



GUYANA

ACT No. 5 of 2011

CUSTODY, CONTACT, GUARDIANSHIP AND MAINTENANCE ACT 2011

I assent,

Bharat Jagdeo,
President

May 25, 2011

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PRICE: \$3,510.00 – To be purchased from Parliament Office, Georgetown, Guyana.

PRINTED BY GUYANA NATIONAL PRINTERS LIMITED.

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AN ACT to provide for the granting of custody, contact, guardianship and maintenance rights with respect to children and for connected purposes.

A.D. 2011.

Enacted by the Parliament of Guyana: -

PART I PRELIMINARY

Short title.

1. This Act may be cited as the Custody, Contact, Guardianship and Maintenance Act 2011.

Interpretation.

2. In this Act -

No.18 of 2009.

“adoption order” means an order, including an interim order, made under the Adoption of Children Act 2009;

“child” means a person under the age of eighteen years, whether born in or out of wedlock who has never been married and includes -

- (a) a stepchild;
- (b) a child adopted by law;
- (c) a child of the family,

except that in the case where a person has special needs, that person shall be considered a child under this Act regardless of the person's age.

“child of the family” unless otherwise stated means a child who is treated in a manner that a child would normally be treated by a parent including the provision of financial and emotional support;

“Clerk” means the Clerk of a magistrate's court;

“cohabit” means to live together in a conjugal relationship whether in or out of wedlock;

“Collecting Officer” means a person appointed under section 63;

“Court” means the High Court of the Supreme Court;

“custody” means parental rights in relation to and responsibilities for a child;

“deduction from earnings order” means an order under section 57;

“disposition” includes sale or a gift of property;

“father” in relation to a child born out of wedlock, means -

- (i) the man who qualifies as father under the laws dealing with the status of children;
- (ii) the man who has been adjudged to be the father of the child by a Court of competent jurisdiction; or
- (iii) the man who has acknowledged the child to be his, and the expression “parent”, in so far as it relates to the father of a child, shall be construed accordingly;

“guardian” means a person qualifying as a guardian under section 30 or a person appointed under section 31;

“guardian of property” means a person appointed under section 34;

“liability order” means an order under section 59;

“maintenance” means the provision of money or property and includes in respect of a child provision for that child’s education;

“maintenance order” means an order made under this Act for the maintenance of a child;

“marriage” includes a reference to a void or voidable marriage;

“Minister” means the Minister who has responsibility for matters related to the welfare of children;

“minor” means a person who is under eighteen years of age;

“mother” has the meaning in the laws dealing with the status of children;

“parent” unless the context otherwise implies, means a person’s mother or father or stepmother or stepfather and includes adoptive parents as well as a person who has treated a child as a child of the family;

“person entitled to custody” includes the mother or father (whether natural or adoptive) the person who acknowledges a child as the child of the family; and a person appointed by the Court to serve as guardian of the child;

“person with special needs” means a person who is physically or mentally disabled to such an extent that the person is unable to perform ordinary day-to-day life activities including the capacity to make personal decisions;

Cap. 13:01. “Public Trustee” means the Public Trustee as provided for under the Public Trustee Act;

“Registrar” means the Registrar of the Court;

“separation agreement” means a formal agreement made between the mother and father of a child to no longer cohabit as spouses even though they may both continue to reside in the same household;

“separation order” means an order of the Court which sets out the terms and conditions of separation between two spouses;

“spouse” means a man and woman who are married to each other or a single man who has been cohabiting with a single woman for a period of at least five years continuously;

“welfare report” means a report which the Court mandates a probation officer or other appropriate person to provide to the Court on matters concerning the welfare of a child.

PART II

GENERAL PRINCIPLES

Welfare principle
and parental
rights.

3. (1) The Court shall have regard to the best interests of the child in making its decisions.

(2) A parent, in order to fulfil the parental responsibilities in relation to a child, has the right-

- (a) to have the child living with the parent or otherwise to regulate the child's residence;
- (b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;
- (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis.

(3) Subject to subsection (2), where two or more persons have a parental right in respect of a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others.

(4) Subject to a court order, no person shall be entitled to remove a child habitually resident in Guyana from, or to keep any such child outside Guyana, without the consent of a person who has parental rights except that, where both the child's parents are persons so described, the consent required for removal or retention of the child, shall be from both.

(5) The rights mentioned in subsection (2) are in this Act referred to as "parental rights" and a parent, or a person acting on the parent's behalf, shall have the right to institute or to defend, any proceedings in respect of those rights.

(6) This section is without prejudice to any other rights enjoyed by a parent which are similar to parental rights under this Act or any other law.

(7) Parental responsibilities shall include the responsibilities of persons exercising parental rights to provide for the upbringing, education and general welfare of a child.

(8) Parental responsibilities and parental rights may be exercisable by either parent without the other.

Provisions relating
to parental
responsibilities
and parental rights.

4. (1) The fact that a person has parental responsibilities and parental rights in relation to a child shall not entitle that person to act in a way which would be incompatible with a court order relating to the child or the child's property, or an incompatible direction made under this Act.

(2) A person who has parental responsibilities and parental rights in relation to a child shall not give up those responsibilities or rights to anyone else but may temporarily arrange for some or all of them to be fulfilled or exercised on the person's behalf by a person who already has parental responsibilities or parental rights in relation to the child concerned or by any other person.

(3) The making of an arrangement under subsection (2) shall not affect any liability arising from a failure to fulfil parental responsibilities.

Provisions relating
to parental
responsibilities
and parental rights.

Restrictions on
decrees for divorce,
separation or
annulment affecting
children.

5. (1) In any petition for divorce, judicial separation or declaration of nullity of marriage, the Court shall consider the information regarding the arrangements, which have or are to be made for the upbringing of the child and determine whether to exercise with respect to the child the powers conferred by section 74.

(2) Where the Court is of the opinion that-

- (a) the circumstances of the case require, or are likely to require it to exercise a power under section 14 with respect to the child concerned;
- (b) it is not in a position to exercise that power without giving further consideration to the case; and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that it should not grant a decree in relation to any petition mentioned in subsection (1), until it is in a position to exercise such a power,

it shall postpone its decision on the granting of a decree in the action until it is in such a position.

(3) This section applies where a child has not reached the age of eighteen years at the date when the question first arises as to whether the Court should give such consideration as is mentioned in subsection (1).

Welfare reports.

6. (1) The Court considering a question with respect to a child under this Act may request -

- (a) a probation officer; or
- (b) such other person as the Court considers appropriate,

to report to the Court on such matters relating to the welfare of the child as are required to be dealt with in the report.

(2) The Minister may make regulations specifying matters, which may be dealt with in a report under this section.

(3) The report may be made in writing, or orally, as the Court requires.

(4) The Court may take account of-

- (a) any statement contained in the report; and
- (b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the Court, relevant to the question which it is considering.

PART III

CUSTODY AND ACCESS

Application for custody or access.

7. A person entitled to the custody of a child may apply to the Court in the manner prescribed by rules of Court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child.

Right to know parents and entitlement to custody.

8. (1) A child shall have the right to know both of his parents.

(2) The mother and the father of a child are equally entitled to the custody of the child.

(3) Subject to any arrangements to be made between the parents or as directed by an order of Court, a parent who has a child residing with the parent, has the responsibilities and rights of a parent in respect of the child and shall exercise those parental responsibilities and rights in the best interests of the child.

(4) Where the parents of a child live separate and apart and the child lives with one of them with the express or implied consent or acquiescence of the other, the right of the other parent to have the child reside with that parent, but not the entitlement to access or contact, is suspended until an order of the Court otherwise provides or the parents otherwise agree.

