



Number 7 of 1964

GUARDIANSHIP OF INFANTS ACT 1964

REVISED

Updated to 31 December 2011

This Revised Act is an administrative consolidation of the *Guardianship of Infants Act 1964*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Nurses and Midwives Act 2011 (41/2011)*, enacted 21 December 2011, and all statutory instruments up to and including *Medical Council - Rules for the Maintenance of Professional Competence (No. 2) 2011 (S.I. No. 741 of 2011)*, made 14 December 2011, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



Number[7 of 2010]

GUARDIANSHIP OF INFANTS ACT 1964

REVISED

Updated to 31 December 2011

Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Guardianship of Children Acts 1964 to 1997: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Children Act 1997* (40/1997), s. 1(5)). The Acts in this group are:

- *Guardianship of Infants Act 1964* (7/1964)
- *Children Act 1997* (40/1997), except Part III

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Adoption Act 2010* (21/2010)
- *Health Act 2004* (42/2004)
- *Protection of Children (Hague Convention) Act 2000* (37/2000)
- *Children Act 1997* (40/1997)
- *Family Law (Divorce) Act 1996* (33/1996)
- *Family Law Act 1995* (26/1995)
- *Child Care Act 1991* (17/1991)

- *Judicial Separation and Family Law Reform Act 1989* (6/1989)
- *Status of Children Act 1987* (26/1987)
- *Courts (No. 2) Act 1986* (26/1986)
- *Age of Majority Act 1985* (2/1985)
- *Courts Act 1981* (11/1981)
- *Health Act 1970* (1/1970)
- *Succession Act 1965* (27/1965)

All Acts up to and including *Nurses and Midwives Act 2011* (41/2011), enacted 21 December 2011, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *District Court (Fees) Order 2011* (S. I. No. 408 of 2011)
- *Circuit Court (Fees) Order 2011* (S.I. No. 407 of 2011)
- *Supreme Court and High Court (Fees) Order 2011* (S.I. No. 406 of 2011)
- *Guardianship of Infants (Statutory Declaration) Regulations 1998* (S.I. No. 5 of 1998)

All statutory instruments up to and including *Medical Council - Rules for the Maintenance of Professional Competence (No. 2) 2011* (S.I. No. 741 of 2011), made 14 December 2011, were considered in the preparation of this revision.



Number 7 of 1964.

GUARDIANSHIP OF INFANTS ACT 1964

REVISED

Updated to 31 December 2011

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title.
2. Definitions.
3. Welfare of F1[**child**] to be paramount.
- 3A. Proof of paternity in certain proceedings.
4. Repeals.

PART II

GUARDIANSHIP

5. Jurisdiction in guardianship matters.
6. Rights of parents to guardianship.
- 6A. Power of court to appoint fathers as guardians.
 7. Power of father and mother to appoint testamentary guardians.
 8. Appointment and removal of guardians by court.
 9. Provisions where two or more guardians appointed.
10. Powers and duties of guardians.
 11. Applications to court.
 - 11A. Custody may be granted to father and mother jointly.
 - 11B. Relatives may apply for access to child.
 - 11C. Operation of order not to be stayed pending appeal unless so ordered.
 - 11D. Provisions relating to orders under sections 6A, 11, 14 and 16.
 12. Variation and discharge of court orders.

PART III

ENFORCEMENT OF RIGHT OF CUSTODY

13. Definitions for Part III.
14. Power of court as to production of F1[child].
15. Power to court to order repayment of costs of bringing up F1[child].
16. Court in making order to have regard to conduct of parent.
17. Power of court as to F1[child]'s religious education.
18. Custody where parents are separated.

SCHEDULE

ACTS REFERRED TO

Adoption Act, 1952	1952, No. 25.
Courts (Supplemental Provisions) Act, 1961	1961, No. 39.
Guardianship of Infants Act, 1886	1886, c. 27.
Wills Act, 1837	1837, c. 26.
Health Act, 1947	1947, No. 28.
Health Authorities Act, 1960	1960, No. 9.
Health Act, 1953	1953, No. 26.



Number 7 of 1964.

GUARDIANSHIP OF INFANTS ACT 1964

REVISED

Updated to 31 December 2011

AN ACT TO CONSOLIDATE WITH AMENDMENTS THE ENACTMENTS RELATING TO THE
CUSTODY AND GUARDIANSHIP OF INFANTS. [25th March, 1964.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

Annotations

Amendments:

- F1** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

Modifications (not altering text):

- C1** Jurisdiction to award costs under Act provided (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 43, commenced as per s. 1(2).

Cost of mediation and counselling services.

43.— The cost of any mediation services or counselling services provided for a spouse who is or becomes a party to proceedings under this Act, the Act of 1964 or the Act of 1989 or for a dependent member of the family of such a spouse shall be in the discretion of the court concerned.

- C2** Power to order report under Act provided (1.08.1996) by *Family Law Act 1995* (26/1995), s. 47(1) and (6)(a), S.I. No. 46 of 1996.

Social reports in family law proceedings.

47. —(1) In proceedings to which this section applies, the court may, of its own motion or on application to it in that behalf by a party to the proceedings, by order give such directions as it thinks proper for the purpose of procuring a report in writing on any question affecting the welfare of a party to the proceedings or any other person to whom they relate from —

(a) such probation and welfare officer (within the meaning of the Child Abduction and Enforcement of Custody Orders Act, 1991) as the Minister for Justice may nominate,

(b) such person nominated by a health board specified in the order as that board may nominate, being a person who, in the opinion of that board, is suitably qualified for the purpose,
or

(c) any other person specified in the order.

...

(6) Subsection (1) applies to proceedings —

(a) under the Act of 1964,

...

- C3** Enforcement of orders under Act (12.07.1986) provided by *Courts (No.2) Act 1986* (26/1986), s. 5, commenced on enactment, as amended (9.01.1998) by *Children Act 1997* (40/1997), s. 14(a) and (b), commenced as per s. 1(2). The *Fines Act 2010* (8/2010). ss. 3 and 6, table, ref. no. 1 applies to the fine in subs. (2).

Enforcement of certain orders under Guardianship of Infants Act 1964.

5.—(1) In this section “the Act of 1964” means the Guardianship of Infants Act, 1964, as amended by the Courts Act, 1981, [the Age of Majority Act, 1985, the Status of Children Act, 1987, and the Children Act, 1997].

(2) Without prejudice to the law as to contempt of court, where the District Court has made an order under [section 7, 11 or 11B] of the Act of 1964 containing a direction regarding—

- (a) the custody of an infant, or
- (b) the right of access to an infant,

any person having the actual custody of the infant who, having been given or shown a copy of the order and—

- (i) having been required, by or on behalf of a person to whom the custody of the infant is committed by the direction, to give up the infant to that person, or
- (ii) having been required, by or on behalf of a person entitled to access to the infant in accordance with the direction, to allow that person to have such access,

fails or refuses to comply with the requirement shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [£1,500] or, at the discretion of the Court, to imprisonment for a term not exceeding [twelve months] or to both such fine and such imprisonment.

...

- C4** Construction of certain references to 21 years not affected (1.03.1985) by *Age of Majority Act 1985* (2/1985), s. 2(4), commenced as per s. 9(2).

Reduction of age of majority.

