



---

*Number 21 of 2022*

---

**Child Care (Amendment) Act 2022**

---





---

*Number 21 of 2022*

---

**CHILD CARE (AMENDMENT) ACT 2022**

---

CONTENTS

Section

1. Definition
2. Repeals
3. Amendment of section 2 of Principal Act
4. Best interests of child to be paramount
5. Views of child
6. Amendment of section 29 of Principal Act
7. Guardians ad litem – insertion of Part VA in Principal Act
8. Consequential amendments to Principal Act
9. Amendment of section 71 of Children Act 2001
10. Amendment of section 25 of Mental Health Act 2001
11. Amendment of Schedule 1 to National Vetting Bureau (Children and Vulnerable Persons) Act 2012
12. Amendment of Schedule 2 to Children First Act 2015
13. Short title, collective citation and commencement

ACTS REFERRED TO

Child Care (Amendment) Act 2011 (No. 19)

Child Care Act 1991 (No. 17)

Child Care Acts 1991 to 2015

Children Act 2001 (No. 24)

Children First Act 2015 (No. 36)

Data Protection Act 2018 (No. 7)

Guardianship of Infants Act 1964 (No. 7)

Mental Health Act 2001 (No. 25)

National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (No. 47)



---

*Number 21 of 2022*

---

## **CHILD CARE (AMENDMENT) ACT 2022**

---

An Act to amend and extend the law in relation to guardians *ad litem* appointed under the Child Care Act 1991; to amend section 29 of the Child Care Act 1991 to allow officers of the Minister to attend, for specific purposes, proceedings heard otherwise than in public; and for those and other purposes to amend the Child Care Act 1991, the Children Act 2001, the Mental Health Act 2001, the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and the Children First Act 2015; to repeal certain provisions of the Child Care (Amendment) Act 2011; and to provide for related matters.

[19th July, 2022]

**Be it enacted by the Oireachtas as follows:**

### **Definition**

1. In this Act, “Principal Act” means the Child Care Act 1991.

### **Repeals**

2. The following provisions are repealed:
  - (a) sections 23NH and 26 of the Principal Act;
  - (b) sections 13(b), (c) and (d) and 14(b) of the Child Care (Amendment) Act 2011.

### **Amendment of section 2 of Principal Act**

3. Section 2(1) of the Principal Act is amended by the insertion of the following definition:

“ ‘Data Protection Regulation’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>1</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);”.

### **Best interests of child to be paramount**

4. The Principal Act is amended by the substitution of the following section for section 24:

<sup>1</sup> O.J. No. L 119, 4.5.2016, p. 1

- “24. (1) In any proceedings before a court under this Act in relation to the care and protection of a child, including proceedings before the High Court under Part IVA in relation to special care, the court shall regard the best interests of the child as the paramount consideration in the resolution of such proceedings.
- (2) In determining for the purposes of subsection (1) what is in the best interests of the child, the court shall have regard to all of the factors or circumstances that it considers relevant to the child including—
- (a) the child’s age, maturity and any special characteristics of the child,
  - (b) the benefit to the child of having a meaningful relationship with his or her parents and with any other relatives and persons who are involved in the child’s upbringing,
  - (c) the views of the child where he or she is capable of forming, and has chosen to express, such views,
  - (d) the physical, psychological and emotional needs of the child,
  - (e) the social, intellectual and educational needs of the child,
  - (f) the religious, spiritual, cultural and linguistic upbringing and needs of the child, and
  - (g) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child’s safety and psychological well-being.
- (3) In this section, ‘household violence’ has the same meaning as it has in section 31(7) of the Guardianship of Infants Act 1964.”.

### **Views of child**

5. The Principal Act is amended by the insertion of the following section after section 24:

#### **“Views of child**

- 24A. Where in any proceedings before a court under this Act in relation to the care and protection of a child, including proceedings before the High Court under Part IVA in relation to special care, the child is capable of forming his or her own views, the court, in so far as practicable shall—
- (a) determine the means by which to facilitate the expression by the child of his or her views in the proceedings, and
  - (b) give due weight to such views as the child wishes to express, having regard to the age and maturity of the child.”.

