



BILLE NA LEANAÍ (CÚRAM AGUS COSAINT), 1987
CHILDREN (CARE AND PROTECTION) BILL, 1987

Mar a tionscnaíodh
As initiated

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Children's Dangerous Performances Act, 1879	42&43 Vict., c. 34
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BILLE NA LEANAÍ (CÚRAM AGUS COSAINT), 1987
CHILDREN (CARE AND PROTECTION) BILL, 1987

BILL

entitled

5 AN ACT TO PROVIDE FOR THE CARE AND PROTECTION
OF CHILDREN AND FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

10 1.—(1) This Act may be cited as the Children (Care and Protection)
Act, 1987.

Short title,
collective citation,
construction and
commencement.

(2) The Children Acts, 1908 to 1957, and this Act may be cited
together as the Children Acts, 1908 to 1987.

15 (3) The Children Acts, 1908 to 1957, and this Act shall be construed
together as one Act.

(4) This Act shall come into operation on such day or days as, by
order or orders made by the Minister under this section, may be
fixed either generally or with reference to any particular purpose or
provision, and different days may be so fixed for different purposes
20 and different provisions.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“the Act of 1976” means the Family Law (Maintenance of Spouses
and Children) Act, 1976;

25 “authorised officer of a health board”, in relation to any function
under this Act, means an officer of a health board who is suitably
qualified (as defined under Regulations), and to whom the function
is delegated under section 16 of the Health Act, 1970;

“care order” has the meaning assigned to it by *section 48*;

“care proceedings” has the meaning assigned to it by *section 45*;

30 “child” has the meaning assigned to it by *section 3*;

“children’s home” has the meaning assigned to it by *section 25*;

“guardian”, in relation to a child or young person, means—

- (a) any legal guardian of the child or young person;
- (b) any person who, in the opinion of the court having cognisance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person; 5
- (c) any person who has custody or care of a child or young person by order of a court of competent jurisdiction;

“health board” means a health board established under the Health Act, 1970; 10

“interim care order” has the meaning assigned to it by *section 49*;

“legal guardian”, in relation to a child or young person, means any person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction; 15

“the Minister” means the Minister for Health;

“parent”, in relation to any person—

- (a) who has been adopted under the Adoption Acts, 1952 to 1976, means the person or persons by whom he was adopted and not his natural parents save where an adoptive parent is also a natural parent; 20
- (b) who is illegitimate, does not include the natural father;

“place of safety” has the meaning assigned to it in *section 38*;

“prescribed” means prescribed by regulations made by the Minister;

“registered medical practitioner” means a person whose name is entered in the General Register of Medical Practitioners established under *section 26* of the Medical Practitioners Act, 1978; 25

“relative”, in relation to any person, means a grandparent, brother, sister, uncle or aunt, whether of the whole blood, of the half-blood or by affinity, or the spouse of any such person, provided that— 30

- (a) where an adoption order has been made in respect of the person under the Adoption Acts, 1952 to 1976, the word shall include any person who would be a relative of his if he were born to the adopter in lawful wedlock; and
- (b) where the person is illegitimate, relationship to him shall be traced through his mother only; 35

“residential care” means care under *section 56*;

“street” has the meaning given to it in the Street-Trading Act, 1926;

“supervision order” has the meaning assigned by *section 47*;

(2) A reference in this Act to the performance of functions includes, in relation to powers, a reference to the exercise of those powers. 40

(3) In this Act—

- (a) a reference to a Part, section or Schedule is to a Part, section or Schedule of this Act unless it is indicated that a reference to some other enactment is intended;
- 5 (b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended;
- 10 (c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

3.—For the purposes of this Act, “child” means a person under the age of 18 years, other than a person who is or has been married. Child.

4.—(1) The Minister may make regulations— Regulations.

- 15 (a) for any purpose in relation to which regulations are provided for by any of the provisions of this Act, and
- (b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.

20 (2) Except in so far as this Act otherwise provides, any power conferred thereby to make regulations may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case, and
- 25 (b) so as to make, as respects the cases in relation to which it is exercised—
- (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
- 30 (ii) the same provision for all cases in relation to which the power is exercised or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of this Act,
- 35 (iii) any such provision either unconditionally or subject to any specified condition.

(3) Every order and regulation made under any provision of an enactment repealed by this Act and in force immediately before such repeal shall continue in force under the corresponding provision, if any, of this Act subject to such adaptations and modifications as the Minister may by regulations make to enable any such order or regulation to have effect in conformity with this Act.

40

(4) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

45

Functions of the
Minister.

5.—(1) The Minister may give general directions to a health board in relation to the performance of the functions assigned to it by this Act and the health board shall comply with any such direction.

(2) The Minister shall supervise the performance by a health board of the functions assigned to it by this Act and, for this purpose, may cause to be inspected any service provided or premises maintained by a health board under this Act. 5

(3) An inspection under this section shall be conducted by a person authorised in that behalf by the Minister (in this section referred to as an authorised person). 10

(4) An authorised person shall be entitled in the exercise of his functions under this section to take with him such person or persons as he considers necessary to assist him.

(5) An authorised person conducting an inspection under this section may: 15

(a) enter any premises maintained by a health board under this Act and make such examination into the state and management of the premises and the treatment of the children therein as he thinks fit, and

(b) examine such records and interview such members of the staff of the board as he thinks fit. 20

(6) Any person who—

(a) refuses to allow an authorised person, or any person accompanying him pursuant to *subsection (4)*, to enter any premises in accordance with *subsection (5)*, or 25

(b) obstructs or impedes an authorised person, or any person so accompanying him, in the exercise of any of the powers conferred on him by this section,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500. 30

(7) The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Prosecution of
offences.

6.—(1) Summary proceedings for an offence under any provision of *Part IV, V* (other than *section 41*) or *VI* (other than *section 63*) shall not be instituted except by or with the consent of the Minister or the relevant health board. 35

(2) Summary proceedings for an offence to which *subsection (1)* applies may be brought at the suit of the Minister or the relevant health board. 40

(3) For the purposes of this section, “relevant health board” means the health board providing services to, or having care of, the child or young person who is the subject of the proceedings or, in the case of offences in connection with registration of services, the health board responsible for such registration. 45

(4) A justice of the District Court shall have jurisdiction to try summarily an indictable offence to which *section 94* relates if—

- (i) the justice is of opinion that the facts proved or alleged against a defendant charged with such an offence constitute a minor offence fit to be tried summarily,
- (ii) the Director of Public Prosecutions consents, and
- 5 (iii) the defendant (on being informed by the justice of his right to be tried by a jury) does not object to being tried summarily,

and, upon summary conviction, the defendant shall be liable to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both.

(5) Section 13 of the Criminal Procedure Act, 1967 (which provides for the procedure where a person pleads guilty in the District Court to an indictable offence) shall apply in relation to an offence mentioned in subsection (4) as if, in lieu of the penalties specified in subsection (3) of the said section 13, there were specified therein the penalties provided for by subsection (4) of this section and the reference in subsection (2) (a) of the said section 13 to the penalties provided for in subsection (3) of that section shall be construed accordingly.

(6) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any person (or any person acting on his behalf) being a director, manager or secretary of such body, that person or the person so acting shall also be guilty of that offence.

7.—The enactments mentioned in the *First Schedule* are hereby repealed to the extent specified in the third column of that Schedule. Repeals.

8.—(1) Any notice required to be given to a health board under this Act may be sent by post in a registered letter addressed to the chief executive officer of the health board, or may be delivered at an office of the health board. Service and authentication of notices and documents.

(2) Any notice, summons or other document required to be served for the purposes of this Act on a body corporate may be served by leaving it at or sending it by post to the registered office of that body, or if it has no such office in the State, by leaving it at or sending it by post to that body at any place in the State at which it conducts its business.

(3) All notices and other documents issued or served under this Act by a health board shall, save as may be otherwise expressly provided in this Act, be sufficiently authenticated by the signature thereon of an authorised officer of the health board.

PART II

PROMOTION OF WELFARE OF CHILDREN

9.—A health board shall promote the welfare generally of children in its area by— Duty of health boards.

- (a) taking such steps as are requisite to identify children who are not receiving adequate care and protection, and

(b) providing such advice, guidance, facilities and services, including family support services on a domiciliary basis or at day care or other centres, as may prevent or diminish the need to receive children into care or keep them in care.

5

Welfare and wishes of child.

10.—In the performance of its functions under this Act, a health board shall—

(a) having regard to the principle that it is generally in the best interests of a child to be brought up in his own family or, where this is not possible, to provide him with such care as is most appropriate to his needs;

10

(b) insofar as is practicable, before making a decision or taking action in relation to a child, give due consideration, having regard to his age and understanding, to the wishes of the child.

15

Provision and maintenance of premises by health boards.

11.—A health board may, with the consent of the Minister, provide, equip and maintain any premises required for the provision of services under this Act.

Arrangements for provision of services.

12.—(1) A health board may, in accordance with such conditions (which may include provision for superannuation) as may be specified by the Minister, make and carry out an arrangement with a person or body to provide services under this Act.

20

(2) Health boards may make and carry out an arrangement for the provision by one of them on behalf of and at the cost of the other of services under this Act.

25

Functions of chief executive officer.

13.—The following functions relating to a health board shall be functions of the chief executive officer of the board—

(a) any function in relation to registration of day care services and children's residential homes;

(b) any function in relation to the institution of care proceedings;

30

(c) any function in relation to the making of arrangements for the care of children in the care of the board;

(d) any function with respect to a decision as to whether or not to provide services or make facilities available to any particular person.

35

PART III

REGULATION OF DAY CARE SERVICES

Definitions.

14.—In this Part—

“day care” means the care, supervision or nursing of a pre-school child, for periods of less than 24 hours a day, by any person other than his parents, guardians or relatives in a place other than the child's own home;

40

“day care service” means day care undertaken by a person—

- (a) in his own home for reward, or
- (b) in premises other than his own home, whether for reward or not;

5 “pre-school child” means a child who has not attained the age of 6 years;

“the register” means the register of persons providing day care service kept by a health board under this Part;

“registered operator” means, in relation to a day care service, the person whose name is entered in the register in respect of that service.

10 **15.**—(1) A health board shall establish and maintain a register of persons who in the area of the board undertake day care services. Register of day care services.

(2) Subject to *section 21* no person other than a registered operator shall carry on a day care service or describe or hold out any service as such.

15 (3) An application for registration shall be made to the health board for the area in which the premises are situate.

(4) An application under *subsection (3)* shall—

- (a) be made in the prescribed form and manner;
- (b) specify such particulars as may be prescribed;

20 (c) be accompanied by the prescribed fee.

(5) A health board shall not grant an application for registration unless the board is satisfied that—

25 (a) the applicant and any person employed or to be employed or participating or intended to participate in the service is a fit person to take care of pre-school children;

(b) the premises in which the service is proposed to be carried on are fit to be used for that purpose.

30 (6) A health board may grant an application for registration either unconditionally or subject to such conditions as the board considers necessary to ensure that proper and adequate care, supervision or nursing will be provided for the pre-school children attending the service.

35 (7) Without prejudice to the generality of *subsection (6)*, a health board may in particular impose conditions in relation to any of the following matters—

(a) the maximum number of pre-school children to be cared for at any one time;

(b) the age of the pre-school children to be cared for;

40 (c) the number and qualifications of persons to be employed (or to participate) in the operation of the service;

(d) the carrying out of necessary repairs, alterations or additions to the place in which the service is to be provided;

(e) the provision of suitable equipment and facilities at the place in which the service is to be provided;

(f) the keeping of records and the giving of notices and information to the health board.

(8) A health board shall give notice to the applicant of its decision to grant or refuse registration. 5

(9) Where a health board decides to grant an application for registration, there shall be entered in the register the name of the registered operator, the address of the place at which the service is to be provided, details of any conditions imposed and such other particulars, if any, as may be prescribed. 10

(10) A registration in the register shall be valid for a period of 24 months from the date of its entry in the register or until the registered operator ceases to carry on the day care service (consequent on removal from the register or for any other reason), whichever is the sooner. 15

Removal from register.

16.—(1) If, at any time, it appears to a health board that a service is being carried on otherwise than in accordance with the relevant requirements or has ceased to be carried on, the board may decide that the registered operator should be removed from the register. 20

(2) The health board may at any time decide that a registered operator should be removed from the register on the grounds that that person has been convicted of an offence under this Act or any regulations made thereunder.

(3) Where a health board has decided under *subsection (1) or (2)* that a registered operator should be removed from the register, it shall give to that person either— 25

(a) a notice that the board proposes to remove that person from the register on such date as may be specified, being a date at least 28 days after the date on the notice, or 30

(b) a notice that the board proposes to remove that person from the register on such a date unless that person has previously complied with any relevant requirement specified in the notice.

(4) A notice under *subsection (3)* shall state the grounds on which the board proposes to remove a registered operator from the register. 35

(5) The health board shall remove a registered operator from the register on the date specified in the notice given under *subsection (3)* unless—

(a) in the case of a notice under *subsection (3) (b)*, the relevant requirement specified in the notice has been complied with; or 40

(b) in any case where an appeal has been lodged with the Minister under *section 17*.

(6) In this section “relevant requirement” means any requirement of this Part, any conditions imposed under *section 15 or 17* and any regulations made by the Minister under *section 18*. 45

Appeals.