(5) Where the parents of a child live separate and apart and the child resides with one of them and the other is entitled to access or contact under the terms of an agreement or order of Court, each shall, in the best interests of the child, encourage and support the child's continuing relationship with the other.

(6) The entitlement to custody and access or contact to a child includes the right to, at reasonable times, visit with and be visited by the child and the right to make inquiries and to be given relevant information as to the health, education and welfare of the child.

Termination of
custody.

9. (1) The entitlement to custody and access or contact shall not extend beyond the period when the child has reached the age of eighteen years unless the child has special needs referred to in the definition of child in section 2.

(2) The entitlement to the custody of and access or contact to a child terminates on the marriage of the child and a subsequent termination of that marriage does not revive that entitlement.

(3) A custody and access or contact order made under this section is subject to variation by an order of a Court or by an agreement filed with the Court.

(4) The entitlement to custody and access or contact is subject to the termination of the responsibilities and rights of a parent.

Merits of
application.

10. (1) The merits of an application under this Act shall be determined on the basis of the best interests of the child.

(2) In determining what are the best interests of a child for the purposes of an application under this Part, a Court shall without prejudice to the general principles specified under Part II, specifically consider all the needs and circumstances of the child including-

- (a) the love, affection and emotional ties between the child, and –
 - (i) each person entitled to or claiming custody of and access or contact with the child;
 - (ii) other members of the child's family, including siblings of the child, who reside with the child; and
 - (iii) persons involved in the care and upbringing of the child;
- (b) the length of time the child has lived in the place where the child is habitually resident;
- (c) the ability and willingness of each person seeking custody of the child to provide the child with guidance, education, and the necessities of life, and to meet any special needs the child may have;
- (d) plans proposed for the care and upbringing of the child;
- (e) the permanence and stability of the family unit with which it is proposed that the child will live;
- (f) the relationship by blood or adoption between the child and each person who is a party to the application.

- (g) the emotional well-being of the parent, the willingness of the parent to facilitate contact with the other parent;
- (h) the need to protect the child from abuse or harm; and
- (i) any other relevant factor.

(3) The past conduct of a person is not relevant to the determination of an application under this Part unless the conduct may not be relevant to the ability of the person to act as parent of the child.

Habitual residence
and parental
responsibility.

11. (1) A child is habitually resident in the place where the child resides –

- (a) with both parents;
- (b) with one parent where the parents are living separate and apart, under an order of Court, under a separation agreement or with the consent, implied consent or acquiescence of the other parent; or
- (c) with a person other than a parent on a permanent basis for a significant period of time.

(2) The removal or withholding of a child without the consent of a parent or a person who has parental responsibility for the child does not alter the habitual residence of the child unless there has been acquiescence.

Application by
person without
parental
responsibilities.

12. (1) A person who has care or control of a child, but in relation to that child has no parental rights, is entitled to apply for the custody of the child.

(2) Save and except for subsection (1) applies only to a person who is at least eighteen years of age and who is no more than fifty years older than the child.

(3) A Court in considering an application for custody by a person without parental responsibility shall have regard to Part II and this Part.

Hearing of
application.

13. (1) In instances where an application filed under this Part has not been listed for hearing within two weeks of it becoming right for hearing, the Registrar of the Court shall list the application for hearing by the Court and give notice to the parties of the date and time when and the Court where the application will be heard.

(2) At the hearing of a matter listed by the Registrar, in accordance with subsection (1), the Court may fix such other dates for the hearing of the application and may give such directions as to the general procedures of the matter including the costs of the proceedings as the Court considers appropriate.

(3) Where the Court fixes a date under subsection (2), the Court shall fix the earliest date that, in the opinion of the Court, would result in an early disposition of the application.

Custody, access,
etc. orders.

14. (1) Upon an application under this Part the Court may make any custody order it thinks fit, with relevant ancillary orders as outlined in section 77 (2) as to the residence of the child and contact with the child.

(2) Where -

- (a) a residence order has been made with respect to a child pursuant to section 77; and
- (b) as a result of the order the child lives, or is to live, with one of two parents who each has parental responsibility for that child,

the residence order shall cease to have effect if the parents live together for a continuous period of more than six months, except where there is a separation agreement or a Court order regarding a separation agreement in place.

Access or
contact
order.

15. Except in a situation where two persons reside in a house as two separate households an access or contact order which requires the person with whom a child lives to allow the child to visit, or otherwise have contact with, another person named in the order, shall cease to have effect if those persons live together for a continuous period of more than six months.

**CUSTODY AND ACCESS –
ASSISTANCE TO THE COURT**

Assessments
of needs of a
child.

16. (1) The Court before which an application is brought under this Part may make an order appointing a person who has technical or professional skill from a listing provided by the chief probation officer to assess and report to it on the needs of the child, on such matters relating to the welfare of the child, and the ability and willingness of the parties or any of them to satisfy the needs of the child.

(2) An order under subsection (1) may be made on or before the hearing of the application under this Part and with or without a request by a party to the application.

(3) The Court shall, where possible, appoint a person agreed upon by the parties, but if the parties do not agree, the Court may choose and appoint the person.

(4) The Court shall appoint a person under subsection (1) to make the assessment and to report to it within the period of time specified by the Court in writing.

(5) In an order under subsection (1), the Court may require the parties, the child and any other person who has been given notice of the proposed order, or any of them, to attend for assessment by the person appointed.

(6) Where a person ordered under this section to attend for assessment refuses to attend or to undergo the assessment, the Court may draw such inference in respect of the ability and willingness of the person to satisfy the needs of the child as the Court considers appropriate.

(7) The Court may take account of-

- (a) any statement contained in the report; and
- (b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the Court, relevant to the question which it is considering.

(8) The Minister may make regulations specifying matters which may be dealt with in a report under this section.

Report to be
filed.

17. (1) The person appointed under section 16 (1) shall file a report with the Registrar of the Court.

(2) The Registrar shall give a copy of the report to each of the parties and to counsel, if any, representing the child.

Admissibility
of report.

18. Notwithstanding any other law, the report mentioned in section 17 (1) is admissible in evidence on an application.

Assessor as
witness.

19. The Court, parties or counsel, if any, representing the child, may require the person appointed under section 16 (1) to attend as a witness at the hearing of the application.

Directions by
Court.

20. The Court by order may give such directions in respect of the assessment as the Court considers appropriate.

Fees and expenses
of person appointed.

21. (1) The Court shall require the parties to pay the fees and expenses of the person referred to in section 6 (1) (b) and the person appointed under section 16 (1).

(2) The Court shall specify in the order the proportions or amounts of the fees and expenses that the Court requires each party to pay.

(3) The Court may relieve a party from responsibility for payment of any of the fees and expenses of the person appointed under section 16 (1) where the Court is satisfied that payment would cause serious financial hardship to the party.

Expert evidence.

22. The Court shall permit the parties or counsel representing the child to call other expert evidence as to the needs of the child.

Mediation.

23. (1) Upon an application under this Part the Court may appoint a person to act as mediator in the matter.

(2) The Court shall require the mediator to file his report with the Court within the period of time specified by the Court.

(3) The mediator shall confer with the parties and counsel, if any, representing the child, and the child in order to endeavour to obtain an agreement in respect of the matter.

Mediator
to file
report.

24. (1) The mediator shall file, with the Registrar, a report setting out agreements reached by the parties or stating only that the parties did not reach an agreement on the matter.

(2) An agreement made between the parties shall be made an order of the Court.

Orders where
child
unlawfully
withheld.