### **Amendment of section 29 of Principal Act**

6. Section 29 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “Part III, IV, IVA or VI” for “Part III, IV or VI”,
- (b) in subsection (2), by the substitution of “Part III, IV, IVA or VI” for “Part III, IV or VI”,
- (c) in subsection (5)—
  - (i) by the substitution of “Part III, IV, IVA or VI” for “Part III, IV or VI”, and
  - (ii) by the substitution of “relevant documents” for “relevant court documents”,
- (d) by the insertion of the following subsection after subsection (5A):

“(5B) (a) Where the Minister is satisfied that the attendance by an officer of the Minister at proceedings referred to in subsection (1) will assist the Minister in—

- (i) the performance of his or her functions pursuant to Part VA and any regulations made thereunder, including the promotion of high professional standards and good practice by guardians *ad litem* in the performance of their functions under this Act, or
- (ii) the review of the operation of this Act, in particular in relation to the care and protection of children,

the Minister may grant an approval to the officer (in this subsection referred to as an ‘approved officer’) for the purposes of such attendance.

(b) An approval under paragraph (a) shall specify—

- (i) the name of the approved officer to whom it is granted,
- (ii) the purpose for which it is granted,
- (iii) the period for which it is valid,
- (iv) the proceedings that the approved officer is permitted to attend,
- (v) the purposes for which information, obtained by the approved officer in the course of his or her attendance at proceedings in accordance with subparagraph (iv), may be processed, which shall include the preparation of a report under paragraph (c)(iii) and the assistance of the Minister for a purpose referred to in paragraph (a),
- (vi) without prejudice to any other requirement of the Data Protection Regulation or the Data Protection Act 2018, a requirement that personal data and special categories of personal data contained in information obtained, by the approved officer in the course of his or her attendance at proceedings in accordance with subparagraph (iv), shall be kept in such form that does not permit the identification of the parties

to the proceedings or any child to whom the proceedings relate,  
and

- (vii) such other matters as the Minister considers appropriate.
- (c) Subject to any directions the court may give, nothing contained in this section shall operate to prohibit for the purposes specified in an approval—
  - (i) the attendance of an approved officer at proceedings referred to in subsection (1),
  - (ii) the access by such officer to any relevant documents of the proceedings referred to in subsection (1), and
  - (iii) the preparation by such officer of a report of the proceedings to assist the Minister for a purpose referred to in paragraph (a), provided that the report does not contain any information which would enable the parties to the proceedings or any child to whom the proceedings relate to be identified.
- (d) In this subsection—
  - ‘personal data’ has the same meaning as it has in the Data Protection Regulation;
  - ‘proceedings’ include proceedings commenced but not completed before the commencement of this subsection;
  - ‘special categories of personal data’ has the same meaning as it has in the Data Protection Act 2018.”,

and

- (e) by the addition of the following subsection after subsection (9):

“(10) In subsections (5) and (5B), ‘relevant documents’, in relation to any proceedings referred to in those subsections, means any of the following documents (other than where the contents of any such document are expressed to be without prejudice or in terms having a like effect):

- (a) the originating document in the proceedings;
- (b) pleadings and other documents (including the terms of settlement, if any) produced to, or lodged with, the court or included in the book of pleadings;
- (c) reports prepared in the course of the proceedings or otherwise under this Act and produced to, or lodged with, the court including—
  - (i) a report prepared by the Child and Family Agency, and
  - (ii) a report furnished by a guardian *ad litem* under section 35E(2);



and

(d) any order, decision or judgment of the court in the proceedings.”.

### **Guardians *ad litem* – insertion of Part VA in Principal Act**

7. The Principal Act is amended by the insertion of the following Part after Part V:

#### “PART VA

##### GUARDIANS *AD LITEM*

#### **Interpretation (Part VA)**

**35A.** (1) In this Part—

‘appointed’ means appointed under section 35C(1);

‘authorisation’ means an authorisation issued to a person under section 35L(1);

‘child’, in relation to a guardian *ad litem*, means the child to whom the proceedings under Part IV, IVA, IVB or VI relate, and for whom the guardian *ad litem* is, or is to be, appointed;

‘guardian *ad litem*’ means a person in respect of whom an authorisation is issued;

‘relevant date’ means the date on which *section 7* of the *Child Care (Amendment) Act 2022* comes into operation.

(2) In this Part—

(a) a reference to the District Court shall be construed as including a reference to the Circuit Court on appeal from the District Court, and

(b) where the proceedings are proceedings under Part IVA, ‘court’ means the High Court.

