



Children Act 1975

1975 CHAPTER 72

PART IV

FURTHER AMENDMENTS OF LAW OF ENGLAND AND WALES

Explanation of concepts

85 Parental rights and duties

- (1) In this Act, unless the context otherwise requires, " the parental rights and duties " means as respects a particular child (whether legitimate or not), all the rights and duties which by law the mother and father have in relation to a legitimate child and his property; and references to a parental right or duty shall be construed accordingly and shall include a right of access and any other element included in a right or duty.
- (2) Subject to section 1(2) of the Guardianship Act 1973 (which relates to separation agreements between husband and wife), a person cannot surrender or transfer to another any parental right or duty he has as respects a child.
- (3) Where two or more persons have a parental right or duty jointly, any one of them may exercise or perform it in any manner without the other or others if the other or, as the case may be, one or more of the others have not signified disapproval of its exercise or performance in that manner.
- (4) From the death of a person who has a parental right or duty jointly with one other person, or jointly with two or more other persons, that other person has the right or duty exclusively or, as the case may be, those other persons have it jointly.
- (5) Where subsection (4) does not apply on the death of a person who has a parental right or duty, that right or duty lapses, but without prejudice to its acquisition by another person at any time under any enactment.
- (6) Subsections (4) and (5) apply in relation to the dissolution of a body corporate as they apply in relation to the death, of an individual.

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- (7) Except as otherwise provided by or under any enactment, while the mother of an illegitimate child is living she has the parental rights and duties exclusively.

86 Legal custody

In this Act, unless the context otherwise requires, " legal custody " means, as respects a child, so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent); but a person shall not by virtue of having legal custody of a child be entitled to effect or arrange for his emigration from the United Kingdom unless he is a parent or guardian of the child.

87 Actual custody

- (1) A person has actual custody of a child if he has actual possession of his person, whether or not that possession is shared with one or more other persons.
- (2) While a person not having legal custody of a child has actual custody of the child he has the like duties in relation to the child as a custodian would have by virtue of his legal custody.
- (3) In this Act, unless the Context otherwise requires, references to the person with whom a child has his home refer to the person who, disregarding absence of the child at a hospital or boarding school and any other temporary absence, has actual custody of the child.

88 Child in care of voluntary organisation

A child is in the care of a voluntary organisation if—

- (a) the organisation has actual custody of him, or
- (b) having had actual custody of him, the organisation has transferred that custody to an individual who does not have legal custody of him.

89 Amendment of Interpretation Act 1889

- (1) In the Interpretation Act 1889 after section 19 there is inserted the following section—

“19A Meaning of expressions relating to children.

- (1) In any Act passed after the Children Act 1975, unless the contrary intention appears—
- (a) the expression "the parental rights and duties ",
 - (b) the expression " legal custody " (as respects a child), and
 - (c) references to the person with whom a child has his home,
- shall be construed in accordance with Part IV of the Children Act 1975.
- (2) This section does not extend to Scotland or Northern Ireland.”

Reports in guardianship and matrimonial proceedings

90 Procedure in guardianship proceedings

(1) The following subsections are substituted for subsections (2) and (3) of section 6 of the Guardianship Act 1973 :—

“(2) A report made in pursuance of subsection (1) above to a magistrates' court shall be made to the court at a hearing of the application unless it is in writing in which case—

- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during a hearing of the application ; and
- (b) if the court thinks fit, the report, or such part of the report as the court requires, shall be read aloud at a hearing of the application.

(3) A magistrates' court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor, shall, require the officer by whom the report was made to give evidence of or with respect to the matters referred to in the report and if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any such matter or any matter referred to in the officer's evidence.

(3A) A magistrates' court may take account of—

- (a) any statement contained in a report made at a hearing of the application or of which copies have been given to the parties or their representatives in accordance with subsection (2)(a) above ; and
- (b) any evidence given by the officer under subsection (3) above, in so far as the statement or evidence is, in the opinion of the court, relevant to the application, notwithstanding any enactment or rule of law to the contrary.”.

(2) The following subsection is added after subsection (5) of the said section 6—

“(6) A single justice may request a report under subsection (1) of this section before the hearing of the application, but in such a case the report shall be made to the court which hears the application, and the foregoing provisions of this section shall apply accordingly.”.

91 Procedure in matrimonial proceedings

(1) The following subsections are substituted for subsections (3) and (4) of section 4 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960—

“(3) A report made in pursuance of subsection (2) of this section shall be made to the court at a hearing of the complaint unless it is in writing in which case—

- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during a hearing of the complaint; and
- (b) if the court thinks fit, the report, or such parts of the report as the court requires, shall be read aloud at a hearing of the complaint.

(4) The court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor, shall, require the officer by whom the report was made to give evidence on or with respect to the matters referred

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to in the report and if the officer gives such evidence, any party to the proceedings may give or call evidence on or with respect to any such matter or any matter referred to in the officer's evidence.

