



# Children Act 1975

## 1975 CHAPTER 72

### PART II

#### CUSTODY

##### *Custodianship orders*

### 33 Custodianship orders

- (1) An authorised court may on the application of one or more persons qualified under subsection (3) make an order vesting the legal custody of a child in the applicant or, as the case may be, in one or more of the applicants if the child is in England or Wales at the time the application is made.
- (2) An order under subsection (1) may be referred to as a custodianship order, and the person in whom legal custody of the child is vested under the order may be referred to as the custodian of the child.
- (3) The persons qualified to apply for a custodianship order are—
  - (a) a relative or step-parent of the child—
    - (i) who applies with the consent of a person having legal custody of the child, and
    - (ii) with whom the child has had his home for the three months preceding the making of the application;
  - (b) any person—
    - (i) who applies with the consent of a person having legal custody of the child, and
    - (ii) with whom the child has had his home for a period or periods before the making of the application which amount to at least twelve months and include the three months preceding the making of the application;
  - (c) any person with whom the child has had his home for a period or periods before the making of the application which amount to at least three years and include the three months preceding the making of the application.

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*Status: This is the original version (as it was originally enacted).*

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- (4) The mother or father of the child is not qualified under any paragraph of subsection (3).
- (5) A step-parent of the child is not qualified under any paragraph of subsection (3) if in proceedings for divorce or nullity of marriage the child was named in an order made under paragraph (b) or (c) of section 41(1) (arrangements for welfare of children of family) of the Matrimonial Causes Act 1973.
- (6) If no person has legal custody of the child, or the applicant himself has legal custody or the person with legal custody cannot be found, paragraphs (a) and (b) of subsection (3) apply with the omission of sub-paragraph (i).
- (7) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (3)(c) to substitute a different period for the period of three years mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).
- (8) Subsection (5) does not apply—
  - (a) if the parent other than the one the step-parent married is dead or cannot be found, or
  - (b) if the order referred to in subsection (5) was made under subsection (1)(c) of section 41 of the Matrimonial Causes Act 1973 and it has since been determined that the child was not a child of the family to whom that section applied.
- (9) For the avoidance of doubt, it is hereby declared that the provisions of section 1 of the Guardianship of Minors Act 1971 apply to applications made under this Part of this Act.
- (10) This section and sections 34 to 46 do not apply to Scotland.