

ORDER IN COUNCIL

XXIII

1990

ratifying a Projet de Loi

ENTITLED

The Guardianship of Minors (Alderney) Law, 1990

(Registered on the Records of the Island of Guernsey
on the 1st October, 1990.)



1990

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 1st day of October, 1990 before Sir Charles Frossard, Kt., Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe and Lawrence Oscar Ozanne, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 7th day of June, 1990, approving and ratifying a *Projet de Loi* of the States of Alderney entitled "The Guardianship of Minors (Alderney) Law, 1990", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island.
2. That an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney for registration on the records of that Island of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 7th day of June 1990

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 29th day of May 1990 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble petition of Jon Kay-Mouat, Esquire, President of the States of Alderney setting forth:—

“That at a meeting of the States of Alderney held on the 15th day of December 1989 the States adopted a Resolution that a *Projet de Loi* entitled “The Guardianship of Minors (Alderney) Law, 1990” be approved: That at the meeting of the States aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said *Projet de Loi* be sanctioned: That the said *Projet de Loi* is set forth in the words and figures of the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the *Projet de Loi* entitled “The Guardianship of Minors (Alderney) Law, 1990”, and order that the same shall have force of law within the Island of Alderney.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the *Projet de Loi* annexed thereto into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said petition and to approve of and ratify the said *Projet de Loi*.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Island of Alderney.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being, of the said Island of Guernsey, and also the Jurats of the said Island of Alderney, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney

PROJET DE LOI

ENTITLED

The Guardianship of Minors (Alderney) Law, 1990

THE STATES, in pursuance of their Resolution of the 14th day of June, 1989, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

PART I

GUARDIANSHIP OF MINORS

General principles

1. Where in any proceedings before the Court:—
 - (a) the custody or upbringing of a person who is not of full age ("a minor"); or
 - (b) the administration of any property belonging to or held on trust for a minor, or the application of the income thereof,

Principle on which questions relating to custody, up-bringing etc. of minors are to be decided.

is in question, the Court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father 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.

Equality of
parental
rights.

2. (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held on trust for a minor or the application of income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal and be exercisable by either without the other.

(2) An agreement for a man or a woman to give up in whole or in part, in relation to any child of his or hers, the rights and authority referred to in the last preceding subsection shall be unenforceable, except that an agreement made between husband and wife which is to operate only during their separation while married may, in relation to a child of theirs, provide for either of them to do so; but no such agreement between husband and wife shall be enforced by any court if the Court is of opinion that it will not be for the benefit of the child to give effect to it.

(3) Where a minor's father and mother disagree on any question affecting his welfare, either of them may apply to the Court for its direction, and, subject to the provisions of the next succeeding subsection, the Court may make such order regarding the matters in difference as it may think proper.

(4) The last preceding subsection shall not authorise the Court to make any order regarding the custody of a minor or the right of access to him of his father or mother.

(5) An order under subsection (3) of this section may be varied or discharged by a subsequent order made on the application of either parent or, after

the death of either parent, on the application of any guardian appointed under this Law, or (before or after the death of either parent) on the application of any other person having the custody of the minor.

(6) Nothing in the foregoing provisions of this section shall affect the operation of any enactment requiring the consent of both parents in a matter affecting a minor, or be taken as applying to a minor who is illegitimate.

Appointment, removal and powers of guardians

3. (1) On the death of the father of a minor, the mother, if surviving, shall, subject to the provisions of this Law, be guardian of the minor either alone or jointly with any guardian appointed by the father; and—

Rights of
surviving
parent as to
guardian-
ship.

- (a) where no guardian has been appointed by the father; or
- (b) in the event of the death or refusal to act of the guardian or guardians appointed by the father,

the Court may, if it thinks fit, appoint a guardian to act jointly with the mother.

(2) On the death of the mother of a minor, the father, if surviving, shall, subject to the provisions of this Law, be guardian of the minor either alone or jointly with any guardian appointed by the mother; and—

- (a) where no guardian has been appointed by the mother; or
- (b) in the event of the death or refusal to act of the guardian or guardians appointed by the mother,

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.

4. (1) The father of a minor may by a declaration made and signed by him before, and signed by, two Jurats or by will appoint any person to be guardian of the minor after his death.

(2) The mother of a minor may by a declaration made and signed by her before, and signed by, two Jurats or by will appoint any person to be guardian of the minor after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the minor so long as the mother or father remains alive unless the mother or father objects to his so acting.

(4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the minor, the mother or father, as the case may be, or the guardian so appointed may apply to the Court, and the Court may either—

- (a) refuse to make any order (in which case the mother or father shall remain sole guardian); or
- (b) make an order that the guardian so appointed—
 - (i) shall act jointly with the mother or father; or
 - (ii) shall be the sole guardian of the minor.