17.—(1) Where a health board decides to refuse an application for

5 registration, to impose a condition or to remove a person from the register, any person who is aggrieved by the decision may, within the period of 28 days following receipt of notice of the decision, appeal to the Minister and the decision shall not take effect until the expiration of that period or, in the case of appeal, until the appeal is determined or withdrawn.

10 (2) Where an appeal is brought against the refusal of an application for registration, the Minister may either confirm the refusal of the application or direct that the applicant shall be registered subject to such conditions, if any, as the Minister may see fit to impose.

(3) Where an appeal is brought against the imposition of a condition imposed by a health board, the Minister may either confirm the imposition of the condition or direct that it shall not apply or that some other condition specified by the Minister shall apply.

15 (4) Where an appeal is brought against a proposal to remove a registered operator from the register, the Minister may either confirm the proposal to remove the registered operator from the register or direct that registration be continued subject to such conditions, if any, as the Minister may see fit to impose.

20 (5) A health board shall comply with any decision given by the Minister under this section.

25 18.—(1) The Minister shall make regulations as to the registration of day care services and the conduct of such services and for securing the health, safety and well-being of children for whom such services are provided. Regulations as to day care services.

(2) Without prejudice to the generality of *subsection (1)*, regulations may prescribe requirements as to:

30 (a) the design, maintenance, repair, ventilation, heating and lighting of premises in which child care services are provided;

(b) the equipment and facilities to be provided;

(c) the qualifications or experience of the person carrying on the service;

35 (d) the number of staff, if any, to be employed and their qualifications or experience;

(e) the keeping of records and the giving of notices and information to health boards.

40 19.—(1) Where the chief executive officer of a health board reasonably believes that a day care service is being carried on in any premises, he may issue to an authorised officer of the board a letter of authority to inspect the premises in accordance with this section. Powers of entry and inspection.

(2) The authorised officer, on production of the letter of authority issued to him under *subsection (1)*, shall be entitled at all reasonable times to enter the premises and inspect—

45 (a) the premises,

(b) any arrangements for the safety and welfare of any child therein,

and

(c) any records required to be kept under this Part.

(3) An authorised officer shall be entitled in the exercise of his powers under *subsection (2)* to take with him such person or persons as he considers necessary to assist him. 5

(4) Any person who—

(a) without reasonable excuse, refuses to allow an authorised officer, or any person accompanying him pursuant to *subsection (3)*, to enter any premises in accordance with *subsection (2)*, or 10

(b) obstructs or impedes an authorised officer or any person so accompanying him in the exercise of any of the powers conferred on him by this section,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £350. 15

(5) An officer of the Minister authorised in writing by or on behalf of the Minister so to do may, on production of the authorisation, exercise powers similar to those conferred by *subsections (2)* and *(3)* in respect of premises which are the subject of an appeal under *section 17* and the provisions of *subsection (4)* shall apply with the necessary modifications in relation to the exercise of such powers. 20

Offences under Part III.

20.—(1) Any person who fails to comply with any provision of this Part or of regulations made under *section 18* or with any condition imposed by a health board under *section 15* or by the Minister under *section 17* shall be guilty of an offence. 25

(2) Any person guilty of an offence under *subsection (1)* shall be liable on summary conviction to a fine not exceeding £1,000.

(3) (a) Where a person is convicted of an offence under *subsection (1)* the court may, either in addition to or in substitution for the penalty referred to in *subsection (2)*, by order declare that the person shall be disqualified during such period as may be specified in the order from carrying on, or taking part in the management of, the service to which the conviction related or, at the discretion of the court, any day care service. 30 35

(b) A person in respect of whom an order is made under this subsection shall not during the period specified in the order carry on, or take part in the management of, the service specified in the order or of any day care service (as the case may be). 40

(c) A person who contravenes *paragraph (b)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

Exemptions of certain persons and institutions.

21.—(1) This Part shall not apply to—

(a) the natural father of an illegitimate child undertaking the nursing or care of the child; 45

(b) any person who would be a relative of an illegitimate child

if the child were the legitimate child of his mother and natural father, undertaking the nursing or care of the child;

5 (c) any hospital or any institution which provides nursing or care for persons suffering from physical or mental disability;

(d) the reception of pre-school children for the purposes of education in any school recognised by the Minister for Education;

10 (e) any particular class of day care service granted an exemption by the Minister in accordance with *subsection (2)*.

(2) The Minister may by order, if he so thinks fit, grant exemption from any or all of the provisions of this Part to any particular class of day care service and may, by order, revoke any such order.

15 22.—(1) Any register maintained by a health board under this Part shall be open to inspection by any person at all reasonable times. Keeping and inspection of register.

(2) Where a registered operator becomes aware that the particulars entered in the register in relation to him or to the day care service in respect of which he is the registered operator are incorrect or incomplete, he shall, forthwith, inform the health board of such particulars as are required to correct or complete the entry in the register.

(3) A health board may at any time cause an entry in the register to be corrected.

25 23.—(1) In a prosecution for an offence under this Act *prima facie* evidence of any entry in the register may be given by the production of a document purporting to be a copy of such entry and to be certified as being a true copy by an officer of the health board authorised in that behalf by the board, and it shall not be necessary in such a prosecution to prove that the officer was in fact an officer of the board or was in fact so authorised. Evidence of content of register.

30 (2) In a prosecution for an offence under this Act the production of a document purporting to be a certificate signed by an officer of the health board authorised in that behalf by the board and stating that a person is not registered in the register shall be *prima facie* evidence of the facts stated therein and without proof of either the signature thereon or that the signature is that of such officer or that he was in fact so authorised.

PART IV

REGULATION OF CHILDREN'S RESIDENTIAL HOMES

40 24.—In this Part— Definitions for Part IV.

“children's residential home” has the meaning assigned to it by *section 25*;

“the manager” means the person having charge of or control over a children's residential home;

45 “the register” means the register of children's residential homes kept by a health board under this Part.

25.—(1) This part applies to—

- (a) every institution which, immediately before the commencement of this Part, was an industrial school certified in accordance with Part IV of the Children Act, 1908, functions in relation to which stood vested in the Minister; 5
- (b) every school which, immediately before such commencement, was a school approved of for the purposes of section 55 of the Health Act, 1953;
- (c) an institution designated by the Minister under *subsection (2)*. 10

(2) The Minister shall by order designate any institution, the sole or main object of which is to provide boarding, care and maintenance for children, as an institution to which this Part shall apply and may by order revoke any such order.

(3) An institution or school to which this Part applies is referred to in this Act as a children's residential home. 15

(4) On the commencement of this Part any institution to which *subsection (1) (a)* applies shall cease to be a certified school for the purposes of Part IV of the Children Act, 1908.

26.—(1) A health board shall establish and maintain a register of children's residential homes in its area. 20

(2) Subject to *subsection (4)*, no person shall carry on a children's residential home or describe or hold out any premises as such unless the premises are entered in the register.

(3) An application for registration shall be made to the health board for the area in which the premises are situate. 25

(4) Where, in the case of a children's residential home to which *section 25 (1) (a)* or *(b)* applies, application for registration is made within three months after the commencement of this Part the home may continue to be carried on unless and until registration is refused. 30

(5) An application for registration shall—

- (a) be made in the prescribed form and manner;
- (b) specify such particulars as may be prescribed;
- (c) be accompanied by the prescribed fee.

(6) A health board shall not grant an application for registration unless the board is satisfied that— 35

- (a) the premises are fit to be used for the boarding, care and maintenance of children, and
- (b) any person employed or to be employed or participating or intended to participate in the operation of the home is a fit person to take care of children. 40

(7) (a) A health board may grant an application for registration either unconditionally or subject to such conditions as

the board considers necessary to ensure that proper and adequate care will be taken of the children in the home.

5 (b) Without prejudice to the generality of *paragraph (a)*, a health board may in particular impose conditions in relation to the following matters—

- (i) the maximum number of children to be cared for at any one time;
- (ii) the age of the children to be cared for;
- 10 (iii) the number and qualifications of persons employed or to be employed or participating or intended to participate in the operation of the home;
- (iv) the keeping of records and the giving of notices and information to the health board.

15 (8) A health board shall give notice to the applicant of its decision to grant or refuse registration.

(9) Where a health board decides to grant an application for registration, there shall be entered in the register the name of the manager of the children's residential home, the description and address of the children's residential home, details of any conditions imposed and such other particulars, if any, as may be prescribed.

(10) A registration in the register shall be valid for a period of 24 months from the date of its entry in the register.

25 27.—(1) If, at any time, it appears to a health board that a children's residential home is being carried on otherwise than in accordance with the relevant requirements or has ceased to be carried on, the board may decide that it should be removed from the register. Removal from register.

30 (2) The health board may at any time decide that a children's residential home should be removed from the register on the grounds that the manager or any person employed or participating in the operation of the home has been convicted of an offence under this Act or any regulations made thereunder.

(3) Where a health board has decided under *subsection (1)* or *(2)* that a children's residential home should be removed from the register, it shall give to the home—

- 35 (a) notice that the Board proposes to remove that children's residential home from the register on such date as may be specified, being a date at least 28 days after the date on the notice; or
- 40 (b) notice that the board proposes to remove that children's residential home from the register on such a date unless any relevant requirement specified in the notice has by then been complied with.

(4) A notice under *subsection (3)*—

- 45 (a) shall state the grounds on which the board proposes to remove a children's residential home from the register;
- (b) may be sent by post in a registered letter addressed to the home at its address in the register.

(5) The health board shall remove a children's residential home from the register on the date specified in the notice given under *subsection (3)* unless—

(a) in the case of a notice under *subsection (3) (b)*, the relevant requirement specified in the notice has been complied with; or 5

(b) in any case, where an appeal has been lodged with the Minister under *section 28*.

(6) In this section "relevant requirement" means any requirement of this Part, any conditions imposed under *section 26* or *28* and any regulations made by the Minister under *section 30*. 10

Appeals.

28.—(1) Where a health board decides to refuse an application for registration, to impose a condition or to remove a person from the register, any person who is aggrieved by the decision may, within the period of 28 days following receipt of notice of the decision, appeal to the Minister and the decision shall not take effect until the expiration of that period or, in the case of appeal, until the appeal is determined or withdrawn. 15

(2) Where an appeal is brought against the refusal of an application for registration, the Minister may either confirm the refusal of the application or direct that the children's residential home shall be registered subject to such conditions, if any, as the Minister may see fit to impose. 20

(3) Where an appeal is brought against the imposition of a condition imposed by a health board, the Minister may either confirm the imposition of the condition or direct that it shall not apply or that some other condition specified by the Minister shall apply. 25

(4) Where an appeal is brought against a proposal to remove a children's residential home from the register, the Minister may either confirm the proposal to remove the children's residential home from the register or direct that registration be continued subject to such conditions, if any, as the Minister may see fit to impose. 30

(5) A health board shall comply with any decision given by the Minister under this section.

Notification of admission of certain children into children's residential home.

29.—Where a child is received into a children's residential home otherwise than in pursuance of an arrangement made by a health board, the manager of the home shall forthwith give notice of such reception to the health board of the area. 35

Regulations as to children's residential homes.

30.—(1) The Minister shall make regulations as to the registration of children's residential homes and the conduct of such homes and for securing the health, safety and well-being of children for whom such homes are provided. 40

(2) Without prejudice to the generality of *subsection (1)*, regulations may prescribe requirements as to:

(a) the design, maintenance, repair, ventilation, heating and lighting of premises; 45

(b) the equipment and facilities to be provided;

- (c) the qualifications or experience of the person carrying on the home;
- (d) the number of staff, if any, to be employed and their qualifications or experience;
- 5 (e) the keeping of records and the giving of notices and information to health boards.

31.—(1) An authorised officer of a health board may, in the area of the health board, at all reasonable times enter a children's residential home and may inspect— Powers of entry and inspection.

- 10 (a) the home;
- (b) any arrangements for the safety and welfare of any child in the home;
- (c) any records required to be kept under this Act.

(2) An authorised officer shall be entitled in the exercise of his powers under *subsection (1)* to take with him such person or persons as he considers necessary to assist him.

- (3) Any person who—
- (a) refuses to allow an authorised officer, or any person accompanying him under *subsection (2)*, to enter any premises in accordance with *subsection (1)*,
- 20 (b) obstructs or impedes an authorised officer, or any person so accompanying him, in the exercise of any of the powers conferred on him by this section,

shall be guilty of an offence.

25 (4) An officer of the Minister authorised in that behalf by the Minister may exercise powers similar to those conferred by *subsections (1) and (2)* and the provisions of *subsection (3)* shall apply with the necessary modifications in relation to the exercise of such powers.

32.—(1) Any person who fails to comply with any provision of this Part or of regulations made under *section 30*, or with any condition imposed by a health board under *section 26* or by the Minister under *section 28*, shall be guilty of an offence. Offences under Part IV.

(2) Any person guilty of an offence under *subsection (1)* shall be liable on summary conviction to a fine not exceeding £1,000.

- 35 (3) (a) Where a person is convicted of an offence under *subsection (1)* the court may, either in addition to or in substitution for the penalty referred to in *subsection (2)*, by order declare that the person shall be disqualified during such period as may be specified in the order from carrying on,
- 40 or taking part in the management of, the home to which the conviction related or, at the discretion of the court, any children's residential home.
- (b) A person in respect of whom an order is made under this subsection shall not during the period specified in the order carry on, or take part in the management of, the
- 45

home specified in the order or any children's residential home (as the case may be).

