



**Custody, Contact,
Guardianship and
Maintenance Act**
2011

Custody, Contact, Guardianship and Maintenance Act 2011



Custody, Contact, Guardianship and Maintenance Act 2011

A publication of the Child Rights Division, Childcare and Protection Agency, Ministry of Labour,
Human Services and Social Security in collaboration with UNICEF.

Permission to reproduce any part of this publication is required.

Georgetown, Guyana

2012

ISBN 978-976-95551-1-2 (pbk)

2012

Designed by luCa Design, www.lucadesign.gy

Table of Contents

Custody and Contact	2
What is custody.....	2
Who is entitled to custody?.....	2
Agreement about custody.....	4
Disputes over custody and access.....	4
Does a child have a right to be heard?.....	6
Leaving the country.....	6
Change of Name.....	6
Guardianship	7
Who can be a guardian of a child?.....	7
What are the responsibilities of a guardian?.....	7
Maintenance	8
If a parent fails to maintain his/her child.....	10
For how long is a maintenance order valid?.....	11
Glossary – Words in the Act you should know	12

Custody and Contact

What is custody?

When a parent or guardian has legal custody of a child, this means that this parent or guardian has the right to make major long-term decisions for the child, especially in relation to education, medical care, moral and religious upbringing and marriage. A child is any person under the age of 18 years and includes a person who is over 18 years old who has special needs.

In many cases, because parents are separated, a child may live with one parent. When a child lives with one parent, that parent is said to have actual custody (also called care and control) of the child which also means that that parent has the right and duty to look after the child on a day-to-day basis. The other parent with whom the child is not living may have access or contact with the child because this parent has a right to see the child and should be allowed to participate in making major decisions concerning the child's welfare.

Who is entitled to custody?

The following persons are entitled to have custody of a child:

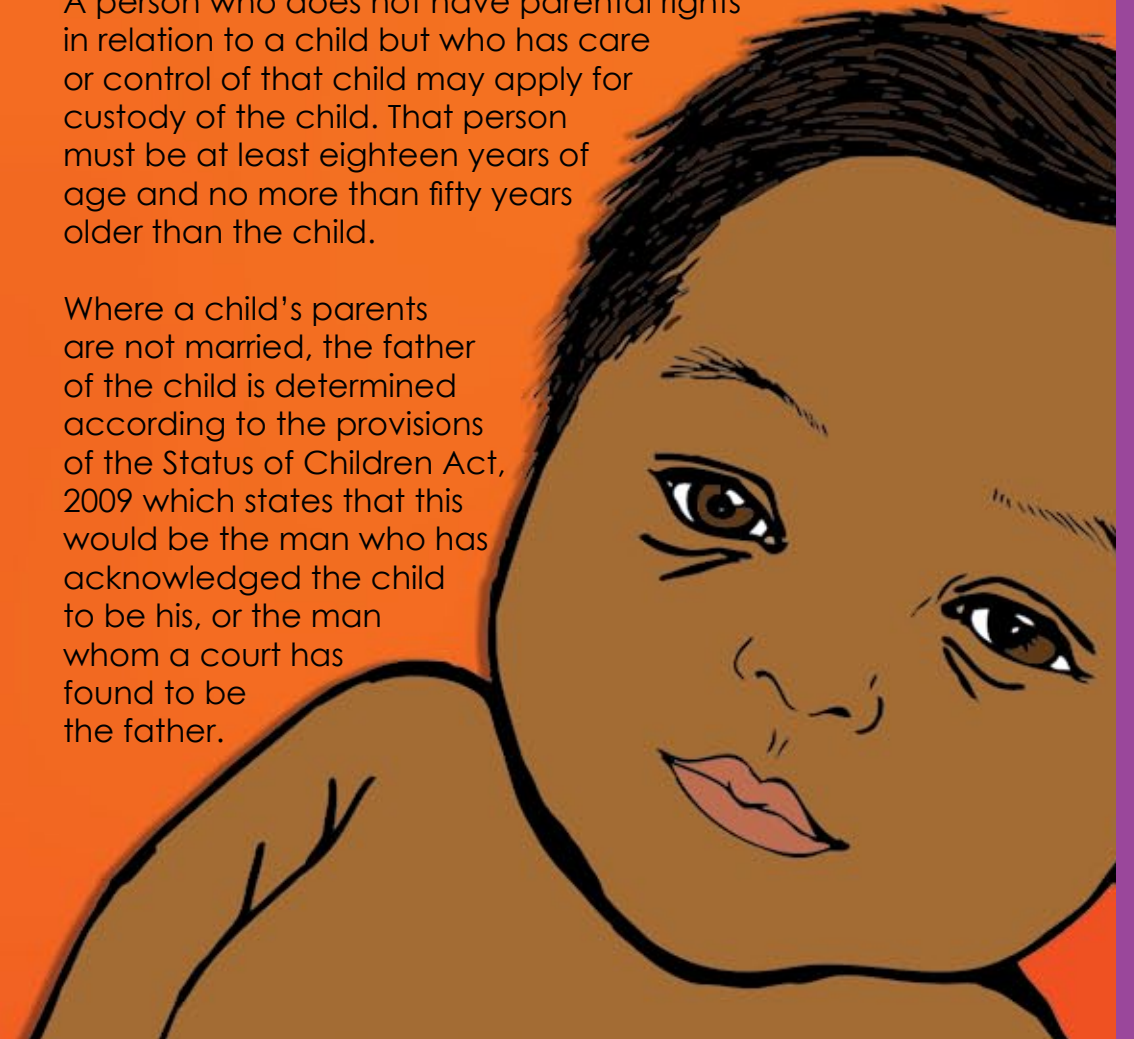
1. the mother or father (whether natural or adoptive);
2. the person who acknowledges the child as a child of their family (who could be a step-parent);
3. any person appointed by the court.

