



# Guardianship (Missing Persons) Act 2017

## 2017 CHAPTER 27

### *Applications, intervention and codes of practice*

#### **19 Requirement for applicants to have sufficient interest**

- (1) The court must refuse to hear an application under a provision listed in subsection (2) if it considers that the applicant does not have a sufficient interest in relation to the missing person's property or financial affairs.
- (2) Those provisions are—
  - (a) section 2 (guardianship order);
  - (b) section 9 (accounts and information);
  - (c) section 10 (directions to guardians);
  - (d) section 11 (actions outside guardian's authority);
  - (e) section 12 (variation of guardianship order);
  - (f) section 13 (revocation of guardianship order).
- (3) For the purposes of subsection (1), the following are to be treated as having a sufficient interest—
  - (a) the missing person and the missing person's personal representatives;
  - (b) the missing person's spouse, civil partner, parent, child or sibling;
  - (c) in relation to an application under section 2, a person who was the guardian in respect of some or all of the missing person's property and financial affairs at any time during the period of one year ending with the day on which the application is made;
  - (d) in relation to an application under section 10, 12 or 13, the guardian.

#### **20 Giving notice of applications**

- (1) Where an application under a provision listed in subsection (2) is made—
  - (a) the applicant must send notice of the application and any other information specified by rules of court to the persons specified by rules of court, and
  - (b) the application must be advertised in accordance with rules of court.

- (2) Those provisions are—
  - (a) section 2 (guardianship order);
  - (b) section 12 (variation of guardianship order);
  - (c) section 13 (revocation of guardianship order).
- (3) The court must refuse to hear an application under a provision listed in subsection (2) if it knows that a requirement under subsection (1) has not been met.
- (4) If the court makes an order on an application in circumstances in which a requirement under subsection (1) has not been met—
  - (a) the failure to meet the requirement does not invalidate the order, but
  - (b) where the court considers varying or revoking a guardianship order which it knows was made or varied in such circumstances, it must consider the effect of the failure.
- (5) Rules of court may make provision imposing obligations to send notice to persons specified in the rules and to advertise where—
  - (a) an application is made under a provision of this Act which is not listed in subsection (2), or
  - (b) the court proposes to exercise a power under this Act without an application being made.

## **21 Right to intervene**

- (1) The missing person's spouse, civil partner, parent, child or sibling may intervene in—
  - (a) proceedings on an application for a guardianship order;
  - (b) proceedings relating to the variation or revocation of a guardianship order;
  - (c) other proceedings relating to the exercise of functions by a guardian.
- (2) Any other person may intervene in such proceedings only with the permission of the court.
- (3) The court must refuse permission to intervene if it considers that the applicant does not have a sufficient interest in relation to the missing person's property or financial affairs.
- (4) References in this section to intervening in proceedings include arguing before the court any question which the court considers it necessary to have fully argued for the purposes of the proceedings.

## **22 Codes of practice**

- (1) The Lord Chancellor must prepare and issue one or more codes of practice—
  - (a) for the guidance of guardians,
  - (b) for the guidance of persons making applications under this Act, and
  - (c) with respect to such other matters concerned with this Act as the Lord Chancellor thinks fit.
- (2) A guardian must have regard to any relevant code issued under this section.
- (3) If it appears to a court or tribunal conducting legal proceedings that—
  - (a) a provision of a code issued under this section, or

- (b) a failure to comply with such a code,  
is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.
- (4) The Lord Chancellor may from time to time revise a code issued under this section.
- (5) The Lord Chancellor may delegate the preparation or revision of all or part of a code under this section.
- (6) Before preparing or revising a code under this section, the Lord Chancellor must consult such persons as the Lord Chancellor considers appropriate.
- (7) The Lord Chancellor may not issue a code or revised code under this section unless—
- (a) a draft has been laid before both Houses of Parliament by the Lord Chancellor, and
  - (b) the 40 day period has elapsed without either House resolving not to approve the draft.
- (8) The Lord Chancellor must arrange for any code or revised code issued under this section to be published in such a way as the Lord Chancellor considers appropriate for bringing it to the attention of those likely to be concerned with its provisions.
- (9) “The 40 day period”, in relation to the draft of a code or revised code, means—
- (a) if the draft is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of the two days;
  - (b) in any other case, the period of 40 days beginning with the day on which it is laid before the Houses.
- (10) In calculating the 40 day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.