- (4A) Subject to the next following subsection, the court may take account of—
- (a) any statement contained in a report made at a hearing of the complaint or of which copies have been given to the parties or their representatives in accordance with subsection (3)(a) of this section ; and
 - (b) any evidence given by the officer under subsection (4) of this section, in so far as the statement or evidence relates to the matters specified by the court under subsection (2) of this section, notwithstanding any enactment or rule of law to the contrary.”.

- (2) In Subsection (5) of the said section 4, for "subsection (4) " there is substituted " subsections (4) and (4A) ".

Registration of births

92 Registration of births of abandoned children

The following section is inserted after section 3 of the Births and Deaths Registration Act 1953—

“3A Registration of births of abandoned children.

- (1) Where the place and date of birth of a child who was abandoned are unknown to, and cannot be ascertained by, the person who has charge of the child, that person may apply to the Registrar General for the child's birth to be registered under this section.
- (2) On an application under this section the Registrar General shall enter in a register maintained at the General Register Office—
 - (a) as the child's place of birth, if the child was found by the applicant or by any person from whom (directly or indirectly) the applicant took charge of the child, the registration district mid sub-district where the child was found, or, in any other case, where the child was abandoned ;
 - (b) as the child's date of birth, the date which, having regard to such evidence as is produced to him, appears to him to be the most likely date of birth of the child, and
 - (c) such other particulars as may be prescribed.
- (3) The Registrar General shall not register a child's birth under this section if—
 - (a) he is satisfied that the child was not born in England or Wales ; or
 - (b) the child has been adopted in pursuance of a court order made in the United Kingdom, the Isle of Man or the Channel Islands ; or
 - (c) subject to subsection (5) below, the child's birth is known to have been previously registered under this Act.
- (4) If no entry can be traced in any register of births relating to a person who has attained the age of 18 and has not been adopted as aforesaid, that person may apply to the Registrar General for his birth to be registered under this section.

- (5) On the application of—
- (a) a person having the charge of a child whose birth had been registered under this Act by virtue of the proviso to section 1 of this Act (as originally enacted), or
 - (b) any such child who has attained the age of 18 years,
- the Registrar General shall re-register the birth of the child under this section, and shall direct the officer having custody of the register of births in which the entry relating to the child was previously made to enter in the margin of the register a reference to the re-registration of the birth.”

93 Registration of father of illegitimate child

- (1) At the end of paragraph (b) of section 10 of the Births and Deaths Registration Act of 1953 (which makes provision for the registration of fathers of illegitimate children) there is added “or
- (c) at the request of the mother (which shall be made in writing) on production of—
 - (i) a certified copy of an order made under section 4 of the Affiliation Proceedings Act 1957 naming that person as the putative father of the child, and
 - (ii) if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father.”
- (2) After the said section 10 there is inserted the following section—

“10A Re-registration of births of illegitimate children.

- (1) Where the birth of an illegitimate child has been registered under this Act but no person has been registered as the child's father, the registrar shall re-register the birth so as to show a person as the father—
- (a) at the joint request of the mother and of that person; or
 - (b) at the request of the mother on production of—
 - (i) a declaration in the prescribed form made by the mother stating that that person is the father of the child ; and
 - (ii) a statutory declaration made by that person acknowledging himself to be the father of the child ; or
 - (c) at the request of the mother (which shall be made in writing) on production of—
 - (i) a certified copy of an order made under section 4 of the Affiliation Proceedings Act 1957 naming that person as the putative father of that child, and
 - (ii) if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father;
- but no birth shall be re-registered under this section except in the prescribed manner and with the authority of the Registrar General.
- (2) On the re-registration of a birth under this section—
- (a) the registrar and the mother shall sign the register;

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- (b) in the case of a request under paragraph (a) of subsection (1) of this section, the other person making the request shall also sign the register; and
 - (c) if the re-registration takes place more than three months after the birth, the superintendent registrar shall also sign the register.”.
- (3) In section 9 of the said Act of 1953 (which enables information required to be given to the registrar to be given to other persons) after subsection (3) there are added the following subsections—
 - “(4) A request made under section 10 of this Act may be included in a declaration under subsection (1) of this section, and, if the request is made under paragraph (b) or (c) of that section, the documents required by that paragraph to be produced shall be produced to the officer in whose presence the declaration is made and sent by him with the declaration to the registrar.
 - (5) A request made under section 10A of this Act instead of being made to the registrar may be made by making and signing in the presence of and delivering to a prescribed officer a statement in the prescribed form and producing to the officer any documents required to be produced by that section, and—
 - (a) the officer shall send the request together with those documents, if any, to the registrar who shall with the authority of the Registrar General re-register the birth as if the request had been made to him; and
 - (b) the person or persons who sign the statement shall be deemed to have signed the register as required by subsection (2) of that section.”.

Extent of Part IV

94 Extent of Part IV

This Part does not extend to Scotland.