



Children Act 1989

1989 CHAPTER 41

PART I

INTRODUCTORY

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 [^{F1}parent, guardian or special guardian of the child's was named in a child arrangements order as a person with whom the child was to live and] has died while the order was in force [^{F2}; or
 - (c) paragraph (b) does not apply, and the child's only or last surviving special guardian dies.]
- (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 [^{F3}; and a special guardian of a child may appoint another individual to be 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 ^{M1}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.

Changes to legislation: Children Act 1989, Section 5 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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 [F⁴child arrangements order was in force in which the person was named as a person with whom the child was to live or the person][F⁵was the child’s only (or last surviving) special guardian],
- 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 [F⁶child arrangements] order referred to in paragraph (b) of those subsections [F⁷also named] a surviving parent of the child [F⁸as a person with whom the child was to live].
- (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.

Textual Amendments

- F1** Words in s. 5(1)(b) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 2\(2\)](#); [S.I. 2014/889, art. 4\(f\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F2** S. 5(1)(c) and preceding word inserted (30.12.2005) by [2002 c. 38, ss. 115\(4\)\(a\)\(ii\), 148](#) (with [Sch. 4 paras. 6-8](#)); [S.I. 2005/2213, art. 2\(k\)](#)
- F3** Words in s. 5(4) inserted (30.12.2005) by [2002 c. 38, ss. 115\(4\)\(b\), 148](#) (with [Sch. 4 paras. 6-8](#)); [S.I. 2005/3213, art. 2\(k\)](#)
- F4** Words in s. 5(7)(b) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 2\(3\)](#); [S.I. 2014/889, art. 4\(f\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F5** Words in s. 5(7) inserted (30.12.2005) by [2002 c. 38, ss. 115\(4\)\(c\), 148](#) (with [Sch. 4 paras. 6-8](#)); [S.I. 2005/2213, art. 2\(k\)](#)
- F6** Words in s. 5(9) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 2\(4\)\(a\)](#); [S.I. 2014/889, art. 4\(f\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F7** Words in s. 5(9) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 2\(4\)\(b\)](#); [S.I. 2014/889, art. 4\(f\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))

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F8 Words in s. 5(9) inserted (22.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 2 para. 2\(4\)\(c\)](#); [S.I. 2014/889](#), art. 4(f) (with transitional provisions in [S.I. 2014/1042](#), arts. 3, 4, 6-10)

Commencement Information

I1 S. 5 except s. 5(11)(12) in force at 14.10.1991 by [S.I. 1991/828](#), [art. 3\(2\)](#) and s. 5(11)(12) wholly in force 1.2.1992 by [S.I. 1991/828](#), [art. 3](#) as amended by [S.I. 1991/1990](#), [art. 2](#).

Marginal Citations

M1 [1837 c. 26](#).

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(1A)(aa) inserted by 2009 c. 24 Sch. 6 para. 21(3)
- s. 4(1C) inserted by 2009 c. 24 Sch. 6 para. 21(4)
- s. 4ZA(2)(aa) inserted by 2009 c. 24 Sch. 6 para. 22(3)
- s. 4ZA(3A) inserted by 2009 c. 24 Sch. 6 para. 22(4)
- s. 8(4)(k) inserted by 2021 c. 17 s. 52(1)
- s. 31A(4A) inserted by 2014 c. 6 s. 15(2)(b)