(c) A person who contravenes *paragraph (b)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

5

Keeping and inspection of register.

33.—(1) Any register maintained by a health board under this Part shall be open to inspection by any person at all reasonable times.

(2) Where a manager becomes aware that the particulars entered in the register in relation to him or to the children's residential home of which he is the manager are incorrect or incomplete, he shall, forthwith, inform the health board of such particulars as are required to correct or complete the entry in the register.

(3) A health board may at any time cause an entry in the register to be corrected.

Evidence of content of register.

34.—(1) In a prosecution for an offence under this Act *prima facie* evidence of any entry into the register may be given by the production of a document purporting to be a copy of such entry and to be certified as being a true copy by an officer of the health board authorised in that behalf by the board, and it shall not be necessary in such a prosecution to prove that the officer was in fact an officer of the board or was in fact so authorised.

(2) In a prosecution for an offence under this Act the production of a document purporting to be a certificate signed by an officer of the health board authorised in that behalf by the board and stating that a children's residential home is not registered in the register shall be *prima facie* evidence of the facts stated therein and without proof of either the signature thereon or that the signature is that of such officer or that he was in fact so authorised.

PART V

CHILDREN IN NEED OF CARE AND PROTECTION

Prevention

Preventative measures.

35.—A health board shall, so far as practicable and subject to the provisions of this Act, promote the welfare of children in its area by—

- (a) identifying children who are receiving or are at risk of receiving inadequate care and protection, and
- (b) providing such advice, guidance, services and facilities as may diminish the need to receive such children into care or keep them in care.

Provision of day care services by health boards.

36.—(1) A health board may make available services for the care of children on a daily basis in accordance with general directions given by the Minister.

(2) In providing a service under this section a health board shall not be subject to registration under *section 15*.

Voluntary care.

37.—(1) A health board may receive into its care any person in its area who appears to be a child—

- (a) who has no parent or guardian;
- (b) whose parent or guardian is missing and cannot be found;
- (c) who is abandoned; or
- (d) who has no parent or guardian able to provide for his proper care, maintenance and upbringing,

where the board is satisfied that such services and support as could be provided for the child or his family without his being received into care would not be sufficient to meet the circumstances of the case and that his reception into care is necessary in his interests.

(2) Care provided by a health board under this section shall be known as "voluntary care".

(3) Without prejudice to *subsection (1)*, where a person is placed with a health board with a view to his adoption, but has not yet been placed for adoption within the meaning of the Adoption Acts, 1952 to 1976, he shall be regarded as being in voluntary care.

(4) Where a person is in voluntary care, the health board may continue to assist that person so long as his welfare appears to require it and, without prejudice to *section 59*, he has not attained the age of 18 years, or, in the case of a person to whom *subsection (3)* applies, until he has been placed for adoption.

(5) For the purposes of this section and *section 61*, where an order of any court is in force giving custody of a person to one parent, the word "parent" shall be deemed to refer to that parent only.

Place of Safety

38.—(1) In this Act, "place of safety" means any institution within the meaning of the Health Acts, any premises maintained under or by virtue of this Act, any premises designated as such by a health board, or any other suitable place the occupier of which is willing temporarily to receive a child.

Place of safety.

(2) A health board shall designate as places of safety such number of suitable premises, whether maintained by the board or by any person who agrees to such designation, as appears to the board to be necessary for the purposes of this Act and may cancel any such designation at any time.

39.—(1) A member of the Garda Síochána may, without warrant, take to a place of safety a child where he has reasonable grounds for believing—

Power of Garda Síochána to take a child to a place of safety.

(a) that any of the offences mentioned in the *Second Schedule* has been, is being or is about to be committed in respect of him, or

(b) that his immediate safety requires it,

and that the circumstances are such that it would not be sufficient to refer the case to a health board with a view to the board seeking a place of safety order or taking care proceedings in respect of the child.

(2) Where a member of the Garda Síochána takes a child to a place

of safety in accordance with this section, he shall as soon as practicable inform a parent or guardian of the child (unless he has no parent or guardian or his parent or guardian is missing and cannot be found) and an authorised officer of the health board for the area in which the place of safety is situated.

5

(3) The child shall be under the care of the health board and shall be dealt with in accordance with the provisions of this Act.

Detention in a place of safety.

40.—(1) Any child who is taken to a place of safety by a member of the Garda Síochána in accordance with *section 39*, or any child who takes refuge in a place of safety, may be detained there pending the making of an application for a place of safety order or any other order under this Part in respect of him.

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(2) Where, in the case of any child to whom this section applies, it is intended to make an application for a place of safety order or any other order under this Part, such application shall be made as soon as possible and in any event not later than 72 hours after the child was first taken to or received into the place of safety.

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Place of safety order.

41.—(1) If it appears to a justice of the District Court, on an information laid by any person, that there is reasonable cause to believe—

20

(a) that any of the conditions mentioned in *section 45 (2)* exist with respect to a child, and

(b) that the child requires immediate care or protection,

the justice may issue a warrant in accordance with *subsection (2)* to be known and in this Act referred to as a "place of safety order".

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(2) A place of safety order shall authorise a member of the Garda Síochána or an authorised officer of the health board for the area in which the child is, accompanied, if necessary, by a member of the Garda Síochána—

(a) to search for the child and if it is found that he has been or is being assaulted, ill-treated or neglected or that any of the conditions mentioned in *section 45 (2)* exist with respect to him, to take him to and keep him in a place of safety, or

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(b) to take him with or without search to and keep him in a place of safety, or

35

(c) to keep him in a place of safety,

and shall specify a period, not exceeding 14 days, beyond which the child so taken or kept shall not continue to be kept without care proceedings being brought in respect of him.

(3) A member of the Garda Síochána authorised by a place of safety order may enter (if need be by force) any house, building or other place where the child is or is believed to be and may remove him to a place of safety.

40

(4) A person who obstructs or interferes with a person in the due exercise of the power conferred on him under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £350 or to imprisonment for a term not exceeding 3 months or to both.

45

(5) Where a child is kept in a place of safety, the health board for the area in which the place of safety is situated may, if it is satisfied that it is in his interests, transfer him to another place of safety either within or outside of the functional area of that board.

5 (6) Where, immediately before the commencement of this section, a child is detained in a place of safety under any provision of the Children Act, 1908, he shall be deemed to have been received into that place pursuant to this section and the provisions of this section shall apply with the necessary modifications.

10 42.—(1) The following provisions shall apply in relation to the issuing of place of safety orders—

Provisions as to place of safety orders.

(a) where an order is issued by a justice, it shall, subject to paragraph (b), be issued by the justice for the district in which the child is for the time being;

15 (b) without prejudice to section 32 (3) of and the Sixth Schedule to the Courts (Supplemental Provisions) Act, 1961, where a justice for that district is not immediately available, an order may be issued by any justice of the District Court;

20 (c) an application for such order may, if the justice is satisfied that the urgency of the matter so requires, be heard and determined at any time and an order may be issued elsewhere than at a sitting of a District Court, without notice to any parent or guardian of the child.

25 (2) It shall not be necessary in any complaint under section 41 or order under this section to name the child if such name is unknown.

43.—(1) Where a child is being kept in a place of safety which is not maintained by a health board, the person occupying or for the time being in charge of that place shall as soon as practicable inform the health board for the area in which that place is situated.

Notification of reception into place of safety.

30 (2) The provisions of subsection (1) shall not apply in the case of a child who is being kept in a place of safety at the request of an officer of the health board.

35 (3) Where a health board receives a child into a place of safety or keeps him in such place or receives notification under subsection (1), the board shall as soon as practicable inform a parent or guardian thereof unless the board is satisfied that—

(a) the parent or guardian is missing and cannot be found, or

(b) the child has no parent or guardian.

40 (4) Where a child who is being kept in a place of safety is transferred to another place of safety, the board shall inform or cause to be informed a parent or guardian of the child of the transfer in like manner as is required under subsection (3).

45 (5) The Minister may prescribe additional classes of persons or bodies which a health board shall be obliged to notify in like manner as is required by subsections (3) and (4).

44.—(1) Where a child is being kept in a place of safety, any person who—

Restriction on removal of child from place of safety.

- (a) without lawful authority or reasonable excuse removes him from such care, or
 - (b) knowingly conceals him having been so removed,
- shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £350 or to imprisonment for a term not exceeding 3 months or to both. 5
- (2) The District Court, on the application of a person from whose care a child has been removed in contravention of *subsection (1)*, may make an order for the return of the child to the applicant.
- (3) Where a person is charged with an offence under *subsection (1)*, the court in determining the matter may make an order for the return of the child to the person from whose care he was so removed. 10
- (4) Any person who receives a child into or keeps him in a place of safety which is not maintained by a health board shall, if so requested by the health board for the area in which the place of safety is or for the area in which the child is ordinarily resident, deliver up the child to an authorised officer of the board. 15
- (5) Where a person refuses or neglects to comply with a request made by a health board under *subsection (4)*, the board may apply to the District Court for an order directing that person to deliver up the child to an authorised officer of the board. 20
- (6) Any person who fails to comply with any requirement of an order of the court under *subsection (5)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £350 or to imprisonment for a term not exceeding 3 months or to both. 25

Care Proceedings

Children who may be the subject of care proceedings.

- 45.—(1) For the purposes of this Act, “care proceedings” means proceedings for the making, variation or discharge of a care order, a supervision order or an interim care order, and any related proceedings by way of appeal or case stated. 30
- (2) A child may be the subject of care proceedings if any of the following conditions is satisfied with respect to him, namely that—
- (a) he has been or is being ill-treated, neglected or assaulted, or
 - (b) he is or has been under the care of a parent or guardian who does not exercise proper guardianship or has otherwise received or is receiving inadequate care such as to cause or to be likely to cause him physical or mental suffering or injury to his health or to impair substantially his proper development, or 35 40
 - (c) his parent or guardian is not capable of exercising proper guardianship, or
 - (d) he has been or is being sexually abused, or
 - (e) any of the offences mentioned in the *Second Schedule* has been committed in respect of him, or 45
 - (f) he is a member of the same household as a person who has

been convicted of an offence mentioned in the *Second Schedule* in respect of a child, or

- 5 (g) the court or another court has found that any of the above conditions is or was satisfied in the case of another child who is or was a member of the household to which he belongs.

46.—(1) Where a health board receives notification in accordance with *section 98* or information suggesting that any of the conditions mentioned in *section 45 (2)* exist with respect to a child, the health board shall cause enquiries to be made into the case. Taking of care proceedings.

(2) Where a health board has reasonable grounds for believing that any of the conditions mentioned in *section 45 (2)* exist with respect to a child, the board may apply to the District Court for a supervision order or a care order, as it considers appropriate.

15 (3) A health board may apply to the District Court for such orders and directions (including orders as to powers of entry) as may be necessary to enable it to fulfil its functions under this section.

(4) Whenever a health board takes care proceedings, it shall as soon as practicable inform a parent or guardian of the child unless the board is satisfied that—

(a) the parent or guardian is missing and cannot be found, or

(b) the child has no parent or guardian.

(5) The Minister may specify classes of persons or bodies which a health board shall be obliged to notify in like manner as required by *subsection (4)*.

47.—(1) Subject to *section 50*, the District Court on the application of a health board may make, in respect of the child who is the subject of the application, an order (in this Act referred to as a supervision order) under this section. Supervision order.

30 (2) A supervision order shall place the child named in the order under the supervision of the health board subject to such conditions, if any, as the court may see fit to impose which may include conditions regarding rights of access to and control over the child by the health board.

35 (3) Without prejudice to *subsection (2)*, a supervision order may require the child to attend at a specified place for such assessment, education, training or medical attention as would, in the opinion of the court, facilitate his proper development.

(4) In addition to or instead of making a supervision order the court may—

(a) order a parent or guardian of the child to enter into a recognisance to exercise proper care and guardianship over the child, or

45 (b) order any person convicted of an offence under the *Second Schedule* in respect of a child to be of good behaviour towards the child.

(5) Subject to *section 51*, a supervision order or an order under

subsection (4) shall apply for not more than 12 months and, in any event, shall cease to apply when the person who is the subject of the order attains the age of 18 years or marries.

(6) On or before the expiration of a supervision order a further supervision order may be made on the application of a health board with effect from the expiration of the first mentioned supervision order. 5

(7) An appeal from a supervision order shall not stay the operation of the order, unless the court otherwise directs.

(8) Any person who— 10

(a) refuses an authorised officer of a health board access to a child who is the subject of a supervision order, or

(b) obstructs or impedes an authorised officer in the exercise of any of his functions under such an order,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £350 or to imprisonment for a term not exceeding 3 months or to both. 15

(9) *Subsection (8)* is without prejudice to the law as to contempt of court or any other liability, whether civil or criminal, which may be incurred by a person guilty of an offence under that subsection. 20

Care order.

48.—(1) Subject to *section 50*, the District Court on the application of a health board may make, in respect of the child who is the subject of the application, an order (in this Act referred to as a “care order”) under this section.

