



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

EXPLANATORY MEMORANDUM

Purpose of Bill

1. The purpose of the *Children (Care and Protection) Bill, 1987*, is to promote the welfare of children, especially children who are at risk from a variety of causes. It aims to update and extend the law in relation to the care and protection of children, particularly those who are neglected, ill-treated, or otherwise at risk.

2. The Bill also aims to prevent abuses affecting children in the areas of "glue sniffing", alcoholic liquor, the sale and consumption of tobacco, and the distribution of what are called "video nasties".

Background

3. One of the paramount concerns of social policy is the promotion of the welfare of children, and their protection from ill-treatment or exploitation. Most of the existing law in this area is based on legislation dating from 1908, a time when there was only a limited awareness that children themselves had rights as individual members of society.

4. Among the changes in attitudes that have taken place since then is the recognition that, where a child must be cared for apart from his or her family, the most desirable approach must be to provide the care he or she requires in a family rather than an institutional setting.

5. There is a need to ensure that accountability for the care and protection of children at risk is firmly vested in responsible agencies, and to strengthen the law to facilitate effective intervention in cases of child abuse or neglect.

6. It is now also widely recognised that the welfare of children can be placed at risk because of commercial or other pressures. Legislation is needed to prevent abuse in these areas.

Present legislative position

7. With the publication of this Bill, a number of measures will have been placed before the Oireachtas to accomplish the objectives mentioned above. In addition to this one, they include Bills relating to the status of children (to remove the stigma of illegitimacy), and the adoption of children. One further major piece of legislation is also required, to update the law relating to juvenile justice, and in particular to establish proper Children's Courts.

8. Measures such as this have been developed having regard to the wealth of information and recommendations arising from a number of official bodies. The Kennedy Report of 1970, the Task Force on Child Care Services, reporting in 1975 and 1980, the Working Party

on Child Care Facilities for Working Parents (1983), and the Review Committee on Adoption Services (1984) — all these reports are finally coming to fruition with this package of legislation.

9. Every year about 4,000 children spend time in care, i.e. in foster care or residential homes. Most are received into care on a voluntary basis, and some following Court intervention. Many other children from disadvantaged families, while not taken into care, receive considerable support from the social services operated by the health boards and by voluntary bodies. In addition thousands of children, not at risk in any way, benefit from day care services. Thousands more would benefit from laws preventing commercial and other types of exploitation.

10. All of these children will benefit from the provisions of this Bill.

General Outline of Bill

11. The Bill provides for the following:

- (a) a statement of the duty of health boards to promote the welfare of children generally, and in particular those who are at risk. This statement also imposes the obligation on health boards to recognise the need for a family setting, as far as possible, and also to recognise that children have the right to have their wishes taken into account;
- (b) strengthening of the powers of health boards to regulate day care services, and residential homes;
- (c) new procedures to facilitate effective intervention in cases of children at risk;
- (d) the extension of the grounds on which the Courts may place children who are at risk, or have been neglected or ill-treated, in the care of, or under the supervision of, health boards;
- (e) procedures for promoting the welfare of children after they have been in the care of health boards;
- (f) new procedures for dealing with the custody of children;
- (g) new procedures for the treatment of children in courtroom sittings;
- (h) the setting out of a number of offences in relation to children, and the penalties for such offences;
- (i) the setting out of offences in relation to “glue sniffing”, “video nasties”, tobacco products, and intoxicating liquor, and the penalties for such offences;
- (j) the establishment of a National Children’s Council, to advise the Minister for Health on all aspects of the promotion of the welfare of children, and to foster co-operation among the agencies concerned with child welfare, increased public awareness, and more research.

PART I

PRELIMINARY AND GENERAL

12. This Part contains the short title and other standard provisions.

Section 2 defines a number of terms used in the Bill. *Section 3* defines a child as a person under the age of eighteen years, other than a person who is or has been married. *Section 4* sets out the power of the Minister for Health to make regulations. *Section 5* sets out the functions of the Minister under the Bill. *Section 6* sets out the procedure for prosecuting certain of the offences under the Bill. *Section 7* sets out the previous legislation repealed by the Bill. *Section 8* sets out procedures for issuing notices under the Bill.

PART II

PROMOTION OF WELFARE OF CHILDREN

13. This Part deals with the promotion of the Welfare of Children. *Section 9* sets out the duty of health boards in this regard. *Section 10* obliges health boards to have regard to the welfare and wishes of the child. *Section 11* gives health boards the power to equip and maintain any premises required for the provision of services under the Bill. *Section 12* gives health boards the power to contract out for the provision of services under the Bill. *Section 13* sets out the functions of chief executive officers of health boards under the Bill.

