



# Children Act 1975

## 1975 CHAPTER 72

### PART IV

#### FURTHER AMENDMENTS OF LAW OF ENGLAND AND WALES

##### *Explanation of concepts*

#### **85 Parental rights and duties**

- (1) In this Act, unless the context otherwise requires, " the parental rights and duties " means as respects a particular child (whether legitimate or not), all the rights and duties which by law the mother and father have in relation to a legitimate child and his property; and references to a parental right or duty shall be construed accordingly and shall include a right of access and any other element included in a right or duty.
- (2) Subject to section 1(2) of the Guardianship Act 1973 (which relates to separation agreements between husband and wife), a person cannot surrender or transfer to another any parental right or duty he has as respects a child.
- (3) Where two or more persons have a parental right or duty jointly, any one of them may exercise or perform it in any manner without the other or others if the other or, as the case may be, one or more of the others have not signified disapproval of its exercise or performance in that manner.
- (4) From the death of a person who has a parental right or duty jointly with one other person, or jointly with two or more other persons, that other person has the right or duty exclusively or, as the case may be, those other persons have it jointly.
- (5) Where subsection (4) does not apply on the death of a person who has a parental right or duty, that right or duty lapses, but without prejudice to its acquisition by another person at any time under any enactment.
- (6) Subsections (4) and (5) apply in relation to the dissolution of a body corporate as they apply in relation to the death, of an individual.

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*Status: This is the original version (as it was originally enacted).*

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- (7) Except as otherwise provided by or under any enactment, while the mother of an illegitimate child is living she has the parental rights and duties exclusively.

**86 Legal custody**

In this Act, unless the context otherwise requires, " legal custody " means, as respects a child, so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent); but a person shall not by virtue of having legal custody of a child be entitled to effect or arrange for his emigration from the United Kingdom unless he is a parent or guardian of the child.

**87 Actual custody**

- (1) A person has actual custody of a child if he has actual possession of his person, whether or not that possession is shared with one or more other persons.
- (2) While a person not having legal custody of a child has actual custody of the child he has the like duties in relation to the child as a custodian would have by virtue of his legal custody.
- (3) In this Act, unless the Context otherwise requires, references to the person with whom a child has his home refer to the person who, disregarding absence of the child at a hospital or boarding school and any other temporary absence, has actual custody of the child.

**88 Child in care of voluntary organisation**

A child is in the care of a voluntary organisation if—

- (a) the organisation has actual custody of him, or
- (b) having had actual custody of him, the organisation has transferred that custody to an individual who does not have legal custody of him.

**89 Amendment of Interpretation Act 1889**

- (1) In the Interpretation Act 1889 after section 19 there is inserted the following section—

**“19A Meaning of expressions relating to children.**

- (1) In any Act passed after the Children Act 1975, unless the contrary intention appears—
- (a) the expression "the parental rights and duties ",
  - (b) the expression " legal custody " (as respects a child), and
  - (c) references to the person with whom a child has his home,
- shall be construed in accordance with Part IV of the Children Act 1975.
- (2) This section does not extend to Scotland or Northern Ireland.”