



AN BILLE UM CHÚRAM LEANAÍ, 1988
CHILD CARE BILL, 1988

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As initiated

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ENACTMENTS REPEALED

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Adoption Act, 1952	1952, No. 25
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Children Act, 1908	8 Edw. 7, c. 67
Children Act, 1934	1934, No. 15
Children Act, 1941	1941, No. 12
Children (Amendment) Act, 1957	1957, No. 28
Children (Employment Abroad) Act, 1913	3 & 4 Geo. 5, c. 7
Courts Act, 1964	1964, No. 11
Courts Act, 1971	1971, No. 36
Defence Act, 1954	1954, No. 11
Guardianship of Infants Act, 1964	1964, No. 7
Health Act, 1953	1953, No. 26
Health Act, 1970	1970, No. 1
Interpretation Act, 1937	1937, No. 38
Local Government (Superannuation) Act, 1980	1980, No. 8
Misuse of Drugs Acts, 1977 and 1984	
Prevention of Cruelty to Children Act, 1904	4 Edw. 7, c. 15
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict, c. 93
School Attendance Act, 1926	1926, No. 17



AN BILLE UM CHÚRAM LEANAÍ, 1988
CHILD CARE BILL, 1988

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

- 10 1.—(1) This Act may be cited as the Child Care Act, 1988.

Short title and
commencement.

- (2) 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
15 and different provisions.

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

“child” means a person under the age of 18 years other than a person
who is or has been married;

“functions” includes powers and duties;

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

“the Minister” means the Minister for Health;

- “parents” includes a surviving parent and, in the case of a child in
respect of whom there is in force an adoption order made under the
25 Adoption Acts, 1952 to 1976, means the adopter or adopters or the
surviving adopter under that adoption order;

“place of safety” means any hospital, children’s residential centre or
similar premises, a Garda Síochána station or any other suitable place
where a child can be looked after in an emergency;

- 30 “prescribed” means prescribed by regulations made by the Minister.

(2) 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;
- (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; 5
- (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. 10

PART II

PROMOTION OF WELFARE OF CHILDREN

Functions of health boards.

3.—(1) It shall be a function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection. 15

(2) In the performance of its functions under this Act a health board shall—

- (a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection; 20
- (b) have regard to the rights and duties of parents, whether under the Constitution or otherwise, and to the principle that it is generally in the best interests of a child to be brought up in his own family; 25
- (c) provide child care and family support services, provide and maintain premises and make such other provision as it considers necessary or desirable for such purposes subject to any general directions given by the Minister under section 52; 30
- (d) in so far 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.

(3) The provisions of the Health Acts, 1947 to 1985, shall apply in relation to the functions of health boards and their officers under this Act and the powers of the Minister under those Acts shall have effect accordingly as if those Acts and this Act were one Act. 35

Duty of health board to care for certain children.

4.—(1) Where it appears to a health board that a child who resides or is found in its area requires care or protection that he is unlikely to receive unless he is taken into its care, it shall be the duty of the health board to take him into its care under this section. 40

(2) Nothing in this section shall authorise a health board to take a child into its care against the wishes of his parents or of any person acting *in loco parentis* or to maintain him in its care under this section if his parents or any such person wish or wishes to resume care of him. 45

(3) Where a health board has taken a child into its care under this section, it shall be the duty of the board—

5 (a) subject to the provisions of this section, to maintain the child in its care so long as his welfare appears to the board to require it and while he remains a child, and

(b) to have regard to the wishes of his parents or of any person acting *in loco parentis* in the provision of such care.

10 (4) Without prejudice to the provisions of *Parts IV* and *V*, where a health board takes a child into its care because it appears that he is lost or that his parents are missing or that he has been deserted or abandoned, the board shall endeavour to re-unite him with his parents or, if this is not possible, to arrange for him to be looked after by a suitable person, where this appears to the board to be in his best interests.

15 5.—(1) A health board shall establish a child care advisory committee to advise the health board on the performance of its functions under this Act and the health board shall consider and have regard to any advice so tendered to it. Child care advisory committees.

20 (2) A child care advisory committee shall be composed of persons with a special interest or expertise in matters affecting the welfare of children, including representatives of voluntary bodies providing child care and family support services.

25 (3) 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.

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

30 (5) The Minister may give general directions in relation to child care advisory committees, including directions on any matter relating to the membership, constitution or business of committees and each health board and child care advisory committee shall comply with any such directions.

35 (6) A health board may, with the consent of the Minister, and shall, if so directed by the Minister, establish more than one child care advisory committee for its area and where more than one committee is established the provisions of *subsection (1)* shall apply with the necessary modifications.

40 6.—(1) A health board shall, as soon as may be after the commencement of this Part and thereafter as occasion requires or as may be directed by the Minister, have a report prepared on the adequacy of the child care and family support services available in its area. Review of services.

45 (2) Without prejudice to the generality of *subsection (1)*, a health board in preparing a report under this section shall have regard to the needs of—

(a) children whose parents are dead or missing,

(b) children whose parents have deserted or abandoned them,

- (c) children who are at risk of being neglected or ill-treated, and
- (d) children whose parents are unable to care for them due to ill-health or for any other reason.

