



# Children Act 1975

## 1975 CHAPTER 72

### PART II

#### CUSTODY

##### *Custodianship orders*

### **37 Custodianship order on application for adoption or guardianship.**

- (1) Where on an application for an adoption order by a relative of the child or by the husband or wife of the mother or father of the child, whether alone or jointly with his or her spouse, the requirements of [F<sup>1</sup>section 12][F<sup>1</sup>section 16 of the <sup>M1</sup>Adoption Act 1976] or, where the application is for a Convention adoption order, [F<sup>1</sup>section 24(6)][F<sup>1</sup>section 17(6) of that Act] are satisfied, but the court is satisfied—

- (a) that the child's welfare would not be better safeguarded and promoted by the making of adoption order in favour of the applicant, than it would be by the making of a custodianship order in his favour, and
- (b) that it would be appropriate to make a custodianship order in the applicant's favour,

the court shall direct the application to be treated as if it had been made by the applicant under section 33, but if the application was made jointly by the father or mother of the child and his or her spouse, the court shall direct the application to be treated as if made by the father's wife or the mother's husband alone.

- (2) Where on an application for an adoption order made—
- (a) by a person who is neither a relative of the child nor the husband or wife of the mother or father of the child; or
  - (b) by a married couple [F<sup>2</sup>neither of whom is a relative of the child or the husband or wife of the mother or father of the child],

the said requirements are satisfied but the court is of opinion that it would be more appropriate to make a custodianship order in favour of the applicant, it may direct the application to be treated as if it had been made by the applicant under section 33.

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*Changes to legislation: There are currently no known outstanding effects for the Children Act 1975, Section 37. (See end of Document for details)*

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- (3) Where on an application under [<sup>F3</sup>section 9 (orders for custody and maintenance)]<sup>F3</sup>section 9 (orders for custody] on application of mother or father) of the <sup>M2</sup>Guardianship of Minors Act 1971 the court is of opinion that legal custody should be given to a person other than the mother or father, it may direct the application to be treated as if it had been made by that person under section 33.
- (4) Where a direction is given under this section the applicant shall be treated (if such is not the case) as if he were qualified to apply for a custodianship order and this Part, except section 40, shall have effect accordingly.
- [<sup>F4</sup>(4A) Where a custodianship order is made by virtue of a direction under subsection (3) or a direction under section 8(3) of the <sup>M3</sup>Domestic Proceedings and Magistrates' Courts Act 1978, the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the custodianship order, or any provision thereof, shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.]
- (5) Subsection (1) does not apply to an application made by a step-parent whether alone or jointly with another person in any case where the step-parent is prevented by section 33(5) from being qualified to apply for a custodianship order in respect of the child.
- (6) Subsections (1) and (2) do not apply to an application for an adoption order made by the child's mother or father alone.

#### Textual Amendments

- F1** Words “section 16” to “1976” substituted for words “section 12” and words “section 17(6)” to “Act” substituted for words “section 24(6)” (E.W.) by [Adoption Act 1976 \(c. 36, SIF 49:11\)](#), s. 74(2), [Sch. 3 para. 19](#)
- F2** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 23](#)
- F3** Words “section 9 (orders for custody)” expressed to be substituted (E.W.) for “section 9 (orders for custody and maintenance)” by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), [Sch. 2 para. 64](#)
- F4** [S. 37\(4A\)](#) inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 69, [Sch. 1](#)

#### Marginal Citations

- M1** [1976 c. 36\(49:11\)](#).
- M2** [1971 c. 3\(49:9\)](#).
- M3** [1978 c. 22\(49:3\)](#).

**Changes to legislation:**

There are currently no known outstanding effects for the Children Act 1975, Section 37.