



Family Law Reform Act 1987

1987 CHAPTER 42

PART I

GENERAL PRINCIPLE

1 General principle.

- (1) In this Act and enactments passed and instruments made after the coming into force of this section, references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time.
- (2) In this Act and enactments passed after the coming into force of this section, unless the contrary intention appears—
 - (a) references to a person whose father and mother were married to each other at the time of his birth include; and
 - (b) references to a person whose father and mother were not married to each other at the time of his birth do not include,references to any person to whom subsection (3) below applies, and cognate references shall be construed accordingly.
- (3) This subsection applies to any person who—
 - (a) is treated as legitimate by virtue of section 1 of the ^{M1}Legitimacy Act 1976;
 - (b) is a legitimated person within the meaning of section 10 of that Act;
 - (c) is an adopted child within the meaning of Part IV of the ^{M2}Adoption Act 1976; or
 - (d) is otherwise treated in law as legitimate.
- (4) For the purpose of construing references falling within subsection (2) above, the time of a person's birth shall be taken to include any time during the period beginning with—
 - (a) the insemination resulting in his birth; or

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Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

(b) where there was no such insemination, his conception, and (in either case) ending with his birth.

Modifications etc. (not altering text)

- C1** S. 1 applied (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 105(2), 108 (with **Sch. 14 para. 1(1)**)
C2 S. 1 excluded by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 831(4)

Marginal Citations

- M1** 1976 c. 31.
M2 1976 c. 36.

PART II

RIGHTS AND DUTIES OF PARENTS ETC.

Parental rights and duties: general

2 Construction of enactments relating to parental rights and duties.

- (1) In the following enactments, namely—
- (a) section 42(1) of the ^{M3}National Assistance Act 1948;
 - (b) section 6 of the Family Law Reform Act ^{M4}1969;
 - (c) the Guardianship of Minors Act ^{M5}1971 (in this Act referred to as “the 1971 Act”);
 - (d) Part I of the Guardianship Act 1973 (in this Act referred to as “the 1973 Act”);
 - (e) Part II of the Children Act 1975;
 - (f) the Child Care Act 1980 except Part I and sections 13, 24, 64 and 65;
 - (g) section 26(3) of the Social Security Act 1986,

references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 above.

- (2) In subsection (7) of section 1 of the 1973 Act (equality of parental rights) for the words from “or be taken” to the end there shall be substituted the words “and nothing in subsection (1) above shall be taken as applying in relation to a child whose father and mother were not married to each other at the time of his birth”.

Marginal Citations

- M3** 1948 c. 29.
M4 1969 c. 36.
M5 1971 c. 3.

[^{F13} Agreements as to exercise of parental rights and duties.

For subsection (2) of section 1 of the 1973 Act (agreements between parents to give up parental rights) there shall be substituted the following subsection—

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“(2) Notwithstanding anything in section 85(2) of the Children Act 1975, an agreement may be made between the father and mother of a child as to the exercise by either of them, during any period when they are not living with each other in the same household, of any of the parental rights and duties with respect to the child; but no such agreement shall be enforced by any court if the court is of opinion that it will not be for the benefit of the child to give effect to it.”]

Textual Amendments

F1 Ss. 3–7 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

[^{F2} Parental rights and duties where parents not married]

Textual Amendments

F2 Ss. 3–7 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

4 Parental rights and duties of father.

- (1) Where the father and mother of a child were not married to each other at the time of his birth, the court may, on the application of the father, order that he shall have all the parental rights and duties with respect to the child.
- (2) Where the father of a child is given all the parental rights and duties by an order under this section, he shall, subject to any order made by the court otherwise than under this section, have those rights and duties jointly with the mother of the child or, if the mother is dead, jointly with any guardian of the child appointed under the 1971 Act.
- (3) An order under this section may be discharged by a subsequent order made on the application of the father or mother of the child or, if the mother is dead, any guardian of the child appointed under the 1971 Act.
- (4) This section and the 1971 Act shall be construed as if this section were contained in that Act.

[^{F3}5 Exercise of parental rights and duties.

At the beginning of subsection (3) of section 1 of the 1973 Act (which enables application to be made for the direction of the court where parents disagree on a question affecting the child’s welfare) there shall be inserted the words “Subject to subsection (3A) below” and after that subsection there shall be inserted the following subsection—

“(3A) Where a child’s father and mother were not married to each other at the time of his birth, subsection (3) above does not apply unless—

- (a) an order is in force under section 4 of the Family Law Reform Act 1987 giving the father all the parental rights and duties with respect to the child; or

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- (b) the father 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.”]