(3) A health board shall give notice of the preparation of a report under *subsection (1)* to— 5

- (a) any child care advisory committee in its area;
- (b) such bodies as the board sees fit whose purposes include the provision of child care and family support services;

and shall have regard to any views or information furnished by such committee or bodies in the preparation of the report. 10

(4) A health board shall submit a copy of any report prepared under this section to the Minister.

Provision of services by voluntary bodies and other persons.

7.—(1) A health board may, in accordance with such conditions, if any, as may be specified by the Minister, make arrangements with voluntary organisations or other persons for the provision by those organisations or other persons on behalf of the health board of child care and family support services which the board is empowered to provide under this Act. 15

(2) Nothing in this section shall empower a health board to delegate to a voluntary organisation or any other person the duty conferred on it under *section 4* to receive certain children into care or the power conferred on it under *section 14* to make application for a care order or a supervision order. 20

Assistance for voluntary bodies and other persons.

8.—(1) A health board may, with the consent of the Minister and on such terms or conditions as it thinks fit, assist a voluntary body or any other person who provides or proposes to provide a child care or family support service similar or ancillary to a service which the health board may provide under this Act— 25

- (a) by a periodic contribution to funds of the body or person;
- (b) by a grant; 30
- (c) by a contribution in kind (whether by way of materials or labour or any other service).

Research.

9.—(1) The Minister may conduct or assist other persons in conducting research into any matter connected with the care and protection of children or the provision of child care and family support services. 35

(2) A health board may conduct or assist other persons in conducting research into any matter connected with the functions assigned to the board under this Act.

PART III 40

PROTECTION OF CHILDREN IN EMERGENCIES

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

10.—(1) Where a member of the Garda Síochána has reasonable grounds for believing that—

- (a) a child has been or is being assaulted, ill-treated, neglected or sexually abused, and
- (b) there is an immediate and serious risk to the health or well-being of the child,

5 the member may, without warrant, take the child to a place of safety.

(2) Any child who is taken to a place of safety by a member of the Garda Síochána under this section may be kept there pending the determination of an application for an emergency care order provided that the application is made as soon as possible and in any event not
10 later than 24 hours after the child was first taken to a place of safety.

(3) A member of the Garda Síochána who takes a child to a place of safety in accordance with this section shall as soon as possible inform or cause to be informed a parent of the child or a person acting *in loco parentis* and the health board for the area in which the child
15 was found of such taking.

11.—(1) If a justice of the District Court is satisfied on the application of a health board or on information supplied on oath by any person that there is reasonable cause to believe that there is an immediate and serious risk to the health or well-being of a child which
20 necessitates his detention in a place of safety, the justice may make an order to be known and in this Act referred to as an "emergency care order".

(2) An emergency care order shall authorise the health board for the area in which the child is for the time being to cause the child to
25 be kept in a place of safety for a period of eight days or such shorter period as may be specified in the order.

(3) Where a justice makes an emergency care order, he may for the purpose of executing that order issue a warrant authorising a member of the Garda Síochána, accompanied by such other members
30 of the Garda Síochána or such other persons as may be necessary, to enter (if need be by force) any house or other place (including any building or part of a building, vehicle, vessel, aircraft or hovercraft) where the child is or where there are reasonable grounds for believing that he is and to deliver the child into the custody of the health board.

35 (4) The following provisions shall have effect in relation to the making of emergency care orders—

- (a) any such order shall, subject to *paragraph (b)*, be made by the justice for the district in which the child is for the time being;
- 40 (b) where a justice for the district in which the child is for the time being is not immediately available, an order may be made by any justice of the District Court;
- (c) an application for any such order may be made, heard and determined *ex parte*;
- 45 (d) an application for any such order may, if the justice is satisfied that the urgency of the matter so requires, be heard and an order made thereon elsewhere than at a public sitting of the District Court.

(5) It shall not be necessary in any information or order under this
50 section to name the child if such name is unknown.

(6) Where a justice makes an emergency care order, he may, if he is satisfied that the safety and well-being of the child so requires, direct that the address or location of the place of safety at which the child is to be kept shall not be revealed to the parents of the child or to any person acting *in loco parentis*. 5

Notification of detention in a place of safety.

12.—Where a health board detains a child in a place of safety pursuant to an emergency care order, the board shall as soon as possible inform or cause to be informed a parent of the child or a person acting *in loco parentis* provided that where the justice making the order has given a direction pursuant to *section 11 (6)*, the address or location of the place of safety shall not be revealed. 10

Provision of places of safety.

13.—A health board shall provide or make arrangements with the managers of children's residential centres or with other suitable persons for the provision of a suitable number of places of safety for the purposes of this Part. 15

PART IV

CARE PROCEEDINGS

Duty of health board to institute proceedings.

14.—Where it appears to a health board with respect to a child who resides or is found in its area that any of the conditions mentioned in *paragraph (a), (b) or (c) of section 15 (1)* exist and that he requires care or protection which he is unlikely to receive unless a court makes a care order or a supervision order in respect of him, it shall be the duty of the health board to make application for a care order or a supervision order, as it thinks fit. 20

Care order.

