



Guardianship (Missing Persons) Act 2017

CHAPTER 27

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

£6.00



Guardianship (Missing Persons) Act 2017

CHAPTER 27

CONTENTS

Missing persons

- 1 Missing persons

Guardianship orders

- 2 Applying for a guardianship order
- 3 Making a guardianship order
- 4 Choice of guardian
- 5 Guardian's role: property and financial affairs
- 6 Guardian's role: rights and powers etc
- 7 Period of guardianship

Guardians

- 8 Guardians and effect of guardianship order
- 9 Expenses, remuneration and records
- 10 Directions by the court to guardians
- 11 Actions outside guardian's authority etc

Variation and revocation of guardianship orders

- 12 Variation of guardianship order
- 13 Revocation of guardianship order
- 14 Automatic revocation
- 15 Protection following variation or revocation

Two or more guardians

- 16 Appointment of two or more guardians

Supervision of guardians

- 17 Supervision of guardians by the Public Guardian

Missing person's best interests

- 18 Missing person's best interests

Applications, intervention and codes of practice

- 19 Requirement for applicants to have sufficient interest
20 Giving notice of applications
21 Right to intervene
22 Codes of practice

General

- 23 The court
24 Interpretation
25 Extent, commencement and short title

Schedule – Appointment of two or more guardians



Guardianship (Missing Persons) Act 2017

2017 CHAPTER 27

An Act to make provision about the property and affairs of missing persons;
and for connected purposes. [27th April 2017]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Missing persons

1 Missing persons

- (1) For the purposes of this Act, a person is “missing” if—
 - (a) the person is absent from his or her usual place of residence,
 - (b) the person is absent from his or her usual day-to-day activities, and
 - (c) the first or second condition is met.
- (2) The first condition is met if the person's whereabouts—
 - (a) are not known at all, or
 - (b) are not known with sufficient precision to enable the person to be contacted for the purposes of decisions relating to his or her property and financial affairs.
- (3) The second condition is met if—
 - (a) the person is unable to make decisions relating to his or her property and financial affairs or to communicate such decisions with a view to their implementation (or both), and
 - (b) the reason for that is something beyond the person's control, other than illness, injury or lack of capacity in relation to a matter (within the meaning of the Mental Capacity Act 2005).

- (4) A person who is detained, whether in a prison or another place, is to be treated for the purposes of this Act as absent from his or her usual place of residence and usual day-to-day activities.

Guardianship orders

2 Applying for a guardianship order

- (1) A person may apply to the court for an order appointing a guardian in respect of some or all of a missing person's property and financial affairs (a "guardianship order").
- (2) The court has jurisdiction to hear and determine an application under this section in relation to property or financial affairs of a missing person only if—
 - (a) the person was domiciled in England and Wales on the day before he or she was first known to be missing,
 - (b) the person had been habitually resident in England and Wales throughout the period of one year ending with that day, or
 - (c) the application is made by the person's spouse or civil partner and the applicant—
 - (i) is domiciled in England and Wales on the day on which the application is made, or
 - (ii) has been habitually resident in England and Wales throughout the period of one year ending with that day.
- (3) If a person is missing for two or more separate periods, the reference in subsection (2)(a) to the day before he or she was first known to be missing is to be read as a reference to the day before the latest period began.

3 Making a guardianship order

- (1) The court may make a guardianship order on an application under section 2 if subsection (2) or (3) of this section applies (and see also sections 19 and 20).
- (2) This subsection applies if the court is satisfied that—
 - (a) the person whose property or financial affairs are the subject of the application is missing,
 - (b) the person was missing throughout the period of 90 days ending with the day on which the application was made,
 - (c) in all the circumstances, the appointment of a guardian in respect of property or financial affairs of the missing person is in the missing person's best interests (see section 18), and
 - (d) there is a person who could be appointed as guardian (see the requirements in section 4(1)),(and in this Act the condition in paragraph (b) is referred to as "the absence condition").
- (3) This subsection applies if the court is satisfied that—
 - (a) subsection (2) does not apply because (and only because) the absence condition is not met, but
 - (b) a decision is needed, or is likely to be needed, in relation to property or financial affairs of the missing person before the day on which that condition would be met,

(and in this Act the condition in paragraph (b) is referred to as “the urgency condition”).

