



Number 40 of 1997

CHILDREN ACT, 1997

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 Acts Referred to

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| Family Law Act, 1995 | 1995, No. 26 |
| Family Law (Divorce) Act, 1996 | 1996, No. 33 |
| Family Law (Maintenance of Spouses and Children) Act, 1976 | 1976, No. 11 |
| Guardianship of Children Acts, 1964 to 1997 | |
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| Judicial Separation and Family Law Reform Act, 1989 | 1989, No. 6 |
| Status of Children Act, 1987 | 1987, No. 26 |
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Number 40 of 1997

CHILDREN ACT, 1997

AN ACT TO AMEND THE GUARDIANSHIP OF INFANTS ACT, 1964, BY PROVIDING A MECHANISM FOR AND RELATING TO THE RECOGNITION OF NATURAL FATHERS AS GUARDIANS, FOR THE TAKING INTO ACCOUNT OF THE WISHES OF CHILDREN IN GUARDIANSHIP, CUSTODY AND ACCESS DECISIONS AFFECTING THEIR WELFARE, AND FOR THE SAFEGUARDING OF THE INTERESTS OF CHILDREN, INCLUDING THEIR REPRESENTATION, IN CERTAIN COURT PROCEEDINGS; AND RELATING TO THE GIVING OF EVIDENCE IN CIVIL PROCEEDINGS BY CHILDREN BY MEANS OF TELEVISION LINKS AND THROUGH INTERMEDIARIES AND THE ADMISSIBILITY OF AND WEIGHT TO BE GIVEN TO SUCH EVIDENCE; AND TO AMEND THE CIVIL LEGAL AID ACT, 1995, THE COURTS (No. 2) ACT, 1986, THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT, 1989, THE CHILD CARE ACT, 1991, THE CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT, 1991, AND THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT, 1976; AND FOR RELATED PURPOSES. [9th December, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—(1) This Act may be cited as the Children Act, 1997.

Short title,
commencement and
collective citation.

(2) This Act, except *section 11* (insofar as it inserts sections 20, 21, 22, 26, 28 and 29 into the Act of 1964) and *Part III* shall come into operation one month after the date of its passing.

(3) *Section 11* (insofar as it inserts sections 20, 21, 22, 26, 28 and 29 into the Act of 1964) and *Part III* shall come into operation on such day or days as may be fixed by the Minister by order or orders, either generally or with reference to a particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

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(4) An order under *subsection (3)* relating to *section 11*, insofar as that order relates to *section 47(1)(b)* of the Family Law Act, 1995, shall not be made without the consent of the Minister for Health and Children.

(5) The Act of 1964 (as amended by the Succession Act, 1965, the Courts Act, 1981, the Age of Majority Act, 1985, the Status of Children Act, 1987, the Judicial Separation and Family Law Reform Act, 1989, the Child Care Act, 1991, and the Courts Act, 1991) and this Act (except *Part III*) may be cited together as the Guardianship of Children Acts, 1964 to 1997, and shall be construed together as one Act.

Interpretation.

2.—(1) In this Act—

“the Act of 1964” means the Guardianship of Infants Act, 1964;

“the Minister” means the Minister for Justice, Equality and Law Reform.

(2) 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.

Expenses.

3.—Any expenses incurred by the Minister, the Minister for Health and Children or the Minister for Social, Community and Family Affairs in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART II

Guardianship, Custody and Maintenance

Rights of certain fathers to guardianship.

4.—The Act of 1964 is hereby amended by the substitution for *section 2* (inserted by the Status of Children Act, 1987) of the following section:

“Interpretation.

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

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‘the Act of 1987’ means the Status of Children Pt.II S.4 Act, 1987;

‘adoption order’ means—

- (a) an adoption order made under the Adoption Acts, 1952 to 1991, or
- (b) an order made or decree granted outside the State, providing for the adoption of a person, which is recognised by virtue of the law for the time being in force in the State,

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

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

5.—Section 6 of the Act of 1964 is hereby amended by the substitution for subsection (4) (substituted by the Status of Children Act, 1987) of the following subsection:

Jurisdiction in guardianship matters.

