



Number 7 of 1964

GUARDIANSHIP OF INFANTS ACT 1964

REVISED

Updated to 2 November 2017

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 *Mediation Act 2017 (27/2017)*, enacted 2 October 2017, and all statutory instruments up to and including *Children and Family Relationships Act 2015 (Commencement) (No. 2) Order 2017 (S.I. No. 474 of 2017)*, made 2 November 2017, were considered in the preparation of this Revised Act.

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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 not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

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Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked.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 1993, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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Wills Act, 1837	1837, c. 26.
Health Act, 1947	1947, No. 28.
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GUARDIANSHIP OF INFANTS ACT 1964

REVISED

Updated to 2 November 2017

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:—

PART I

PRELIMINARY AND GENERAL

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

[Interpretation. **2.**—(1) In this Act, unless the context otherwise requires—

‘the Act of 1987’ means the Status of Children Act, 1987;

[‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;]

[‘adoption order’ has the same meaning as it has in the Adoption Act 2010;]

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

[‘civil partner’ shall be construed in accordance with section 3 of the Act of 2010;

‘cohabitant’ shall be construed in accordance with section 172(1) of the Act of 2010;

‘enactment’ means a statute or an instrument made under a power conferred by statute;

‘enforcement order’ shall be construed in accordance with section 18A(1);]

[‘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—

(a) an order under section 6A is in force in respect of that child,

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

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

(d) the circumstances set out in subsection (4A) of this section apply, or

(e) the father is a guardian of the child by virtue of section 6D;]

‘maintenance’ includes education;

[‘Minister’ means the Minister for Justice and Equality;]

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

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

[‘qualifying guardian’, in relation to a child, means a person who is a guardian of that child and who—

(a) is the parent of the child and has custody of him or her, or

(b) not being a parent of the child has custody of him or her to the exclusion of any living parent of the child;

‘relative’, in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child;]

‘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, and]

(d) [...]

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

[(4A) The circumstances referred to in paragraph (d) of the definition of 'father' in subsection (1) are that the father and mother of the child concerned—

- (a) have not married each other, and
- (b) have been cohabitants for not less than 12 consecutive months occurring after the date on which this subsection comes into operation, which shall include a period, occurring at any time after the birth of the child, of not less than three consecutive months during which both the mother and father have lived with the child.]

(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.]

[References in enactments to guardians appointed under section 6C or 6E

2A. (1) Subject to subsection (2), a reference in a provision of an enactment specified in section 6C(12) to a person who is a guardian of a child pursuant to this Act shall include a reference to a person who is appointed as guardian of the child under that section if the court so appointing the person orders that he or she is to enjoy the rights and responsibilities of a guardian under the provision concerned.

(2) Subsection (1) shall apply subject to such limitations (if any) as may be specified under section 6C(9) in the order of the court under that section appointing the person concerned as guardian of the child concerned.

(3) A reference in a provision of an enactment to a person who is a guardian of a child pursuant to this Act shall, in the case of a temporary guardian appointed under section 6E, be construed subject to such limitations (if any) as are imposed under subsection (6) or (11) of that section on the exercise by him or her of the rights and responsibilities of a guardian under the provision.]

Welfare of [child] to be paramount.

3.— (1) Where, in any proceedings before any court, the—

- (a) guardianship, custody or upbringing of, or access to, a child, or
- (b) administration of any property belonging to or held on trust for a child or the application of the income thereof,

is in question, the court, in deciding that question, shall regard the best interests of the child as the paramount consideration.

(2) In proceedings to which subsection (1) applies, the court shall determine the best interests of the child concerned in accordance with Part V.]

Proof of paternity in certain proceedings.

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 [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 [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 [child]:

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

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.

[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 €150 per week towards the maintenance of a child or a lump sum order greater than €15,000 for the benefit of a 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 [children] or the care of [children]’s estates.]

Rights of parents to guardianship.

6.—[(1) The following persons shall be guardians of a child jointly:

(a) the father and mother of the child, or

(b) where a married couple of the same sex have jointly adopted a child under an adoption order, each of the married couple.]

[(1A) Where civil partners or a cohabiting couple have jointly adopted a child under an adoption order the civil partners or cohabiting couple, as the case may be, shall be guardians of the child jointly.]