Textual Amendments

F3 Ss. 3–7 repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

[^{F4}6 Appointment of guardians.

- (1) At the end of section 3 of the 1971 Act (rights of surviving parent as to guardianship) there shall be added the following subsections—

“(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.”

- (2) At the end of section 4 of that Act (power of father and mother to appoint testamentary guardians) there shall be added the following subsection—

“(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.”

- (3) At the end of section 5 of that Act (power of court to appoint guardian for child having no parent etc.) there shall be added the following subsection—

“(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”.”]

Textual Amendments

F4 Ss. 3–7 repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

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[^{F5}7] **Rights with respect to adoption.**

(1) In section 18 of the ^{M6}Adoption Act 1976 (which relates to orders declaring a child free for adoption), for subsection (7) there shall be substituted the following subsection—

“(7) Before making an order under this section in the case of a child whose father and mother were not married to each other at the time of his birth and whose father is not his guardian, the court shall satisfy itself in relation to any person claiming to be the father that either—

- (a) he has no intention of making—
 - (i) an application under section 4 of the Family Law Reform Act 1987 for an order giving him all the parental rights and duties with respect to the child; or
 - (ii) an application under any other enactment for an order giving him a right to custody, legal or actual custody or care and control of the child; or
- (b) if he did make such an application, the application would be likely to be refused.”

(2) In section 72(1) of that Act (interpretation), in the definition of “guardian” for paragraph (b) there shall be substituted the following paragraph—

- “(b) in the case of a child whose father and mother were not married to each other at the time of his birth, includes the father where—
- (i) 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
 - (ii) 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 enactment.”]

Textual Amendments

F5 Ss. 3–7 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

Marginal Citations

M6 1976 c. 36.

8 **Rights where child in care etc.**

(1) In section 70 of the Children and Young Persons Act 1969 (interpretation), after subsection (1) there shall be inserted the following subsection—

“(1A) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, an order of any court is in force giving the right to the actual custody of the child to the father, any reference in this Act to the parent of the child includes, unless the contrary intention appears, a reference to the father.

In this subsection “actual custody”, in relation to a child, means actual possession of his person.”

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(2) In section 8 of the ^{M7}Child Care Act 1980 (application of Part I to children subject to orders of court), for subsection (2) there shall be substituted the following subsections—

“(2) Subject to subsection (3) below, where an order of any court is in force giving the right to the actual custody of a child to any person, the provisions of this Part of this Act shall have effect in relation to the child as if for references to the parents or guardians of the child or to a parent or guardian of his there were substituted references to that person.

(3) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, an order is in force under section 4 of the Family Law Reform Act 1987 by virtue of which actual custody is shared between the mother and the father, both the mother and the father shall be treated as parents of the child for the purposes of the provisions of this Part.

(4) In this section “actual custody”, in relation to a child, means actual possession of his person.”

(3) In section 13 of that Act (penalty for assisting children in care to run away etc.), for subsection (4) there shall be substituted the following subsection—

“(4) Subsections (2) and (3) of section 8 of this Act shall apply for the purposes of this section as they apply for the purposes of the provisions of Part I of this Act.”

(4) In section 24 of that Act (emigration of children), after subsection (4) there shall be inserted the following subsection—

“(4A) Subsection (2) and (3) of section 8 of this Act shall apply for the purposes of the provisions of Part I of this Act.”

(5) At the end of section 64 of that Act (transfer of parental rights and duties to voluntary organisations) there shall be added the following subsection—

“(8) Subsections (2) and (3) of section 8 of this Act shall apply for the purposes of this section and section 65 of this Act as they apply for the purposes of the provisions of Part I of this Act.”

Marginal Citations

M7 1980 c. 5

[^{F69} Consent to marriages.

In Schedule 2 to the Marriage Act 1949 (consents required to marriages of persons under eighteen), for Part II there shall be substituted the following provisions—

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“II.

