall apply to rules fixing or varying the fees referred to in subsection (1), section 5(2) and section 22((7).

(3) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section, section 5(2) and section 22(7) other than those to which subsection (2) applies.

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Special Courts

5 (1) Nothing in this Act shall be construed so as to confer any jurisdiction on a Special Court—

- (a) to entertain any application, other than an application for the variation or discharge of an existing order made by a Special Court under this Act, relating to a minor who has attained the age of sixteen years;
- (b) to vary or discharge any order made under this Act by the Supreme Court; or
- (c) to entertain any application involving the administration or application of any property belonging to or held in trust for a minor, or the income thereof.

(2) The Chief Justice may make rules regulating the practice and procedures (including fees of court and the fees of barristers and attorneys) in Special Courts exercising jurisdiction under this Act; and such rules may provide for the hearing and determination of applications otherwise than in open court.

(3) Where an application is made under this Act to a Special Court and the Special Court makes or refuses to make an order, an appeal shall lie to the Supreme Court in the manner and subject to the conditions provided for an appeal in a civil cause or matter by the Civil Appeals Act 1971 [*title 8 item 85*]:

Provided that where any such application is made to a Special Court, and the Special Court considers that the matter is one which would more properly or conveniently be dealt with by the Supreme Court, the Special Court may refuse to make an order, and in such case no appeal shall lie to the Supreme Court.

Welfare of minor is first and paramount consideration

6 Where in any proceedings before any court the custody or upbringing of a minor, or the administration of any property belonging to or held on trust for a minor, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the minor 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.

Equal right of mother to apply to court

7 The mother of a minor shall have the like powers to apply to a court in respect of any matter affecting the minor as are possessed by the father.

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PART II

Guardianship of minors in general

8 (1) A guardian of a minor may (according to the circumstances in any particular case) be the guardian of the person of the minor or the guardian of the property of the minor or the guardian of both the person and the property of the minor.

(2) Subject to this section—

- (a) a guardian of the person of a minor shall have the custody and control of the person of the minor;
- (b) a guardian of the property of a minor shall have the control and management of the property, and shall apply the income thereof for the proper maintenance, up bringing and education of a minor, and shall deal with the property as carefully as a person of ordinary prudence would deal with his own property, and may do all acts that are reasonable and proper for the protection of the property.

(3) In sections 9 to 22 “guardian”, in relation to a minor, unless the contrary intention appears, means the guardian of both the person and the property of the minor.

(4) Nothing in this section shall—

- (a) abridge or derogate from any power conferred upon or vested in a court to appoint or remove the guardian of a minor or to define, restrict, alter or extend the powers of the guardian of a minor or otherwise in relation to the custody of a minor and the control or management of the person or property of a minor;
- (b) authorize the disregarding of any terms or conditions on which the guardian of a minor has been appointed by either parent of the minor or by a court;
- (c) abridge or derogate from any rights or powers lawfully conferred upon or vested in personal representatives or trustees in relation to the property of a minor; or
- (d) authorize the guardian (as such) of a minor to sell, exchange, mortgage, lease or let any real or personal property of the minor.

Guardianship of minor by parents

9 *[Deleted]*

[Section 9 deleted by 2002:36 Sch para 22 effective 19 January 2004]

Rights of surviving parent

10 Subject to this Act—

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- (a) on the death of the father of a minor, the mother, if surviving, shall be guardian of the minor, either alone or jointly with any guardian appointed (as provided in section 11) by the father;
- (b) where no guardian has been appointed by the father as provided in section 11, or if the guardian or guardians so appointed by the father is or are dead or refuses or refuse to Act the Supreme Court or a Special Court may, if it thinks fit, appoint a guardian to act jointly with the mother;
- (c) on the death of the mother of a minor, the father, if surviving, shall be the guardian of the minor, either alone or jointly with any guardian appointed (as provided in section 11) by the mother;
- (d) where no guardian has been appointed by the mother as provided in section 11, or if the guardian or guardians so appointed by the mother is or are dead or refuses or refuse to act, the Supreme Court or a Special Court may, if it thinks fit, appoint a guardian to act jointly with the father.

Power of father and of mother to appoint guardian after death of appointor

- 11 (1) In this section "the court" means the Supreme Court or a Special Court.
- (2) The father of a minor may by deed or will appoint any person to be guardian of the minor after his death.
- (3) The mother of a minor may by deed or will appoint any person to be guardian of the minor after her death.
- (4) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the minor so long as the mother or father remains alive unless the mother or father objects to his so acting.
- (5) 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 minor, 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 minor, and in the latter case may make such order regarding the custody of the minor and the right of access thereto of its mother or father as, having regard to the welfare of the minor, the court thinks fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the minor such weekly or other periodical sum as, having regard to the means of the mother or father and the needs of the minor, the court may consider reasonable.
- (6) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly.
- (7) If under section 10 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

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appointed by the court shall act jointly with the guardian appointed by the surviving parent.