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

[(3A) (a) On the death of a civil partner who has jointly adopted a child with their civil partner, the other civil partner, if surviving, shall be guardian of the child, either alone or jointly with any guardian appointed by the deceased civil partner or by the court.

(b) On the death of one cohabitant of a cohabiting couple who have jointly adopted a child, the other cohabitant, if surviving, shall be guardian of the child, either alone or jointly with any guardian appointed by the deceased cohabitant or by the court.]

[(3B) On the death of a spouse who has jointly adopted a child with his or her spouse of the same sex, the other spouse, if surviving, shall be guardian of the child, either alone or jointly with any guardian appointed by the deceased spouse or by the court.]

[(4) Subject to subsection (1A), where the mother of a child has not married the child's father, and no other person is, under this Act, the guardian of the child, she, while living, shall alone be the guardian of the child.]

[(5) In this section, 'cohabiting couple' has the same meaning as it has in the Adoption Act 2010.]

[Power of court to appoint parent as guardian

6A.— (1) The court may, on an application to it by a person who, being a parent of the child, is not a guardian of the child, make an order appointing the person as guardian of the child.

(2) Without prejudice to other provisions of this Act, the appointment under this section of a guardian shall not, unless the court otherwise orders, affect the prior appointment (whether under this or any other enactment) of any other person as guardian of the child.]

[Rights of certain parents to guardianship

6B.— ...]

[Power of court to appoint person other than parent as guardian

6C.—(1) The court may, on an application to it by a person who, not being a parent of the child, is eligible under subsection (2) to make such application, make an order appointing the person as guardian of a child.

(2) A person is eligible to make an application referred to in subsection (1) where he or she is over the age of 18 years and—

(a) on the date of the application, he or she—

(i) is married to or is in a civil partnership with, or has been for over 3 years a cohabitant of, a parent of the child, and

(ii) has shared with that parent responsibility for the child's day-to-day care for a period of more than 2 years,

or

(b) on the date of the application—

(i) he or she has provided for the child's day-to-day care for a continuous period of more than 12 months, and

(ii) the child has no parent or guardian who is willing or able to exercise the rights and responsibilities of guardianship in respect of the child.

(3) An application under subsection (1) shall be on notice to each person who is a parent or guardian of the child concerned.

(4) Where a person to whom subsection (2)(b) applies makes an application under subsection (1), the court shall direct that the Child and Family Agency be put on notice of the application, and have regard to the views (if any) of the Agency in deciding whether or not to make an order under subsection (1).

(5) Without prejudice to other provisions of this Act, the appointment under this section of a guardian shall not, unless the court otherwise orders, affect the prior appointment (whether under this or any other enactment) of any other person as guardian of the child.

(6) Subject to subsection (7), an order under subsection (1) shall not be made under this section without the consent of—

(a) each guardian of the child, and

(b) the applicant concerned.

(7) The court may make an order dispensing, for the purposes of this section, with the consent of a guardian of the child, if it is satisfied that the consent is unreasonably withheld and that it is in the best interests of the child to make such an order.

(8) In deciding whether or not to make an order under this section, the court shall—

(a) ensure that the child concerned, to the extent possible given his or her age and understanding, has the opportunity to make his or her views on the matter known, and have regard to those views, and

(b) have regard to the number of persons who are guardians of the child concerned, and the degree to which those persons are involved in the upbringing of the child.

(9) Where the court appoints under this section a person as guardian of a child, and one or both of the parents of that child are still living, the person so appointed shall enjoy the rights and responsibilities of a guardian specified in subsection (11) only—

(a) where the court expressly so orders, and

(b) to the extent specified in the order and in the case of the rights and responsibilities specified in any of paragraphs (a) to (e) of that subsection, subject to such limitations as are specified in the order.

(10) In deciding whether to exercise its power under subsection (9), the court shall have regard to—

(a) the relationship between the child concerned and the person appointed as guardian of the child, and

(b) the best interests of the child.

(11) The rights and responsibilities referred to in subsection (9) are the rights and responsibilities of a guardian:

(a) to decide on the child's place of residence;

(b) to make decisions regarding the child's religious, spiritual, cultural and linguistic upbringing;

(c) to decide with whom the child is to live;

(d) to consent to medical, dental and other health related treatment for the child, in respect of which a guardian's consent is required;

(e) under an enactment specified in subsection (12);

(f) to place the child for adoption, and consent to the adoption of the child, under the Adoption Act 2010.

