

A Handbook on Family Law relating to children in
Northern Ireland

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Introduction: Courts in Northern Ireland

1. The key pieces of legislation concerning family proceedings for children in Northern Ireland are:
 - i. The Children (Northern Ireland) Order 1995 (hereinafter referred to as “the 1995 Order”),
 - ii. The Adoption (Northern Ireland) Order 1987 (hereinafter referred to as “the 1987 Order”).
2. At present, the law that applies in Northern Ireland substantially mirrors the law that was in place in England and Wales prior to the legislative developments in 2002 Northern Ireland has recently engaged the Children and Adoption Act (Northern Ireland) 2022, however dates for commencement of all provisions therein, are not yet confirmed. Northern Ireland continues to follow closely, in most instances, case-law from England and Wales notwithstanding that the terminology has not changed, as will be described further in later chapters.
3. The Family Court tiers in Northern Ireland are:
 - (i) the Family Proceedings Court at Magistrates’ Court level, where a District Judge (Magistrates’ Court) sits with two lay panel members save in specified circumstances;¹
 - (ii) the Family Care Centre at County Court level; and
 - (iii) the Family Division of the High Court of Justice in Northern Ireland, which is the highest first instance Court.
4. The Family Proceedings Rules (Northern Ireland) 1996 govern procedure for cases in the Family Care Centre and High Court. For cases in the Magistrates’ Court, the most relevant procedural rules are The Magistrates’ Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996.
5. Most applications are commenced in the Family Proceedings Court, save in specified circumstances (e.g. existing proceedings or variation of an earlier order). Any application can be transferred to a higher court and further details are set out below.
6. Appeals lie as follows:
 - (i) From the Family Proceedings Court to the Family Care Centre;
 - (ii) From the Family Care Centre to the High Court;
 - (iii) From the High Court to the Court of Appeal.

In the event an appeal has been determined by the High Court from a first instance decision of the Family Care Centre that appeal is final, and any further appeal can only be by way of a case stated on a point of law to the Court of Appeal.

Transfer of Proceedings

7. The Children (Allocation of Proceedings) Order (Northern Ireland) 1996 provides for the transfer of any application to a different court tier.
8. If a Court other than the Family Proceedings Court previously made an Order and the application is to vary, extend or discharge that Order, proceedings should be commenced at the court tier that made the original Order.²

¹ Schedule 2 – The Children & Young Person Act (Northern Ireland) 1968

² Article 4 – The Children (Allocation of Proceedings) Order (Northern Ireland) 1996

9. An application may be commenced in a court in which there are pending any other family proceedings which may affect or are connected to the child.³ Further, proceedings may be commenced in any Court that has directed an Article 56⁴ investigation in respect of a child or in the Family Proceedings Court if ordered by the Court which directed the investigation.⁵
10. With most cases commencing in the Family Proceedings Court, transfer to a higher Court (i.e. the Family Care Centre, and perhaps from there to the High Court) is usually considered having regard to the complexity of the legal or factual matters in the proceedings.⁶ Guidance can be found within Appendix 1, Guide to Case management in public law proceedings, Part 1 and Part 2 and case law.⁷

Key Concepts

11. **Definition of “A Child”** – A child is defined in Article 2(2) of the 1995 Order as, “a person under the age of 18”.⁸

12. **Welfare Principle** – also known as the paramountcy principle, this concept derives from Article 3 (1) of the 1995 Order:

“Where a court determines any question with respect to—

(a) the upbringing of a child; or

(b) the administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the court’s paramount consideration.”

13. **Welfare Checklist** – this is a list of factors set out in Article 3 (3) of the 1995 Order, to which the court must have regard when considering whether to make any Order in family proceedings:

“In the circumstances mentioned in paragraph (4), a court shall have regard in particular to —
(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;

(g) the range of powers available to the court under this Order in the proceedings in question.”

14. **No Delay Principle** – Article 3(2) of the 1995 Order provides:

³ Article 3 (2) & Article 6 (1) - *The Children (Allocation of Proceedings) Order (Northern Ireland) 1996*

⁴ Article 56 – *The Children (Northern Ireland) Order 1995*

⁵ Article 3 (3) (a) and (b) - *The Children (Allocation of Proceedings) Order (Northern Ireland) 1996*

⁶ Article 5 - *The Children (Allocation of Proceedings) Order (Northern Ireland) 1996*

⁷ *In the matter of E and F [2021] NI Fam 48*

⁸ *Exception Parts X, XI and XII (fostering, child minding and employment)*

“In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.”

15. **No Order Principle** – as set out in Article 3 (5) of the 1995 Order, the court shall not make an Order in respect of a child, unless benefit can be derived, for the child, from the making of an Order.

“Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.”

16. **Least interventionist approach** – In addition to Article 3(5) above, intervention has to be proportionate to the legitimate aim ensuring that consideration is given to Article 8 of the ECHR⁹ in any application.

17. **Parental Responsibility** – is defined at Article 6 (1) of the 1995 Order as:

“all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”

18. A child’s mother will always have parental responsibility. A father will have parental responsibility if he is married to the mother at the time of the birth, or if he is named on the child’s birth certificate, where the child was born on or after 15 April 2002.¹⁰ If a Residence Order is made in favour of a father who does not already have parental responsibility, the Court shall also make a Parental Responsibility Order in his favour.¹¹ It can also be acquired by a father, or stepparent by Court Order or agreement in a prescribed form.¹²

Where a Residence Order is made in favour of a person who is not a parent or Guardian of a child, Article 12(2) of the 1995 Order provides that that person shall have parental responsibility for the duration of that Residence Order.

In an application made to the High Court or Family Care Centre, where a child has no parent with parental responsibility or where a Residence Order was in force in respect of a parent or guardian who has died during the period of the Order, the Court may appoint an Applicant to become the child’s guardian.¹³ Such an Order confers parental responsibility upon the Applicant.¹⁴ Further a parent who has parental responsibility for a child may appoint another individual to be the child’s guardian in the event of death. This will convey parental responsibility upon the Guardian.¹⁵

Parental responsibility can also be conferred on a Second Female Parent or be obtained through the making of a Parental Order pursuant to the provisions of the Human Fertilisation and Embryology Acts 1990 and 2008, which apply to Northern Ireland in the same way as in England and Wales, with consequential amendments to Article 7 of the 1995 Order.

⁹ ECHR – European Convention on Human Rights

¹⁰ Section 1 (6) (b) Family Law Act (Northern Ireland) 2001

¹¹ Article 12 (1) – The Children (Northern Ireland) Order 1995

¹² Article 7 (1) – The Children (Northern Ireland) Order 1995

¹³ Article 159 (1) - The Children (Northern Ireland) Order 1995

¹⁴ Article 159 (4) - The Children (Northern Ireland) Order 1995

¹⁵ Article 160 - The Children (Northern Ireland) Order 1995

19. The **effect** of the making of Orders upon other Orders is provided for in Article 179¹⁶ as is the **duration of Orders**. In certain instances, a requirement for leave to apply a second time for a particular order is also put in place by a dismissal of a first application. Further, Article 179(14) permits the Court to order that no further application may be brought, for a specified period of time, without leave of the court.¹⁷

PUBLIC LAW PROCEEDINGS

20. In Northern Ireland the relevant authority for the purpose of public law proceedings is one of five Health and Social Care Trusts, hereinafter referred to as “the Trust”.

