

BILLE

dá ngairtear

Acht do dhéanamh comhdhlúthú maílle le leasuithe ar na haachtacháin a bhaineann le coimeád agus caomhnóireacht nafon.

*Rite ag dhá Theach an Oireachtais,
18 Márta, 1964*

BAILE ATHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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BILL

entitled

An Act to consolidate with amendments the enactments relating to the custody and guardianship of infants.

*Passed by both Houses of the Oireachtas,
18th March, 1964*

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AN BILL E UM CHAOMHNOIREACHT NAION, 1963
GUARDIANSHIP OF INFANTS BILL, 1963

Mar a ritheadh ag dhá Theach an Oireachtais
As passed by both Houses of the Oireachtas

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SCHEDULE

REPEALS

MARGINAL ABBREVIATIONS

- 1662 = Tenures Abolition Act, 1662 (14 & 15 Chas. 2 sess. 4. c. 19)
1873 = Custody of Infants Act, 1873 (36 Vict. c. 12)
1886 = Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27)
1891 = Custody of Children Act, 1891 (54 Vict. c. 8).





AN BILLE UM CHAOMHNOIREACHT NAION, 1963.
GUARDIANSHIP OF INFANTS BILL, 1963

BILL

entitled

AN ACT TO CONSOLIDATE WITH AMENDMENTS THE 5
ENACTMENTS RELATING TO THE CUSTODY AND
GUARDIANSHIP OF INFANTS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS :--

PART I

PRELIMINARY AND GENERAL 10

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

Definitions. 2.—In this Act, except where the context otherwise requires—
1962, No. 25. “adoption order” means an adoption order made under the Adoption Act, 1952, and for the time being in force; 15

“father” includes a male adopter under an adoption order but does not include the natural father of an illegitimate infant;

“illegitimate infant” does not include any infant adopted under an adoption order;

“infant” means a person under twenty-one years of age; 20

“maintenance” includes education;

“mother” includes a female adopter under an adoption order;

“parent” means a father or mother as defined by this section;

“testamentary guardian” means a guardian appointed by deed or will; 25

“welfare”, in relation to an infant, comprises the religious and moral, intellectual, physical and social welfare of the infant.

Welfare of infant to be paramount. [Declaratory of present rule: See *Re Kindersley*, [1944] I.R. 111] 3.—Where in any proceedings before any court the custody, guardianship or upbringing of an infant, or the administration of any property belonging to or held on trust for an infant, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration. 30

Repeals. 4.—Each enactment specified in the Schedule is hereby repealed to the extent indicated in the third column of the Schedule. 35

PART II

GUARDIANSHIP

Jurisdiction in guardianship matters. [1886, ss. 9, 10] 1961, No. 89. 5.—(1) The jurisdiction conferred on a court by this Part may be exercised by the High Court or, subject to section 22 of the Courts (Supplemental Provisions) Act, 1961, by the Circuit Court. 40

(2) Accordingly, a reference to this Part shall be substituted at reference number 45 in the Fourth Schedule to the said Act for the reference to the Guardianship of Infants Act, 1886 (repealed by 1886, c. 27. this Act).

5 (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 infants or the care of infants' estates. [1886, s. 13; cf. 1961, No. 89, s. 22, 3rd Sch., 24]

6.—(1) The father and mother of an infant shall be guardians of the infant jointly. Rights of parents to guardianship. [New] [1886, s. 2]

10 (2) On the death of the father of an infant the mother, if surviving, shall be guardian of the infant, either alone or jointly with any guardian appointed by the father or by the court.

(3) On the death of the mother of an infant the father, if surviving, shall be guardian of the infant, either alone or jointly with any guardian appointed by the mother or by the court. 15

(4) The mother of an illegitimate infant shall be guardian of the infant.

7.—(1) The father of an infant may by deed or will appoint a person or persons to be guardian or guardians of the infant after his death. Power of father and mother to appoint testamentary guardians. 20

(2) The mother of an infant may by deed or will appoint a person or persons to be guardian or guardians of the infant after her death. [1862, s. 6 in pt.; 1886, ss. 2, 3, in pt.]

