

## Appointment of Testamentary Guardians

### What do these words mean?

'APPOINTEE'	-	the person appointed to be guardian
'TESTATOR'	-	the person who makes a Will
'PARENTAL RESPONSIBILITY'	-	please see our separate Fact Sheet

The appointment of Guardians and the rights they have are governed by the Children Act 1989, s5. A Guardian can only be appointed in accordance with that section. A parent with Parental Responsibility may appoint a Guardian by Will or by a document which (s)he dates and signs and which provides that the appointment only take effect on his/her death.

The appointee will become the child's guardian if, at the death of the Testator:

1. no parent with Parental Responsibility survived him; **or**
2. there was a Residence Order in force in the sole favour of the Testator relating to the child.

If neither of these conditions is fulfilled, the appointee will not automatically become the child's Guardian but s(he) will be entitled to apply to the Court to be appointed Guardian. Notice of such an application must be given to every person who has Parental Responsibility.

Where a Testator has children under the age of 18, the appointment of Testamentary Guardians should always be considered. The expression 'Testamentary Guardian' merely indicates that the Guardian has been appointed by a Will.

It is usual (but not essential) that the same persons are appointed guardians of all the Testators minor children. When the Guardians are to act only after the death of the surviving parent it is desirable that each parent should appoint the same persons to act as Guardian.

It is, of course important that the Testator should obtain the consent of the proposed Guardian before making the appointment.

The appointed Guardian can appoint a successor. It is, however, unnecessary to make express provision in the Will because the Children Act 1989, s5(4) enables a Guardian to appoint another individual to take his/her place in the event of his/her death.