

STATES OF JERSEY



CHILDREN (JERSEY) LAW 2002: APPOINTMENT OF CHILDREN'S GUARDIANS AND ADVOCATES IN CERTAIN COURT PROCEEDINGS (P.137/2010) – COMMENTS

**Presented to the States on 29th October 2010
by H.M. Attorney General**

STATES GREFFE

COMMENTS

1. This Comment is prepared in the light of Proposition P.137/2010 lodged by the Deputy of St. Martin (“the Proposition”).
2. As the Proposition comments on the legal position under the Children (Jersey) Law 2002 (“the 2002 Law”), the United Nations Convention on the Rights of the Child (“UNCRC”) and certain judgments of the Royal Court, it seems to me that it would be helpful for members to have legal advice on some of the issues in advance so that the debate can take place against a background where members are informed about the domestic legislation, relevant legislation in England and Wales and international obligations. This Comment does not touch on the financial aspects of the Proposition.

Summary

3. In summary –
 - 3.1. The 2002 Law makes it a matter of the exercise of discretion by the Royal Court as to whether or not guardians and/or advocates should be appointed for children in any particular case;
 - 3.2. The legal position in England and Wales is that there is a presumption that a guardian will be appointed although that presumption can be rebutted; if a guardian is appointed then the guardian must appoint a solicitor unless one has already been appointed and the court has a discretionary power to appoint a solicitor in certain circumstances;
 - 3.3. The legal position in Jersey is essentially the same as in other jurisdictions such as Scotland and the Republic of Ireland both of which have a similar discretionary regime;
 - 3.4. The case of Re B [2010] JRC 150 (“Re B”) expounded the statutory position and articulated the approach of the Royal Court in the exercise of its statutory discretion;
 - 3.5. The provisions relating to the appointment of guardians and advocates in children proceedings in the 2002 Law are compatible with the European Convention on Human Rights and Fundamental Freedoms (“ECHR”);
 - 3.6. The provisions relating to the appointment of guardians and advocates in children proceedings in the 2002 Law are compatible with the UNCRC;
 - 3.7. Both the Republic of Ireland and Scotland; which also have discretionary provisions on the appointment of guardians and lawyers, are both bound by the ECHR and the UNCRC;
 - 3.8. The Royal Court is a public authority and therefore must as a matter of Law exercise its powers in a manner compatible with the ECHR and, if it does not do so, there is a right of appeal;

- 3.9. The Proposition if adopted would remove any discretion from the Royal Court as to whether or not a guardian and advocate must be appointed in any particular case;
- 3.10. It is ultimately a matter of policy for the Assembly as to whether the Royal Court should continue to have and exercise such a discretion or whether that discretion should be removed by statutory amendment.

Domestic legislation

4. The present arrangements are set out in Article 75(1) of the 2002 Law, which is in these terms –

“75 Representation and assistance for children

- (1) *Where it considers it desirable in the interests of a child to do so the court may order –*
 - (a) *that the child be separately represented in such proceedings under this Law as the court may specify; or*
 - (b) *that the child be assisted and befriended by such person, being a person independent from the Minister, as the court may specify.*
- (2) *Where a child is empowered to bring any proceedings under this Law –*
 - (a) *the child may not do so without leave of the court and the court may only grant leave if it is satisfied that the child has sufficient understanding to bring those proceedings; and*
 - (b) *the child may only act through a guardian ad litem appointed by the court.*
- (3) *Without prejudice to any other power of the court to make an order for costs against any party to proceedings, where a child has been granted legal representation under a legal aid certificate for any proceedings under this Law, the court may order that the costs of such representation be paid –*
 - (a) *out of public funds; or*
 - (b) *where he or she has been given an opportunity to be heard on the question of costs, by any person with parental responsibility for the child who is not a party to the proceedings.*
- (4) *The amount of costs that the court has ordered to be paid under paragraph (1) shall be determined in accordance with Rules of Court made under the Royal Court (Jersey) Law 1948 and where the costs are to be paid out of public funds, such amount shall be paid from the annual income of the States.”*

5. Accordingly, paragraph (1) of Article 75 of the 2002 Law expressly provides that the Court may make certain orders relating to the representation of a child in care proceedings; this involves the exercise of the Court’s discretion.