#### **Order directing appointment of guardian *ad litem***

**35B.** (1) A guardian *ad litem* shall not be appointed for a child in proceedings under this Act unless an order directing such appointment has been made under this section.

(2) In proceedings under Part IVA, the High Court shall by order direct that a guardian *ad litem* be appointed for a child.

(3) In proceedings under Part IV, IVB or VI, the District Court shall by order direct that a guardian *ad litem* be appointed for a child, unless the court—

(a) is satisfied, having regard to all of the circumstances that the court considers relevant to the child including the matters referred to in

paragraphs (a) to (g) of section 24(2), that the best interests of the child can be determined without such appointment being made, and

- (b) in respect of a child who is capable of forming his or her own views, it has determined other means by which to facilitate the expression by the child of those views.
- (4) Where the District Court decides not to make an order under subsection (3), it shall give reasons for its decision in writing.
- (5) Where a court makes an order under subsection (2) or (3), the court shall give directions relating to—
  - (a) the service on the Minister of such documents relating to the proceedings as he or she may require for the performance of his or her functions under section 35C,
  - (b) the service on such guardian *ad litem* as may be appointed of documents relating to the proceedings, and
  - (c) the notification of the making of the order and the appointment of a guardian *ad litem* under section 35C(1) to the parties to the proceedings.

#### **Appointment of guardian *ad litem* for child**

- 35C.** (1) Where an order under section 35B(2), (3) or 35H(3)(b) is made, the Minister shall appoint a guardian *ad litem* for the child to whom the order relates.
- (2) The Minister shall notify the court that made the order under section 35B(2), (3) or 35H(3)(b), as the case may be, of an appointment under subsection (1) as soon as practicable after the making of such an appointment.
  - (3) The power to appoint a guardian *ad litem* under subsection (1) includes the power to appoint a guardian *ad litem* in place of the guardian *ad litem* who stands appointed under that subsection.
  - (4) Where the Minister appoints a guardian *ad litem* for a child pursuant to an order under section 35H(3)(b), the power to appoint a guardian *ad litem* under subsection (1) includes the power to appoint a guardian *ad litem* other than the guardian *ad litem* previously appointed for the child in the proceedings and to whom the order relates.

#### **Legal advice and legal representation**

- 35D.** (1) In proceedings under Part IVA, where a guardian *ad litem* is appointed for a child pursuant to an order under section 35B(2) or 35H(3)(b), the Minister shall provide, or arrange for the provision, to the guardian *ad litem* of legal advice and legal representation for the purposes of the proceedings for which the guardian *ad litem* is appointed.
- (2) In proceedings under Part IV, IVB or VI, following the making of an order under section 35B(3) or 35H(3)(b), at the request of the guardian

*ad litem* appointed for the child, the Minister, for the purposes of the proceedings for which the guardian *ad litem* is appointed—

- (a) shall provide, or arrange for the provision, to the guardian *ad litem* of legal advice, and
  - (b) may, where he or she considers that it is in the best interests of the child, provide, or arrange for the provision, to the guardian *ad litem* of such legal representation as the Minister considers appropriate having regard to the matters specified in subsection (3).
- (3) In determining for the purposes of subsection (2)(b) whether the provision of legal representation to the guardian *ad litem* is in the best interests of the child, the Minister shall have regard to:
- (a) the views (if any) in relation to legal representation being provided to the guardian *ad litem* expressed by the court that made the order under section 35B(3) or 35H(3)(b);
  - (b) whether the guardian *ad litem* intends to make an application under this Act in relation to the child;
  - (c) the opinion of the guardian *ad litem* in relation to any application made in the proceedings;
  - (d) whether an order has been made under section 35E(11).

#### **Functions of guardians *ad litem* appointed under section 35C**

**35E.** (1) The functions of a guardian *ad litem* appointed for a child shall be—

- (a) in so far as practicable and where the child is capable of forming his or her own views, to ascertain the views of the child in relation to any matter to which the proceedings relate, and
  - (b) to make recommendations to the court regarding what is in the best interests of the child—
    - (i) where the child has expressed views referred to in paragraph (a), after having considered those views, or
    - (ii) where the child is not capable of forming or expressing his or her views or is unwilling to express his or her views.
- (2) Without prejudice to the generality of subsection (1), a guardian *ad litem* appointed for a child shall—
- (a) furnish to the court a report that—
    - (i) conveys any views expressed by the child in relation to the matters to which the proceedings relate, and
    - (ii) contains the recommendations of the guardian *ad litem* regarding what is in the best interests of the child and the reasons for those recommendations,

