

立法會  
《2011年未成年人監護(修訂)條例草案》委員會

當局對委員在二零一一年七月六日的  
條例草案委員會會議上所提事項作出的回應

當局在擬訂《2011年未成年人監護(修訂)條例草案》時  
所參考的英格蘭與威爾斯《1989年兒童法令》條文

應《2011年未成年人監護(修訂)條例草案》委員會委員在二零一一年七月六日的會議上提出的要求，本文件臚列當局在擬訂《2011年未成年人監護(修訂)條例草案》時所參考的英格蘭與威爾斯《1989年兒童法令》條文，以供各委員參考。有關資料載於附件

勞工及福利局  
二零一一年七月

當局擬訂《2011年未成年人監護(修訂)條例草案》時所參考的  
英格蘭與威爾斯《1989年兒童法令》條文

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
<p>《條例草案》第三條，家事法律程序的 詮釋</p> <p>家事法律程序(domestic proceedings) 指根 據以下條例或司法管轄權而進行的任何 法律程序—</p> <p>(a) 《分居令及贍養令條例》(第16 章)；</p> <p>(b) 《婚姻訴訟條例》(第179章)；</p> <p>(c) 《家庭及同居關係暴力條例》(第 189章)；</p> <p>(d) 《婚姻法律程序與財產條例》(第 192章)；</p> <p>(e) 《領養條例》(第290章)；</p>	<p><b>Sections 8(3) and 8(4)</b></p> <p>(3) For the purposes of this Act “family proceedings” means any proceedings —</p> <p>(a) under the inherent jurisdiction of the High Court in relation to children; and</p> <p>(b) under the enactments mentioned in subsection (4),</p> <p>but does not include proceedings on an application for leave under section 100(3).</p> <p>(4) The enactments are—</p>	<ul style="list-style-type: none"> <li>• 《條例草案》第三條對 「家事法律程序」一詞的 釋義，列舉了與《1989 年兒童法令》第8(4)條所 載的法例／條文相等／ 相類的香港法例。</li> <li>• 根據司法機構的建議， 「家事法律程序」一詞在 《條例草案》的英譯為 「domestic proceedings」， 而非英格蘭與威爾斯 《1989年兒童法令》的 「family proceedings」，原 因是要避免與終審法院</li> </ul>

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
(f) 《父母與子女條例》(第429章)； 及 (g) 原訟法庭就未成年人具有的固有 司法管轄權；	(a) Parts I, II and IV of this Act; (b) the Matrimonial Causes Act 1973; (ba) Schedule 5 to the Civil Partnership Act 2004; (c) the Domestic Violence and Matrimonial Proceedings Act 1976; (d) the Adoption and Children Act 2002; (e) the Domestic Proceedings and Magistrates' Courts Act 1978; (ea) Schedule 6 to the Civil Partnership Act 2004; (f) sections 1 and 9 of the Matrimonial Homes Act 1983; (g) Part III of the Matrimonial and Family Proceedings Act 1984. (h) the Family Law Act 1996 (i) sections 11 and 12 of the Crime and Disorder Act 1998.	首席法官所發出的「實務指示 15.12 - 婚姻法律程序和家事法律程序」內「family proceedings」一詞與《條例草案》的「domestic proceedings」定義有所不同，故需在用詞方面避免混淆。

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
<p>《條例草案》第四條之下新設的第 6(1) 條</p> <p>未成年人的父或母可委任任何人於其去世後充任該未成年人的監護人。</p>	<p><b>Section 5(3)</b></p> <p>(3) A parent who has parental responsibility for his child may appoint another individual to be the child's guardian in the event of his death.</p>	<p>—</p>
<p>《條例草案》第四條之下新設的第 6(2) 條</p> <p>未成年人的監護人可委任任何人於其去世後充任該未成年人的監護人。</p>	<p><b>Section 5(4)</b></p> <p>(4) A guardian of a child may appoint another individual to take his place as the child's guardian in the event of his death; and a special guardian of a child may appoint another individual to be the child's guardian in the event of his death.</p>	<p>—</p>
<p>《條例草案》第四條之下新設的第 6(3) 條</p> <p>本條所指的委任須以書面作出，並須註明日期及—</p> <p>(a) 由作出委任的人簽署，或由另一人</p>	<p><b>Section 5(5)</b></p> <p>(5) An appointment under subsection (3) or (4) shall not have effect unless it is made in writing, is dated and is signed by the person making the appointment or —</p>	<ul style="list-style-type: none"> <li>根據香港法律改革委員會（法改委）發表的《兒童監護權報告書》，新設的第 6(3)條規定在任何情況下，監護人的任命必須由兩名證人見證。這項</li> </ul>

