



Children Act 1989

1989 CHAPTER 41

PART I

INTRODUCTORY

1 Welfare of the child

- (1) When a court determines any question with respect to—
 - (a) the upbringing of a child; or
 - (b) the administration of a child's property or the application of any income arising from it,the child's welfare shall be the court's paramount consideration.
- (2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.
- (3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—
 - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
 - (b) his physical, emotional and educational needs;
 - (c) the likely effect on him of any change in his circumstances;
 - (d) his age, sex, background and any characteristics of his which the court considers relevant;
 - (e) any harm which he has suffered or is at risk of suffering;
 - (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
 - (g) the range of powers available to the court under this Act in the proceedings in question.
- (4) The circumstances are that—

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- (a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
 - (b) the court is considering whether to make, vary or discharge an order under Part IV.
- (5) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

2 Parental responsibility for children

- (1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.
- (2) Where a child's father and mother were not married to each other at the time of his birth—
 - (a) the mother shall have parental responsibility for the child;
 - (b) the father shall not have parental responsibility for the child, unless he acquires it in accordance with the provisions of this Act.
- (3) References in this Act to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of his birth must be read with section 1 of the Family Law Reform Act 1987 (which extends their meaning).
- (4) The rule of law that a father is the natural guardian of his legitimate child is abolished.
- (5) More than one person may have parental responsibility for the same child at the same time.
- (6) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.
- (7) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.
- (8) The fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Act.
- (9) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.
- (10) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.
- (11) The making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of his parental responsibility for the child concerned.

3 Meaning of “parental responsibility”

- (1) In this Act “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
- (2) It also includes the rights, powers and duties which a guardian of the child’s estate (appointed, before the commencement of section 5, to act generally) would have had in relation to the child and his property.
- (3) The rights referred to in subsection (2) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.
- (4) The fact that a person has, or does not have, parental responsibility for a child shall not affect—
 - (a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or
 - (b) any rights which, in the event of the child’s death, he (or any other person) may have in relation to the child’s property.
- (5) A person who—
 - (a) does not have parental responsibility for a particular child; but
 - (b) has care of the child,may (subject to the provisions of this Act) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare.

4 Acquisition of parental responsibility by father

- (1) Where a child’s father and mother were not married to each other at the time of his birth—
 - (a) the court may, on the application of the father, order that he shall have parental responsibility for the child; or
 - (b) the father and mother may by agreement (“a parental responsibility agreement”) provide for the father to have parental responsibility for the child.
- (2) No parental responsibility agreement shall have effect for the purposes of this Act unless—
 - (a) it is made in the form prescribed by regulations made by the Lord Chancellor; and
 - (b) where regulations are made by the Lord Chancellor prescribing the manner in which such agreements must be recorded, it is recorded in the prescribed manner.
- (3) Subject to section 12(4), an order under subsection (1)(a), or a parental responsibility agreement, may only be brought to an end by an order of the court made on the application—
 - (a) of any person who has parental responsibility for the child; or
 - (b) with leave of the court, of the child himself.
- (4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.

5 Appointment of guardians

- (1) Where an application with respect to a child is made to the court by any individual, the court may by order appoint that individual to be the child's guardian if—
 - (a) the child has no parent with parental responsibility for him; or
 - (b) a residence order has been made with respect to the child in favour of a parent or guardian of his who has died while the order was in force.
- (2) The power conferred by subsection (1) may also be exercised in any family proceedings if the court considers that the order should be made even though no application has been made for it.
- (3) A parent who has parental responsibility for his child may appoint another individual to be the child's guardian in the event of his death.
- (4) A guardian of a child may appoint another individual to take his place as the child's guardian in the event of his death.
- (5) An appointment under subsection (3) or (4) shall not have effect unless it is made in writing, is dated and is signed by the person making the appointment or—
 - (a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 9 of the Wills Act 1837; or
 - (b) in any other case, is signed at the direction of the person making the appointment, in his presence and in the presence of two witnesses who each attest the signature.
- (6) A person appointed as a child's guardian under this section shall have parental responsibility for the child concerned.
- (7) Where—
 - (a) on the death of any person making an appointment under subsection (3) or (4), the child concerned has no parent with parental responsibility for him; or
 - (b) immediately before the death of any person making such an appointment, a residence order in his favour was in force with respect to the child,the appointment shall take effect on the death of that person.
- (8) Where, on the death of any person making an appointment under subsection (3) or (4)—
 - (a) the child concerned has a parent with parental responsibility for him; and
 - (b) subsection (7)(b) does not apply,the appointment shall take effect when the child no longer has a parent who has parental responsibility for him.
- (9) Subsections (1) and (7) do not apply if the residence order referred to in paragraph (b) of those subsections was also made in favour of a surviving parent of the child.
- (10) Nothing in this section shall be taken to prevent an appointment under subsection (3) or (4) being made by two or more persons acting jointly.
- (11) Subject to any provision made by rules of court, no court shall exercise the High Court's inherent jurisdiction to appoint a guardian of the estate of any child.

- (12) Where rules of court are made under subsection (11) they may prescribe the circumstances in which, and conditions subject to which, an appointment of such a guardian may be made.
- (13) A guardian of a child may only be appointed in accordance with the provisions of this section.

6 Guardians: revocation and disclaimer

- (1) An appointment under section 5(3) or (4) revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.
- (2) An appointment under section 5(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it by a written and dated instrument which is signed—
 - (a) by him; or
 - (b) at his direction, in his presence and in the presence of two witnesses who each attest the signature.
- (3) An appointment under section 5(3) or (4) (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it—
 - (a) destroys the instrument by which it was made; or
 - (b) has some other person destroy that instrument in his presence.
- (4) For the avoidance of doubt, an appointment under section 5(3) or (4) made in a will or codicil is revoked if the will or codicil is revoked.
- (5) A person who is appointed as a guardian under section 5(3) or (4) may disclaim his appointment by an instrument in writing signed by him and made within a reasonable time of his first knowing that the appointment has taken effect.
- (6) Where regulations are made by the Lord Chancellor prescribing the manner in which such disclaimers must be recorded, no such disclaimer shall have effect unless it is recorded in the prescribed manner.
- (7) Any appointment of a guardian under section 5 may be brought to an end at any time by order of the court—
 - (a) on the application of any person who has parental responsibility for the child;
 - (b) on the application of the child concerned, with leave of the court; or
 - (c) in any family proceedings, if the court considers that it should be brought to an end even though no application has been made.

7 Welfare reports

- (1) A court considering any question with respect to a child under this Act may—
 - (a) ask a probation officer; or
 - (b) ask a local authority to arrange for—
 - (i) an officer of the authority; or

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- (ii) such other person (other than a probation officer) as the authority considers appropriate,
to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.
- (2) The Lord Chancellor may make regulations specifying matters which, unless the court orders otherwise, must be dealt with in any report under this section.
- (3) The report may be made in writing, or orally, as the court requires.
- (4) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of—
- (a) any statement contained in the report; and
 - (b) any evidence given in respect of the matters referred to in the report, in so far as the statement or evidence is, in the opinion of the court, relevant to the question which it is considering.
- (5) It shall be the duty of the authority or probation officer to comply with any request for a report under this section.