25. (1) Where a Court is satisfied upon application by a person in whose favour an order has been made under this Part that there are reasonable and probable grounds for believing that a person is unlawfully withholding the child from the applicant, the Court by order may –

- (a) compel the person or persons unlawfully withholding the child to produce or cause the child to be produced in Court on the date and time specified; or
- (b) authorise the applicant or someone on behalf of the applicant to take charge of the child, for the purpose of giving effect to the rights of the applicant.

(2) Where the Court is satisfied upon application that there are reasonable and probable grounds for believing that a person –

- (a) is unlawfully withholding a child from a person entitled to custody of the child;

- (b) who is prohibited by Court order or separation agreement from removing the child from Guyana proposes to remove the child or to have the child removed from Guyana; or
- (c) who is not entitled to custody of a child proposes to remove that child or to have the child removed from Guyana and that the child is not likely to return,

the Court by order may direct the police or social worker to locate, take charge of and deliver the child to the person named in the order.

(3) Applications made under subsections (1) and (2) may be made *ex parte*.

(4) An order may be made under subsection (2) on an *ex parte* application where the Court is satisfied that it is necessary that action be taken without delay.

(5) A police officer or social worker directed by the order under subsection (2) shall do all things the police officer or social officer is reasonably able to do to locate, take charge of and deliver the child in accordance with the order.

(6) For the purpose of locating and taking charge of a child in accordance with an order under subsection (2), a police officer may enter and search a place where the police officer has reasonable and probable grounds for believing that the child may be with such assistance and such force as are reasonable in the circumstances.

(7) The Court shall in an order made under subsection (2) name a date on which the order expires which shall be a date not later than six months after it is made unless the Court is satisfied that a longer period of time is necessary in the circumstances.

(8) An entry or search referred to in subsections (5) and (6) shall be made only between 5:00 hours and 21:00 hours unless the Court, in the order or by a subsequent order, authorises entry and search at another time.

(9) An application under subsection (2) may be made in an application for custody or access or at any other time.

Listing name
of offender.

26. (1) Subject to an application made to the Court by a person who has an order of Court who is entitled to custody, the Court may order the Commissioner of Police to place at any port of entry or exit the name of an individual who had violated the order, or who the Court seeks to prohibit removing the child from Guyana.

(2) Pursuant to subsection (1), the Court may order that the Commissioner of Police prevent the child from leaving Guyana or prevent a named person or any one from removing the child from Guyana.

Ancillary orders
in relation to
custody.

27. (1) The Court may require a person to do any one or more of the following –

- (a) post a bond with or without sureties with the Registrar in such amount as the Court considers appropriate; or
- (b) deliver the child's passport and where the child's name is on a person's passport, the person's passport, and any other travel documents of either of them that the Court may specify to the Court or to the police.

(2) The Court may, in an order under subsection (1), give directions in respect of the safekeeping of the property, passports, or travel documents, as the Court considers appropriate.

Information as
to address.

28. (1) On an application for custody the Court may order a person or public body or entity to provide the Court with the particulars of the address of the proposed respondent or person against whom an order under this Part may be made as are contained in the records in the custody of that person or body, for the purpose of the applicant or person in whose favour the order may be made to learn or confirm the whereabouts of the proposed respondent or person against whom the order referred to in this section may be made.

(2) The person or body or entity referred to in subsection (1) shall give the Court such particulars as are contained in the records and the Court may then give the particulars to the applicant or such other person as the Court considers appropriate.

(3) A Court shall only make an order on an application under subsection (1) where the Court is satisfied that the purpose of the application is to enable the applicant to identify or to obtain particulars as to the identity of a person who has custody of a child, or to learn or confirm the whereabouts of the proposed respondent for the enforcement of an order for custody or access.

(4) The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.

Order restraining
harassment.

No. 18 of 1996.

29. (1) Notwithstanding the provisions of the Domestic Violence Act 1996, on application, a Court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or a child in the applicant's lawful custody and may require the person to enter into a recognizance or post a bond that the Court considers appropriate.

(2) A person who contravenes a restraining order commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for three months.

PART IV

GUARDIANSHIP

Entitlement to
guardianship.

30. (1) Except as otherwise provided in this Part both the mother and father shall be the guardian of a child.

(2) The Court in its discretion may appoint any other person as guardian of a child.

Appointment of
guardians.

31. (1) By deed or document notarially executed, a parent or parents of a child may appoint a guardian or guardians of a child where necessary and a person who has an objection to the appointment shall seek an order of Court to resolve the objection.

(2) A parent or parents of a child may, by a testamentary document, deed or document notarially executed, appoint a person to be guardian of the child at the time of their death and the appointment shall be of no effect unless that parent had custody of the child (or would have been so entitled if he had survived until after the birth of the child) but the surviving parent shall have joint guardianship with the appointed guardian.

(3) By deed or document notarially executed a parent who has sole custody and guardianship of a child may make provision for the guardianship of that child in the event of an unforeseen occurrence that prevents the parent from taking care of the child even though the parent is alive.

(4) An appointed guardian of a child may appoint a person to take the guardian's place as guardian in the event of the guardian's death, but such appointment shall be of no effect unless provided for by a document notarially executed.

(5) An appointment as guardian shall not take effect until accepted, either expressly or impliedly by acts which are not consistent with any other intention.

(6) If two or more persons are appointed as guardians, any one or more of them shall, unless the appointment expressly provides otherwise, be entitled to act as guardian.

Responsibility
of guardian.

32. (1) Subject to an order under this Act, a person appointed as a child's guardian under section 31 shall have, in respect of the child, the responsibilities imposed, and the rights conferred on a parent by sections 3 and 4.

(2) Subject to section 31 (6), where more than one person is appointed guardian, the guardians are jointly responsible for ensuring the welfare of the child.

(3) If guardians are unable to agree upon a question affecting the welfare of the child to whom their guardianship relates, any one or more of them may apply to the Court for its direction, and the Court may make any order regarding the disputed issues as it thinks fit.

Revocation and
other termination
of appointment.

33. (1) An appointment made under section 31 (1), (2), (3) or (4) revokes an earlier appointment (including one made in a testamentary document) made by the same person in respect of the same child, unless it is clear (whether as a result of an express provision in the later appointment or by necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

(2) Subject to subsections (3) and (4), the revocation of an appointment made under section 31 (1), (2), (3) or (4) (including one made in a testamentary document) shall not take effect unless, the revocation is done by testamentary document, deed or by notarised document.

(3) For the avoidance of doubt, an appointment made under section 31 (2) in a will or codicil is revoked if the will or codicil is revoked.

(4) Once an appointment of a guardian takes effect under section 31, then, unless the terms of the appointment provide for earlier termination, it shall terminate only by virtue of-

- (a) the child attaining the age of eighteen years unless the child has special needs and is a child under section 2;
- (b) the marriage of the child;
- (c) the death of the child or the guardian; or
- (d) the termination of the appointment by an order of Court upon an application by the Childcare and Protection Agency or a next friend of the child.

PART V

GUARDIAN OF PROPERTY

Appointment
of guardian of
property.

34. (1) Upon application by a parent of a child or any other person directly associated with the child, the Court may appoint the applicant as a guardian of the property of the child.

(2) In deciding an application for the appointment of a guardian of the property of a child, the Court shall consider *inter alia* all the circumstances, including-

- (a) the ability of the applicant to manage the property of the child;
- (b) the merits of any plans proposed by the applicant for the care and management of the property of the child; and
- (c) the views and preferences of the child, where such views and preferences can reasonably be ascertained.

(3) A guardian within the meaning of section 30 or 31 may be appointed guardian of the property of the child concerned.

(4) More than one person may be appointed guardian of the property of a child.

Parent and
other persons.

35. (1) The parents of a child are equally entitled to be appointed as guardians of the property of the child, as between themselves and subject to an order of the Court or to an agreement between them.