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
<p>按作出委任的人的指示，在作出委任的人面前簽署；並</p> <p>(b) 由 2 名見證人見證。</p>	<p>(a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 9 of the Wills Act 1837; or</p> <p>(b) in any other case, is signed at the direction of the person making the appointment, in his presence and in the presence of two witnesses who each attest the signature.</p>	<p>規定較英格蘭與威爾斯《1989年兒童法令》第5(5)(b)條的規定更為嚴格，該條文只規定作出任命的人士在指示另一個人為自己簽署任命文件，而非自行簽署文件時，才需要由兩名證人見證。法改委秘書處已確定新設的第6(3)條的規定符合報告書建議的原意。</p>

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
<p>《條例草案》第四條之下新設的第 6(4) 條</p> <p>儘管有第(3) 款的規定，父或母或監護人可藉按照《遺囑條例》(第 30 章) 第 5 條簽立的遺囑，委任監護人。</p>	<p><b>Section 5(5)</b></p> <p>(5) An appointment under subsection (3) or (4) shall not have effect unless it is made in writing, is dated and is signed by the person making the appointment or—</p> <p>(a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 9 of the Wills Act 1837; or</p> <p>(b) in any other case, is signed at the direction of the person making the appointment, in his presence and in the presence of two witnesses who each attest the signature.</p>	<ul style="list-style-type: none"> <li>第 6 (4) 條乃根據《1989 年兒童法令》第 5 (5) (a) 條加入。</li> </ul>

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
<p>《條例草案》第四條之下新設的第 6(7) 條</p> <p>本條所指的委任，可由 2 名或多於 2 名的人共同作出。</p>	<p><b>Section 5(10)</b></p> <p>Nothing in this section shall be taken to prevent an appointment under subsection (3) or (4) being made by two or more persons acting jointly.</p>	<p>—</p>
<p>《條例草案》第四條之下新設的第 8B 條</p> <p><b>8B. 撤銷監護人的委任</b></p> <p>(1) 除非根據第 6 條作出委任的目的顯然是委任額外的監護人，否則該項委任即撤銷同一人在先前就同一未成年人所作的委任(包括在遺囑中作出的委任)。</p> <p>(2) 根據第 6 條作出的委任(包括在遺囑中作出的委任)可由作出委任的人以註明日期並符合以下規定的書面文件撤銷—</p> <p>(a) 由作出委任的人簽署，或由另一人</p>	<p><b>Sections 6(1) to 6(4)</b></p> <p>(1) An appointment under section 5(3) or (4) revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.</p> <p>(2) An appointment under section 5(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it by a written and</p>	<ul style="list-style-type: none"> <li>• 《1989年兒童法令》第 6 條並沒有新設的第 8B(4) 條，加入此條文的目的是要令法例更加清晰。</li> </ul>

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
<p>依作出委任的人的指示，在作出委任的人面前簽署；並</p> <p>(b) 由 2 名見證人見證。</p> <p>(3) 凡任何人根據第 6 條藉某文件作出委任(以遺囑作出的委任除外)，如該人出於撤銷該項委任的意圖而—</p> <p>(a) 銷毀該文件；或</p> <p>(b) 指示其他人在其面前銷毀該文件，</p> <p>該項委任即被撤銷。</p> <p>(4) 如某項委任是由 2 名或多於 2 名的人根據第 6 條共同作出的，則—</p> <p>(a) 該項委任可由他們任何一人按照第(2) 或(3) 款撤銷；</p> <p>及</p>	<p>dated instrument which is signed—</p> <p>(a) by him; or</p> <p>(b) at his direction, in his presence and in the presence of two witnesses who each attest the signature.</p> <p>(3) An appointment under section 5(3) or (4) (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it—</p> <p>(a) destroys the instrument by which it was made; or</p> <p>(b) has some other person destroy that instrument in his presence.</p> <p>(3A) An appointment under section 5(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person appointed is the spouse of the person who made the</p>	



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<p>(b) 撤銷該項委任的人須將該項撤銷通知所有與其共同作出該項委任的人。</p> <p>(5) 為免生疑問，凡根據第6條作出的委任是以遺囑作出的，如該遺囑被撤銷，則該項委任亦被撤銷。</p>	<p>appointment and either—</p> <p>(a) a decree of a court of civil jurisdiction in England and Wales dissolves or annuls the marriage, or</p> <p>(b) the marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in England and Wales by virtue of Part II of the Family Law Act 1986,</p> <p>unless a contrary intention appears by the appointment.</p> <p>(3B) An appointment under section 5(3) or (4)(including one made in an unrevoked will or codicil) is revoked if the person appointed is the civil partner of the person who made the appointment and either—</p>	

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	<p>(a) an order of a court of civil jurisdiction in England and Wales dissolves or annuls the civil partnership, or</p> <p>(b) the civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in England and Wales by virtue of Chapter 3 of Part 5 of the Civil Partnership Act 2004,</p> <p>unless a contrary intention appears by the appointment.</p> <p>(4) For the avoidance of doubt, an appointment under section 5(3) or (4) made in a will or codicil is revoked if the will or codicil is revoked.</p>	
<p>《條例草案》第四條之下新設的第 8D(2) 條及第 8D(3) 條</p>	<p><b>Sections 5(1) and 5(2)</b></p> <p>(1) Where an application with respect to a child is made to the court by any individual,</p>	<ul style="list-style-type: none"> <li>• 新設的第 8D(2)(a)條內的「管養令」，相對於《1989年兒童法令》第 5(1)(b)</li> </ul>