(2) A care order shall commit the child to the care of the health board subject to such conditions, if any, as the court may see fit to impose which may include conditions regarding access by or consultation with a parent or guardian of his on matters relating to him. 25

(3) Without prejudice to *section 46 (2)*, the court to which application is made for a care order may, instead of making such an order, make a supervision order in respect of the child who is the subject of the application. 30

(4) Where a child is committed to the care of a health board under this section, the board shall, while the order is in force and subject to such conditions as may be mentioned in it, have the like control over the child as if it were his parent and the child so committed shall continue in the care of the board. 35

(5) An appeal from a care order shall not stay the operation of the order, unless the court otherwise directs.

(6) Subject to *section 51*, a care order shall apply for such period as the court may determine and shall cease to apply when the person who is the subject of the order attains the age of 18 years or marries. 40

Interim care order.

49.—(1) Where an application is made by a health board for a supervision order or a care order in respect of a child and it appears to the court that grounds may exist for the making of such an order but that— 45

(a) further enquiries are necessary before deciding on the order, if any, which is appropriate, or

(b) proceedings relevant to the court's consideration of the application for an alleged offence against the child have not been completed—

5 the court may make an order (in this Act referred to as an "interim care order") under this section.

(2) An interim care order shall require the child—

(a) to remain in or to be placed in the custody of a parent or guardian of his, or

10 (b) to remain in the custody of the health board or, in the case of an application for a care order, to be placed in such custody,

15 subject to such conditions, if any, as the court may see fit to impose which may include conditions regarding access by or consultation with a parent or guardian of the child or the health board on matters relating to him.

(3) Without prejudice to *subsection (2)*, an interim care order may require the child named in the order to attend at an assessment or medical institution, if such attendance would in the opinion of the court facilitate the court in reaching a decision on the application.

20 (4) In making an order under this section, the court shall have regard to any reports or recommendations furnished by the health board, and may seek additional reports or evidence from such other persons or bodies as it sees fit.

25 (5) Unless extended under *subsection (6)*, an interim care order shall not remain in force beyond a period of 28 days.

30 (6) An interim care order may, on the application of the health board, be from time to time varied by the court or extended until the completion of the proceedings referred to in *subsection (1) (b)* or the expiration of 56 days from the making of the order, whichever is the later.

35 (7) Where a child is placed in the care of a health board under this section, the board shall, while the order is in force and subject to such conditions as the court may impose, have the like control over the child as if it were his parent, and shall be responsible for his maintenance, and the child so committed shall continue in the care of the board.

50.—(1) A court shall not make a supervision order or a care order unless it is satisfied that the order being sought is in the best interests of the child, and—

Conditions required for making of supervision and care orders.

40 (a) that any of the conditions mentioned in *section 45 (2)* exist with respect to the child, and

(b) having considered the family background and other circumstances of the child, that he requires care which he would otherwise be unlikely to receive.

45 (2) A health board shall compile and make available such reports and undertake such enquiries as will assist the court in reaching a decision in relation to proceedings under this Part, and the court shall have regard to such information.

Discharge or
variation of orders.

51.—(1) An application to the court for the discharge or variation of a supervision order, a care order or an interim care order may be made by the child, his parent or guardian or the health board.

(2) Where an application is made in accordance with *subsection (1)* and it appears to the court that it would be in the best interests of the child, having regard to circumstances which have arisen since the order was made— 5

(a) that the order should be discharged or that the child should be dealt with in some other manner, the court may either revoke the order or revoke it and deal with the child in any manner in which he could have been dealt with if the order had not been made, or 10

(b) that any condition attaching to the order should be varied or revoked or any new condition added, the court may either vary, revoke or add any such condition. 15

Change of
residence.

52.—(1) Where a supervision order or a care order or an interim care order is in force and, on application of the health board to the District Court, the court is satisfied that the child who is the subject of the order has changed or is about to change his residence from within the area of the health board to the area of another health board, the court shall amend the order by substituting the other health board for the former health board and the order shall have effect accordingly. 20

(2) Any person having custody, charge or care of a child in respect of whom there is in force a supervision order or a care order or an interim care order shall inform the health board of any change or proposed change in the place of residence of the child. 25

(3) A person who fails without reasonable excuse to comply with the provisions of *subsection (2)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200. 30

PART VI

CHILDREN WHO ARE OR HAVE BEEN IN THE CARE OF HEALTH BOARDS

Care of Children

Interpretation of
Part VI.

53.—For the purposes of this Part—

(a) a child shall be regarded as being in the care of a health board where he is in voluntary care or has been committed to the care of a health board by order of a court or pursuant to a place of safety order; 35

(b) a person shall be regarded as being a child for so long as he remains in the care of a health board and has not attained the age of 18 years. 40

Welfare and wishes
of child.

54.—(1) A health board shall, so far as practicable and subject to the provisions of this Act, promote the welfare of children in its area.

(2) In the performance of this function, a health board shall—

(a) have regard to the principle that it is generally in the best interests of a child to be brought up in his own family or where this is not possible to provide him with such care as is most appropriate to his needs;

(b) insofar as is practicable, before making a decision or taking action in relation to a child in its care, give due consideration, having regard to his age and understanding, to the wishes of the child.

10 55.—(1) In this Act, “foster care” means the care and maintenance of a child under an arrangement made by or on behalf of a health board. Placement in foster care.

(2) Foster care shall not include the care and maintenance of a child who is placed for adoption under the Adoption Acts, 1952 to 15 1976.

(3) A health board may, in accordance with regulations made by the Minister, assist a child in its care by arranging for his placement with a suitable person in foster care.

(4) Subject to *section 58*, a person undertaking foster care shall 20 have like control over the child in his care as if he were the parent of the child.

56.—(1) A health board may assist a child in its care by arranging for its placement in a children’s home or in a home or school approved by the Minister for the purposes of this section. Placement in residential care.

(2) A health board shall not make or approve arrangements for the placement of a child in residential care unless it is satisfied that the necessary and appropriate care of the child cannot be provided otherwise than by his placement in such care. 25

57.—(1) A health board shall carry out a review of the progress of each child in its care and of his family circumstances not later than 30 three months after his reception into care and thereafter, at three monthly intervals, in such form as shall be prescribed in regulations drawn up by the Minister. Such review shall include consideration of alternatives to the maintenance of the child in such care. Review of placement in care.

(2) A health board shall carry out a review in like manner as is required by *subsection (1)* of each child in its area who is the subject of a supervision order. Such review shall include consideration of the possibility of seeking a discharge or variation of the order. 35

(3) A health board shall inform the parent or guardian of the child of their right to be consulted, and to make representations, in the 40 carrying out of such reviews.

58.—(1) Where a health board has placed a child in foster care or residential care, the board may, subject to the provisions of this Act, at any time request the person undertaking such care to return him 45 to the custody of the health board. Removal from foster care or residential care.

(2) Where, after a period of 7 days, a request under *subsection (1)* is not complied with, the health board may apply to the District Court for the area in which the child is for an order under *subsection (3)*.

(3) The District Court may, on the application of a health board under *subsection (2)*, make an order requiring the person undertaking the care of the child to deliver up the child to an authorised officer of the board, if the court considers it to be in the best interests of the child.

5

(4) Where a child is removed from foster care or residential care in accordance with *subsection (3)*, any contract between the board and the person providing such care in respect of him shall terminate immediately upon the removal.

(5) Any person who fails to comply with any requirement of an order of the court under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding three months or to both.

(6) Where the court declines to make an order under *subsection (3)*, the contract between that person and the health board shall continue, subject to such conditions, if any, as the court sees fit to impose and the child shall be deemed to be in foster care or residential care, as the case may be.

(7) The provisions of this section are without prejudice to the right of a health board to apply for a place of safety order under *section 41* in respect of a child in foster care or residential care.

Aftercare.

59.—(1) Where a person who is in the care of a health board attains the age of 18 years, the board shall, if it is satisfied as to his need for assistance, continue to assist him in accordance with *subsection (2)* so long as his welfare appears to require and he has not attained the age of 21 years.

(2) A health board may assist a person under this section in one or more of the following ways—

(a) by causing him to be visited or assisted;

(b) by arranging for the completion of his education and by contributing towards his maintenance while he is completing his education;

(c) by placing him in a suitable trade, calling or business and paying such fee or sum as may be requisite for that purpose; or

(d) by arranging hostel or other forms of accommodation for him.

(3) Any arrangement made by a health board under *section 55 (4)* or *(5)* of the Health Act, 1953, prior to the commencement of this section shall continue in force as if made under this section.

(4) The Minister may, with the consent of the Minister for Finance, make regulations governing the provision of assistance under this section and such regulations may, in particular, provide for requiring persons to contribute in specified cases towards the cost of providing them with accommodation under *subsection 2 (d)*.

Transitional provisions.

60.—(1) Any child who immediately before the commencement of *section 48* was the subject of an order committing him to the care of a health board acting as a fit person under *section 21, 24 or 58 (7)* of

the Children Act, 1908, or committing him to an industrial school under section 58 (1) of that Act, shall upon such commencement be deemed to be the subject of a care order and the provisions of sections 48 and 51 shall apply with the necessary modifications.

5 (2) Where a child is in the care of a health board acting as a fit person under section 21 or 24 of the Children Act, 1908, in respect of the commission of an offence against him and the person charged with the commission of the offence is acquitted of the charge or the charge is dismissed for want of prosecution, any care order to which
10 the child is deemed to be subject shall forthwith be void, but without prejudice to anything that may have been lawfully done under it.

(3) Any child who was the subject of an order under section 21, 24 or 58 (7) of the Children Act, 1908 committing him to the care of a relative or fit person (not being a health board) in force immediately
15 before the repeal of those sections shall remain in such care as if those sections had not been repealed.

(4) Where, immediately before the commencement of section 37, a child or young person is in the care of a health board otherwise than by virtue of a court order (including a place of safety order), he shall
20 be deemed to be in voluntary care.

(5) A child boarded-out by a health board with any person under an arrangement in force immediately before the commencement of section 55 shall be deemed to have been placed with that person in foster care.

25 (6) Where, immediately before the commencement of section 55, a health board is contributing towards the maintenance of a child in accordance with section 55 (9) (c) of the Health Act, 1953, the board may, subject to such conditions as it sees fit, continue to contribute to the maintenance of the child as if that section had not been
30 repealed.

(7) Where, immediately before the commencement of section 56, a child is maintained by a health board in a home or school approved by the Minister for the purposes of section 55 of the Health Act, 1953, he shall be deemed to have been placed in such care under an
35 arrangement made by a health board under section 56.

Restriction on Removal from Care

61.—(1) Subject to subsections (2) and (4), a health board shall as soon as practicable comply with any request of a parent or guardian of a child for his removal from voluntary care. Removal from voluntary care.

40 (2) Where a health board has reason to believe that, if the request were complied with, grounds would exist for the making under section 41 of a place of safety order in respect of the child, the board may decline to comply with the request pending the making or refusal of such an order, provided that the board notifies the parent or guardian
45 without delay of its grounds for so declining and application for the order is made to the court as soon as practicable.

(3) Where the application is refused, the health board shall, as soon as is consistent with the child's best interests, return the child to his parent or guardian.

50 (4) Where the child has been continually in voluntary care for a period which amounts to at least 180 days immediately before the request, and the board is of the opinion that a delay in his removal

is necessary in his interests, the board may delay his removal from voluntary care for a period not exceeding 14 days from the date of the request.

(5) A parent or guardian who is aggrieved by a health board's decision to delay the return of a child in accordance with *subsection (4)* may apply to a justice of the District Court and the justice may make such order as to the custody of the child as he thinks proper in the interests of the child. 5

(6) Any person who, without reasonable excuse, removes a child from voluntary care without the approval of the health board shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £350 or to imprisonment for a term not exceeding 3 months or to both. 10

Restriction on removal of child who is the subject of care order or interim care order.

62.—(1) Where a child is in the care of a health board in pursuance of a care order or an interim care order, it shall not be lawful for any person to remove him from the care of any person who has care of him with the authority of the health board without the consent of that board save— 15

(a) by order of a court, or

(b) where the child is the subject of a place of safety order or is removed to a place of safety by a member of the Garda Síochána under *section 41*, or 20

(c) where the child is arrested.

(2) The District Court, on the application of a health board from whose care a child has been removed in contravention of *subsection (1)*, may make an order for the return of the child to the board. 25

(3) Any person who without reasonable excuse—

(a) removes a child in contravention of *subsection (1)*, or

(b) knowingly harbours or conceals a child who has been unlawfully removed as aforesaid, 30

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £350 or to imprisonment for a term not exceeding 3 months or to both.

(4) Where a person has been charged with an offence under *subsection (3)*, the court, in determining the matter, may make an order for the return of the child to the health board or person from whose care he was so removed. 35

(5) *Subsection (3)* is without prejudice to the law as to contempt of court or any other liability, whether civil or criminal, that may be incurred by any person guilty of an offence under that subsection. 40

(6) Where, immediately before the commencement of *section 56*, a child is maintained by a health board in a home or school approved by the Minister for the purposes of *section 55* of the Health Act, 1953, he shall be deemed to have been placed in such care under an arrangement made by a health board under *section 56*. 45

Power to retake a child.

63.—(1) Where a child who is in the care of a health board is removed from that care or leaves that care without the consent of the

health board, he may be returned to that care by an authorised officer of the health board by any person who is undertaking the care of the child on behalf of the health board or, at the request of the health board, by a member of the Garda Síochána.

