



Family Law Reform Act 1987

1987 CHAPTER 42

PART II

RIGHTS AND DUTIES OF PARENTS ETC.

Parental rights and duties: general

2 Construction of enactments relating to parental rights and duties

- (1) In the following enactments, namely—
- (a) section 42(1) of the National Assistance Act 1948;
 - (b) section 6 of the Family Law Reform Act 1969;
 - (c) the Guardianship of Minors Act 1971 (in this Act referred to as "the 1971 Act");
 - (d) Part I of the Guardianship Act 1973 (in this Act referred to as "the 1973 Act");
 - (e) Part II of the Children Act 1975;
 - (f) the Child Care Act 1980 except Part I and sections 13, 24, 64 and 65;
 - (g) section 26(3) of the Social Security Act 1986,
- references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 above.

- (2) In subsection (7) of section 1 of the 1973 Act (equality of parental rights) for the words from "or be taken" to the end there shall be substituted the words "and nothing in subsection (1) above shall be taken as applying in relation to a child whose father and mother were not married to each other at the time of his birth".

3 Agreements as to exercise of parental rights and duties

For subsection (2) of section 1 of the 1973 Act (agreements between parents to give up parental rights) there shall be substituted the following subsection—

“(2) Notwithstanding anything in section 85(2) of the Children Act 1975, an agreement may be made between the father and mother of a child as to the

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exercise by either of them, during any period when they are not living with each other in the same household, of any of the parental rights and duties with respect to the child; but no such agreement 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.”

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—
- (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—

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- (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—
 - (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

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(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.”

(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.
(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.”

Orders for custody

10 Orders for custody on application of either parent

For section 9 of the 1971 Act and the heading preceding that section there shall be substituted the following heading and section—

“9 Orders for custody and financial relief Orders for custody on application of either parent.

- (1) The court may, on the application of either parent of a child, make such order regarding—
- (a) the legal custody of the child; and
 - (b) access to the child by either parent,
- as the court thinks fit; and an order under 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 Act.
- (2) An order under this section—
- (a) shall not give legal custody to a person other than a parent of the child; and
 - (b) shall not be made at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.”

11 Orders for custody in guardianship cases

For sections 10 and 11 of the 1971 Act there shall be substituted the following section—

“10 Orders for custody in guardianship cases.

- (1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make such order regarding—
- (a) the legal custody of the child; and
 - (b) access to the child by the parent,
- as the court thinks fit; and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order previously made.
- (2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—
- (a) power to make such order regarding—

- (i) the legal custody of the child; and
 - (ii) access to the child by the parent, as the court thinks fit; and
 - (b) power to vary or discharge any order previously made by virtue of this subsection.
- (3) An order shall not be made under or by virtue of this section at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.”

Orders for financial relief

12 Orders for financial relief on application of either parent

After section 11A of the 1971 Act there shall be inserted the following section—

“11B Orders for financial relief on application of either parent.

- (1) The court may, on the application of either parent of a child, make—
- (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (2) of this section;
 - (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;
- and an order mentioned in paragraph (a) or (b) of that subsection may be varied or discharged on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.
- (2) The orders referred to in subsection (1) of this section are—
- (a) an order requiring one parent to make to the other parent for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;
 - (b) an order requiring one parent to secure to the other parent for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;
 - (c) an order requiring one parent to pay to the other parent for the benefit of the child, or to the child, such lump sum as may be so specified;
 - (d) an order requiring either parent to transfer to the other parent for the benefit of the child, or to the child, such property as may be so specified, being property to which the first-mentioned parent is entitled, either in possession or reversion;
 - (e) an order requiring that a settlement of such property as may be so specified, being property to which either parent is so entitled, be made to the satisfaction of the court for the benefit of the child.”

13 Orders for financial relief in guardianship cases

After section 11B of the 1971 Act there shall be inserted the following section—

“11C Orders for financial relief in guardianship cases.

- (1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make—
 - (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;
 - (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;
 and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.

- (2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—
 - (a) power to make—
 - (i) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;
 - (ii) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection; and
 - (b) power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.