- (b) having regard to the age and maturity of the child, inform him or her of—
    - (i) the recommendations referred to in paragraph (a)(ii),
    - (ii) the outcome of the proceedings, and
    - (iii) such other matters relevant to the proceedings as the guardian *ad litem* considers appropriate,
  - (c) inform the court of any additional matters, relevant to the best interests of the child, coming to his or her knowledge as a result of the performance by the guardian *ad litem* of his or her functions, and
  - (d) perform such additional functions as the court, having regard to subsection (3), may of its own motion direct either generally or for a specified purpose.
- (3) In determining for the purpose of subsection (2)(d) whether to direct the performance by a guardian *ad litem* of such additional functions as the court may specify, the court shall have regard to the nature of the case and whether such performance is necessary and in the best interests of the child.
- (4) Subject to this Part, a guardian *ad litem* appointed for a child shall be independent in the performance of his or her functions.
- (5) A guardian *ad litem* shall, in the performance of his or her functions under this Part, regard the best interests of the child as the paramount consideration.
- (6) In determining for the purposes of this section what is in the best interests of the child, a guardian *ad litem* appointed for the child shall have regard to all of the circumstances that he or she considers relevant to that child, including the matters referred to in paragraphs (a) to (g) of section 24(2).
- (7) Subject to subsection (9), a copy of a report furnished to the court under subsection (2)(a) shall be made available to the counsel or solicitor, if any, representing each party in the proceedings, or, if any party is not so represented, to that party and may be received in evidence in the proceedings.
- (8) The court or any party to the proceedings may call a guardian *ad litem* appointed for a child as a witness.
- (9) The court may, where it considers appropriate, order that such part of the report as is specified in the order shall be omitted from a copy made available under subsection (7).
- (10) A guardian *ad litem* appointed for a child is not a party to the proceedings.

- (11) Notwithstanding subsection (10), the court may, in any proceedings under this Act in which a guardian *ad litem* has been appointed for a child pursuant to an order under section 35B(2), (3) or 35H(3)(b), of its own motion or on the application of the guardian *ad litem*, where it is satisfied, having regard to the nature of the case, that it is necessary and in the best interests of the child and in the interests of justice to do so, order that the guardian *ad litem* shall have such of the rights of a party as may be specified by the court in the entirety of the proceedings or in respect of such issues in the proceedings as the court may direct.

**Powers of guardians *ad litem* appointed under section 35C**

- 35F.** (1) A guardian *ad litem* appointed for a child may make an application to the court—
- (a) subject to subsection (4), to procure a report on any question affecting the welfare of the child where—
    - (i) there is no report on the question concerned, or
    - (ii) the information in a report on the question concerned is out of date,
  - (b) for the provision of information to the guardian *ad litem* by any person, or
  - (c) in relation to any other matter relating to his or her functions.
- (2) The court may by order—
- (a) on an application under subsection (1)(a), direct the Child and Family Agency to procure a report from such person as the court may nominate on any question affecting the welfare of the child,
  - (b) on an application under subsection (1)(b), direct such person as the court considers appropriate to provide specified information to the guardian *ad litem* appointed for the child, and
  - (c) on an application under subsection (1)(c), give such directions as the court considers appropriate.
- (3) In deciding whether or not to give a direction under subsection (2)(a), the court shall have regard to the wishes of the parties to the proceedings.
- (4) A guardian *ad litem* appointed for a child shall consult the parties to the proceedings or the counsel or solicitor, if any, representing such parties before making an application under subsection (1)(a).
- (5) Where a court gives a direction under subsection (2), a person to whom the direction is made shall, subject to subsection (9), comply with such direction.

- (6) A copy of a report prepared pursuant to a direction under subsection (2)(a) shall be made available to the guardian *ad litem* appointed for the child, the counsel or solicitor, if any, representing each party in the proceedings or, if any party is not so represented, to that party and may be received in evidence in the proceedings.
- (7) The court may, where it considers appropriate, order that such part of a report prepared pursuant to a direction under subsection (2)(a) as is specified in the order shall be omitted from a copy made available under subsection (6).
- (8) Where a person prepares a report pursuant to a direction under subsection (2)(a)—
  - (a) the fees and expenses of the person shall be paid by such party to the proceedings as the court shall order, and
  - (b) the court, the guardian *ad litem* or any party to the proceedings may call the person as a witness.
- (9) Nothing in this section shall operate to require a person to provide a guardian *ad litem* appointed for a child with any information that the person would be entitled to refuse to provide on the grounds of legal professional privilege.