15.—(1) Where, on the application of a health board with respect to a child who resides or is found in its area, the court is satisfied that— 25

- (a) the child has been or is being assaulted, ill-treated, seriously neglected or sexually abused, or
- (b) the child's health, development or well-being has been or is being avoidably impaired or seriously neglected, or 30
- (c) there are reasonable grounds for believing that the child's health, development or well-being is likely to be avoidably impaired or seriously neglected,

and that the child requires care or protection which he is unlikely to receive unless the court makes an order under this section, the court may make an order (in this Act referred to as a "care order") in respect of the child. 35

(2) In the exercise of its jurisdiction under this section the court shall have regard to the rights and duties of parents, whether under the Constitution or otherwise, and the natural and imprescriptible rights of the child. 40

(3) A care order shall commit the child to the care of the health board for so long as he remains a child or for such shorter period as the court may determine and the board shall for the duration of the order have the like control over the child as if it were his parent. 45

(4) Without prejudice to *subsection (3)* a health board may, either

for a fixed period or until the health board otherwise determines, allow a child who has been committed to its care under a care order to be under the charge and control of a parent or other suitable person.

5 (5) On an application for a care order, the court, if it so thinks proper, may make a supervision order under *section 16* in respect of the child, either in lieu of a care order or pending its determination of the application.

10 (6) Between the making of an application for a care order and its determination, the court may give such directions as it sees fit as to the care and custody of the child who is the subject of the application pending such determination, and any such direction shall cease to have effect on the determination of the application.

15 (7) Where a court makes a care order, it may in addition make an order requiring the parents of the child to contribute to the health board such weekly or other periodic sum towards the cost of maintaining the child as the court, having regard to the parents' means, thinks fit.

20 (8) An order under *subsection (7)* may be varied or discharged on application to the court by the parents of the child or by the health board.

16.—(1) Where, on the application of a health board, with respect to a child who resides in its area, the court is satisfied that— Supervision order.

25 (a) the child has been or is being assaulted, ill-treated, seriously neglected or sexually abused, or

(b) the child's health, development or well-being has been or is being avoidably impaired or seriously neglected, or

30 (c) there are reasonable grounds for believing that the child's health, development or well-being is likely to be avoidably impaired or seriously neglected,

and it is desirable that the child be visited periodically by or on behalf of the health board, the court may make an order (in this Act referred to as a "supervision order") in respect of the child.

35 (2) A supervision order shall direct the health board to have the child visited on such periodic occasions, whether weekly or otherwise, as the court may determine, in order to satisfy the board as to the welfare of the child and to give to his parents or to a person acting *in loco parentis* any necessary advice as to the care of the child.

40 (3) Where a court makes a supervision order in respect of a child, it may, on the application of the health board, either at the time of the making of the order or at any time during the currency of the order, give such directions as it sees fit as to the care of the child, which may require the parents of the child or a person acting *in loco parentis* to cause him to attend for treatment or attention at a hospital, 45 clinic or other place specified by the court.

(4) Any person who fails to comply with the terms of a supervision order or any directions given by a court under *subsection (3)* or who prevents a person from visiting a child on behalf of the health board or who obstructs or impedes any such person visiting a child in 50 pursuance of such an order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250.

(5) Subject to *subsection (6)*, a supervision order shall remain in force for not more than 12 months and, in any event, shall cease to have effect when the person in respect of whom the order is made ceases to be a child.

(6) The court may, on the application of the health board, extend the term of a supervision order from time to time if it so thinks proper. 5

Access to children in care.

17.—Where a child is committed to the care of a health board under a care order, the court, of its own motion or on the application of any person, may make such order as it thinks proper as to access to the child by his parents or by any other person and may vary or discharge any such order. 10

Effect of appeal from orders.

18.—An appeal from an order under this Part shall, if the court that made the order or the court to which the appeal is brought so determines (but not otherwise), stay the operation of the order on such terms (if any) as may be imposed by the court making the determination. 15

Discharge or variation of orders etc.

19.—The court, of its own motion or on the application of any person, may, having regard to the provisions of *section 15*—

- (a) vary or discharge a care order or a supervision order,
- (b) vary or discharge any condition or direction affecting the child who is the subject of the order, or 20
- (c) in the case of a care order, discharge the care order and make a supervision order in respect of the child.

Jurisdiction.

20.—(1) The District Court and the Circuit Court on appeal from the District Court shall have jurisdiction to hear and determine proceedings under this Part. 25

(2) Proceedings under this Part may be brought, heard and determined before and by a justice of the District Court for the time being assigned to the District Court district where the child resides or is for the time being. 30

Hearing of proceedings.

21.—(1) Proceedings under this Part shall be heard otherwise than in public.

(2) Proceedings under this Part shall be as informal, and be heard and determined as expeditiously, as practicable, consistent with the administration of justice. 35

Power to proceed in absence of child.