2. — ...

(4) (a) This section does not affect the construction of any reference to the age of twenty-one years, or of any word or expression to which subsection (2) relates, in any statutory provision to which this subsection applies.

(b) This subsection applies to— ...

- (viii) any provision of the Illegitimate Children (Affiliation Orders) Act, 1930, the Guardianship of Infants Act, 1964, or the Family Law (Maintenance of Spouses and Children) Act, 1976, that provides for payments to be made for maintenance or support of children up to the age of twenty-one years,

...

- C5** Jurisdiction to make orders under Act restricted (12.05.1982) by *Courts Act 1981* (11/1981), s. 15(2), commenced as per s. 33(3).

Jurisdiction under Guardianship of Infants Act 1964.

15.— ...

(2) (a) Subject to paragraph (c) of this subsection, nothing in the Guardianship of Infants Act, 1964, as amended by subsection (1) of this section, shall be construed as conferring on the District Court jurisdiction to make an order under Part II or III of that Act in relation to which the High Court or the Circuit Court (except on appeal from the District Court) has made an order under the said Part II or the said Part III.

(b) Subject to paragraph (c) of this subsection, nothing in the Guardianship of Infants Act 1964, as amended by subsection (1) of this section, shall be construed as conferring on the Circuit Court jurisdiction to make an order under Part II or III of that Act in relation to which the High Court has made an order under the said Part II or III.

(c) The District Court and the Circuit Court may vary or revoke an order made by the High Court under the said Part II or the said Part III before the commencement of this section if—

(i) the circumstances to which the order of the High Court related have changed other than by reason of such commencement, and

(ii) in the case of a variation or revocation of such an order by the District Court, the provisions of the order would have been within the jurisdiction of that Court if this section had been in operation at the time of the making of the order.

Editorial Notes:

- E1** Provision for no fees being payable in proceedings under this Act made (22.08.2011) by *Supreme Court and High Court (Fees) Order 2011* (S.I. No. 406 of 2011), art. 6(1).
- E2** Provision for no fees being payable in proceedings in family law proceedings, any matrimonial cause or matter or proceedings brought by a health board or health authority in any matter relating to minors made (22.08.2011) by *Circuit Court (Fees) Order 2011* (S.I. No. 407 of 2011), art. 3.
- E3** Provision for no fees being payable in proceedings in family law proceedings, any matrimonial cause or matter or proceedings brought by a health board or health authority in any matter relating to minors made (22.08.2011) by *District Court (Fees) Order 2011* (S.I. No. 408 of 2011), art. 3.
- E4** Provision made for the Circuit Court to be known as the Circuit Family Court when exercising its jurisdiction to hear and determine family law proceedings or, where provided for, when transferring family law proceedings to the High Court (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 31, commenced as per s. 46(2).
- E5** Provision for separate hearing of proceedings under Act made (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 32, commenced as per s. 46(2).
- E6** Provision for conduct of proceedings under Act in the Circuit and High Courts to be informal made (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 33, commenced as per s. 46(2).
- E7** Provision for conduct of proceedings under Act in the District Court to be informal made (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 45, commenced as per s. 46(2).
- E8** Jurisdiction of local courts in cases under Act provided (12.05.1982) by *Courts Act 1981* (11/1981), s. 16, commenced as per s. 33(3).

PART I

PRELIMINARY AND GENERAL

Short title. **1.**—This Act may be cited as the Guardianship of Infants Act, 1964.

F2[Interpretation. **2.**—(1) In this Act, unless the context otherwise requires—
'the Act of 1987' means the Status of Children Act, 1987;

F3['adoption order' means—

(a) an adoption order within the meaning of the *Adoption Act 2010*; or

(b) an intercountry adoption effected outside the State and recognised under that Act;

and for the time being in force;]

‘child’ means a person who has not attained full age;

‘father’ includes a male adopter under an adoption order, but, subject to section 11(4), does not include the father of a child who has not married that child's mother unless either—

(a) an order under section 6A (inserted by the Act of 1987) is in force in respect of that child,

(b) the circumstances set out in subsection (3) of this section apply, or

(c) the circumstances set out in subsection (4) of this section apply;

‘maintenance’ includes education;

‘mother’ includes a female adopter under an adoption order;

‘parent’ means a father or mother as defined by this subsection;

‘testamentary guardian’ means a guardian appointed by deed or will;

‘welfare’, in relation to a child, comprises the religious, moral, intellectual, physical and social welfare of the child.

(2) A reference, however expressed, in this Act to a child whose father and mother have not married each other shall, except in a case to which subsection (3) relates, be construed in accordance with section 4 of the Act of 1987.

(3) (a) The circumstances referred to in paragraph (b) of the definition of ‘father’ in subsection (1) are that the father and mother of the child concerned have at some time gone through a ceremony of marriage and the ceremony resulted in—

(i) a voidable marriage in respect of which a decree of nullity was granted after, or at some time during the period of 10 months before, the birth of the child, or

(ii) a void marriage which the father reasonably believed (whether or not such belief was due to a mistake of law or of fact) resulted in a valid marriage—

(I) where the ceremony occurred before the birth of the child, at some time during the period of 10 months before that birth, or

(II) where the ceremony occurred after the birth of the child, at the time of that ceremony.

(b) It shall be presumed for the purposes of subparagraph (ii) of paragraph (a), unless the contrary is shown, that the father reasonably believed that the ceremony of marriage to which that subparagraph relates resulted in a valid marriage.

(4) The circumstances referred to in paragraph (c) of the definition of ‘father’ in subsection (1) are that the father and mother of the child concerned, not being a father or mother to whom the circumstances set out in subsection (3) apply—

(a) have not married each other,

(b) declare that they are the father and mother of the child concerned,

(c) agree to the appointment of the father as a guardian of the child,

(d) have entered into arrangements regarding the custody of and, as the case may be, access to the child, and

(e) have made a statutory declaration to that effect as may be prescribed by the Minister for Justice, Equality and Law Reform.

(5) In this Act—

(a) a reference to a Part or section is a reference to a Part or section of this Act, unless it is indicated that a reference to some other enactment is intended,

(b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(c) a reference to any enactment shall be construed as a reference to that enactment as amended by or under any subsequent enactment.]

Annotations

Amendments:

F2 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 4, commenced as per s. 1(2).

F3 Substituted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 162, S.I. No. 511 of 2010.

Modifications (not altering text):

C6 Definition of term “father” extended (1.01.2011) by *Protection of Children (Hague Convention) Act 2000* (37/2000), s. 3(2)(e), S.I. No. 650 of 2010.

Application of Convention in the State.

3.— ...

(2) ...

(e) The definition of “father” in section 2 (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964, shall include the father of a child who has, by virtue of Article 16, acquired parental responsibility corresponding to guardianship in relation to the child by operation of the law of a state other than the State, and section 8(4) (which provides that certain guardians may be removed from office only by the court), as so inserted, of that Act shall apply in relation to such a father.

Editorial Notes:

E9 Form of statutory declaration provided for in subs. (4)(e) prescribed (1.02.1998) by *Guardianship of Infants (Statutory Declaration) Regulations 1998* (S.I. No. 5 of 1998), reg. 3.