#### **Provision of information by Child and Family Agency**

- 35G.** (1) A guardian *ad litem* appointed for a child may request the Child and Family Agency to provide to him or her any information relating to the welfare of the child necessary for the performance by the guardian *ad litem* of his or her functions under this Act.
- (2) Notwithstanding anything contained in any other enactment or rule of law, but subject to the Data Protection Regulation and the Data Protection Act 2018—
    - (a) the Child and Family Agency shall comply with a request under subsection (1), and
    - (b) the guardian *ad litem* may apply to the court to determine any dispute between the guardian *ad litem* and the Agency in relation to the requirement of the Agency to provide information under this section.
  - (3) The Child and Family Agency, in complying with a request under subsection (1), is not required to furnish information that would be exempt from production in proceedings in a court on the grounds of legal professional privilege.

#### **Cessation of appointment and re-appointment of guardian *ad litem***

- 35H.** (1) Subject to subsections (3) and (4), an order under section 35B(2) and any appointment under section 35C(1) pursuant to such an order ceases to have effect on the earliest of the following occurring:

- (a) where the High Court makes a special care order—
    - (i) on the expiration of the period specified in the special care order or such extended period (within the meaning of section 23J(9)), if any, for which the special care order has effect, or
    - (ii) upon the discharge of the special care order under section 23NE, whichever is the earlier;
  - (b) where the High Court makes an interim special care order—
    - (i) on the expiration of the period specified in the interim special care order or such extended period (within the meaning of section 23N(9)), if any, for which the interim special care order has effect, or
    - (ii) upon the discharge of the interim special care order under section 23NE, whichever is the earlier;
  - (c) upon a determination by the High Court not to make a special care order or an interim special care order, as the case may be, in respect of the child to whom the order relates;
  - (d) by direction of the High Court; or
  - (e) when the child to whom the order relates attains the age of 18 years.
- (2) Subject to subsections (3) and (4), an order under section 35B(3) and any appointment under section 35C(1) pursuant to such an order ceases to have effect on the earliest of the following occurring:
- (a) where the District Court makes an interim care order under section 17, on the expiration of the period specified in the interim care order or any extension of such period under subsection (2) of that section;
  - (b) upon a determination by the District Court to refuse to make an interim care order under section 17;
  - (c) upon a determination by the District Court of an application under section 18(1) for a care order;
  - (d) upon a determination by the District Court of an application under section 19(1) for a supervision order;
  - (e) upon a determination by the District Court of an application under—
    - (i) section 22(a), (b) or (c),
    - (ii) section 43A, or

- (iii) section 43B(1);
  - (f) other than where the child to whom the order relates is in the care of the Child and Family Agency under section 17, upon a determination by the District Court of an application under—
    - (i) section 37(2) or (3), or
    - (ii) section 47;
  - (g) by direction of the District Court; or
  - (h) when the child to whom the order relates attains the age of 18 years.
- (3) Where a court by order directs that proceedings in which an order has been made under section 35B(2) or (3) are to be kept under review, the court may—
- (a) direct that the order under section 35B(2) or (3) and any appointment under section 35C(1) pursuant to such an order ceases to have effect until such time as a hearing of a review is due to take place, and
  - (b) prior to the date of the review, by order direct that a guardian *ad litem* previously appointed for the child in the proceedings be re-appointed for that child.
- (4) Where a child in respect of whom a court has made an order under section 35B(2) or (3), as the case may be, becomes a party to the proceedings by order under section 25(1), or otherwise than by reason of such an order, the court shall determine when the order under section 35B(2) or (3) and any appointment under section 35C(1) pursuant to such an order ceases to have effect having regard to the matters referred to in paragraphs (a) to (g) of section 24(2).
- (5) In subsections (1) and (2), a reference to an order, a determination or a direction is a reference to such order, determination or direction in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned or determined by the court.
- (6) For the purposes of subsection (1)(a)(i), where the High Court, pursuant to an application to which subsection (2)(b) or (5)(b) of section 23NJ applies, makes a special care order (in this subsection referred to as the ‘subsequent care order’)—
- (a) a reference in subsection (1)(a)(i) to the expiration of the period specified in a special care order shall be construed as including a reference to the expiration of the period specified in the subsequent care order, and