“(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.”.

6.—Section 6A (inserted by the Status of Children Act, 1987) of the Act of 1964 is hereby amended—

Power of court to appoint certain fathers as guardians.

(a) by the substitution for subsection (1) of the following subsection:

“(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.”, and

(b) by the deletion of subsection (3).

7.—Section 8 of the Act of 1964 is hereby amended by the substitution for subsection (4) of the following subsection:

Appointment and removal of guardians by court.

“(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.”.

8.—Section 11 of the Act of 1964 is hereby amended by the substitution for subsection (5) (as inserted by the Age of Majority Act, 1985) of the following subsections:

Age of dependency of 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,

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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.”.

New sections.

9.—The Act of 1964 is hereby amended by the insertion after section 11 of the following sections:

“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.

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.

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.

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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.”.

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10.—Section 17 of the Act of 1964 is hereby amended by the deletion of subsection (2).

Amendment of section 17 of Act of 1964.

11.—The Act of 1964 is hereby amended by the insertion after Part III of the following Part:

Insertion of new Part IV (Safeguarding Interests of Children).

“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.—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.

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, Pt.II S.11

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

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.

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 statement 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.

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.

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(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.”

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12.—Without prejudice to any other amendment of the Act of 1964 made by this Act, for the words “infant”, “infants”, “infant’s” and “infants’ ”, wherever occurring in that Act otherwise than in the expression “Guardianship of Infants Act, 1964”, there shall be substituted the words “child”, “children”, “child’s” and “children’s” respectively.

Further amendment of Act of 1964.

13.—Section 28(5) of the Civil Legal Aid Act, 1995, is hereby amended—

Amendment of section 28 of Civil Legal Aid Act, 1995.

(a) in paragraph (b), by the deletion of “or”,

(b) in paragraph (c), by the the substitution of “assistance, or” for “assistance.”, and

(c) the insertion after paragraph (c) of the following paragraph:

“(d) where the court has ordered that a guardian *ad litem* appointed under section 28 (inserted by the *Children Act, 1997*) of the Guardianship of Infants Act, 1964, should be legally represented in proceedings under subsection (4) of that section, and any of the parties to those proceedings is in receipt of civil legal aid.”.

14.—Section 5 of the Courts (No. 2) Act, 1986, is hereby amended—

Amendment of section 5 of Courts (No.2) Act, 1986.

(a) in subsection (1), by the substitution of “the Age of Majority Act, 1985, the Status of Children Act, 1987, and the *Children Act, 1997*” for “and the Age of Majority Act, 1985”,

(b) in subsection (2)—

(i) by the substitution of “section 7, 11 or 11B” for “section 7 or section 11”,

(ii) by the substitution of “£1,500” for “£200”, and

(iii) by the substitution of “twelve months” for “six months”,

and

(c) in subsection (3), by the substitution of “section 7, 11 or 11B” for “section 7 or section 11”.

15.—The Family Law (Maintenance of Spouses and Children) Act, 1976, is hereby amended—

Amendment of Family Law (Maintenance of Spouses and Children) Act, 1976.

(a) in section 8(b), by the substitution of “Circuit Court or, in relation to an agreement other than a separation agreement, the District Court” for “Circuit Court”, and

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(b) in paragraph (b) of section 8A (inserted by the Status of Children Act, 1987), by the substitution of “Circuit Court or, in relation to an agreement other than a separation agreement, the District Court” for “Circuit Court”.

Amendment of section 41 of Judicial Separation and Family Law Reform Act, 1989.

16.—The Judicial Separation and Family Law Reform Act, 1989, is hereby amended, in section 41, by the substitution of the following subsections for subsections (1) and (2):

“(1) In this section ‘dependent member of the family’ has the meaning assigned to it by section 2 of the Family Law Act, 1995.