(2) The parent of a child has a preferential entitlement to be appointed by the Court as a guardian of the property of the child over and above a person who is not a parent of the child.

Responsibility of
guardian of
property.

36. (1) A guardian of the property of a child has charge of and is responsible for the care and management of the property of the child.

(2) Where more than one person is appointed guardian of the property of a child, the guardians are jointly responsible for the care and management of the property of the child.

Safeguarding
of child's property.

37. (1) Subject to this Act, this section applies where-

- (a) property is owned by or due to a child;
- (b) the property is held by a person other than a parent or guardian of the child in trust for the child; and
- (c) but for this section, the property would be required to be transferred to a parent having parental responsibilities in relation to the child or to a guardian for administration by that parent or guardian to be held in trust on behalf of the child.

(2) Subject to subsection (4), where this section applies and the person holding the property is an executor, administrator or trustee, then-

- (a) if the value of the property exceeds five hundred thousand dollars, the executor, administrator or trustee shall; or
- (b) if that value is not less than fifty thousand dollars and does not exceed five hundred thousand dollars, the executor, administrator or trustee may,

apply to the Court for its direction as to the administration of the property.

(3) Subject to subsection (4), where this section applies and the person holding the property is a person other than an executor administrator or trustee, then, if the value of the property is not less than fifty thousand dollars and does not exceed five hundred thousand dollars, that person may apply to the Court for a direction as to the administration of the property.

(4) Where the parent or guardian mentioned in subsection (1) (c) has been appointed a trustee under a trust deed to administer the property concerned, subsection (2) and (3) shall not apply, and the person holding the property shall transfer it to the parent or guardian.

(5) On receipt of an application under subsection (2) or (3), the Court may do one or more than one, of the following, in so far as the context admits-

- (a) appoint a person (whether or not the parent or guardian mentioned in subsection (1) (c)) to administer all or part of the property concerned and in the event of the Court making such an appointment the Court shall direct that the property be vested in the child on the child becoming an adult;
 - (b) direct that all or part of the property concerned be transferred to the Public Trustee;
 - (c) direct that all or, in a case where the parent or guardian so mentioned has not been appointed by virtue of paragraph (a), part of the property concerned be vested in the parent,
- to be administered on behalf of the child.

(6) A direction under subsection (5) (c) may include such conditions as the Court considers appropriate, including in particular a condition-

- (a) that in relation to the property concerned no capital expenditure shall be incurred without the Court's approval; or
- (b) that there shall be exhibited annually to the Public Trustee the securities and bank books which represent the capital of the property.

(7) A person who has applied under subsection (2) or (3) for a direction shall not vest the property concerned except in accordance with a direction under subsection (5).

(8) The Minister may from time to time prescribe a variation in a sum referred to in subsections (2) and (3).

Obligations and
rights of person
administering
child's property.

38. (1) A person acting as the guardian of a child's property-

- (a) shall be required to act as a reasonable and prudent person would act were it on the person's own behalf; and

- (b) subject to any order made under this Act, shall be entitled to do anything which the child, if of full age and capacity, could do in relation to that property,

and subject to subsection (2), on relinquishment of guardianship of the property, shall be liable to account to the Public Trustee for the person's dealings with the child's property or to the child on the child's coming of age, which ever is earlier.

(2) No liability shall be incurred by virtue of subsection (1) in respect of funds which have been properly used to safeguard and promote the child's health, education, development and welfare.

Payment of debt
due to child.

39. (1) Subject to section 37, where a person is under a duty to pay money or deliver movable property to a child and a guardian of the property of the child has not been appointed, the payment of not more than two hundred thousand dollars or the delivery of the movable property to the value of not more than two hundred thousand dollars per year to -

- (a) a parent with whom the child resides; or
(b) a person who has legal custody of the child,

discharges the duty to the extent of the amount paid or the value of the movable property delivered, but the total amount paid, or total value of property delivered, in respect of the same obligation shall not exceed two hundred thousand dollars.

(2) Subsection (1) does not apply in respect of money payable under a judgment or order of a Court.

(3) A receipt or discharge for money or movable property received for a child by the Public Trustee in accordance with subsection (1) has the same validity as if a court had appointed the person who received the money or movable property, a guardian of the property of the child.

(4) The Public Trustee may receive and hold money or movable property in accordance with subsection (1) and shall have the responsibility of a guardian for the care and management of the money or movable property.

Transfer of property
to child.

40. A guardian of the property of a child shall transfer the property to the child concerned when the child attains the age of eighteen years, except where the child has special needs, in which case the responsibility for the property shall be retained by the guardian or transferred to a person who has custody of that child.

Bond by guardian.

41. (1) A Court that appoints a guardian of the property of a child other than the Public Trustee may require the guardian to post a bond, with or without sureties, in such amount as the Court considers appropriate in respect of the care and management of the property of the child.

(2) Subsection (1) does not apply to the appointment of a parent of the child as guardian of the property of the child where the Court is of the opinion that it is appropriate not to require the parent to post a bond.

Disposition of
property of child.

42. (1) Upon application by a guardian of the property of a child or by a person with parental responsibility for a child, the Court may grant an order requiring or approving, or both -

- (a) the disposition or encumbrance of all or part of the interest of the child in immovable property;
- (b) the disposition of the interest of the child in movable property; or
- (c) the payment of all or part of any money belonging to the child or of the income from any property belonging to the child, or both.

(2) An order shall be made under subsection (1) only where the Court is of the opinion that the disposition, incumbrance, sale or payment is necessary for the maintenance, education or medical expenses including psychiatric care if required, of the child, or will substantially benefit the child.

(3) An order under subsection (1) may be made subject to such conditions as the Court considers appropriate.

(4) The Court shall not require or approve a disposition of the interest of a child in immovable property contrary to a term of the instrument by which the child acquired the interest.

(5) The Court, where it makes an order under subsection (1), may order that a person named in the order execute any documents necessary to carry out the disposition, encumbrance, sale or payment.

(6) The Court by order may give such directions as it considers necessary for carrying out an order made under subsection (1).

(7) A person does not incur or shall not be deemed to incur liability by making a payment in accordance with an order under this section.

tenance where
power of appoint-
ment in favour of
child.

43. (1) Upon an application by or with the consent of a person who has an estate in fee simple in the property with power to devise or appoint the property to one or more of the person's children, a court may order that a portion of the proceeds of the property that the Court considers appropriate be used for the maintenance, education or benefit of one or more of the children.

(2) An order may be made under subsection (1) whether or not-

- (a) there is a gift over in the event that there are no children to take under the power; or
- (b) a person could dispose of the property in the event that there are no children to take under the power.

Application of
income of property
of infants for
purposes of
education or
otherwise.

44. (1) Subject to section 37, where property is held by a guardian, trustee, administrator, or executor, in trust for a child (whether the trust is express or implied, or constructive), the guardian, trustee, administrator, or executor, may at the sole discretion of that person pay to the child's parent or guardian (if any) or otherwise apply for or towards the child's maintenance, education or benefit the income of that property or part thereof, whether there is or is not another fund applicable to the same purpose, or anyone bound by law to provide for the child's maintenance or education.

(2) The guardian, trustee, administrator or executor shall invest any income from the property and any resulting income from time to time in securities and in financial institutions in respect of which that person is by settlement (if any) or by law authorised to invest such income for the benefit of the child or a person who ultimately becomes entitled to the property from which it arises but so that the guardian, trustee, administrator or executor may at any time, if that person thinks fit, apply that income or any part thereof, as if it arose in that current year.