E10 Previous affecting provision: section substituted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 9, commenced as per s. 1(2)(b); superseded as per F-note above.

Welfare of
F4[child] to be
paramount.

3.—Where in any proceedings before any court the custody, guardianship or upbringing of a F4[child], or the administration of any property belonging to or held on trust for a F4[child], or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the F4[child] as the first and paramount consideration.

Annotations**Amendments:**

- F4** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

Proof of paternity
in certain
proceedings.

F5 **3A.**—Where in any proceedings before any court on an application for an order under this Act (other than so much of any proceedings as *section 15* of the Act of 1987 relates to) in respect of a **F6**[child] whose father and mother have not married each other, a person (being a party to the proceedings) is alleged to be, or alleges that he is, the father of the **F6**[child] but that allegation is not admitted by a party to the proceedings, the court shall not on that application make any final order which imposes any obligation or confers any right on that person unless it is proved on the balance of probabilities that he is the father of the **F6**[child]:

Provided that this section applies only where the fact that that person is or is not the father of the **F6**[child] is material to the proceedings.]

Annotations**Amendments:**

- F5** Inserted (14.06.1988) by *Status of Children Act 1987* (26/1987) s. 10, commenced as per s. 1(2)(b).
- F6** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

Repeals.

4.—Each enactment specified in the Schedule is hereby repealed to the extent indicated in the third column of the Schedule.

PART II

GUARDIANSHIP

Jurisdiction in
guardianship
matters.

F7 **5.**—(1) Subject to subsection (2) of this section, the jurisdiction conferred on a court by this Part may be exercised by the Circuit Court or the District Court.

(2) The District Court and the Circuit Court, on appeal from the District Court, shall not have jurisdiction to make an order under this Act for the payment of a periodical sum at a rate greater than **F8**[€150] per week towards the maintenance of a **F9**[child].

(3) The jurisdiction conferred by this Part is in addition to any other jurisdiction to appoint or remove guardians or as to the wardship of **F9**[children] or the care of **F9**[children]'s estates.]

Annotations**Amendments:**

- F7** Substituted (12.05.1982) by *Courts Act 1981* (11/1981) s. 15(1)(a), commenced as per s. 33(3).
- F8** Substituted (1.10.2002) by *Courts and Court Officers Act 2002* (15/2002), s. 21, S.I. No. 407 of 2002.
- F9** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

Editorial Notes:

- E11** Previous affecting provision: amount of weekly payment increased (15.08.1991) by *Courts Act 1991* (20/1991), s. 12, commenced as per s. 23(3).

Rights of parents to guardianship. **6.—(1)** The father and mother of a F10[child] shall be guardians of the F10[child] jointly.

(2) On the death of the father of a F10[child] the mother, if surviving, shall be guardian of the F10[child], either alone or jointly with any guardian appointed by the father or by the court.

(3) On the death of the mother of a F10[child] the father, if surviving, shall be guardian of the F10[child], either alone or jointly with any guardian appointed by the mother or by the court.

F11[(4) Where the mother of a child has not married the child's father, she, while living, shall alone be the guardian of the child, unless the circumstances set out in section 2(4) apply or there is in force an order under section 6A (inserted by the Act of 1987) or a guardian has otherwise been appointed in accordance with this Act.]

Annotations**Amendments:**

- F10** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).
F11 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 5, commenced as per s. 1(2).

Modifications (not altering text):

- C7** Application of Act not affected (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 10(2), commenced as per s. 1(2).

Effect of decree of divorce.**10.— ...**

(2) For the avoidance of doubt, it is hereby declared that the grant of a decree of divorce shall not affect the right of the father and mother of an infant, under section 6 of the Act of 1964, to be guardians of the infant jointly.

Editorial Notes:

- E12** Previous affecting provision: subs. (4) substituted (14.06.1988) by *Status of Children Act 1987* (26/1987) s. 11, in force per s. 1(2)(b); superseded as per F-note above.

F12[Power of court to appoint certain fathers as guardians.

6A.—F13[(1) Where the father and mother of a child have not married each other and have not made a declaration under section 2(4), or where the father was a guardian of the child by virtue of a declaration under section 2(4) but was removed from office under section 8(4), the court may, on the application of the father, by order, appoint the father to be a guardian of the child.]

(2) Without prejudice to the provisions of sections 5(3) (inserted by the *Courts Act, 1981*), 8 (4) and 12 of this Act, the appointment by the court under this section of the father of a F14[child] as his guardian shall not affect the prior appointment of any person as a guardian of the F14[child] under section 8 (1) of this Act unless the court otherwise orders.

(3) F15[...]

Annotations**Amendments:**

F12 Inserted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 12, commenced as per s. 1(2)(b).

F13 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 6(a), commenced as per s. 1(2).

F14 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

F15 Deleted (9.01.1998) by *Children Act 1997* (40/1997), s. 6(b), commenced as per s. 1(2).

Power of father
and mother to
appoint testamen-
tary guardians.

7.—(1) The father of a F16[**child**] may by deed or will appoint a person or persons to be guardian or guardians of the F16[**child**] after his death.

(2) The mother of an F16[**child**] may by deed or will appoint a person or persons to be guardian or guardians of the F16[**child**] after her death.

(3) A testamentary guardian shall act jointly with the surviving parent of the F16[**child**] so long as the surviving parent remains alive unless the surviving parent objects to his so acting.

(4) If the surviving parent so objects or if a testamentary guardian considers that the surviving parent is unfit to have the custody of the F16[**child**], the testamentary guardian may apply to the court for an order under this section.

(5) The court may—

(a) refuse to make an order (in which case the surviving parent shall remain sole guardian), or

(b) make an order that the testamentary guardian shall act jointly with the surviving parent, or

(c) make an order that he shall act as guardian of the F16[**child**] to the exclusion, so far as the court thinks proper, of the surviving parent.

(6) In the case mentioned in paragraph (c) of subsection (5) the court may make such order regarding the custody of the F16[**child**] and the right of access to the F16[**child**] of the surviving parent as the court thinks proper, and the court may further order that the surviving parent shall pay to the guardian or guardians, or any of them, towards the maintenance of the F16[**child**] such weekly or other periodical sum as, having regard to the means of the surviving parent, the court considers reasonable.

(7) F17[...]

(8) An appointment of a guardian by deed may be revoked by a subsequent deed or by will.

Annotations**Amendments:**

F16 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

F17 Repealed (1.01.1967) by *Succession Act 1965* (27/1965), s. 8 and sch. 2, S.I. No. 168 of 1966, subject to transitional provisions in s. 9.

Modifications (not altering text):

- C8** Power to make care order provided (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20, S.I. No. 258 of 1995 as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 9(2) and as amended (1.01.2005) by *Health Act 2004* (2/2004), s. 75 and sch. 7 part 6 item 19, S.I. No. 887 of 2004.

Proceedings under Guardianship of Infants Act, 1964, Judicial Separation and Family Law Reform Act, 1989, etc.

[20. —(1) Where in any proceedings under section 7, 8, 11, 11B or Part III of the Guardianship of Infants Act, 1964, or in any case to which—

- (a) section 3 (3) of the Judicial Separation and Family Law Reform Act, 1989,
- (b) section 6(b) or 10(f) of the Family Law Act, 1995, or
- (c) section 5(2), 11(b) or 41 of the Family Law (Divorce) Act, 1996,

relates, or in any other proceedings for the delivery or return of a child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any person, adjourn the proceedings and direct [the Health Service Executive] to undertake an investigation of the child's circumstances.]

