



STATUTORY INSTRUMENTS.

S.I. No. 587 of 2018



GUARDIANSHIP OF INFANTS ACT 1964 (CHILD'S VIEWS EXPERT)
REGULATIONS 2018

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I, CHARLES FLANAGAN, Minister for Justice and Equality, in exercise of the powers conferred on me by section 32(10) of the Guardianship of Infants Act 1964 (No. 7 of 1964), and in consultation with the Minister for Children and Youth Affairs, hereby make the following regulations:

1. (1) These Regulations may be cited as the Guardianship of Infants Act 1964 (Child's Views Expert) Regulations 2018.

(2) These Regulations shall come into operation on 1st day of January 2019.

2. In these Regulations—

“Act of 1964” means the Guardianship of Infants Act 1964 (No. 7 of 1964);

“Act of 2005” means the Health and Social Care Professionals Act 2005 (No. 27 of 2005);

“Act of 2007” means the Medical Practitioners Act 2007 (No. 25 of 2007);

“child”, in Regulation 5, means the child in respect of whom an expert is appointed;

“expert” means a person appointed under section 32(1)(b) of the Act of 1964;

“functions”, in relation to an expert, means the functions of an expert under subsections (6) and (7) of section 32 of the Act of 1964;

“medical practitioner” means a medical practitioner who is for the time being registered in the register of medical practitioners;

“psychiatrist” means a medical practitioner who is registered in the Specialist Division of the register of medical practitioners under the medical specialty of “Psychiatry” or under the medical specialty of “Child and Adolescent Psychiatry”;

“psychologist” means a person—

(a) who practices as such,

(b) who holds a qualification listed opposite the profession of psychologist in the third column of Schedule 3 to the Act of 2005 or a qualification that is a corresponding qualification, within the meaning of section 90 of that Act, to that qualification, and

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 4th January, 2019.*

- (c) following the establishment under section 36 of the Act of 2005 of the register of members of the profession of psychologist, whose name is for the time being entered in that register;

“register of medical practitioners” means the register of medical practitioners established under section 43 of the Act of 2007;

“registered teacher” has the meaning it has in the Teaching Council Act 2001 (No. 8 of 2001);

“social care worker” means a person—

- (a) who practices as such,
- (b) who holds a qualification listed opposite the profession of social care worker in the third column of Schedule 3 to the Act of 2005 or a qualification that is a corresponding qualification, within the meaning of section 90 of that Act, to that qualification, and
- (c) following the establishment under section 36 of the Act of 2005 of the register of members of the profession of social care worker, whose name is for the time being entered in that register;

“social worker” means a social worker whose name is for the time being entered in the register of members of the profession of social worker established and maintained under section 36 of the Act of 2005.

3. (1) Subject to Regulation 4, the following may be appointed under section 32(1)(b) of the Act of 1964 to perform the functions of an expert:

- (a) a psychiatrist who has practised child and adolescent psychiatry for a relevant period;
- (b) a psychologist who has practised child and adolescent clinical psychology for a relevant period;
- (c) a social care worker who has engaged in the practice of the profession of social care worker, as it relates to the provision of social care services to children, for a relevant period;
- (d) a social worker who has engaged in the practice of the profession of social worker, as it relates to the provision of social work services to children, for a relevant period;
- (e) a registered teacher who has taught children for a relevant period.

(2) In this Regulation—

- (a) “relevant period” means, in relation to an appointment referred to in paragraph (1), a period of not less than 5 years within the 10 years immediately preceding the appointment, and

- (b) a reference in subparagraph (a) to a period of not less than 5 years includes a reference to periods which, when taken together, amount to such a period.

4. A person shall not be appointed under section 32(1)(b) of the Act of 1964 to perform the functions of an expert unless there is in place in respect of him or her a policy of professional indemnity insurance to cover claims in respect of any description of civil liability incurred in the performance by him or her of such functions.

5. The following are the minimum standards that shall apply to the performance by an expert of his or her functions:

- (a) he or she shall act independently of the parties to the proceedings concerned and of any other persons involved in the proceedings;
- (b) he or she shall, subject to the terms of the order appointing him or her and other than where he or she is of the opinion that, having regard to the age and maturity of the child, it is not in the best interests of the child to do so, advise the child of the reason why the expert has been appointed, and the matters on which the child's views are being sought;
- (c) he or she shall facilitate the free expression by the child of his or her views;
- (d) without prejudice to the generality of paragraph (c), he or she shall ascertain whether the views expressed by the child are expressed as a result of undue influence on the part of another person and, if so, and where necessary and appropriate, shall facilitate the child in the expression of views that are not expressed as a result of such undue influence;
- (e) he or she shall ensure that a report prepared by him or her accurately reflects the views expressed by the child in relation to the matters to which the proceedings relate;
- (f) subject to his or her obligation to furnish information to the court, he or she shall maintain the confidentiality of any document or other information made available to him or her in the performance of his or her functions;
- (g) he or she shall maintain adequate knowledge of legislation and rules of court relevant to proceedings to which section 3(1)(a) of the Act of 1964 applies.

6. The fees and expenses that may be charged by an expert in respect of the performance by him or her of his or her functions are specified in Regulations 7 to 10.

7. The fee of €240 is specified as the maximum fee that may be charged by an expert for the performance by him or her, in respect of a particular child, of the functions specified in the following provisions of section 32 of the Act of 1964:

- (a) subsection (6)(a), and
- (b) subsection (6)(b).

8. The fee of €325 is specified as the maximum fee that may be charged by an expert for the performance by him or her, in respect of a particular child, of the functions specified in the following provisions of section 32 of the Act of 1964:

- (a) subsection (6)(a), and
- (b) subsection (6)(c).

9. The fee of €325 is specified as the maximum fee that may be charged by an expert for the performance by him or her, in respect of a particular child, of the functions specified in the following provisions of section 32 of the Act of 1964:

- (a) subsection (6)(a),
- (b) subsection (6)(b), and
- (c) subsection (6)(c).

10. (a) Subject to paragraph (b), an expert to whom section 32(7) of the Act of 1964 applies may charge expenses in respect of his or her appearance before the court as a witness in the proceedings concerned.

(b) The amount of €250 is specified as the maximum amount that may, in the proceedings concerned, be charged under paragraph (a).



GIVEN under my Official Seal,
20 December 2018.

CHARLES FLANAGAN,
Minister for Justice and Equality.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations specify the necessary qualifications and experience of child's views experts appointed under section 32(1)(b) of the Guardianship of Infants Act 1964 in private family law proceedings and the fees and expenses that may be charged by such experts.

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(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€2.54

