

Legal Ways Children May Come into Care

The Children, Young Persons and Their Families Act 1989:

The following is a summary of the Act:

The Act has two major divisions:

- Care and Protection
- Youth Justice

It applies to young people up to the age of 17 years of age. A child is defined as a boy or girl under the age of 14 years of age.

Two important principles are:

- The interests of the child or young person are paramount (s.6)
- The family should participate in decision making and be empowered to care for its children and young people.

The, Department of Child, Youth and Family (CYF) Services administers the 'Act'. Any Court matters relating to offending by 14 – 17 year olds are held in the Youth Court.

Sections:

Section 39: Place of Safety Warrant

- It is suspected that the child or young person is suffering or is likely to suffer ill treatment, neglect, deprivation, abuse or harm and emergency action is needed.
- The matter must be brought to court within five days after the warrant is executed.

Section 40: Warrant to remove a Child or Young Person

- Only applies where an application for a declaration has been made that the child or young person is in need of protection.

Section 42: Search without Warrant

- Only exercised by the Police

Section 48: Unaccompanied child or young person

- Only exercised by the Police.

Section 78: Custody order pending determination of proceedings

- Available at time of making application for declaration that a child or young person is in need of care and protection.

Section 101: Custody order

- Available only after a declaration is made that a child or young person is in need of a care or protection plan, and a social worker's report is filed and accepted by the Court.

- Plan must be prepared and reviewed every 6 or 12 months, depending on the age of the child or young person.
- Used when long-term work is needed with the child or family/whanau.
- Custody rights of any other person having custody are suspended.

Section 102: Interim Custody order

- Only available when a declaration is made
- Length of time is 6 months
- Only one further interim order can be made

Section 110: Guardianship Order

- Applies until age of 20 years
- Additional Guardianship in addition to any existing guardians
- Sole Guardianship – guardianship rights of all other guardians are suspended.

Section 139: Temporary Care Agreement

- When parents are temporarily unwilling or unable to care for the child or young person
- 28 days with a possibility of one further agreement
- Can be terminated by either party with notice in the manner specified in the agreement.

Section 140: Extended Care Agreement

- Only available at instigation of a Family Group Conference (FGC)
- For up to 6 months for a child of 7 years, up to a year for a child or young person over 7 years.
- The Social Worker must believe the child or young person will return home
- Can be broken by either party with notice – usually 7 days in writing.
- Any child or young person over the age of 12 must consent to the agreement.
- There are some special provisions for children with disabilities relating to agreements for their care.

Section 141:

- These agreements apply only to children or young persons ‘who are so mentally or physically disabled that suitable care for that child or young person can be provided only if that child or young person is placed in an institution’.
- Cannot be used when the child has lived at home up until now, unless there has been a new intervening change in the disability.
- There must be a FGC and a commitment from parents to keep in contact
- Maybe for a period of up to 2 years, and may be renewed after another FGC
- No consent from the child or young person is required.

Section 142:

- These agreements apply to children and young people who can meet the definition of ‘disabled’ as set out in the ‘Disabled Persons’ Community Welfare Act,
- Are made with the controlling authority of a home registered under the Act.

- An FGC is required, and the agreement may be for a period of up to one year, and is renewable with another FGC.