(12) The enactments referred to in subsection (11)(e) are:

(a) section 2A(2) of the Firearms Act 1925;

(b) section 5 of the Protection of Young Persons (Employment) Act 1996;

(c) sections 50 and 50A of the International Criminal Court Act 2006;

(d) sections 79, 79A and 79B of the Criminal Justice (Mutual Assistance) Act 2008;

(e) section 14 of the Passports Act 2008;

(f) the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.]

[Rights and responsibilities equivalent to guardianship arising in another state

6D.— (1) Subject to this section, a person shall be the guardian of a child where he or she has—

- (a) pursuant to a judgment that is entitled to recognition in accordance with the provisions of the Council Regulation or the Convention,
- (b) pursuant to a measure that is entitled to recognition in accordance with the provisions of the Convention, or
- (c) by operation of the law of a state other than the State as provided for in Chapter III of the Convention,

acquired, in respect of the child, rights and responsibilities that are equivalent to guardianship.

(2) The court may, in accordance with this Act and, where applicable, the Council Regulation and the Convention, remove, vary or enforce the rights and responsibilities of a guardian to whom subsection (1) applies.

(3) In this section—

‘Convention’ means the Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at the Hague on the 19th day of October, 1996;

‘Council Regulation’ means Council Regulation (EC) No. 2201/2003 of 27 November 2003¹ concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000;

‘judgment’ means a judgment as defined in Chapter I of Article 2 of the Council Regulation;

‘measure’ means a judgment or decision which is made in accordance with Chapter II of the Convention;

‘person’ includes a person, institution or other body.]

[Power of court to appoint temporary guardian

6E.— (1) A qualifying guardian may nominate a person to be, in the event that the qualifying guardian becomes incapable through serious illness or injury of exercising the rights and responsibilities of guardianship, temporary guardian of the child concerned.

(2) The nomination under subsection (1) of a person to be a temporary guardian shall—

- (a) be in writing, in such form as may be prescribed, and
- (b) specify such limitations (if any) as the qualifying guardian wishes to impose on the rights and responsibilities of guardianship that the temporary guardian, if appointed under this section, may exercise.

(3) Where a qualifying guardian who has nominated a person under subsection (1), or a person so-nominated (in this section referred to as the ‘nominated person’), is of opinion that the qualifying guardian is incapable through serious illness or injury of exercising the rights and responsibilities of guardianship, that guardian or nominated person may apply to the court for an order under this section.

(4) An application under subsection (3) shall be on notice to—

- (a) each guardian of the child, including, where the application is made by the nominated person, the qualifying guardian concerned,

¹O.J. No. L338, 23.12.2003, p. 1

(b) where the application is made by the qualifying guardian concerned, the nominated person,

(c) a parent (if any) of the child who is not the child's guardian, and

(d) the Child and Family Agency.

(5) The court, on hearing an application under subsection (3), and having regard to the views (if any) of the persons referred to in subsection (4), may make an order appointing the nominated person to be a temporary guardian of the child concerned where, and only where, it is satisfied that—

(a) the qualifying guardian concerned is incapable through serious illness or injury of exercising the rights and responsibilities of guardianship,

(b) the nominated person is a fit and proper person to exercise the rights and responsibilities specified in subsection (8), and

(c) it is in the best interests of the child concerned for the nominated person to become the temporary guardian of the child.

(6) An order under subsection (5) may impose—

(a) such limitations on the exercise by the temporary guardian of the rights and responsibilities of guardianship, and

(b) such conditions relating to the periodic review by the court of the appointment of the person as temporary guardian,

as the court considers necessary in the best interests of the child concerned.

(7) In imposing limitations or conditions under subsection (6), the court shall have regard to the limitations specified by the qualifying guardian under subsection (2).

(8) Subject to the terms of the order concerned under subsection (5), a person appointed to be temporary guardian—

(a) may exercise the rights and responsibilities of guardianship in respect of the child concerned,

(b) shall take custody of the child concerned, and

(c) shall act jointly with any other guardian of the child concerned, including the qualifying guardian concerned.

(9) A temporary guardian shall, and the qualifying guardian concerned may, where he or she is of opinion that the qualifying guardian is no longer incapable of exercising the rights and responsibilities of guardianship, apply to the court for an order under subsection (11).