WHERE THE PARENTS OF THE CHILD WERE NOT MARRIED TO EACH OTHER AT THE TIME OF HIS BIRTH

<i>Circumstances</i>	<i>Person or persons whose consent is required</i>
1. Where both parents are alive:	
(a) if the father has been given by an order of any court the right to the actual custody of the child or the right to consent to the marriage of the child, or both those rights;	The mother and the father.
(b) if the father has not been given either of those rights.	The mother.
2. Where the mother is dead:	
(a) if the father is a guardian under the Guardianship of Minors Act 1971 and there is no other guardian;	The father.
(b) if the father is a guardian as mentioned in paragraph (a) above and another guardian has been appointed by the mother or by the court under the Guardianship of Minors Act 1971;	The father and the guardian if acting jointly, or the father or the guardian if the father or guardian is the sole guardian of the child.
(c) if the father is not a guardian and a guardian has been appointed by the mother or by the court under the Guardianship of Minors Act 1971.	The guardian.
3. Where the father is dead:	
(a) if there is no other guardian;	The mother.
(b) if a guardian has been appointed by the father or by the court under the Guardianship of Minors Act 1971.	The mother and the guardian if acting jointly, or the mother or the guardian if the mother or guardian is the sole guardian of the child.
4. Where both parents are dead.	The guardian or guardians appointed by the mother or father or by the court under the Guardianship of Minors Act 1971.

In this Part of this Schedule “actual custody”, in relation to a child, means actual possession of his person.”]

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Textual Amendments

- F6** Ss. 9–16 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

Orders for custody

10 Orders for custody on application of either parent.

For section 9 of the 1971 Act and the heading preceding that section there shall be substituted the following heading and section—

“ Orders for custody and financial relief

9 Orders for custody on application of either parent

- (1) The court may, on the application of either parent of a child, make such order regarding—
- (a) the legal custody of the child; and
 - (b) access to the child by either parent,
- as the court thinks fit; and an order under this section may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.
- (2) An order under this section—
- (a) shall not give legal custody to a person other than a parent of the child; and
 - (b) shall not be made at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.”

11 Orders for custody in guardianship cases.

For sections 10 and 11 of the 1971 Act there shall be substituted the following section—

“10 Orders for custody in guardianship cases.

- (1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make such order regarding—
- (a) the legal custody of the child; and
 - (b) access to the child by the parent,
- as the court thinks fit; and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order previously made.

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- (2) The powers of this court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—
- (a) power to make such order regarding—
 - (i) the legal custody of the child; and
 - (ii) access to the child by the parent, as the court thinks fit; and
 - (b) power to vary or discharge any order previously made by virtue of this subsection.
- (3) An order shall not be made under or by virtue of this section at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.”

[^{F7} Orders for financial relief]

Textual Amendments

F7 Ss. 9–16 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

12 Orders for financial relief on application of either parent.

After section 11A of the 1971 Act there shall be inserted the following section—

“11B Orders for financial relief on application of either parent.

- (1) The court may, on the application of either parent of a child, make—
- (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (2) of this section;
 - (b) in the case of proceedings in a magistrates’ court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;
- and an order mentioned in paragraph (a) or (b) of that subsection may be varied or discharged on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.
- (2) The orders referred to in subsection (1) of this section are—
- (a) an order requiring one parent to make to the other parent for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;
 - (b) an order requiring one parent to secure to the other parent for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;
 - (c) an order requiring one parent to pay to the other parent for the benefit of the child, or to the child, such lump sum as may be so specified;
 - (d) an order requiring either parent to transfer to the other parent for the benefit of the child, or to the child, such property as may be so specified, being property to which the first-mentioned parent is entitled, either in possession or reversion;

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- (e) an order requiring that a settlement of such property as may be so specified, being property to which either parent is so entitled, be made to the satisfaction of the court for the benefit of the child.”

[^{F8}13 Orders for financial relief in guardianship cases.

After section 11B of the 1971 Act there shall be inserted the following section—

“ Orders for financial relief in guardianship cases.

- (1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make—
 - (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;
 - (b) in the case of proceedings in a magistrates’ court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;
 and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.
- (2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—
 - (a) power to make—
 - (i) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;
 - (ii) in the case of proceedings in a magistrates’ court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection; and
 - (b) power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.
- (3) The orders referred to in subsections (1) and (2) of this section are—
 - (a) an order requiring the parent to make to the guardian or other guardian for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;
 - (b) an order requiring the parent to secure to the guardian or other guardian for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;
 - (c) an order requiring the parent to pay to the guardian or other guardian for the benefit of the child, or to the child, such lump sum as may be so specified;
 - (d) an order requiring the parent to transfer to the guardian or other guardian for the benefit of the child, or to the child, such property as may be so specified, being property to which the parent is entitled, either in possession or reversion;
 - (e) an order requiring that a settlement of such property as may be so specified, being property to which the parent is so entitled, be made to the satisfaction of the court for the benefit of the child.”]

