

AN ANALYSIS OF THE FAMILY COURTS ACT, 2024

A NEW ERA FOR FAMILY JUSTICE IN IRELAND



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STRUCTURAL AND PROCEDURAL REFORMS FOR MODERN FAMILY LAW



FOCUSING ON
CHILDREN'S
BEST INTERESTS



FAIRNESS,
RESPECT &
EQUALITY



SUPPORTING FAMILIES
THROUGH DIFFICULT
TIMES



BUILDING TRUST IN
THE FAMILY JUSTICE
SYSTEM

SPECIALISED COURTS • BETTER OUTCOMES

by Hugh Condon Dip. Fam Law, Dip. LSP

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Introduction

Ireland currently does not have a dedicated or specialised Family Court system, this position contrasts with many other European and Common Law jurisdictions. The new Family Courts Act, 2024 seeks to change that.¹ In 2019, Dr. Geoffrey Shannon said that '*Cases concerning children are mainly heard in the general courts in the same buildings as other cases, by judges who do not specialise in family or child law*'.² This Act aims to create three new specialised family courts in Ireland namely a Family High Court, Family Circuit Court and Family District Court. These won't be completely new courts - instead, they will be special divisions within the existing court system. In 2022, the then Minister of Justice, Helen McEntee said '*The Family Court Bill will form an intrinsic part of the reform of the family justice system and will provide many of the building blocks essential to these reforms*'.³

The introduction of this new Act represents a significant shift in the approach to family law in Ireland, promoting specialisation and a focus on children's welfare. However, it also presents a range of concerns for legal practitioners that highlight the need for careful planning, adequate resources, and comprehensive training to ensure that the transition is effective and that the rights of all parties are maintained. Addressing these concerns will not only be crucial for the successful commencement and implementation of the act but also for building trust among practitioners and the public alike.

Here we look specifically at how this new piece of legislation intends to bring about structural and procedural reforms in the Irish family law landscape.

Guiding Principles (Part 2, Section 8)

The new Act establishes fundamental guiding principles that reshape how family law proceedings will be conducted in Ireland. At its core, the legislation prioritises the welfare of children while promoting efficient, accessible, and less adversarial approaches to resolving family disputes. When children are involved in family law proceedings, the Act mandates that their best interests must be the primary consideration throughout the process. Courts and legal practitioners are required to ensure that children are kept informed about their cases in age-appropriate ways.

¹ Irish Statute Book, Family Courts Act, 2024

² Opening Statement of Dr Geoffrey Shannon to the Joint Committee on Justice and Equality, 8 March 2019

³ Minister for Justice, Helen McEntee, TD., Press Release, 16 November 2022

Importantly, children who are capable of forming their own views must be given the opportunity to express them, with their opinions being weighted according to their age and maturity. The Act outlines that cases involving children should proceed without unnecessary delays that could impact their welfare.

A significant focus of the new legislation is the emphasis on resolving family disputes outside the traditional courtroom setting whenever possible. Courts and legal representatives are instructed to encourage parties to consider alternative dispute resolution methods, particularly mediation. For solicitors this is nothing new as there is a requirement on them when initiating Judicial Separation or Divorce proceedings that they submit a declaration that they have discussed alternatives, including mediation, with their client. However, the Act recognises that such alternatives may not always be appropriate, especially in cases where safety concerns exist for any party or child involved in the proceedings.

The legislation introduces more stringent case management practices to improve efficiency. Courts will implement specific time limits and maximum word counts for legal submissions to streamline proceedings. This approach aims to make the process more cost-effective while trying to ensure that cases are resolved in a timely manner.

Accessibility and user-friendliness are key themes throughout the Act. The legislation requires that proceedings be conducted in a manner that is accessible to all parties involved. It emphasises the importance of quickly identifying the core issues in dispute and facilitating agreement between parties where possible. The Act specifically addresses safety concerns, requiring courts to minimise any risks to the safety of parties or children involved in proceedings.