21. A Trust commences a public law application by filing Forms C1 and C10. Pursuant to Article 50 (1) of the 1995 Order, the Trust may seek a Care Order or a Supervision Order. Prior to initiating such an application, the Trust may have made an application for an Emergency Protection Order (see below at paragraph 51).

22. Upon disposal of public law proceedings, the Court may make:

- a. a Care Order – Articles 50 and 52;
- b. a Supervision Order – Article 54 and Schedule 3;
- c. Private Law Orders (Residence Order, Contact Order, Prohibited Steps Order, Specific Issue Order).¹⁸

23. On an application for a Care Order or Supervision Order the court may make the above orders even though no application has been made.¹⁹ The Court could also make a combination of a Supervision Order and Private Law Orders.

24. Whilst a Care Order is in place, the court cannot make any Private Law Order except for a Residence Order, in respect of a child who is in the care of an authority.²⁰

25. In public law proceedings, the Court shall appoint a Court Children’s Guardian²¹ (unless satisfied it is not necessary to do so, which is rarely employed) whose role is to place before the Court anything that s/he considers to be in the best interests of the child. The powers and duties of the Court Children’s Guardian can be found at Rule 4.12²² and Rule 12²³ of the respective relevant Rules.

CARE & SUPERVISION ORDERS

Care Orders

26. The effect of a Care Order in Northern Ireland is the same as in England and Wales. It grants parental responsibility to the Trust.²⁴ It does not remove the parental responsibility, or change

¹⁶ For example Article 179(2) – the making of a Care Order discharges any Article 8 orders in place.

¹⁷ Re LD (A Male Child aged 13 ½ years) (No.2) [2022] NI Fam 34

¹⁸ Article 8 – The Children (Northern Ireland) Order 1995

¹⁹ Article 50 (6) and Article 10 (1) (b) – The Children (Northern Ireland) Order 1995

²⁰ Article 9 (1) – The Children (Northern Ireland) Order 1995

²¹ Article 60 – The Children (Northern Ireland) Order 1995. NOTE: Formerly known as a Guardian ad Litem see Section 137 The Adoption and Children Act (Northern Ireland) 2022 & The Children’s Court Guardian Agency for Northern Ireland (Establishment and Constitution) Order (Northern Ireland) 2023

²² The Family Proceedings Rules (Northern Ireland) 1996

²³ Magistrates’ Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996

²⁴ Article 52 – The Children (Northern Ireland) Order 1995

the legal status, of any parent (although the Trust can determine the extent to which the parent may exercise same if necessary to safeguard or promote the child's welfare).²⁵ It does act to discharge any Residence Order that had been in force,²⁶ so it would remove the parental responsibility of any non-parent who had parental responsibility by virtue of a Residence Order. A Care Order also discharges any other Article 8 orders that had been in force.²⁷

27. Where a child is subject to a Care Order, the Trust has a duty to safeguard and promote the child's welfare²⁸ and to provide the child with accommodation and maintenance.²⁹
28. There are some restrictions on what the Trust can do, for example in relation to the child's name or removal from the jurisdiction.³⁰ A Trust may also only make arrangements for a child in care to live outside Northern Ireland with leave of the Court pursuant to Article 33 of the 1995 Order.³¹
29. Pursuant to Article 53, a Trust must promote reasonable contact for a child in care with defined persons. Where contact arrangements are not agreed an application may be made to Court.
30. An application may be made to Discharge a Care Order pursuant to Article 58. On an application to discharge a Care Order the Court can consider substitution by way of a Supervision Order.³²
31. Further, where a child is subject to a Care Order, the Trust shall advise, assist and befriend the child with a view to promoting his welfare when the Care Order has expired at age 18.³³ For example, this would involve an assessment of the child's needs and the preparation of a pathway plan.³⁴ A personal advisor should be appointed for any relevant child³⁵ and unless satisfied that the child's welfare does not require it, the Trust should support a child by maintaining him, providing him with suitable accommodation and providing support.³⁶

Supervision Orders

32. A Supervision Order does not confer parental responsibility on the Trust. Article 54 of the 1995 Order provides that:

" (1) While a supervision order is in force the supervisor shall—

(a) advise, assist and befriend the supervised child;

(b) take such steps as are reasonably necessary to give effect to the order; and

(c) where—

²⁵ Article 52 (3) (b) and Article 52 (4) – The Children (Northern Ireland) Order 1995

²⁶ Article 179 (2) – The Children (Northern Ireland) Order 1995

²⁷ Article 179 (2) – The Children (Northern Ireland) Order 1995

²⁸ Article 26 - The Children (Northern Ireland) Order 1995

²⁹ Article 27 - The Children (Northern Ireland) Order 1995

³⁰ Article 52 (7) - The Children (Northern Ireland) Order 1995

³¹ Article 33 cannot be used if the placement outside the jurisdiction is a residential unit – see *In the matter of OM [2021] NI Fam 16* – instead leave must be sought for the exercise of the High Court's inherent jurisdiction pursuant to Article 173.

³² Article 58(4) - The Children (Northern Ireland) Order 1995

³³ Article 34A - The Children (Northern Ireland) Order 1995

³⁴ Article 34A (5) - The Children (Northern Ireland) Order 1995

³⁵ Article 34C (2) - The Children (Northern Ireland) Order 1995

³⁶ Article 34C (8) - The Children (Northern Ireland) Order 1995

- (i) the order is not wholly complied with; or
 - (ii) the supervisor considers that the order may no longer be necessary, consider whether or not to apply to the court for its variation or discharge.
- (2) Schedule 3 (which makes further provision with respect to supervision orders) shall have effect.”

33. Directions can only be given if they are compliant with the provisions of Schedule 3 to the 1995 Order.

When are Care and Supervision orders made?

34. A Care Order or Supervision order can only be made in relation to children who are aged 16 years or younger.³⁷

35. Before a Care or Supervision Order can be made, the Trust must satisfy the court that the threshold criteria in Article 50(2) of the 1995 Order³⁸ are met:

- “A court may only make a care order or supervision order if it is satisfied –
- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
 - (b) that the harm, or likelihood of harm, is attributable to –
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child's being beyond parental control.”

36. This test is assessed as at the date on which the Trust issued their application or first took protective measures in relation to the child³⁹, otherwise known as “the date of intervention”.

37. To obtain an interim Care or Supervision Order, the court must be satisfied of the interim threshold criteria set out in Article 57(2) of the 1995 Order⁴⁰ are met:

- “A court shall not make an interim care order or interim supervision order under this Article unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in Article 50(2).”

38. Establishing the threshold criteria does not necessitate the granting of a Care or Supervision Order. If the Threshold Criteria are met, the court will conduct a welfare analysis to decide which, if any, order is best for the child having regard to the Trust’s proposed care plan. In deciding what Order, if any, is in the child’s best interests, the Court should consider the welfare principle, and factors in the welfare checklist. The Court should also consider the “No Order” principle. For example, that matters have improved significantly since the proceedings were commenced, such that it is in the child’s best interests to return home with no order of the court.