(10) An application under subsection (9) shall be on notice to—

(a) each guardian of the child concerned, including, where the application is made by a temporary guardian, the qualifying guardian concerned,

(b) any parent of the child who is not the child's guardian, and

(c) the Child and Family Agency.

(11) The court, on hearing an application under subsection (9), may make an order—

(a) confirming that the appointment of the temporary guardian shall continue in force,

- (b) to the effect that the qualifying guardian is capable of exercising the rights and responsibilities of guardianship and revoking the appointment of the temporary guardian, or
- (c) to the effect that the qualifying guardian shall have specified rights and responsibilities of guardianship and that the other rights and responsibilities of guardianship shall be exercised by the qualifying guardian and temporary guardian jointly.

(12) An order under subsection (11) may—

- (a) specify the period for which it shall remain in effect,
- (b) impose such conditions relating to the periodic review by the court of the order as the court considers necessary in the best interests of the child concerned, and
- (c) provide for such additional matters as the court considers necessary in the best interests of the child concerned.

(13) In considering an application under subsection (3) or (9), the court shall ensure that the child concerned, to the extent possible given his or her age and understanding, has the opportunity to make his or her views on the matter known, and the court shall take account of those views.]

[Declaration that person is guardian

6F.—(1) A person specified in subsection (2) may apply to the court for a declaration under this section that a person named in the application is or is not a guardian by virtue of the circumstances set out in section 2(4A) or 6B(3) of a child named in the application (in this section referred to as the ‘child concerned’).

(2) An application for a declaration under this section may be made, in relation to a child concerned, by—

- (a) a guardian of the child concerned, or
- (b) a person seeking a declaration that he or she is or is not a guardian by virtue of the circumstances set out in section 2(4A) or 6B(3) of the child concerned.

(3) An application for a declaration under this section shall not be made in relation to a child concerned other than—

- (a) where the application is made by a person referred to in subsection (2)(a), on notice to each other guardian of the child and the person named in the application in relation to whom the declaration is sought, and
- (b) where the application is made by a person referred to in subsection (2)(b), on notice to each guardian of the child.

(4) The court may direct that notice of any application for a declaration under this section shall be given to such other persons as the court thinks fit and where notice is so given or where notice is given under subsection (3) to any person the court may, either of its own motion or on the application of that person or any party to the proceedings, order that that person shall be added as a party to those proceedings.

(5) Where on an application for a declaration under this section it is proved on the balance of probabilities that a person named in the application is or is not a guardian by virtue of the circumstances set out in section 2(4A) or 6B(3) of the child concerned, the court shall make the declaration accordingly.]

[Power of parents to appoint testamentary guardians

7.— (1) On the death of the guardian ('deceased guardian') of a child, a guardian ('surviving guardian') surviving the deceased guardian, if any, shall be guardian of the child jointly, where applicable, with—

(a) any other surviving guardian, and

(b) any person or persons appointed testamentary guardian by the deceased guardian in accordance with this section.

(2) A guardian who is—

(a) the parent of a child, or

(b) not being the parent of the child, has custody of him or her to the exclusion of any living parent of the child,

may by deed or will appoint a person or persons to be guardian ('testamentary guardian') of the child after his or her death.

(3) On the death of a guardian referred to in subsection (2), the testamentary guardian appointed by the deceased guardian shall, subject to subsections (4) and (5), act jointly with a surviving guardian of the child so long as that surviving guardian remains alive.

(4) Where subsection (3) applies and—

(a) a surviving guardian referred to in that subsection objects to a testamentary guardian acting jointly with him or her, or

(b) the testamentary guardian considers that a surviving guardian is unfit to have the custody of the child,

the surviving guardian or the testamentary guardian, as the case may be, may apply to the court for an order under this section.

(5) On an application under subsection (4), the court may make an order providing that—

(a) the appointment of the testamentary guardian is revoked and the surviving guardian shall remain guardian of the child concerned,

(b) the testamentary guardian shall act jointly with the surviving guardian, or

(c) the testamentary guardian shall act as guardian of the child to the exclusion, insofar as the court thinks proper, of the surviving guardian.

(6) Where the court makes an order under subsection (5)(c), it may make all or any of the following orders:

(a) such order regarding the custody of the child and the right of access to the child of the surviving guardian as it thinks proper;

(b) an order that a parent of the child shall pay to the guardian or guardians, or any of them, towards the maintenance of the child such weekly or other periodical sum as, having regard to the means of the surviving parent, it considers reasonable.