(2) Where the court grants a decree of judicial separation, it may declare either of the spouses concerned to be unfit to have custody of any dependent member of the family who is a minor and, if it does so and the spouse to whom the declaration related is a parent of a dependent member of the family who is a minor, that spouse shall not, on the death of the other spouse, be entitled as of right to the custody of that minor.”.

Amendment of section 20 of Child Care Act, 1991.

17.—Section 20 of the Child Care Act, 1991, is hereby amended by the substitution of the following subsection for subsection (1)—

“(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 board for the area in which the child resides or is for the time being to undertake an investigation of the child’s circumstances.”.

Amendment of section 2 of Child Abduction and Enforcement of Custody Orders Act, 1991.

18.—Section 2 (as amended by the Family Law Act, 1995) of the Child Abduction and Enforcement of Custody Orders Act, 1991, is hereby amended—

(a) in the definition of “the Minister” by the substitution of “the Minister for Justice, Equality and Law Reform” for “the Minister for Equality and Law Reform”, and

(b) in the definition of “probation and welfare officer” by the substitution of “the Minister for Justice, Equality and Law Reform” for “the Minister for Justice.”.

PART III

Evidence of Children

19.—(1) In this Part, unless the context otherwise requires— Interpretation.

“child” means a person who is not of full age;

“statement” means any representation of fact or opinion however made;

“video-recorded” means recorded on any medium (including a film) from which a moving image may by any means be produced, and includes the accompanying soundtrack, if any, and “video-recording” has a corresponding meaning.

(2) Where the age of a person at any time is material for the purpose of any proceedings to which this Part applies, his or her age at that time shall, for the purposes of such proceedings, be deemed, unless the contrary is proved, to be or to have been that which appears to the court to be his or her age at that time.

20.—This Part applies to— Application of Part III.

(a) civil proceedings before any court, commenced after the commencement of this Part, concerning the welfare of a child; or

(b) with the necessary modifications, in the same manner as it applies to a child, to civil proceedings before any court, commenced after the commencement of this Part, concerning the welfare of a person who is of full age but who has a mental disability to such an extent that it is not reasonably possible for the person to live independently.

21.—(1) In any proceedings to which this Part applies a child may, with the leave of the court, give evidence (whether from within or outside the State) through a live television link. Evidence through television link.

(2) Evidence given under *subsection (1)* shall be video-recorded.

(3) Any child who, in giving evidence under *subsection (1)* from outside the State, makes a statement material in the proceedings which the child knows to be false or does not believe to be true shall be guilty of perjury, or, if *section 28* applies, shall be guilty of an offence specified in *subsection (2)* of that section.

(4) Proceedings for an offence under *subsection (3)* may be taken, and the offence may, for the purposes of the jurisdiction of the court, be treated as having been committed, in any place in the State.

(5) Where evidence is given by a child under *subsection (1)* that any person was known to him or her before the date of commencement of the proceedings, the child shall not be required to identify the person during the course of those proceedings, unless the court directs otherwise.

22.—(1) Where in proceedings to which this Part applies the evidence of a child is being given or to be given through a live television link, the court may, of its own motion or on the application of a Evidence through intermediary.

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party to the proceedings, if satisfied that, having regard to the age or mental condition of the child, any questions to be put to the child should be put through an intermediary, direct that any such question be so put.

(2) Questions put to a child through an intermediary under this section shall be either in the words used by the questioner or in words that convey to the child, in a way that is appropriate to his or her age or mental condition, the meaning of the questions being asked.

(3) An intermediary referred to in *subsection (1)* shall be appointed by the court and shall be a person who, in its opinion, is competent to act as such.

Admissibility of hearsay evidence.