When do Care and Supervision Orders cease to have effect?

³⁷ Article 50 (4) – The Children (Northern Ireland) Order 1995

³⁸ Equivalent section 31 (2) – The Children Act 1989

³⁹ *Re M (A Minor) (Care Order: Threshold Conditions)* [1994] 2 FLR 577

⁴⁰ Equivalent section 38 (2) – The Children Act 1989

39. An interim Care or interim Supervision Order that may be made during the proceedings may last a maximum of 8 weeks for the first order made⁴¹, with subsequent orders to last a maximum of 4 weeks.⁴²
40. A Care Order lasts until the child's 18th birthday unless brought to an end by order discharging same on an earlier date.⁴³
41. Supervision Orders are made in the first instance for 12 months.⁴⁴ On application the order can be extended, but for no longer than 3 years.⁴⁵
42. If a court makes a Care Order in respect of a child who is the subject of a Supervision Order, the Supervision Order is discharged.⁴⁶ However, a Supervision Order shall remain in force when an Article 8 Order is made.

Enforceability of Care Orders in England & Wales

43. Where a child is subject to a Care Order, a Trust may not make arrangements for them to live outside Northern Ireland unless they have the leave of the Court.⁴⁷
44. Regulation 2A - The Children (Prescribed Orders – Northern Ireland, Guernsey, and Isle of Man) Regulations 1991 as amended by The Children (Prescribed Orders – Northern Ireland, Guernsey and Isle of Man) Amendment Regulations 2006 applies where a Trust wishes to place a child in England and Wales. Pursuant to this Regulation, the Care Order may be transferred to the relevant local authority.
45. Such a transfer can only take place where:
- (a) The Court in Northern Ireland has granted permission pursuant to Article 33 for the Trust to make arrangements for the child to live in England or Wales and,
 - (b) the relevant local authority has notified the relevant court in Northern Ireland in writing that it agrees to take over the care of the child, and
 - (c) the Trust in Northern Ireland has notified the relevant court that it agrees to the local authority taking over the care of the child.
46. Where such a transfer takes place, the Order then has effect in England and Wales for all purposes as if it were a Care Order granted under section 31(1)(a) placing the child in the care of the English or Welsh local authority.

Enforceability of Care Orders in Scotland

47. Where a child is subject to a Care Order made in Northern Ireland, the Care Order has effect in Scotland as if it were a compulsory supervision order. Regulation 5 (1) (b) of The Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 applies.

⁴¹ Article 57 (4) (a) – *The Children (Northern Ireland) Order 1995*

⁴² Article 57 (4) (b) & Article 5 (b) – *The Children (Northern Ireland) Order 1995*

⁴³ Article 58 – *The Children (Northern Ireland) Order 1995*

⁴⁴ Paragraph 6 (1), Schedule 3 - *The Children (Northern Ireland) Order 1995*

⁴⁵ Paragraph 6 (4), Schedule 3 - *The Children (Northern Ireland) Order 1995*

⁴⁶ Article 179 (3) - *The Children (Northern Ireland) Order 1995*

⁴⁷ Article 33 - *The Children (Northern Ireland) Order 1995*

48. The following conditions must be satisfied:
- (a) the Court has approved the child to live outside Northern Ireland pursuant to Article 33 of the 1995 Order;
 - (b) The Scottish Local Authority has, through the Principal Reporter, notified the court, which granted the Article 33 permission, in writing that it is willing to take over the care and supervision of the child; and
 - (c) The relevant Northern Ireland Trust has notified the court that it agrees to the Scottish Local Authority taking over the care of the child.

Enforceability of Supervision Order in England & Wales

49. There are no statutory provisions which provide for the enforceability of Supervision order made in Northern Ireland, in England and Wales.

Enforceability of Supervision Orders in Scotland

50. Where a child is subject to a Supervision Order, the Supervision Order has effect in Scotland as if it were a compulsory supervision order. Regulation 6 (1) (b) – The Children’s Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 applies.

51. The Supervision Order is enforceable if:
- (a) The relevant Northern Ireland Trust has notified the local authority for the area in which the child is to reside in Scotland of the proposed transfer of the child to Scotland; and
 - (b) The Scottish Local Authority has consent to the proposed transfer in writing.

Emergency Protection Orders

52. The Trust may also apply for an Emergency Protection Order in circumstances where the Trust is satisfied that a child is in immediate need of protection from significant harm or is at risk of significant harm.⁴⁸
53. A Court cannot make an Order for a period exceeding 8 days.⁴⁹ The Court may extend the Order, but not for a further period exceeding 7 days.⁵⁰ When making an Order, the Court may also impose an exclusion requirement if there is reasonable cause to believe that if a person is excluded from a dwelling house that a child will not be likely to suffer significant harm.⁵¹

Secure Accommodation Orders

54. A Trust cannot place a child in accommodation in Northern Ireland for the purpose of restricting their liberty unless an order is made authorising the child to be placed in secure accommodation. There is one regional secure accommodation facility in Northern Ireland known as Lakewood Secure Care Centre which can accommodate up to 16 children. Admissions are considered through a panel which considers the presenting need, and thereafter if a place is secured an application to Court is required.
55. The application should be made in Form C1 supplemented with Form C17.

⁴⁸ Article 63 – The Children (Northern Ireland) Order 1995

⁴⁹ Article 64 (1) – The Children (Northern Ireland) Order 1995

⁵⁰ Article 64 (4) – The Children (Northern Ireland) Order 1995

⁵¹ Article 63A – The Children (Northern Ireland) Order 1995

56. A Secure Accommodation Order has the effect of permitting a Trust to place (or keep) a child in accommodation for the purpose of restricting liberty⁵². A child under the age of 13 years shall not be placed in secure accommodation unless prior approval of the Department of Health has been sought⁵³.

When are secure accommodation orders made?

57. Pursuant to Article 44 (2) of the 1995 Order, a Trust may apply to admit a child to secure care if the child meets one or all of the following criteria:

“(a) that—

(i) he has a history of absconding and is likely to abscond from any other description of accommodation; and

(ii) if he absconds, he is likely to suffer significant harm; or

(b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons”.