The legislation also outlines clear expectations for parties entering family law proceedings. Individuals are expected to make genuine efforts to resolve their disputes through alternative means before resorting to court action. When court proceedings are necessary, parties are required to participate in a manner that minimises conflict, promotes agreement, and keeps costs under control. They must also ensure that children's interests remain paramount and that any safety concerns are adequately addressed.

Through these comprehensive guidelines, the Family Courts Act 2024 aims to create a more modern and effective family law system. The legislation balances the need for efficient legal processes with the importance of protecting vulnerable parties, especially children.

By promoting alternative dispute resolution while maintaining strong safeguards for cases where court intervention is necessary, the Act represents a significant step forward in Irish family law reform. Its emphasis on reducing conflict, controlling costs, and prioritising children's welfare reflects a contemporary understanding of what families need from the justice system during difficult times.

Family High Court (Part 3, Sections 9 - 18)

The legislation establishes "an Ard-Chúirt Teaghlaigh" (the Family High Court) as a distinct division within the existing High Court system. This new court will be led by a Principal Judge, officially titled "an Príomh-Bhreitheamh den Ard-Chúirt Teaghlaigh," who will oversee its operations and management. Additional judges will be assigned to serve in this specialised court, with their number to be determined by Acts of the Oireachtas.

To ensure continuous operation of the Family High Court, the Act includes provisions for temporary assignments when regular judges are unavailable. In cases of illness or increased workload, the President of the High Court can temporarily assign other High Court judges to the Family High Court. Importantly, these temporary assignments are limited to judges with suitable training and experience in family law matters.

The Family High Court's jurisdiction encompasses several key areas, including adoption cases under the Adoption Act 2010, international child abduction matters, and certain child care proceedings. It will also hear appeals from the Family Circuit Court and cases stated from both the Family District Court and Family Circuit Court.

A notable aspect of the Act is its emphasis on alternative dispute resolution. When initiating proceedings in the Family High Court, parties must generally indicate whether they have attempted mediation. However, this requirement doesn't apply to certain types of cases, such as domestic violence proceedings or child protection matters. Judges are empowered to suspend proceedings to allow parties to pursue mediation, provided this doesn't compromise safety or cause undue delay.

The Act also introduces practical changes to make the court more accessible and less intimidating. Proceedings are to be conducted as informally as practicable, and notably, judges, barristers, and solicitors will not wear wigs or gowns in the Family High Court, this is a practice that is already in place in the current Circuit and District Courts when dealing with

family law matters. The court will typically sit in separate buildings or at different times from other courts to maintain privacy and reduce stress for families.

The Principal Judge's role includes significant administrative responsibilities, such as arranging the distribution of court business and ensuring efficiency. They must work closely with the Courts Service while maintaining judicial independence. The Act also establishes a system for selecting the Principal Judge, with appointments lasting at least four years. To improve access to justice across Ireland, the Act provides for the Family High Court to operate on circuit. The Courts Service, in consultation with senior judges, can divide the state into Family High Court Circuits, ensuring that family law services are available throughout the country. The court must sit at least once yearly in designated appeal towns, though this requirement can be modified based on caseload and practical considerations.

Family Circuit Court (Part 4, Sections 19 – 35)

The Family Circuit Court is established as a division of the Circuit Court under the Courts (Establishment and Constitution) Act 1961. Specifically, this division is named "an Chúirt Chuarda Teaghlaigh". The Family Circuit Court will have distinct jurisdiction over family law matters, including custody and welfare of children, divorce, and related family issues. Judges assigned to this court will exercise jurisdiction in areas related to the residence or place of business of the parties involved or where a child at the centre of the proceedings resides.

Importantly, there is a provision for judges to direct the exercise of jurisdiction from other circuits if deemed necessary for the child's best interest. Moreover, the Principal Judge of the Family Circuit Court will play a central role in organising court business and ensuring that cases are distributed among judges effectively. This operational structure aims to promote efficiency within the court's functions.