22.—(1) It shall not be necessary in proceedings under this Part for the child to whom the proceedings relate to be brought before the court or to be present for all or any part of the hearing unless the court, either of its own motion 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. 40

(2) Where the child requests to be present during the hearing or a particular part of the hearing of the proceedings the court shall grant the request unless it appears to the court that, having regard to the

age of the child or the nature of the proceedings, it would not be in the child's interests to accede to the request.

23.—(1) No matter likely to lead members of the public to identify a child who is the subject of proceedings under this Part or under section 11, 32 or 33 shall be published in a written publication available to the public or be broadcast.

Prohibition on publication or broadcast of certain matters.

(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, by order dispense with the prohibitions of that subsection in relation to him to such extent as may be specified in the order.

(3) If any matter is published or broadcast in contravention of subsection (1), each of the following persons, namely —

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(b) in the case of any other publication, the person who publishes it, and

(c) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

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 both.

(4) Nothing in this section shall affect the law as to contempt of court.

(5) In this section —

“broadcast” means broadcast by wireless telegraphy of sound or visual images intended for general reception;

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

24.—In any application for a care order or a supervision order, the court shall make due inquiry as to the age of the person to whom the application relates, but an order or direction 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 that person shall, for the purposes of this Act, be deemed to be the true age of that person.

Presumption and determination of age.

PART V

CHILDREN IN THE CARE OF HEALTH BOARDS

25.—(1) A health board shall provide accommodation and maintenance for a child in its care in such one of the following ways as it thinks fit —

Accommodation and maintenance of children in care.

(a) by placing him in foster care, or

(b) by placing him in a children's residential centre, approved under Part VII, or

(c) by placing him in a residential centre operated by the board or by any other health board, or

(d) by making such other suitable arrangements as may be approved generally or for the purpose of a particular case by the Minister.

5

(2) The Minister may withdraw any approval given under *subsection (1) (d)*.

(3) Nothing in this section shall prevent a health board sending a child in its care to any hospital or to any institution which provides nursing or care for children suffering from physical or mental disability.

10

Provision of residential care by health boards.

26.—(1) A health board may, with the approval of the Minister, provide and maintain a residential centre or other premises for the provision of residential care for children in care.

(2) The Minister may make regulations with respect to the conduct of homes or other premises provided by health boards under this section and for securing the welfare of children maintained therein.

15

Regulations as to foster care.

27.—(1) The Minister may make regulations in relation to the placing of children in foster care by health boards under *section 25* and for securing generally the welfare of such children.

20

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may —

(a) fix the conditions under which children may be placed in foster care;

(b) prescribe the form of contract to be entered into by a health board with persons with whom children are placed in foster care;

25

(c) provide for the supervision and visiting by a health board of children in foster care;

(d) require a health board to review the case of each child in its care in foster care in such manner and at such intervals as may be prescribed.

30

Regulations as to residential care.

28.—(1) The Minister may make regulations in relation to the placing of children in residential care (whether in approved children's residential centres or in other institutions) by health boards under *section 25* and for securing generally the welfare of such children.

35

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may —

(a) fix the conditions under which children may be placed in residential care;

40

(b) prescribe the form of contract to be entered into by a health board with persons providing residential care;

(c) provide for the supervision and visiting by a health board of children in residential care;

- (d) require a health board to review the case of each child in its care who has been placed in residential care in such manner and at such intervals as may be prescribed.

29.—(1) Where a health board has placed a child in foster care, the board, at any time while the child remains in its care, may and shall, if so required by the Minister, remove the child from the custody of the person with whom he was so placed.

Removal from
foster care or
residential care.

(2) Where a health board has placed a child in a children's residential centre or has made other arrangements in respect of him in accordance with *section 25*, the board—

(a) may, at any time, remove the child from the centre or from the care of any person with whom he was placed under such an arrangement, and

(b) shall remove the child from the centre or from the care of any person with whom he was placed under such an arrangement if so required to do by the Minister or upon the centre ceasing to be approved under *Part VII*.

(3) Where a health board is empowered or required by or under this section to remove a child from the custody of a person, that person shall deliver up the child to the board on demand and, if that person wilfully refuses or neglects so to deliver up such custody, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250.

(4) Where a person refuses or neglects to comply with a request of a health board to deliver up a child in accordance with *subsection (3)*, the board may apply to the District Court for an order directing that person to deliver up the child to the custody of the board and the justice may, if he considers that it is in the best interests of the child so to do, make such an order.

(5) Where a child is removed from the custody of a person in pursuance of this section, any contract between the board and that person in respect of the child shall terminate immediately upon the removal.

(6) The provisions of this section are without prejudice to the power of a health board to apply for an emergency care order.

30.—Where a child becomes adopted under the Adoption Acts, 1952 to 1976, and the child was, immediately before the adoption, placed in foster care by a health board with the adopter or adopters, the health board may, with the consent of the Minister and subject to such conditions as the Minister or the health board sees fit, contribute to the maintenance of the child as if he continued to be in foster care.

Children who
become adopted.

31.—(1) (a) Where a child who is in the care of a health board attains the age of 18 years, the board may, in accordance with *subsection (2)*, assist him for so long as the board is satisfied as to his need for assistance and, subject to *paragraph (b)*, he has not attained the age of 21 years.

