



Children Act 1975

1975 CHAPTER 72

PART III

CARE

Conflict of interest between parent and child

64 Addition of new sections to Children and Young Persons Act 1969

The following heading and sections are inserted after section 32 of the Children and Young Persons Act 1969—

**“32A Conflict of interest between parent and child or young person
Conflict of Interest between parent and child or young person.**

- (1) If before or in the course of proceedings in respect of a child or young person—
- (a) in pursuance of section 1 of this Act, or
 - (b) on an application under section 15(1) of this Act for the discharge of a relevant supervision order or a supervision order made under section 21(2) of this Act on the discharge of a relevant care order; or
 - (c) on an application under section 21(2) of this Act for the discharge of a relevant care order or a care order made under section 15(1) of this Act on the discharge of a relevant supervision order; or
 - (d) on an appeal to the Crown Court under section 2(12) of this Act, or
 - (e) on an appeal to the Crown Court under section 16(8) of this Act against the dismissal of an application for the discharge of a relevant supervision order or against a care order made under section 15(1) on the discharge of—
 - (i) a relevant supervision order; or
 - (ii) a supervision order made under section 21(2) on the discharge of a relevant care order; or

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(f) on an appeal to the Crown Court under section 21(4) of this Act against the dismissal of an application for the discharge of a relevant care order or against a supervision order made under section 21(2) on the discharge of—

(i) a relevant care order ; or

(ii) a care order made under section 15(1) on the discharge of a relevant supervision order,

it appears to the court that there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child or young person and those of his parent or guardian, the court may order that in relation to the proceedings the parent or guardian is not to be treated as representing the child or young person or as otherwise authorised to act on his behalf.

- (2) If an application such as is referred to in subsection (1)(b) or (c) of this section is unopposed, the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall order that in relation to proceedings on the application no parent or guardian of his shall be treated as representing him or as otherwise authorised to act on his behalf; but where the application was made by a parent or guardian on his behalf the order shall not invalidate the application.
- (3) Where an order is made under subsection (1) or (2) of this section for the purposes of proceedings on an application within subsection (1)(a), (b) or (c) of this section, that order shall also have effect for the purposes of any appeal to the Crown Court arising out of those proceedings.
- (4) The power of the court to make orders for the purposes of an application within subsection (1)(a), (b) or (c) of this section shall also be exercisable, before the hearing of the application, by a single justice.
- (5) In this section—
- " relevant care order " means a care order made under section 1 of this Act;
- " relevant supervision order " means a supervision order made under section 1 of this Act.

32B Safeguarding of interests of child or young person where section 32A order made.

- (1) Where the court makes an order under section 32A(2) of this Act the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall in accordance with rules of court appoint a guardian ad litem of the child or young person for the purposes of the proceedings. In this subsection " court" includes a single justice.
- (2) Rules of court shall provide for the appointment of a guardian ad litem of the child or young person for the purposes of any proceedings to which an order under section 32A(1) of this Act relates.
- (3) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child or young person in the manner prescribed by rules of court.”.

65 Legal aid for parents where order made under new section 32A of 1969 Act

In section 28 (power to order legal aid to be given) of the Legal Aid Act 1974—

- (a) in subsection (1), for " subsections (3) and (6)" there is substituted " subsections (3), (6) and (6A) " , and
- (b) the following subsection is inserted after subsection (6)—

“(6A) Where a court makes an order under section 32A of the Children and Young Persons Act 1969 affecting the parent or guardian of a person in relation to any proceedings, it may order that the parent or guardian shall be given legal aid for the purpose of taking such part in the proceedings as may be allowed by rules of court.

In this subsection "guardian" has the same meaning as in the Children and Young Persons Act 1933.”.

66 Safeguarding of interests of children before children's hearings etc. in Scotland

In the Social Work (Scotland) Act 1968 the following section is inserted after section 34—

“34A Safeguarding of interests of children before children's hearings etc.

- (1) In any proceedings—
 - (a) before a children's hearing;
 - (b) before the sheriff on an application under section 42(2)(c) of this Act;
 - (c) before the sheriff on an appeal under section 49 or 51 of this Act,the chairman (in the case of proceedings referred to in paragraph (a) above) or the sheriff (in any other case)—
 - (i) shall consider whether it is necessary for the purpose of safeguarding the interests of the child in the proceedings, because there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child and those of his parent, to appoint a person to act for that purpose; and
 - (ii) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (i) above.
- (2) The power to make rules under—
 - (a) section 35(4) of this Act,
 - (b) section 32 of the Sheriff Courts (Scotland) Act 1971,shall include power to make rules providing for—
 - (i) the procedure in relation to the disposal of matters arising under this section;
 - (ii) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.
- (3) The expenses of a person appointed under subsection (1) of this section shall—
 - (a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and

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- (b) except in so far as otherwise defrayed in terms of regulations made under section 103(2) of the Children Act 1975,
be borne by the local authority for whose area the children's panel from which the relevant children's hearing has been constituted is formed.
- (4) For the purposes of subsection (3) of this section, " relevant children's hearing " means—
- (a) in the case of proceedings referred to in subsection (1)(a) of this section, the children's hearing;
 - (b) in the case of proceedings referred to in subsection (1)(b) of this section, the children's hearing who have directed the application;
 - (c) in the case of proceedings referred to in subsection (1)(c) of this section, the children's hearing whose decision is being appealed against.”.