Effect of divorce or annulment on appointment of guardian

11A An appointment under section 11(2) or (3) (including one made in an unrevoked will or codicil) is revoked if the person appointed is the spouse of the person who made the appointment and either—

- (a) a decree of the Supreme Court dissolves or annuls the marriage; or
- (b) the marriage is dissolved and the divorce is entitled to recognition in Bermuda under the Recognition of Divorces and Legal Separations Act 1977,

unless a contrary intention is expressed in the appointment.

[Section 11A inserted by 1998 : 17 effective 1 August 1998]

Court may make orders relating to guardianship

12 (1) In this section “the court” means the Supreme Court or, subject to section 5, a Special Court.

- (2) The court upon the application of—
 - (a) either of the parents of a minor; or
 - (b) any guardian of a minor; or
 - (c) any person related to a minor in a degree nearer than the degree of first cousin; or
 - (d) any person for the time being having actual charge of a minor; or
 - (e) any children’s officer appointed under the Children Act 1998,

may make such orders as it may think fit in relation to the guardianship, custody or maintenance of the minor and the right of access thereto and the control and management of any property of the minor, having regard to the welfare of the minor and to the conduct and to the wishes or representations of either parent or of any guardian or of any person having the actual charge of the minor.

[Section 12 reference to “Protection of Children Act 1943” deleted and replaced with “Children Act 1998” under the powers of the Computerization and Revision of Laws Act 1989 s. 11(h)]

Orders where mother applies under section 12

13 (1) Where an application is made under section 12 by the mother of a minor, the court to which the application is made shall have power to make an order under section 12 notwithstanding that the mother is at the time of the application residing with the father of the minor.

(2) Where the court makes an order on the application of the mother of a minor giving the custody of the minor to the mother then, whether the mother at the date of the order is residing with the father or not, the court may further order that the father shall

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pay to the mother towards the maintenance of the minor such weekly or other periodical sum of money as the court, having regard to the means of the father and the needs of the minor, may think reasonable.

(3) No such order as aforesaid, 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 minor continues to reside with the father.

Disputes between joint guardians

14 (1) In this section “the court” means the Supreme Court or a Special Court.

(2) Where two or more persons act as joint guardians of a minor and they are unable to agree on any question affecting the welfare of the minor, 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.

Removal of guardian by court

15 (1) In this section “the court” means the Supreme Court or a Special Court.

(2) The court in its discretion, on being satisfied that it is for the welfare of the minor to do so, may remove from his office any guardian of a minor, and may appoint another guardian in place of the guardian so removed:

Provided that a Special Court shall not have power to remove a guardian who has been appointed by the Supreme Court.

Divorce order or judicial separation order; declaration in order that a parent is unfit to have custody of the minor children

16 Where a judicial separation order or a divorce order is made, the court making the order may thereby declare the parent by reason of whose misconduct the order is made to be a person unfit to have the custody of the minor children (if any) of the marriage; and if such a declaration is made the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of any such minor children.

[Section 16 amended by 2022 : 4 s. 35 effective 13 March 2023]

Agreement in separation deed for custody of minor by mother

17 No agreement contained in any separation deed between the father and the mother of a minor shall be held to be invalid by reason of its providing that the father of the minor shall give up the custody or control of the minor to the mother:

Provided that no court shall enforce any such agreement if the court considers that it will not be for the welfare of the minor to give effect thereto.

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Duty of office manager of Magistrates Courts to collect and receive payments

18 (1) Nothing in this section shall abridge, derogate from or affect any power which (apart from this section) is vested in the Supreme Court to enforce any order made by that court.

(2) Where an order is made under this Part by the Supreme Court or by a Special Court for the payment of sums of money, the court making the order may include in the order a direction that payments thereunder be made to the clerk, and where such a direction is given by the court—

- (a) payments under the order shall be made to the clerk and not otherwise;
- (b) it shall be the duty of the clerk to collect and receive all such payments as may be so directed to be made to him and to pay to the person named in the order any sums paid to him in accordance with the direction;
- (c) where any payment directed to be made to the clerk is seven days in arrears, it shall be the duty of the clerk as soon as may be to report in writing the default to the court which made the order and to inform the person named in the order accordingly.