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

Appointment and removal of guardians by court.

8.—(1) Where a [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 [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.

[(4) A guardian—

- (a) appointed by will or deed,
- (b) appointed by order of the court,
- (c) holding office by virtue of the circumstances set out in subsection (4) or (4A) of section 2, or subsection (3) or (4) of section 6B, or
- (d) holding office by virtue of section 6D, and subject to subsection (2) of that section,

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.

[(6) The court may, on application by a guardian or a proposed guardian make an order removing from office a guardian (including a guardian who is the applicant)—

- (a) appointed pursuant to section 6A, 6C, 7 or subsection (1) or (2), or
- (b) who holds office by virtue of the circumstances set out in subsection (4) or (4A) of section 2, or subsection (3) or (4) of section 6B, or
- (c) who holds office by virtue of section 6D.

(7) The court shall remove a guardian from office under subsection (6) only where—

- (a) there is another guardian in place or about to be appointed,
- (b) the court is satisfied that it is in the best interests of the child that the guardian be removed from office,
- (c) for substantial reasons that appear to it to be sufficient, the court considers it necessary or desirable to do so, and
- (d) the guardian who is to be removed from office—
 - (i) consents to the removal,
 - (ii) is unable or unwilling to exercise the powers, responsibilities and entitlements of guardianship in respect of the child, or
 - (iii) has failed in his or her duty towards the child to such extent that the safety or welfare of the child is likely to be prejudicially affected if he or she is not removed from office.]

[Duration of guardianship

8A.—Subject to section 8, a person continues to be a guardian of a child until whichever of the following occurs first—

- (a) the guardian dies,
- (b) the child attains the age of 18 years, or
- (c) the child marries.]

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 [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 [child] and shall be entitled to take proceedings for the restoration of his custody of the [child] against any person who wrongfully takes away or detains the [child] and for the recovery, for the benefit of the [child], of damages for any injury to or trespass against the person of the [child];

(b) as guardian of the estate, shall be entitled to the possession and control of all property, real and personal, of the [child] and shall manage all such property and receive the rents and profits on behalf and for the benefit of the [child] until the [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 [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 [children].

Applications to court.

11.—(1) Any person being a guardian of a [child] may apply to the court for its direction on any question affecting the welfare of the [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 child and the right of access to the child of each of his or her parents, and

(b) order a parent of the child to pay towards the maintenance of the child such weekly or other periodical sum as, having regard to the means of the parent, the court considers reasonable.]

[(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.]

[(4) In the case of a child whose parents have not married each other—

(a) a reference in subsection (2)(b) to a parent of that child shall be construed as including a parent who is not a guardian of the child, and

(b) the right to make an application under this section regarding the custody of the child and the right of access thereto of each of his or her parents shall extend to a parent who is not a guardian of the child, and for this purpose references in this section to the parent of a child shall be construed as including such a parent.]

[(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 [child].]

[(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.]

[(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.]

[(10) An application under subsection (1) shall be on notice to each other person who is a parent or guardian of the child concerned.]

[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 [parents] jointly.]

[Relatives may apply for access to child.

11B.—(1) Any person who—

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

[(b) is a person with whom the child resides or has formerly resided,]

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) [...]

(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,]

[(d) the views of the child, and

(e) whether it is necessary to make an order to facilitate the access of the person to the child.]

(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.]

[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.]

[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 [each of his or her parents] on a regular basis.]

[Relatives and certain persons may apply for custody of child]

11E.—(1) The court may, on application by—

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

(b) a person to whom subsection (2) applies,

make an order giving that person custody of the child.

(2) This subsection applies to a person with whom the child concerned resides where the person—

(a) (i) is or was married to or in a civil partnership with, or has been, for a period of over 3 years, the cohabitant of the parent of the child, and

(ii) has, for a period of more than 2 years, shared with that parent responsibility for the child's day-to-day care,

or

(b) (i) is an adult who has, for a continuous period of more than 12 months, provided for the child's day-to-day care, and

(ii) the child has no parent or guardian who is willing or able to exercise the rights and responsibilities of guardianship in respect of the child.