(3) A testamentary guardian shall act jointly with the surviving parent of the infant so long as the surviving parent remains alive unless the surviving parent objects to his so acting. 25

(4) If the surviving parent so objects or if a testamentary guardian considers that the surviving parent is unfit to have the custody of the infant, the testamentary guardian may apply to the court for an order under this section. 30

(5) The court may—

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

(b) make an order that the testamentary guardian shall act jointly with the surviving parent, or 35

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

(6) In the case mentioned in paragraph (c) of subsection (5) the court may make such order regarding the custody of the infant and the right of access to the infant of the surviving parent as the court thinks proper, and the court may further order that the surviving parent shall pay to the guardian or guardians, or any of them, towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the surviving parent, the court considers reasonable. 45

(7) A person under the age of twenty-one years shall be entitled to appoint guardians by will notwithstanding section 7 of the Wills Act, 1837. 1837, c. 26.

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

Appointment and removal of guardians by court.

[New]

8.—(1) Where an infant 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 infant.

(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.

[1886, s. 5]

(4) The court may remove from office any guardian appointed by will or deed or order of 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.

Provisions where two or more guardians appointed. [1886, s. 3, in part]

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.

[1862, ss. 6, 7; 1886, s. 4]

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

[1862, ss. 6, 7]

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

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

(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 infants.

Applications to court.

[1886, s. 3 (3)]

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

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

[1886, s. 5]

(a) give such directions as it thinks proper regarding the custody of the infant and the right of access to the infant of his father or mother;

(b) order the father or mother to pay towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the father or mother, 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 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 an illegitimate infant the right to make an application under this section regarding the custody of the infant and the right of access thereto of his father or mother shall extend to the natural father of the infant and for this purpose references in this section to the father or parent of an infant shall be construed as including him; but no order shall, on such application, be made under paragraph (b) of subsection (2).

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

Variation and discharge of court orders. [New]

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PART III

ENFORCEMENT OF RIGHT OF CUSTODY

13.—In this Part—

“the court” means the High Court;

Definitions for Part III. [1891, s. 5]

“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;

1947, No. 28. 1960, No. 9.

“parent” includes a guardian of the person and any person at law liable to maintain an infant or entitled to his custody;

“person” includes any school or institution.

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

Power of court as to production of infant. [1891, s. 1]

15.—Where, upon application by a parent for the production of an infant, the court finds—

Power to court to order repayment of costs of bringing up infant. [1891, s. 2]

(a) that the infant is being brought up at the expense of another person, or

(b) that at any time assistance has been provided for the infant by a health authority under section 55 of the Health Act, 1953,

1953, No. 26.

the court may, in its discretion, if it orders the infant to be given up to the parent, further order that the parent shall pay to that person or health authority the whole of the costs properly incurred by the person or health authority in bringing up or providing assistance for the infant or such portion thereof as the court considers reasonable, having regard to all the circumstances of the case, including, in particular, the means of the parent.

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

[1891, s. 3]

1938, No. 26.

16.—Where a parent has—

(a) abandoned or deserted an infant, or

(b) allowed an infant 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, 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 infant to the parent unless the parent has satisfied the court that he is a fit person to have the custody of the infant.

Power of court as to infant's religious education.

[1891, s. 4]

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

(2) Nothing in this Act shall interfere with or affect the power of the court to consult the wishes of the infant in considering what order ought to be made or diminish the right which any infant now possesses to the exercise of his own free choice.

Custody where parents are separated.

[1886, s. 7]

1952, No. 25.

18.—(1) In any case where a decree for divorce *a mensa et thoro* is pronounced, the court may thereby declare the parent by reason of whose misconduct the decree is made to be a person unfit to have the custody of the children (if any) of the marriage or of any children adopted under the Adoption Act, 1952, by the parents jointly; and in such case, the parent so declared to be unfit shall not, on the death of the other parent, be entitled as of right to the custody of the children.

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

[1873, s. 2]

SCHEDULE

35

Section 4.

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.