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Textual Amendments

- F8** Ss. 9–16 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

[^{F9}14] Orders for financial relief for persons over eighteen.

After section 11C of the 1971 Act there shall be inserted the following section—

“ Orders for financial relief for persons over eighteen.

- (1) If, on an application by a person who has attained the age of eighteen and whose parents are not living with each other in the same household, it appears to the High Court or a county court—
 - (a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or
 - (b) that there are special circumstances which justify the making of an order under this section,
 the court may make one or both of the orders mentioned in subsection (2) of this section.
- (2) The orders referred to in subsection (1) of this section are—
 - (a) an order requiring either or both of the applicant’s parents to pay to the applicant such periodical payments, and for such term, as may be specified in the order; and
 - (b) an order requiring either or both of the applicant’s parents to pay to the applicant such lump sum as may be so specified.
- (3) An application may not be made under this section by any person if, immediately before he attained the age of sixteen, a periodical payments order was in force with respect to him.
- (4) No order shall be made under this section at a time when the parents of the applicant are living with each other in the same household.
- (5) Any order made under this section requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.
- (6) An order under this section requiring the making of periodical payments may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (7) In subsection (3) of this section “periodical payments order” means an order made under—
 - (a) this Act,
 - (b) section 6(3) of the Family Law Reform Act 1969,
 - (c) section 23 or 27 of the Matrimonial Causes Act 1973,
 - (d) section 34 of the Children Act 1975, or

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(e) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978, for the making or securing of periodical payments.”]

Textual Amendments

F9 Ss. 9–16 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

[^{F10} *Alteration of maintenance agreements*]

Textual Amendments

F10 Ss. 9–16 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

15 Alteration during lives of parties.

- (1) In this section and section 16 below “maintenance agreement” means any agreement in writing made in respect of a child, whether before or after the commencement of this section, being an agreement which—
- (a) is or was made between the father and mother of the child; and
 - (b) contains provision in respect of the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child;
- and any such provisions are in this section and that section referred to as “financial arrangements”.
- (2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then subject to subsection (4) below, either party may apply to the High Court, a county court or a magistrates' court for an order under this section.
- (3) If the court to which the application is made is satisfied either—
- (a) that, by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or
 - (b) that the agreement does not contain proper financial arrangements with respect to the child,
- then, subject to subsections (4) and (5) below, that court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to that court to be just having regard to all the circumstances; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.
- (4) A magistrates' court shall not entertain an application under subsection (2) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident in the commission area (within the meaning of the Justices

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of the ^{M8}Peace Act 1979) for which the court is appointed, and shall not have power to make any order on such an application except—

- (a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;
 - (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.
- (5) Where a court decides to alter an agreement, by an order under this section—
- (a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child, or
 - (b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which under the agreement as altered by the order the payments or, as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of subsections (1) and (2) of section 12 of the 1971 Act as if the order were an order under section 11B(2)(a) or (b) of that Act.

- (6) For the avoidance of doubt it is hereby declared that nothing in this section affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

Marginal Citations

M8 1979 c. 55.

[^{F11}16 Alteration after death of one party.

- (1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of the child and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the High Court or a county court for an order under section 15 above.
- (2) An application under this section shall not, except with the permission of the High Court or a county court, be made after the end of a period of six months from the date on which representation in regard to the estate of the deceased is first taken out.
- (3) A county court shall not entertain an application under this section, or an application for permission to make an application under this section, unless it would have jurisdiction to hear and determine proceedings for an order under section 2 of the ^{M9}Inheritance (Provision for Family and Dependants) Act 1975 in relation to the deceased's estate by virtue of section 25 of the ^{M10}County Courts Act 1984 (jurisdiction under the said Act of 1975).
- (4) If a maintenance agreement is altered by a court on an application under this section the like consequences shall ensue as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

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- (5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (6) In considering for the purposes of subsection (2) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.]

Textual Amendments

F11 Ss. 9–16 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

Marginal Citations

M9 1975 c. 63.

M10 1984 c. 28.

Supplemental

17 Abolition of affiliation proceedings.

The ^{M11}Affiliation Proceedings Act 1957 (the provisions of which are superseded by this Part) shall cease to have effect.

Marginal Citations

M11 1957 c. 55.