...

Appointment and removal of guardians by court.

8.—(1) Where a F18[**child**] has no guardian, the court, on the application of any person or persons, may appoint the applicant or applicants or any of them to be the guardian or guardians of the F18[**child**].

(2) When no guardian has been appointed by a deceased parent or if a guardian so appointed dies or refuses to act, the court may appoint a guardian or guardians to act jointly with the surviving parent.

(3) A guardian appointed by the court to act jointly with a surviving parent shall continue to act as guardian after the death of the surviving parent.

F19[(4) A guardian appointed by will or deed or order of court, or holding office by virtue of the circumstances set out in section 2(4) (inserted by the *Children Act, 1997*) applying to him, may be removed from office only by the court.]

(5) The court may appoint another guardian in place of a guardian so removed or in place of a guardian appointed by any such order who dies.

Annotations**Amendments:**

- F18** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).
F19 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 7, commenced as per s. 1(2)

Modifications (not altering text):

- C9** Application of section extended (1.01.2011) by *Protection of Children (Hague Convention) Act 2000* (37/2000), s. 3(2)(e), S.I. No. 650 of 2010.

Application of Convention in the State.

3.— ...

(2) ...

- (e) The definition of "father" in section 2 (inserted by the *Children Act, 1997*) of the Guardianship of Infants Act, 1964, shall include the father of a child who has, by virtue

of Article 16, acquired parental responsibility corresponding to guardianship in relation to the child by operation of the law of a state other than the State, and section 8(4) (which provides that certain guardians may be removed from office only by the court), as so inserted, of that Act shall apply in relation to such a father.

...

C10 Power to make care order provided (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20, S.I. No. 258 of 1995 as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 9(2) and as amended (1.01.2005) by *Health Act 2004* (2/2004), s. 75 and sch. 7 part 6 item 19, S.I. No. 887 of 2004.

Proceedings under Guardianship of Infants Act, 1964, Judicial Separation and Family Law Reform Act, 1989, etc.

[20. —(1) Where in any proceedings under section 7, 8, 11, 11B or Part III of the Guardianship of Infants Act, 1964, or in any case to which—

(a) section 3 (3) of the Judicial Separation and Family Law Reform Act, 1989,

(b) section 6(b) or 10(f) of the Family Law Act, 1995, or

(c) section 5(2), 11(b) or 41 of the Family Law (Divorce) Act, 1996,

relates, or in any other proceedings for the delivery or return of a child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any person, adjourn the proceedings and direct [the Health Service Executive] to undertake an investigation of the child's circumstances.]

...

Provisions where two or more guardians appointed.

9.—(1) Where two or more persons are appointed to be guardians they shall act jointly and on the death of any of them the survivor or survivors shall continue to act.

(2) Where guardians are appointed by both parents the guardians so appointed shall after the death of the surviving parent act jointly.

Powers and duties of guardians.

10.—(1) Every guardian under this Act shall be a guardian of the person and of the estate of the F20[child] unless, in the case of a guardian appointed by deed, will or order of the court, the terms of his appointment otherwise provide.

(2) Subject to the terms of any such deed, will or order, a guardian under this Act—

(a) as guardian of the person, shall, as against every person not being, jointly with him, a guardian of the person, be entitled to the custody of the F20[child] and shall be entitled to take proceedings for the restoration of his custody of the F20[child] against any person who wrongfully takes away or detains the F20[child] and for the recovery, for the benefit of the F20[child], of damages for any injury to or trespass against the person of the F20[child];

(b) as guardian of the estate, shall be entitled to the possession and control of all property, real and personal, of the F20[child] and shall manage all such property and receive the rents and profits on behalf and for the benefit of the F20[child] until the F20[child] attains the age of twenty-one years or during any shorter period for which he has been appointed guardian and may take such proceedings in relation thereto as may by law be brought by any guardian of the estate of a F20[child].

(3) The provisions of this section are without prejudice to the provisions of any other enactment or to any other powers or duties conferred or imposed by law on parents, guardians or trustees of the property of F21[children].

Annotations**Amendments:**

F20 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

F21 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

Modifications (not altering text):

C11 The age of twenty-one years mentioned in subs. (2) was reduced to 18 years (1.03.1985) by *Age of Majority Act 1985* (2/1985), s. 2(3), commenced as per s. 9(2). Certain provisions of this 1964 Act are excluded by the *Age of Majority Act 1985*, s. 2(4), but they relate solely to maintenance liabilities.

Reduction of age of majority.

2.— ...

(3) Where there is, in any statutory provision passed or made before the commencement of this Act, a reference to the age of twenty-one years, such provision shall, subject to subsection (4), be construed and have effect as if the reference therein were a reference to full age.

...

Applications to court.

11.—(1) Any person being a guardian of a F22[**child**] may apply to the court for its direction on any question affecting the welfare of the F22[**child**] and the court may make such order as it thinks proper.

(2) The court may by an order under this section—

(a) give such directions as it thinks proper regarding the custody of the F22[**child**] and the right of access to the F22[**child**] of his father or mother;

(b) order the father or mother to pay towards the maintenance of the F22[**child**] such weekly or other periodical sum as, having regard to the means of the father or mother, the court considers reasonable.

F23[(3) An order under this section may be made on the application of either parent notwithstanding that the parents are then residing together, but an order made under paragraph (a) of subsection (2) shall not be enforceable and no liability thereunder shall accrue while they reside together, and the order shall cease to have effect if for a period of three months after it is made they continue to reside together.]

F24[(4) In the case of an F25[**child**] whose father and mother have not married each other, the right to make an application under this section regarding the custody of the F25[**child**] and the right of access thereto of his father or mother shall extend to the father who is not a guardian of the F25[**child**], and for this purpose references in this section to the father or parent of a F25[**child**] shall be construed as including him.]

F26[(5) The court may, of its own motion or on an application under this section, by an order under this section give such directions as it thinks proper to procure a report from such person as it may nominate on any question affecting the welfare of the F25[**child**].]

F27[(5) A reference in subsection (2)(b) to a child shall include a reference to a person who—

(a) has not attained the age of 18 years, or—

(b) has attained the age of 18 years and is or will be, or if any order were made under this Act providing for payment of maintenance for the benefit of the person, would be, receiving full-time education or instruction at a university,

college, school or other educational establishment, and who has not attained the age of 23 years.

(6) Subsection (2) (b) shall apply to and in relation to a person who has attained the age of 18 years and has a mental or physical disability to such extent that it is not reasonably possible for the person to maintain himself or herself fully, as it applies to a child.]

F26[(6) In deciding whether or not to request a report under subsection (5) of this section the court shall have regard to the wishes of the parties before the court where ascertainable but shall not be bound by the said wishes.

(7) A copy of any report prepared under subsection (5) shall be made available to the barrister or solicitor, if any, representing each party in the proceedings or, if any party is not so represented, to that party and may be received in evidence in the proceedings.

(8) Where any person prepares a report pursuant to a request under subsection (5) of this section, the fees and expenses of that person shall be paid by such party or parties to the proceedings as the court shall order.