As with the Family High Court, the Family Circuit Court will be committed to maintaining an informal atmosphere during proceedings to minimise the stress typically associated with family law disputes. Judges, legal practitioners and parties involved in cases will not wear traditional legal garb, such as wigs or gowns, to create a more approachable environment. In line with modern judicial practices, the Family Circuit Court will prioritise alternative dispute resolution methods, including mediation, to resolve disputes. Judges will have the authority to suspend proceedings temporarily to allow parties to explore these alternatives.

The Act also details the protocols for the creation and adjustment of Family Circuit Court circuits, ensuring that geographical areas are adequately covered and that the administration of family law is efficient. This includes assigning judges to specific circuits and recognising their responsibilities regarding family law matters.

Family District Court (Part 5, Sections 36 – 50)

The Act establishes a new division of the District Court called "an Chúirt Dúiche Teaghlaigh" (the Family District Court). This court will be led by a Principal Judge of the Family District Court, along with additional judges who will be specifically styled as Judges of the Family District Court.

The jurisdiction of the Family District Court can be exercised by a judge in districts where either a party resides or works, where a child involved in the proceedings lives (or is proposed to live), or where a previous application in the same proceedings was granted. Judges can make urgent orders outside their district when necessary, and they have the power to refer legal questions to the Family High Court for final determination. Appeals from the Family District Court will go to the Family Circuit Court.

To maintain appropriate separation from other court proceedings, the Family District Court must sit in different buildings or at different times from other courts (except the Family High Court and Family Circuit Court). This requirement can be waived in urgent cases or exceptional circumstances. The Courts Service, in consultation with relevant judicial officers, manages the scheduling and location of court sittings.

The Principal Judge of the Family District Court can issue practice directions for conducting proceedings and must consider factors like minimising costs and expediting cases. These practice directions must be coordinated with those issued by the Family High Court and Family Circuit Court to avoid conflicts.

Regarding judicial appointments, the President of the District Court can assign judges to the Family District Court based on their training and experience. The Principal Judge serves for at least 4 years (unless retirement comes first) and cannot be reassigned to the same role after their term. Other Family District Court judges serve minimum 3 year terms and can be reassigned. The Act also makes special provision for Irish speaking areas, requiring judges assigned to these districts to have sufficient Irish language knowledge where practicable.

This structure largely mirrors the organisational framework seen in the Family High Court and Family Circuit Court, with similar provisions for judicial assignments, practice directions, and administrative functions.

Rules of Court in Family Law Proceedings (Part 6, Section 51)

The Family Courts Act 2024 introduces important changes to the rules governing family law proceedings in our court system. These amendments establish a more structured and specialised approach to handling family law cases across all court levels.

The Act modifies the existing court rules system by expanding the membership of various rules committees. For the Superior Courts Rules Committee, the number of members increases from seven to eight, with the Principal Judge of the Family High Court joining as a new member. Similar changes apply to both the Circuit and District Court Rules Committees, where membership increases from four to five members, with their respective Family Court Principal Judges being added.

A significant addition is the new Section 72(a), which specifically addresses rules for family law proceedings. This section empowers the various rules committees to create specialised procedures for family courts at all levels - the Family High Court, Family Circuit Court, and Family District Court. These rules can cover a wide range of procedural matters, making the family court system more efficient and accessible.

The new rules can establish specific requirements for several key areas. These include how proceedings should be started, what documentation is needed, how court procedures should be conducted, and how costs should be awarded. The rules can also set standards for how judges should be addressed and how cases should be presented to the Family High Court.

Importantly, the Act allows for the Master of the High Court and other senior court officers to handle uncontested cases and make interim orders. This provision aims to streamline court processes and reduce delays in more straightforward matters.

When creating these rules, the committees must consider two key factors: the guiding principles established in Section 8 of the Act (which emphasise the best interests of children and efficient resolution of family disputes) and the need for proper and efficient administration of justice.