6. The Proposition is expressed to be an amendment to the now-withdrawn P.124/2010 which sought a change in the 2002 Law to “*make it mandatory that children in care proceedings and in respect of secure accommodation orders should have a Children’s guardian and an advocate appointed in all cases*”. The current Proposition supports a change to the said Law “*so that where children may be – (i) separated from their parents by virtue of a care order; or (ii) confined by virtue of a secure accommodation order, a children’s guardian and an advocate for the child will be appointed by the Court in all cases*”. Whilst the Proposition may appear to be narrower in scope than its predecessor, care proceedings inherently involve the possibility that children may be separated from their parents. It follows that the Proposition is not materially different from its predecessor.

Court practice and the decision in *Re B [2010] JRC 150*

7. The Proposition states that “*the Royal Court for several years has been content to appoint guardians for children caught in care and other proceedings. As long ago as the Jersey case of Re TS & others [2005] JRC 178 the Royal Court made known its wish to make more use of guardians to safeguard the interests of children in appropriate Jersey cases. A lawyer was also appointed to work with the guardian. Over the past few years, in particular, the Royal Court has been true to that sentiment and routinely appointed a guardian and an advocate to safeguard and represent the interests of the child.*”
8. The case of *Re TS and others* concerned an application for an order freeing the subject children for adoption. A freeing order extinguishes all parental rights and cannot be revoked except if a child has not been adopted or placed for adoption within one year of the freeing order being made.
9. That is to be distinguished from the situation where a care order is made when a parent retains parental responsibility (with limitations on its exercise) and can apply to discharge the care order. In addition, a parent can apply for an order for contact with a child who is subject to a care order.
10. It might be more accurate to say that the court has *invariably* appointed a guardian rather than “*routinely*” done so as the word “*routinely*” suggests that the court has not exercised the statutory discretion that it is obliged to do.
11. The Proposition does not therefore appear to be challenging Article 75 of the 2002 Law, but rather, it appears to be raising concerns about that part of the Court’s decision in *Re B* which confirmed, as paraphrased in the Proposition, that “*neither the appointment of a guardian or a lawyer will automatically follow, even where the child that is the subject of proceedings may be removed from its parents for good*”.

In my opinion, it cannot be the Court’s settled practice to appoint a guardian and a lawyer for the child in all care cases since, as outlined above, Article 75 of the 2002 Law requires these appointments to be discretionary, based on the facts of each case.

12. The actual decision in the case of *Re B* was consistent with previous orders made by the Court on the issue of the separate legal representation of children in care cases. The circumstances of the case were analysed, discretion was exercised, and a lawyer was in fact appointed for the child in that case.
13. With regard to the discretion that the Court exercises in *Re B*, the Court stated –

“Article 75 requires the Court in effect to conduct a balancing exercise in relation to the question as to whether or not the child should have representation. The first question would be whether the child needs representation. The statute contemplates that there is a spectrum at one end of which one can say that the child definitely does need representation and at the other end that the child definitely does not need representation. Between those two extremes, the Court may consider that representation would be useful, might be useful, or was unlikely but could be useful. It is clear that the question as to whether it is desirable to appoint separate representation is one which is to be answered objectively where the decision taker takes all relevant circumstances into account.”

European Convention on Human Rights

14. The Human Rights (Jersey) Law 2000 (the “Human Rights Law”) was not in force when the then Draft Children (Jersey) Law 200- was lodged. Nonetheless, the *projet de loi* which included the said draft Law (P.200/2001) contained the following –

“European Convention on Human Rights

[...] on 7th December 2001 the Health and Social Services Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Health and Social Services Committee the provisions of the Draft Children (Jersey) Law 200- are compatible with the Convention Rights.”

15. It is not suggested in the Proposition that the proposed changes to the 2002 Law are necessary to prevent the violation of a child’s human rights, and in my opinion they are not.
16. Article 7(1) of the Human Rights Law makes it unlawful for a public authority to act in a way which is incompatible with the ECHR. Article 7(2) defines a public authority as including “*a court or tribunal*”. It is accordingly unlawful for the Royal Court to act in a manner that is incompatible with the ECHR and it must ensure that the human rights of any party before it are respected. That means that the Royal Court in exercising any discretion that the 2002 Law provides must have regard to the human rights of any child that is the subject matter of the proceedings.