58. Guidance and Regulations⁵⁴ state that, *“restricting the liberty of children is a serious step which must be taken only when there is no appropriate alternative. It must be a “last resort” in the sense that all else must first have been comprehensively considered and rejected – never because no other placement was available at a relevant time, because of inadequacies in staffing, because the child is simply being a nuisance or runs away from [his] accommodation and is not likely to suffer significant harm in doing so, and never as a form of punishment”.*

59. When making a Secure Accommodation Order, the court must specify a maximum period for which it applies.

60. Without court authority, the maximum period for the restriction of a child’s liberty is 72 hours, either consecutively or in aggregate in any period of 28 days⁵⁵. The maximum period for which a court may authorise a child to be kept in secure accommodation is three months in the first instance⁵⁶, although on subsequent applications the court may authorise secure accommodation for a period not exceeding six months at any one time.⁵⁷

Enforceability of Secure Accommodation Orders in England and Wales and Scotland

61. Where it is proposed to place a child from Northern Ireland in another part of the United Kingdom, within a residential care setting, the placement of the child outside of Northern Ireland (if they are in care) must be authorised under the Inherent Jurisdiction of the High Court.⁵⁸

⁵² Article 44 – *The Children (Northern Ireland) Order 1995*

⁵³ Regulation 2 – *The Children (Secure Accommodation) Regulations (Northern Ireland) 1996*

⁵⁴ *The Children (Northern Ireland) Order 1995 - Guidance and Regulations: Volume 4 published by the Department of Health, Paragraph 15.5*

⁵⁵ Regulation 6 – *The Children (Secure Accommodation) Regulations (Northern Ireland) 1996*

⁵⁶ Regulation 7 – *The Children (Secure Accommodation) Regulations (Northern Ireland) 1996*

⁵⁷ Regulation 8 – *The Children (Secure Accommodation) Regulations (Northern Ireland) 1996*

⁵⁸ *Re OM [2021] NI Fam 16*

62. Where that Order has authorised the deprivation of liberty, said Order may be recognised in Scotland, subject to specific conditions.⁵⁹ Otherwise, the Order may be recognised as a “Part 1” Order, pursuant to the Family Law Act 1986 provisions.

FREEING ORDERS

63. At present, the applicable law on adoption in Northern Ireland is the Adoption (Northern Ireland) Order 1987 (hereinafter referred to as “the 1987 Order”). A child is defined as a person who has not attained the age of 18 years⁶⁰.

64. Once a child is subject to care proceedings, the only procedure by which the child can be adopted, is either by consent of the birth parent to adoption, or by an order freeing the child for adoption (“a freeing order”) which allows the Trust to place the child for adoption.

65. The effect of a freeing order is to revoke the parental responsibility of any parent that held same, and vests sole parental responsibility in the Trust as an adoption agency.

66. An application may be made for a freeing order by consent of the parent(s) pursuant to Article 17 of the 1987 Order, or without consent pursuant to Article 18 of the 1987 Order.

67. The applicable rules to such proceedings are found in Part IVA of the Family Proceedings Rules (Northern Ireland) 1996, as amended in 2003⁶¹.

68. Applications are made:

- i. By Form A1 if for an application with parental consent⁶²;
- ii. By Form A2 if the application is made without parental consent⁶³.

A statement of facts must also be filed in the second case to set out the facts relied upon to dispense with parental consent.

69. A freeing order will remain in effect until an adoption order is made; it is revoked; or the child turns 18 years.

When are freeing orders made?

70. A freeing order with parental agreement can only be made if:

- i. Parental agreement has been given in the prescribed form (Form A3) by a parent with parental responsibility⁶⁴. It should be noted that consent given by a mother is ineffective if given within 6 weeks of birth⁶⁵,
- ii. This consent needs to be witnessed by a Justice of the Peace⁶⁶,

⁵⁹ *Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022.*

⁶⁰ *Article 2 (2) – The Adoption (Northern Ireland) Order 1987*

⁶¹ *The Family Proceedings (Amendment) Rules (Northern Ireland) 2003*

⁶² *Rules 4A.3. – The Family Proceedings (Amendment) Rules (Northern Ireland) 2003*

⁶³ *Rules 4A.4. – The Family Proceedings (Amendment) Rules (Northern Ireland) 2003*

⁶⁴ *Rules 4A.7. – The Family Proceedings (Amendment) Rules (Northern Ireland) 2003*

⁶⁵ *Article 17 (4) – The Adoption (Northern Ireland) Order 1987*

⁶⁶ *Rules 4A.7 (1) – The Family Proceedings (Amendment) Rules (Northern Ireland) 2003*

- iii. The court is satisfied that each parent has been given the opportunity to make a declaration that s/he prefers not to be involved with future questions concerning the adoption of the child⁶⁷.
- iv. If the father does not have parental responsibility, the court must satisfy itself, that he is not likely to apply for Parental Responsibility or a Residence Order, or that if he did apply it is likely such application would be refused⁶⁸.

When are freeing orders made without parental agreement?

71. A freeing order without parental agreement can only be made if:

- i. The child is in the care of the Trust (adoption agency)⁶⁹;
- ii. The child has been placed for adoption, or it is likely the child will be placed for adoption⁷⁰;
- iii. Each parent has been given the opportunity to make a declaration as described above⁷¹;
- iv. If a father does not have parental responsibility the court must be satisfied that the test as set out above is satisfied⁷².
- v. If a father does not have parental responsibility that the test above is satisfied.

72. The Court must also consider the welfare of the child in deciding whether to make any Order, with Article 9 of the 1987 providing:

“In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall—

(a) have regard to all the circumstances, full consideration being given to—

- (i) the need to be satisfied that adoption, or adoption by a particular person or persons, will be in the best interests of the child; and*
- (ii) the need to safeguard and promote the welfare of the child throughout his childhood; and*
- (iii) the importance of providing the child with a stable and harmonious home; and*

(b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”

73. In an application sought without parental agreement, the Court is asked to dispense with parental consent. The grounds that the Court must consider in such an application as set out at Article 16 (2) of the 1987 Order, in that a parent or guardian:

- “(a) cannot be found or is incapable of giving agreement;*
- (b) is withholding his agreement unreasonably;*
- (c) has persistently failed without reasonable cause to discharge his parental responsibility for the child;*
- (d) has abandoned or neglected the child;*
- (e) has persistently ill-treated the child;*
- (f) has seriously ill-treated the child”.*

⁶⁷ Article 17 (5) – The Adoption (Northern Ireland) Order 1987

⁶⁸ Article 17 (6) – The Adoption (Northern Ireland) Order 1987

⁶⁹ Article 18 (2) (a) – The Adoption (Northern Ireland) Order 1987

⁷⁰ Article 18 (2) (b) – The Adoption (Northern Ireland) Order 1987

⁷¹ Article 17 (5) – The Adoption (Northern Ireland) Order 1987

⁷² Article 17 (6) – The Adoption (Northern Ireland) Order 1987

74. It should be noted that if relying upon Article 16 (2) (f) that the Court must also be satisfied that the rehabilitation of the child within the household of the parent or guardian is unlikely⁷³.
75. When considering whether a parent is withholding his/her agreement unreasonably, the Court must apply an objective test⁷⁴.
76. In applying the legal tests, and in paying regard to the interference with Article 8 ECHR rights that are represented by the making of such orders, the Court will conduct a holistic appraisal of the options available for the child and will only make a Freeing Order if satisfied that nothing less than adoption will do to meet the child's future needs⁷⁵.

