



# Family Law Reform Act 1987

## 1987 CHAPTER 42

### PART II

#### RIGHTS AND DUTIES OF PARENTS ETC.

##### *Parental rights and duties where parents not married*

#### **4 Parental rights and duties of father**

- (1) Where the father and mother of a child were not married to each other at the time of his birth, the court may, on the application of the father, order that he shall have all the parental rights and duties with respect to the child.
- (2) Where the father of a child is given all the parental rights and duties by an order under this section, he shall, subject to any order made by the court otherwise than under this section, have those rights and duties jointly with the mother of the child or, if the mother is dead, jointly with any guardian of the child appointed under the 1971 Act.
- (3) An order under this section may be discharged by a subsequent order made on the application of the father or mother of the child or, if the mother is dead, any guardian of the child appointed under the 1971 Act.
- (4) This section and the 1971 Act shall be construed as if this section were contained in that Act.

#### **5 Exercise of parental rights and duties**

At the beginning of subsection (3) of section 1 of the 1973 Act (which enables application to be made for the direction of the court where parents disagree on a question affecting the child's welfare) there shall be inserted the words "Subject to subsection (3A) below" and after that subsection there shall be inserted the following subsection—

“(3A) Where a child's father and mother were not married to each other at the time of his birth, subsection (3) above does not apply unless—

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- (a) an order is in force under section 4 of the Family Law Reform Act 1987 giving the father all the parental rights and duties with respect to the child; or
- (b) the father has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any other enactment.”

## **6 Appointment of guardians**

- (1) At the end of section 3 of the 1971 Act (rights of surviving parent as to guardianship) there shall be added the following subsections—

“(3) Where the father and mother of a child were not married to each other at the time of his birth, this section does not apply unless the father satisfies the requirements of subsection (4) of this section.

(4) The father of a child satisfies the requirements of this subsection if—

- (a) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or
- (b) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any other enactment.”

- (2) At the end of section 4 of that Act (power of father and mother to appoint testamentary guardians) there shall be added the following subsection—

“(7) Where the father and mother of a child were not married to each other at the time of his birth—

- (a) subsection (1) of this section does not apply, and subsection (3) of this section does not apply in relation to a guardian appointed by the mother, unless the father satisfies the requirements of section 3(4) of this Act; and
- (b) any appointment under subsection (1) of this section shall be of no effect unless the father satisfies those requirements immediately before his death.”

- (3) At the end of section 5 of that Act (power of court to appoint guardian for child having no parent etc.) there shall be added the following subsection—

“(3) Where the father and mother of a child were not married to each other at the time of his birth, subsection (1) of this section shall have effect as if for the words 'no parent' there were substituted the words 'no mother, no father satisfying the requirements of section 3(4) of this Act.’”

## **7 Rights with respect to adoption**

- (1) In section 18 of the Adoption Act 1976 (which relates to orders declaring a child free for adoption), for subsection (7) there shall be substituted the following subsection—

“(7) Before making an order under this section in the case of a child whose father and mother were not married to each other at the time of his birth and whose father is not his guardian, the court shall satisfy itself in relation to any person claiming to be the father that either—

- (a) he has no intention of making—

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- (i) an application under section 4 of the Family Law Reform Act 1987 for an order giving him all the parental rights and duties with respect to the child; or
    - (ii) an application under any other enactment for an order giving him a right to custody, legal or actual custody or care and control of the child; or
  - (b) if he did make such an application, the application would be likely to be refused.”
- (2) In section 72(1) of that Act (interpretation), in the definition of "guardian" for paragraph (b) there shall be substituted the following paragraph—
  - “(b) in the case of a child whose father and mother were not married to each other at the time of his birth, includes the father where—
    - (i) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or
    - (ii) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any enactment.”

## **8 Rights where child in care etc.**

- (1) In section 70 of the Children and Young Persons Act 1969 (interpretation), after subsection (1) there shall be inserted the following subsection—
  - “(1A) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, an order of any court is in force giving the right to the actual custody of the child to the father, any reference in this Act to the parent of the child includes, unless the contrary intention appears, a reference to the father.

In this subsection 'actual custody', in relation to a child, means actual possession of his person.”
- (2) In section 8 of the Child Care Act 1980 (application of Part I to children subject to orders of court), for subsection (2) there shall be substituted the following subsections—
  - “(2) Subject to subsection (3) below, where an order of any court is in force giving the right to the actual custody of a child to any person, the provisions of this Part of this Act shall have effect in relation to the child as if for references to the parents or guardians of the child or to a parent or guardian of his there were substituted references to that person.
  - (3) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, an order is in force under section 4 of the Family Law Reform Act 1987 by virtue of which actual custody is shared between the mother and the father, both the mother and the father shall be treated as parents of the child for the purposes of the provisions of this Part.
  - (4) In this section 'actual custody', in relation to a child, means actual possession of his person.”

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(3) In section 13 of that Act (penalty for assisting children in care to run away etc.), for subsection (4) there shall be substituted the following subsection—

“(4) Subsections (2) and (3) of section 8 of this Act shall apply for the purposes of this section as they apply for the purposes of the provisions of Part I of this Act.”

(4) In section 24 of that Act (emigration of children), after subsection (4) there shall be inserted the following subsection—

“(4A) Subsections (2) and (3) of section 8 of this Act shall apply for the purposes of subsection (2) above as they apply for the purposes of the provisions of Part I of this Act.”

(5) At the end of section 64 of that Act (transfer of parental rights and duties to voluntary organisations) there shall be added the following subsection—

“(8) Subsections (2) and (3) of section 8 of this Act shall apply for the purposes of this section and section 65 of this Act as they apply for the purposes of the provisions of Part I of this Act.”

## 9 Consents to marriages

In Schedule 2 to the Marriage Act 1949 (consents required to marriages of persons under eighteen), for Part II there shall be substituted the following provisions—

### **“II. WHERE THE PARENTS OF THE CHILD WERE NOT MARRIED TO EACH OTHER AT THE TIME OF HIS BIRTH**

<i>Circumstances</i>	<i>Person or persons whose consent is required</i>
1. Where both parents are alive:	
(a) if the father has been given by an order of any court the right to the actual custody of the child or the right to consent to the marriage of the child, or both those rights;	The mother and the father.
(b) if the father has not been given either of those rights.	The mother.
2. Where the mother is dead:	
(a) if the father is a guardian under the Guardianship of Minors Act 1971 and there is no other guardian;	The father.
(b) if the father is a guardian as mentioned in paragraph (a) above and another guardian has been appointed by the mother or by the court under the Guardianship of Minors Act 1971;	The father and the guardian if acting jointly, or the father or the guardian if the father or guardian is the sole guardian of the child.

<i>Circumstances</i>	<i>Person or persons whose consent is required</i>
(c) if the father is not a guardian and a guardian has been appointed by the mother or by the court under the Guardianship of Minors Act 1971.	The guardian.
3. Where the father is dead:	
(a) if there is no other guardian;	The mother.
(b) if a guardian has been appointed by the father or by the court under the Guardianship of Minors Act 1971.	The mother and the guardian if acting jointly, or the mother or the guardian if the mother or guardian is the sole guardian of the child.
4. Where both parents are dead.	The guardian or guardians appointed by the mother or father or by the court under the Guardianship of Minors Act 1971.

In this Part of this Schedule 'actual custody', in relation to a child, means actual possession of his person."