- (4) The court must send a copy of a guardianship order to the Public Guardian.
- (5) The Secretary of State may by regulations made by statutory instrument amend subsection (2)(b) by increasing or reducing the period for the time being specified there.
- (6) Regulations under this section may include transitional, transitory or saving provision.
- (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

4 Choice of guardian

- (1) The court may only appoint a person as a guardian in respect of property or financial affairs of a missing person if it is satisfied that the person –
 - (a) is an individual aged at least 18 or a trust corporation (as defined in section 68 of the Trustee Act 1925),
 - (b) consents to the appointment,
 - (c) is suitable to act as the guardian of the property or financial affairs, and
 - (d) if appointed, will act in the missing person’s best interests (see section 18).
- (2) For the purposes of determining whether a person (“the proposed guardian”) is suitable to act as the guardian of property or financial affairs, the court must, among other things, have regard to –
 - (a) the proposed guardian’s relationship with the missing person;
 - (b) the missing person’s views on the proposed guardian, so far as they are known to, or reasonably ascertainable by, the court;
 - (c) whether the proposed guardian has the skills and knowledge necessary to carry out the functions proposed to be conferred on the proposed guardian by the guardianship order;
 - (d) any conflict between the proposed guardian’s interests and the missing person’s interests.
- (3) For the purposes of determining whether there is a conflict between the proposed guardian’s interests and the missing person’s interests, the court must, among other things, consider –
 - (a) any connection between the proposed guardian’s property and financial affairs and the missing person’s property and financial affairs, and
 - (b) how any such connection might affect the taking of decisions by the proposed guardian if appointed.
- (4) There is not a conflict between the proposed guardian’s interests and the missing person’s interests merely because the proposed guardian –
 - (a) is the missing person’s spouse, civil partner, parent, child, sibling or other relative,
 - (b) was living with the missing person immediately before that person became a missing person, or

- (c) may benefit from being appointed as guardian, whether directly or indirectly.
- (5) The court may make a guardianship order appointing a person as a guardian whether or not the person is proposed in the application for the order.

5 Guardian's role: property and financial affairs

- (1) A guardianship order must appoint the guardian in relation to –
 - (a) all of the missing person's property and financial affairs, or
 - (b) property or financial affairs of the missing person specified or described in the order.
- (2) A guardianship order may not relate to the property and financial affairs of more than one person.
- (3) A guardianship order may be made in respect of any property or financial affairs of the missing person, whether or not mentioned in the application, subject to subsection (4).
- (4) A guardianship order may be made only in respect of property or financial affairs in respect of which the court is satisfied that –
 - (a) the conditions in section 3(2)(c) and (d) are met, and
 - (b) where the order is made in reliance on section 3(3), the urgency condition is met.

6 Guardian's role: rights and powers etc

- (1) A guardianship order must appoint the guardian to exercise on behalf of the missing person –
 - (a) all of the missing person's rights and powers in relation to the property or financial affairs to which the order relates, or
 - (b) such of those rights and powers as are specified or described in the order,(but see subsections (5) to (8)).
- (2) A guardianship order may –
 - (a) impose duties on the guardian;
 - (b) include conditions and restrictions.
- (3) The court's powers under subsection (2) include power –
 - (a) to require the guardian to give the Public Guardian security for the exercise of the guardian's functions;
 - (b) to require the guardian to submit to the Public Guardian such reports at such times or intervals as the court may direct;
 - (c) to make provision suspending the guardian's authority to exercise rights and powers for a period.
- (4) The rights and powers that a guardian may be appointed to exercise include –
 - (a) selling, letting or mortgaging the missing person's property;
 - (b) making investments;
 - (c) executing deeds and other documents;
 - (d) recovering money owed to the missing person;

- (e) discharging debts and other obligations of the missing person (whether legally enforceable or not);
 - (f) resigning trusteeships held by the missing person;
 - (g) bringing or conducting legal proceedings;
 - (h) making a gift out of the missing person's property.
- (5) A guardianship order has effect subject to the restrictions in subsections (6) to (8).
- (6) A guardian may not –
- (a) execute a will for the missing person, or
 - (b) exercise a power vested in the missing person as a trustee in relation to another person's property.
- (7) A guardian may only make a gift out of the missing person's property if the guardianship order expressly authorises the making of the gift, the making of gifts of a description which includes the gift or the making of gifts generally.
- (8) Subsection (7) does not apply in relation to a gift made for the maintenance of, or otherwise for the benefit of, a dependant of the missing person.
- (9) "Dependant", in relation to a missing person, means an individual who, if the missing person were not missing, would reasonably rely on the missing person to provide for his or her maintenance.