(3) This section applies-

- (a) only if and as far as a contrary intention is not expressed in an instrument (if any), under which the interest of the child arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained; and
- (b) whether or not the guardian, trustee, administrator or executor acquired that capacity before the commencement of this Act.

Appointment
by guardian.

45. (1) A guardian of the property of a child may appoint by testamentary document one or more persons or the Public Trustee to be guardian of the property of the child after the death of the appointer.

(2) An appointment under subsection (1) is effective only-

- (a) if that appointer is the only person who is the guardian of the property of the child on the day immediately before the appointment is to take effect; or
- (b) if the appointer and every other person who is the guardian of the property of the child die at the same time or in circumstances that render it uncertain who survived the other.

(3) The Public Trustee shall apply to the Court to be appointed to act as interim guardian of the property of a child until a guardian is appointed in the stead of a guardian who has died.

(4) An appointment under this section does not apply to prevent an application for or the making of an order under section 31.

(5) This section applies in respect of testamentary documents made after or which crystallize after this Act comes into being.

Termination of
appointment of
guardian of
property.

46. (1) A guardian of the property of a child may be removed by a Court for the same reasons for which a trustee may be removed.

(2) A guardian of the property of a child, with the permission of the Court, may resign the office of guardian upon conditions that the Court considers appropriate.

(3) Guardianship of property terminates when the child for whom the guardian was appointed, attains the age of eighteen years except where the child has special needs.

(4) Where a child has special needs and has attained the age of eighteen years, an application may be made to the Court for a determination of whether the guardianship shall continue or be terminated and another person appointed as guardian of the child's property.

PART VI MAINTENANCE

The duty to
maintain.

47. (1) For the purposes of this Act a person has an obligation to the extent of the person's capabilities to maintain –

- (a) the person's own child;
- (b) each child of the person's spouse, where such child–
 - (i) was born prior to the marriage; and
 - (ii) resides with them as a member of the family;
- (c) each child of the person with whom the person cohabits, where such child–
 - (i) was born prior to the commencement of the cohabitation; and
 - (ii) resides with them as part of the family;

- (d) a child who is treated as a child of the family; and
- (e) each child of any children the person has, in the event of the parents of those children failing to do so.

(2) A parent with whom the child does not reside shall be taken to have met the responsibility to maintain the child by making periodical payments with respect to the child of an amount, and at intervals, as may be determined in accordance with the provisions of this Act.

Priority of
maintenance
order.

48. The Court shall give priority to an application for a maintenance order under this Act over all other applications for maintenance under other laws.

Orders.

49. (1) On an application for maintenance made by or on behalf of a child, the Court may-

- (a) make an order, including an interim order, and may impose terms, conditions or restrictions in connection with the order or interim order as the Court thinks fit and just;
- (b) make an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the Court, of property –
 - (i) to which the parent is entitled (either in possession or reversion) and;
 - (ii) which is specified in the order;
- (c) make an order requiring the person liable to maintain the child-
 - (i) to transfer to the applicant, for the benefit of the child; or
 - (ii) to transfer to the child,
 property to which that person is entitled (either in possession or reversion) as may be specified in the order;

- (d) make an order requiring the person liable to maintain the child-
 - (i) to make to the applicant for the benefit of the child; or
 - (ii) to make to the child,

such lump sum or periodical payments, for such term, as may be specified in the order.

(2) Where Court orders the payment of maintenance pursuant to this Act, the Court may require the person obliged to pay maintenance to give such security, including a charge on property that the Court may order, for the performance of the order.

(3) A Court which requires a person to give security pursuant to subsection (2), may, on application upon default of the payment, direct the sale or other realization of the security upon terms and conditions as the Court considers appropriate.

(4) A Court may order maintenance to be paid in a combination of two or more of the orders for which it has jurisdiction.

(5) The Court shall make a maintenance order for such sum as it deems fit after assessing the evidence adduced before it.

(6) A child under this Act shall be entitled to legal representation provided by the State.

Matters to which the Court is to have regard and disputes about parentage.

50. (1) In deciding whether to exercise its power under section 49 and if so in what manner, the Court shall have regard to all the circumstances including-

- (a) the income, earning capacity, property and other financial resources which the applicant or each person liable to maintain the child has or is likely to have in the foreseeable future;

- (b) the financial needs, obligations and responsibilities which the applicant or each person liable to maintain the child has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity, if any, property and other financial resources of the child;
- (e) special needs of the child;
- (f) the manner in which the child was being or is expected to be, educated or trained.

(2) In deciding whether to exercise its powers under this section and section 49 against a person who is liable to maintain the child by reason of section 47 (1) (b), (c), (d) or (e) only, and if so in what manner, the Court shall in addition, have regard to-

- (a) whether that person had assumed responsibility for the maintenance of the child and, if so, the extent to which and the basis on which that responsibility was assumed and the length of the period during which that responsibility was met;
- (b) whether the person did so knowing that the child was not the child of that person; and
- (c) the liability of any other person to maintain the child.

(3) Where a person, who is alleged to be a parent of the child with respect to whom an application for maintenance has been made, denies parentage of the child, the Court shall not make a maintenance order on the assumption that the person is one of the child's parents unless-

- (a) the person has been declared, found or adjudged to be a parent of the child in question and-
 - (i) that declaration, finding or adjudication still subsists; and
 - (ii) the child has not subsequently been adopted;

- (b) the person is presumed a parent of the child by virtue of one or other of the presumptions of parentage and the child has not subsequently been adopted; or
- (c) the birth certificate of the child in question bears the name of the person as a parent of the child.

(4) Where the parentage of a child is in issue, the Court shall determine the issue of parentage before making an order under section 49.

(5) The Court in deciding whether to exercise its functions under section 49 may also have regard to the financial resources or obligation of any other person in whose favour it proposes to make the order.

Contents of
order.

51. An order for payment of maintenance shall specify-

- (a) the amount to be paid and the period for which the amount applies;
- (b) when the payment is to be made;
- (c) where or to whom payment is to be made;
- (d) the breakdown of the amount as between children;
- (e) the name and date of birth of the child for whom maintenance is ordered;
- (f) the date on which the order expires; and
- (g) such other information as the Court thinks fit.

Power to
require infor-
mation.

52. (1) Upon application for maintenance under this Act, including an application for a variation or discharge order, the Court may request a person, including the applicant or the respondent, a corporation or public body, including the State, to provide information respecting-

- (a) the wages, salary or remuneration;
- (b) the sources of income;
- (c) the assets including, title to immovable and movable property, or liabilities;

- (d) the financial status;
- (e) changes in circumstances that affect the amount of maintenance to be paid under the order;
- (f) the location, address and place of employment;
- (g) the location, address and place of residence;
- (h) copies of income tax returns;
- (i) any other information as required by the Court,

respecting the applicant or respondent, that is within the knowledge of, or shown on a record in the possession or control of, the person, corporation or public body, including the State.

(2) A person, including the applicant or respondent, or corporation or a public body, including the State that receives a request for information in accordance with subsection (1) shall provide it within fourteen days of the day on which the request is received.

(3) Where it appears that an order of the Court under subsection (1) has not been complied with, the Court may allow a further fourteen days for compliance.

(4) The Court in the event of default under subsections (2) or (3) may issue a *subpoena* for the information requested and may make an order awarding costs against the defaulter as it considers appropriate.

(5) This section applies notwithstanding any other law or regulation and notwithstanding any common law rule of confidentiality, except attorney-client privilege.

(6) An action shall not lie against a person who provides information in accordance with this section.

(7) A person, including the applicant or the respondent, a corporation or public body, including a servant or agent of the State, who knowingly withholds, misleads or gives false information to the Court in response to an order of the Court pursuant to this section commits an offence and shall be liable on summary conviction to a maximum fine of two hundred thousand dollars.