PART III

REGULATION OF DAY CARE SERVICES

14. This Part deals with the regulation of day care services, which are defined (along with other definitions) in *Section 14*. *Section 15* obliges the health board to maintain a Register of persons providing day care services. Nobody other than a registered operator will be allowed to carry on a day care service, and registration will only be granted if the Board is satisfied that applicants and their premises are suitable. Health Boards can attach a wide range of conditions to registration. *Section 16* gives health boards the power to remove operators from the register. *Section 17* gives a right of appeal to the Minister, who can grant or refuse the appeal at his discretion, or attach such conditions as he sees fit.

Section 18 obliges the Minister to make regulations about registration, and about the conduct of day care services. *Section 19* gives powers of entry and inspection of premises to the health boards. *Section 20* establishes a number of offences under this part, and the appropriate penalties. *Section 21* sets out a number of exemptions from this Part, including the natural father of an illegitimate child undertaking the nursing or care of his child; other relatives of such children; hospitals; pre-schools recognised by the Minister for Education. *Section 22* allows the Register kept by the health board to be inspected by the public. *Section 23* sets out the procedures for establishing the contents of the register as evidence in the case of a prosecution.

PART IV

REGULATION OF CHILDREN'S RESIDENTIAL HOMES

15. This part deals with the regulation of Children's Residential Homes. *Section 24* defines a number of the terms used in Part IV. *Section 25* defines Children's Residential Homes. *Section 26* obliges the health board to set up a register of such homes. Nobody will be allowed to operate a children's home unless the premises is registered.

A health board will only grant registration if it is satisfied that the premises are suitable, that any persons involved are suitable, and that any conditions laid down are complied with. *Section 27* gives health boards the power to remove an operator from the register. *Section 28* gives a right of appeal to the Minister, who may grant or refuse the appeal, or lay down any conditions he sees fit.

Section 29 obliges the manager of a residential home to give notice to the health board of any child he has received into the home. *Section 30* obliges the Minister to make regulations about the registration of children's homes, and the conduct of such homes. *Section 31* gives powers of entry and inspection to the health board. *Section 32* sets out a number of offences under *Part IV*, and the appropriate penalties. *Section 33* allows the register kept by the health board to be inspected by the public. *Section 34* sets out the procedures for establishing the contents of the register as evidence in the case of a prosecution.

PART V

CHILDREN IN NEED OF CARE AND PROTECTION

Prevention

16. This Part sets out procedures for more effective intervention in the case of children in need of care and protection. *Section 35* obliges the health board to promote the welfare of children in its area by identifying children at risk, and by providing such advice and facilities as are necessary to diminish the need to receive such children into care or to keep them in care. *Section 36* enables health boards themselves to establish day care services for children.

17. At present, a health board's power to receive children into voluntary care (that is, without recourse to the courts) is limited to children whose parents are dead or have abandoned them, or whose parents are destitute. *Section 37* extends the power of health boards to cover many situations in which parents may need to place their children in voluntary care, e.g. where a mother is deciding whether to place her child for adoption, or where parents are unable to look after their children due to illness, psychiatric problems, or other difficulties.

Place of Safety

18. *Sections 38 to 44* update provisions of the Children Act, 1908, which provide for the removal to safety of children who are in danger. *Section 38* defines a place of safety. *Section 39* provides that, in an emergency, a Garda would be empowered to remove, without warrant, a child in respect of whom any of the offences in the *Second Schedule* had been committed, or whose immediate safety required that he be removed. (At present the Gardaí can act without warrant only where an offence has been committed.) Any child so removed would be placed in the care of the health board. Under *section 40* a child who is taken to a place of safety may be detained there, but an application for a Court Order must be made no later than 72 hours after he or she has been detained.

19. *Sections 41 to 44* make a number of changes in the law in relation to place of safety orders. Such an order authorises the removal of a child from a situation of neglect or danger, and the child's placement in the care of a health board pending the bringing of care proceedings. The grounds upon which these orders may be issued are being extended, and there are new provisions to ensure that orders can be obtained quickly in cases of emergency.

Care Proceedings

20. *Section 45* updates and extends the grounds on which the courts may place a child in the care of, or under the supervision of, a health board. A child may be the subject of care proceedings where he or she has been ill-treated, neglected, or assaulted; is receiving inadequate care, likely to impair his or her health or development; is or has been sexually abused. In addition, a child may be the subject of these proceedings if any of the offences listed in the *Second Schedule* has been committed against him or her; or the child is a member of the same household as a person who has been convicted of such an offence against another child; or the child is a member of the same household as another child who is the victim of any of these circumstances.