- 5 (2) A person who obstructs or interferes with a person in the due exercise of the power conferred on him under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £350 or to imprisonment for a term not exceeding 3 months or to both.

10 *Maintenance*

64.—Where a child is in voluntary care, a parent of the child may be obliged to make contributions to the health board towards the cost of his maintenance in accordance with the provisions of *section 72*. Maintenance of child in voluntary care.

- 15 65.—(1) Where a care order has been made in respect of a child, a parent of the child may be obliged to contribute towards his maintenance so long as the order is in force in accordance with the provisions of this section. Maintenance of child who is subject of a care order.

(2) The health board shall give notice in writing to any person liable to contribute—

- 20 (a) requiring him to make such contributions as have been determined by the chief executive officer under *section 72*, and
(b) informing him of the procedures set out in *subsections (3) and (4)*.

25 (3) Where, after a period of one month beginning on the date that notice was given in accordance with *subsection (2)*, a person has defaulted in making any required contribution, the health board may apply to the District Court for the district in which that person resides, for an order under *subsection (4)*.

30 (4) On an application under *subsection (3)*, the court may make an order requiring the person liable to contribute to pay to the health board such weekly or other periodical sum as, having regard to the means of the person and the cost of maintaining the child, the court considers proper, but not exceeding the amount specified in the notice given to him under *subsection (2)*.

35 (5) An order made under *subsection (4)* shall be enforceable in like manner as a maintenance order made under *section 5* of the Act of 1976 subject to the following modifications—

- (a) the court shall, when making the order, direct that payment be made to the health board;
- 40 (b) when a payment required to be made under the order is in arrears, it shall be the duty of the health board to take what steps it considers reasonable in the circumstances to recover the sums in arrears, whether by proceeding for an attachment of earnings order or otherwise;
- 45 (c) an attachment of earnings order made pursuant to an order made under *subsection (4)* shall direct that the amounts deducted under the attachment of earnings order be paid to the health board.

(6) An order made under this section may be varied or discharged

at any time on the application of any person required to contribute towards the maintenance of a child or of the health board to whose care the child is committed.

Maintenance —
saver in relation to
members of
Defence Forces.

66.—(1) Section 98 of the Defence Act, 1954 (which provides for deductions from pay of members of the Permanent Defence Force and reservists called out on permanent service in respect of court orders under section 75, 82 or 99 of the Children Act, 1908) shall apply in like manner to orders made under *section 65 or 79*. 5

(2) Section 107 of the Defence Act, 1954 (which provides that court orders made under the aforementioned sections against a member of the Permanent Defence Force or a reservist during any period when he is called out on permanent service shall not be enforceable by imprisonment) shall apply in like manner in the case of orders made under *section 65 or 79*. 10

Miscellaneous Provisions 15

Provision and
maintenance of
premises by health
boards.

67.—(1) A health board may, with the consent of the Minister, provide, equip and maintain any premises required for the provision of services under this Act.

(2) The Minister may give to a health board such directions as he thinks fit in relation to the provision or maintenance of any premises provided and maintained under *subsection (1)* and in relation to the arrangements for providing a service therein, and the health board shall comply with any such direction. 20

(3) A health board may, with the consent of the Minister, discontinue the provision and maintenance of any premises or any part of any such premises provided and maintained by it under *subsection (1)* or any service therein, subject to the health board giving reasonable notice where possible. 25

(4) A health board may on its own initiative and without the consent of the Minister discontinue temporarily, in case of necessity, the provision and maintenance of any premises or part of any premises provided and maintained by it under *subsection (1)* or any service therein, subject to the health board giving reasonable notice where possible. 30

(5) The Minister may direct a health board, after consultation with it, to discontinue the provision and maintenance of any premises or part of any premises provided and maintained by it under *subsection (1)* or any service therein and the health board shall comply with any such direction, and shall give reasonable notice where possible. 35

(6) Where, on a discontinuance under *subsection (2) or (5)*, a person who held an office under the health board in the premises affected is offered a similar office by the board, the first-mentioned office shall, for the purposes of the superannuation of the person, be deemed not to have been abolished. 40

Arrangements for
provision of
services.

68.—(1) A health board may, in accordance with such conditions (which may include provision for superannuation) as may be specified by the Minister, make and carry out an arrangement with a person or body to provide services under this Act. 45

(2) Health boards may make and carry out an arrangement for the provision by one of them on behalf of and at the cost of the other of services under this Act. 50

69.—(1) A health board shall establish a child care advisory committee and may define the constitution and procedure of such committee. Child care advisory committees.

5 (2) It shall be the function of a child care advisory committee to advise the health board on the provision of services for the care and protection of children in the functional area of the board and the health board shall consider any advice so tendered to it.

(3) Membership of a child care advisory committee may include persons who are not members of the health board.

10 (4) A person shall not receive any remuneration for acting as a member of a child care advisory committee but a health board may make payments to any such member in respect of travelling and subsistence expenses incurred by him in relation to the business of the committee.

15 (5) Payments under this section shall be in accordance with a scale determined by the Minister, with the consent of the Minister for Finance.

70.—(1) An employee of a children's home or other service to which this section applies shall be deemed to be employed by the health board for the area in which the home or service is situated for the purposes of the Local Government (Superannuation) Act, 1956, and the Local Government (Superannuation) Act, 1980, subject to any modifications (including modifications to any scheme or regulations made under the said Act of 1980 and modifications as to service reckonable as pensionable service) which may, with the consent of the Minister for the Environment, be specified in an order made by the Minister. Superannuation of staff of certain children's homes.

30 (2) In this section, "employee" means a person employed by a children's home or other service who is the holder in a permanent capacity of a position, the establishment, remuneration and conditions of service of which have been approved by the health board, for the area in which the home is situated, with the consent of the Minister.

(3) This section applies to a children's home or other service which—
(a) is not directly operated or administered by a health board,
35 (b) is funded by a health board,
(c) is registered as a children's home in accordance with *Part IV*,
and
(d) is specified by the Minister for the purpose of this section.

71.—(1) Any person who, for the purpose of obtaining any service under this Act whether for himself or some other person— False statements.

(a) knowingly makes any false statement or false representation or knowingly conceals any material fact, or
(b) produces or furnishes, or causes or allows to be produced or furnished, any document or information which he knows
45 or believes to be false in a material particular,

shall be guilty of an offence and shall be liable on summary conviction

to a fine not exceeding £500 or to imprisonment for a term not exceeding 3 months or to both.

Charges and contributions.

72.—(1) Save as may be specifically provided to the contrary, any charge which may be made or contribution which may be levied by a health board under this Act or regulations thereunder may, in default of payment, be recovered as a simple contract debt in any court of competent jurisdiction from the person on whom the charge is made or contribution levied, from the person's spouse (if any) or, in case the person has died, from his personal representative. 5

(2) In making available a service under any provision of this Act, the chief executive officer of the health board shall from time to time determine in each case whether such service shall be provided without charge or at such charge as he considers appropriate. 10

(3) In making a determination in accordance with *subsection (2)* the chief executive officer of a health board shall comply with any general directions given by the Minister with the consent of the Minister for Finance. 15

(4) Charges under any provision of this Act shall be in accordance with a scale approved of or directed by the Minister with the consent of the Minister for Finance. 20

Declaration regarding means.

73.—For the purposes of determining what charge or contribution, if any, should be levied on any person for a service to which *section 72* relates, a health board may require that person to make a declaration in such form as it considers appropriate in relation to his means and may take such steps as it thinks fit to verify the declaration. 25

Change of circumstances.

74.—(1) Where a person is recorded by a health board as entitled, because of specified circumstances, to a service provided by the board under any provision of this Act without charge, he shall notify the board of any change in those circumstances which disentitles him thereto. 30

(2) A person who knowingly contravenes *subsection (1)* shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £350.

PART VII

CUSTODY 35

Custody order.

75.—(1) In accordance with the provisions of this Part, the District Court may, on the application of any person qualified under *section 76*, make an order (to be known as a custody order) vesting legal custody of a child or young person in the applicant.

(2) A person granted a custody order in respect of a child shall in particular, subject to such directions and conditions as may be determined by the court under *subsection (4)*, have the right— 40

- (a) to authorise medical treatment for the child;
- (b) to authorise him to travel abroad.

(3) A person granted a custody order in respect of a child shall not have the right—

- (a) to change the religion of the child, or
- (b) to arrange for the emigration of the child,

5 without the consent of every person being a parent or legal guardian of the child.

(4) In addition to making a custody order, the court may give such directions and impose such conditions as it deems necessary in the interests of the child and, in particular, give such directions as it thinks
10 proper regarding the right of access to the child of a parent or legal guardian or the health board for the area in which the child is ordinarily resident.

(5) Subject to *section 93*, a custody order shall have the effect of—

15 (a) suspending the right (whether conferred by order of a court or otherwise) of any person other than the applicant in whose favour the order is made to custody of the child;

(b) suspending any care order or interim care order which has been made in respect of the child.

20 (6) *Subsection (5) (a)* shall not apply where the person already having custody is a parent of the child and the person awarded custody is the husband or wife of the parent provided that the court is satisfied that it is in the best interests of the child that the spouses should have joint custody.

25 (7) An application for a custody order may be made by and granted in favour of persons jointly.

76.—(1) The persons qualified to apply for a custody order are— Application for custody order.

30 (a) where the application is made with the consent of every person being a parent or legal guardian of a child, any person with whom the child has had his home for a period or periods before the making of the application which amount to at least 12 months and include the 3 months before the making of the application, save that in the case of a child in foster care it shall also be necessary to have the consent of the health board on whose behalf such
35 foster care is being undertaken; or

(b) in any other case, any person with whom the child has had his home for a period or periods before the making of the application which amount to at least 3 years and include the 3 months before the making of the application; or

40 (c) the health board.

(2) For the purpose of *subsection (1) (a)*, a parent or legal guardian shall be deemed to have given his consent where he is missing for at least 12 months and the court is satisfied that he cannot be found or he is incapable by reason of mental infirmity of giving such consent.

45 (3) For the purpose of *subsections (1) and (2)*, where an order of any court is in force giving custody of a child to one parent, the word

“parent” in those subsections shall be deemed to refer to that parent to the exclusion of the other parent.

(4) A court shall not hear an application for a custody order unless the applicant has given notice of the application within 21 days of the making of the application or such extended period as the court may allow to— 5

(a) every person being a parent or legal guardian of the child (save where such parent or legal guardian is missing and cannot be found);

(b) in the case of a child in foster care, the health board on whose behalf such foster care is being undertaken. 10

Restriction on removal of child.

77.—(1) Any person who, without reasonable excuse, removes a child from the custody of any person with whom he has had his home for a period or periods amounting to at least 3 years, without the consent of that person save— 15

(a) by order of a court, or

(b) where the child is the subject of a place of safety order or is removed to a place of safety by a member of the Garda Síochána under *section 39*, or

(c) where the child is arrested, 20

shall be guilty of an offence.

(2) The District Court on the application of a person from whose care a child has been removed in contravention of *subsection (1)* may make an order for the return of the child to the applicant.

(3) Any person who, without reasonable excuse, knowingly harbours or conceals a child who has been removed in contravention of *subsection (1)* or *(2)* shall be guilty of an offence. 25

(4) Any person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £350 or to imprisonment for a term not exceeding 3 months, or both. 30

(5) Where a person is charged with an offence under *subsection (1)* or *(2)* the court, in determining the matter, may make an order for the return of the child to the person from whose care he was so removed, pending the making or determination of an application for a custody order. 35

(6) The provisions of *section 6 (1)* shall not apply to the offences mentioned in this section in any case in which a health board was not involved in the making of the arrangements for the care of the child.

(7) For the purposes of *subsections (1) (a)* and *(1) (b)* of *section 76*, the three-month period before the making of an application shall be deemed not to have been interrupted solely by virtue of the removal of a child in contravention of *subsection (1)* or *(2)*. 40

(8) (a) The provisions of this section are without prejudice to those provisions of *sections 61* and *62* which restrict the removal of children. 45

(b) This section shall not be read as preventing a child (who is not subject to the provisions of *section 61* or *62*) from

leaving the person with whom he has had his home, if he wishes to do so, or as prohibiting any person from caring for a child who so leaves.

5 78.—(1) A court shall not make a custody order unless it is satisfied that such order is in the best interests of the child and that—

Conditions required for making of custody order.

(a) every person being a parent or legal guardian of the child gives an informed consent to the making of the order, or

10 (b) the parent or legal guardian of the child is not capable of exercising proper guardianship or does not wish to have the care of the child;

and, in any case, that the child has had his home with the applicant for a period or periods amounting to at least 12 months or 3 years (as the case may be) including the 3 months before the application and that the applicant is a fit person to have custody of the child.

15 (2) For the purpose of *subsection (1) (a)*, a parent or legal guardian shall be deemed to have given his consent where he is incapable by reason of mental infirmity of giving such consent or where he is missing for at least 12 months and the court is satisfied that he cannot be found.

20 (3) For the purpose of *subsection (1)*, where an order of any court is in force giving custody of a child to one parent, the word "parent" shall be deemed to refer to that parent to the exclusion of the other parent.

25 (4) A health board shall have a right to be heard in any case in which an application is made by a person who is undertaking the foster care of the child or in any other case at the discretion of the court.