Duration of
orders.

53. (1) A maintenance order may begin from the date of the making of the application for the order in question or a later date but shall not in the first instance extend beyond the child's eighteenth birthday.

(2) A maintenance order under subsection (1) may be extended if the Court is satisfied that-

- (a) the child is, or will be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation whether or not while in gainful employment, in which case the order shall not extend beyond the child's twenty-first birthday;
- (b) the child in question is unable by reason of illness, or special needs to provide for the child's reasonable needs; or
- (c) there are special circumstances which justify the making of an order to extend beyond the age of eighteen.

(3) A maintenance order shall, subject to a review by the Court, continue to have effect on the death of the person liable to make payments under the order and shall be enforceable against the estate of that person.

(4) A maintenance order shall only cease to have effect if a person making or securing the payments, and the person to whom the payments are made or secured, live together for a period of more than six months and the child concerned lives with them.

Extension of
maintenance
order.

54. (1) Where a maintenance order ceases to have effect on the date on which the child reaches the age of eighteen years or at any time after that date as specified in the order, either before or on the date on which the child reaches the age specified in the

order, the child or in a case where the child has special needs the parent or guardian may apply to the Court for extension of the order.

(2) If on such an application it appears to the Court that-

- (a) the child is or will be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment,
- (b) there are special circumstances which justify the making of an order under this subsection, including special needs of the child.

the Court shall have power by order to extend the order from such date as the Court may specify, not being earlier than the date of the making of the application, in which case the order shall not extend beyond the child's twenty-first birthday unless the child has special needs.

(3) An order which is extended by an order under subsection (2) may be varied or discharged on the application of a person by whom or to whom payments are required to be made under the extended order.

Variation, etc., of
order or change of
circumstances.

55. (1) The Court, on application, may make an order varying, suspending or discharging a maintenance order where there has been a change of circumstances since the making of the order.

(2) An application under this section may be made only on the grounds that, by reason of the change of circumstances since the making of the last order under section 49, the amount of maintenance payable would be different or should not be paid if it were to be made by reference to the circumstances of the case as at the date of the application.

Exercise of power
of variation or
discharge.

56. (1) In exercising its power under section 55 to vary or discharge a maintenance order the Court shall have regard to all the circumstances of the case, including a change in any of the matters to which the Court was required to have regard when making the order.

(2) The power of the Court under section 55 to vary a maintenance order shall include a power to suspend any provision of the order temporarily and to revive any provision so suspended.

(3) Where, on an application under section 55 for the variation of a maintenance order, the Court varies the payments required to be made under that order, the Court may provide that the payments so varied shall be made from such date as the Court may specify, not being earlier than the date of the making of the application.

(4) An application for the variation of a maintenance order for the benefit of a child may, if the child has reached the age of sixteen, be made by the child.

(5) Where the Court provides for the payment of a sum in instalments the Court, on an application made either by the person liable to pay or the person entitled to receive the sum, shall have power to vary that order by varying-

- (a) the number of instalments payable;
- (b) the amount of an instalment payable;
- (c) the date on which an instalment becomes payable.

(6) Subject to subsection (4), an application under section 55 may be made upon the application of-

- (a) a party to the proceedings in which the order was made;
- (b) a person having residence and contact with the child to whom the orders relates; or
- (c) a person to whom a payment was directed in such order to be made.

Deduction
from earnings
orders.

57. (1) This section applies where a person ("the liable person") is liable to make payments of maintenance pursuant to a maintenance order.

(2) The Court may make an order ("a deduction from earnings order") against the liable person to secure the payment of an amount due under the maintenance order in question.

(3) A deduction from earnings order may be made so as to secure the payment of-

- (a) arrears of maintenance payable under an order;
- (b) maintenance which will become due under an order; or
- (c) both arrears and future amounts.

(4) A deduction from earnings order-

- (a) shall be expressed to be directed to a person (the employer) who has the liable person in the person's employment;
- (b) shall have effect from such date as may be specified in the order.

(5) A deduction from earnings order shall operate as an instruction to the employer to-

- (a) make deductions from the liable person's earnings; and
- (b) pay the amount deducted in the manner prescribed in the order.

(6) The Court shall direct the Registrar or Clerk to serve a copy of any deduction from earnings order, which it makes under this section on-

- (a) the person who appears to the Court to have the liable person in question in the person's employment; and
- (b) the liable person.

(7) Where-

- (a) a deduction from earnings order has been made; and
- (b) a copy of the order has been served on the liable person's employer,

it shall be the duty of that employer to comply with the order but the employer shall not be under any liability for non-compliance before the end of the period of thirty days beginning with the date on which the copy of the order was served on the employer .

(8) In this section and in section 59-

"earnings" includes wages and salaries and other emoluments;

“employer” includes the State and any person liable to pay the wages or salary, and the word “employment” shall be construed accordingly.

Regulations.

58. (1) The Minister may by regulations make provision with respect to deduction from earnings orders.

(2) The regulations may, in particular, provide-

- (a) for the circumstances in which one person is to be treated as employed by another;
- (b) for allowing the person who deducts and pays any maintenance under an order to deduct from the liable person's earnings a prescribed sum towards the person's administrative costs which shall be computed as one percent of the amount ordered to be paid;
- (c) for requiring a person on whom a copy of an order is served to notify the Registrar or Clerk in the prescribed manner and within a prescribed period if that person does not have the liable person in the person's employment or if the liable person ceases to be in the person's employment;
- (d) for the operation of an order where the liable person is in the employment of the State;
- (e) for a deduction from earnings order to lapse when the employer concerned ceases to have the liable person in the person's employment;
- (f) for the giving of notice by the Registrar or Clerk in the prescribed form to the employer concerned that an order has been varied, suspended or discharged.

(3) The regulations may include provisions that while a deduction from earnings order is in force the liable person shall from time to time notify the Registrar and Clerk, in the prescribed manner and within a prescribed period, of each occasion on

which the liable person leaves any employment or becomes employed, or reemployed, and shall include in this notification a statement of the liable person's earnings and expected earnings from the employment concerned and of other matters as may be prescribed.

(4) A person who fails to comply with the requirements of a deduction from earnings order, or with a regulation under this section which is designated for the purposes of this subsection, commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars.

(5) It shall be a defence for a person charged with an offence under subsection (4) to prove that all reasonable steps were taken to comply with the requirements in question.

Liability order.

59. (1) This section applies where –

- (a) a liable person fails to make one or more payments; and
- (b) it appears to the Court that -
 - (i) it is inappropriate to make a deduction from earnings order against that person; or
 - (ii) although such an order has been made against that person, it has proved ineffective as a means of ensuring that payments are made in accordance with the maintenance order in question.

(2) The Court on application may, if satisfied that the payments in question have become payable by the liable person and have not been paid, make a liability order against the liable person directing that the sum due under the order and the costs in relation to the liability order, be recovered by distress and sale of the goods and chattels of the liable person.

(3) On an application under subsection (2), the Court shall not question the maintenance order under which the payments of child support maintenance fell to be made.

(4) In subsection (2), "the sum due" means the aggregate of –

- (a) the arrears of maintenance that remain unpaid including processing fees for deductions from earnings order and payments made through the post office;
- (b) an amount, determined in such manner as may be prescribed, in respect of the charges connected with the distress; and
- (c) costs of the applications.

