

CHILDREN AND YOUNG PERSONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Orders under Part 2 of the 1989 Act

Residence orders

Section 36: Entitlement of relative to apply for a residence order

146. *Section 36* provides that an application for a residence order may be made by a relative, without first seeking the permission of the court, in circumstances where the child has been living with them for one year immediately prior to the application. The section inserts a new subsection (5B) in section 10 of the 1989 Act to that effect. The existing qualifying condition for relatives is that the child must have been living with them for a period of three years out of the last five years.
147. Section 113 of the Adoption and Children Act 2002 amended the qualifying condition for a local authority foster carer applying for a section 8 order, including a residence order to a one year period. These sections are intended to align the position of relative carers with local authority foster carers.
148. A relative is defined in section 105 of the 1989 Act as a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent.

Section 37: Duration of residence orders

149. At present, a residence order ceases to have effect when the child reaches the age of 16, unless the court is satisfied that the circumstances are exceptional e.g. the child has a learning disability. Section 114 of the Adoption and Children Act 2002 empowered the courts to direct in appropriate cases that a residence order made in favour of someone who is not the parent or guardian of a child may be extended until the child reaches the age of 18.
150. *Section 37* amends sections 9 and 12 of the 1989 Act so that a residence order, unlike other section 8 orders, will last until the child reaches the age of 18 unless the courts directs that the order should end earlier or another order is made discharging the residence order prior to that date. The intention is to provide enhanced security for the child where the holder of a residence order who is not the child's parent is caring for the child on a long term basis.

Special guardianship orders

Section 38: Entitlement of relative to apply for a special guardianship order

151. *Section 38* mirrors the provision in *section 36* above in relation to relatives applying for special guardianship orders and amends section 14A(5) of the 1989 Act to that effect.