Aftercare.

- (b) Where a health board is assisting a person in accordance with *subsection (2) (b)*, and that person attains the age of 21 years, the board may continue to provide such assistance until the completion of the course of education in which he is engaged.

5

(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; 10
- (c) by placing him in a suitable trade, calling or business and paying such fee or sum as may be requisite for that purpose;
- (d) by arranging hostel or other forms of accommodation for him. 15

(3) Any arrangement made by a health board under section 55 (4) or (5) of the Health Act, 1953, in force immediately before the commencement of this section shall continue in force as if made under this section. 20

(4) In providing assistance under this section, a health board shall comply with any general directions given by the Minister.

Recovery of
children in care.

32.—(1) The provisions of this section shall apply to any child who is committed to the care of a health board under a care order and who— 25

- (a) is removed without lawful authority from the custody of the board or from the custody of any person who is taking care of him on behalf of the board, or
- (b) leaves that custody without the consent of the board, or
- (c) is prevented from returning or refuses or neglects to return to the custody of the board at the end of any period of leave or when so requested by the board. 30

(2) A justice of the District Court may, if satisfied by information on oath that there are reasonable grounds for believing that a person specified in the information can produce the child named in the application, make an order directing that person to deliver up the child to the custody of the board. 35

(3) A person having the child in his custody who fails to comply with an order under *subsection (2)* 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 both. 40

(4) A justice of the District Court may, if satisfied by information on oath that there are reasonable grounds for believing that the child named in the application is in any house or other place (including any building or part of a building, vehicle, vessel, aircraft or hovercraft) specified in the information, issue a warrant authorising a member of the Garda Síochána, accompanied by such other members of the Garda Síochána or such other persons as may be necessary to enter 45

(if need be by force) and to search the house or other place for the child; and if the child is found he shall be returned to the custody of the board.

- 5 33.—(1) Where a child is in the care of a health board, the District Court may, of its own motion or on the application of any person, give such directions and make such order on any question affecting the welfare of the child as it thinks proper and may vary or discharge any such direction or order. Application for directions.

- 10 (2) Proceedings under this section shall be heard otherwise than in public.

- 15 34.—(1) On the commencement of *Part IV* any child who is in the care of a health board pursuant to an order made under section 21, 24 or 58 (7) of the Children Act, 1908 shall be deemed to be the subject of a care order committing him to the care of that health board and the provisions of *Part IV* shall apply with the necessary modifications. Transitional provisions.

- 20 (2) Where, on the commencement of *Part IV*, a child is in the care of a health board pursuant to an order made 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 the child is deemed to be subject under *subsection (1)* shall forthwith be void, but without prejudice to anything that may have been lawfully done under it.

- 25 (3) Nothing in this Act shall affect an order made under section 21, 24 or 58 (7) of the Children Act, 1908 committing a child to the care of a relative or fit person other than a health board.

- 30 (4) On the commencement of *Part III*, any child who is being detained in a place of safety under any provision of the Children Act, 1908 shall be deemed to have been received into that place pursuant to an emergency care order on the date of such commencement.

- 35 (5) Where, on the commencement of *Part II*, a child is in the care of a health board otherwise than by virtue of a court order, he shall be deemed to have been taken into care under *section 4* on the date of such commencement.

- (6) Where, on the commencement of *Part V*, a child is boarded-out by a health board, he shall be deemed to have been placed by the health board in foster care under an arrangement made under *section 25*.

- 40 (7) Where, on the commencement of *Part V*, 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 he were in foster care.

- 45 (8) Where, on the commencement of *Part V*, a child is being 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 residential care by the health board under an arrangement made under *section 25*.

- 50 (9) Nothing in *section 50* shall affect the operation of an order committing a child to a certified industrial school to which that section applies.

PART VI

SUPERVISION OF PRE-SCHOOL SERVICES

Definitions for Part VI.

35.—In this Part—

“authorised person” means a person appointed under *section 40* to be an authorised person for the purposes of this Part; 5

“national school” has the meaning assigned to it in the School Attendance Act, 1926;

“pre-school child” means a child who has not attained the age of six years and who is not attending a national school or a school providing an educational programme similar to a national school; 10

“pre-school service” means any pre-school, play group, day nursery, creche or other similar service which caters for pre-school children;

“relevant health board” means the health board for the area in which a pre-school service is being or is proposed to be carried on.

Regulations as to pre-school services.

36.—(1) The Minister shall, after consultation with the Minister for Education, make regulations for the purpose of securing the health, safety and well-being of and promoting the development of children attending pre-school services. 15

(2) Without prejudice to the generality of *subsection (1)*, regulations may— 20

(a) prescribe requirements as to the heating, lighting, ventilation, cleanliness, repair and maintenance of premises in which pre-school services are carried on and as to the equipment and facilities to be provided;

(b) provide for the enforcement and execution of the regulations by health boards; 25

(c) prescribe the annual fees to be paid to health boards by persons carrying on pre-school services towards the cost of inspections under this Part.