(5) A person including a bailiff may, in exercising the person's power under subsection (1) against the liable person's goods, seize –

- (a) any goods except –
 - (i) such tools, books, vehicles and other items of equipment as are necessary for the liable person for use personally by the liable person in the liable person's employment, business or vocation;
 - (ii) such clothing, bedding, furniture, household, equipment and provisions as are necessary for satisfying the liable person's basic domestic needs; and
- (b) any money, banknotes, bills of exchange, promissory notes, bond, specialties or securities for money belonging to the liable person.

(6) For the purposes of subsection (5), the liable person's domestic needs shall be taken to include those of any member of the liable person's family with whom the liable person resides.

(7) A person levying distress under this section shall not be taken to be a trespasser –

- (a) on that account; or
- (b) on account of a subsequent irregularity being found in levying the distress.

(8) A person sustaining special damage by reason of an irregularity in levying a distress under this section may recover full satisfaction for the damage and no more by proceedings against the person who levied the distress.

(9) If upon the return of a warrant it shall appear that no sufficient distress can be had, a magistrate may issue a warrant to bring the defaulting party before the magistrate, unless such sums and costs are sooner paid, and if the defaulting party neglects or refuses without reasonable cause to make payment of the sum so due together with costs, the magistrate may commit the defaulting party to prison for any period not exceeding three months unless the sum and costs, together with the costs of commitment, be sooner paid.

(10) The Minister may make regulations to carry out the provisions of this section.

Committal to
prison and
obligation where
committed to
prison.

60. (1) The Court may order the committal of a liable person who does not comply with an order with respect to maintenance.

(2) Where the liable person is committed to prison under this section, the committal shall not operate to discharge the liability of the person to pay the sum in respect of which the liable person is so committed, but at any subsequent hearing relating to the enforcement, variation, suspension or discharge of the order, the Court may, if in its opinion the circumstances so warrant, remit the whole or a part of the amount due under the order.

Appeal of
committal
order.

61. A person against whom a Court has issued a committal order may appeal this order but the appeal shall not operate as a stay of the order.

Maintenance
agreement.

62. (1) Nothing in this Act shall be taken to prevent a person from entering into a maintenance agreement for the benefit of a child.

(2) The existence of a maintenance agreement shall not prevent a party to the agreement, or another person, from applying for a maintenance order with respect to a child for whose benefit periodical payments are to be made or secured under the agreement.

(3) Where an agreement contains a provision, which purports to restrict the right of a person to apply for a maintenance order, that provision shall be void.

(4) A maintenance agreement may be registered with the Deeds Registry in the same manner as a deed is registered.

Appointment of
Collecting
Officer.

63. (1) The Registrar shall be the Collecting Officer for the High Court and each Clerk in a Magisterial District shall be the collecting officer for that Magisterial District.

(2) Payments of any amount ordered by a Court under this Part may be made to a Collecting Officer in person or by manager's cheque sent by registered post or money order properly addressed to the Collecting Officer and posted in time to be delivered to the Collecting Officer on or before the day appointed for payments.

(3) It is the duty of the Collecting Officer to receive all payments directed to be made to the Collecting Officer under this Part and to make to the person named in the maintenance order, in the manner ordered, payments-

- (a) of the sum directed to be paid under the maintenance order; or
- (b) the part of the payment ordered,
as is received by the Collecting Officer, without making deductions therefrom.

(4) Payment shall be made by the Collecting Officer-

- (a) directly to the person named in the maintenance order at the office of the Collecting Officer; or

(b) by sending to the post master at the post office for the area where the person named in the order resides, an original and duplicate order specifying the amount to be paid.

(5) In a case to which subsection (4) (b) applies, the person named in the maintenance order shall attend at the post office and sign the receipt on the original and duplicate orders in the presence of the postmaster or other authorised officer who shall then pay the amount.

(6) The postmaster or the authorised officer shall retain the duplicate order and return the original to the Collecting Officer.

(7) The reasonable expenses incurred under subsection (4) (b) shall be borne by the person against whom the order was made and shall be computed at the rate of 1% of the sum stipulated in the order.

(8) Where a maintenance order provides for payment to be made to a Collecting Officer, the applicant for the order shall thereupon give the applicant's nearest post office address to the Collecting Officer.

Rules of Court,
liability order.

64. The procedure to be followed in dealing with an application for a liability order and the form and contents of a liability order may be prescribed by rules of Court.

Penalties for
neglect to
maintain or for
abandoning.

65. (1) A person who is liable to maintain a child and, refuses or neglects to maintain the child or wilfully abandons that child, commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and three months imprisonment in the case of a first offence and to seventy-five thousand dollars and six months imprisonment for each subsequent offence.

(2)(a) Notwithstanding the provisions of subsection (1) the magistrate may make a maintenance order under this Act against a person referred to in subsection (1) in addition to imposing the penalty provided for in subsection (1).

- (b) Where appropriate, the provisions of the Protection of Children Act 2009, shall apply.

No.17 of 2009.

(3) A person who is in receipt of maintenance for a child and is proved to be misapplying the said sum commits an offence and shall be liable on summary conviction to a fine of fifty thousand dollars.

Appeal.

66. (1) An appeal shall lie to the Full Court in the manner provided by the law in force for the time being, from a decision of a Court in respect of a maintenance order, a liability order, a deduction from earnings order or a maintenance assessment.

(2) The Full Court may, upon hearing an appeal-

- (a) confirm, reverse or modify the order;
- (b) remit the matter to the Court for rehearing generally or with the opinion of the Full Court; or
- (c) make such order as the Full Court thinks just.

(3) An order of the Full Court may be appealed

(4) An appeal under this section shall not operate as a stay of the order appealed against.

Application
for
maintenance.

67. (1) Notwithstanding anything in this Act, an application for maintenance may be brought either in the High Court or a magistrate's court by an applicant.

(2) An order for maintenance made in the High Court may be enforced -

- (a) in accordance with the Rules of the High Court;
- (b) in accordance with the relevant provisions of section 59 of this Act.

PART VII

GENERAL PROVISIONS

Application to
Court.

68. An application under this Act shall be made to the Court in the manner prescribed by rules of Court.

Nature of
application.

69. The Court shall hear all matters under this Act *in camera*.

Parties.

70. The parties to an application under this Act include-

- (a) the persons who have parental responsibility for the child;
- (b) a person who has demonstrated a settled intention to treat the child as a child of the family;
- (c) a person who has had the actual care and has had responsibility for the upbringing of the child immediately preceding the application; and
- (d) any other person whose presence as a party is necessary to determine the matters in issue.

Combining
application.

71. Where, in an application, it appears to the Court that it is necessary or desirable, in the best interest of the child to have other matters first or simultaneously determined, the Court may, subject to the provisions of this Act, direct that the application stand over until those other proceedings are brought or determined as the Court considers appropriate.

Application or
response by
minor.

72. Subject to section 56 (4) a minor under the age of seventeen years who is a parent may make an application under this Act by a guardian *ad litem*, next friend or the Public Trustee.

Consent to
making of
order.

73. The Court shall give effect to an agreement between the parties and may also expand the agreement and make it an order of Court, as it sees it fit, having regard to the best interests of the child.

Interim orders.

74. In a proceeding under this Act, the Court may make such interim order as the Court considers appropriate.

Procedures for interim orders.

75. An interim order may *inter alia*-

- (a) contain directions about how it is to be carried into effect;
- (b) impose conditions which must be complied with by a person-
 - (i) in whose favour or against whom the order is made;
 - (ii) who is a parent of the child concerned;
 - (iii) who is not a parent of the child but who has parental responsibility for the child; or
 - (iv) with whom the child is living;
- (c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period or until the Court otherwise orders; or
- (d) make such incidental, supplemental or consequential provisions as the Court thinks fit.

Restriction on making interim orders.