- (b) a reference to the expiration of an extended period for which the special care order has effect shall be construed as including a reference to the expiration of an extended period for which the subsequent care order has effect.
- (7) Where an interim special care order referred to in subsection (1)(b) is an order made in accordance with section 23L(3), a reference in that subsection to an interim special care order shall be construed as including a reference to such interim special care order that the High Court may make at a hearing referred to in section 23M(1)(a).

### Costs

- 35I.** (1) Any costs or expenses reasonably incurred by a guardian *ad litem* in the exercise of his or her functions under this Act shall be paid by the Minister and the Minister may apply to the court to have the amount of any such costs or expenses measured or taxed.
- (2) The court may, on the application to it in that behalf by the Minister, order a party to proceedings in which a guardian *ad litem* is appointed to pay to the Minister any costs or expenses payable by the Minister under subsection (1).
  - (3) In this section, ‘costs or expenses’ means costs or expenses in respect of work done on or after the relevant date.

### Regulations

- 35J.** (1) The Minister may, for the purpose of promoting high professional standards and good practice on the part of guardians *ad litem*, make regulations relating to the standard of performance by guardians *ad litem* of their functions under this Act, and, without prejudice to the generality of the foregoing, such regulations may:
- (a) specify the standards to be applied to guardians *ad litem* in the performance by them of their functions under this Act;
  - (b) make provision for the training of guardians *ad litem*;
  - (c) make provision for codes of conduct for guardians *ad litem*;
  - (d) make provision for the procedures that are to apply to monitor, measure and evaluate the performance by guardians *ad litem* of their functions under this Act;
  - (e) make provision for the establishment and administration of a system of investigation and adjudication of complaints against guardians *ad litem*;
  - (f) make provision for the procedures that are to apply in respect of the keeping of records by guardians *ad litem*;
  - (g) specify such fees and expenses to be paid to guardians *ad litem* as the Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time determine;

- (h) make provision for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of the provision, or arrangement for the provision of, legal advice to, and legal representation for, guardians *ad litem*;
  - (i) make provision for such other matters as the Minister considers necessary to ensure that guardians *ad litem* are capable of performing their functions under this Act.
- (2) Regulations under this section may make different provision in relation to different classes of persons and different classes of proceedings, and contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

#### **Provision of information by guardians *ad litem* to Minister**

- 35K.** (1) The Minister may request a guardian *ad litem* to provide the Minister with such information relating to the performance of the functions of the guardian *ad litem* under this Act (including information relating to the proceedings in which he or she has been appointed for a child) as is necessary for the performance by the Minister of his or her functions under this Part.
- (2) Notwithstanding anything contained in any other enactment or rule of law, but subject to the Data Protection Regulation and the Data Protection Act 2018, a guardian *ad litem* shall comply with a request under subsection (1).
- (3) The Minister may use such information provided in response to a request under subsection (1) as he or she requires for the performance of his or her functions under this Part.

#### **Authorisation**

- 35L.** (1) Subject to this section, the Minister may issue an authorisation in writing to such and so many persons as the Minister considers appropriate to perform the functions conferred on a guardian *ad litem* by or under this Act.
- (2) A person will not be considered appropriate for the purposes of subsection (1) unless—
- (a) the person is a member of a class prescribed under subsection (3)(a), and
  - (b) subject to subsection (3)(c), the person satisfies such requirements as may be specified under subsection (3)(b).
- (3) The Minister may by regulations—
- (a) prescribe a class or classes of persons who, in the opinion of the Minister, are suitable to be guardians *ad litem*,

