

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER G15

GUARDIANSHIP OF INFANTS ACT

Showing the Law as at 15 December 2000

Published by Authority

Printed in
The Attorney General's Chambers
ANGUILLA

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GUARDIANSHIP OF INFANTS ACT

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GUARDIANSHIP OF INFANTS ACT

Interpretation

1. In this Act, "Court" means the High Court.

Jurisdiction of Court to appoint or remove guardian unaffected

2. Nothing in this Act contained shall restrict or affect the jurisdiction of the Court to appoint or remove guardians in respect of infants.

Principle on which question relating to custody, upbringing, etc., of infants are to be decided

3. Where in any proceeding before the Court the custody or upbringing of an infant, or the administration of any property belonging to or held on trust for an infant, or the application of the income thereof, is in question, the Court, in deciding that question, shall regard the welfare of the infant 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

4. The mother of an infant shall have the like powers to apply to the Court in respect of any matter affecting the infant as are possessed by the father.

Custody and maintenance of infants

5. (1) The power of the Court under section 11 to make an order as to the custody of an infant and the right of access thereto may be exercised notwithstanding that the mother of the infant is then residing with the father of the infant.

(2) Where the Court under section 11 makes an order giving the custody of the infant 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 infant such weekly or other periodical sum as the Court, having regard to the means of the father, may think reasonable.

(3) 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 3 months after it is made the mother of the infant continues to reside with the father.

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

Rights of surviving parent as to guardianship

6. (1) On the death of the father of an infant, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, 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 an infant, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, 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 testamentary guardians

7. (1) The father of an infant may by deed or will appoint any person to be guardian of the infant after his death.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant 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 infant, 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 infant, and in the latter case may make such order regarding the custody of the infant and the right of access thereto of its mother or father as, having regard to the welfare of the infant, the Court may think fit, and may further order that the

mother or father shall pay to the guardian towards the maintenance of the infant 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 6 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.

Disputes between joint guardians

8. Where 2 or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, 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.

Enforcement of orders for payment of money

9. (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 notice is liable on summary conviction to a fine of $400.

(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.

Powers of guardian under this Act

10. Every guardian in Anguilla under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be) of an infant as any guardian appointed by will or otherwise now has in England under the Act 12 Car. 2 Cap. 24.

Mother may apply to Court for order as to custody of infant

11. The Court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, 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 the costs of the mother and the liability of the father for them, or otherwise as to costs, as it may think just.

Court may remove guardian

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

Guardianship in case of divorce or judicial separation

13. In any case where a decree for judicial separation, or a decree nisi or decree absolute for divorce, shall be pronounced, the Court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and in such case, 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 such children.

Rules as to procedure

14. Rules for regulating the practice and procedure in any proceedings under this Act, and the forms in such proceedings, may be made in the same manner as rules of the High Court may be made.

Citation

15. This Act may be cited as the Guardianship of Infants Act, Revised Statutes of Anguilla, Chapter G15.