PART III

PROPERTY RIGHTS

18 Succession on intestacy.

- (1) In Part IV of the Administration of Estates Act 1925 (which deals with the distribution of the estate of an intestate), references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 above.
- (2) For the purposes of subsection (1) above and that Part of that Act, a person whose father and mother were not married to each other at the time of his birth shall be presumed not to have survived by his father, or by any person related to him only through his father, unless the contrary is shown.

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Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

- (3) In section 50(1) of that Act (which relates to the construction of documents), the reference to Part IV of that Act, or to the foregoing provisions of that Part, shall in relation to an instrument inter vivos made, or a will or codicil coming into operation, after the coming into force of this section (but not in relation to instruments inter vivos made or wills or codicils coming into operation earlier) be construed as including references to this section.
- (4) This section does not affect any rights under the intestacy of a person dying before the coming into force of this section.

19 Dispositions of property.

- (1) In the following dispositions, namely—
 - (a) dispositions inter vivos made on or after the date on which this section comes into force; and
 - (b) dispositions by will or codicil where the will or codicil is made on or after that date,references (whether express or implied) to any relationship between two persons shall be construed in accordance with section 1 above.
- (2) It is hereby declared that the use, without more, of the word “heir” or “heirs” or any expression which is used to create an entailed interest in real or personal property does not show a contrary intention for the purposes of section 1 as applied by subsection (1) above.
- (3) In relation to the dispositions mentioned in subsection (1) above, section 33 of the ^{M12}Trustee Act 1925 (which specifies the trust implied by a direction that income is to be held on protective trusts for the benefit of any person) shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with section 1 above.
- (4) Where under any disposition of real or personal property, any interest in such property is limited (whether subject to any preceding limitation or charge or not) in such a way that it would, apart from this section, devolve (as nearly as the law permits) along with a dignity or title of honour, then—
 - (a) whether or not the disposition contains an express reference to the dignity or title of honour; and
 - (b) whether or not the property or some interest in the property may in some event become severed from it,nothing in this section shall operate to sever the property or any interest in it from the dignity or title, but the property or interest shall devolve in all respects as if this section had not been enacted.
- (5) This section is without prejudice to section 42 of the ^{M13}Adoption Act 1976 (construction of dispositions in cases of adoption).
- (6) In this section “disposition” means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will or codicil.
- (7) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date on which this section comes into force shall not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

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Marginal Citations

M12 1925 c. 19.

M13 1976 c. 36.

20 No special protection for trustees and personal representatives.

Section 17 of the ^{M14}Family Law Reform Act 1969 (which enables trustees and personal representatives to distribute property without having ascertained that no person whose parents were not married to each other at the time of his birth, or who claims through such a person, is or may be entitled to an interest in the property) shall cease to have effect.

Marginal Citations

M14 1969 c. 46.

21 Entitlement to grant of probate etc.

- (1) For the purpose of determining the person or persons who would in accordance with probate rules be entitled to a grant of probate or administration in respect of the estate of a deceased person, the deceased shall be presumed, unless the contrary is shown, not to have been survived—
 - (a) by any person related to him whose father and mother were not married to each other at the time of his birth; or
 - (b) by any person whose relationship with him is deduced through such a person as is mentioned in paragraph (a) above.
- (2) In this section “probate rules” means rules of court made under section 127 of the ^{M15}Supreme Court Act 1981.
- (3) This section does not apply in relation to the estate of a person dying before the coming into force of this section.

Marginal Citations

M15 1981 c. 54.

PART IV

DETERMINATION OF RELATIONSHIPS

22 Declarations of parentage.

For section 56 of the ^{M16}Family Law Act 1986 (declarations of legitimacy or legitimation) there shall be substituted the following section—

Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

“56 Declarations of parentage, legitimacy or legitimation.

- (1) Any person may apply to the court for a declaration—
 - (a) that a person named in the application is or was his parent; or
 - (b) that he is the legitimate child of his parents.
- (2) Any person may apply to the court for one (or for one or, in the alternative, the other) of the following declarations, that is to say—
 - (a) a declaration that he has become a legitimated person;
 - (b) a declaration that he has not become a legitimated person.
- (3) A court shall have jurisdiction to entertain an application under this section if, and only if, the applicant—
 - (a) is domiciled in England and Wales on the date of the application; or
 - (b) has been habitually resident in England and Wales throughout the period of one year ending with that date.
- (4) Where a declaration is made on an application under subsection (1) above, the prescribed officer of the court shall notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of that declaration.
- (5) In this section “legitimated person” means a person legitimated or recognised as legitimated—
 - (a) under section 2 or 3 of the Legitimacy Act 1976;
 - (b) under section 1 or 8 of the Legitimacy Act 1926; or
 - (c) by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of England and Wales and effected under the law of another country.”