(3) Subject to subsection (4), the court shall not make an order under subsection (1) without the consent of each guardian of the child.

(4) The court may make an order dispensing with the consent of a guardian if satisfied it is in the best interests of the child to do so.

(5) The court, in making an order in respect of a person to whom subsection (2) applies, may grant custody of a child to the child's parent and such person jointly and, in doing so, shall—

- (a) where these are not agreed as between the person and the parent of the child, specify the residential arrangements that are to apply in respect of the child, and
- (b) where the residential arrangements that are to apply in respect of the child provide that, for any period, the child will not reside with one of his or her parents, specify the contact (if any) that is to take place between the child and that parent during that period.]

Variation and discharge of court orders.

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

[Additional powers of court in relation to applications under this Act

12A.—(1) In making any order under this Act, the court may impose such conditions as it considers to be necessary in the best interests of the child.

(2) The court may, where it considers it necessary and appropriate in order to protect the best interests of the child, including his or her right to the care and custody of both of his or her parents, impose conditions in relation to the holding of the passport of a child.

(3) The conditions referred to in subsection (2) include that a passport may be retained by the court or held by a specified person and may be released subject to such further conditions as may be determined by the court.

(4) Where, in any proceedings pursuant to this Part, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to a child concerned in the proceedings, the court may, of its own motion, or on the application of any person, adjourn the proceedings and make such directions under section 20 of the Child Care Act 1991 as the court may deem appropriate.]

PART III

ENFORCEMENT OF RIGHT OF CUSTODY

Definitions for Part III.

13.—In this Part—

['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 [child] or entitled to his custody;

"person" includes any school or institution.

Power of court as to production of [child].

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

[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 (as amended by section 4 of the Child Care (Amendment) Act 2011) of the Child Care Act 1991 or the Child and Family Agency.]

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 [or the Child and Family Agency] the whole of the costs properly incurred by the health authority in providing such assistance[, or by the Executive or the Agency] 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.]

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

16.—Where a parent has—

- (a) abandoned or deserted a [child], or
- (b) allowed a [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 [to be maintained as described in section 15(2)(b) or (c) in the care of a health board [, the Health Service Executive or the Child and Family Agency]], 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 [child] to the parent unless the parent has satisfied the court that he is a fit person to have the custody of the [child].

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

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

(2) [...]

Custody where parents are separated.

18.—[...]

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

[Enforcement orders

18A.— (1) A guardian or parent of a child who has been—

- (a) granted, by order of the court made under this Act, custody of, or access to, that child, and
- (b) unreasonably denied such custody or access by another guardian or parent of that child,

may apply to the court for an order (“enforcement order”) under this section.

(2) An application under subsection (1) shall be on notice to each guardian and parent of the child concerned.

(3) Subject to subsection (4), the court, on an application under subsection (1), shall make an enforcement order only where it is satisfied that—

- (a) the applicant was unreasonably denied custody or access, as the case may be, by the other parent or guardian,
- (b) it is in the best interests of the child to do so, and
- (c) it is otherwise appropriate in the circumstances of the case to do so.

(4) An enforcement order may provide for one or more than one of the following:

- (a) that the applicant be granted access to the child for such periods of time (being periods of time in addition to the periods of time during which the applicant has access to the child under the order referred to in subsection (1)(a)) that the court may consider necessary in order to allow any adverse effects on the relationship between the applicant and child caused by the denial referred to in subsection (1) to be addressed;
- (b) that the respondent reimburse the applicant for any necessary expenses actually incurred by the applicant in attempting to exercise his or her right under the order referred to in subsection (1)(a) to custody of, or access to, the child;
- (c) that the respondent or the applicant, or both, in order to ensure future compliance by them with the order referred to in subsection (1)(a) do one or more than one of the following:
 - (i) attend, either individually or together, a parenting programme;
 - (ii) avail, either individually or together, of family counselling;
 - (iii) receive information, in such manner and in such form as the court may determine on the possibility of their availing of mediation as a means of resolving disputes between them, that adversely affect their parenting capacities, between the applicant and respondent.

(5) An enforcement order shall not contain a provision referred to in subsection (4)(a) unless—

- (a) the child, to the extent possible given his or her age and understanding, has had the opportunity to make his or her views on the matter known to the court, and
- (b) the court has taken the views (if any) of the child referred to in paragraph (a) into account in making the order.