30 79.—(1) Where a person who is undertaking the foster care of a child is granted a custody order, the health board may, in accordance with regulations made by the Minister, continue to contribute towards the maintenance of the child as if he had remained in foster care. Maintenance.

(2) Where a health board is making contributions in accordance with *subsection (1)*, a parent of the child shall be obliged to contribute towards his maintenance in accordance with *section 72*.

35 (3) In any case in which a health board is not contributing or does not intend to contribute towards the maintenance of the child, the following arrangements shall apply—

40 (a) the court which makes a custody order may, at the same time at the request of the person granted the custody order, and

(b) the District Court for the district in which any parent of the child, resides may, at any time, at the request of the person granted the custody order,

45 make an order requiring any such person to pay such weekly or other periodical sum as, having regard to his means and the cost of maintaining the child, the court considers proper.

(4) An order made under *subsection (3)* may be varied or discharged at any time on the application of a parent of the child or of the person granted the custody order.

(5) An order made under *subsection (3)* shall be enforceable in like manner as a maintenance order made under section 5 of the Act of 1976. 5

Variation or discharge of orders.

80.—(1) Subject to its being satisfied that it is in the best interests of the child, a court may vary or discharge any custody order or any condition or direction or may add a new condition or direction in relation to such an order on the application of— 10

(a) a parent or legal guardian of the child,

(b) the person or persons granted custody of the child, or

(c) a health board, in any case in which the child was, immediately before the making of the custody order, the subject of a care order. 15

(2) Before discharging a custody order in respect of a child who, immediately before the making of the order, was the subject of a care order—

(a) if the court is of the opinion that it would be desirable to do so, it shall on discharging the custody order make an order revoking the original care order; 20

(b) if the court is of the opinion that it would be desirable that a care order be revived, the court shall on discharging the custody order make an order reviving the care order;

(c) if the court is of the opinion that, while the care order should be revoked, it is desirable that the child be placed under the supervision of the health board, it shall on discharging the custody order, revoke the care order and make a supervision order in respect of the child. 25

(3) The provisions of *section 47* shall apply with the necessary modifications to a supervision order made under *subsection (2) (c)*. 30

Applications for directions.

81.—Any person being a parent or legal guardian of a child or any person granted a custody order in respect of the child may apply to the District Court for its direction on any question affecting the welfare of the child (including the right of access to the child of his parents) and the court may make such order as it thinks proper. 35

Joint custody.

82.—Where persons, who under a custody order are awarded joint custody of a child, are unable to agree on the exercise of rights or duties in respect of the child, either one of them may apply to the court, and the court may make such order as it thinks proper. 40

PART VII

COURT PROCEDURES, EVIDENCE AND JURISDICTION

83.—Proceedings under *Part V, VI or VII* shall, so far as is compatible with the protection of the rights of the parties, be conducted without undue formality. Conduct of proceedings.

84.—(1) Proceedings under *Part V, VI or VII* in the District Court shall be heard otherwise than in public. Privacy of proceedings.

(2) Proceedings under *Part V, VI or VII* in the Circuit Court or the High Court shall be heard in chambers.

(3) The provisions of this section are without prejudice to the provisions of *section 42* in relation to the issue of place of safety orders.

85.—(1) It shall not be necessary in any proceedings under *Part V or VII* for the child or young person who is the subject of the proceedings to be brought before the court or to be present for all or any part of the hearing save— Power to proceed in absence of child or young person.

(a) where the court, whether at its discretion or at the request of any of the parties to the case, is satisfied that this is necessary for the proper disposal of the case, or

(b) where the child or young person wishes to be present unless the court decides that, having regard to the age of the child or young person and the nature of the case, it is not in his interests to be present for all or any part of the proceedings.

(2) Where, in proceedings related to any of the offences mentioned in the *Second Schedule*, the court is satisfied that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child or young person.

86.—(1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child or young person is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of evidence of that witness. Power to clear court while child or young person is giving evidence.

(2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera or to exclude a witness until his evidence is required.

(3) Nothing in this section shall authorise the exclusion of *bona fide* representatives of the press.

Evidence of young children.

87.—Where, in any proceedings against any person for an offence, any child who is tendered as a witness does not in the opinion of the court understand the nature of an oath, the evidence of the child may be taken though not given on oath, if the court is of the opinion that the child is of sufficient intelligence to justify the taking of such evidence and understands the duty of speaking the truth, provided that there shall be no conviction without corroborating material evidence. 5

Extension of power to take deposition of child or young person.

88.—(1) Where a justice is satisfied on the evidence of a registered medical practitioner that a court attendance would involve serious danger to the health or well-being of a child or young person in respect of whom any of the offences mentioned in the *Second Schedule* is alleged to have been committed, the justice may take in writing the deposition of the child or young person on oath. 10

(2) The justice shall subscribe the deposition and add a statement of his reason for taking it and of the day when and place where it was taken and of the names of any persons present at the time. 15

(3) The justice shall send the deposition with his statement—

(a) if the deposition relates to an offence for which any person is committed for trial, to the court to which that person has been committed, or 20

(b) in any other case, to the clerk of the District Court for the district in which the deposition has been taken.

Admission of deposition of child or young person in evidence.

89.—Any deposition of a child or young person, taken in accordance with *section 88*, shall be admissible in evidence without further proof at the trial of any person for any of the offences mentioned in the *Second Schedule* provided that reasonable notice of the intention to take the deposition was served on the accused person and he or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child or young person making the deposition. 25 30

Exclusion of child or young person from court in certain cases.

90.—No child (other than an infant in arms) and, if the court so directs, no young person shall be permitted to be present in court during the trial of any other person charged with an offence against, or in relation to any conduct contrary to, decency or morality or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not permitted to be so, and any young person so present while any such direction is in force, shall be ordered to be removed. 35 40

Prohibition on publication or broadcast of certain matters.

91.—(1) (a) No report in any newspaper, magazine or other printed publication, or in any broadcast of any proceedings under *Part V, VI or VII* or in respect of any of the offences mentioned in the *Second Schedule* shall reveal the name, address, or school, or include any particulars likely to lead to the identification of any child or young person who is the subject of, or witness in, the proceedings or in respect of whom any such offence is alleged to have been committed. 45

(b) No picture shall be published in any newspaper, or other printed publication, or in any television broadcast as being or including a picture of any child or young person so concerned in the proceedings. 50

5 (2) Without prejudice to *subsection (1)*, the court may, in any case if satisfied that it is appropriate to do so in the interests of the child or young person, by order dispense with the prohibitions of that subsection in relation to him to such extent as may be specified in the order.

(3) Any person who publishes any matter in contravention of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both.

10 (4) In this section—

“picture” includes photograph, drawing or other likeness;

“broadcast” means a broadcast by wireless telegraphy of sound or visual images.

15 92.—(1) In any application under *Part V, VI or VII* in respect of a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall hear such evidence as may be required. Presumption and determination of age.

20 (2) Where a person is brought before a court for the purpose of determining his age in accordance with *subsection (1)*, an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person who is the subject of the proceedings shall, for the purposes of this Act, be deemed to be the true age of that person.

25 (3) Where in a charge or indictment for an offence under this Act, or any of the offences mentioned in the *Second Schedule*, except an offence under the Criminal Law Amendment Act, 1885, or the Criminal Law (Amendment) Act, 1935, it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or had attained any specified age, and he appears 30 to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to have been under or to have attained that age, as the case 35 may be, unless the contrary is proved.

40 (4) Where in any charge or indictment for an offence under this Act, or any of the offences mentioned in the *Second Schedule*, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to provide that the person alleged to have been a child was a young person or 45 the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

(5) Where a person is charged with an offence under this Act in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.

50 93.—(1) Subject to *subsection (2)*, the jurisdiction conferred on a court under *Part VII* may be exercised by a court which has jurisdiction in relation to the Guardianship of Infants Act, 1964. In the event of Jurisdiction.

courts being designated as Family or Children's Courts, the jurisdiction under this section shall be transferred to such courts.

(2) Where the High Court has made an order as to the welfare of a child or young person, any subsequent proceeding in relation to the welfare of the child or young person shall be heard by the High Court. 5

PART IX

OFFENCES IN RELATION TO CHILDREN

Neglect, abuse and cruelty.

94.—(1) Any parent or person having the custody, charge or care of any child or young person who wilfully assaults, ill-treats, neglects, abandons or exposes him, or who causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him injury to his health or well being, or unreasonable suffering, shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £3,000 or to imprisonment for a term not exceeding 3 years or to both or on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both. 10 15

(2) For the purposes of this section, a parent or person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails, without reasonable excuse, to provide adequate food, clothing, medical aid or accommodation for him. 20

(3) A person may be convicted of an offence under this section notwithstanding—

(a) that actual suffering or injury to health, or the likelihood of actual suffering or injury to health was obviated by the action of the child or young person or any other person; 25

(b) the death of the child or young person in respect of whom the offence is committed.

(4) Upon the trial of any person for infanticide or for the murder or the manslaughter of a child or young person of whom he was a parent or of whom he had custody, charge or care, it shall be lawful for the court, if it is satisfied that the accused is guilty of an offence under this section in respect of such child or young person but is not satisfied that he is guilty of the offence charged, to find the accused guilty of an offence under this section. 30 35

Volatile substances.

95.—(1) Any person, not being a child, who sells, offers or makes available to a child or young person any volatile substance in circumstances in which it would be reasonable for that person to know or suspect that the substance will be or is likely to be misused by that child or young person in a manner which is likely to cause him to be intoxicated shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both. 40

(2) (a) Any person who sells, offers or makes available to a child or young person a volatile substance to which this paragraph applies, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both. 45 50

(b) The Minister may prescribe volatile substances to which

paragraph (a) shall apply, whether in respect of children or young persons or both.

5 (3) Where a person is prosecuted for an offence under subsection (1) or (2) it shall be a defence for him to prove that he took reasonable steps to assure himself that the person to whom any volatile substance was sold, offered or made available was not a child or a young person, as the case may be.

10 (4) Subject to subsection (6), a court by which a person is convicted of an offence under this section may order anything shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court thinks fit.

15 (5) A court shall not order anything to be forfeited under this section if a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity is given to him to show cause why the order should not be made.

20 (6) A member of the Garda Síochána may seize any volatile substance prescribed by the Minister under subsection (2) which is in the possession of a child or young person in any public place or any volatile substance (whether so prescribed or not) which is being misused by a child or young person in a manner likely to cause him to be intoxicated. Any substance so seized may be destroyed or otherwise disposed of in such manner as a member of the Garda Síochána not below the rank of Chief Superintendent may direct.

25 96.—(1) If any person causes or procures any child or young person, or, having the custody, charge or care of a child or young person, allows him to be in any street, premises or place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, 30 performing, offering anything for sale, or otherwise) he shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £500 or to imprisonment for a term not exceeding 6 months or to both.

35 (2) If a person having the custody, charge or care of a child or young person is charged with an offence under this section and it is proved that the child or young person was in any street, premises or place for any such purpose as aforesaid, he shall be presumed to have allowed him to be in the street, premises or place for that purpose unless the contrary is proved.

40 97.—(1) Where a member of the Garda Síochána, with reasonable cause, suspects that a person is committing or has committed any of the offences under this Part and if the member with reasonable cause suspects that the person, unless he is arrested, either will abscond for the purposes of evading justice or will obstruct the course of justice, 45 he may arrest the person without warrant.

(2) A member of the Garda Síochána may, on complaint being made to him by an authorised officer of a health board, arrest without warrant a person whom he has reasonable cause to believe is committing or has committed an offence under any of the sections mentioned in subsection (3) if the member with reasonable cause 50 suspects that the person, unless he is arrested, either will abscond for the purposes of evading justice or will obstruct the course of justice.

(3) The sections to which the provisions of subsection (2) apply are sections 44 (1), 44 (6), 47 (8), 61 (6), 62 (3) and 63 (2).

Notification of health board as to certain proceedings.

98.—Where a summons is issued charging any of the offences mentioned in the *Second Schedule* in respect of a child or young person or any offence under *section 95* or *96* in respect of a child or young person, the member of the Garda Síochána issuing the summons shall, as soon as practicable, notify the health board in whose area the child or young person is for the time being of— 5

(a) the nature of the charge, and

(b) the name, address (or last known address) of the child or young person, so far as is known to him.

Mode of charging offences and limitation of time.

99.—(1) Where a person is charged with committing any of the offences mentioned in the *Second Schedule* in respect of two or more children or young persons, the same information or summons may be used to charge the offence in respect of all or any of them but the person charged shall not be liable to separate penalties except upon separate information. 10
15

(2) When any offence mentioned in the *Second Schedule* charged against any person is a continuing offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

(3) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act or for an offence mentioned in the *Second Schedule* may be instituted within 12 months from the date of the offence. 20
30

Interpretation of *Part IX*.

100.—For the purposes of *Part IX*—

(a) a person who is the parent or guardian of a child or young person or who is legally liable to maintain a child or young person shall be presumed to have the custody of the child or young person and, as between parents, one parent shall not be deemed to have ceased to have the custody of the child or young person by reason only that he has deserted, or otherwise does not reside with, the other parent and child or young person; and 25
30

(b) any person having actual possession or control of a child or young person shall be presumed to have care of the child or young person. 35

PART X

OFFENCES IN RELATION TO CERTAIN VIDEO RECORDINGS

Interpretation of *Part X*.