Marginal Citations

M16 1986 c. 55.

23 Provisions as to scientific tests.

- (1) For subsections (1) and (2) of section 20 of the ^{M17}Family Law Reform Act 1969 (power of court to require use of blood tests) there shall be substituted the following subsections—
 - “(1) In any civil proceedings in which the parentage of any person fails to be determined, the court may, either of its own motion or on an application by any party to the proceedings, give a direction—
 - (a) for the use of scientific tests to ascertain whether such tests show that a party to the proceedings is or is not the father or mother of that person; and
 - (b) for the taking, within a period specified in the direction, of bodily samples from all or any of the following, namely, that person, any party who is alleged to be the father or mother of that person and any other party to the proceedings;

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Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

and the court may at any time revoke or vary a direction previously given by it under this subsection.

(2) The person responsible for carrying out scientific tests in pursuance of a direction under subsection (1) above shall make to the court a report in which he shall state—

- (a) the results of the tests;
- (b) whether any party to whom the report relates is or is not excluded by the results from being the father or mother of the person whose parentage is to be determined; and
- (c) in relation to any party who is not so excluded, the value, if any, of the results in determining whether that party is the father or mother of that person;

and the report shall be received by the court as evidence in the proceedings of the matters stated in it.

(2A) Where the proceedings in which the parentage of any person fails to be determined are proceedings on an application under section 56 of the Family Law Act 1986, any reference in subsection (1) or (2) of this section to any party to the proceedings shall include a reference to any person named in the application.”

(2) In section 25 of that Act (interpretation of Part III)—

(a) for the definitions of “blood samples” and “blood tests” there shall be substituted the following definition—

““bodily sample” means a sample of bodily fluid or bodily tissue taken for the purpose of scientific tests;”;

(b) after the definition of “excluded” there shall be inserted the following definition—

““scientific tests” means scientific tests carried out under this Part of this Act and made with the object of ascertaining the inheritable characteristics of bodily fluids or bodily tissue.”

Marginal Citations

M17 1969 c. 46.

PART V

REGISTRATION OF BIRTHS

24 Registration of father where parents not married.

For section 10 of the ^{M18}Births and Deaths Registration Act 1953 (in this Act referred to as “the 1953 Act”) there shall be substituted the following section—

Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

“10 Registration of father where parents not married.

- (1) Notwithstanding anything in the foregoing provisions of this Act, in the case of a child whose father and mother were not married to each other at the time of his birth, no person shall as father of the child be required to give information concerning the birth of the child, and the registrar shall not enter in the register the name of any person as father of the child except—
 - (a) at the joint request of the mother and the person stating himself to be the father of the child (in which case that person shall sign the register together with the mother; 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 stating himself to be the father of the child; or
 - (c) at the request of that person on production of—
 - (i) a declaration in the prescribed form by that person stating himself to be the father of the child; and
 - (ii) a statutory declaration made by the mother stating that that person is the father of the child; or
 - (d) at the request of the mother or that person (which shall in either case be made in writing) on production of—
 - (i) a certified copy of a relevant order; and
 - (ii) if the child has attained the age of sixteen, the written consent of the child to the registration of that person as his father.
- (2) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, a person stating himself to be the father of the child makes a request to the registrar in accordance with paragraph (c) or (d) of subsection (1) of this section—
 - (a) he shall be treated as a qualified informant concerning the birth of the child for the purposes of this Act; and
 - (b) the giving of information concerning the birth of the child by that person and the signing of the register by him in the presence of the registrar shall act as a discharge of any duty of any other qualified informant under section 2 of this Act.
- (3) In this section and section 10A of this Act references to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987 and “relevant order”, in relation to a request under subsection (1)(d) that the name of any person be entered in the register as father of a child, means any of the following orders, namely—
 - (a) an order under section 4 of the said Act of 1987 which gives that person all the parental rights and duties with respect to the child;
 - (b) an order under section 9 of the Guardianship of Minors Act 1971 which gives that person any parental right with respect to the child; and
 - (c) an order under section 11B of that Act which requires that person to make any financial provision for the child.”

Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

Marginal Citations

M18 1953 c. 20.

25 Re-registration where parents not married.

For section 10A of the 1953 Act there shall be substituted the following section—

“10A Re-registration where parents not married.

