



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

Mar a ritheadh ag Dáil Éireann

As passed by Dáil Éireann

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, 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, 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 registration and inspection 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 child 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 voluntary care, 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 annual 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 Gardai or health board staff to intervene quickly where there is an immediate and serious threat to the safety and welfare of a child.

Section 12 enables a Garda to remove to safety, without warrant, a child who is in immediate danger where it would not be sufficient to await the making of an application for an emergency care order by a health board under section 13. Any child so removed must be delivered up to the health board, which must apply for an emergency care order. The child may be retained in the custody of the board for

a maximum of three days pending the hearing of that application. *Section 13* empowers a District Justice to make an emergency care order requiring that a child be placed or maintained 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* provides for parents to be informed when a child is taken into care under this Part. *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, 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 where there is reasonable cause to believe that grounds exist for the making of a care order and that it is necessary for the protection of the child that he be placed or remain in care pending the determination 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, neglected or sexually abused, or
- (b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or
- (c) there are reasonable grounds for believing that his health, development or welfare is likely to be avoidably impaired or 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 (or for such shorter period as the court may determine) 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 where it is satisfied that there are reasonable grounds for believing that the grounds set out at paragraph (a), (b) or (c) of section 18 (1) exist with respect to the child. Thus, the standard of proof required to obtain a supervision order will be less than that required for a care 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.

Section 20 creates a link between the Bill and the Guardianship of Infants Act, 1964, the Judicial Separation and Family Law Reform Act, 1989 and any other proceedings for the delivery or return of a child.

In any such proceedings, the court will be able to refuse to grant custody to either or both of the parents and instead place the child in the care of a health board or, alternatively, to grant custody to one or both parents subject to the child being supervised by a health board under a supervision order.

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. *Section 23* provides that a court, which finds or declares that a care order is invalid, may refuse to order the return of the child to his parents if this would not be in his best interests; instead it may either make a new care order or remit the matter to the relevant District Court so that it can consider the need to make a new care order.

PART V

Jurisdiction and Procedure

This Part deals with the jurisdiction, powers and procedures of courts in relation to child care proceedings.

Section 24 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 25 empowers a court to make a child a party to all or part of care proceedings and to appoint a solicitor to represent the child in any case where the court is satisfied that this is necessary in the interests of the child. Where a solicitor is appointed by order of the court, the costs and expenses, including solicitors fees, incurred will be paid by the health board involved in the proceedings unless the court orders otherwise.

Section 26 enables the court, of its own motion or on the application of any party, to procure a report from any person on any question affecting the welfare of the child. A copy of any such report is to be made available to the counsel or solicitor of each of the parties or, if any of the parties is not represented, it is to be made available to that party. The reports may be received in evidence at the proceedings and the person making the report may be called as a witness.

Section 27 confers jurisdiction to hear and determine care proceedings on the District Court and the Circuit Court on appeal. *Section 28* provides that care proceedings will be heard in private and will be as informal as possible. *Section 29* 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 30* prohibits the publication or broadcast of any matter that would serve to identify a child who is the subject of care proceedings. *Section 31* deals with the presumption and determination of age by the court. *Section 32* enables rules of court to be made to facilitate proceedings under the Bill. *Section 33* makes it an offence for a person to fail or refuse to deliver up a child to a health board when an emergency care order,

an interim care order or a care order is made. *Section 34* enables a justice making an interim care order or a care order to issue a warrant to the Gardai to search for the child and deliver him up to the health board.

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 35 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), 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 36 requires a health board to facilitate 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 37 empowers health boards to provide residential facilities for children. *Section 38* requires the Minister to make regulations governing the placement of children in foster care and *Section 39* makes similar provision in relation to residential care. *Section 40* requires the Minister to make regulations for health boards to carry out reviews of children in care. *Section 41* enables the Minister to make regulations in relation to the removal of a child from foster care or residential care. *Section 42* deals with children in the care of health boards who become adopted. *Section 43* enables a health board to provide "aftercare" e.g. support and assistance for persons who were formerly in care. *Section 44* enables a health board or the Gardai to recover children who have been unlawfully removed from care or who have absconded. *Section 45* enables the court to give directions on any matter affecting the welfare of a child in care. *Section 46* 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 47 defines terms used in this Part. *Section 48* requires 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 49* requires persons carrying on pre-school services to notify their local health board. *Section 50* places a statutory duty on persons carrying on pre-school services to take all reasonable measures to safeguard the children concerned. *Section 51* requires health boards to arrange for the inspection of pre-school services. *Section 52* provides for the appointment of authorised persons (which may include officers of the Minister for Education) to carry out inspections. *Section 53* outlines the powers of inspection of authorised persons. *Section 54* empowers health boards to provide pre-school

services and to make available information on pre-school services. *Section 55* deals with offences under this Part.

PART VIII

Children's Residential Centres

This Part provides for the introduction of arrangements for the registration and inspection of residential homes for children.