Additionally, any proposed rules must be developed in consultation with the Family Courts Practice and Procedure Committee, ensuring a coordinated and well-thought-out approach to family court procedures.

These changes represent a significant step toward creating a more specialised and efficient family court system in Ireland. By establishing clear procedures and guidelines specifically designed for family law cases, the Act aims to make the court system more responsive to the unique needs of families while ensuring fair and efficient processing of cases.

Family Courts Practice and Procedure Committee (Part 6, Section 52)

The Act establishes a significant coordinating body called the Family Courts Practice and Procedure Committee. This committee brings together the Principal Judges from all three family courts along with up to two staff members nominated by the Courts Service Chief Executive.

This committee serves as a crucial mechanism for maintaining consistency and coordination across the family court system. They are required to meet at least twice yearly, though meetings can be called more frequently if needed. The primary purpose is to ensure a harmonised approach to court practices and procedures across all levels of the family courts, while also considering matters related to the Courts Service's functions.

Importantly, the committee has the power to propose new rules of court to any or all of the existing rules committees (Superior Courts, Circuit Court, and District Court), though this does not impinge on these committees' existing functions. This ability to propose rules, it would appear, gives the committee a meaningful role in shaping family court procedures.

A notable feature of the committee's structure is its responsiveness to emerging issues. Any Principal Judge can request additional meetings if they notice diverging practices or procedures developing between the courts. When such a request is made, the committee must convene as soon as practicable to address these concerns. This mechanism helps prevent the development of inconsistent approaches across different levels of the family court system.

The committee maintains autonomy in managing its internal operations, as it has the authority to regulate its own procedures and business matters. This flexibility allows the committee to adapt its working methods as needed to fulfill its coordination role effectively.

Miscellaneous Provisions (Part 7, Sections 53 – 65)

A significant change is the creation of new Principal Judge positions for the Family Courts system. The Act amends the existing judicial precedence order to include the Principal Judge of the Family High Court, establishing their rank in the judicial hierarchy. Similarly, it adds the Principal Judge of the Family Circuit and District Courts to the ranking system, ensuring clear lines of authority within the family court structure.

The Act also addresses situations where these Principal Judges might be unable to perform their duties or when their positions become vacant. In such cases, their responsibilities would typically fall to the President of their respective court. Alternatively, the President may delegate these duties to the most senior available judge within that particular family court division.

An important aspect of the new system is the emphasis on judicial training and education. Judges serving in any of the family courts must undergo specific training as required by their Principal Judge, although specifically what this training would be like is not outlined. This requirement is coordinated with the President of the court and the Chief Justice, ensuring that judges handling family matters will have appropriate specialised knowledge.

The legislation also reforms how reserved judgments are managed. Principal Judges of the Family Courts now share responsibility with Court Presidents for maintaining registers of reserved judgments, ensuring better tracking and management of pending decisions in family law cases.

A practical innovation in the Act addresses the handling of related family law cases. When there are pending proceedings in higher courts (Family Circuit Court or Family High Court), the Family District Court retains the authority to hear other related cases involving the same parties or children if it determines this is necessary for justice to be served. This provision allows for more flexible and efficient handling of interconnected family law matters.

Importantly, judges assigned to the Family Courts retain all their powers as ordinary judges of their respective courts (High Court, Circuit Court, or District Court). This ensures they maintain their full judicial authority while serving in their specialised family law roles.

The Act also includes several technical amendments to various existing laws, updating their definitions to incorporate references to the Family Courts Act 2024 and ensuring consistency across the legal framework. These changes help integrate the new family court system into the existing judicial structure.

Jurisdiction (Part 8, Sections 66 – 94)

The new Act introduces important flexibility in how family law cases can be handled across different court levels, establishing clear rules for transferring cases between courts when appropriate. This system aims to ensure that cases are heard in the most suitable court for their circumstances.