United Nations Convention on the Rights of the Child

17. The States has previously agreed that policy and legislation initiatives will be undertaken to progress compliance with UNCRC. At the present time, the United Kingdom's ratification of UNCRC has not been extended to Jersey.
18. The Proposition asserts that the statement in *Re B* that neither the appointment of a guardian or a lawyer will be automatic in child care cases "*is likely to contravene article 9 of [UNCRC]*" which "*provides that where children may be separated from their parents; they have to be "given an opportunity to participate in the proceedings and make their views known"*". I do not agree. In my opinion a system which does not automatically appoint a guardian or lawyer for the child in child care cases but leaves it to the discretion of the Court would not contravene Article 9 UNCRC as such. It might be helpful to consider the UNCRC as a whole.
19. Whilst Article 9 UNCRC is of relevance, so are Articles 3 and 12 UNCRC. Article 3(1) UNCRC states that "*[i]n all actions concerning children [...] the best interests of the child shall be a primary consideration*".
20. Article 12 UNCRC provides as follows –
 - “1. *States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
 2. *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law*".
21. It is accordingly the case that the right to participate does not require the appointment of a guardian and lawyer in all cases nor does it require a view to be expressed independently on behalf of a child who is incapable of forming his/her own views.
22. In – “General Comment No. 12 (2009) The right of the child to be heard” (the “General Comment”) (issued by the Committee on the Rights of the Child created under the aegis of the UNCRC) –, Articles 3 and 12 UNCRC are identified as general principles of the UNCRC meaning that they establish not only rights in themselves but should also be considered in the interpretation and implementation of all other rights.
23. In addition, guidance is provided as to the precise meaning of Article 12 UNCRC. Paragraph 22 of the General Comment notes that the child has the right to express his/her views freely which includes the freedom to “*choose whether or not she or he wants to exercise her or his right to be heard*” and paragraphs 35 and 36 of the General Comment state that “[a]fter the child has decided to be heard, he or she will have to decide how to be heard: “*either directly, or through a representative or appropriate body*”. The Committee recommends that, wherever possible, the child must be given the opportunity

to be directly heard in any proceedings. [...] The representative can be the parent(s), a lawyer, or another person (inter alia, a social worker). [...] The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation. Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.”

24. Thus, where Article 12 UNCRC applies (it does not appear to apply to children who are not capable of forming their own views), it does not make it mandatory for the child to be represented by a representative in all cases and in many cases it could well be appropriate to leave such a decision to the “appropriate authority”.

25. Article 9 UNCRC provides, inter alia, as follows –

“1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known [...]”.

26. Article 9 does not require children to be provided with legal representation in all proceedings in which they might be involved; legal representation itself does not appear to be specifically considered at all so long as the child can “participate”. Participation can be ensured by a number of means which could include but does not necessarily mean the appointment of a guardian and lawyer.

27. In the same way as the General Comment makes it clear in relation to Article 12 UNCRC that a child can be adequately represented by a parent or a social worker or a lawyer, a child can participate in proceedings and make his views known in accordance with Article 9 UNCRC without having recourse to both a guardian and separate legal representation.

Other jurisdictions

Guernsey

28. The proposition states that “*the recent decision of the Royal Court in Re B ...places Jersey not only at odds with practice in England and Wales, but also with that of Guernsey...*”.

29. The Law which applies in children's cases in Guernsey is based in part on the Children Act 1989 (which applies in England and Wales) and in part on Scottish legislation. It is not therefore straightforward to compare what happens in Guernsey with the position in Jersey or the position in England and Wales.
30. Children's welfare cases in Guernsey and Alderney requiring compulsory intervention are dealt with under The Children (Guernsey and Alderney) Law 2008.
31. A distinction is made between those cases where intervention is required but there is the possibility of rehabilitation or placement in the extended family and those cases where the plan is that the child will be permanently removed from its parents and the plan is not to place with extended family. This is in contrast to the situation in Jersey, whereby a child may be placed with parents or extended family members under a care order.
32. In Guernsey, where there is no prospect of rehabilitation or placement in the extended family, an application is made to the Court for a Community Parenting Order, whereas if intervention is required but placement with extended family or rehabilitation with parents is a possibility, cases are dealt with by referral to the Children's Convenor (and then referral to the Child, Youth and Community Tribunal).
33. If an application is made to the Court for a Community Parenting Order, then the child is automatically a party to the proceedings and the child is represented by a safeguarder (equivalent of a Children's Guardian) and an advocate.
34. An application for a secure accommodation order must be made to the Court. The child is not automatically a party to the proceedings but the court's practice is to join them automatically and for a safeguarder and advocate for the child to be appointed.