101.—In this Part—

“video work” means any series of visual images (whether with or without sound)— 40

(a) produced electronically by the use of any information on any disc or magnetic tape, and

(b) shown as a moving picture but does not include a video game;

“video recording” means any disc or magnetic tape upon which is recorded information by the use of which the whole or a part of a video work may be produced or reproduced;

5 “supply” means supply in any manner, whether for reward or consideration or not, and includes supply by sale, letting or hire, exchange or loan and references to supplying shall be construed accordingly;

“premises” includes any vehicle, vessel or stall;

“business” includes any activity carried on by or in a club whether or not registered under the Registration of Clubs (Ireland) Act, 1904.

10 **102.**—(1) A video work is a prohibited video work if it depicts to any significant extent— Prohibited video works.

(a) acts of force or restraint associated with human sexual activity,

15 (b) mutilation or torture of or other acts of gross violence towards humans or animals,

(c) human urinary or excretory functions,

or is designed to any extent to stimulate or encourage anything falling within *paragraph (a) or (b)* above or could reasonably be regarded as so doing.

20 **103.**—(1) A person shall not import or distribute or supply or keep, offer or expose for sale or supply, any video recording containing any video work which is a prohibited video work by virtue of *section 102*. Offences in relation to prohibited video works.

(2) Any person who contravenes *subsection (1)* of this section shall be guilty of an offence.

25 (3) A person shall not have in his possession or control with intent to commit or to aid, abet, counsel or procure the commission of an offence under *subsection (1)* of this section, any video recording work containing any video which is a prohibited video work by virtue of *section 102*.

30 (4) Any person who contravenes *subsection (2)* of this section shall be guilty of an offence.

35 (5) Where, in any proceedings for an offence under *subsection (3)* of this section, it is proved that a person had at the time of the alleged offence in his possession or under his control a prohibited video work, it shall be presumed, until the Court is satisfied to the contrary, that he had such video works in his possession or under his control with such intent.

(6) In any proceedings for an offence under *subsection (1)* of this section it shall be a defence for the defendant to prove—

40 (a) (i) that the time of the alleged offence he carried on the business of supplying video recordings, and

(ii) that the act alleged to constitute such offence was committed by him by reason of or in furtherance of his said business, and

45 (iii) that he could not have, by the exercise of reasonable

care, diligence or skill, have known of or ascertained the contents of the video recording in respect of which such act was committed;

or

- (b) that knowing or suspecting it to be a prohibited video work, he took or retained possession of it for the purpose of— 5
- (i) preventing another from committing or continuing to commit an offence in relation to such video work, or
 - (ii) delivering it into the custody of a member of the Garda Síochána; 10

and that as soon as practicable he took such steps as were reasonably open to him to destroy or erase such video work or to deliver it into such custody.

Offences by bodies corporate.

104.—Where an offence under this Part is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, secretary or other similar official of such body corporate or any person purporting to act in any such capacity, such person shall also be guilty of that offence and shall be liable to be proceeded against and punished accordingly whether such body corporate has or has not been proceeded against. 15 20

Attempts, etc., to commit offences.

105.—A person who attempts to commit an offence under this Part or who aids, abets, counsels or procures the commission of an offence under this Part or who incites any other person to commit an offence under this Part shall be guilty of an offence. 25

Search warrants.

106.—(1) If a justice of the District Court is satisfied by information laid on oath by a member of the Garda Síochána that there are reasonable grounds for suspecting—

- (a) that an offence under this Part has been or is being committed on any premises; and 30
- (b) that evidence that the offence has been or is being committed is on those premises;

he may issue a warrant authorising any member of the Garda Síochána to enter and search the premises within one month of the date of issue of the warrant. 35

(2) A member of the Garda Síochána entering any premises in pursuance of a warrant under this Part may, if necessary, use reasonable force to effect such entrance and may seize anything found thereon which he has reasonable grounds for believing may be required to be used in evidence in any proceedings for an offence under this Part. 40

Powers of the Garda Síochána.

107.—(1) A member of the Garda Síochána (if he is not in uniform, on production of his identification card, if demanded) may stop and request of any person whom he suspects of having committed or is committing an offence under this Part, that he furnish the member with his name and address and such person shall, when so requested, comply with that request. 45

5 (2) Every person, of whom a request has been made in accordance with *subsection (1)* above, who shall fail or refuse to give his name and address or shall give in response to such request, a name or an address which is false or misleading, shall be guilty of an offence under this section.

10 (3) A member of the Garda Síochána in addition to the powers conferred by *subsection (1)* above may, without warrant, search any person whom he reasonably suspects of having committed or is committing an offence under this Part and may seize and retain possession of any video recording found in the course of a search under this section which he reasonably suspects of containing a prohibited video work.

15 (4) Every person who shall obstruct or impede or prevent the exercise by a member of the Garda Síochána of the power conferred by *section 106 (1)* above or by *subsection (1)* or *(3)* of this section shall be guilty of an offence under this section.

(5) A member of the Garda Síochána may arrest, without warrant, any person whom he reasonably suspects of having committed an offence under *section 107 (2)* or *(4)* above.

20 **108.**—(1) Every person who shall be convicted of any offence under this Part shall be liable on summary conviction, at the discretion of the court, to a fine not exceeding £500 or three months imprisonment or to both such fine and imprisonment. Trial of offences and penalties.

25 (2) Proceedings taken for an offence under this Part or in relation to this Part may be heard otherwise than in public and evidence and or argument in relation to whether a particular video recording contains a prohibited video work shall be heard otherwise than in public.

30 (3) *Subsection (2)* above shall not be taken as restricting *bona fide* representatives of the press or of other media from attending such proceedings.

35 **109.**—(1) Whether or not a person is convicted of any offence under this Part, the court may order any video recording produced to the court, and shown to the satisfaction of the court to relate to an offence under this Part or to be a prohibited video work, to be forfeited and destroyed. Forfeiture and destruction.

(2) An order of the court under *subsection (1)* above shall not be carried into effect until whichever is the later of the following—

40 (a) the expiration of 6 months from the date of the said order, or

(b) where an appeal is taken, until the final determination of an appeal from an order of the court in relation to such video recording.

(3) In this section—

45 (a) an appeal shall include a case stated whether consultative or by way of appeal;

(b) “video recording” shall include any spool, case or other thing on or in which the recording is kept.

(4) The ownership or otherwise of any video recording not the subject matter of an order under *subsection (1)* above shall be determined in the manner provided for in the Police Property Act, 1897.

Saver for certain videos used for medical and other purposes.

110.—It shall not be an offence under *sections 103 (1) or (3) or section 105* where it is shown, if necessary, to the satisfaction of the court that the importation or supply or possession as may be appropriate, was an importation, supply or possession with a view solely to its use in— 5

(a) training for or carrying on any nursing, medical or related occupation, or 10

(b) in *bona fide* psychiatric research work, or

(c) in the dissemination of information relating to crimes of genocide as defined in the Genocide Act, 1973.

PART XI

THE NATIONAL CHILDREN'S COUNCIL 15

National Children's Council.

111.—The Minister shall establish a National Children's Council, within three months of the coming into operation of this Act.

Duties.

112.—The duties of the National Children's Council shall be:

(a) to advise the Minister, and to make recommendations, on any aspect of the welfare of children, either on its own initiative or as requested by the Minister, 20

(b) to foster and encourage co-operation between the various persons and bodies actively engaged in promoting the care and protection of children, 11

(c) to promote research work in the area of the care and protection of children, and to collect and disseminate knowledge in this field, 25

(d) to create public awareness of the priority attached to child welfare, and of all developments in the promotion of child welfare, 30

(e) to publish an annual report on its work,

(f) to carry out such other additional duties as the Minister may decide.

Expenses.

113.—The National Children's Council may incur such expenses as may be approved by the Minister on an annual basis. 35

Regulations.

114.—The composition, membership, and terms of office of the National Children's Council shall be set out in regulations published by the Minister within one month of the coming into operation of this Act. The Minister may himself nominate no more than one-third of the members of the Council, the balance being nominated by bodies specified in the regulations referred to in this section. 40

115.—No member of the National Children's Council shall receive any remuneration, but the Minister may make payments to any such member in respect of travelling and subsistence expenses incurred in connection with the work of the Council. Such payments shall be in accordance with a scale determined by the Minister.

Remuneration.

PART XII

OFFENCES IN RELATION TO TOBACCO PRODUCTS

116.—In this Part—

Interpretation.

“school” means, as the context may require, a first level school (including a special school), or a second level school, which is recognised and grant aided by the Minister for Education;

“tobacco product” has the same meaning as in the Finance (Excise Duty on Tobacco Products) Act, 1977.

117.—The Minister shall publish regulations prohibiting the sale or consumption of tobacco products in all schools, and in such other place as he may decide, where the health and welfare of children is placed at risk by access to such products.

Prohibition in relation to schools, etc.

118.—(1) Any person who sells, offers to sell, or makes available, any tobacco product to a person under the age of 16 years, whether for his own use or otherwise, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

Restriction on sale of tobacco products.

(2) The owner, or other person in charge, of any machine for the sale of tobacco products who permits the machine to be used for the sale of such products to a person under the age of 16 years shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

(3) Whenever a person is prosecuted for an offence under this section, it shall be a defence for him to establish that he had taken all reasonable steps to assure himself that the person to whom the tobacco products were sold, offered for sale or made available had attained the age of 16 years.

(4) Where, in a prosecution of an offence under this section, it is alleged that the person in respect of whom the offence was committed is under the age of 16 years, and such person appears to the court to have been, at the date of the commission of the alleged offence, under the age of 16 years, such person shall for the purposes of this section be presumed, until the contrary is proved, to have been at that date under that age.

119.—Any person who sells, offers to sell or makes available, cigarettes to a person otherwise than in packets of ten or more cigarettes shall be guilty of an offence and shall be liable—

Restriction on sale of cigarettes.

(a) on summary conviction to a fine not exceeding £500,

(b) on conviction on indictment, to a fine not exceeding £10,000.

120.—Where an offence under this Part is committed by a body corporate or by a person purporting to act on behalf of a body

Offences in relation to bodies corporate and unincorporated bodies.

corporate or an unincorporated body of persons and is proved to have been committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any person who, when the offence is committed, is a director, member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body, that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly. 5

Prosecution of offences. 121.—Summary proceedings in relation to an offence under this Part may be brought and prosecuted by the Minister or by an officer, appointed by the Minister for that purpose, of the Minister or of a health board. 10

Expenses. 122.—The expenses incurred by the Minister in the administration of this Part shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 15

PART XIII

OFFENCES IN RELATION TO INTOXICATING LIQUOR

Interpretation. 123.—In this Part—
 “the Act of 1927” means the Intoxicating Liquor Act, 1927;
 “the Act of 1960” means the Intoxicating Liquor Act, 1960; 20
 “the Act of 1962” means the Intoxicating Liquor Act, 1962;
 “the Acts” means the Licensing Acts, 1833 to 1986;
 “bar” means any open bar or any part of a licensed premises exclusively or mainly used for the sale and consumption of intoxicating liquor and shall include any counter or barrier across which drink is or can be served to the public; 25
 “licence” means a licence for the sale of intoxicating liquor whether granted on production or without production of a certificate of the Circuit Court or the District Court;
 “licensed premises” means premises in respect of which a licence has been granted and is in force; 30
 “the Minister” means the Minister for Justice.

Sale of intoxicating liquor to persons under the age of 18 years. 124.—(1) The holder of any licence shall not—
 (a) sell or deliver intoxicating liquor to a person under the age of 18 years; 35
 (b) sell or deliver intoxicating liquor to any person for consumption on his licensed premises by a person under the age of 18 years;
 (c) permit a person under the age of 18 years to consume intoxicating liquor on his licensed premises, or 40
 (d) permit any person to supply a person under the age of 18 years with intoxicating liquor on his licensed premises.

(2) The holder of a licence of any licensed premises shall not sell or deliver intoxicating liquor to any person for consumption off his licensed premises by a person under the age of 18 years in any place other than a private residence.

5 (3) A holder of a licence who contravenes *subsection (1) or (2)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

(a) £50, in the case of a first offence,

(b) £100, in the case of a second offence, or

10 (c) £300, in the case of a third or any subsequent offence,

and the offence shall be deemed for the purposes of Part III (which relates to the endorsement of licences) of the Act of 1927 to be an offence to which that Part of that Act applies.

(4) In any proceedings against a person for a contravention of
15 *subsection (1) or (2)* of this section, it shall be a defence for such person to prove that he had reasonable grounds for believing that the person in respect of whom he is alleged to have committed the offence was over the age of 18 years.

125.—(1) A person shall not—

20 (a) purchase intoxicating liquor for delivery to, or consumption by, a person under the age of 18 years in any place other than a private residence,

(b) deliver intoxicating liquor to a person under the age of 18 years in any place other than a private residence, or

25 (c) send a person under the age of 18 years to any place where intoxicating liquor is sold, delivered or distributed for the purpose of obtaining intoxicating liquor.

(2) A person who contravenes *subsection (1)* of this section shall be guilty of an offence and shall be liable on summary conviction to
30 a fine not exceeding—

(a) £50, in the case of a first offence,

(b) £100, in the case of a second offence, or

(c) £300, in the case of a third or any subsequent offence.