- (1) Where there has been registered under this Act the birth of a child whose father and mother were not married to each other at the time of the birth, but no person has been registered as the father of the child, 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 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 stating himself to be the father of the child; or
 - (c) at the request of that person on production of—
 - (i) a declaration in the prescribed form by that person stating himself to be the father of the child; and
 - (ii) a statutory declaration made by the mother stating that that person is the father of the child; or
 - (d) at the request of the mother or that person (which shall in either case be made in writing) on production of—
 - (i) a certified copy of a relevant order; and
 - (ii) if the child has attained the age of sixteen, 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 shall sign the register;
 - (b) in the case of a request under paragraph (a) or (b) of subsection (1) of this section, or a request under paragraph (d) of that subsection made by the mother of the child, the mother shall also sign the register;
 - (c) in the case of a request under paragraph (a) or (c) of that subsection, or a request made under paragraph (d) of that subsection by the person requesting to be registered as the father of the child, that person shall also sign the register; and
 - (d) if the re-registration takes place more than three months after the birth, the superintendent registrar shall also sign the register.”

26 Re-registration after declaration of parentage.

After section 14 of the 1953 Act there shall be inserted the following section—

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Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

“14A Re-registration after declaration of parentage.

- (1) Where, in the case of a person whose birth has been registered in England and Wales—
 - (a) the Registrar General receives, by virtue of section 56(4) of the Family Law Act 1986, a notification of the making of a declaration of parentage in respect of that person; and
 - (b) it appears to him that the birth of that person should be re-registered, he shall authorise the re-registration of that person’s birth, and the re-registration shall be effected in such manner and at such place as may be prescribed.
- (2) This section shall apply with the prescribed modifications in relation to births at sea of which a return is sent to the Registrar General.”

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

27 Artificial insemination.

- (1) Where after the coming into force of this section a child is born in England and Wales as the result of the artificial insemination of a woman who—
 - (a) was at the time of the insemination a party to a marriage (being a marriage which had not at that time been dissolved or annulled); and
 - (b) was artificially inseminated with the semen of some person other than the other party to that marriage,then, unless it is proved to the satisfaction of any court by which the matter has to be determined that the other party to that marriage did not consent to the insemination, the child shall be treated in law as the child of the parties to that marriage and shall not be treated as the child of any person other than the parties to that marriage.
- (2) Any reference in this section to a marriage includes a reference to a void marriage if at the time of the insemination resulting in the birth of the child both or either of the parties reasonably believed that the marriage was valid; and for the purposes of this section it shall be presumed, unless the contrary is shown, that one of the parties so believed at that time that the marriage was valid.
- (3) Nothing in this section shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.

Modifications etc. (not altering text)

- C3** S. 27 excluded (1.8.1991) by [Human Fertilisation and Embryology Act 1990 \(c. 37, SIF 83:1\)](#), **ss. 39(3), 43(2), 49(4)**

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Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

28 Children of void marriages.

- (1) In subsection (1) of section 1 of the ^{M19}Legitimacy Act 1976 (legitimacy of children of certain void marriages), for the words “the act of intercourse resulting in the birth” there shall be substituted the words “the insemination resulting in the birth or, where there was no such insemination, the child’s conception”.
- (2) At the end of that section there shall be added the following subsections—
 - “(3) It is hereby declared for the avoidance of doubt that subsection (1) above applies notwithstanding that the belief that the marriage was valid was due to a mistake as to law.
 - (4) In relation to a child born after the coming into force of section 28 of the Family Law Reform Act 1987, it shall be presumed for the purposes of subsection (1) above, unless the contrary is shown, that one of the parties to the void marriage reasonably believed at the time of the insemination resulting in the birth or, where there was no such insemination, the child’s conception (or at the time of the celebration of the marriage if later) that the marriage was valid.”

Marginal Citations

M19 1976 c.31.

