

Testamentary Guardianship

This page explains how, in law, a person can be appointed to act as a guardian for a child in the event of a parent's or a carer's death.

What is Testamentary Guardianship?

'Testamentary Guardianship' refers to the process whereby a guardian is appointed for a child by someone in the event of their death. The guardian may be, for example, a close relative such as a grandparent or sibling.

Once this takes effect, the guardian will have the responsibilities and duties towards the child akin to that of a parent.

The process for appointing a testamentary guardian and the rights which are conferred is governed by [section 5 Children Act 1989](http://www.legislation.gov.uk/ukpga/1989/41/section/5). (<http://www.legislation.gov.uk/ukpga/1989/41/section/5>).

Who can appoint a Testamentary Guardian?

- A parent who has Parental Responsibility for the child
- A guardian for the child
- A special guardian for the child

This means that an unmarried father without Parental Responsibility for the child cannot appoint a guardian unless and until he gets Parental Responsibility for the child. For more information see our page on [Parental Responsibility \(https://childlawadvice.org.uk/information-pages/parental-responsibility/\)](https://childlawadvice.org.uk/information-pages/parental-responsibility/).

How is a Testamentary Guardian appointed?

A testamentary guardian can be appointed:

- in a will; or
- in writing, dated and signed by the person making the appointment. It can also be signed by someone else following the directions of the person making the appointment.

There is no requirement to use a particular form of words. A statement such as "*In accordance with section 5 of the Children Act 1989 I appoint [X] to be the guardian of my child [Y]*" would suffice.

When does Testamentary Guardianship take effect?

On the death of the testator, a person appointed as a testamentary guardian will obtain Parental Responsibility for the child concerned when either of the following conditions is met:

- the child has no surviving parent with Parental Responsibility for him; or
- a child arrangements order or residence order was in force which named the testator as the person with whom the child was to live.

If there is a surviving parent with Parental Responsibility for the child and there is no order for residence, Parental Responsibility will not automatically transfer to the guardian.

The rules are slightly different where a special guardian appoints a testamentary guardian.

If the testator was the child's only (or last surviving) special guardian, the testamentary guardian appointment will take effect. This applies even if there is a parent with Parental Responsibility still living.

If there is another special guardian still living, the testamentary guardian appointment will not take effect.

For more information see our page on [Special Guardianship \(https://childlawadvice.org.uk/information-pages/special-guardianship/\)](https://childlawadvice.org.uk/information-pages/special-guardianship/). This is a complicated area of the law; if you have clarifying questions please contact us on 0300 330 5480.

What are the rights and responsibilities of a Testamentary Guardian?

Once a testamentary guardian is appointed, they will get 'Parental Responsibility' for the child. This is a legal term which grants the ability to have a say in important decisions affecting the child's long-term care and upbringing. For more information see our page on [Parental Responsibility \(https://childlawadvice.org.uk/information-pages/parental-responsibility/\)](https://childlawadvice.org.uk/information-pages/parental-responsibility/).

This process does not confer an automatic entitlement to have the child live with the testamentary guardian. An application to court for a Child Arrangements Order or a Special Guardianship Order is required to legally be recognised as the person with whom the child lives. That is not to say that the child is unable to live with the guardian in the absence of a court order. However, a court order would be necessary if there is a dispute over where the child is to live. For more information see our page on [Residence \(https://childlawadvice.org.uk/information-pages/residence/\)](https://childlawadvice.org.uk/information-pages/residence/).

Can the appointment of a Testamentary Guardian be discharged?

Any appointment of a guardian under section 5 may be brought to an end at any time by order of the court:

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

[Section 6 of the Children Act 1989 \(http://www.legislation.gov.uk/ukpga/1989/41/section/6\)](http://www.legislation.gov.uk/ukpga/1989/41/section/6) governs revocation/discharge of a Testamentary Guardian.