
STATUTORY INSTRUMENTS

2005 No. 2795

The Family Procedure (Adoption) Rules 2005

PART 7

**LITIGATION FRIEND, CHILDREN'S GUARDIAN, REPORTING
OFFICER AND CHILDREN AND FAMILY REPORTER**

SECTION 2

CHILDREN'S GUARDIAN

Appointment of children's guardian

59.—(1) In proceedings to which Part 5 applies, the court will appoint a children's guardian where the child is a party to the proceedings unless it is satisfied that it is not necessary to do so to safeguard the interests of the child.

(2) At any stage in proceedings where the child is a party to the proceedings—

(a) a party may apply, without notice to the other parties unless the court directs otherwise, for the appointment of a children's guardian; or

(b) the court may of its own initiative appoint a children's guardian.

(3) The court will grant an application under paragraph (2)(a) unless it considers that such an appointment is not necessary to safeguard the interests of the child.

(4) When appointing a children's guardian the court will consider the appointment of anyone who has previously acted as a children's guardian of the same child.

What the court or a court officer will do once the court has made a decision about appointing a children's guardian

60.—(1) Where the court refuses an application under rule 59(2)(a) it will give reasons for the refusal and the court or a court officer will—

(a) record the refusal and the reasons for it; and

(b) as soon as practicable, notify the parties and either the Service or the Assembly of a decision not to appoint a children's guardian.

(2) Where the court appoints a children's guardian under rule 59 a court officer will record the appointment and, as soon as practicable, will—

(a) inform the parties and either the Service or the Assembly; and

(b) unless it has already been sent, send the children's guardian a copy of the application and copies of any document filed with the court in the proceedings.

(3) A court officer also has a continuing duty to send the children's guardian a copy of any other document filed with the court during the course of the proceedings.

Termination of the appointment of the children’s guardian

61.—(1) The appointment of a children’s guardian under rule 59 continues for such time as is specified in the appointment or until terminated by the court.

(2) When terminating an appointment in accordance with paragraph (1), the court will give reasons for doing so, a note of which will be taken by the court or a court officer.

Powers and duties of the children’s guardian

62.—(1) The children’s guardian is to act on behalf of the child upon the hearing of any application in proceedings to which Part 5 applies with the duty of safeguarding the interests of the child.

(2) The children’s guardian must also provide the court with such other assistance as it may require.

How the children’s guardian exercises his duties – investigations and appointment of solicitor

63.—(1) The children’s guardian must make such investigations as are necessary for him to carry out his duties and must, in particular—

- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs; and
- (b) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.

(2) The children’s guardian must—

- (a) appoint a solicitor for the child unless a solicitor has already been appointed;
- (b) give such advice to the child as is appropriate having regard to his understanding; and
- (c) where appropriate instruct the solicitor representing the child on all matters relevant to the interests of the child, including possibilities for appeal, arising in the course of proceedings.

(3) Where the children’s guardian is authorised in the terms mentioned by and in accordance with section 15(1) of the Criminal Justice and Court Services Act 2000⁽¹⁾ or section 37(1) of the Children Act 2004⁽²⁾ (right of officer of the Service or Welsh family proceedings officer to conduct litigation or exercise a right of audience), paragraph (2)(a) will not apply if he intends to have conduct of the proceedings on behalf of the child unless—

- (a) the child wishes to instruct a solicitor direct; and
- (b) the children’s guardian or the court considers that he is of sufficient understanding to do so.

Where the child instructs a solicitor or conducts proceedings on his own behalf

64.—(1) Where it appears to the children’s guardian that the child—

- (a) is instructing his solicitor direct; or
- (b) intends to conduct and is capable of conducting the proceedings on his own behalf

he must inform the court of that fact.

(2) Where paragraph (1) applies, the children’s guardian—

(1) 2000 c. 43.
(2) 2004 c. 31.

- (a) must perform the duties set out in rules 62, 63, 65 to 67 and this rule, other than those duties in rule 63(2)(a) and (c), and such other duties as the court may direct;
- (b) must take such part in the proceedings as the court may direct; and
- (c) may, with the permission of the court, have legal representation in the conduct of those duties.