Each of these persons would have parental rights which means that they would be entitled to custody of a child. When a child is adopted all parental rights pass from the natural parents to the adoptive parents.

If one parent dies, the surviving parent will have all parental rights unless a guardian has been appointed by the deceased parent, or by the court, to act jointly with the surviving parent.

A person who does not have parental rights in relation to a child but who has care or control of that child may apply for custody of the child. That person must be at least eighteen years of age and no more than fifty years older than the child.

Where a child's parents are not married, the father of the child is determined according to the provisions of the Status of Children Act, 2009 which states that this would be the man who has acknowledged the child to be his, or the man whom a court has found to be the father.



Agreement about custody

Parents who are getting divorced or are separating can continue to exercise parental rights jointly or together without any order of the court. So where the children are to live and how often they are to visit the other parent can be informally agreed. Many times parents decide which parent the child will live with and they also work out reasonable visiting and other means of contact with the child by the other parent.

What happens if parents disagree on who should have custody of a child?

Disputes over custody and access

Sometimes parents cannot agree on what is best for the welfare of their child or on who should have actual custody or how contact with the child is to be allowed. Where parents cannot agree, they would have to go to Court for a decision on which parent will have actual custody of their children and which parent would be allowed contact with the children, and when and where this would occur. Guardians of children can also make applications to the Court in relation to custody.



When the Court has to decide on the issue of custody, the Court makes what is called a Custody Order. This order would also set out what access or contact, if any, the other parent would have with the child or children. The court may simply order reasonable access or contact and leave it to the parties to make their own arrangements or it may say exactly what the access or contact arrangements are to be.

Parents can vary access or contact arrangements by agreement or, if there is a dispute, can go back to the court and ask for a variation or change of the order. Very rarely will the court refuse access to or contact with a parent.

If the parent with whom the child lives causes difficulties over access or tries to stop it, the other parent would most likely have to return to court to make sure that the court order is obeyed.

A divorce or other court ordered separation may be delayed until issues regarding the custody and welfare of the children are dealt with.

In deciding custody disputes the court has to consider what is in the best interests of the child, so the welfare of the child is the most important consideration.



Does a child have a right to be heard?