Section 56 provides for definitions for the purposes of this Part. *Section 57* provides that it will not be lawful for any person or body to operate a home for children unless it is registered with the local health board. *Section 58* provides for a system of registration to be administered by health boards. *Section 59* provides for appeals against decisions of health boards in relation to registration. *Section 60* requires the Minister to make regulations for the purpose of ensuring proper standards in children's residential centres. *Section 61* provides that a person guilty of an offence under this Part shall be liable to a fine of up to £1,000 or 12 months imprisonment or both. *Section 62* deals with the situation where a centre is being phased out of operation. *Section 63* provides for the introduction of a superannuation scheme for the staff of certain residential centres. *Section 64* is a transitional provision in relation to 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 65 gives the Minister power to make regulations. *Section 66* requires the Minister to supervise health boards in the performance of their functions. *Section 67* enables health boards to charge for certain services. *Section 68* provides for the prosecution of offences. *Section 69* 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 70* is the usual expenses provision.

PART X

Miscellaneous and Supplementary

Section 71 makes it an offence to sell solvent-based products to children for "glue-sniffing". It also gives a Garda power to seize any substance in the possession of a child in a public place which the Garda has reasonable cause to believe is being misused by that child in a manner likely to cause him to be intoxicated. Provision is made for fines of up to £1,000 or 12 months imprisonment. *Sections 72, 73* and *74* provide for some minor amendments to the School Attendance Act, 1926 and the Guardianship of Infants Act, 1964. *Section 75* provides for deductions from pay of members of the Defence Forces who may have children in care. *Section 76* provides for repeals. The opportunity is being taken to repeal a large number of outdated provisions in relation to children.

*An Roinn Sláinte,
Eanáir, 1991.*

Wt. P24956/B/1. 1,000. 1/91. Cahill. (A23554). G.16.

AN BILL UM CHURAM LEANAL, 1988 CHILD CARE BILL, 1988

*Mar a riteadh ag Dáil Éireann
As passed by Dáil Éireann*

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, sexually abused or who are at risk.

The provisions of the Bill are as follows:

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

PART I

Preliminary

The Bill will be known as the Child Care Bill. It is the intention of the Minister for Health to bring its provisions into effect as soon as possible. The Bill contains provisions in relation to the following:—

- (a) the term "child" to mean a person up to 15 years (other than a married person);
- (b) the term "parent" to mean a person who is responsible for children and the age up to 18 years;
- (c) the term "health board" to mean a body established by or under an Act of the Oireachtas;
- (d) the term "Gardaí" to mean the members of the Garda Síochána;
- (e) the term "court" to mean the District Court or the Circuit Court;
- (f) the term "residential centre" to mean a place where children are accommodated for more than 24 hours;
- (g) the term "pre-school service" to mean a service provided for children under the age of 6 years.

services and to make available information on pre-school services. Section 55 deals with offences under this Part.

PART VIII

Children's Residential Centres

This Part provides for the introduction of arrangements for the registration and inspection of residential homes for children.

Section 56 provides for definitions for the purposes of this Part. Section 57 provides that it will not be lawful for any person or body to operate a home for children unless it is registered with the local health board. Section 58 provides for a system of registration to be administered by health boards. Section 59 provides for appeals against decisions of health boards in relation to registration. Section 60 requires the Minister to make regulations for the purpose of ensuring proper standards in children's residential centres. Section 61 provides that a person guilty of an offence under this Part shall be liable to a fine of up to £1,000 or 12 months imprisonment or both. Section 62 deals with the situation where a centre is being phased out of operation. Section 63 provides for the introduction of a superannuation scheme for the staff of certain residential centres. Section 64 is a transitional provision in relation to 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 65 gives the Minister power to make regulations. Section 66 requires the Minister to supervise health boards in the performance of their functions. Section 67 enables health boards to charge for certain services. Section 68 provides for the prosecution of offences. Section 69 assigns certain functions under the Bill to chief executive officers of health boards. It is intended that most of those functions will be delegated by chief executive officers to other officers of health boards. Section 70 is the usual expenses provision.

PART X

Miscellaneous and Supplementary

Section 71 makes it an offence to sell solvent-based products to children for "give-a-things". It also gives a Garda power to seize any substance in the possession of a child in a public place which the Garda has reasonable cause to believe is being misused by that child in a manner likely to cause him to be intoxicated. Provision is made for fines of up to £1,000 or 12 months imprisonment. Sections 72, 73 and 74 provide for some minor amendments to the School Attendance Act, 1926 and the Guardianship of Infants Act, 1964. Section 75 provides for deductions from pay of members of the Defence Forces who may have children in care. Section 76 provides for repeals. The opportunity is being taken to repeal a large number of outdated provisions relating to children.

As Enacted Bill.

London, 1991.

BN 871964000 1,000, 191, Canal 1A23540, G 18.