The Family High Court has been given the authority to transfer cases to lower courts if it determines that either the Family Circuit Court or Family District Court would be more appropriate for handling the matter. When making such transfers, the High Court can either decide on the costs itself or allow the court receiving the case to make that determination.

A notable feature of the new system is the expanded role of the Family District Court in cases where all parties agree. Even if a case involves monetary amounts that would typically exceed the District Court's jurisdiction, it can still handle the case if two conditions are met: the parties have reached an agreement on the issues, and they consent to having the District Court make the final determination.

The Act also allows judges to transfer cases based on their assessment of what's most appropriate. A Family District Court judge can send a case to the Family Circuit Court if they believe there are special circumstances that make it more suitable for the higher court. Similarly, a Family Circuit Court judge can transfer a case to the Family District Court if they believe it's more appropriate or if they think the case should have been filed there in the first place. In both situations, judges can impose costs on parties as they see fit, and their decisions to transfer can be appealed.

However, there are important limitations on these transfers. Once a case has been transferred up from the District Court to the Circuit Court, it cannot be sent back down. Likewise, if a case has been transferred down to the District Court, it cannot be sent back up to the Circuit Court. Additionally, the Circuit Court cannot transfer a case down simply because the parties have resolved their disputes, unless they specifically agree to such a transfer.

The Act includes a specific restriction regarding cases involving judicial separation, divorce, or dissolution of civil partnership. Once a judge in either the Family District Court or Family Circuit Court has granted such a decree, neither court can transfer related proceedings about orders made under specific family law acts between the parties.

This flexible system aims to ensure that family law cases are heard at the most appropriate court level while maintaining clear boundaries and preventing cases from being unnecessarily shuffled between courts. It aims to balance the need for efficient case management with appropriate jurisdictional limits and the rights of the parties involved.

Protection for Parties to Proceedings (Part 9, Section 95 – 99)

The Family Courts Act 2024 establishes comprehensive protections for people involved in family court proceedings, with particular emphasis on privacy rights and the wellbeing of children. These new provisions carefully balance the need for confidentiality in sensitive family matters with appropriate transparency in the justice system.

The Act maintains the private nature of family court proceedings while creating structured exceptions for certain professionals. Legal practitioners can attend and report on cases, but must ensure their reports don't reveal any identifying information about the parties or children involved. Similarly, journalists are generally permitted to attend family court hearings, though this right comes with significant restrictions. Courts have the power to exclude media representatives or limit publication when necessary to protect anonymity, shield sensitive information, prevent distress, guard against harassment, protect business confidentiality, or avoid interference with criminal investigations.

When considering restrictions on media coverage, courts must weigh several important factors. These include the best interests of any children involved, the views of all parties (including children mature enough to express their opinions), the sensitive nature of personal information, potential distress from media presence, and risks of harassment. The court must also consider the broader public interest in maintaining confidence in the justice system.

The legislation creates serious consequences for breaking privacy rules. Publishing or broadcasting information that could help identify parties or children in family court cases becomes a criminal offence. Those who violate these provisions face significant penalties, including fines up to €50,000 or imprisonment for up to three years. However, the Act provides a defence for publishers who can demonstrate they had no knowledge or reason to suspect that the information would identify protected parties.

Particular attention is paid to protecting witnesses during cross-examination, especially young people. When a witness is under 18, the court must prevent direct cross-examination by the other party unless it's absolutely essential for justice. This protection can extend to adult witnesses as well, with courts having discretion to prevent personal cross-examination when appropriate. In cases where direct cross-examination is prohibited, the court must explain its decision and arrange for legal representation to conduct the questioning, appointing a legal practitioner, if necessary, to ensure fair proceedings.

The Act also addresses the practical need to share court documents with other official bodies, such as for related investigations or inquiries. While this sharing is permitted, strict privacy requirements remain in place, ensuring that shared information remains confidential and protected from public disclosure.