Where a health board considers that any of the above conditions exist with respect to a child, it may apply to the courts for a care order (*Section 46*), or a supervision order (*Section 47*). *Section 48* deals with care orders which replace the Fit Person Order provided for in the 1908 Act. A care order would remove the child from his or her parents and place him or her in the care of the health board. Where a child is in the care of a health board, the board shall have the same authority in respect of the child as if it was his or her parent. (Under the present law, the courts can commit a child directly to residential care—this will now change.) The supervision order already referred to would permit the health board to supervise the child's care without removing the child from the family.

Section 49 provides for the making of interim care orders, where it appears that grounds may exist for the making of care orders or supervision orders, but further enquiries are necessary before making the appropriate order, or in other circumstances where an interim situation exists. *Section 50* sets out the conditions required for the making of such orders, including the general condition that the court must be satisfied that the making of an order is in the best interests of the child. *Section 51* provides for the circumstances under which orders can be varied or discharged, and *Section 52* deals with the situation arising from a change of address.

PART VI

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

Care of children

21. This Part deals with the promotion of the welfare of children who are, or who have been, in the care of health boards. *Section 53* sets out relevant definitions, and *Section 54* reiterates the obligation on the health board to promote the welfare of children in its area, and to have regard, before taking any action in respect of a child in its care, to the wishes of the child.

Section 55 allows a health board, in accordance with regulations to be made by the Minister, to arrange to have a child in its care placed in foster care. *Section 56* obliges a health board to refrain from placing a child in residential care unless it is satisfied that the necessary and appropriate care of the child can only be achieved in residential care.

Under *Section 57*, a health board must review the progress of each child in its care, and under its supervision, every three months. Parents or guardians have the right to be consulted and to make representations in the carrying out of such reviews.

A child who is in foster care or residential care may be removed by the health board, and returned to the board's own custody, under

Section 58, subject to the courts if necessary. *Section 59* obliges a health board to continue to assist a child who has been in the care of the board, if it is considered necessary, even after the child has passed the age of eighteen years (and until the child reaches the age of 21).

Section 60 sets out a number of transitional provisions connected with the coming into effect of the Bill.

Restriction on Removal from Care

22. Parents who have neglected or ill-treated a child sometimes agree to place him or her in care on a voluntary basis, rather than face court action. There is no procedure at present which enables a health board to refuse to return such a child to his or her parents on request. *Section 61* introduces a provision which enables a health board to delay the removal of a child in such a situation, pending the making of an application for a place of safety order. *Section 62* makes it an offence to remove a child who is the subject of a care order, and *Section 63* gives a health board power to retake a child who has been removed from care.

Maintenance

23. *Sections 64* and *65* provide that the parent of a child who is in voluntary care, or subject to a care order, may be obliged to contribute towards the cost of maintaining the child. *Section 66* contains a saver in relation to maintenance for members of the Defence Forces.

Miscellaneous Provisions

24. *Section 67* enables a health board to provide and equip any premises required for the provision of services under the Bill. *Section 68* empowers a health board to enter into contracts for the provision of services.

Section 69 provides for the establishment by a health board of Child Care Advisory Committees, and obliges health boards to consider any advice tendered by such a Committee.

Section 70 provides for the superannuation of any staff employed in connection with the services established under the Bill. *Section 71* makes it an offence to make a false statement for the purpose of obtaining any service under the Bill. *Section 72* sets out arrangements under which any charges provided for in the Bill are arrived at. *Section 73* enables a health board to require a person who may be subject to a charge to make a declaration of income. *Section 74* obliges a person in receipt of services under the Bill to notify the board of any relevant change in circumstances.

PART VII

CUSTODY

25. This Part provides for a new procedure which would enable persons who are bringing up a child apart from his or her parents (e.g. foster parents or relatives) to obtain a custody order which would grant them legal custody of the child. At present a child who is placed by his parents in the care of a relative or foster parent may be removed at any time. The purpose of the new procedure in this Part is to protect the interests of the child by affording legal recognition to the relationship with his or her foster family, and securing it against arbitrary, capricious, or precipitous interference.

However, a custody order differs fundamentally from an Adoption Order, as it would not sever a child's relationship with his or her natural family, and would not change the child's rights under the Succession Acts. It would be open to the parents, or the person

granted custody, to apply to have the order varied or discharged if circumstances changed.