(9) The court may, if it thinks fit, or either party to the proceedings may, call the person making the report as a witness.]

Annotations

Amendments:

- F22** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).
- F23** Substituted (1.03.1985) by *Age of Majority Act 1985* (2/1985), s. 6(a), commenced as per s. 9(2).
- F24** Substituted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 13, commenced as per s. 1(2)(b).
- F25** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).
- F26** Inserted (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 40, commenced as per s. 46(2).
- F27** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 8, commenced as per s. 1(2).

Modifications (not altering text):

- C12** Power to give directions under section provided (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 5(2), commenced as per s. 1(2).

Grant of decree of divorce and custody etc., of children.

5.— ...

(2) Upon the grant of a decree of divorce, the court may, where appropriate, give such directions under section 11 of the Act of 1964 as it considers proper regarding the welfare (within the meaning of that Act), custody of, or right of access to, any dependent member of the family concerned who is an infant (within the meaning of that Act) as if an application had been made to it in that behalf under that section.

- C13** Power to make an orders under section provided (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 11(b), commenced as per s. 1(2).

Preliminary orders in proceedings for divorce.

11.—Where an application is made to the court for the grant of a decree of divorce, the court, before deciding whether to grant or refuse to grant the decree, may, in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the following orders— ...

(b) an order under section 11 of the Act of 1964,

...

Miscellaneous ancillary orders.

15.—(1) On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make one or more of the following orders: ...

(f) an order under section 11 of the Act of 1964,

...

C14 Provision for certain orders made under subs. (2)(b) not to be stayed made (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 25(a), commenced as per s. 1(2).

Stay on certain orders the subject of appeal.

25.—Where an appeal is brought from an order under—

(a) section 11 (2) (b) of the Act of 1964,

...

the operation of the order shall not be stayed unless the court that made the order or to which the appeal is brought directs otherwise.

C15 Power to make orders under Act provided (1.08.1996) by *Family Law Act 1995* (26/1995), ss. 6(b) and 10(1)(f), S.I. No. 46 of 1996.

Preliminary orders in proceedings for judicial separation.

6.— Where an application is made to the court for the grant of a decree of judicial separation, the court, before deciding whether to grant or refuse to grant the decree, may, in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the following orders— ...

(b) an order under section 11 of the Act of 1964,

...

Miscellaneous ancillary orders.

10.— (1) On granting a decree of judicial separation, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make one or more of the following orders: ...

(f) an order under section 11 of the Act of 1964.

...

C16 Power to make care order provided (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20, S.I. No. 258 of 1995 as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 9(2) and as amended (1.01.2005) by *Health Act 2004* (2/2004), s. 75 and sch. 7 part 6 item 19, S.I. No. 887 of 2004.

Proceedings under Guardianship of Infants Act, 1964, Judicial Separation and Family Law Reform Act, 1989, etc.

[20. —(1) Where in any proceedings under section 7, 8, 11, 11B or Part III of the Guardianship of Infants Act, 1964, or in any case to which—

(a) section 3 (3) of the Judicial Separation and Family Law Reform Act, 1989,

(b) section 6(b) or 10(f) of the Family Law Act, 1995, or

(c) section 5(2), 11(b) or 41 of the Family Law (Divorce) Act, 1996,

relates, or in any other proceedings for the delivery or return of a child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any

person, adjourn the proceedings and direct [the Health Service Executive] to undertake an investigation of the child's circumstances.]

...

- C17** Power to make care order provided (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20, S.I. No. 258 of 1995 as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 9(2) and as amended (1.01.2005) by *Health Act 2004* (2/2004), s. 75 and sch. 7 part 6 item 19, S.I. No. 887 of 2004.

Proceedings under Guardianship of Infants Act, 1964, Judicial Separation and Family Law Reform Act, 1989, etc.

[20. —(1) Where in any proceedings under section 7, 8, 11, 11B or Part III of the Guardianship of Infants Act, 1964, or in any case to which—

(a) section 3 (3) of the Judicial Separation and Family Law Reform Act, 1989,

(b) section 6(b) or 10(f) of the Family Law Act, 1995, or

(c) section 5(2), 11(b) or 41 of the Family Law (Divorce) Act, 1996,

relates, or in any other proceedings for the delivery or return of a child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any person, adjourn the proceedings and direct [the Health Service Executive] to undertake an investigation of the child's circumstances.]

...

- C18** Power to make give directions under Act provided (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 3(3), commenced as per s. 46(2).

Grant of decree of judicial separation, custody, etc of children.

3.— ...

(3) Upon the granting of a decree of judicial separation by the court, the court may, where appropriate, by order give such directions under section 11 of the Guardianship of Infants Act, 1964, as it thinks proper regarding the welfare or custody of, or right of access to, an infant (being an infant within the meaning of that Act) as if an application had been made under that section.

- C19** Power to make an orders under Act provided (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 11(b) and 16(g), commenced as per s. 46(2).

Preliminary orders in judicial separation proceedings.

11.—After an application for a decree of judicial separation has been issued, the court, before deciding whether to grant or refuse to grant such decree, may if it appears to the court proper to do so make any one or more of the following orders— ...

(b) a custody or access order or other order on any question affecting the welfare of an infant pursuant to section 11 of the Guardianship of Infants Act, 1964 ;

...

Miscellaneous ancillary orders.

16.—On granting a decree of judicial separation or at any time thereafter, the court may, on application to it by either spouse, make any one or more of the following orders: ...

(g) an order under section 11 of the Guardianship of Infants Act, 1964 concerning any dependent child of the family.

Editorial Notes:

- E13** The duplicate numbering of subss. (5) and (6) appears in the original amendments. The *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 40, which inserted subss. (5) to (9) above, was repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch, S.I. No. 46 of 1996. The 1995 Act, s. 47 made alternative provision for social reports in proceedings, which would indicate that it was intended to repeal the versions of subss. (5) and (6) above which provide for welfare reports, and subss. (7) to (9) also dealing with welfare reports.
- E14** Previous affecting provision: subs. (5) inserted (1.03.1985) by *Age of Majority Act 1985* (2/1985), s. 6(b), commenced as per s. 9(2); substituted as per F-note above.

F28 [Custody may be granted to father and mother jointly.]

11A.—For the avoidance of doubt, it is hereby declared that the court, in making an order under section 11, may, if it thinks it appropriate, grant custody of a child to the child's father and mother jointly.]

Annotations**Amendments:**

- F28** Inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 9, commenced as per s. 1(2).

F29 [Relatives may apply for access to child.]

11B.—(1) Any person who—

(a) is a relative of a child, or,

(b) has acted *in loco parentis* to a child,

and to whom section 11 does not apply may, subject to subsection (3), apply to the court for an order giving that person access to the child on such terms and conditions as the court may order.

(2) A person may not make an application under subsection (1) unless the person has first applied for and has been granted by the court leave to make the application.

(3) In deciding whether to grant leave under subsection (1), the court shall have regard to all the circumstances, including in particular—

(a) the applicant's connection with the child,

(b) the risk, if any, of the application disrupting the child's life to the extent that the child would be harmed by it,

(c) the wishes of the child's guardians.

