
Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Appointment, removal and powers of guardians. (See end of Document for details)

SCHEDULES

SCHEDULE 1

TEXT OF 1971 ACT AS AMENDED

Appointment, removal and powers of guardians

Rights of surviving parent as to guardianship.

- 3 (1) On the death of the father of a child, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the child either alone or jointly with any guardian appointed by the father; and—
- (a) where no guardian has been appointed by the father; or
 - (b) in the event of the death or refusal to act of the guardian or guardians appointed by the father,
- the court may, if it thinks fit, appoint a guardian to act jointly with the mother.
- (2) On the death of the mother of a child, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the child either alone or jointly with any guardian appointed by the mother; and—
- (a) where no guardian has been appointed by the mother; or
 - (b) in the event of the death or refusal to act of the guardian or guardians appointed by the mother,
- the court may, if it thinks fit, appoint a guardian to act jointly with the father.
- (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.

Power of father and mother to appoint testamentary guardians.

- 4 (1) The father of a child may by deed or will appoint any person to be guardian of the child after his death.
- (2) The mother of a child may by deed or will appoint any person to be guardian of the child after her death.
- (3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the child so long as the mother or father remains alive unless the mother or father objects to his so acting.

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Appointment, removal and powers of guardians. (See end of Document for details)

- (4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the child, the guardian may apply to the court, and the court may either—
- (a) refuse to make any order (in which case the mother or father shall remain sole guardian); or
 - (b) make an order that the guardian so appointed—
 - (i) shall act jointly with the mother or father; or
 - (ii) shall be the sole guardian of the child.
- (5) Where the guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.
- (6) If under section 3 of this Act a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but, if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.
- (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.

Power of court to appoint guardian for child having no parent etc.

- 5 (1) Where a child has no parent, no guardian of the person, and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the child.
- (2) A court may entertain an application under this section to appoint a guardian of a child notwithstanding that parental rights and duties with respect to the child are vested in a local authority or a voluntary organisation by virtue of a resolution under section 3 or 64 of the ^{M1}Child Care Act 1980.
- (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”.

Marginal Citations

M1 1980 c.5.

Power of High Court to remove or replace guardian.

- 6 The High Court may in its discretion on being satisfied that it is for the welfare of the child remove from his office any testamentary guardian or any guardian appointed or acting by virtue of this Act, and may also, if it deems it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross Heading: Appointment, removal and powers of guardians. (See end of Document for details)

Disputes between joint guardians.

- 7 Where two or more persons act as joint guardians of the child and they are unable to agree on any question affecting the welfare of the child, any of them may apply to the court for its direction and the court may make such order regarding the matters in difference that it may think proper.

Changes to legislation:

There are currently no known outstanding effects for the Family Law Reform Act 1987, Cross
Heading: Appointment, removal and powers of guardians.