126.—(1) A person under the age of 18 years shall not—

35 (a) purchase intoxicating liquor,

(b) consume intoxicating liquor in any place other than a private residence, or

(c) represent himself for the purpose of obtaining, or being permitted to consume, intoxicating liquor, to be over the
40 age of 18 years.

(2) Any person who contravenes *subsection (1)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

Provision of intoxicating liquor for persons under the age of 18 years.

Offences by persons under the age of 18 years.

Exclusion of children under the age of 16 years from bars of licensed premises.

127.—(1) Subject to *subsection (2)* of this section, the holder of a licence of any licensed premises shall not allow a child under the age of 16 years to be at any time in the bar of his licensed premises.

(2) It shall not be unlawful for the holder of a licence of any licensed premises at any time between the hour of 10.30 o'clock in the morning and the hour of 8.00 o'clock in the evening (other than a time during which the sale of intoxicating liquor is prohibited under the Acts) to allow a child under the age of 16 years to be in the bar of his licensed premises if such child is accompanied by his parent or guardian.

(3) Nothing in *subsection (1)* of this section shall apply in the case of a child who is—

- (a) a child of a licence-holder, or
- (b) resident in the licensed premises, or
- (c) in the bar of the licensed premises solely for the purpose of passing through in order to gain access to, or egress from, some other part of the premises.

(4) Every holder of a licence of any licensed premises shall display in a conspicuous place in the bar of his licensed premises a notice stating that subject to the provisions of *section 127* of the *Children (Care and Protection) Act, 1987* it is an offence to allow a child (under the age of 16 years) to be in a bar at any time except between the hours of 10.30 o'clock in the morning and 8.00 o'clock in the evening and that such child may be allowed in the bar during those hours only if he is accompanied by his parent or guardian.

(5) A holder of a licence of any licensed premises who contravenes *subsection (1)* of this section, or any person who causes or procures or attempts to cause or procure a child under the age of 16 years to go to or to be in the bar of a licensed premises in contravention of this section, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

- (a) £50, in the case of a first offence, or
- (b) £100, in the case of a second or any subsequent offence.

(6) A holder of a licence of any licensed premises who contravenes *subsection (4)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

- (a) £20, in the case of a first offence, or
- (b) £50, in the case of a second or any subsequent offence.

(7) If a child under the age of 16 years is found in the bar of a licensed premises—

- (a) unaccompanied by his parent or guardian, or
- (b) at a time when such a child is not permitted to be there,

the parent or, as the case may be, the guardian, of the child shall unless he establishes that the child was so present—

- (i) without his knowledge or consent, or

(ii) in accordance with the circumstances specified in *subsection (3)* of this section,

be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

- 5 (8) In any proceedings against a person for a contravention of *subsection (1)* of this section, it shall be a defence for such person to prove that he used all due diligence to prevent the child being admitted to the bar or that he had reasonable grounds for believing that the person in respect of whom he is alleged to have committed the offence
10 was not a child under the age of 16 years.

- 15 128.—(1) Notwithstanding the application of an exemption order under section 4 or 5 of the Act of 1927, or section 10 of the Act of 1962, in respect of the premises, the holder of a licence of any licensed premises shall not allow a person who is under the age of 18 years (other than a person under that age whose employment in the licensed premises is not prohibited under *section 131* of this Act) to be on any part of the licensed premises which is used for the sale or consumption of intoxicating liquor at any time during the period in respect of which the exemption was granted.

Restriction on persons under the age of 18 years being on licensed premises during extended hours.

- 20 (2) Notwithstanding the application of an exemption order under section 4 or 5 of the Act of 1927, or section 10 of the Act of 1962, in respect of the premises, a person who is under the age of 18 years (other than a person under that age whose employment in the licensed premises is not prohibited under *section 131* of this Act) shall not be
25 on any part of a licensed premises which is used for the sale or consumption of intoxicating liquor at any time during the period in respect of which the exemption was granted.

- 30 (3) The holder of a licence of any licensed premises in respect of which an exemption order under section 4 or 5 of the Act of 1927, or section 10 of the Act of 1962, is in force shall display in a conspicuous place in the part of the licensed premises which is used on foot of such exemption order a notice stating that it is an offence for a person who is under the age of 18 years to be on that part of the premises at any time during the period in respect of which the exemption order
35 was granted.

(4) A holder of a licence of any licensed premises who contravenes *subsection (1)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

- (a) £50, in the case of a first offence, or
40 (b) £100, in the case of a second or any subsequent offence,

and the offence shall be deemed for the purposes of Part III (which relates to the endorsement of licences) of the Act of 1927 to be an offence to which that Part of that Act applies.

- 45 (5) A person who contravenes *subsection (2)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

(6) A holder of a licence who contravenes *subsection (3)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

- 50 (a) £20, in the case of a first offence, or

(b) £50, in the case of a second or any subsequent offence.

(7) In any proceedings against a person for a contravention of *subsection (1)* of this section, it shall be a defence for such person to prove that he used all due diligence to prevent the person under the age of 18 years in respect of whom the charge is brought being admitted to the part of the premises which is used for the sale or consumption of intoxicating liquor during the period in respect of which the exemption was granted or that he had reasonable grounds for believing that such person was over the age of 18 years.

Restriction on persons under the age of 18 years being on premises used for the sale of intoxicating liquor for consumption off the premises.

129.—(1) Where a licensed premises, or any part of a licensed premises which is structurally separate from the remainder of the premises, is used exclusively or mainly for the sale of intoxicating liquor for consumption off the premises, the holder of the licence of the licensed premises shall not permit a person who is under the age of 18 years and who is not accompanied by his parent or guardian (other than a person under that age whose employment in the licensed premises is not prohibited under *section 131* of this Act) to be at any time on such premises or, as the case may be, such part of such premises.

(2) A person who is under the age of 18 years and who is not accompanied by his parent or guardian (other than a person under that age whose employment in the licensed premises is not prohibited under *section 131* of this Act) shall not be at any time on a licensed premises, or on any part of a licensed premises which is structurally separate from the remainder of the premises, where such premises or, as the case may be, such part of such premises, is used exclusively or mainly for the sale of intoxicating liquor for consumption off the premises.

(3) Where a licensed premises, or any part of a licensed premises which is structurally separate from the remainder of the premises, is used exclusively or mainly for the sale of intoxicating liquor for consumption off the premises, the holder of the licence of such licensed premises shall display in a conspicuous place in such premises a notice stating that it is an offence for a person who is under the age of 18 years and who is not accompanied by his parent or guardian to be on such premises or, as the case may be, on such part of such premises.

(4) A holder of a licence of any licensed premises who contravenes *subsection (1)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

(a) £50, in the case of a first offence, or

(b) £100, in the case of a second or any subsequent offence,

and the offence shall be deemed for the purposes of Part III (which relates to the endorsement of licences) of the Act of 1927 to be an offence to which that Part of that Act applies.

(5) A person who contravenes *subsection (2)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

(6) A holder of a licence who contravenes *subsection (3)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

(a) £20, in the case of a first offence, or

(b) £50, in the case of a second or any subsequent offence.

5 (7) In any proceedings against a person for a contravention of
subsection (1) of this section, it shall be a defence for such person to
prove that he used all due diligence to prevent the person under the
age of 18 years in respect of whom the charge is brought being
admitted to the premises or any part of the premises which is used
exclusively or mainly for the sale of intoxicating liquor for con-
sumption off the premises or that he had reasonable grounds for
10 believing that such person was over the age of 18 years.

15 130.—(1) Where a member of the Garda Síochána suspects, with
reasonable cause, that an offence under *section 124, 125 or 126* of this
Act is being or has been committed, the member concerned may
seize, detain and remove, without warrant, any bottle or container
which—

Powers of Garda
Síochána in relation
to certain offences.

(a) is in the possession, in a public place, of a person by or in
respect of whom such member suspects the offence to
have been committed and who appears to the member to
be under the age of 18 years, and

20 (b) such member suspects, with reasonable cause, contains
intoxicating liquor.

(2) Where a member of the Garda Síochána suspects, with reason-
able cause, that an offence under this Part of this Act has been
committed, the member concerned may—

25 (a) (i) in the case of an offence under *section 127* of this Act,
request the person in respect of whom the offence
was committed, if such person appears to the member
to be a child under the age of 16 years, to provide the
member with his name, address and age, or

30 (ii) in any other case, request the person by whom, or in
respect of whom, such member suspects the offence
to have been committed to provide such member with
his name, address and age, or

35 (b) request the parent or, as the case may be, the guardian of
the person by or in respect of whom the offence was
committed to provide the name, address and age of that
person.

40 (3) Where any person, who is requested by a member of the Garda
Síochána, pursuant to *subsection (2)* of this section, to supply a name,
address and age, fails or refuses to provide the member with the
name, address and age as so requested, or provides any name, address
or age which is false or misleading, such person shall be guilty of an
offence and shall be liable on summary conviction to a fine not
exceeding £50.

45 131.—(1) The holder of a licence of any licensed premises shall
not employ—

Employment of
persons under the
age of 18 years.

(a) any person being his sister, step-sister, daughter, step-daugh-
ter or sister-in-law who resides with him and is under the
age of 16 years, or

(b) any person being his brother, step-brother, son, step-son or brother-in-law who resides with him and is under the age of 16 years, or

(c) any person under the age of 18 years other than a person referred to in *paragraph (a)* or *paragraph (b)* of this subsection who is over the age of 16 years, 5

to sell, or to assist in the sale of, intoxicating liquor for consumption on or off his licensed premises nor shall such holder of a licence permit any such person to engage in, or assist in, any such sale in his licensed premises. 10

(2) Any holder of a licence who contravenes *subsection (1)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

(a) £50, in the case of a first offence, or

(b) £100, in the case of a second or any subsequent offence, 15

and the offence shall be deemed for the purposes of Part III (which relates to the endorsement of licences) of the Act of 1927 to be an offence to which that Part of that Act applies.

Proof of age in prosecution.

132.—(1) Where in any prosecution under *section 124, 125, 126, 128, 129, 130 or 131* of this Act, it is alleged that the person by whom, or in respect of whom, the offence was committed was a person under the age of 18 years, and such person appears to the Court to have been, at the date of the commission of the offence, a person under that age, that person shall, for the purposes of this Part of this Act, be presumed to have been under the age of 18 years at that date, unless the contrary is proved. 20 25

(2) Where in a prosecution for an offence under *section 127* of this Act, it is alleged that the person in respect of whom the offence was committed was a child under the age of 16 years, and such person appears to the Court to have been under the age of 16 years at the date of the commission of the offence, that person shall, for the purposes of this Part of this Act, be presumed to have been under the age of 16 years at that date, unless the contrary is proved. 30

FIRST SCHEDULE
ENACTMENTS REPEALED

Section 7

35

Session and Chapter or Number and Year	Short Title	Extent of Repeal
4 Edw. 7, c.15.	Prevention of Cruelty to Children Act, 1904.	The whole Act.
8 Edw. 7, c.67.	Children Act, 1908.	Part I, Sections 12 to 15, Sections 19 to 38, Section 58(1), (5), (6), (7) and (8), Section 59, Section 74(11), Sections 114 and 115, Sections 118, 119, 121, 122 and 126, The First Schedule.
3 & 4 Geo. 5, c.7.	Children (Employment Abroad) Act, 1913.	The whole Act.
4 & 5 Geo. 5, c.58.	Criminal Justice Administration Act, 1914.	Section 28(2).

Session and Chapter or Number and Year	Short Title	Extent of Repeal
No. 15 of 1934. No. 12 of 1941. No. 26 of 1953. No. 28 of 1957.	Children Act, 1934. Children Act, 1941. Health Act, 1953. Children (Amendment) Act, 1957.	The whole Act. Section 10(1). Sections 55, 56 and 57. Sections 2, 3, 4 and 10.

SECOND SCHEDULE

OFFENCES REFERRED TO

*Sections 39, 45, 47,
85, 88, 89, 91, 92,
98 and 99*

- Manslaughter of a child or young person.
- Infanticide.
- 5 — Aiding, abetting, counselling or procuring the suicide of a child or young person.
- Any offence against a child or young person under any of the following sections of the Offences Against the Person Act, 1861—
- 10 Section 27 (Exposing a child whereby his life is endangered or his health is permanently injured).
- Section 55 (Abduction of a girl under 16 years).
- Section 56 (Child stealing or receiving).
- Section 61 (Sodomy and bestiality).
- Section 62 (Attempts to commit the above).
- 15 — Any offence under the Criminal Law Amendment Act, 1885 or the Punishment of Incest Act, 1908 or the Criminal Law (Amendment) Act, 1935 in respect of a child or young person.
- Any offence under the Dangerous Performances Acts, 1879 and 1897.
- 20 — An offence under section 17 of the Children Act, 1908.
- An offence under *section 94* of this Act.
- Any other offence involving bodily injury to a child or young person.

BILLE NA LEANAÍ (CÚRAM AGUS
COSAINTE), 1987

CHILDREN (CARE AND PROTECTION)
BILL, 1987

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú le haghaidh cúram agus
cosaint leanaí agus le haghaidh nithe gaolmhara.

BILL

(as initiated)

entitled

An Act to provide for the care and protection of
children and for related matters.

*An Teachta Breandán Ó Húilín a thólaic,
29 Meitheamh, 1987*

*Presented by Deputy Brendan Howlin,
29th June, 1987*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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