(5) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(6) If under section 3 of this Law a guardian has been appointed by the Court to act jointly with the surviving parent, he shall continue to act as guardian after the death of the surviving parent; but, if the surviving parent has appointed a guardian, the guardian appointed by the Court shall act jointly with the guardian appointed by the surviving parent.

5. Where a minor has no surviving parent, no guardian of the person, and no other person having parental rights with respect to him, the Court, on the application of any person, may, if it thinks fit after receiving the advice of the family council or, if a family council cannot be convened, the advice of Her Majesty's Procureur or a person appointed by him in that behalf, appoint the applicant to be guardian of the minor.

Power of Court to appoint guardian for minor having no parent etc.

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

Power of Court to remove or replace guardian.

7. Where two or more persons act as joint guardians of a minor and they are unable to agree on any question affecting the welfare of the minor, any of them may apply to the Court for its direction, and the said Court may make such order regarding the matters in difference as it may think proper.

Disputes between joint guardians.

Powers of
guardians.

8. (1) Subject to the next succeeding subsection, a guardian appointed under this Law, besides being guardian of the person of the minor, shall have all the rights, powers, and duties of a guardian of the minor's estate under the customary law of this Island, including in particular the capacity to sue and be sued in the name of the minor and the right to receive and recover in his own name for the benefit of the minor property of whatever description and wherever situated which the minor is entitled to receive or recover.

(2) Nothing in the last preceding subsection shall restrict or affect the power of the Court to appoint a person to be, or to act, as the guardian of a minor's estate either generally or for a particular purpose; and the last preceding subsection shall not apply to a guardian under this Law so long as there is a guardian of the minor's estate alone.

Orders for custody and maintenance

Orders for
custody and
maintenance
on applica-
tion of
mother or
father.

9. (1) The Court may, on the application of the mother or father of a minor who is under the age of 16 years or of a minor who has attained that age but is physically or mentally incapable of self-support, make such order regarding—

- (a) the custody of the minor; and
- (b) the right of access to the minor of his mother or father,

as the Court thinks fit having regard to the welfare of the minor and to the conduct and wishes of the mother and father.

(2) Where the Court makes an order under subsection (1) of this section giving the custody of the

minor to any person (whether or not one of the parents), the Court may make a further order requiring payment to that person by the parent or either of the parents excluded from having that custody of such weekly or other periodical sum towards the maintenance of the minor as the Court thinks reasonable having regard to the means of that parent.

(3) An order may be made under subsection (1) or (2) of this section notwithstanding that the parents of the minor are then residing together, but—

- (a) no such order shall be enforceable, and no liability thereunder shall accrue, while they are residing together; and
- (b) any such order shall cease to have effect if for a period of three months after it is made they continue to reside together:

Provided that, unless the Court in making the order directs otherwise, paragraphs (a) and (b) of this subsection shall not apply to any provisions of the order giving the custody of the minor to a person other than one of the parents or made with respect to a minor of whom custody is so given.

(4) An order under subsection (1) or (2) of this section may be varied or discharged by a subsequent order made on the application of either parent or after the death of either parent on the application of any guardian appointed under this Law, or (before or after the death of either parent) on the application of any other person having the custody of the minor by virtue of an order under subsection (1) of this section.

(5) On an application under subsection (1) of this section the Court may, in any case where it adjourns the hearing of the application for more than 7 days, make an interim order, to have effect until such date as may be specified in the order and containing

- (a) provision for payment by either parent to the other, or to any person given the custody of the minor, of such weekly or other periodical sum, towards the maintenance of the minor as the Court thinks reasonable having regard to the means of the parent on whom the requirement is imposed; and
- (b) where by reason of special circumstances the Court thinks it proper, any provision regarding the custody of the minor or the right of access to the minor of the mother or father;

but an interim order under this subsection shall not be made to have effect after the end of the 3 months beginning with the date of the order or of any previous interim order made under this subsection, with respect to the application, and shall cease to have effect on the making of a final order or on the dismissal of the application.

(6) There shall be no appeal under section 15 of this Law from an interim order under the last preceeding subsection if the appeal relates only to a provision requiring payments to be made towards the maintenance of a minor.

(7) Subsection (3) and (4) of this section and section 12 of this Law shall apply to any interim

order under subsection (5) of this section as they apply to an order under subsection (1) or (2) of this section.

10. (1) Where the Court makes an order under section 4(4) of this Law that a person shall be the sole guardian of a minor to the exclusion of his mother or father, the said Court may—

Orders for custody and maintenance where person is guardian to exclusion of surviving parent.

(a) make such order regarding—

(i) the custody of the minor; and

(ii) the right of access to the minor of his mother or father;

as the Court thinks fit having regard to the welfare of the minor; and

(b) make a further order requiring the mother or father to pay to the guardian such weekly or other periodical sum towards the maintenance of the minor as the Court thinks reasonable having regard to the means of the mother or father.