7 Period of guardianship

- (1) A guardian is appointed for the period specified in the guardianship order.
- (2) The period specified in a guardianship order must end before the end of the period of 4 years beginning with the day on which the order is made.
- (3) Subsections (1) and (2) do not prevent the court from making further guardianship orders in respect of some or all of the missing person's property and financial affairs, including orders reappointing a person as a guardian.

Guardians

8 Guardians and effect of guardianship order

- (1) A guardian must act in what the guardian reasonably believes to be the missing person's best interests (see section 18).
- (2) A guardian is to be treated as the missing person's agent with the authority conferred by the guardianship order and this Act.
- (3) Before taking a decision in relation to which it would be reasonable to expect the missing person to consult a particular person, the guardian must consult that person unless it is not reasonably practicable to do so.
- (4) A guardianship order does not affect any rights, powers or other interests of third parties in relation to the missing person's property or financial affairs.

9 Expenses, remuneration and records

- (1) A guardian is entitled to be reimbursed out of the missing person's property for reasonable expenses incurred in connection with the exercise of functions as a guardian.
- (2) The court may direct that a guardian is entitled to remuneration payable out of the missing person's property for exercising functions as a guardian.
- (3) A guardian must—
 - (a) keep records of the exercise of functions as a guardian, including accounts relating to the exercise of those functions, and
 - (b) on ceasing to be a guardian, give a copy of the records to such persons as the court directs.
- (4) The court may, on an application, order a person to provide the applicant with accounts or other information relating to the person's exercise of functions as a guardian in the form and manner specified in the order.
- (5) When giving a direction under subsection (3) or considering an application under subsection (4), the court must have regard to—
 - (a) the need to keep the missing person's affairs confidential, and
 - (b) the need to impose only such requirements as are reasonable in all the circumstances,(and, regarding applications, see also sections 19 and 20).
- (6) Directions under subsection (3) and orders under subsection (4) may include conditions and restrictions.

10 Directions by the court to guardians

- (1) The court may give a direction to a guardian about—
 - (a) whether or how to act in a particular case, or
 - (b) the scope of the guardian's authority under the guardianship order and this Act.
- (2) The court may do so on an application or without an application being made (and see sections 19 and 20).

11 Actions outside guardian's authority etc

- (1) The court may make a declaration—
 - (a) that action taken by a guardian, when purporting to exercise functions as a guardian, was within or outside the scope of the guardian's authority under the guardianship order and this Act, or
 - (b) that a guardian performed or failed to perform a duty under the guardianship order, this Act or regulations under section 58 of the Mental Capacity Act 2005 or a duty owed to the missing person under a rule of law.
- (2) It may do so on an application or without an application being made (and see sections 19 and 20).
- (3) If the court makes a declaration under subsection (1) that a guardian acted outside the scope of the guardian's authority or failed to perform a duty as described in that subsection, it may—

- (a) make an order disallowing expenses incurred by the guardian or remuneration to which the guardian would otherwise be entitled;
 - (b) make an order requiring the guardian to make a payment of an amount determined by the court to the missing person or the missing person's estate;
 - (c) make such other order as the court considers appropriate for the purpose of compensating the missing person or the missing person's estate for any loss resulting from the action or failure.
- (4) Subsection (3) does not prevent the court from exercising powers available to it otherwise than by virtue of that subsection.
- (5) If the court makes a declaration under subsection (1), or otherwise determines, that a guardian acted outside the scope of the guardian's authority or failed to perform a duty as described in that subsection but—
- (a) the guardian shows that the guardian behaved honestly and reasonably in doing so, and
 - (b) the court considers that, having regard to all the circumstances, the guardian ought to be relieved of personal liability,
- the court may relieve the guardian, either entirely or partly, of personal liability in respect of the action or failure.
- (6) In considering whether to relieve a guardian of personal liability, the court must have regard to—
- (a) the care and skill that it is reasonable to expect the guardian to have exercised in the circumstances, and
 - (b) in the case of a person acting as a guardian in the course of a business or profession, any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