26. *Section 75* establishes and defines the custody order. It also limits the scope of the order—e.g. a person granted a custody order in respect of a child does not acquire the right to change the child's religion, or to arrange for the child to emigrate.

Section 76 identifies the type of person qualified to apply for a custody order. *Section 77* makes it an offence to remove a child from a person who has the proper custody of the child. *Section 78* sets out the conditions which must be met before a court can grant a custody order.

Section 79 provides that a health board or a parent may make, or be required to make, a contribution towards the cost of maintenance of a child covered by a custody order. *Section 80* sets out the circumstances in which a custody order may be varied or discharged.

Section 81 enables any person who has been granted a custody order to apply to the courts for a direction on any question affecting the welfare of a child. *Section 82* provides that where two persons have joint custody, either of them can apply to the courts to resolve a disagreement.

PART VIII

COURT PROCEDURES, EVIDENCE, AND JURISDICTION

27. This Part aims to protect the interests of children who find themselves in a court-room setting (other than as offenders). It also sets out the jurisdiction of the various courts involved in the operation of the Bill.

28. *Section 83* provides that court proceedings under the Bill shall be conducted as informally as possible. *Section 84* facilitates maximum privacy. *Section 85* provides that a child may not be obliged to be present in Court if it is considered to be in his or her best interests not to be present, and if it is considered that the child's presence is not essential to the just hearing of the case. *Section 86* makes it possible for a court to be cleared while a child is giving evidence.

Section 87 provides that it may not be necessary for a child to give evidence on oath, although no conviction may be obtained on such testimony without corroborating evidence. Under *sections 88* and *89*, a justice may take a deposition in writing from a child, and the deposition can be entered in evidence. *Section 90* excludes children from a courtroom during the trial of an offence against decency or morality, unless required to give evidence.

Section 91 prohibits the identification in the media of any children involved in proceedings under the Bill. *Section 92* sets out technical requirements in relation to the ages of children covered by the Bill.

Section 93 covers jurisdiction. The section specifies that in the event of Family or Children's Courts being established, jurisdiction will be transferred to those Courts.

PART IX

OFFENCES IN RELATION TO CHILDREN

Neglect, Ill-Treatment, Abuse

29. *Section 94* updates provisions of the 1908 Act which provide

for offences relating to the neglect or abuse of, or cruelty to, children. On summary conviction, fines are being increased from £25 at present to £1,000 with prison sentences of up to 12 months. On conviction on indictment, the maximum fine is being increased from £100 to £3,000, and/or imprisonment for up to 3 years (2 years at present).

Solvent Abuse

30. *Section 95* seeks to prevent solvent abuse, or "glue sniffing", by controlling the availability of solvents to children. Provision is made for fines of up to £1,000 or 12 month's imprisonment for persons selling solvent-based products (including glue-sniffing kits) to children for "sniffing" purposes. The Minister will have the power to ban the sale of solvent-based products to children; and the Gardaí will be empowered to seize products which children are abusing.

Begging

31. *Section 96* makes it an offence for any person to allow a child in his custody to beg, and imposes a penalty of £500 and/or 6 months' imprisonment.

Section 97 gives the Gardaí powers of arrest without warrant in respect of a range of the offences specified in the Bill. *Section 98* obliges the Gardaí, when issuing a summons in respect of an offence against a child, to notify the health board. *Section 99* sets out procedures for charging persons with offences under the Bill, and *Section 100* defines some of the terms used in *Part IX*.

Miscellaneous Provisions

PART X

OFFENCES IN RELATION TO CERTAIN VIDEO RECORDINGS

32. *Part X* is aimed at prohibiting "video nasties". *Section 101* contains a number of definitions, and *section 102* defines a prohibited video work (a "video nasty").

Section 103 makes it an offence to import, distribute, supply, keep, offer for sale or supply, any "video nasty". *Section 104* includes bodies corporate in the definition of those who can commit such an offence. And *Section 105* makes it an offence to aid and abet.

Sections 106 and *107* deal with the issuing of search warrants and the powers of the Gardaí in relation to "video nasties", and penalties are set out in *Section 108*. These include fines up to £500 and/or 3 months' imprisonment.

Under *Section 109*, "video nasties" can be forfeited and destroyed. There is a saver in *Section 110* for video recordings required for legitimate purposes defined in the section.

PART XI

THE NATIONAL CHILDREN'S COUNCIL

33. The purpose of this Part is to establish a National Children's Council, to advise the Minister and further the development of child welfare in other ways.

Section 111 directs the Minister to establish the Council within three months of the coming into operation of the Bill.