England and Wales

35. The Proposition refers to the practice in England and Wales. It states "... *in cases in the public law field where the State intervened (such as applications for care orders or secure accommodation orders) section 41 [Children Act 1989] made it mandatory for a specialist social worker, or other appropriately qualified person, to be appointed as a guardian for the child in those legal proceedings. Only in exceptional cases was the Court permitted not to follow that course. The child also had the assistance of a lawyer who was appointed by the guardian.*".
36. It assists to consider the relevant legislation which is different to the 2002 Law and deals with guardians and lawyers separately.
37. In England and Wales, the child is automatically a party to specified proceedings under the Children Act 1989 ("the 1989 Act"), including applications for care and secure accommodation orders. This is different to the position in Jersey where the child is not automatically a party to an application for a care or secure accommodation order.

38. In relation to guardians, section 41(1) of the 1989 Act provides that “*for the purpose of any specified proceedings, the court shall appoint an officer of the Service for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests*”. The term ‘specified proceedings’ covers a wide range of cases including applications for care orders or secure accommodation orders.
39. The “Service” referred to is the Children and Family Court Advisory and Support Service known as CAFCASS. It includes social workers who act as children’s guardians and its introduction on 1st April 2001 brought together the services previously provided by the Court Welfare Service, the Guardian ad Litem Services and the Children’s Division of the Official Solicitor’s Office.
40. There is therefore a rebuttable presumption in favour of appointing a guardian but the legislation does not require the appointment of a guardian in every case.
41. Section 41(3) of the 1989 Act provides that, where a child is not represented by a solicitor, the court “*may*” appoint one, if any of the following three conditions is satisfied: “*(a) no officer of the service (children’s guardian) has been appointed for the child; (b) the child has sufficient understanding to instruct a solicitor and wishes to do so; (c) it appears to the court that it would be in the child’s best interests for him to be represented by a solicitor.*”
42. This therefore gives the Court the discretion to appoint a solicitor to represent the child.
43. The Family Proceedings Rules (issued under the 1989 Act) provide that the child’s guardian shall appoint a solicitor to represent the child in “specified proceedings” and has a duty to do so unless a solicitor has already been appointed by the Court.
44. The effect of these provisions taken together is that in England and Wales, there is a presumption that a guardian will be appointed, although that presumption can be rebutted, but once appointed, the guardian has a duty to appoint a solicitor to represent the child. If there is no guardian the court has a discretion to appoint a solicitor for the child.
45. There have been problems in England with the ability of Cafcass to provide enough guardians to cover every care case. Cafcass and the President of the Family Division in England and Wales issued a joint agreement on 29th September 2010 in response to the need to tackle backlogs in allocating guardians to care cases. The press release makes reference to “*the latest national figures show that...only 151 care cases remain unallocated...*”.
46. Although then, in theory, in each care case in England there could be a children’s guardian and solicitor for the children, in practice, because of a shortage of guardians, in some cases there is no guardian and in those cases the solicitor acts alone.

Scotland and the Republic of Ireland

47. It may assist members to be aware of the position in two other jurisdictions, namely Scotland and the Republic of Ireland, both of which are subject to the ECHR and UNCRC (as part of the United Kingdom in Scotland's case).
48. Part V of the Irish Child Care Act 1991 governs the procedure in child care proceedings. In such proceedings, sections 25 and 26 grant the court discretion to appoint a guardian or a lawyer, or both.
49. Similarly, sections 41 and 42 of the Children (Scotland) Act 1995 and Rule 3 of the Children's Hearings (Legal Representation) (Scotland) Rules 2002 provide a discretionary framework for the appointment of guardians and legal representatives in child care proceedings. The relevant statutory provisions are attached at Appendices 1 to 3.
50. We are aware of no suggestion that the systems in those two jurisdictions, which are similar to that in place in Jersey, contravene the ECHR or UNCRC.