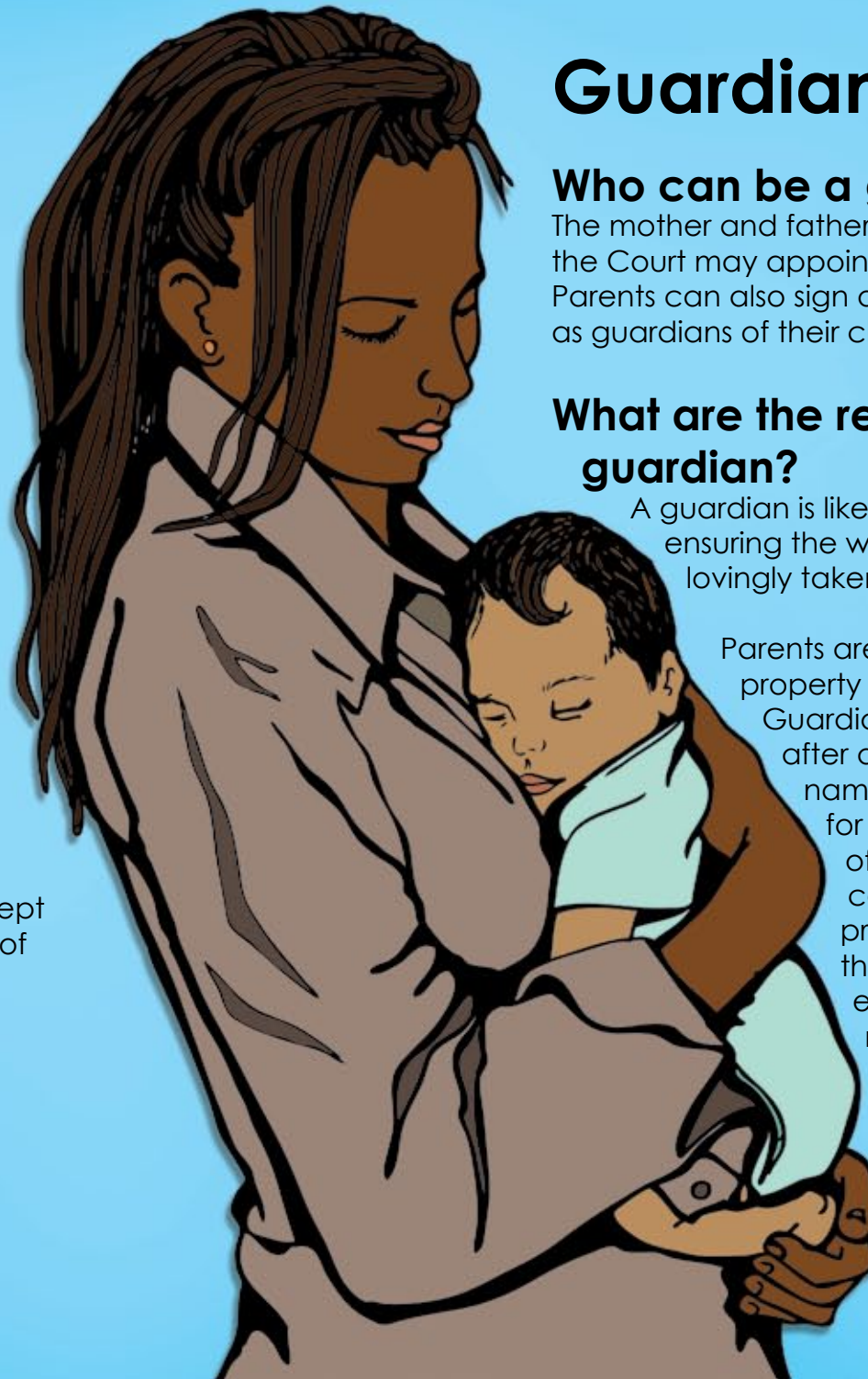
Where children are able to do so, they must be allowed to express their views in relation to custody and the Court must listen to and take such views into consideration.

Leaving the country

A person (who is not a parent or a person having parental rights) is not entitled to take or keep a child out of Guyana unless the court gives permission to do so or unless the person who has parental rights gives their consent. Parents may agree to their child leaving the country whether for a holiday or permanently. Where there are custody disputes, the Court may order that a parent cannot take a child out of the country without the consent of the Court or the other parent.

Change of Name

A parent cannot change a child's surname except with a judge's permission or the written consent of the other parent.



Guardianship

Who can be a guardian of a child?

The mother and father of a child are its guardians. However, the Court may appoint any other person as a guardian. Parents can also sign documents naming a person or persons as guardians of their child.

What are the responsibilities of a guardian?

A guardian is like a parent and has the responsibilities of ensuring the welfare of the child i.e. that the child is lovingly taken care of.

Parents are usually the guardian of their children's property unless the Court orders otherwise.