- (b) specify the requirements that a member of a class or classes prescribed under paragraph (a) shall satisfy in order to be considered appropriate for the purposes of subsection (1), and
  - (c) provide for exemptions from any requirement referred to in paragraph (b) for a specified class or classes of persons.
- (4) When prescribing a class or classes of persons under subsection (3)(a), the Minister shall have regard to—
- (a) the functions to be performed by guardians *ad litem* under this Act, and
  - (b) the qualifications, minimum level of professional experience, training and expertise of such class or classes of persons.
- (5) When specifying requirements under subsection (3)(b) and providing for exemptions under subsection (3)(c) in respect of such requirements, the Minister shall have regard to—
- (a) the functions to be performed by guardians *ad litem* under this Act, and
  - (b) the promotion of high professional standards and good practice on the part of guardians *ad litem*.
- (6) Where the Minister is considering issuing an authorisation to a person, the Minister may request the person to provide the Minister with such information as the Minister may require in order to decide whether to issue the authorisation and the person shall comply with the request concerned.
- (7) Where in the opinion of the Minister a person fails without good cause to comply with a request under subsection (6), the Minister may have regard to such failure when considering whether to issue an authorisation to the person.

#### **Notification of relevant matters**

- 35M.** (1) A guardian *ad litem* shall notify the Minister in writing of any relevant matter in relation to him or her which would be likely to affect his or her authorisation, as soon as practicable and in any event not later than 14 days after that matter comes to the knowledge of the guardian *ad litem*.
- (2) In this section, ‘relevant matter’, includes a criminal record within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012, other than a conviction to which section 14A of that Act applies.

#### **Revocation of authorisation**

- 35N.** The Minister may revoke an authorisation issued in respect of a person if it appears to the Minister that—

- (a) any requirement for the granting of the authorisation is no longer satisfied,
- (b) the person has failed to comply with section 35M(1),
- (c) the person has committed a serious breach of regulations made under this Part,
- (d) the person has become incapable through ill-health or otherwise of performing the functions of a guardian *ad litem* under this Act, or
- (e) there are other good and sufficient reasons to do so.

#### **Cessation of authorisation**

**35O.** (1) An authorisation issued in respect of a person shall cease to have effect—

- (a) where it is revoked under section 35N,
  - (b) in the case of a person who is an officer of the Minister, where the person ceases to be an officer of the Minister,
  - (c) in the case of a person with whom the Minister has entered into a contract for services under section 35P, on the expiry of the period of the contract, or on the expiry of such further period as the Minister may direct in accordance with subsection (3), or
  - (d) at the request of the person.
- (2) Where an authorisation ceases in accordance with subsection (1) and the person in respect of whom the authorisation was issued stands appointed for a child, the person concerned shall cease to be so appointed.
- (3) Where the period of a contract referred to in subsection (1)(c) is due to expire before the conclusion of proceedings in which a person is appointed for a child, the Minister may direct that the authorisation issued in respect of the person shall continue for such period as the Minister considers necessary having regard to the proceedings concerned.

#### **Contracts for services**

**35P.** (1) This section applies to a person who the Minister is satisfied is appropriate to perform the functions conferred on a guardian *ad litem* by or under this Act.

- (2) The Minister may enter into contracts for services with such and so many persons to whom the section applies as the Minister considers necessary for the performance by him or her of the functions under section 35C(1) or 35L(1).
- (3) A contract for services entered into under subsection (2) shall contain such terms and conditions as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.

- (4) The Minister may issue an authorisation to a person with whom he or she has entered into a contract for services under subsection (2).

**Transitional and saving provisions (Part VA)**

**35Q.** (1) Where immediately prior to the relevant date a person—

- (a) stands appointed under section 26 as a guardian *ad litem*,
- (b) is a person in respect of whom the Minister has received a vetting disclosure, and
- (c) is a person who the Minister is satisfied is a fit and proper person to be a guardian *ad litem*,

then, on and from that date, the appointment shall be deemed to be an appointment under section 35C(1).

- (2) Where an appointment is deemed under subsection (1) to be an appointment under section 35C(1), this Part shall apply to the person concerned subject to the following modifications and any other necessary modifications—

- (a) an order made under section 26 prior to the relevant date—
  - (i) in the case of a person appointed to act as a guardian *ad litem* in any proceedings under Part IVA, shall be treated as if it was an order made under section 35B(2), and
  - (ii) in the case of a person appointed to act as a guardian *ad litem* in any proceedings under Part IV, IVB or VI, shall be treated as if it was an order made under section 35B(3),
- (b) an order referred to in paragraph (a)(i) shall cease to have effect—
  - (i) in accordance with section 35H(1), or
  - (ii) after a period of 12 months commencing on the relevant date if no authorisation is issued in respect of the person in that period, whichever is the earlier,
- (c) an order referred to in paragraph (a)(ii) shall cease to have effect—
  - (i) in accordance with section 35H(2), or
  - (ii) after a period of 12 months commencing on the relevant date if no authorisation is issued in respect of the person in that period, whichever is the earlier, and
- (d) where prior to the relevant date the person had instructed a solicitor or counsel, or both, to represent him or her in proceedings under this Act, then on and from that date, the solicitor or counsel, or both, as the case may be, may continue to represent the person in such proceedings for such period as the order has effect, in accordance with paragraph (b) or (c), as the case may be.