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
<p>(2) 在以下情況下，法院如認為合適，可應任何人的申請，委任該人為某未成年人的監護人—</p> <p>(a) 擁有該未成年人的管養令的父或母或監護人去世；或</p> <p>(b) 該未成年人沒有父母、監護人及其他對其擁有父母的權利的人。</p> <p>(3) 如法院認為即使沒有人提出申請，亦應該根據第(2)款作出委任，則法院可在任何家事法律程序中，行使該款所授予的委任權力。</p>	<p>the court may by order appoint that individual to be the child's guardian if —</p> <p>(a) the child has no parent with parental responsibility for him; or</p> <p>(b) a residence order has been made with respect to the child in favour of a parent, guardian or special guardian of his who has died while the order was in force; or</p> <p>(c) paragraph (b) does not apply, and the child's only or last surviving special guardian dies.</p> <p>(2) The power conferred by subsection (1) may also be exercised in any family proceedings if the court considers that the order should be made even though no application has been made for it.</p>	<p>條內的「同住令」。</p>

條例草案條文	當局參考的英格蘭與威爾斯 《1989年兒童法令》條文	備註
<p>《條例草案》第四條之下新設的第 8G 條</p> <p><b>8G. 監護人擁有父母的權利</b></p> <p>根據本部獲委任為某未成年人的監護人的人，在取得監護權時，即對該未成年人擁有父母的權利。</p>	<p><b>Section 5(6)</b></p> <p>A person appointed as a child's guardian under this section shall have parental responsibility for the child concerned.</p>	<ul style="list-style-type: none"> <li>《未成年人監護條例》中用以刻劃親子關係之詞為「父母權利」。因此，我們在新設的第 8G 條使用「父母權利」一詞，以確保條文用字的一致性。</li> </ul>
<p>《條例草案》第五條之下新設的第 9A 條</p> <p><b>9A. 過渡性及保留條文</b></p> <p>(1) 在本條中— 生效日期(commencement date) 指《2011年未成年人監護(修訂)條例》(2011年第 號) 開始實施的日期； 《未修訂條例》(pre-amended Ordinance) 指在緊接生效日期前有效的本條例。</p>	<p><b>Sections 12 and 13 of Schedule 14</b></p> <p><i>Existing guardians to be guardians under this Act</i></p> <p>12(1) Any appointment of a person as guardian of a child which— (a) was made— (i) under sections 3 to 5 of the Guardianship of Minors Act 1971;</p>	<ul style="list-style-type: none"> <li>過渡性及保留條文以《1989年兒童法令》附表 14 的相應條文作為藍本。</li> <li>《1989年兒童法令》附表 14 沒有新設的第 9A(2)及(5)條，加入這兩條條文的目的是要令法例更加清晰。</li> </ul>

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<p>(2) 《2011年未成年人監護(修訂)條例》(2011年第 號)不影響根據《未修訂條例》進行而在緊接生效日期前屬待決的法律程序。</p> <p>(3) 凡根據《未修訂條例》或原訟法庭就未成年人具有的固有司法管轄權而委任某人為某未成年人的監護人，而該項委任在緊接生效日期前是有效的，則該項委任在生效日期當日及之後，須視為根據本條例作出並具有效力的委任。</p> <p>(4) 凡根據《未修訂條例》委任某人為某未成年人的監護人，但該項委任在緊接生效日期前尚未生效，則該項委任在生效日期當日及之後，須受本條例規管。</p> <p>(5) 為免生疑問，任何根據《未修訂條例》委任的監護人與根據本條例委任的監護人具有相同的權利及責任。</p>	<p>(ii) under section 38(3) of the Sexual Offences Act 1956; or</p> <p>(iii) under the High Court's inherent jurisdiction with respect to children; and</p> <p>(b) has taken effect before the commencement of section 5,</p> <p>shall (subject to sub-paragraph (2)) be deemed, on and after the commencement of section 5, to be an appointment made and having effect under that section.</p> <p>(2) Where an appointment of a person as guardian of a child has effect under section 5 by virtue of sub-paragraph (1)(a)(ii), the appointment shall not have effect for a period which is longer than any period specified in the order.</p> <p><i>Appointment of guardian not yet in effect</i></p>	

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	<p>13 Any appointment of a person to be a guardian of a child—</p> <p>(a) which was made as mentioned in paragraph 12(1)(a)(i); but</p> <p>(b) which, immediately before the commencement of section 5, had not taken effect,</p> <p>shall take effect in accordance with section 5 (as modified, where it applies, by paragraph 8(2)).</p>	