- (3) The orders referred to in subsections (1) and (2) of this section are—
 - (a) an order requiring the parent to make to the guardian or other guardian for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;
 - (b) an order requiring the parent to secure to the guardian or other guardian for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;
 - (c) an order requiring the parent to pay to the guardian or other guardian for the benefit of the child, or to the child, such lump sum as may be so specified;
 - (d) an order requiring the parent to transfer to the guardian or other guardian for the benefit of the child, or to the child, such property as may be so specified, being property to which the parent is entitled, either in possession or reversion;
 - (e) an order requiring that a settlement of such property as may be so specified, being property to which the parent is so entitled, be made to the satisfaction of the court for the benefit of the child.”

14 Orders for financial relief for persons over eighteen

After section 11C of the 1971 Act there shall be inserted the following section—

“11D Orders for financial relief for persons over eighteen.

- (1) If, on an application by a person who has attained the age of eighteen and whose parents are not living with each other in the same household, it appears to the High Court or a county court—
 - (a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or
 - (b) that there are special circumstances which justify the making of an order under this section,the court may make one or both of the orders mentioned in subsection (2) of this section.
- (2) The orders referred to in subsection (1) of this section are—
 - (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments, and for such term, as may be specified in the order; and
 - (b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.
- (3) An application may not be made under this section by any person if, immediately before he attained the age of sixteen, a periodical payments order was in force with respect to him.
- (4) No order shall be made under this section at a time when the parents of the applicant are living with each other in the same household.
- (5) Any order made under this section requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.
- (6) An order under this section requiring the making of periodical payments may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (7) In subsection (3) of this section 'periodical payments order' means an order made under—
 - (a) this Act,
 - (b) section 6(3) of the Family Law Reform Act 1969,
 - (c) section 23 or 27 of the Matrimonial Causes Act 1973,
 - (d) section 34 of the Children Act 1975, or
 - (e) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978,for the making or securing of periodical payments.”

Alteration of maintenance agreements

15 Alteration during lives of parties

- (1) In this section and section 16 below "maintenance agreement" means any agreement in writing made in respect of a child, whether before or after the commencement of this section, being an agreement which—
- (a) is or was made between the father and mother of the child; and
 - (b) contains provision in respect of the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child;

and any such provisions are in this section and that section referred to as "financial arrangements".

- (2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then, subject to subsection (4) below, either party may apply to the High Court, a county court or a magistrates' court for an order under this section.
- (3) If the court to which the application is made is satisfied either—
- (a) that, by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or
 - (b) that the agreement does not contain proper financial arrangements with respect to the child,

then, subject to subsections (4) and (5) below, that court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to that court to be just having regard to all the circumstances; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

- (4) A magistrates' court shall not entertain an application under subsection (2) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident in the commission area (within the meaning of the Justices of the Peace Act 1979) for which the court is appointed, and shall not have power to make any order on such an application except—
- (a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;
 - (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

- (5) Where a court decides to alter an agreement, by an order under this section—
- (a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child, or
 - (b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which—under the agreement as altered by the order the payments or, as the case may be, the additional payments attributable to the increase

are to be made or secured for the benefit of the child, the court shall apply the provisions of subsections (1) and (2) of section 12 of the 1971 Act as if the order were an order under section 11B(2)(a) or (b) of that Act.

- (6) For the avoidance of doubt it is hereby declared that nothing in this section affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

16 Alteration after death of one party

- (1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of the child and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the High Court or a county court for an order under section 15 above.
- (2) An application under this section shall not, except with the permission of the High Court or a county court, be made after the end of a period of six months from the date on which representation in regard to the estate of the deceased is first taken out.
- (3) A county court shall not entertain an application under this section, or an application for permission to make an application under this section, unless it would have jurisdiction to hear and determine proceedings for an order under section 2 of the Inheritance (Provision for Family and Dependents) Act 1975 in relation to the deceased's estate by virtue of section 25 of the County Courts Act 1984 (jurisdiction under the said Act of 1975).
- (4) If a maintenance agreement is altered by a court on an application under this section the like consequences shall ensue as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.
- (5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (6) In considering for the purposes of subsection (2) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Supplemental

17 Abolition of affiliation proceedings

The Affiliation Proceedings Act 1957 (the provisions of which are superseded by this Part) shall cease to have effect.