Guardians may also be appointed to look after any property that may be in the child's name or any property which is to be used for the benefit of the child. The guardian of a child's property is responsible for the care and management of the child's property and can use the income from the property for the child's maintenance, education or other benefit. If a guardian mismanages a child's property, he or she would have to account for his or her dealings with the property. In order to deal with a child's property e.g. to sell it or obtain a mortgage from the bank on the property, the guardian would have to get the permission of the Court.

Maintenance

Persons who have parental rights have a duty to maintain their children i.e. they have a duty to provide maintenance or money for the welfare of their children.

So -

1. All parents, whether they are married or not, have a duty to maintain their children. They have this duty even when their children are not living with them.
2. A person (both man and woman) has a duty to maintain his/her own child whether the child is born before or after their marriage and where the child has been living with them as a member of the family.
3. A person (both man and woman) has a duty to maintain a child of his or her common law spouse who was born before they began living together where the child has been living with them as a member of the family.
4. A person (both man and woman) has a duty to maintain any child who is treated as a child of the family.

So, for example, step-parents are responsible for maintaining their step-children.



If a parent fails to maintain his/her child

If parents fail to maintain their children then the grandparents must do so.

However, it is a criminal offence to refuse to or to neglect to maintain a child. A person can be fined and sentenced to imprisonment for this offence. It is also an offence to misapply money received for maintenance of a child.

Usually, the parent with whom the child lives and who has actual custody of the child would apply to the Magistrates' Court for a maintenance order. The other parent will be summoned to appear before a magistrate and can be arrested if he/she does not obey the summons.

In some cases, there may be a dispute as to whether a person is a child's parent. If there is a dispute as to parentage of the child no order for maintenance will be made until the issue of parentage is sorted out. For example, if the person summoned as the father of the child says that he is not the

father (i.e. he denies paternity or fatherhood) the magistrate will hear what he and the mother and any witnesses have to say and then decide whether or not he is the father of the child. If the father's name is on the child's birth certificate the court may make a maintenance order on the assumption that he is the father.

If paternity or fatherhood is not in dispute, or once paternity has been decided, the magistrate will make an order saying how much the parent summoned must pay as maintenance for the child. In deciding on the amount to be paid the magistrate will look at the means of the parent summoned and of the other parent or anyone else who is under a duty to maintain the child. Maintenance can be ordered to be paid in any sum which the court deems fit after assessing the facts and circumstances of each case.

For how long is a maintenance order valid?

Applications for maintenance for a child under 17 years old have to be made through the child's guardian or parent. A maintenance order is valid until the child is 18 years old and may be extended to 21 years if he/she is at school or any other place of education or longer if he/she cannot maintain him/herself because of illness or special needs.

The child, him/herself, may apply for the extension of a maintenance order on or before he/she reaches 18 years old. The child may also apply for a variation or change of a maintenance order if he/she has reached the age of 16 years.



Glossary –

Words in the Act you should know

Access – this means that a parent with whom a child is not living may have contact with the child because this parent has a right to see the child and should be allowed to participate in making major decisions concerning the child's welfare.

Act – An Act is a law passed by the National Assembly and signed by the President. Everyone must do what the law says. An Act also guides us on what persons have a duty to do. So it is important to understand what the law says. If someone breaks the law then they can be arrested and charged and taken to court where a judge or magistrate can order that they pay a fine or be imprisoned. Persons who break the law can also be taken to court where a judge or magistrate can order that they must obey the law.

Child – In this Act, this is a person who is under the age of 18 years and includes a child who is over 18 years old who has special needs.

Custody – This is the situation where a parent or guardian has the care of a child and the right to make decisions that are in the best interests of the child especially in relation to education, medical care, moral and religious upbringing and marriage.

Divorce – This occurs when persons who have been legally married are legally separated after a Judge of the High Court hears the case and decides that they should no longer remain married.

Guardian – This is a person who has care of a child instead of his/her parent(s).

Maintenance – This is money that is paid by the parent (s) of a child for the welfare of the child.

Parent – This is the person who the law recognizes are being the child's main legal guardian who has parental rights and responsibilities to make sure that a child is lovingly cared for. Parents can be biological parents i.e. parents by blood or adoptive parents or step parents.

Parental rights – These are rights and responsibilities that parents have to make sure that their child or children are lovingly taken care of. They should make decisions that are in the best interests of their child or children.

Spouse – This is a person who is married to another person of the opposite sex and includes a man and a woman who are living together in a permanent relationship.

Summons and summoned – To be summoned is to be called and summons is the notice that is sent by a court to notify and command a person to attend court.