Conclusion

51. The 2002 Law, as currently in force, does not allow the Court to hold that the appointment of a guardian and a lawyer for a child should be automatic in all child care cases, because Article 75 of that Law requires discretion to be exercised.
52. The decision in the case of *Re B* represents an analysis of the statutory position and how it applies.
53. The fact that the appointment of a guardian and a lawyer for a child will not be automatic in all child care cases does not offend the ECHR.
54. A regime that does not appoint a guardian and a lawyer for a child in all child care cases does not contravene Article 9 UNCRC.
55. It appears that Scotland and the Republic of Ireland, which are both subject to the ECHR and UNCRC; rely on discretionary regimes in relation to the appointment of guardians and lawyers in public child care cases.
56. The Proposition would require the appointment of both a guardian and an advocate for the child in all cases. This would be so even at the end of the spectrum identified in *Re B* where the child "*definitely does not need representation*".
57. It is a matter of policy as to whether or not the Court should retain a discretion.

27th October 2010
Attorney General

ENGLAND AND WALES

Children Act 1989

Section 41 – Representation of child

- (1) For the purpose of any specified proceedings, the court shall appoint an officer of the Service for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests.
- (2) The officer of the Service shall—
 - (a) be appointed in accordance with rules of court; and
 - (b) be under a duty to safeguard the interests of the child in the manner prescribed by such rules.
- (3) Where—
 - (a) the child concerned is not represented by a solicitor; and
 - (b) any of the conditions mentioned in subsection (4) is satisfied,the court may appoint a solicitor to represent him.
- (4) The conditions are that—
 - (a) no officer of the Service has been appointed for the child;
 - (b) the child has sufficient understanding to instruct a solicitor and wishes to do so;
 - (c) it appears to the court that it would be in the child's best interests for him to be represented by a solicitor.
- (5) Any solicitor appointed under or by virtue of this section shall be appointed, and shall represent the child, in accordance with rules of court.
- (6) In this section "specified proceedings" means any proceedings—
 - (a) on an application for a care order or supervision order;
 - (b) in which the court has given a direction under section 37(1) and has made, or is considering whether to make, an interim care order;
 - (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
 - (d) on an application under section 39(4);

- (e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;
 - (f) with respect to contact between a child who is the subject of a care order and any other person;
 - (g) under Part V;
 - (h) on an appeal against—
 - (i) the making of, or refusal to make, a care order, supervision order or any order under section 34;
 - (ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order; or
 - (iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in subparagraph (i) or (ii);
 - (iv) the refusal of an application under section 39(4); or
 - (v) the making of, or refusal to make, an order under Part V; or
 - (hh) on an application for the making or revocation of a placement order (within the meaning of section 21 of the Adoption and Children Act 2002);
 - (i) which are specified for the time being, for the purposes of this section, by rules of court.
- (7) The proceedings which may be specified under subsection (6)(i) include (for example) proceedings for the making, varying or discharging of a section 8 order.
- (8) Rules of court may make provision as to—
- (a) the assistance which any officer of the Service may be required by the court to give to it;
 - (b) the consideration to be given by any officer of the Service, where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order;
 - (c) the participation of officers of the Service in reviews, of a kind specified in the rules, which are conducted by the court.
- (9) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of—

(a) any statement contained in a report made by an officer of the Service who is appointed under this section for the purpose of the proceedings in question; and

(b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question which the court is considering.