(4) In this section, a relative of a child who is the subject of an adoption order includes—

(a) a relative of the child's adoptive parents,

(b) the adoptive parents of the child's parents, or

(c) a relative of the adoptive parents of the child's parents.]

Annotations**Amendments:**

F29 Inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 9, commenced as per s. 1(2).

Modifications (not altering text):

C20 Power to make care order provided (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20, S.I. No. 258 of 1995 as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 9(2) and as amended (1.01.2005) by *Health Act 2004* (2/2004), s. 75 and sch. 7 part 6 item 19, S.I. No. 887 of 2004.

Proceedings under Guardianship of Infants Act, 1964, Judicial Separation and Family Law Reform Act, 1989, etc.

[20. —(1) Where in any proceedings under section 7, 8, 11, 11B or Part III of the Guardianship of Infants Act, 1964, or in any case to which—

(a) section 3 (3) of the Judicial Separation and Family Law Reform Act, 1989,

(b) section 6(b) or 10(f) of the Family Law Act, 1995, or

(c) section 5(2), 11(b) or 41 of the Family Law (Divorce) Act, 1996,

relates, or in any other proceedings for the delivery or return of a child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any person, adjourn the proceedings and direct [the Health Service Executive] to undertake an investigation of the child's circumstances.]

...

F30[Operation of order not to be stayed pending appeal unless so ordered.

11C.—The operation of an order under this Act shall not be stayed pending the outcome of an appeal against the order unless the court that made the order or the court to which the appeal is brought directs otherwise.]

Annotations**Amendments:**

F30 Inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 9, commenced as per s. 1(2).

F31[Provision relating to orders under sections 6A, 11, 14 and 16.

11D.—In considering whether to make an order under section 6A, 11, 14 or 16 the court shall have regard to whether the child's best interests would be served by maintaining personal relations and direct contact with both his or her father and mother on a regular basis.]

Annotations**Amendments:**

F31 Inserted (09.01.1998) by *Children Act 1997* (40/1997), s. 9, commenced as per s. 1(2).

Variation and discharge of court orders.

12.—The court may vary or discharge any order previously made by the court under this Part.

PART III

ENFORCEMENT OF RIGHT OF CUSTODY

Annotations**Modifications (not altering text):**

- C21** Power to make care order provided (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20, S.I. No. 258 of 1995 as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 9(2) and as amended (1.01.2005) by *Health Act 2004* (2/2004), s. 75 and sch. 7 part 6 item 19, S.I. No. 887 of 2004.

Proceedings under Guardianship of Infants Act, 1964, Judicial Separation and Family Law Reform Act, 1989, etc.

[20. —(1) Where in any proceedings under section 7, 8, 11, 11B or Part III of the Guardianship of Infants Act, 1964, or in any case to which—

- (a) section 3 (3) of the Judicial Separation and Family Law Reform Act, 1989,
- (b) section 6(b) or 10(f) of the Family Law Act, 1995, or
- (c) section 5(2), 11(b) or 41 of the Family Law (Divorce) Act, 1996,

relates, or in any other proceedings for the delivery or return of a child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any person, adjourn the proceedings and direct [the Health Service Executive] to undertake an investigation of the child's circumstances.]

...

Definitions for Part III.

13.—In this Part—

F32[‘the court’ means the Circuit Court or the District Court;];

“health authority” has the meaning assigned to it by subsection (1) of section 2 of the Health Act, 1947, as amended by section 9 of the Health Authorities Act, 1960;

“parent” includes a guardian of the person and any person at law liable to maintain a F33[child] or entitled to his custody;

“person” includes any school or institution.

Annotations**Amendments:**

- F32** Substituted (12.05.1982) by *Courts Act 1981* (11/1981), s. 15(1)(b), commenced as per s. 33(3).
- F33** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

Editorial Notes:

- E15** The *Health Authorities Act 1960* (9/1960), s. 9 mentioned in subs. (2) was repealed (1.04.1971) by *Health Act 1970* (1/1970), s. 3 and sch. 1, S.I. No. 90 of 1971.

Power of court as to production of F34[child].

14.—Where a parent of a F34[child] applies to the court for an order for the production of the F34[child] and the court is of opinion that that parent has abandoned or deserted the F34[child] or that he has otherwise so conducted himself that the court should refuse to enforce his right to the custody of the F34[child], the court may in its discretion decline to make the order.

Annotations**Amendments:**

F34 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

F35 [Power of Court to order repayment of costs of bringing up child.]

15.—(1) Where, upon application by a parent for the production of a child, the court finds that the child is being brought up at the expense of another person, the court may, in its discretion, if it orders that the child be given up to the parent, further order that the parent shall pay to that person the whole of the costs properly incurred by the person in bringing up the child or such portion of those costs as the court considers reasonable.

(2) Where, upon application by a parent for the production of a child, the court finds that—

- (a) assistance has been provided for the child at any time by a health authority under section 55 of the Health Act 1953,
- (b) the child has been maintained in the care of a health board under section 4 of the Child Care Act 1991 at any time before the amendment of that provision by the *Health Act 2004*, or
- (c) the child has been maintained in the care of the Health Service Executive under section 4 of the Child Care Act 1991 at any time after the amendment of that provision by the *Health Act 2004*,

the court may, in its discretion, if it orders that the child be given up to the parent, further order that the parent shall pay to the Health Service Executive the whole of the costs properly incurred by the health authority in providing such assistance or by the health board or the Executive in maintaining the child in care or such portion of those costs as the court considers reasonable.

(3) In determining the amount to be repaid under this section, the court shall have regard to the circumstances of the case including, in particular, the means of the parent.]

Annotations**Amendments:**

F35 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7 part 2, S.I. No. 887 of 2004, art. 2(j).

Editorial Notes:

E16 Previous affecting provision: par. (b) amended (31.10.1995) by *Child Care Act 1991* (17/1991), s. 76, S.I. No. 258 of 1995, superseded as per F-note above.

Court in making order to have regard to conduct of parent.

16.—Where a parent has—

- (a) abandoned or deserted a F36[child], or
- (b) allowed a F36[child] to be brought up by another person at that person's expense, or to be provided with assistance by a health authority under section 55 of the Health Act, 1953 or F37[to be maintained as described in section 15(2)(b) or (c) in the care of a health board or the Health Service Executive],

for such a length of time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties,

the court shall not make an order for the delivery of the F36[**child**] to the parent unless the parent has satisfied the court that he is a fit person to have the custody of the F36[**child**].

Annotations

Amendments:

F36 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

F37 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7 part 2, S.I. No. 887 of 2004, art. 2(j).

Editorial Notes:

E17 Previous affecting provision: para. (b) amended (31.10.1995) by *Child Care Act 1991* (17/1991), s. 77, S.I. No. 258 of 1995; subsequently substituted as per F-note above.

Power of court as to F38[**child's**] religious education.

17.—(1) Upon any application by a parent for the production or custody of a F38[**child**], if the court is of opinion that that parent ought not to have the custody of the F38[**child**], the court shall have power to make such order as it thinks fit to secure that the F38[**child**] be brought up in the religion in which the parents, or a parent, have or has a legal right to require that the F38[**child**] should be brought up.

(2) F39[...]

Annotations

Amendments:

F38 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

F39 Deleted (9.01.1998) by *Children Act 1997* (40/1997), s. 10, commenced as per s. 1(2).

