



# Guardianship (Missing Persons) Act 2017

## 2017 CHAPTER 27

### *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,

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*Status: This is the original version (as it was originally enacted).*

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- (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.