Family Proceedings Rules 1991

Rule 4.11A – Additional powers and duties of children’s guardian

- (1) The children’s guardian shall—
 - (a) appoint a solicitor to represent the child unless such a solicitor has already been appointed; and
 - (b) give such advice to the child as is appropriate having regard to his understanding and, subject to rule 4.12(1)(a), instruct the solicitor representing the child on all matters relevant to the interests of the child including possibilities for appeal, arising in the course of proceedings.
- (2) Where the children’s guardian is an officer of the service authorised by the Service in the terms mentioned by and in accordance with section 15(1) of the Criminal Justice and Court Services Act 2000, paragraph (1)(a) shall not require him to appoint a solicitor for the child if he intends to have conduct of the proceedings on behalf of the child unless—
 - (a) the child wishes to instruct a solicitor direct; and
 - (b) the children’s guardian or the court considers that he is of sufficient understanding to do so.
- (2A) Where the children’s guardian is a Welsh family proceedings officer authorised by the National Assembly for Wales in the terms mentioned by and in accordance with section 37(1) of the Children Act 2004, paragraph (1)(a) shall not require him to appoint a solicitor for the child if he intends to have conduct of the proceedings on behalf of the child unless—
 - (a) the child wishes to instruct a solicitor direct; and
 - (b) the children’s guardian or the court considers that he is of sufficient understanding to do so.
- (3) Where it appears to the children’s guardian that the child—
 - (a) is instructing his solicitor direct; or
 - (b) intends to conduct and is capable of conducting the proceedings on his own behalf,he shall inform the court and from then he—
 - (i) shall perform all of his duties set out in rule 4.11 and this rule, other than those duties under paragraph (1)(a) of this rule, and such other duties as the court may direct;
 - (ii) shall take such part in the proceedings as the court may direct; and

- (iii) may, with the leave of the court, have legal representation in the conduct of those duties.
- (4) Unless excused by the court, the children's guardian shall attend all directions appointments in and hearings of the proceedings and shall advise the court on the following matters—
 - (a) whether the child is of sufficient understanding for any purpose including the child's refusal to submit to a medical or psychiatric examination or other assessment that the court has the power to require, direct or order;
 - (b) the wishes of the child in respect of any matter relevant to the proceedings including his attendance at court;
 - (c) the appropriate forum for the proceedings;
 - (d) the appropriate timing of the proceedings or any part of them;
 - (e) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application; and
 - (f) any other matter concerning which the court seeks his advice or concerning which he considers that the court should be informed.
- (5) The advice given under paragraph (4) may, subject to any order of the court, be given orally or in writing; and if the advice be given orally, a note of it shall be taken by the court or the proper officer.
- (6) The children's guardian shall, where practicable, notify any person whose joinder as a party to those proceedings would be likely, in the opinion of the children's guardian, to safeguard the interests of the child of that person's right to apply to be joined under rule 4.7(2) and shall inform the court—
 - (a) of any such notification given;
 - (b) of anyone whom he attempted to notify under this paragraph but was unable to contact; and
 - (c) of anyone whom he believes may wish to be joined to the proceedings.
- (7) The children's guardian shall, unless the court otherwise directs, not less than 14 days before the date fixed for the final hearing of the proceedings—
 - (a) file a written report advising on the interests of the child; and
 - (b) serve a copy of the filed report on the other parties and any local authority that is preparing, or has prepared, a report under section 14A(8) or (9).

- (8) The children's guardian shall serve and accept service of documents on behalf of the child in accordance with rule 4.8(3)(b) and (4)(b) and, where the child has not himself been served, and has sufficient understanding, advise the child of the contents of any document so served.
- (9) If the children's guardian inspects records of the kinds referred to in section 42, he shall bring to the attention of—
 - (a) the court; and
 - (b) unless the court otherwise directs, the other parties to the proceedings,
all records and documents which may, in his opinion, assist in the proper determination of the proceedings.
- (10) The children's guardian shall ensure that, in relation to a decision made by the court in the proceedings—
 - (a) if he considers it appropriate to the age and understanding of the child, the child is notified of that decision; and
 - (b) if the child is notified of the decision, it is explained to the child in a manner appropriate to his age and understanding.

REPUBLIC OF IRELAND

Child Care Act 1991

Section 25 – Power of court to join child as a party and costs of child as a party

- (1) If in any proceedings under *Part IV* or *VI* the child to whom the proceedings relate is not already a party, the court may, where it is satisfied having regard to the age, understanding and wishes of the child and the circumstances of the case that it is necessary in the interests of the child and in the interests of justice to do so, order that the child be joined as a party to, or shall have such of the rights of a party as may be specified by the court in, either the entirety of the proceedings or such issues in the proceedings as the court may direct. The making of any such order shall not require the intervention of a next friend in respect of the child.
- (2) Where the court makes an order under *subsection (1)* or a child is a party to the proceedings otherwise than by reason of such an order, the court may, if it thinks fit, appoint a solicitor to represent the child in the proceedings and give directions as to the performance of his duties (which may include, if necessary, directions in relation to the instruction of counsel).
- (3) The making of an order under *subsection (1)* or the fact that a child is a party to the proceedings otherwise than by reason of such an order shall not prejudice the power of the court under *section 30(2)* to refuse to accede to a request of a child made thereunder.
- (4) Where a solicitor is appointed under *subsection (2)*, the costs and expenses incurred on behalf of a child exercising any rights of a party in any proceedings under this Act shall be paid by the health board concerned. The health board may apply to the court to have the amount of any such costs or expenses measured or taxed.
- (5) The court which has made an order under *subsection (2)* may, on the application to it of a health board, order any other party to the proceedings in question to pay to the board any costs or expenses payable by that board under *subsection (4)*.