- (3) In this section, ‘vetting disclosure’ has the same meaning as it has in the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.”.

### Consequential amendments to Principal Act

#### 8. The Principal Act is amended—

- (a) in section 23G(1)(c), by the substitution of “Part VA in respect of proceedings under this Part” for “section 26 (as amended by the Child Care (Amendment) Act 2011) in respect of proceedings under this Part and whose appointment has effect in accordance with section 26(4)”,
- (b) in section 23M(1)(c)—
- (i) by the substitution of “a person is appointed under section 35C(1) pursuant to an order under section 35B(2)” for “it makes an appointment under section 26 (as amended by the Child Care (Amendment) Act 2011)”, and
- (ii) by the substitution of “the person so appointed” for “a person appointed under that section”,
- (c) in section 23NK(b), by the substitution of “the guardian of the child, a guardian *ad litem*, where such guardian *ad litem* is appointed in accordance with Part VA in respect of proceedings under this Part,” for “the guardian of the child”,
- (d) in section 27, by the addition of the following subsections after subsection (5):
- “(6) In subsection (3), a reference to a party includes a reference to a guardian *ad litem*, if any, appointed in accordance with Part VA in respect of the proceedings concerned.
- (7) In this section, where the proceedings are proceedings under Part IVA, ‘court’ means the High Court.”,
- (e) in section 28(3)(c), by the insertion of “or Part VA” after “Part V (as amended by the Child Care (Amendment) Act 2011)”, and
- (f) in section 33—
- (i) in subsection (1), by the substitution of “IV, VA” for “IV”, and
- (ii) by the addition of the following subsection after subsection (3):
- “(4) In subsection (2), a reference to parties to proceedings includes a reference to a guardian *ad litem*, if any, appointed in accordance with Part VA in respect of the proceedings concerned.”.

#### Amendment of section 71 of Children Act 2001

9. Section 71(1)(a) of the Children Act 2001 is amended by the substitution of “Part III, IV, V or VA” for “Part III, IV or V”.

**Amendment of section 25 of Mental Health Act 2001**

**10.** Section 25 of the Mental Health Act 2001 is amended by the substitution of the following subsection for subsection (14):

“(14) Sections 21, 22, 24, 24A, 25, 27 to 35Q, 37 and 47 of the Child Care Act 1991 shall apply to proceedings under this section as they apply to proceedings to which those sections apply, subject to the following modifications:

- (a) references in those sections to proceedings or an order under Part III, IV, IVA, IVB, V, VA or VI of that Act shall be construed as references to proceedings or an order under this section;
- (b) in an application under subsection (1), the District Court shall appoint a guardian *ad litem* for the child to whom the application relates;
- (c) the guardian *ad litem* is entitled to the provision of legal advice and legal representation in the proceedings for which he or she is appointed for the child;
- (d) any other necessary modifications.”.

**Amendment of Schedule 1 to National Vetting Bureau (Children and Vulnerable Persons) Act 2012**

**11.** Schedule 1 to the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 is amended, in Part 1, by the addition of the following paragraph after paragraph 15:

“16. Any work or activity by a guardian *ad litem* within the meaning of Part VA of the Child Care Act 1991 as such a guardian.”.

**Amendment of Schedule 2 to Children First Act 2015**

**12.** Schedule 2 to the Children First Act 2015 is amended, in paragraph 14, by the substitution of “under section 35C(1)” for “in accordance with section 26”.

**Short title, collective citation and commencement**

- 13.** (1) This Act may be cited as the Child Care (Amendment) Act 2022.
- (2) The Child Care Acts 1991 to 2015 and this Act, other than *sections 9 to 12*, may be cited together as the Child Care Acts 1991 to 2022.
- (3) This Act shall come into operation on such day or days as the Minister for Children, Equality, Disability, Integration and Youth may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.