29 Evidence of paternity in civil proceedings.

- (1) Section 12 of the ^{M20}Civil Evidence Act 1968 (which relates to the admissibility in evidence in civil proceedings of the fact that a person has been adjudged to be the father of a child in affiliation proceedings) shall be amended as follows.
- (2) For paragraph (b) of subsection (1) there shall be substituted the following paragraph—
 - “(b) the fact that a person has been found to be the father of a child in relevant proceedings before any court in England and Wales or has been adjudged to be the father of a child in affiliation proceedings before any court in the United Kingdom;”
- (3) In subsection (2) for the words “to have been adjudged” there shall be substituted the words “to have been found or adjudged” and for the words “matrimonial or affiliation proceedings” there shall be substituted the words “other proceedings”.
- [^{F12}(4) In subsection (5) after the definition of “matrimonial proceedings” there shall be inserted the following definition—
 - ““relevant proceedings” means—
 - (a) proceedings on a complaint under section 42 of the National Assistance Act 1948 or section 26 of the Social Security Act 1986;
 - (b) proceedings on an application for an order under any of the following, namely—
 - (i) section 6 of the Family Law Reform Act 1969;
 - (ii) the Guardianship of Minors Act 1971;
 - (iii) section 34(1)(a), (b) or (c) of the Children Act 1975;

Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

- (iv) section 47 of the Child Care Act 1980; and
- (v) section 4 of the Family Law Reform Act 1987;
- (c) proceedings on an application under section 35 of the said Act of 1975 for the revocation of a custodianship order;”.]

Textual Amendments

F12 S. 29(4) repealed (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 124(3), 125(7), Sch. 20

Marginal Citations

M20 1968 c. 64.

Supplemental

30 Orders applying section 1 to other enactments.

- (1) The Lord Chancellor may by order make provision for the construction in accordance with section 1 above of such enactments passed before the coming into force of that section as may be specified in the order.
- (2) An order under this section shall so amend the enactments to which it relates as to secure that (so far as practicable) they continue to have the same effect notwithstanding the making of the order.
- (3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

31 Interpretation.

In this Act—

“the 1953 Act” means the ^{M21}Births and Deaths Registration Act 1953;

“the 1971 Act” means the ^{M22}Guardianship of Minors Act 1971;

“the 1973 Act” means the ^{M23}Guardianship Act 1973.

Marginal Citations

M21 1953 c. 20.

M22 1971 c. 3.

M23 1973 c. 29.

PROSPECTIVE

32 Text of 1971 Act as amended.

The 1971 Act (excluding consequential amendments of other enactments and savings) is set out in Schedule 1 to this Act as it will have effect, subject to sections

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Changes to legislation: There are currently no known outstanding effects for the Family Law Reform Act 1987. (See end of Document for details)

33(2) and 34(3) below, when all the amendments and repeals made in it by this Act come into force.

33 Amendments, transitional provisions, savings and repeals.

- (1) The enactments mentioned in Schedule 2 to this Act shall have effect subject to the amendments there specified, being minor amendments and amendments consequential on the provisions of this Act.
- (2) The transitional provisions and savings in Schedule 3 to this Act shall have effect.
- (3) The inclusion in this Act of any express saving or amendment shall not be taken as prejudicing the operation of sections 16 and 17 of the Interpretation Act 1978 (which relate to the effect of repeals).
- (4) The enactments mentioned in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

34 Short title, commencement and extent.

- (1) This Act may be cited as the Family Law Reform Act 1987.
- (2) This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint; and different days may be so appointed for different provisions or different purposes.
- (3) Without prejudice to the transitional provisions contained in Schedule 3 to this Act, an order under subsection (2) above may make such further transitional provisions as appear to the Lord Chancellor to be necessary or expedient in connection with the provisions brought into force by the order, including—
 - (a) such adaptations of the provisions so brought into force; and
 - (b) such adaptations of any provisions of this Act then in force,
 as appear to him necessary or expedient in consequence of the partial operation of this Act.
- (4) The following provisions of this Act extend to Scotland and Northern Ireland, namely—
 - (a) –section 33(1) and paragraphs 12, 13 and 74 of Schedule 2;
 - (b) –section 33(2) and paragraph 7 of Schedule 3 so far as relating to the operation of the ^{M24}Maintenance Orders Act 1950;
 - (c) –section 33(4) and Schedule 4 so far as relating to that Act and the Interpretation Act 1978; and
 - (d) –this section.
- (5) Subject to subsection (4) above, this Act extends to England and Wales only.

Subordinate Legislation Made

- P1** Power of appointment conferred by s. 34(2) partly exercised: [S.I. 1988/425](#), 1989/382
[S. 34\(2\)](#) power partly exercised (6.3.2001): 1.4.2001 appointed for specified provisions by [S.I. 2001/777](#), [art. 2](#)

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Changes to legislation: There are currently no known outstanding effects
for the Family Law Reform Act 1987. (See end of Document for details)

Marginal Citations

M24 1950 c. 37.

Status:

Point in time view as at 01/02/1991. This version of this Act contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Family Law Reform Act 1987.