Variation and revocation of guardianship orders

12 Variation of guardianship order

- (1) The court may make an order varying a guardianship order, on an application or without an application being made.
- (2) It may do so only if it is satisfied that—
- (a) the person whose property or financial affairs are the subject of the guardianship order is missing,
 - (b) the absence condition or the urgency condition is met, and
 - (c) in all the circumstances, the proposed variation is in the missing person's best interests (see section 18),
- (and see also sections 19 and 20).
- (3) The power under subsection (1) includes power to—
- (a) appoint a different person to be the guardian;
 - (b) add or remove property or financial affairs, subject to subsection (4);
 - (c) add, remove or alter conditions or restrictions;
 - (d) alter the period for which the guardian is appointed, subject to subsection (5);

- (e) do anything else that the court could do on making a guardianship order.
- (4) Where the court varies a guardianship order in circumstances in which the urgency condition (but not the absence condition) is met, it may only make provision in respect of property or financial affairs in respect of which it is satisfied that the urgency condition is met.
- (5) The court may not vary a guardianship order so that the period for which the guardian is appointed ends after the last day of the 4 year period specified in section 7(2).
- (6) The court must send a copy of an order varying a guardianship order to the Public Guardian.

13 Revocation of guardianship order

- (1) The court may make an order revoking a guardianship order, on an application or without an application being made.
- (2) If a guardian has reasonable grounds to believe that the person whose property or financial affairs are the subject of the guardianship order is no longer missing, the guardian must apply to the court as soon as reasonably practicable for the revocation of the order.
- (3) The court may revoke a guardianship order only if it is satisfied that—
 - (a) the person whose property or financial affairs are the subject of the guardianship order is no longer missing, or
 - (b) in all the circumstances, revocation is in the missing person's best interests (see section 18),(and see also sections 19 and 20).
- (4) The court must send a copy of an order revoking a guardianship order to the Public Guardian.

14 Automatic revocation

- (1) A guardianship order is revoked—
 - (a) on the death of the missing person;
 - (b) on the making of a declaration of presumed death in respect of the missing person under section 2 of the Presumption of Death Act 2013;
 - (c) on the death of the guardian;
 - (d) on the expiry of the guardian's period of appointment.
- (2) A guardianship order made after the death of the missing person is to be treated as having been immediately revoked under subsection (1)(a).
- (3) Where a person becomes aware that a guardianship order appointing the person as guardian has been revoked under subsection (1)(a) or (b), the person must inform the Public Guardian as soon as reasonably practicable.

15 Protection following variation or revocation

- (1) Where a guardian acts within the scope of the authority conferred by the guardianship order and this Act at a time when—
 - (a) the guardianship order has been revoked under section 14, but

- (b) the guardian does not know that, the guardian does not incur any personal liability (either to the missing person or any other person) because of the revocation.
- (2) Where a person deals with a guardian at a time when –
 - (a) the guardianship order has been varied or revoked, but
 - (b) the person does not know that, the transaction between them is, in favour of that person, as valid as if the guardianship order had not been varied or revoked.
- (3) Where the interest of a purchaser depends on whether a transaction between a guardian and another person was valid by virtue of subsection (2), it is to be conclusively presumed in favour of the purchaser that the other person did not at the material time know of the variation or revocation of the guardianship order if –
 - (a) the transaction between the guardian and the other person was completed within the period of 12 months beginning with the day on which the guardianship order was made, or
 - (b) before the completion of the purchase, or within the period of 3 months beginning with the day of its completion, the other person makes a statutory declaration that the person did not at the material time know of the variation or revocation of the guardianship order.
- (4) For the purposes of this section –
 - (a) knowledge that a guardianship order has been revoked includes knowledge of the occurrence of an event which caused it to be revoked under section 14, and
 - (b) “purchaser” and “purchase” have the meaning given in section 205(1) of the Law of Property Act 1925.