Custody where parents are separated.

18.—F40[...]

(2) A provision contained in any separation agreement made between the father and mother of a F41[**child**] shall not be invalid by reason only of its providing that one of them shall give up the custody or control of the F41[**child**] to the other.

Annotations

Amendments:

F40 Repealed (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 41(3), commenced as per s. 46(2), subject to transitional provision in same subsection.

F41 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 12, commenced as per s. 1(2).

Modifications (not altering text):

C22 Power to make care order provided (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20, S.I. No. 258 of 1995 as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per

s. 9(2) and as amended (1.01.2005) by *Health Act 2004* (2/2004), s. 75 and sch. 7 part 6 item 19, S.I. No. 887 of 2004.

Proceedings under Guardianship of Infants Act, 1964, Judicial Separation and Family Law Reform Act, 1989, etc.

[20. —(1) Where in any proceedings under section 7, 8, 11, 11B or Part III of the Guardianship of Infants Act, 1964, or in any case to which—

(a) section 3 (3) of the Judicial Separation and Family Law Reform Act, 1989,

(b) section 6(b) or 10(f) of the Family Law Act, 1995, or

(c) section 5(2), 11(b) or 41 of the Family Law (Divorce) Act, 1996,

relates, or in any other proceedings for the delivery or return of a child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any person, adjourn the proceedings and direct [the Health Service Executive] to undertake an investigation of the child's circumstances.]

...

Editorial Notes:

E18 Previous affecting provision: words in subs. (1) substituted (12.05.1982) by *Courts Act 1981* (11/1981), s. 15(1)(c), commenced as per s. 33(3); subsequently superseded as per F-note above.

F42[PART IV

SAFEGUARDING INTERESTS OF CHILDREN]

Annotations

Amendments:

F42 Part IV (ss. 19-30) inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 11, this section commenced as per s. 1(2).

F42[Definitions. **19.**—In this Part—

‘the Act of 1976’ means the Family Law (Maintenance of Spouses and Children) Act, 1976;

‘the Act of 1989’ means the Judicial Separation and Family Law Reform Act, 1989;

‘the Act of 1995’ means the Family Law Act, 1995;

‘the Act of 1996’ means the Family Law (Divorce) Act, 1996.]

Annotations

Amendments:

F42 Part IV (ss. 19-30) inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 11, this section commenced as per s. 1(2).

F43[Safeguards to ensure applicant's awareness of alternatives to custody, access and guardianship proceedings and to assist attempts at agreement.]

20.—(1) In this section 'the applicant' means a person who has applied, is applying or proposes to apply to the court for directions under section 6A, 11 or 11B.

(2) If a solicitor is acting for the applicant, the solicitor shall, before the institution of proceedings under section 6A, 11 or 11B, discuss with the applicant the possibility of the applicant—

- (a) engaging in counselling to assist in reaching an agreement with the respondent about the custody of the child, the right of access to the child or any other question affecting the welfare of the child and give to the applicant the name and address of persons qualified to give counselling on the matter,
- (b) engaging in mediation to help to effect an agreement between the applicant and the respondent about the custody of the child, the right of access to the child or any question affecting the welfare of the child, and give to the applicant the name and addresses of persons qualified to provide an appropriate mediation service, and
- (c) where appropriate, effecting a deed or agreement in writing executed or made by the applicant and the respondent and providing for the custody of the child, the right of access to the child or any question affecting the welfare of the child.

(3) If a solicitor is acting for the applicant—

- (a) the original documents by which the proceedings under section 6A, 11 or 11B are instituted shall be accompanied by a certificate signed by the solicitor indicating, if it be the case, that the solicitor has complied with subsection (2) in relation to the matter and, if the document is not so accompanied, the court may adjourn the proceedings for such period as it considers reasonable to enable the solicitor to engage in the discussions referred to in subsection (2),
- (b) if the solicitor has complied with paragraph (a), any copy of the original document served on any person or left in an office of the court shall be accompanied by a copy of that certificate.

(4) The solicitor shall be deemed to have complied with subsection (3) in relation to the requirement of a certificate where the application under section 6A, 11 or 11B is made in proceedings for the grant of—

- (a) a decree of judicial separation under the Act of 1989 and section 5(2) of that Act has been complied with by the solicitor, or
- (b) a decree of divorce under the Act of 1996 and section 6(4) of that Act has been complied with by the solicitor.]

Annotations

Amendments:

F43 Part IV (ss. 19-30) inserted (1.01.1999) by *Children Act 1997* (40/1997), s. 11, this section commenced by S.I. No. 433 of 1998.

F44[Safeguards to ensure respondent's awareness of alternatives to custody, access and guardianship proceedings and to assist attempts at agreement.]

21.—(1) In this section 'the respondent' means a respondent in proceedings in the court under section 6A, 11 or 11B.

(2) If a solicitor is acting for the respondent, the solicitor shall, as soon as practicable after receiving instructions from the respondent in relation to proceedings under section 6A, 11 or 11B discuss with the respondent the possibility of the respondent—

- (a) engaging in counselling to assist in reaching an agreement with the applicant about the custody of the child, the right of access to the child or any other question affecting the welfare of the child and give to the respondent the name and addresses of persons qualified to give counselling on the matter,
- (b) engaging in mediation to help to effect an agreement between the respondent and the applicant about the custody of the child, the right of access to the child or any question affecting the welfare of the child and where appropriate give to the respondent the name and addresses of persons qualified to provide an appropriate mediation service, and
- (c) where appropriate, effecting a deed or agreement in writing executed or made by the respondent and the applicant and providing for the custody of the child, the right of access to the child or any question affecting the welfare of the child.

(3) If a solicitor is acting for the respondent—

- (a) the memorandum or other documents delivered to the appropriate officer of the court for the purpose of the entry of an appearance by the respondent in proceedings under section 6A, 11 or 11B shall be accompanied by a certificate signed by the solicitor indicating, if it be the case, that the solicitor has complied with subsection (2) in relation to the matter and, if the document is not so accompanied, the court may adjourn the proceedings for such period as it considers reasonable to enable the solicitor to engage in the discussions referred to in subsection (2),
- (b) if the solicitor has complied with paragraph (a), any copy of the original document given or sent to the applicant or his solicitor shall be accompanied by a copy of that certificate.

(4) The solicitor shall be deemed to have complied with subsection (3) in relation to the requirement of a certificate where the application under section 6A, 11 or 11B is made in proceedings for the grant of—

- (a) a decree of judicial separation under the Act of 1989 and section 6(2) of that Act has been complied with by the solicitor, or
- (b) a decree of divorce under the Act of 1996 and section 7(4) of that Act has been complied with by the solicitor.]

Annotations

Amendments:

- F44** Part IV (ss. 19-30) inserted (1.01.1999) by *Children Act 1997* (40/1997), s. 11, this section commenced by S.I. No. 433 of 1998.

F45 [Adjournment of proceedings to assist agreement on custody or guardianship of or access to child.

22.—(1) Where, in proceedings under section 6A, 11 or 11B it appears to the court that agreement between the parties on the subject matter of the proceedings may be effected, it may adjourn or further adjourn the proceedings for the purpose of enabling attempts to be made by the parties, if they wish, to reach agreement, with or without the assistance of a third party, on some or all of the issues which are in dispute.