(3) Regulations under this section may— 30

(a) make different provision for different classes of pre-school services;

(b) prescribe different requirements for different classes of pre-school services;

(c) provide for exemptions from any provision or provisions of the regulations for a specified class or classes of pre-school services. 35

Giving of notice to health board.

37.—(1) A person carrying on a pre-school service on the commencement of this Part shall give notice to the relevant health board in the prescribed manner. 40

(2) A person who, after the commencement of this Part, proposes to carry on a pre-school service shall give notice to the relevant health board in the prescribed manner.

38.—It shall be the duty of every person carrying on a pre-school service to take all reasonable measures to safeguard the health, safety and well-being of pre-school children attending the service and to comply with regulations made by the Minister under this Part.

Duty of person carrying on pre-school service.

5 39.—A health board shall cause to be visited from time to time each pre-school service in its area in order to ensure that the person carrying on the service is fulfilling the duty imposed on him under *section 38* and that the service is being carried on in accordance with regulations made by the Minister under this Part.

Supervision of pre-school service.

10 40.—(1) A health board may appoint such and so many of its officers as it thinks fit to be authorised persons for the purposes of this Part.

Authorised persons.

15 (2) A health board may, with the consent of the Minister for Education, appoint an officer of that Minister to be an authorised person for the purposes of this Part.

(3) Every authorised person shall be furnished with a warrant of his appointment as an authorised person, and, when exercising any power conferred on an authorised person under this Part, shall, if requested by any person affected, produce the warrant to that person.

20 41.—(1) Where the relevant health board has received notification in accordance with *section 37* in respect of a pre-school service, an authorised person shall be entitled at all reasonable times to enter any premises (including a private dwelling) in which the service is being carried on.

Inspection by authorised persons.

25 (2) A justice of the District Court may, if satisfied on information on oath that there are reasonable grounds for believing that a pre-school service is being carried on in any premises (including a private dwelling) in respect of which notice has not been received by the relevant health board in accordance with *section 37*, issue a warrant
30 authorising a person appointed by the health board in accordance with *section 40* to enter and inspect the premises.

35 (3) An authorised person who enters any premises in accordance with *subsection (1)* or *(2)* may make such examination into the condition of the premises and the care and attention which the pre-school children are receiving as may be necessary for the purposes of this Part.

42.—(1) A health board may, with the approval of the Minister, provide a pre-school service in its area and provide and maintain premises for that purpose.

Provision by health boards of pre-school services and information.

40 (2) The Minister may after consultation with the Minister for Education, make regulations for the purpose of securing the health, safety and well-being and promoting the development of children attending pre-school services provided by health boards.

45 (3) A health board shall make available to any interested person information on pre-school services in its area, whether provided by the board or otherwise.

43.—(1) A person who—

(a) refuses to allow an authorised person to enter any premises in accordance with *subsection (1) or (2) of section 41* or who obstructs or impedes an authorised person in the exercise of any of his powers under *subsection (3) of that section*; or 5

(b) contravenes the requirements of this Part or of any regulations made thereunder

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000. 10

(2) Where a person is convicted of an offence under this Part the court may, either in addition to or in substitution for the imposition of a fine, by order declare that the person shall be prohibited for such period as may be specified in the order from carrying on a pre-school service. 15

(3) A person who contravenes an order made under *subsection (2)* 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 both.

PART VII

20

CHILDREN'S RESIDENTIAL CENTRES

44.—(1) The manager of any centre which provides or proposes to provide residential care for children may apply to the Minister for approval to receive into the centre children in the care of health boards. 25

(2) Upon an application under *subsection (1)*, the Minister may, if he so thinks fit, appoint a suitable person to inspect the centre and to report to him on its fitness for the reception of children in the care of health boards.

(3) Any person inspecting a centre on behalf of the Minister under this section may make such examination into the state and management of the centre and the care of any children therein as he thinks fit. 30

(4) If the Minister is satisfied—

(a) on consideration of the report furnished to him in accordance with this section that the centre is fit for the reception of children, and 35

(b) that it is desirable to approve the centre having regard to the number of children in the care of health boards who require residential care, 40

he may approve the centre for the reception of children in the care of health boards.

(5) A centre which is approved under this section is referred to in this Act as a "children's residential centre".

45.—(1) The Minister may make regulations as to the conduct of 50

children's residential centres and for securing the safety and well-being of children in such centres.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may prescribe requirements as to—

- 5 (a) the design, maintenance, repair, ventilation, heating and lighting of centres;
- (b) the equipment and facilities to be provided in centres;
- (c) the ratio between the number of children and the number of staff and as to the qualifications of staff;
- 10 (d) the keeping of records and the giving of information to the Minister.

46.—(1) The following provisions shall have effect in relation to a children's residential centre: Powers of inspection.

- 15 (a) a person authorised by the Minister may at any time visit and inspect the centre and make such examination of the condition and management of the centre and the care of the children therein as he thinks proper;
- (b) any health board which has sent a child to such a centre may, at any time while the child resides in the centre, appoint a suitable person to visit the centre and that person may visit the centre and make such examination into the care of the child as he thinks proper;
- 20 (c) the manager of the centre shall permit and provide facilities for every such visitation, inspection and examination.