(6) Where the court, on an application under subsection (1), is of the opinion that the denial of custody or access was reasonable in the particular circumstances, it may—

- (a) refuse to make an enforcement order, or
- (b) make such enforcement order that it considers appropriate in the circumstances.

(7) This section is without prejudice to the law as to contempt of court.

(8) In this section—

“family counselling” means a service provided by a family counsellor in which he or she assists a person or persons—

- (a) to resolve or better cope with personal and interpersonal problems or difficulties relating to, as the case may be, his, her or their marriage, civil partnership, cohabitation or parenting of a child, or
- (b) to resolve or better cope with personal and interpersonal problems or difficulties, or issues relating to the care of children, where the person or persons is or are affected, or likely to be affected, by separation, divorce, the dissolution of a civil partnership or the ending of a relationship of cohabitation;

“family counsellor” means a person who has the requisite skill and judgment to provide family counselling;

“parenting programme” means a programme that is designed to assist (including by the provision of counselling services or the teaching of techniques to resolve disputes) a person in resolving problems that adversely affect the carrying out of his or her parenting responsibilities.]

[Person presumed to have seen order of court

18B.—A person shall be deemed to have been given or shown a copy of an order made under this Act if that person was present at the sitting of the court at which such order was made.]

[Power of court to vary or terminate custody or access enforcement order

18C.—(1) The court may, on application by a person granted by order of the court made under this Act, custody of, or access to a child, make an order varying or terminating an enforcement order or any part of that order.

(2) The court may, in proceedings to vary or terminate a custody or access order, in those proceedings vary or terminate an enforcement order that relates to that custody or access order.]

[Enforcement of custody or access order

18D.—(1) Where a guardian or parent of a child—

- (a) has been granted, by order of the court made under this Act, custody of, or access to that child, and
- (b) fails, without reasonable notice to another guardian or parent of the child, to exercise the right concerned,

the other parent or guardian of the child may apply to the court for an order requiring the first-mentioned guardian or parent to reimburse to the second-mentioned guardian or parent any necessary expenses actually incurred by that guardian or parent as a result of the failure of the first-mentioned guardian or parent to exercise that right.

(2) In this section, and section 18A, ‘necessary expenses’ include the following:

- (a) travel expenses;
- (b) lost remuneration;
- (c) any other expenses the court may allow.]

[PART IV

SAFEGUARDING INTERESTS OF CHILDREN]

[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.]

[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.]

[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.]

[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.]

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

23. [(1)]—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.]

[(2) Subsection (1) does not apply to—

- (a) an admission by a party that indicates a child has been abused or is at risk of abuse, or
- (b) a disclosure by a child that indicates the child has been abused or is at risk of abuse.

(3) In this section, ‘abuse’ means physical, sexual or emotional abuse.]

[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.]

[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.]

[Social reports.]

26.— ...]

[Power to proceed in absence of child.]

27.—(1) It shall not be necessary in proceedings under section [section 6A, 6C, 6E, 11, 11B or 11E] 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.]

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

28.— ...]

[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.]

[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.]

[Part V

BEST INTERESTS OF THE CHILD]

[Determination by court of best interests of child]

31. (1) In determining for the purposes of this Act what is in the best interests of a child, the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family.

(2) The factors and circumstances referred to in subsection (1) include:

- (a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;
- (b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);
- (c) the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;
- (d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;
- (e) the child's religious, spiritual, cultural and linguistic upbringing and needs;
- (f) the child's social, intellectual and educational upbringing and needs;
- (g) the child's age and any special characteristics;

- (h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;
- (i) where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;
- (j) the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;
- (k) the capacity of each person in respect of whom an application is made under this Act—
 - (i) to care for and meet the needs of the child,
 - (ii) to communicate and co-operate on issues relating to the child, and
 - (iii) to exercise the relevant powers, responsibilities and entitlements to which the application relates.

(3) For the purposes of subsection (2)(h), the court shall have regard to household violence that has occurred or is likely to occur in the household of the child, or a household in which the child has been or is likely to be present, including the impact or likely impact of such violence on:

- (a) the safety of the child and other members of the household concerned;
- (b) the child's personal well-being, including the child's psychological and emotional well-being;
- (c) the victim of such violence;
- (d) the capacity of the perpetrator of the violence to properly care for the child and the risk, or likely risk, that the perpetrator poses to the child.