(2) The powers conferred by subsection (1) of this section may be exercised at any time and include power to vary or discharge any order previously made under those powers.

11. The powers of the Court under section 7 of this Law shall, where one of the joint guardians is the mother or father of the minor, include power—

Orders for custody and maintenance where joint guardians disagree.

(a) to make such order regarding—

(i) the custody of the minor; and

(ii) the right of access to the minor of his mother or father;

as the Court thinks fit having regard to the welfare of the minor;

- (b) to make an order requiring the mother or father to pay such weekly or other periodical sum towards the maintenance of the minor as the Court thinks reasonable having regard to the means of the mother or father;
- (c) to vary or discharge any order previously made under that section.

Enforcement
of orders for
custody and
maintenance.

12. (1) Where an order made by the Court under this Part of this Law contains a provision committing to the applicant the legal custody of a minor, a copy of the order may be served on any person in whose actual custody the minor may for the time being be and thereupon, if the said person refuses to obey the order, the Court may commit the said person to prison until he has remedied his default save that a person shall not by virtue of this subsection be committed for more than three months in all for disobeying one or more orders to do the same thing.

(2) Where an order made by the Court under this Part of this Law contains a provision as to the maintenance to be paid by any person in respect of a minor, a copy of the order may be served on the said person and thereupon, if the said person refuses to obey the order, the Court may commit the said person to prison until he has remedied his default save that a person shall not by virtue of this subsection be committed for more than three months in all for disobeying one or more orders to do the same thing.

Illegitimate children

13. (1) Subject to the succeeding provisions of this section, in relation to the custody or upbringing of a minor who is illegitimate, and in relation to the administration of any property belonging to or held on trust for such minor or the application of income of any such property, the mother of such minor shall have the same rights and authority as the father and mother of a minor who is legitimate shall have on or after the date of the coming into force of this Part of this Law.

Application
of Law to
illegitimate
children.

(2) An agreement for the mother of a minor who is illegitimate to give up in whole or in part in relation to such minor, the rights and authority referred to in the last preceding subsection shall be unenforceable.

(3) Subject to the succeeding provisions of this section, section 9(1) of this Law shall apply in relation to a minor who is illegitimate as it applies in relation to a minor who is legitimate, and references in that subsection, and in any other provision of this Part of this Law so far as it relates to proceedings under that subsection, to the father or mother or parent of a minor shall be construed accordingly.

(4) No order shall be made by virtue of the last preceding subsection under section (2) of this Law.

(5) For the purposes of this Part of this Law, a minor who is illegitimate shall be treated as if he were the legitimate issue of his mother.

(6) For the purposes of sections 3, 4, 5 and 10 of this Law, a person being the natural father of an illegitimate child and being entitled to his custody by virtue of an order in force under section 9 of this Law, as applied by this section, shall be treated as if he were the lawful father of the minor; but any appointment of a guardian made by virtue of this subsection under section 4(1) of this Law shall be of no effect unless the appointer is entitled to the custody of the minor as aforesaid immediately before his death.

Procedure and appeals

Procedure.

14. (1) The Court shall so far as is consistent with the due dispatch of business, separate the hearing and determination of proceedings under this Part of this Law from other business.

(2) Proceedings in the Court under this Part of this Law shall be heard and determined in camera.

Appeals.

15. Part II of the Court of Alderney (Appeals) Law, 1969(a) shall apply to appeals from any decision of the Court under this Law.

PART II

GENERAL

Service of notices.

16. Any notice which may be served for the purpose of this Law shall be validly served on any person, if delivered to him, left, or sent by registered post or by recorded delivery service to him at his usual or last known place of abode.

(a) Ordres en Conseil Vol. XXII, p. 192.

17. (1) In this Law, unless the context otherwise requires— Interpretation.

“the Court” means the Court of Alderney;

“enactment” includes an Ordinance whether made under an Order in Council or otherwise;

“Her Majesty’s Procureur” includes Her Majesty’s Comptroller;

“maintenance” includes education;

“statutory instrument” includes any regulation, order, rule, byelaw or other instrument of a similar nature, applying to persons in general or to any substantial class or classes of persons, made in this Island under any Act of Parliament. Order in Council, Ordinance, or Order of the Royal Court.

(2) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as repealed and re-enacted, amended, extended or applied by or under any other enactment including this Law.

18. This Law may be cited as the Guardianship of Minors (Alderney) Law, 1990. Citation.

19. This Law shall come into force on such day as the States may by Ordinance appoint and different days may be so appointed for the coming into force of different Parts of this Law. Commencement.

K. H. TOUGH,
Her Majesty’s Greffier.