25 47.—(1) The Minister may at any time give notice of his intention to withdraw approval from a children's residential centre where— Power to withdraw approval.

- (a) he is dissatisfied with the condition or management of the centre or the care of any child therein,
- 30 (b) it appears to him that the centre is not complying with the provisions of this Part or with the provisions of regulations made under this Part, or
- (c) it appears to him that the continued approval of the centre is unnecessary having regard to the number of children in the care of health boards who require residential care.
- 35 (2) (a) Where the Minister proposes to withdraw approval, he shall give notice in writing to the manager of the centre specifying the date on which it is proposed to withdraw approval and (unless before that date the notice is withdrawn) on that date the withdrawal of approval shall take effect.
- 40 (b) The date specified in the notice shall be a date not less than 28 days after the date on which the notice is served on the manager of the centre.

45 (3) A notice under this section shall state the grounds on which it is proposed to withdraw approval.

Discontinuance of
centre.

48.—(1) Where the manager of a children's residential centre intends to cease to carry on the centre or to cease to receive children sent to the centre by health boards, he shall give three months' notice in writing to the Minister of his intention to do so and at the expiration of three months from the date of the notice (unless before that time the notice is withdrawn) the centre shall cease to be approved under this Part. 5

(2) The Minister may if he so thinks fit accept a shorter period of notice for the purposes of *subsection (1)* and the provisions of that subsection shall apply with the necessary modifications. 10

Superannuation of
certain staff.

49.—(1) An employee of a children's residential centre to which this section applies shall, for the purposes of the Local Government (Superannuation) Act, 1980, be deemed to be employed by the health board for the area in which the centre is situated 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. 15

(2) In this section, "employee" means a person employed by a children's residential centre 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 centre is situated, with the consent of the Minister. 20

(3) This section applies to a children's residential centre which— 25

(a) is not directly operated or administered by a health board,

(b) is funded by a health board,

(c) is approved as a children's residential centre in accordance with this Part, and

(d) is specified by the Minister for the purpose of this section. 30

Transitional
provision.

50.—(1) On commencement of this Part, every institution which, immediately before such commencement, 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, shall cease to be so certified and shall be deemed to be approved by the Minister under this Part as a children's residential centre. 35

(2) On the commencement of this Part, every school which, immediately before such commencement, was a school approved (or deemed to be approved) for the purposes of section 55 of the Health Act, 1953 shall be deemed to be approved by the Minister under this Part as a children's residential centre. 40

PART VIII

ADMINISTRATION

Regulations.

51.—(1) The Minister may make regulations—

(a) for any purpose in relation to which regulations are provided for by any of the provisions of this Act, and 45

(b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.

(2) Every order and regulation made under any provision of an enactment repealed by this Act and in force immediately before such
5 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.

(3) Every regulation made under this Act shall be laid before each
10 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.

15 52.—(1) The Minister may give general directions to a health board in relation to the performance of the functions assigned to it by or under this Act and the health board shall comply with any such direction. Powers of the Minister.

(2) The Minister may cause to be inspected any service provided
20 or premises maintained by a health board under this Act.

(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).

(4) An authorised person conducting an inspection under this
25 section may—

(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 children therein as he thinks fit, and

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

(5) The Minister may direct a health board to supply him with such reports and statistics in relation to the performance of the functions assigned to it by or under this Act as he may require and a health
35 board shall comply with any such direction.

53.—(1) In making available a service under *section 3* or *4*, 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 it considers appropriate. Charges for certain services.

40 (2) In making a determination in accordance with *subsection (1)* a health board shall comply with any general directions given by the Minister with the consent of the Minister for Finance.

(3) For the purposes of determining what charge, if any, should be made on any person for a service, a health board may require that
45 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.

(4) Where a person is recorded by a health board as entitled,

because of specified circumstances, to a service without charge, he shall notify the board of any relevant change in those circumstances.

(5) Any charge which may be made by a health board under this Act 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, where the person has died, from his legal personal representative. 5

Prosecution of offences.

54.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the health board for the area in which the offence is alleged to have been committed or by any other person. 10

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

(3) Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body or persons and is proved to have been committed with the consent or approval of, or to have been attributable to any neglect on the part of, any person who, when the offence was committed, was 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. 15 20

Functions of chief executive officer.

55.—(1) The following functions relating to a health board shall be functions of the chief executive officer of the board: 25

- (a) any function with respect to a decision as to whether or not to provide a service or make facilities available to any particular person;
- (b) any function with respect to a decision as to the making or recovery of a charge or the amount of any charge for a service provided in a particular case under *section 3 or 4*; 30
- (c) any function in relation to whether or not to receive a child into care under *section 4*;
- (d) any function in relation to the payment of a grant or allowance to a voluntary body or any other person; 35
- (e) any function in relation to an application for the making of an emergency care order or the making, variation or discharge of a care order or a supervision order or any related proceedings;
- (f) any function in relation to a particular child in the care of the board or in relation to the provision of aftercare; 40
- (g) any function in relation to the supervision of pre-school services;
- (h) such other functions as may be prescribed.

