



Children Act 1975

1975 CHAPTER 72

PART II

CUSTODY

Custody in Scotland

47 Granting of custody

- (1) Without prejudice to any existing enactment or rule of law conferring a—
 - (a) right to apply for custody of a child ;
 - (b) power to grant custody of a child ;any relative, step-parent or foster parent of the child is qualified to apply for, and subject to subsection (2) may be granted, such custody in the same manner as any person so qualified before the commencement of this Act.
- (2) Except in the case of an application under section 2 of the Illegitimate Children (Scotland) Act 1930, custody of a child shall not be granted in any proceedings to a person other than a parent or guardian of the child unless that person—
 - (a) being a relative or step-parent of the child, has the consent of a parent or guardian of the child and has had care and possession of the child for the three months preceding the making of the application for custody; or
 - (b) has the consent of a parent or guardian of the child and has had care and possession of the child for a period or periods, before such application, which amounted to at least twelve months and included the three months preceding such application ; or
 - (c) has had care and possession of the child for a period or periods before such application which amounted to at least three years and included the three months preceding such application ; or
 - (d) while not falling within paragraph (a), (b) or (c), can show cause, having regard to section 1 of the Guardianship of Infants Act 1925 (the principle on which questions relating to custody, upbringing etc. of children are to be decided) why an order should be made awarding him custody of the child.

Status: This is the original version (as it was originally enacted).

- (3) Nothing in this section shall prejudice any ancillary power of the court in any proceedings relative to custody.
- (4) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (2)(c) to substitute a different period for the period of three years mentioned in that paragraph (or the period which by a previous order under this subsection was substituted for that period).
- (5) In relation to a grant of custody to which this section applies,
 - (a) " guardian " has the same meaning as in the 1958 Act;
 - (b) " foster parent " means a person who, at the commencement of the proceedings in which the grant is made, has had care and possession of the child for a period or periods amounting to at least twelve months, whether or not that person continues to have care and possession of the child;
 - (c) " relative " has the same meaning as in the 1958 Act, except that, where the child is illegitimate, " relative " does not include the father of the child.
- (6) The form and manner of any consent required in terms of subsection (2) (a) or (b) may be prescribed by act of sederunt.