Section 26 – Appointment of guardian *ad litem* for a child

- (1) If in any proceedings under *Part IV* or *VI* the child to whom the proceedings relate is not a party, the court may, if it is satisfied that it is necessary in the interests of the child and in the interests of justice to do so, appoint a guardian *ad litem* for the child.
- (2) Any costs incurred by a person in acting as a guardian *ad litem* under this section shall be paid by the health board concerned. The health board may apply to the court to have the amount of any such costs or expenses measured or taxed.
- (3) The court which has made an order under *subsection (1)* may, on the application to it of a health board, order any other party to the proceedings in question to pay to the board any costs or expenses payable by that board under *subsection (2)*.
- (4) Where a child in respect of whom an order has been made under *subsection (1)* becomes a party to the proceedings in question (whether by virtue of an order under *section 25(1)* or otherwise) then that order shall cease to have effect.

SCOTLAND

Children (Scotland) Act 1995**Section 41 – Safeguarding child’s interests in proceedings**

- (1) Subject to subsection (2) below, in any proceedings under this Chapter or Chapter 3 of this Part of this Act either at a children’s hearing or before the sheriff, the hearing or, as the case may be, the sheriff—
- (a) shall consider if it is necessary to appoint a person to safeguard the interests of the child in the proceedings; and
 - (b) if they, or he, so consider, shall make such an appointment, on such terms and conditions as appear appropriate.
- (2) Subsection (1) above shall not apply in relation to proceedings under section 57 of this Act.
- (3) Where a children’s hearing make an appointment under subsection (1)(b) above, they shall state the reasons for their decision to make that appointment.
- (4) The expenses of a person appointed under subsection (1) above shall—
- (a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and
 - (b) except in so far as otherwise defrayed in terms of regulations made under section 101 of this Act,
- be borne by the local authority—
- (i) for whose area the children’s panel from which the relevant children’s hearing has been constituted is formed;
 - (ii) where there is no relevant children’s hearing, within whose area the child resides.
- (5) For the purposes of subsection (4) above, “relevant children’s hearing” means, in the case of proceedings—
- (a) at a children’s hearing, that hearing;
 - (b) under section 68 of this Act, the children’s hearing who have directed the application;
 - (c) on an appeal under section 51 of this Act, the children’s hearing whose decision is being appealed against.

Children's Hearings (Legal Representation) (Scotland) Rules 2002

Rule 3 – Legal representation for the purpose of assisting children at a Children's Hearing

- (1) A business meeting arranged by the Principal Reporter under section 64(1) of the Act may appoint to any child who is due to appear before the Children's Hearing a legal representative if it appears to that business meeting, notwithstanding that an appointment may be made under section 41(1) of the Act, that—
 - (a) despite the entitlement of the child to be accompanied by a representative under rule 11 of the 1996 Rules legal representation is required to allow the child to effectively participate at the Hearing; or
 - (b) it may be necessary to make a supervision requirement (or a review of such requirement) which includes a requirement for the child to reside in a named residential establishment and the child is likely to meet the criteria specified in section 70(10) of the Act and the Secure Accommodation (Scotland) Regulations 1996.
- (2) The Children's Hearing may at any time appoint to any child a legal representative if it appears to that Hearing that either of the circumstances in paragraph (1)(a) or (b) above apply notwithstanding that:
 - (a) a business meeting or a previous Children's Hearing has considered the appointment of a legal representative for the child who is the subject of the Hearing; or
 - (b) an appointment has been or may be made under section 41(1) of the Act.
- (3) When any appointment of a legal representative is made, the business meeting or the Children's Hearing shall direct the Principal Reporter to advise the local authority of that appointment.