Recognition of Freeing Orders in England & Wales

77. A Freeing Order or the variation or revocation of a Freeing Order shall have effect in England and Wales as they have in Northern Ireland.⁷⁶

Recognition of Freeing Orders in Scotland

78. A Freeing Order shall have effect in Scotland as they have in Northern Ireland.⁷⁷

ADOPTION ORDERS

79. An application for an Adoption Order is made in Form A9.⁷⁸
80. The legal effect of an Adoption Order gives parental responsibility for a child to the adopters and also extinguishes the parental responsibility which any person has for the child immediately before the making of the Order⁷⁹.
81. A person applying for an Adoption Order must be aged over 21 years, unless they are in a couple and the other person has attained the age of 21 years⁸⁰. There is no upper age limit. Furthermore, an applicant must be domiciled in a part of the United Kingdom, or in any of the Channel Islands or in the Isle of Man⁸¹. In the circumstances of a couple at least one of them must be domiciled in a part of the United Kingdom, or in any of the Channel Islands or in the Isle of Man⁸².
82. An Adoption Order may not be made in respect of any child that is married, has been married or has been a civil partner⁸³.
83. Where the Applicant, or one of the Applicants is a parent, step-parent, or relative of the child or the child was placed with the Applicants by the adoption agency or in pursuance of an order of

⁷³ Article 16 (4) – The Adoption (Northern Ireland) Order 1987

⁷⁴ Down Lisburn Health and Social Services Trust v H [2006] UKHL 36

⁷⁵ Re B (A Child) [2013] UKSC 33, Re B-S (Children) [2013] EWCA Civ 1146

⁷⁶ Article 106 (2) – Adoption and Children Act 2002

⁷⁷ Section 70 (4) - Adoption and Children (Scotland) Act 2007

⁷⁸ Rules 4A.15. – The Family Proceedings (Amendment) Rules (Northern Ireland) 2003

⁷⁹ Article 12 (3) – The Adoption (Northern Ireland) Order 1987

⁸⁰ Article 14 – The Adoption (Northern Ireland) Order 1987

⁸¹ Article 15 (2) – The Adoption (Northern Ireland) Order 1987

⁸² Article 14 (4) – The Adoption (Northern Ireland) Order 1987

⁸³ Article 12 (5) – The Adoption (Northern Ireland) Order 1987

the High Court, an Adoption Order shall not be made unless a child is at least 19 weeks old and the child must have lived with the proposed adopters for a period of at least 13 weeks⁸⁴. If these circumstances do not arise, an Order will not be made unless the child is at least 12 months old and at all times during the preceding 12 months the child must have had his home with the Applicants or one of them⁸⁵.

Recognition of Adoption Orders made in Northern Ireland in England and Wales

84. An Adoption Order made in Northern Ireland has the same effect in England and Wales as it has in Northern Ireland.⁸⁶

Recognition of Adoption Orders made in Northern Ireland in Scotland

85. An Adoption Order made in Northern Ireland has the same effect in Scotland.⁸⁷

Recognition in Northern Ireland of Adoption Orders made in England & Wales

86. An Adoption Order made in England and Wales has the same effect in Northern Ireland, as in England and Wales.⁸⁸

Recognition in Northern Ireland of Adoption Orders made in Scotland

87. An Adoption Order made in Scotland has the same effect in Northern Ireland as in Scotland.⁸⁹

PRIVATE LAW ORDERS IN PUBLIC LAW PROCEEDINGS

88. In addition to key concepts being applicable irrespective of the public or private nature of the application the court may make a private law order in public law proceedings at an interim stage and at the conclusion of proceedings, so long as there is not an Interim Care Order in place.

89. A private law order at an interim stage might include, for example, a child being placed with one parent subject to a 'lives with' order pursuant to Article 8 of the Children (Northern Ireland) Order 1995 and an interim supervision order is also in force, whilst assessments are carried out.

90. The court may dispose of public law proceedings with a private law order if it considers such an order to be in the child's best interests.

FUTURE CHANGES: THE ADOPTION AND CHILDREN ACT (NORTHERN IRELAND) 2022

91. The Adoption and Children Act (Northern Ireland) 2022 is a primary piece of legislation which will establish new legal processes in Northern Ireland concerning the adoption of children.

⁸⁴ Article 13 – The Adoption (Northern Ireland) Order 1987

⁸⁵ Article 13 (2) - The Adoption (Northern Ireland) Order 1987

⁸⁶ Article 106 (1) – Adoption and Children Act 2002

⁸⁷ Section 31 (10) – Adoption and Children (Scotland) Act 2007

⁸⁸ Article 58A – The Adoption (Northern Ireland) Order 1987

⁸⁹ Article 16 (aa) - The Adoption (Northern Ireland) Order 1987 as amended by Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011.

Commencement dates are not confirmed (at the date of writing this guide) for the majority of the provisions within the Act. It is intended that the new legislation will be more child centred providing that the paramount consideration of the court or adoption agency must be the child's welfare, throughout the life of the child. The Act also creates a "welfare checklist" of considerations to be considered when decisions are being made on adoption.⁹⁰

92. At the time of writing, the first provision that has come into force is that the Guardian ad Litem shall now be known as the Children's Court Guardian and the Northern Ireland Guardian ad Litem Agency is now known as The Children's Court Guardian Agency for Northern Ireland.⁹¹

93. Key provisions of the Act, yet to be implemented, are as follows:

- (i) **Delay** - A statutory provision that in general, delay is likely to prejudice the child's welfare and a requirement for court to draw up timetables for resolving adoption cases without delay;⁹²
- (ii) **No Order Principle** - A statutory provision that the court must consider this principle when considering the range of powers available to it whether under the Act or The Children (Northern Ireland) Order 1995;⁹³
- (iii) Placement Orders will replace Freeing Orders. The making of a Placement Order will not extinguish a parent's parental responsibility. This will now only occur upon the making of an Adoption Order.⁹⁴
- (iv) The grounds for dispensing with parental consent⁹⁵ will be reduced to two grounds.⁹⁶
- (v) There is a provision for "consent" to the making of a Placement Order and Adoption Order, as opposed to the previous concept of "agreement".⁹⁷
- (vi) The Act sets out three conditions that must be satisfied before an Adoption Order can be made.⁹⁸
 - a. the parent or guardian has consented to, or given advance consent to, the making of the adoption order and has not withdrawn consent and does not oppose the making of the adoption order, or the court is satisfied that such consent should be dispensed with;⁹⁹
 - b. the child has been placed for adoption by the adoption agency with prospective adopters with the consent of the parent or guardian, or has been placed for adoption

⁹⁰ Section 1 (2) & (4) – *The Adoption and Children Act (Northern Ireland) 2022*.

⁹¹ Section 137 – *The Adoption and Children Act (Northern Ireland) 2022 & The Children's Court Guardian Agency for Northern Ireland (Establishment and Constitution) Order (Northern Ireland) 2023 commencement date 6th March 2023*.