Section 112 sets out the duties of the Council, including the following: advising the Minister and making recommendations; fostering co-operation between relevant groups and agencies; promoting

research; and creating public awareness. *Section 113* allows the Council to incur such expenses as the Minister shall decide. *Section 114* obliges the Minister to publish regulations covering the composition, membership, and terms of office of the Council within one month of the Bill coming into operation. The Minister may nominate no more than one-third of the members, the balance being nominated by relevant bodies. *Section 115* precludes the members of the Council from receiving remuneration.

PART XII

OFFENCES IN RELATION TO TOBACCO PRODUCTS

34. The purpose of this Part is to seek to ensure that the health and welfare of children is not put at risk by access to cigarettes.

Section 116 contains definitions. *Section 117* obliges the Minister to publish regulations prohibiting the sale or consumption of tobacco products in all schools, and in any other place he may decide where the health and welfare of children is placed at risk by access to such products. *Section 118* makes it an offence to sell any tobacco product to a person under the age of sixteen, or to allow a cigarette machine to be used for that purpose. The penalty for such an offence is a fine of £500. *Section 119* makes it an offence to sell cigarettes in any amount smaller than a packet of ten.

Sections 120 to 122 are technical sections, dealing with bodies corporate, the prosecution of offences, and expenses incurred by the Minister.

PART XIII

OFFENCES IN RELATION TO INTOXICATING LIQUOR

35. The purpose of this Part is to seek to protect the health and welfare of children by preventing the possibility of alcohol abuse.

Section 123 contains a number of definitions. *Section 124* forbids a licence-holder to sell alcohol to any person under the age of eighteen years, for consumption on or off the premises. The penalties include fines and endorsements of the licence. *Section 125* makes it illegal for anybody to provide alcohol to a person under eighteen.

Section 126 makes it illegal for anyone under the age of eighteen to buy or drink alcohol, or to pretend to be over eighteen for the purpose. The penalty for this offence is a fine of £50. (The consumption of alcohol in a private residence is exempted under *Sections 124 to 126*.)

With a few exceptions, no child under the age of sixteen will be allowed in the bar of a licensed premises after 8 p.m., under *Section 127*. At all other times children under the age of sixteen must be accompanied by a parent or guardian. Publicans must display a notice to this effect conspicuously on the premises, and both publicans, and parents or guardians, can be found guilty of an offence if an unaccompanied child is found on such premises in contravention of this section.

With a few exceptions, no person under the age of eighteen years can be allowed in a licensed premises during an extension. Both the person themselves, and the publican, can be guilty of an offence under *section 128* in these circumstances. *Section 129* prohibits anyone under the age of eighteen years from entering an off-licence. *Section 130*



AN BILLÉ CUSTAM AGUS MÁIL (FORÁLACHA
ILGHNÉITHEACHA) (UIMH. 2), 1987
CUSTOMS AND EXCISE (MISCELLANEOUS PROVISIONS)
(NO. 2) BILL, 1987

Mar a nionscaladh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Powers of search in relation to controlled drugs.
3. Search warrants (controlled drugs).
4. Evidential value of certain certificates.
5. Search warrants (books or documents).
6. Seizure or detention of conveyances.
7. Detention of certain goods.
8. Liability to forfeiture of certain goods.
9. Burden of proof in certain proceedings.
10. Provision relating to goods grown, etc., in certain areas of Continental Shelf.
11. Excise control of certain hydrocarbon oil.
12. Regulations regarding importation and exportation of goods by land.
13. Regulations in relation to pipelines.
14. Amendment of Illicit Distillation (Ireland) Act, 1831.
15. Amendment of Customs and Inland Revenue Act, 1881.
16. Amendment of Finance Act, 1929.
17. Amendment of Customs-free Airport Act, 1947.
18. Amendment of Finance Act, 1950.
19. Amendment of Finance Act, 1971.
20. Short title and construction.

sets out the powers of the Gardai in relation to this Part of the Bill. Section 131 limits the circumstances in which children may be employed in a licenced premises (no person under the age of sixteen may be employed in any circumstances). Section 132 places the onus of proof, where age is a factor, on the accused.

FIRST SCHEDULE

ENACTMENTS REPEALED

SECOND SCHEDULE

OFFENCES REFERRED TO

The *Second Schedule* includes manslaughter, infanticide, aiding and abetting a suicide, abduction of a girl under the age of sixteen, sodomy and bestiality, and a range of other criminal offences against children and young people.

*Deputy Brendan Hawlin,
June, 1987.*