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STATUTORY INSTRUMENTS

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**1995 No. 755**

**The Children (Northern Ireland) Order 1995**

**PART XV  
GUARDIANS**

**Appointment by court**

**159.**—(1) Where an application with respect to a child is made by any individual, the High Court or a county 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 residence order has been made with respect to the child in favour of a parent or guardian of his who has died while the order was in force.

(2) The power conferred by paragraph (1) may also be exercised in any family proceedings by the High Court or a county court if it considers that the order should be made even though no application has been made for it.

(3) Paragraph (1) shall not apply if the residence order referred to in sub-paragraph (b) of that paragraph was also made in favour of a surviving parent of the child.

(4) A person appointed as a guardian under this Article shall have parental responsibility for the child concerned.

(5) Subject to any provision made by rules of court, the High Court shall not exercise its inherent jurisdiction to appoint a guardian of the fortune or estate of any child.

(6) Where rules are made under paragraph (5), they may prescribe the circumstances in which, and conditions subject to which, an appointment of such a guardian may be made.

(7) A guardian may only be appointed in accordance with the provisions of this Article or Article 160.

**Appointment by parent or guardian**

**160.**—(1) 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.

(2) A guardian of a child may appoint another individual to take his place as the child's guardian in the event of his death.

(3) An appointment under paragraph (1) or (2) shall not have effect unless it is made—

- (a) by will or by deed; or
- (b) by a written and dated instrument which is signed—
  - (i) by the person making the appointment, or
  - (ii) at his direction, in his presence and in the presence of two witnesses each of whom attests the signature.

(4) A person appointed as a guardian under this Article shall have parental responsibility for the child concerned.

(5) Where—

- (a) on the death of any person making an appointment under paragraph (1) or (2), 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 residence order in his favour was in force with respect to the child,

the appointment shall take effect on the death of that person.

(6) Where, on the death of any person making an appointment under paragraph (1) or (2)—

- (a) the child concerned has a parent with parental responsibility for him; and
- (b) paragraph (5)(b) does not apply,

the appointment shall take effect when the child no longer has a parent who has parental responsibility for him.

(7) Paragraph (5) shall not apply if the residence order referred to in sub-paragraph (b) of that paragraph was also made in favour of a surviving parent of the child.

(8) Nothing in this Article shall be taken to prevent an appointment under paragraph (1) or (2) being made by two or more persons acting jointly.

#### **Revocation of appointment by parent or guardian**

**161.**—(1) An appointment under paragraph (1) or (2) of Article 160 revokes an earlier such appointment (including one made in an unrevoked will) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

(2) An appointment under paragraph (1) or (2) of Article 160 (including one made in an unrevoked will) is revoked if the person who made the appointment revokes it by a written and dated instrument which is signed—

- (a) by him; or
- (b) at his direction, in his presence and in the presence of two witnesses each of whom attests the signature.

(3) An appointment under paragraph (1) or (2) of Article 160 (other than one made in a will) is revoked if, with the intention of revoking the appointment, the person who made it—

- (a) destroys the instrument by which it was made; or
- (b) has some other person destroy that instrument in his presence.

(4) An appointment under paragraph (1) or (2) of Article 160 made in a will is revoked if the will is revoked.

(5) An appointment under paragraph (1) or (2) of Article 160 (including one made in an unrevoked will) is revoked if—

- (a) the marriage of the person who made the appointment is dissolved or annulled, and
- (b) the person appointed is his former spouse.

(6) Paragraph (5) is subject to a contrary intention appearing from the appointment.

(7) In paragraph (5)—

“dissolved or annulled” means—

- (a) dissolved by a decree of divorce or annulled by a decree of nullity of marriage granted under the law of any part of the United Kingdom or the Channel Islands or under the law of the Isle of Man, or
- (b) dissolved or annulled in any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man by a divorce or annulment which is entitled to be recognised as valid by the law of Northern Ireland;

“former spouse” means the person whose marriage with the person who made the appointment was so dissolved or annulled.

### **Disclaimer of appointment by parent or guardian**

**162.**—(1) A person who is appointed as a guardian under paragraph (1) or (2) of Article 160 may disclaim his appointment by an instrument in writing signed by him and made within a reasonable time of his first knowing that the appointment has taken effect.

(2) Where regulations are made by the Department of Finance and Personnel prescribing the manner in which such disclaimers must be recorded, no such disclaimer shall have effect unless it is recorded in the prescribed manner.

### **Termination by court**

**163.**—(1) Any appointment of a guardian under Article 159 or 160 may be brought to an end at any time by order of the court—

- (a) on the application of any person who has parental responsibility for the child;
- (b) on the application of the child concerned, with leave of the court; or
- (c) in any family proceedings, if the court considers that it should be brought to an end even though no application has been made.

(2) In paragraph (1) “the court” means the High Court and, except in relation to any appointment of a guardian under Article 159 by the High Court, a county court.