(2) If proceedings are adjourned pursuant to subsection (1), any party may at any time request that the hearing of the proceedings be resumed as soon as practicable and, if such a request is made, the court shall, subject to any other power of the court to adjourn proceedings, resume the hearing.

(3) The powers conferred by this section are additional to any other power of the court to adjourn proceedings.

(4) Where the court adjourns proceedings under this section, it may, at its discretion, advise the parties concerned to seek the assistance of a third party in relation to the effecting of an agreement between them on all or any of its terms.]

Annotations

Amendments:

F45 Part IV (ss. 19-30) inserted (1.01.1999) by *Children Act 1997* (40/1997), s. 11, this section commenced by S.I. No. 433 of 1998.

F46 [Non-admissibility as evidence of certain communications relating to agreement.

23.—An oral or written communication between any of the parties concerned and a third party for the purpose of seeking assistance to reach agreement between them regarding the custody of the child, the right of access to the child or any question affecting the welfare of the child (whether or not made in the presence or with the knowledge of the other party) and any record of such communication, made or caused to be made by any of the parties concerned or such a third party, shall not be admissible as evidence in any court.]

Annotations

Amendments:

F46 Part IV (ss. 19-30) inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 11, this section commenced as per s. 1(2).

F47 [Orders in respect of custody or access agreements.

24.—Where—

(a) the parties to a dispute relating to the welfare of a child enter into an agreement in writing that includes—

(i) a provision whereby one party undertakes, or both parties undertake, to take custody of the child, or

(ii) a provision governing the rights of access of parties,

and

(b) an application is made by any party to the court for an order making the agreement a rule of court,

the court may make such an order if it is satisfied that the agreement is a fair and reasonable one which in all the circumstances adequately protects the interests of the parties and the child, and such order shall, insofar as it relates to a provision specified in subparagraph (i) or (ii) of paragraph (a), be deemed to be an order under section 11(2)(a) or 11B as appropriate.]

Annotations

Amendments:

F47 Part IV (ss. 19-30) inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 11, this section commenced as per s. 1(2).

F48[Wishes of child.

25.—In any proceedings to which section 3 applies, the court shall, as it thinks appropriate and practicable having regard to the age and understanding of the child, take into account the child's wishes in the matter.]

Annotations

Amendments:

F48 Part IV (ss. 19-30) inserted (9.01.1998) by *Children Act 1997*(40/1997), s. 11, this section commenced as per s. 1(2).

F49[Social reports.

26.—For the purposes of the application of section 47 of the Act of 1995 to proceedings under this Act, 'court' includes the District Court.]

Annotations

Amendments:

F49 Part IV (ss. 19-30) inserted by *Children Act 1997* (40/1997), s. 11, this section not commenced as of 31.12.2011.

F50[Power to proceed in absence of child.

27.—(1) It shall not be necessary in proceedings under section 6A, 11 or 11B for the child to whom the proceedings relate to be brought before the court or to be present for all or any part of the hearing unless the court, either of its own motion or at the request of any of the parties to the proceedings, is satisfied that it is necessary for the proper disposal of the proceedings.

(2) Where the child requests to be present during the hearing or a particular part of the hearing of the proceedings, the court shall grant the request unless it appears to it that, having regard to the age of the child or the nature of the proceedings, it would not be in the child's best interests to accede to the request.]

Annotations

Amendments:

F50 Part IV (ss. 19-30) inserted (9.01.1998) by *Children Act 1997*(40/1997), s. 11, this section commenced as per s. 1(2).

F51[Appointment of guardian *ad litem* for a child and provision for separate representation.

28.—(1) If in proceedings under section 6A, 11 or 11B the child to whom the proceedings relate is not a party, the court may, if satisfied that having regard to the special circumstances of the case it is necessary in the best interests of the child to do so, appoint a guardian *ad litem* for the child.

(2) Without prejudice to the generality of subsection (1), in deciding whether to appoint a guardian *ad litem*, the court shall, in particular, have regard to—

- (a) the age and understanding of the child,
- (b) any report on any question affecting the welfare of the child that is furnished to the court under section 47 of the Act of 1995,
- (c) the welfare of the child,
- (d) whether and to what extent the child should be given the opportunity to express the child's wishes in the proceedings, taking into account any state-

ment in relation to those matters in any report under section 47 of the Act of 1995, and

(e) any submission made in relation to the matter of the appointment as a guardian *ad litem* that is made to the court by or on behalf of a party to the proceedings or any other person to whom they relate.

(3) For the purposes of this section, the court may appoint as a guardian *ad litem* the person from whom, under section 47(1) of the Act of 1995, a report on any question affecting the welfare of the child was procured, or such other person as it thinks fit.

(4) If having regard to the gravity of the matters that may be in issue or any other special circumstances relating to the particular case, it appears to the court that it is necessary in the best interests of the child that the guardian *ad litem* ought to be legally represented, the court may order that the guardian *ad litem* be so represented in the proceedings.

(5) The fees and expenses of a guardian *ad litem* appointed pursuant to subsection (1) and the costs of obtaining legal representation pursuant to an order under subsection (4) shall be paid by such parties to the proceedings concerned, and in such proportions, or by such party to the proceedings, as the court may determine.]

Annotations

Amendments:

F51 Part IV (ss. 19-30) inserted by *Children Act 1997* (40/1997), s. 11, this section not commenced as of 31.12.2011.

F52[Cost of mediation and counselling services.

29.—The cost of any mediation or counselling services provided for an applicant or respondent who is or becomes a party to proceedings under this Act, or for the child to whom the proceedings relate, shall be in the discretion of the court concerned.]

Annotations

Amendments:

F52 Part IV (ss. 19-30) inserted (1.01.1999) by *Children Act 1997* (40/1997), s. 11, this section commenced by S.I. No. 433 of 1998.

F53[Jurisdiction.

30.—(1) Subject to subsection (2), the jurisdiction conferred on a court by this Part may be exercised by the Circuit Court or the District Court.

(2) Where the agreement referred to in section 24 is a separation agreement, the application for an order in respect of that agreement shall be made to the Circuit Court.

(3) Where an application is made to the court for an order under section 24, the court may, in the same proceedings, if it appears to it to be proper to do so, make an order under section 8 or 8A of the Act of 1976 without the institution of proceedings under that Act.

(4) Where an application is made to the court for an order under section 8 or 8A of the Act of 1976, the court may, in the same proceedings, if it appears to it to be proper to do so, make an order under section 24 without the institution of proceedings under this Act.]

Annotations**Amendments:**

F53 Part IV (ss. 19-30) inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 11, this section commenced as per s. 1(2).

Section 4.

SCHEDULE

REPEALS

Session and Chapter	Short Title	Extent of Repeal
14 & 15 Chas. 2, sess. 4, c. 19.	Tenures Abolition Act, 1662.	Sections 6, 7, 15 and 16.
36 Vict. c. 12.	Custody of Infants Act, 1873.	The whole Act.
49 & 50 Vict. c. 27.	Guardianship of Infants Act, 1886.	The whole Act.
54 Vict. c. 3.	Custody of Children Act, 1891.	The whole Act.