Two or more guardians

16 Appointment of two or more guardians

- (1) The court may appoint two or more guardians in respect of some or all of a missing person’s property and financial affairs.
- (2) It may appoint them –
 - (a) at the same time or at different times;
 - (b) by means of the same guardianship order or separate guardianship orders.
- (3) It may do so whether or not the appointment of two or more guardians is proposed in an application for, or for the variation of, a guardianship order.
- (4) The Schedule to this Act makes further provision about the appointment of two or more guardians.
- (5) The Secretary of State may by regulations made by statutory instrument make provision about the appointment of two or more guardians, including provision modifying this Act as it applies where two or more guardians are appointed.
- (6) Regulations under this section may –
 - (a) amend the Schedule to this Act,

- (b) make different provision for different purposes, and
 - (c) include transitional, transitory or saving provision.
- (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Supervision of guardians

17 Supervision of guardians by the Public Guardian

- (1) Section 58 of the Mental Capacity Act 2005 (functions of the Public Guardian) is amended as follows.
- (2) After subsection (2) insert –
- “(2A) The Public Guardian also has the following functions –
- (a) establishing and maintaining a register of guardianship orders,
 - (b) supervising guardians,
 - (c) receiving security which the court requires a guardian to give for the exercise of the guardian’s functions,
 - (d) receiving reports from guardians,
 - (e) reporting to the court on such matters relating to proceedings under the Guardianship (Missing Persons) Act 2017 as the court requires,
 - (f) dealing with representations (including complaints) about the way in which a guardian is exercising the guardian’s functions, and
 - (g) publishing, in any manner the Public Guardian thinks appropriate, information about the exercise of his or her functions in connection with guardians and guardianship orders.”
- (3) In subsection (3), after “this Act” insert “or the Guardianship (Missing Persons) Act 2017”.
- (4) In subsection (4) –
- (a) in paragraph (a), after “court” insert “or guardians”, and
 - (b) after paragraph (f) insert –
 - “(g) the making of reports to the Public Guardian by guardians.”
- (5) In subsection (5), after “functions” insert “in relation to lasting powers of attorney or deputies”.
- (6) After subsection (6) insert –
- “(7) In this section “guardian” and “guardianship order” have the same meaning as in the Guardianship (Missing Persons) Act 2017.”

*Missing person's best interests***18 Missing person's best interests**

- (1) In determining for the purposes of this Act what is in a missing person's best interests, the court or a guardian—
 - (a) must consider all the relevant circumstances of which the court or guardian is aware, and
 - (b) must, among other things, take the steps described in subsections (2) to (4).
- (2) The court or guardian must consider, so far as is reasonably ascertainable—
 - (a) any relevant wishes and feelings expressed by the missing person at any time, including any relevant written statement made by the missing person,
 - (b) the beliefs and values that would be likely to influence the missing person, and
 - (c) any other factors that the missing person would be likely to consider.
- (3) The court or guardian must take into account the views of any persons of whom the court or guardian (as appropriate) is aware with a relevant interest in relation to the missing person's property or financial affairs, where it is reasonably practicable and appropriate to do so.
- (4) The court or guardian must consider the consequences of taking a proposed action.
- (5) Nothing in this Act requires the court or a guardian—
 - (a) to decide a matter by reference to the decision the missing person is likely to have taken in relation to the matter, or
 - (b) to consider any question as to whether or when the missing person might cease to be missing.
- (6) The Secretary of State may by regulations made by statutory instrument provide that, for the purposes of this Act, doing something specified or described in the regulations, or doing it in circumstances specified or described in the regulations, is or is not to be treated as being in a missing person's best interests.
- (7) Regulations under this section may—
 - (a) make different provision for different purposes, and
 - (b) include transitional, transitory or saving provision.
- (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

*Applications, intervention and codes of practice***19 Requirement for applicants to have sufficient interest**

- (1) The court must refuse to hear an application under a provision listed in subsection (2) if it considers that the applicant does not have a sufficient interest in relation to the missing person's property or financial affairs.

- (2) Those provisions are –
 - (a) section 2 (guardianship order);
 - (b) section 9 (accounts and information);
 - (c) section 10 (directions to guardians);
 - (d) section 11 (actions outside guardian’s authority);
 - (e) section 12 (variation of guardianship order);
 - (f) section 13 (revocation of guardianship order).
- (3) For the purposes of subsection (1), the following are to be treated as having a sufficient interest –
 - (a) the missing person and the missing person’s personal representatives;
 - (b) the missing person’s spouse, civil partner, parent, child or sibling;
 - (c) in relation to an application under section 2, a person who was the guardian in respect of some or all of the missing person’s property and financial affairs at any time during the period of one year ending with the day on which the application is made;
 - (d) in relation to an application under section 10, 12 or 13, the guardian.

