



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

*As amended in Committee*

**EXPLANATORY MEMORANDUM**

**Introduction**

The purpose of the Bill is to up-date the law in relation to the care of children, particularly children who have been assaulted, ill-treated, seriously neglected or sexually abused or who are at risk.

The main provisions of the Bill are as follows:—

- (i) the placing of a statutory duty on health boards to promote the welfare of children who are not receiving adequate care and protection;
- (ii) strengthening of the powers of health boards to provide child care and family support services;
- (iii) improved procedures to facilitate immediate intervention by health boards and the Gardai where children are in serious danger;
- (iv) revised provisions to enable the courts to place children who have been assaulted, ill treated, seriously neglected or sexually abused or who are at risk in the care of or under the supervision of health boards;
- (v) introduction of arrangements for the inspection and supervision of pre-school services;
- (vi) revised provisions in relation to the inspection and approval of residential centres for children.

**PART I**

**Preliminary**

Section 1 provides that the Bill will be known as the Child Care Act and empowers the Minister for Health to bring its provisions into effect by order. Section 2 defines terms used in the Bill. The term "child" is defined as any person up to 18 years (other than a married person). The main effect of this is to raise from 16 to 18 years the age up to which health boards are responsible for children and the age up to which children may be placed in care.



## PART II

### *Promotion of Welfare of Children*

This Part contains a number of provisions aimed at promoting the welfare of children.

*Section 3* gives health boards responsibility to promote the welfare of children who are not receiving adequate care and protection and power to provide child care and family support services. In the performance of this function, health boards will be required, having regard to the rights and duties of parents, to regard the welfare of the children as the first and paramount consideration. It also requires health boards to have regard to the principle that it is generally in the best interests of a child to be brought up in his own family. Thus the emphasis is on providing support and assistance so that children can remain at home; only in exceptional cases are children to be taken into care.

*Section 4* enables health boards to receive into care, without reference to the courts, orphans and abandoned children and, with the consent of the parents, children whose parents are unable to care for them due, for example, to serious illness, sudden bereavement, marital breakdown or other family crisis.

*Section 5* requires health boards to make available accommodation for children who are homeless, who have no accommodation that they can reasonably occupy and who are unable to arrange accommodation for themselves.

*Section 6* requires each health board to provide or ensure the provision of an adoption service in its area. For this purpose a health board may enter into an arrangement with a registered adoption society.

*Section 7* provides for the establishment of Child Care Advisory Committees in each health board area to advise the board on the performance of its functions under the Bill. The Committees would include representatives of voluntary bodies involved in child care. *Section 8* requires health boards to carry out periodic reviews of the adequacy of the child care services in their areas. *Section 9* enables health boards to make arrangements with voluntary bodies to provide child care and family support services on their behalf. *Section 10* empowers health boards to grant-aid voluntary bodies providing child care and family support services. *Section 11* enables the Minister for Health and health boards to carry out research in the area of child care.

## PART III

### *Protection of Children in Emergencies*

This Part enables the Gardaí or health board staff to intervene quickly where there is an immediate and serious threat to the safety and well being of a child.

*Section 12* enables a Garda to remove to safety, without warrant, a child who has been assaulted, ill-treated, neglected or sexually abused and who is in immediate danger and to deliver the child up to the custody of the health board. *Section 13* empowers a District Justice to make an emergency care order authorising the placement of a child in the care of a health board for up to 8 days where there is an



immediate and serious risk to his safety. *Section 14* requires that the parents be informed when a child is taken into care under an emergency care order. *Section 15* requires each health board to ensure that there is adequate accommodation available for the purposes of this Part.

#### PART IV

##### Care Proceedings

This Part enables the courts to place children who have been assaulted, ill-treated, seriously neglected or sexually abused or who are at risk in the care of or under the supervision of health boards.

*Section 16* imposes a statutory duty on a health board to apply for a care order or a supervision order, as appropriate, whenever it appears to the board that the conditions required for the making of an order exist with respect to a child.

*Section 17* enables a justice to make an interim care order pending the outcome of an application for a care order.

*Section 18* provides for the making of a care order. A care order would, in effect, suspend the parents' right to custody of the child and place him in the custody of the health board. In order to obtain a care order, it would be necessary for a health board to satisfy the court that—

(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

(c) there are reasonable grounds for believing that his 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 he is placed in the care of the health board.

While a care order is in force, the health board shall have like control over the child as if it were his parent and shall do what is reasonable to promote the child's welfare.

A care order would remain in force until the child attained the age of 18 unless it was successfully challenged by the parents or discharged by the court because of changed circumstances.

*Section 19* enables the court to make a supervision order. This would authorise a health board to have a child visited in his home to ensure that he was being cared for properly. The court would also have power to direct the parents to bring the child to a day care centre, child guidance clinic, hospital etc. A supervision order shall remain in force for up to 12 months and may be renewed.

*Section 20* requires a health board to allow reasonable access between a child in care and his parents or other persons who have a bona fide interest in him. There is provision for a person to appeal to court against the access arrangements offered by a health board and also for a health board to apply to court for an order authorising it to refuse access to a named person. *Section 21* provides that an appeal from an order under this Part shall not stay the operation of the order unless the court so directs. *Section 22* enables the court to vary or discharge orders.