(3) Where it is reported by the clerk, or it is otherwise made to appear to the court which made the order, that any sum payable under an order made under this Part has not been paid within seven days after the payment became due, the court may issue a warrant for the defaulter to be brought before the court; and if on appearing before the court the defaulter fails to pay all arrears due together with the costs of the proceedings—

- (a) the court may enforce payment by issuing and causing to be executed a warrant for distress and sale of the defaulter's goods; or
- (b) if the defaulter wilfully refuses to make payments in accordance with the order, the court may imprison him for a period not exceeding three months, so however, that the defaulter shall be entitled to be released from imprisonment on payment of the arrears and of all costs and charges connected therewith.

(4) Without prejudice to anything in subsection (3), where an order for the payment of sums of money has been made by the Supreme Court or by a Special Court, and the court which made the order is satisfied that the person against whom the order was made has without reasonable cause failed to comply with the order—

- (a) where there is any pension or income or any salary or wages payable to the defaulter, the court which made the order for the payment of sums of money may, after giving the person by whom the pension, income, salary or wages is payable an opportunity of being heard, order that such an amount as the court thinks fit be attached and be paid weekly, or at such longer intervals as may be specified in such further order, out of such pension, income, salary or wages to the person named in such further order;
- (b) any order made under paragraph (a) shall be an authority to the person by whom such pension, income, salary or wages is payable to make the

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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 making payment in accordance with the order.

(5) Any person who without reasonable excuse (the proof of which shall be upon him) fails to comply with an order made under sub-section (4)(a) commits an offence against this Act:

Punishment on summary conviction: a fine of \$840.

(6) Any power conferred by subsection (3) or subsection (4) may, as respects the enforcement of an order made by a Special Court, be exercised by the magistrate who was chairman of the Special Court acting alone or, in the absence of that magistrate, by another magistrate acting alone.

(7) In this section "clerk" means the office manager of the Magistrates' Courts.

(8) Instead of making an order under subsection (4)(a) a Special Court may make an attachment of earnings order under the Magistrates Act 1948 [*title 8 item 15*]

Obligation of payer to notify change of address

19 Any person who is for the time being required to make payments of money in compliance with any order made under this Part shall give notice of any change of address to such person (if any) as may be specified in the order, and if without reasonable excuse he fails to do so he commits an offence against this Act:

Punishment on summary conviction: a fine of \$84.

Enforcement of orders of court awarding custody

20 (1) Subsection (1) of section 18 shall apply in relation to this section as it applies in relation to section 18.

(2) Where an order made by the Supreme Court or a Special Court under this Part contains a provision committing to any person the custody of a minor, a copy of the order may be served on any person in whose actual custody the minor may be for the time being; and where a copy of the order is served on any such person it shall operate as an order of the court requiring him to deliver up the minor to the person named therein, and if he fails to deliver up the minor to the person named then, without prejudice to any other remedy, the court may commit him to prison until he has remedied his default:

Provided that a person shall not, for a non-compliance as aforesaid, be liable to imprisonment for a period of more than two months.

Costs

21 (1) The Supreme Court in the exercise of its jurisdiction in any proceedings under this Part may make such order as it thinks just respecting the costs of any party to the proceedings, and, where the circumstances of a particular case appear to the court to justify such a course, may award costs against the parent, guardian or person in actual charge of a minor whether the parent, guardian or such person is or is not a party to the proceedings.

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(2) A Special Court in the exercise of its jurisdiction in any proceedings under this Part may with respect to the award of costs under the Magistrates Act 1948 [*title 8 item 15*], award costs, where the circumstances of a particular case appear to the court to justify such a course, against the parent, guardian or person in charge of a minor whether the parent, guardian or such person is or is not a party to the proceedings.

Judge may prohibit taking or sending out of Bermuda of minors under 16

22 (1) For the purposes of this section—

- (a) “interested person”, in relation to a young minor, does not include a person who is the sole guardian (whether a parent or not) of the minor but, subject as aforesaid, includes any person (whether a parent or relative of the minor or some other person) who is bona fide interested in the welfare of the minor;
- (b) “Judge” means the Chief Justice, a Puisne judge or an Assistant justice of the Supreme Court; and
- (c) “young minor” means a minor under the age of sixteen years.

(2) Subject to this section, any person may apply to a judge for an order restricting any person named or referred to in the order from taking or sending a young minor out of Bermuda.

(3) An application for such an order as aforesaid shall be in writing and shall be supported by an affidavit sworn by the applicant, and such affidavit shall set out or include—

- (a) a statement indicating the status of the applicant in relation to the young minor;
- (b) considerations tending to show that there is reason to apprehend that, unless the order is made, the young minor will be taken or sent out of Bermuda;
- (c) considerations tending to show that it would be prejudicial to the welfare of the young minor for him or her to be taken or sent out of Bermuda; and
- (d) considerations tending to show that the making of the order is a matter of urgency.

