

CHILDREN AND FAMILY LAW

Leaflet No. 8.



LEGAL AID BOARD

This leaflet is not an interpretation of the law.

LEAFLET No. 8

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Proceedings concerning children

In family law proceedings concerning a child, the child's welfare is the main consideration.

In special circumstances and in certain family law proceedings, the following may be appointed:-

- a solicitor, to legally represent the child separately; or
- a *guardian ad litem*, to protect the interests of the child.

Guardianship

Guardianship is the legal relationship between parents and their child. It involves the duty to maintain and properly care for a child and the right to make decisions about a child's education, religious upbringing, health and general welfare.

A child needs a guardian until the age of eighteen years. A person who has attained the age of 18 years and has a mental or physical disability to such an extent that it is not reasonably possible for the person to maintain himself / herself may need a guardian.

Married persons are automatically joint guardians of their child.

A mother, who is not married to the father of her child, is automatically the child's guardian.

A father, who is not married to the mother of his child, is not automatically the child's guardian. However, the mother may consent to the father being appointed a guardian. Alternatively, the unmarried father may apply to court to be appointed a guardian with the mother.

Other guardians may be appointed under a parent's will or by court order.

Custody

Custody is the physical day-to-day care and control of a child.

Spouses living together are automatically joint custodians of their child. Where spouses separate or divorce, a decision must be made regarding custody of their child.

A mother, who is not married to the father of her child, automatically has sole custody.

A father, who is not married to the mother of his child, may apply to court to be appointed a guardian of the child. If he is appointed, he may apply for custody.

A child may be in the custody of neither parent, for example, where the child is being reared by grandparents, a relative of the child or is in the care of a health board.

Once custody is decided, arrangements must be made for access.

Access

Access is the contact between a child and the parent with whom the child does not ordinarily reside. Access can be physical, in the sense of a child seeing the other parent in person, or it can be by means of a letter, telephone or other form of electronic communication.

Grandparents and other relatives have a right to apply to court for access.

Where a child is in the care of a health board, parents or relatives may apply for access.

Maintenance of children

Parents, whether married or not, have a duty to maintain their dependent children. A dependent child is a child:-

- under eighteen years;
- under twenty three years who is in full time education; or
- dependent on its parents due to a disability.

In certain circumstances, a person other than the parent may seek maintenance for a child from the child's parents, for example, a social worker or a relative taking care of the child.

Inheritance and children

Generally, a child does not have an automatic right to a share in his / her parent's estate where the parent died having made a valid will. However, a court can award a child a share of his / her parent's estate where it finds that the parent "*failed in his moral duty to make proper provision for the child in accordance with his means*". Such an application must be brought in the High Court within six months of the date of the grant of probate.

A child bringing such an application need not be under eighteen years of age or have been financially dependent on the parent. Children of unmarried parents have the same inheritance rights as marital children. Adopted children have a right of inheritance from their adoptive parents.

Children in care

A care order places a child in the care of a health board. The health board may make decisions as to how the child's interests are best served, for example, it may decide to place the child with foster parents or in residential care.

A care order may be made for as long as the child remains a child or for a shorter period. Where a short term order is made, the court can extend it at a later date.

Parents may voluntarily place their child in the care of a health board.

A health board is obliged to apply to the District Court for a care order or other order where it is of the opinion that a child needs care which will not otherwise be provided.

The District Court may make a care order where it is satisfied that a child:-

- has been or is being assaulted, ill-treated, neglected, sexually abused, or, the child's health, development or welfare has been or is being avoidably impaired or neglected; and
- requires care or protection which s/he is unlikely to receive if an order is not made.

If a health board has concerns about a child, but does not consider that it would be appropriate to seek a care order, it may apply for a supervision order. This allows health board officials to visit the child and give advice to the child's parent(s) about caring for the child.

Wardship

Wardship proceedings may be instituted, for example, where a person, who is not a parent of a child, seeks custody of the child. If a child is made a ward of court, all matters concerning the child's upbringing and welfare become the responsibility of the court. The court will decide matters such as, responsibility for care and custody of the child, management of any property owned by the child, and sometimes the degree of contact the child's parents should have with the child.

Adoption

Adoption is the process whereby an adoption order is made which ends the legal relationship between a child and his / her natural parents. This is replaced with a new relationship between the child and the adoptive parents.

An adoption order can be made by the Adoption Board in respect of:-

- a child under eighteen years; or
- a child who is an orphan; or
- a child whose parents are not married to each other; or
- a child of a marriage who has been abandoned.

An adoption order cannot be made without the consent of every person, being the child's mother or guardian or a person having charge or control over the child.

If the natural father is a guardian of the child, or has care or control of the child, his consent is also required. The Adoption Board is required to make efforts to consult the natural father where he is not a guardian.

A mother who wishes to have her child adopted must first consent to the child being *placed* for adoption. At a later date, consent to the making of the adoption *order* is required. Where a mother gives the first consent and then wants to get her child back, the court may dispense with the need for her second consent if it considers that it is in the child's best interest to do so.

For a foreign adoption to be valid in this country, all of the requirements of an Irish adoption must be complied with as well as the laws of the foreign country.

Fostering

Fostering is the placing of a child in the care of a person other than a relative of the child by a health board in accordance with legislation. The health board also makes arrangements where appropriate, for access to the child by the natural parent(s).

Child Abduction

This is the removal of a child by a parent from one country to another without the consent of the other parent or in breach of a court order.

Ireland is a party to conventions which provide for co-operation between countries in relation to child abduction. Generally, this means that, where a child is abducted to a convention country, the child will be returned to the country where it normally resides and the courts in that country will deal with any disputes about custody or access.

In certain circumstances, the child may not be returned, for example, if the court is satisfied that there is a grave risk to the child's physical or psychological wellbeing.

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