23.—(1) Subject to *subsection (2)*, a statement made by a child shall be admissible as evidence of any fact therein of which direct oral evidence would be admissible in any proceeding to which this Part applies, notwithstanding any rule of law relating to hearsay, where the court considers that—

(a) the child is unable to give evidence by reason of age, or

(b) the giving of oral evidence by the child, either in person or under *section 21*, would not be in the interest of the welfare of the child.

(2)(a) Any statement referred to in *subsection (1)* or any part thereof shall not be admitted in evidence if the court is of the opinion that, in the interests of justice, the statement or that part of the statement ought not to be so admitted.

(b) In considering whether the statement or any part of the statement ought to be admitted, the court shall have regard to all the circumstances, including any risk that the admission will result in unfairness to any of the parties to the proceedings.

(3) A party proposing to adduce evidence admissible in proceedings to which this Part applies by virtue of *subsection (1)*, shall give to the other party or parties to the proceedings—

(a) such notice, if any, of that fact, and

(b) such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances for the purpose of enabling such party or parties to deal with any matter arising from its being hearsay.

(4) *Subsection (3)* shall not apply where the parties concerned agree that it should not apply.

Weight of hearsay evidence.

24.—(1) In estimating the weight, if any, to be attached to any statement admitted in evidence pursuant to *section 23*, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(2) Regard may be had, in particular, as to whether—

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- (a) the original statement was made contemporaneously with the occurrence or existence of the matters stated,
- (b) the evidence involves multiple hearsay,
- (c) any person involved has any motive to conceal or misrepresent matters,
- (d) the original statement was an edited account or was made in collaboration with another for a particular purpose, and
- (e) the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

25.—Where information is given in a statement admitted in evidence pursuant to *section 23*—

Evidence as to credibility.

- (a) any evidence which, if the child who originally supplied the information had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose,
- (b) evidence may, with the leave of the court, be given of any matter which, if that child had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility as a witness but of which evidence could not have been adduced by the cross-examining party, and
- (c) evidence tending to prove that the child, whether before or after supplying the information, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible, be admissible for the purpose of showing that the witness has contradicted himself or herself.

26.—(1) Where information contained in a document is admissible in evidence in proceedings to which this Part applies, the information may be given in evidence, whether or not the document is still in existence, by producing a copy of the document, or of the material part of it, authenticated in such manner as the court may approve.

Copies of documents in evidence.

(2) It is immaterial for the purposes of *subsection (1)* how many removes there are between the copy and the original, or by what means (which may include facsimile transmission) the copy was produced or any intermediate copy was made.

(3) In this section “document” includes a sound recording and a video-recording.

27.—Where in proceedings to which this Part applies the court is of the opinion that it is desirable that evidence be taken by live television link or by means of a video-recording and facilities for doing so are not available, it may, by order, transfer the proceedings to a court where those facilities are available and, where such an order is

Transfer of proceedings.

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made, the jurisdiction of the court to which the proceedings have been transferred may be exercised—

- (a) in the case of the Circuit Court, by the judge of the circuit concerned, and
- (b) in the case of the District Court, by the judge of that court for the time being assigned to the district court district concerned.

Oath or affirmation not necessary for child witnesses.

28.—(1) Notwithstanding any rule of law, in any civil proceedings (whether or not they are proceedings to which this Part applies) the evidence of a child who has not attained the age of 14 years may be received otherwise than on oath or affirmation if the court is satisfied that the child is capable of giving an intelligible account of events which are relevant to the proceedings.

(2) Any child whose evidence is received in accordance with *subsection (1)* and who makes a statement material in the proceedings concerned which the child knows to be false or does not believe to be true, shall be guilty of an offence and on conviction shall be liable to be dealt with as if guilty of perjury.

(3) *Subsection (1)* shall apply to a person with mental disability who has attained the age of 14 years as it applies to a child who has not attained that age.

(4) Unsworn evidence received by virtue of this section may corroborate evidence (sworn or unsworn) given by any other person.