(4) For the purposes of this section, a parent's conduct may be considered to the extent that it is relevant to the child's welfare and best interests only.

(5) In any proceedings to which section 3(1)(a) applies, the court shall have regard to the general principle that unreasonable delay in determining the proceedings may be contrary to the best interests of the child.

(6) In obtaining the ascertainable views of a child for the purposes of subsection (2)(b), the court—

- (a) shall facilitate the free expression by the child of those views and, in particular, shall endeavour to ensure that any views so expressed by the child are not expressed as a result of undue influence, and
- (b) may make an order under section 32.

(7) In this section 'household violence' includes behaviour by a parent or guardian or a household member causing or attempting to cause physical harm to the child or another child, parent or household member, and includes sexual abuse or causing a child or a parent or other household member to fear for his or her safety or that of another household member.]

[Power of court to make certain orders

32. (1) In proceedings to which section 3(1)(a) applies, the court may, by order, do either or both of the following:

(a) give such directions as it thinks proper for the purpose of procuring from an expert a report in writing on any question affecting the welfare of the child; or

(b) appoint an expert to determine and convey the child's views.

(2) An order under subsection (1) may be made by the court of its own motion or on application to it in that behalf by a party to the proceedings and, in deciding whether to make an order, the court shall have regard to any views expressed to it in relation to the matter by or on behalf of a party to the proceedings concerned or any other person to whom they relate.

(3) Without prejudice to the generality of subsection (1), the court, in deciding whether to make an order under that subsection, shall, in particular, have regard to the following:

(a) the age and maturity of the child;

(b) the nature of the issues in dispute in the proceedings;

(c) any previous report under subsection (1)(a) on a question affecting the welfare of the child;

(d) the best interests of the child;

(e) whether the making of the order will assist the expression by the child of his or her views in the proceedings;

(f) the views expressed by a person referred to in subsection (2).

(4) A copy of a report under subsection (1)(a) may be provided in evidence in the proceedings and shall be given to—

(a) the parties to the proceedings concerned, and

(b) subject to subsection (5), if he or she is not a party to the proceedings, to the child concerned.

(5) In determining whether a report obtained under subsection (1)(a) should be furnished to the child to whom it relates, the court shall have regard to the following:

(a) the age and maturity of the child and the capacity of the child to understand the report;

(b) the impact on the child of reading the report and the effect it may have on his or her relationship with his or her parents or guardians;

(c) the best interests of the child;

(d) whether the best interests of the child would be better served by the furnishing of the report to the parent, guardian, next friend of the child or an expert appointed under subsection (1)(b), rather than to the child himself or herself.

(6) An expert appointed under subsection (1)(b) shall—

(a) ascertain the maturity of the child,

(b) where requested by the court, ascertain whether or not the child is capable of forming his or her views on the matters that are the subject of the proceedings, and report to the court accordingly,

(c) where paragraph (b) does not apply, or where paragraph (b) applies and the expert ascertains that the child is capable of forming his or her own views on the matters that are the subject of the proceedings—

- (i) ascertain the views of the child either generally or on any specific questions on which the court may seek the child's views, and
 - (ii) furnish to the court a report, which shall put before the court any views expressed by the child in relation to the matters to which the proceedings relate.
- (7) The court or a party to proceedings to which this section applies may call as a witness in the proceedings an expert appointed under subsection (1).
- (8) Where, in proceedings referred to in subsection (1), the court has made an order under paragraph (a) or (b) of subsection (1), nothing in this section shall prevent the court from—
- (a) making a further order under either or both of those paragraphs, or
 - (b) in making such a further order, appointing the same or a different expert to perform the function concerned.
- (9) The fees and expenses of an expert appointed under subsection (1) 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.
- (10) The Minister may, in consultation with the Minister for Children and Youth Affairs, by regulation specify—
- (a) the qualifications and experience of an expert appointed under this section, and
 - (b) the fees and allowable expenses that may be charged by such an expert.
- (11) Without prejudice to the generality of subsection (10), regulations under that subsection may provide for:
- (a) the qualifications, and the minimum level of professional experience, to be held by an expert,
 - (b) the minimum standards that shall apply to the performance by an expert of his or her functions under this section, and
 - (c) such other matters as the Minister considers necessary to ensure that experts are capable of performing their functions under this section.]

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.