20 Giving notice of applications

- (1) Where an application under a provision listed in subsection (2) is made –
 - (a) the applicant must send notice of the application and any other information specified by rules of court to the persons specified by rules of court, and
 - (b) the application must be advertised in accordance with rules of court.
- (2) Those provisions are –
 - (a) section 2 (guardianship order);
 - (b) section 12 (variation of guardianship order);
 - (c) section 13 (revocation of guardianship order).
- (3) The court must refuse to hear an application under a provision listed in subsection (2) if it knows that a requirement under subsection (1) has not been met.
- (4) If the court makes an order on an application in circumstances in which a requirement under subsection (1) has not been met –
 - (a) the failure to meet the requirement does not invalidate the order, but
 - (b) where the court considers varying or revoking a guardianship order which it knows was made or varied in such circumstances, it must consider the effect of the failure.
- (5) Rules of court may make provision imposing obligations to send notice to persons specified in the rules and to advertise where –
 - (a) an application is made under a provision of this Act which is not listed in subsection (2), or
 - (b) the court proposes to exercise a power under this Act without an application being made.

21 Right to intervene

- (1) The missing person’s spouse, civil partner, parent, child or sibling may intervene in –

- (a) proceedings on an application for a guardianship order;
 - (b) proceedings relating to the variation or revocation of a guardianship order;
 - (c) other proceedings relating to the exercise of functions by a guardian.
- (2) Any other person may intervene in such proceedings only with the permission of the court.
- (3) The court must refuse permission to intervene if it considers that the applicant does not have a sufficient interest in relation to the missing person's property or financial affairs.
- (4) References in this section to intervening in proceedings include arguing before the court any question which the court considers it necessary to have fully argued for the purposes of the proceedings.

22 Codes of practice

- (1) The Lord Chancellor must prepare and issue one or more codes of practice –
 - (a) for the guidance of guardians,
 - (b) for the guidance of persons making applications under this Act, and
 - (c) with respect to such other matters concerned with this Act as the Lord Chancellor thinks fit.
- (2) A guardian must have regard to any relevant code issued under this section.
- (3) If it appears to a court or tribunal conducting legal proceedings that –
 - (a) a provision of a code issued under this section, or
 - (b) a failure to comply with such a code,is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.
- (4) The Lord Chancellor may from time to time revise a code issued under this section.
- (5) The Lord Chancellor may delegate the preparation or revision of all or part of a code under this section.
- (6) Before preparing or revising a code under this section, the Lord Chancellor must consult such persons as the Lord Chancellor considers appropriate.
- (7) The Lord Chancellor may not issue a code or revised code under this section unless –
 - (a) a draft has been laid before both Houses of Parliament by the Lord Chancellor, and
 - (b) the 40 day period has elapsed without either House resolving not to approve the draft.
- (8) The Lord Chancellor must arrange for any code or revised code issued under this section to be published in such a way as the Lord Chancellor considers appropriate for bringing it to the attention of those likely to be concerned with its provisions.
- (9) “The 40 day period”, in relation to the draft of a code or revised code, means –
 - (a) if the draft is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of the two days;

- (b) in any other case, the period of 40 days beginning with the day on which it is laid before the Houses.
- (10) In calculating the 40 day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

General

23 The court

- (1) The Lord Chancellor must by regulations made by statutory instrument designate the High Court or the Court of Protection to have the functions of the court under this Act.
- (2) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.
- (3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice's functions under this section.
- (4) Regulations under this section may include transitional, transitory or saving provision.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

24 Interpretation

- (1) In this Act –
 - “the absence condition” has the meaning given in section 3;
 - “the court” means the court for the time being designated by the Lord Chancellor under section 23;
 - “guardian” means a person appointed as a guardian under this Act;
 - “guardianship order” has the meaning given in section 2;
 - “missing”, in relation to a person, has the meaning given in section 1 (and see subsection (2));
 - “the missing person” means –
 - (a) in relation to an application or order under this Act, the missing person whose property or financial affairs are or would be the subject of the application or order, and
 - (b) in relation to a guardian, the missing person in respect of whose property or financial affairs the guardian is appointed,
 (and see subsection (2));
 - “personal representative”, in relation to a person who has died, means –
 - (a) a person responsible for administering the person's estate under the law of England and Wales, or
 - (b) a person who, under the law of another country or territory, has functions equivalent to those of administering the person's estate under the law of England and Wales;
 - “property” includes any thing in action and any interest in real or personal property;
 - “sibling” means a sibling of the full blood or the half blood;

“the urgency condition” has the meaning given in section 3;

“will” includes codicil.