76. (1) A Court shall not make an interim order which is to have effect for a period which will end after the child concerned has reached the age of eighteen unless it is satisfied that the circumstances of the case are exceptional, including that the child has special needs.

(2) A Court shall not make an interim order, other than one varying or discharging that interim order, with respect to a child who has reached the age sixteen unless the Court is satisfied that there are circumstances that affect or are likely to affect the best interests of the child.

Ancillary orders.

77. (1) Without prejudice to any other provisions made in this Act, in the relevant circumstances in proceedings in the Court, whether those proceedings are or are not independent of any other action, an order may be made in relation to-

- (a) custody;
- (b) guardianship;
- (c) the administration of a child's property; or
- (d) maintenance.

(2) As part of the orders made under subsection (1) or any other Part of this Act, the Court may in particular as it thinks fit make any of the following ancillary orders-

- (a) an order depriving a person of custody;
- (b) an order prohibiting removal of a child from the jurisdiction;
- (c) an order-
 - (i) imposing upon a person, (provided that person is at least eighteen years and no more than fifty years older than the child or is a parent of the child) responsibilities; and
 - (ii) giving that person rights;
- (d) an order regulating the arrangements -
 - (i) with whom; or
 - (ii) if with different persons alternately or periodically, and a person with whom and during what periods, a child under the age of eighteen years is to live (any such order being known as a "residence order");
- (e) an order regulating the arrangements for maintaining personal relations and direct contact between a child (under eighteen) and a person with whom the child is not, or will not be, living (any such order being known as a "contact order");
- (f) an order regulating a specific question which has arisen, or may arise, in connection with a matter arising under this

- Act (any such order being known as a “specific issue order”);
- (g) an order prohibiting the taking of any step of a kind specified in the order made under subsection (1) in the fulfilment of parental responsibilities or the exercise of parental rights relating to a child or in the administration of a child’s property;
 - (h) an order appointing a guardian to manage a child’s property or remitting the matter to the Public Trustee to report on suitable arrangements for the future management of the property; or
 - (i) an order appointing or removing a person as guardian of the child.

(3) The relevant circumstances mentioned in subsection (1) are that an application for an order under that subsection is made by a person who-

- (a) not having, and never having had, parental responsibilities or parental rights in relation to the child, claims an interest;
- (b) has parental responsibilities or parental rights in relation to the child; or
- (c) has had, and for a reason other than is mentioned in subsection (4) no longer has, parental responsibilities or parental rights in relation to the child ;or
- (d) that although no such application has been made, the Court even if it declines to make any other order considers it should make such an order.

(4) The reasons referred to in subsection (3) (c) are that the parental responsibilities or parental rights have been extinguished on the making of an adoption order or other order of Court.

(5) Subject to subsection (6), in considering whether or not to make an order under subsection (1) and what order to make, the Court-

- (a) shall have regard to the best interests of the child concerned and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and
- (b) taking account of the child's age and maturity, shall so far as practicable-
 - (i) give the child an opportunity to indicate whether the child wishes to express the child's views;
 - (ii) if the child does so wish, give the child an opportunity to express the child's views; and
 - (iii) have regard to such views as the child may express.

(6) The Court shall, notwithstanding subsection (3), endeavour to ensure that any order which it makes, or any determination by it not to make an order, does not adversely affect the position of a person who has, in good faith and for value, acquired any property of the child concerned, or any right or interest in such property.

(7) Nothing in paragraph (b) of subsection (5) requires a child to be legally represented, if the child does not wish to be, in proceedings in the course of which the Court implements that paragraph.

(8) Without prejudice to the generality of paragraph (b) of subsection (5), a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view for the purposes both of paragraph (b) of subsection (5) and of subsection (7).

(9) Where the Court makes a custody order which requires that a child live with a person who, immediately before the order is made does not have in relation to the child all the parental responsibilities and the parental rights mentioned in paragraphs (a), (b) and (c) of section 3 (2), that person shall, subject to the provisions of the order or of

any other order made under subsection (1), have the relevant responsibilities and rights while the custody order remains in force.

Variation of
interim orders.

78. An order varying or discharging an interim order shall not be made unless the Court is satisfied that there has been a material change in the circumstances that affects or is likely to affect the best interests of the child.

Timing of order.

79. Where a Court has power to make an interim order, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.

Meaning of order.

80. A reference in this Act to an order includes a reference to an interim order or to an order varying or discharging an order.

Courts having
jurisdiction
under this
Act.

81. (1) Subject to the provisions of this section, "the Court" for the purposes of this Act means-

- (a) the High Court; or
- (b) a magistrate's court of the district in which the applicant or respondent or the child or to whom the matter or order relates resides.

(2) A magistrate's court shall have no jurisdiction to entertain any application in respect of a child-

- (a) where proceedings relating to or affecting the child are pending in the High Court;
- (b) where an order of the High Court relating to the custody or guardianship of, or access to, the child is in force;
- (c) where the child is a ward of the Court.

(3) In any proceedings in which any question of guardianship, custody, or access and maintenance arises as an ancillary matter either of the said Courts shall have jurisdiction.

(4) Where in any Court proceedings under this Act against a person (in this section referred to as “the respondent”), for maintenance he successfully rebuts a presumption of paternity based on any of the circumstances referred to in section 50 and under the laws dealing with the status of the children, and-

- (a) the application for maintenance is accordingly dismissed; and
- (b) the Court makes a positive finding of non-paternity in favour of the respondent.

the Court shall have the power to make a declaration of non-paternity in favour of the respondent.

(5) A Court having jurisdiction under this Act in respect of custody or contact may decline to exercise its jurisdiction where it is of the opinion that it is more appropriate for jurisdiction to be exercised by another Court.

Consent by minor.

82. A consent in respect of a matter provided by a minor is not invalid by reason only that the person giving the consent is a minor.

Procedure.

Cap. 3:04
Cap. 3:05
Cap. 10:02

83. Proceedings in a magistrate’s court under this Act may be taken in the manner provided for in the Summary Jurisdiction Acts and except as provided for or varied by this Act such proceedings including the computation of costs and other matters with respect to costs shall be as near as may be according to the procedure under the Summary Jurisdiction Acts, provided that at least seven days shall have elapsed between the service of a summons on a defendant and the commencement of the hearing of the matter that requires the adjudication of the Court.

Removal of
proceedings

84. (1) Where any application has been made under this Act to a magistrate’s court, the High Court may, at the instance of any party to the application, order the application to be removed to the High Court and there continued as if it had been properly and duly commenced in that Court on such terms as to costs as it thinks proper.

(2) Where an application is made to a magistrate's court under this Act, and the Magistrate considers that the matter is one which would more conveniently be dealt with by the High Court, the Magistrate may refuse to make an order, and may order that the matter be transferred to the High Court in accordance with section 81 (5) and in that case no appeal shall lie from the decision of the Magistrate.

State to provide legal representation for child.

85. (1) Where the Court considers it appropriate that a child needs legal representation, the Court shall so direct and shall make arrangements for such legal representation of the child.

(2) The Court may appoint the Public Trustee as legal representative of the child.

Power to make regulations.

86. The Minister may make regulations for carrying out the purposes of this Act.

Savings.

87. Nothing in this Act shall affect the application to children and minors of-

Cap. 12:22

(a) the Official Receivers Act;

Cap. 12:01

(b) the Deceased Persons Estates' Administration Act; and

Cap. 13:01

(c) the Public Trustee Act.

Repeal.
Cap. 45:03

88. The Maintenance Act in so far as it relates to maintenance of children and other matters provided for in this Act is repealed.

Passed by the National Assembly on 10th March, 2011.


S. E. Isaacs,

Clerk of the National Assembly.

(BILL No. 29/2009)