Throughout these provisions, there is careful consideration of how to protect vulnerable parties while maintaining the integrity of the legal process. The Act provides courts with clear guidance on managing sensitive family matters, ensuring that children's welfare and the protection of vulnerable parties remain paramount while still allowing sufficient transparency to maintain public confidence in the family law system.

The legislation demonstrates a sophisticated understanding of the complexities involved in family court proceedings, creating a framework that protects privacy and vulnerability while ensuring justice can be properly administered. It gives courts the tools they need to manage these sensitive cases appropriately, with clear guidelines for balancing competing interests and protecting all parties involved.

Transitional Provisions (Part 10, Sections 100 – 104)

The Act includes important transitional provisions that explain how existing family law cases will be handled as the new family court system is implemented. These provisions ensure a smooth transition without disrupting ongoing legal proceedings.

The Act establishes that the shift to the new system won't interrupt the administration of justice. It carefully outlines how different types of cases should be managed during the transition period, which begins on what the Act calls the "operative date" - the date when different parts of the Act come into effect for particular courts or districts.

For cases in the High Court that were started before the operative date, the handling depends on their progress. If the High Court has already begun hearing the case, it can either finish dealing with it or transfer it to the new Family High Court if appropriate. However, if the High Court hasn't started hearing the case, it must transfer it to the Family High Court.

The Circuit Court and District Court have similar but slightly different arrangements. For cases that were started before the operative date, these courts can either continue handling them or transfer them to the new Family Circuit Court or Family District Court respectively. The transfer would ensure the case is heard in the area where one of the parties lives or works.

The Act clarifies that merely hearing preliminary matters or procedural applications doesn't count as having "heard" a case. This means that cases where only preliminary matters have been dealt with can still be transferred to the new family courts. However, any orders made during these preliminary hearings remain valid even if the case is transferred.

Regarding appeals, similar transition rules apply. If an appeal has already been partly heard by the High Court or Circuit Court, these courts can finish dealing with it. For appeals that haven't been heard yet, they can be transferred to the appropriate new family court. The Act also allows the Court of Appeal or Supreme Court to transfer cases to the new family courts for rehearing when necessary.

To ensure continuity, all existing court orders, declarations, appointments, and other legal decisions made by the previous courts remain valid under the new system. The Act deems these to have been made by the equivalent new family court. This includes orders from other countries that were recognised by Irish courts before the change.

An important practical consideration is that judges who were handling specific family law cases when the Act comes into effect can continue overseeing those cases, even if they haven't been assigned to the new family courts. This helps maintain consistency in ongoing cases.

The Act also addresses international aspects, ensuring that court orders from other countries that were recognised by Irish courts before the transition will continue to be valid and enforceable by the new family courts. This maintains Ireland's compliance with international legal obligations and protects the rights of parties involved in cross-border cases.

These transitional provisions appear to demonstrate careful planning to ensure that the creation of the new family court system doesn't disrupt existing cases or create uncertainty for people already involved in family law proceedings. The Act provides clear guidance for courts and maintains the validity of existing orders while allowing for appropriate transfers to the new specialised family courts.

Conclusion

The Family Courts Act 2024 marks a transformative step in the evolution of family law in Ireland, establishing a dedicated framework that prioritises the welfare of children and promotes a more efficient, accessible, and less adversarial approach to resolving family disputes. By creating specialised divisions within the existing court system, the Act addresses the unique complexities of family law, ensuring that cases are managed by judges with the requisite expertise and sensitivity. The emphasis on alternative dispute resolution, alongside robust protections for vulnerable parties, reflects a contemporary understanding of the needs of families navigating legal challenges. As the new system is implemented, the transitional provisions and clear guidelines aim to maintain continuity and uphold the integrity of ongoing cases. Ultimately, the Family Courts Act 2024 not only enhances the administration of justice but also fosters a more compassionate and responsive legal environment for families in Ireland.

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