⁹² Section 113 – *The Adoption and Children Act (Northern Ireland) 2022*

⁹³ Section 101 (6) – *The Adoption and Children Act (Northern Ireland) 2022*

⁹⁴ Chapter 3 – *The Adoption and Children Act (Northern Ireland) 2022*

⁹⁵ Article 16 (2) – *The Adoption (Northern Ireland) Order 1987*

⁹⁶ Section 18 (3) – *The Adoption and Children Act (Northern Ireland) 2022*

⁹⁷ Section 51 – *The Adoption and Children Act (Northern Ireland) 2022*

⁹⁸ Section 44 – *The Adoption and Children Act (Northern Ireland) 2022*

⁹⁹ Section 44 (2) – *The Adoption and Children Act (Northern Ireland) 2022*

under a placement order, and the parent or guardian does not oppose the making of the order;¹⁰⁰ or

- c. the child has been placed for adoption in England and Wales under the Adoption and Children Act 2002 or is the subject of a Scottish permanence order which authorises the child to be adopted.¹⁰¹
- (vii) The Act reduces the time that the child must have lived with the intended adopters from that of 13 weeks to 10 weeks.¹⁰²
- (viii) **Contact** - When making a Placement Order or an Adoption Order the court will have a statutory duty to consider contact between birth families and the child.¹⁰³ The court may impose any conditions on contact as it considers appropriate.¹⁰⁴ The court will have the power to make an order for contact during placement for adoption and similarly post adoption.¹⁰⁵ The court will also have the power to prohibit contact between the child and a named person, post adoption.¹⁰⁶
- (ix) The Act places a duty upon the Trust to make arrangements for the provision of adoption support services and a right for specified persons to request and received an assessment of needs for adoption support services.¹⁰⁷
- (x) **Special Guardianship Orders** – The legislation introduces Special Guardianship Orders which are intended to provide greater permanence for children who cannot return to their birth families but for whom adoption is not appropriate. For the most part, the provisions mirror the provisions in the Children Act 1989, however there are some differences:
 - a. No person is entitled to apply or seek leave of the court to apply unless the child has lived with the Applicant for at least one year immediately preceding the application;¹⁰⁸
 - b. A Court may only make a Special Guardianship Order of its own volition in care or supervision proceedings in which a question arises about the welfare of the child;¹⁰⁹
 - c. The court may make an interim Supervision Order together with a Special Guardianship Order in any care or supervision proceedings, if the court considers it necessary in order to satisfactorily safeguard the child’s welfare;¹¹⁰
 - d. Where a Special Guardianship Order application relates to a looked after child, the authority will be required to prepare a suitability report for the court;¹¹¹

¹⁰⁰ Section 44 (4) – The Adoption and Children Act (Northern Ireland) 2022

¹⁰¹ Section 44 (6) – The Adoption and Children Act (Northern Ireland) 2022

¹⁰² Section 39 – The Adoption and Children Act (Northern Ireland) 2022

¹⁰³ Section 23 – The Adoption and Children Act (Northern Ireland) 2022

¹⁰⁴ Section 24 (5) – The Adoption and Children Act (Northern Ireland) 2022

¹⁰⁵ Section 23 & 49 – The Adoption and Children Act (Northern Ireland) 2022

¹⁰⁶ Section 49 – The Adoption and Children Act (Northern Ireland) 2022

¹⁰⁷ Schedule 4 – The Adoption and Children Act (Northern Ireland) 2022

¹⁰⁸ Section 119 – The Adoption and Children Act (Northern Ireland) 2022 inserts Article 14A

¹⁰⁹ Section 119 – The Adoption and Children Act (Northern Ireland) 2022 inserts Article 14A (6) (b)

¹¹⁰ Section 119 – The Adoption and Children Act (Northern Ireland) 2022 inserts Article 14F (3A)

¹¹¹ Section 119 – The Adoption and Children Act (Northern Ireland) 2022 inserts Article 14A (12)

- e. There will also be a duty on the Trust to provide special guardianship support services where it has been assessed as needed.¹¹²
- (xi) **Step Parent Adoptions** – The Act provides that a natural parent in a stepparent situation is not required to make a joint application to adopt his/her own child. Where the applicant is the partner of a parent of the child, the child must have had his home with the prospective adopter/s for a period of one year before an application can be made.¹¹³
- (xii) **Intercountry Adoption** – It will not be an offence to arrange to remove a child from the jurisdiction, not just remove a child.¹¹⁴
- (xiii) **Overseas Adoption** - The Act introduces a shorter residency requirement of 10 weeks that the child must have lived with prospective adopters, prior to an overseas adoption.¹¹⁵
94. The Act also provides for key amendments to the Children (Northern Ireland) Order 1995.¹¹⁶ Key amendments are as follows:
- (i) A child will only have had to live with a foster carer for one year as opposed to three years¹¹⁷, before the foster carer is permitted to apply for leave to bring an Article 8 Order.¹¹⁸
- (ii) Residence Orders made in respect of a looked after child will be automatically granted to age 18 or extended to age 18 unless a court determines otherwise.¹¹⁹
- (iii) **Definition of Harm** – this will be broadened to cover impairment caused to a child as a result of the ill-treatment of another person or abusive behaviour directed towards another person, regardless of whether the child saw, heard or was present during the ill-treatment or abusive behaviour.¹²⁰
- (iv) **Article 53 Orders** - Where a Trust has been authorised by a court order to refuse contact between a looked after child and a member of the child’s birth family, the Trust is no longer under a duty to endeavour to promote contact.¹²¹
- (v) **Care Plans** – Care planning will be placed on a statutory basis, with the Trust required to prepare and review a plan for the court.¹²²
- (vi) **Children’s Court Guardian** – their role will be extended to being appointed in applications for the making or revocation of an adoption placement order¹²³ and applications for the

¹¹² Section 119 – The Adoption and Children Act (Northern Ireland) 2022 which will insert Article 14F (1)

¹¹³ Section 39 - The Adoption and Children Act (Northern Ireland) 2022

¹¹⁴ Section 38 (1) - The Adoption and Children Act (Northern Ireland) 2022

¹¹⁵ Section 83 - The Adoption and Children Act (Northern Ireland) 2022

¹¹⁶ Part 2 - The Adoption and Children Act (Northern Ireland) 2022

¹¹⁷ Article 9 (3) – The Children (Northern Ireland) Order 1995

¹¹⁸ Section 117 - The Adoption and Children Act (Northern Ireland) 2022 amends Article 9

¹¹⁹ Section 118 - The Adoption and Children Act (Northern Ireland) 2022 amends Article 9 & Article 179 (10)

¹²⁰ Section 133 - The Adoption and Children Act (Northern Ireland) 2022 amends Article 2 (2)

¹²¹ Section 135 - The Adoption and Children Act (Northern Ireland) 2022 inserts Article 53 (6A)

¹²² Section 134 - The Adoption and Children Act (Northern Ireland) 2022 inserts Article 50A

¹²³ Section 106 - The Adoption and Children Act (Northern Ireland) 2022

making of a special guardianship order¹²⁴ with respect to a child who is subject of a care order.