How the children’s guardian exercises his duties – attendance at court, advice to the court and reports

65.—(1) The children’s guardian or the solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must attend all directions hearings unless the court directs otherwise.

(2) The children’s guardian must advise the court on the following matters—

- (a) whether the child is of sufficient understanding for any purpose including the child’s refusal to submit to a medical or psychiatric examination or other assessment that the court has the power to require, direct or order;
- (b) the wishes of the child in respect of any matter relevant to the proceedings including his attendance at court;
- (c) the appropriate forum for the proceedings;
- (d) the appropriate timing of the proceedings or any part of them;
- (e) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application; and
- (f) any other matter on which the court seeks his advice or on which he considers that the court should be informed.

(3) The advice given under paragraph (2) may, subject to any direction of the court, be given orally or in writing.

(4) The children’s guardian must—

- (a) unless the court directs otherwise, file a written report advising on the interests of the child in accordance with the timetable set by the court; and
- (b) where practicable, notify any person the joining of whom as a party to those proceedings would be likely, in his opinion, to safeguard the interests of the child, of the court’s power to join that person as a party under rule 23 and must inform the court—
 - (i) of any notification;
 - (ii) of anyone whom he attempted to notify under this paragraph but was unable to contact; and
 - (iii) of anyone whom he believes may wish to be joined to the proceedings.

(5) Any report to the court under this rule will be confidential.

(Part 9 sets out the procedure for making an application to be joined as a party in proceedings.)

How the children’s guardian exercises his duties – service of documents and inspection of records

66.—(1) The children’s guardian must—

- (a) serve documents on behalf of the child in accordance with rule 37(2)(b); and
- (b) accept service of documents on behalf of the child in accordance with the table in rule 37(1),

and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.

- (2) Where the children’s guardian inspects records of the kinds referred to in—
- (a) section 42 of the 1989 Act (right to have access to local authority records); or
 - (b) section 103 (right to have access to adoption agency records)

he must bring all records and documents which may, in his opinion, assist in the proper determination of the proceedings to the attention of—

- (i) the court; and
- (ii) unless the court directs otherwise, the other parties to the proceedings.

How the children’s guardian exercises his duties – communication of a court’s decision to the child

67. The children’s guardian must ensure that, in relation to a decision made by the court in the proceedings—

- (a) if he considers it appropriate to the age and understanding of the child, the child is notified of that decision; and
- (b) if the child is notified of the decision, it is explained to the child in a manner appropriate to his age and understanding.

Solicitor for child

68.—(1) A solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must represent the child—

- (a) in accordance with instructions received from the children’s guardian unless the solicitor considers, having taken into account the views of the children’s guardian and any direction of the court under rule 64(2)—
 - (i) that the child wishes to give instructions which conflict with those of the children’s guardian; and
 - (ii) that he is able, having regard to his understanding, to give such instructions on his own behalf,

in which case the solicitor must conduct the proceedings in accordance with instructions received from the child;

- (b) where no children’s guardian has been appointed and the condition in section 41(4)(b) of the 1989 Act is satisfied, in accordance with instructions received from the child; or
- (c) in default of instructions under sub-paragraph (a) or (b), in furtherance of the best interests of the child.

(2) A solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must—

- (a) serve documents on behalf of the child in accordance with rule 37(2)(a); and
- (b) accept service of documents on behalf of the child in accordance with the table in rule 37(1),

and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.

(3) Where the child wishes an appointment of a solicitor under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) to be terminated—

- (a) he may apply to the court for an order terminating the appointment; and
 - (b) the solicitor and the children’s guardian will be given an opportunity to make representations.
- (4) Where the children’s guardian wishes an appointment of a solicitor under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) to be terminated—
- (a) he may apply to the court for an order terminating the appointment; and
 - (b) the solicitor and, if he is of sufficient understanding, the child, will be given an opportunity to make representations.
- (5) When terminating an appointment in accordance with paragraph (3) or (4), the court will give its reasons for so doing, a note of which will be taken by the court or a court officer.
- (6) The court or a court officer will record the appointment under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) or the refusal to make the appointment.