- (2) References in the following provisions to a missing person include a person whose property or financial affairs are or were the subject of a guardianship order but who is no longer missing –
 - (a) sections 8, 9, 11, 14(1), 15(1) and 18, and
 - (b) sections 19 and 21, so far as they apply to applications or proceedings in connection with such a person.
- (3) References in this Act to action by a guardian (however expressed) include inaction.

25 Extent, commencement and short title

- (1) This Act extends to England and Wales only.
- (2) The following come into force on the day on which this Act is passed –
 - (a) section 16(5) to (7),
 - (b) section 17, so far as it confers power to make regulations,
 - (c) section 18(6) to (8), and
 - (d) section 24 and this section.
- (3) Subject to subsection (2), the provisions of this Act come into force on such day as the Secretary of State may appoint by regulations made by statutory instrument.
- (4) Regulations under this section may –
 - (a) appoint different days for different purposes, and
 - (b) include transitional, transitory or saving provision.
- (5) This Act may be cited as the Guardianship (Missing Persons) Act 2017.

SCHEDULE

Section 16

APPOINTMENT OF TWO OR MORE GUARDIANS

Powers of court when appointing two or more guardians

- 1 (1) This paragraph applies where, when making or varying a guardianship order, the court appoints two or more guardians in respect of some or all of a missing person's property and financial affairs, whether by appointing them at the same time or at different times.
- (2) The court must –
 - (a) provide for the guardians to act jointly in relation to the property or financial affairs,
 - (b) provide for each guardian to have sole responsibility in relation to different parts of the missing person's property and financial affairs, or
 - (c) provide for a combination of joint and sole responsibilities.
- (3) For the purposes of sub-paragraph (2)(c), the court provides for a combination of joint and sole responsibilities if it provides –
 - (a) for the guardians to act jointly in relation to parts of the missing person's property and financial affairs, and
 - (b) for one or more of the guardians to have sole responsibility in relation to other parts of the missing person's property and financial affairs.
- (4) The court may make different provision in relation to different guardians so far as it provides for them to have sole responsibility in relation to different parts of the missing person's property and financial affairs, including provision imposing different conditions and restrictions.
- (5) The court may provide that different guardians are appointed for different periods.

Power of court to remove guardians

- 2 (1) This paragraph applies where a guardianship order appoints two or more guardians.
- (2) The court's powers under section 12 to vary the order include a power to remove one or more of the guardians without appointing a replacement (but not to remove all of the guardians without replacing any of them).

Guardians appointed to act jointly

- 3 (1) This paragraph applies where a guardianship order appoints two or more guardians to act jointly in relation to property or financial affairs.
- (2) The guardians must act unanimously in relation to the property or financial affairs.

- (3) A condition or restriction imposed by the court in respect of the property or financial affairs applies to each of the guardians.
- (4) A direction given by the court under section 10 in respect of the property or financial affairs applies to each of the guardians.

Death of a guardian

- 4 (1) This paragraph applies where –
 - (a) a guardianship order appoints two or more guardians, and
 - (b) one of the guardians dies.
- (2) The order is not revoked under section 14(1)(c) on the guardian's death unless –
 - (a) no other guardian appointed under the order remains alive, or
 - (b) the only other guardian remaining alive is appointed only to act jointly with the deceased guardian.
- (3) If, by virtue of this paragraph, the order is not revoked on the guardian's death, a guardian appointed under the order who remains alive must apply to the court for the variation or revocation of the order as soon as reasonably practicable after becoming aware of the death.

Expiry of period of appointment of a guardian

- 5 (1) This paragraph applies where –
 - (a) a guardianship order appoints two or more guardians, and
 - (b) a guardian's period of appointment expires.
- (2) The order is not revoked under section 14(1)(d) if the period of appointment of another guardian appointed under the order has not expired.
- (3) But section 15(2) applies in relation to a person who deals with the guardian mentioned in sub-paragraph (1)(b) after that guardian's period of appointment expires as if the guardianship order had been revoked under section 14(1)(d) on the expiry of that period.



Published by TSO (The Stationery Office), part of Williams Lea Tag, and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

E-mail: customer.services@tso.co.uk

Textphone: 0333 202 5077

TSO@Blackwell and other Accredited Agents

ISBN 978-0-10-540087-5