- (vii) **Children in Need** – the Act enhances the provision of services for children in need.¹²⁵ The Act introduces a power for Trusts to provide accommodation to a disabled child, for the purposes of providing short term breaks outside of the looked after children system¹²⁶ and exceptional circumstances will no longer be required for the making of cash payments to children and families in need.¹²⁷
- (viii) **General Duty of the Trust** – the Trust will be required to promote, facilitate, and support a looked after child’s learning and development, and their achievement in relation to education or training.¹²⁸
- (ix) **Advocacy Services** - In the case of a looked after child, former looked after children, special guardianship children or adopted children if they wish to make representation to the Trust in respect of the Trust’s discharge of its function, the Trust will be required to provide independent advocacy services to them.¹²⁹
- (x) **Dually Approved Carers** – Where a Trust is considering Adoption for a child or is satisfied that a child ought to be placed for Adoption the amendments place a duty on a Trust to consider placing the child with dually approved carers.¹³⁰
- (xi) **Support for Care Leavers** - The age limit for support provided by the Trust to specified care leavers who are still engaged in education and training will be extended from 24 to 25 years.¹³¹ Care leavers will also be able to continue living with their foster parents up to the age of 21 years.¹³²
- (xii) **Female Genital Mutilation Protection Orders** will be included in the defined list of Family Proceedings;¹³³
- (xiv) **Fostering Panels** – These panels will be placed onto a statutory footing.¹³⁴

PRIVATE LAW PROCEEDINGS

95. The same Court structure and key concepts apply that apply to public law proceedings apply similarly to private law proceedings.

96. The Court’s emphasis in private law proceedings is on parents exercising their parental responsibility to reach agreement with each other about what is best for their children.

¹²⁴ Section 138 - The Adoption and Children Act (Northern Ireland) 2022 inserts Article 60(ha)

¹²⁵ Article 18 – The Children (Northern Ireland) Order 1995

¹²⁶ Section 121 - The Adoption and Children Act (Northern Ireland) 2022 amends Article 18

¹²⁷ Section 121 - The Adoption and Children Act (Northern Ireland) 2022 amends Article 18

¹²⁸ Section 122 - The Adoption and Children Act (Northern Ireland) 2022 amends Article 26

¹²⁹ Section 132 - The Adoption and Children Act (Northern Ireland) 2022 amends Article 45

¹³⁰ Section 124 - The Adoption and Children Act (Northern Ireland) 2022 inserts Article 27 (9A) – (9D)

¹³¹ Section 128 - The Adoption and Children Act (Northern Ireland) 2022 inserts Article 34AA – 34DC

¹³² Section 128 - The Adoption and Children Act (Northern Ireland) 2022 inserts Article 34AA – 34DC

¹³³ Section 116 - The Adoption and Children Act (Northern Ireland) 2022 amends Article 8

¹³⁴ Section 126 - The Adoption and Children Act (Northern Ireland) 2022 inserts new Article 28A

Orders pursuant to Article 8 of the Children (Northern Ireland) Order 1995

97. Broadly speaking, the purpose of Court Orders available under Article 8 of the 1995 Order are to specify arrangements for children in circumstances where their parents are unable to agree.
98. "Article 8 Orders" closely follow those available under section 8 of the 1989 Act in England and Wales, save that the terminology in Northern Ireland remains unchanged such that the Orders available, as defined in the legislation, are:
- "contact order"** means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;
- "prohibited steps order"** means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;
- "residence order"** means an order settling the arrangements to be made as to the person with whom a child is to live; and
- "specific issue order"** means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.
99. Where the Court makes a Residence Order in favour of any person, it also bestows upon that person parental responsibility.¹³⁵ However, there are some limitations to the exercising of this parental responsibility acquired in this manner which are set out at Article 12(3) of the 1995 Order.

Commencement of Proceedings

100. The Private Law Case Management Guide applies to all proceedings issued on or after 1st March 2013. This guidance details the key steps that should be taken during proceedings, and outlines what parties are expected to do before issuing proceedings and placing their dispute before the Court. Parties are encouraged to enter into pre-proceedings correspondence and/or consider whether an alternative form of dispute resolution (e.g. mediation) would provide a means of resolving the issues. Consideration is also to be given during proceedings as to whether there is an alternative means of resolving the dispute. The Guide otherwise sets out the issues that should be considered in respect of case management at each stage of the application. For those proceedings that are allocated to the High Court Tier, a pilot Resolutions Court is currently available to parties, where a specific listing can be allocated as a dispute resolution hearing before the Judge, to encourage and facilitate agreements being reached.
101. An application for an Article 8 Order is commenced by completing Form C1¹³⁶ in which the Order sought is specified together with short reasons. If a party alleges domestic violence a supplemental Form C1AA must also be completed.
102. As stated previously, the application is normally commenced at the Family Proceedings Court level with consideration given to transfer if the complexity demands same. Applications to vary

¹³⁵ Articles 12 (1) and 12 (2) – *The Children (Northern Ireland) Order 1995*

¹³⁶ Article 4 – *Magistrates' Court (Children (Northern Ireland) Order 1995) Rules (Northern Ireland 1996)*

or discharge existing orders are made to the Court that made the original order.¹³⁷ An application may also be commenced in a court in which there are pending any other family proceedings which may affect or are connected to the child.¹³⁸

103. Only a parent of a child may apply for an Article 8 Order as of right, otherwise the leave of the Court is required.¹³⁹ The court shall in deciding whether to grant leave shall have particular regard to various factors as set out within Article 10 (9) of the 1995 Order.
104. The Respondents are any person the Applicant believes has parental responsibility for the child.
105. When issuing an application, the Applicant should also consider whether there are other persons that require to be served with the application. Schedule 2¹⁴⁰ sets out various other persons who may be served.
106. Legislation has recently been introduced which enables the court to make a special measures direction for the purpose of assisting a person to give evidence or participate in proceedings.¹⁴¹

Key Concepts

107. When a Court is considering whether or not to make a private law Order in respect of a child, the Court will apply the key concept provisions as set out earlier in this handbook.
108. A Court is restricted from making orders after a child's 16th birthday, or last after that time, unless the circumstances of the case are exceptional.
109. Articles 9(6) and 9(7) restrict the Court from making orders after a child's 16th birthday, or last after that time, unless the circumstances of the case are exceptional¹⁴²:

“Article 9 (6) No court shall make any Article 8 order which is to have effect for a period which will end after the child has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.

(7) No court shall make any Article 8 order, other than one varying or discharging such an order, with respect to a child who has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.”

Directions

110. The Judge may give, vary or revoke directions for the conduct of proceedings.¹⁴³

¹³⁷ Article 4 – The Children (Allocation of Proceedings) Order (Northern Ireland) 1996

¹³⁸ Article 3 (2) & Article 6 (1) - The Children (Allocation of Proceedings) Order (Northern Ireland) 1996

¹³⁹ Article 10 (1) (a) (ii) – The Children (Northern Ireland) Order 1995

¹⁴⁰ Magistrates' Court (Children (Northern Ireland) Order 1995) Rules (Northern Ireland 1996

¹⁴¹ Article 37 The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 & The Family Proceedings (Amendment) Rules (Northern Ireland) 2022

¹⁴² See paragraphs 67 – 69 - Fergus v Marvail [2017] NICA 71

¹⁴³ Rule 15 Magistrates' Court (Children (Northern Ireland) Order 1995) Rules (Northern Ireland 1996 or Rule 4.15 – Family Proceedings Rules (Northern Ireland) 1996

111. Such directions may be given of the court's own motion or on written request¹⁴⁴ of a party to the proceedings. In urgent cases, with the leave of the court, a request for directions may be made orally, without notice to the parties or both.

112. Pursuant to Article 4(1) of the 1995 Order, the Judge may request for a Trust to file a "Welfare Report" with the Court:

"A court considering any question with respect to a child under this Order may ask an authority to arrange for a suitably qualified person to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report."