(2) Any question as to whether or not a particular function is a function of the chief executive officer shall be determined by the Minister. 45

(3) In this section "chief executive officer" includes a person acting

as deputy chief executive officer in accordance with section 13 of the Health Act, 1970.

- 56.—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. Expenses.

PART IX

MISCELLANEOUS AND SUPPLEMENTARY

- 57.—(1) A person shall not be liable to suffer death for an offence committed by him when he was under the age of eighteen years. Abolition of death sentence for crimes committed by persons under eighteen years of age.
- 10 (2) (a) Where a person under the age of seventeen years is convicted of an offence, the punishment for which but for subsection (1) would be death, the court shall sentence that person to be detained and, if so sentenced, he shall be liable to be detained in such place and under such conditions as the Minister for Justice may direct and while so detained shall be deemed to be in legal custody.
- 15 (b) A person of the age of seventeen years or over who but for subsection (1) would be liable to suffer death shall be liable to imprisonment for life.
- 20 58.—(1) It shall be an offence for a person to sell, offer or make available a substance other than a controlled drug to a person under the age of eighteen years or to a person acting on behalf of that person if he knows or has reasonable cause to believe that the substance is, or its fumes are, likely to be inhaled by the person under the age of 25 eighteen years for the purpose of causing intoxication. Sale etc. of solvents.
- (2) In proceedings against any person for an offence under subsection (1), it shall be a defence for him to prove that at the time he sold, offered or made available the substance he was under the age of eighteen years and was acting otherwise than in the course of or 30 furtherance of a business.
- (3) In proceedings against any person for an offence under subsection (1) it shall be a defence for him to prove that he took reasonable steps to assure himself that the person to whom the substance was sold, offered or made available, or any person on whose behalf that 35 person was acting, was not under the age of eighteen years.
- (4) A person who is guilty of an offence under subsection (1) 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 (5) 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.
- 45 (6) A court shall not order anything to be forfeited under this section unless an opportunity is given to any person appearing to the court to be the owner of or otherwise interested in it to show cause why the order should not be made.
- (7) In this section "controlled drug" has the meaning assigned to it by the Misuse of Drugs Acts, 1977 and 1984.

Amendment of
section 17 of the
School Attendance
Act, 1926.

59.—Section 17 of the School Attendance Act, 1926 (which deals with the failure of a parent to comply with the Act) is hereby amended by the substitution for paragraph (b) of subsection (4) of the following:—

“(b) make a care order committing the child to the care of the health board for the area in which he is resident and in such case the provisions of *Part IV* of the *Child Care Act, 1988* shall apply as if the order were an order made thereunder”.

Amendment of
section 15 of the
Guardianship of
Infants Act, 1964.

60.—Section 15 of the Guardianship of Infants Act, 1964 (which gives power to the court to order repayment of costs of bringing up an infant) is hereby amended by the insertion in paragraph (b) after the words “assistance has been provided for the infant by a health authority under section 55 of the Health Act, 1953,” of the words “or that at any time the infant has been maintained in the care of a health board under *section 4* of the *Child Care Act, 1988*”.

Amendment of
section 16 of the
Guardianship of
Infants Act, 1964.

61.—Section 16 of the Guardianship of Infants Act, 1964 (which requires the court in making an order for the delivery of an infant to its parent to have regard to the conduct of the parent) is hereby amended by the insertion in paragraph (b) after the words “or to be provided with assistance by a health authority under section 55 of the Health Act, 1953” of the words “or to be maintained in the care of a health board under *section 4* of the *Child Care Act, 1988*”.

Maintenance —
saver in relation to
members of
Defence Forces.

62.—(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 sections 75, 82 or 99 of the Children Act, 1908) shall apply in like manner to an order made under *section 15*.

(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 an order made under *section 15*.

Rules of court.

63.—(1) For the purpose of ensuring the expeditious hearing of applications under any provision of this Act, rules of court may make provision for the service of documents otherwise than under section 7 of the Courts Act, 1964 (as amended by section 22 of the Courts Act, 1971) in circumstances to which the said section 7 relates.

(2) This section is without prejudice to section 17 of the Interpretation Act, 1937 which provides for rules of court.

Repeals.

64.—The enactments specified in the *Schedule* are hereby repealed to the extent specified in the third column.

SCHEDULE

ENACTMENTS REPEALED

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 1, Sections 13 and 15, Sections 20 to 26, Sections 34, 36 and 38 (1), Section 58 (1), (5), (6), (7) and (8), Section 59, Section 74 (11), Sections 103, 118, 119, 121, 122 and 126.
3 & 4 Geo. 5, c.7.	Children (Employment Abroad) Act, 1913.	The whole Act.
No. 15 of 1934.	Children Act, 1934.	The whole Act.
No. 12 of 1941.	Children Act, 1941.	Section 10 (1).
No. 26 of 1953.	Health Act, 1953.	Sections 55, 56, 57 and 65 (2).
No. 28 of 1957.	Children (Amendment) Act, 1957.	Sections 2, 3 and 10.
No. 2 of 1964.	Adoption Act, 1964.	Section 10.

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*An tAire Sláinte a thólaic,
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*Presented by the Minister for Health,
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