## PART II

### PART V

#### *Jurisdiction and Procedure*

*Section 23* requires the Court, having regard to the rights and duties of parents, to regard the welfare of the child as the first and paramount consideration in any proceeding in relation to the care and protection of a child. *Section 24* confers jurisdiction to hear and determine care proceedings on the District Court and the Circuit Court on appeal. *Section 25* provides that care proceedings will be heard in private and will be as informal as possible. *Section 26* provides that a child involved in care proceedings need not be brought before the court for all or any part of the hearing unless the court so directs. *Section 27* prohibits the publication or broadcast of any matter that would serve to identify a child who is the subject of care proceedings. *Section 28* deals with the presumption and determination of age by the court. *Section 29* enables rules of court to be made to facilitate the expeditious hearing of proceedings under the Bill.

### PART VI

#### *Children in the care of Health Boards*

This Part sets out the arrangements which may be made by health boards in looking after children in their care.

*Section 30* empowers a health board to place a child in foster care, in a children's residential centre, or other institution (e.g. a special school) or where the child may be eligible for adoption, to place him with a view to his adoption, or to make other suitable arrangements for his care, which may include placing him with a relative. *Section 31* empowers health boards to provide residential facilities for children. *Section 32* gives the Minister power to make regulations governing the placement of children in foster care and *Section 33* confers a similar power in relation to residential care. *Section 34* specifies the procedures for the removal of a child from foster care or residential care. *Section 35* deals with children in the care of health boards who become adopted. *Section 36* enables a health board to provide "aftercare" e.g. support and assistance for persons who were formerly in care. *Section 37* enables a health board or the Gardaí to recover children who have been unlawfully removed from care or who have absconded. *Section 38* enables the court to give directions on any matter affecting the welfare of a child in care. *Section 39* is a transitional provision in relation to children who are already in care when this Part comes into operation.

### PART VII

#### *Supervision of Pre-School Services*

This Part provides for the supervision and inspection of pre-schools, playgroups, creches, nurseries and similar services for pre-school children.

*Section 40* defines terms used in this Part. *Section 41* enables the Minister for Health, after consultation with the Ministers for Education and for the Environment, to make regulations for securing the safety and promoting the development of children attending pre-school services. *Section 42* requires persons carrying on pre-school services to notify their local health board. *Section 43* places a statutory duty on persons carrying on pre-school services to take all reasonable



measures to safeguard the children concerned. *Section 44* requires health boards to arrange for the inspection of pre-school services. *Section 45* provides for the appointment of authorised persons (which may include officers of the Minister for Education) to carry out inspections. *Section 46* outlines the powers of inspection of authorised persons. *Section 47* empowers health boards to provide pre-school services and to make available information on pre-school services. *Section 48* deals with offences under this Part.

## PART VIII

### *Children's Residential Centres*

This Part updates the arrangements for the inspection and supervision of residential homes (formerly industrial schools) for which the Minister for Health has responsibility and homes approved under the Health Act, 1953.

*Section 49* enables the Minister to approve a centre as suitable for the reception of children in the care of health boards. *Section 50* enables the Minister to make regulations governing the conduct and operation of centres. *Section 51* requires the Minister to have centres inspected from time to time. *Section 52* enables the Minister to withdraw approval should the need arise. *Section 53* deals with the situation where a centre is being phased out of operation. *Section 54* provides for the introduction of a superannuation scheme for the staff of certain residential centres. *Section 55* is a transitional provision in relation to the approval of centres which are already in operation when this Part comes into force.

## PART IX

### *Administration*

This Part contains various technical measures in relation to the administration of the Bill.

*Section 56* gives the Minister power to make regulations. *Section 57* requires the Minister to supervise health boards in the performance of their functions. *Section 58* enables health boards to charge for certain services. *Section 59* provides for the prosecution of offences. *Section 60* assigns certain functions under the Bill to chief executive officers of health boards. It is intended that most of these functions will be delegated by chief executive officers to other officers of health boards. *Section 61* is the usual expenses provision.

## PART X

### *Miscellaneous and Supplementary*

*Section 62* is a technical provision which is required to enable the State to ratify the United Nations Covenant on Civil and Political Rights. *Section 63* makes it an offence to sell solvent-based products to children for "glue-sniffing". Provision is made for fines of up to £1,000 or 12 months imprisonment. *Sections 64, 65 and 66* provide for some minor amendments to the School Attendance Act, 1926 and the Guardianship of Infants Act, 1964. *Section 67* provides for deductions from pay of members of the Defence Forces who may have children in care. *Section 68* provides for repeals. The opportunity



*An Roinn Sláinte,  
Iúil, 1990.*

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# THE HISTORY OF THE CITY OF NEW YORK

FROM THE FIRST SETTLEMENT  
TO THE PRESENT TIME

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is being taken to repeal a large number of outdated provisions in relation to children.

An Royal Statute,  
1912, 1910.