(4) Where an application is made under this section to a judge, the judge may deal with it in a summary way and if it appears to him that the applicant is an interested person and that the matters set out in the supporting affidavit show prima facie good cause for the making of an order, may make an order restraining any person named or referred to in the order from taking or sending out of Bermuda the young minor to whom the application relates.

(5) Any order made by a judge under subsection (4) may be made subject to such limitations or conditions as the judge thinks fit to impose.

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(6) Where an application is made under this section to a judge and it appears to the judge that the applicant is not an interested person, or that the application is frivolous or vexatious or wanton or unreasonable, the judge may award such costs against the applicant as in the circumstances he thinks just.

(7) The Chief Justice may make rules for regulating practice and procedure (including fees of court and the fees of barristers and attorneys) in respect of applications made under this section to a judge and the hearing and determination of such applications.

PART III

Contracts by minors

23 (1) All contracts, whether under seal or by way of simple contract, entered into by minors for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with minors, shall be absolutely void:

Provided that nothing in subsection (1) shall invalidate—

- (a) any contract which before 31 March 1950 could have been entered into by a minor at common law or equity or under the authority of any Act and which would then not have been voidable by him; or
- (b) any contract made in pursuance of section 24.

(2) No action shall be brought against any person in respect of any promise made by him after he attained full age to pay any debt contracted while he was a minor or in respect of any ratification made by him after he attained full age of any promise or contract made while he was a minor, whether there is or is not any new consideration for such promise or ratification made after he attained full age.

Marriage settlements by minors

24 (1) Nothing in this section shall apply in relation to any male minor under the age of twenty years or to any female minor under the age of seventeen years.

(2) It shall be lawful for a minor upon or in contemplation of his or her marriage, with the sanction of the Supreme Court, to make a valid and binding settlement or contract for the settlement of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, or whether in possession, reversion, remainder, or expectancy; and any conveyance, appointment or assignment of any such real or personal property or contract to make a conveyance, appointment, or assignment thereof, executed by a minor, in the circumstances aforesaid and with the sanction of the Supreme Court, for the purpose of giving effect to such a settlement shall be as valid and effectual as if the minor were a person of full age:

Provided that—

- (a) subsection (2) shall not extend to powers as to which it is expressly declared that they shall not be exercised by a minor; and

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- (b) where any appointment under a power of appointment, or any disentailing assurance, has been executed by a minor tenant in tail under this section and the person executing the appointment or assurance subsequently dies while he or she is still a minor, then the appointment or disentailing assurance shall become absolutely void.

PART IV

Realization of minor's property

25 (1) The Supreme Court upon application by the guardian or next friend of a minor, if the Court is satisfied that it is for the benefit of the minor, may order that any real or personal property belonging to a minor be sold, exchanged, mortgaged, leased or let upon such terms and conditions as the Court may approve.

(2) Any instrument necessary for the purpose of carrying into effect any sale, exchange, mortgage, lease or letting ordered by the Supreme Court under this section shall be in such form and contain such terms as the Court may direct and maybe executed by any person nominated by the Court for the purpose, and on being so executed shall be as valid and effectual for all purposes and in all respects as if the minor had been a person of full age and had himself executed the instrument.

(3) The proceeds of any sale, exchange, mortgage, lease or letting ordered by the Supreme Court under this section shall be applied in such manner as the Court may order for the payment of all expenses incidental to the transaction and in or towards the proper maintenance, upbringing or education of the minor or otherwise for the benefit of the minor; and the powers of the Court shall include power—

- (a) to order that such proceeds be invested in the name of a trustee and that the income from the investment be applied for the benefit of the minor;
- (b) to order that such proceeds be applied in or towards the acquisition (either absolutely or for a period) of other property;
- (c) to order that such proceeds be applied in or towards the redemption or discharge of any encumbrance, charge or dower affecting any property of the minor;
- (d) to order that such proceeds be applied towards the reparation, improvement or development of any land belonging to the minor;

and to make such supplementary or incidental orders as the Court may from time to time think necessary or expedient in connection with any order made under this subsection as aforesaid.

(4) Without prejudice to anything in subsections (1) to (3), the Supreme Court, upon application by the guardian or next friend of a minor, and on being satisfied that money is required for the purpose of the maintenance, upbringing, education or advancement of the minor or for some other purpose for the benefit of the minor, may order that provision be made for such purpose out of any capital sum belonging to the minor.

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