In practice, this assistance is normally given to the Court in private law proceedings through a team of Court Children's Officers who are employed by the five Health and Social Care Trusts in Northern Ireland. They can undertake enquiries or conduct mediation between the parents as may be appropriate.

113. In certain circumstances, a direction may be made for a child to be separately represented in proceedings by the Official Solicitor¹⁴⁵ however this assistance can only be requested in the Family Care Centre or High Court.

Article 56 investigation

114. Where, in any family proceedings it appears to the Court that it may be appropriate for a Care or Supervision Order to be made with respect to a child, the Court may direct the Trust to undertake an investigation into the child's circumstances, otherwise known as "an Article 56 investigation". The Trust will prepare a written report to the Court and said report should be filed with the Court within 8 weeks from the Court direction, unless otherwise directed.¹⁴⁶

115. In the event that the Trust undertakes an investigation and decides not to apply for a Care or Supervision Order in respect of a child, the Trust should inform the Court of its reasons for making this decision, any service or other assistance which the Trust has provided or would intend to provide and any further action that the Trust has taken or proposes to take.¹⁴⁷ Upon conclusion of their investigation, if the Trust is not applying for an Order, they Trust will decide whether it is appropriate to review the case at a later date. Often, the Trust remains involved in the proceedings, keeping the matter under review.

116. When making a direction pursuant to Article 56, the Court may also consider making an Interim Care Order or Interim Supervision Order (even though no application may be before the Court)¹⁴⁸, and may appoint a Children's Court Guardian to represent the child(ren).¹⁴⁹

Recognition and enforcement in Northern Ireland of Section 8 Orders made in England, Wales and Scotland

117. The Family Law Act 1986 applies in Northern Ireland, as it does throughout the rest of the United Kingdom in relation to "Part 1" Orders as defined by section 1 of the Act.

¹⁴⁴ By way of C2 application

¹⁴⁵ Rule 6.6 – The Family Proceedings Rules (Northern Ireland) 1996

¹⁴⁶ Article 56 (4) – The Children (Northern Ireland) Order 1995

¹⁴⁷ Article 56 (3) – The Children (Northern Ireland) Order 1995

¹⁴⁸ Article 57(1)(a) – The Children (Northern Ireland) Order 1995

¹⁴⁹ Article 60(6)(b) - The Children (Northern Ireland) Order 1995

118. For an Order to be enforceable, it must be registered under section 27 of the 1986 Act, in accordance with section 29.

119. The Northern Ireland arrangements for registration of Orders can be found at Order 90, Part IV (Rules 26 – 35) of the Rules of the Court of Judicature (Northern Ireland) 1980.

120. Once the Order is registered in Northern Ireland, it can be enforced and the powers of the Court are the same, as if the Order had been made in Northern Ireland.

Orders under the Inherent Jurisdiction

121. Where an issue arises and it cannot be resolved under the statutory provisions of the 1995 Order, the Court may make orders to protect a child (or vulnerable adult) under the inherent jurisdiction, including making such individuals wards of Court. Such proceedings are initiated in the High Court by way of Summons and Affidavit.

122. There are some restrictions on the use of the inherent jurisdiction.¹⁵⁰ Proceedings may not be used to require a child to be placed in care, accommodated or supervised by a Trust. A child that is already subject to a Care Order may not be made a Ward of Court. The Trust may not use proceedings of this kind, to determine a question that has arisen or may arise in respect of any aspect of parental responsibility for a child.

123. Where the intended Applicant is the Trust, leave of the court must be sought to bring the application in the first instance.¹⁵¹ The Court will only grant leave to the Trust if the Court is satisfied that the result could not be achieved through any other Order, that the Trust is entitled to apply for and further that there is reasonable cause to believe that if the Court's inherent jurisdiction is not exercised that the child is likely to suffer significant harm.

Recognition and enforceability of Orders under the inherent jurisdiction

124. An Order under the inherent jurisdiction is also a Part 1 Order for the purpose of the Family Law Act 1986 (and thus registration / enforcement as noted above) if it meets the definition in section 1 of the 1986 Act.

Family Assistance Orders

125. When concluding proceedings, the Court may make a Family Assistance Order.¹⁵² When a Family Assistance Order is made, the Trust must make a suitably qualified person available to assist, advise and befriend any person named in the Order, so long as the child resides within the Trust area.¹⁵³

126. Persons that can be named in an Order are:

- (i) any parent or guardian,
- (ii) any person with whom the child is living or in whose favour a contact order is in force;
- (iii) the child himself.¹⁵⁴

¹⁵⁰ Article 173 – The Children (Northern Ireland) Order 1995

¹⁵¹ Article 173 (2) – The Children (Northern Ireland) Order 1995

¹⁵² Article 16 – The Children (Northern Ireland) Order 1995

¹⁵³ Article 16 (7) (a) – The Children (Northern Ireland) Order 1995

¹⁵⁴ Article 16(2) – The Children (Northern Ireland) Order 1995

127. The Court cannot make a Family Assistance Order unless, it is satisfied that the circumstances are exceptional.¹⁵⁵ Consent also is required from every person named in the order, other than the child.¹⁵⁶

128. A Family Assistance Order shall have effect for a period of six months except if the Order specifies a shorter period of time.¹⁵⁷

APPENDIX

LEGISLATION:

General

- The Children (Northern Ireland) Order 1995,
- The Adoption (Northern Ireland) Order 1987,
- The Children (Allocation of Proceedings) Order (Northern Ireland) 1996,
- Family Law Act (Northern Ireland) 2001,
- The Children (Secure Accommodation) Regulations (Northern Ireland) 1996
- Adoption and Children Act (Northern Ireland) 2022

Family Proceedings Court (Magistrates' Court)

- The Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996,

Family Care Centre (County Court)

- County Court Rules (Northern Ireland) 1981
- County Court (Northern Ireland) Order 1980
- Family Proceedings Rules (Northern Ireland) 1996 (as amended)

High Court of Justice in Northern Ireland

- Rules of the Court of Judicature (Northern Ireland) 1980
- Judicature (Northern Ireland) Act 1978
- Family Proceedings Rules (Northern Ireland) 1996 (as amended)

USEFUL MATERIALS

- The Law of Children in Northern Ireland : The Annotated Legislation (2nd Edition) Michael Long QC & Judge Gemma Loughran
- Guide to Case Management in Private Law Proceedings
- Guide to Case Management in Public Law Proceedings
- The Children Order Advisory Committee, Best Practice Guidance, 2nd Edition 2010

USEFUL WEBSITES

- <https://www.judiciaryni.uk/judicial-decisions>
- <https://www.justice-ni.gov.uk/articles/family-forms>
- <https://www.justice-ni.gov.uk/publications/family-law-childcare-literature>
- <https://www.bailii.org>

¹⁵⁵ Article 16 (3) (a) – The Children (Northern Ireland) Order 1995

¹⁵⁶ Article 16 (3) (b) – The Children (Northern Ireland) Order 1995

¹⁵⁷ Article 16 (3) (4) – The Children (Northern Ireland) Order 1995