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Explanatory Memorandum](#)

**AN BILLE UM CHÚRAM LEANAÍ (LEASÚ) 2006
CHILD CARE (AMENDMENT) BILL 2006**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Definitions.
 2. Amendment of Part VI of Principal Act.
 3. Short title, collective citation and commencement.
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ACTS REFERRED TO

Child Care Act 1991	1991, No. 17
Child Care Acts 1991 to 2001	
Health Act 2004	2004, No. 42
Non-Fatal Offences Against the Person Act 1997	1997, No. 26



AN BILLE UM CHÚRAM LEANAÍ (LEASÚ) 2006
CHILD CARE (AMENDMENT) BILL 2006

BILL

entitled

5 AN ACT TO AMEND THE CHILD CARE ACT 1991 TO
ENABLE FOSTER PARENTS AND RELATIVES WHO
HAVE BEEN TAKING CARE OF A CHILD FOR A
PERIOD OF NOT LESS THAN 5 YEARS TO APPLY FOR
10 A COURT ORDER IN RELATION TO THE CARE OF
THE CHILD; AND TO PROVIDE FOR RELATED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“Minister” means the Minister for Health and Children;

15 “Principal Act” means the Child Care Act 1991.

2.—The following sections are inserted into the Principal Act after section 43: Amendment of Part VI of Principal Act.

20 “Orders relating to children in care of same foster parent or relative for five years or more.

43A.—(1) This section applies to a child in the care of the Health Service Executive whether in care under section 4 or under section 18 and whether the child has been placed under section 36(1)(a) with a foster parent or under section 36(1)(d) with a relative.

25 (2) On the application of a foster parent or relative with whom the child has been placed, the court may grant an order under this section, but only if it is satisfied that—

30 (a) the foster parent or relative has been taking care of the child for a continuous period of not less than five years beginning on the date of placement in accordance with this Act and ending on the date of application,

35 (b) the granting of the order is in the child’s best interests,

(c) the Health Service Executive has consented in advance to the granting of the order,

(d) the Health Service Executive has, on behalf of the foster parent or relative— 5

(i) if the child is in its care under section 4, obtained the consent to the granting of the order of a parent having custody of the child at the relevant time or of a person (other than the foster parent or relative) acting *in loco parentis* to the child, or 10

(ii) if the child is in its care under section 18, given notice of the application to a parent having custody of the child at the relevant time or of a person (other than the foster parent or relative) acting *in loco parentis* to the child, and 15 20

(e) the child's wishes have, in so far as is practicable, been given due consideration having regard to the age and understanding of the child.

(3) The requirement of subsection (2)(d) as to the consent or notification of a parent or other person does not apply if— 25

(a) the court is satisfied that he or she is missing and cannot be found by the Health Service Executive, or 30

(b) the court, having regard to the child's welfare, so directs.

(4) Subject to any conditions or restrictions imposed under subsection (5), an order under this section shall authorise the foster parent or relative to whom it is granted— 35

(a) to have, on behalf of the Health Service Executive, the like control over the child as if the foster parent or relative were the child's parent, and 40

(b) to do, on behalf of the Health Service Executive, what is reasonable (subject to the provisions of this Act and of the regulations for the time being in force under this Act) in all the circumstances of the case for the purpose of safeguarding and promoting the child's health, development or welfare and, in particular, give consent to— 45

(i) any necessary medical or psychiatric examination, treatment or 50

assessment with respect to the child, and

- 5 (ii) the issue of a passport to, or the provision of passport facilities for, the child to enable the child to travel abroad for a limited period.

10 (5) In granting the order, the court may impose any conditions or restrictions it thinks fit as to the extent of the authority of the foster parent or relative to whom the order is granted.

15 (6) Any consent given by a foster parent or relative of the child in accordance with an order under this section shall be sufficient authority for the carrying out of a medical or psychiatric examination or assessment, the provision of medical or psychiatric treatment, the issue of a passport or the provision of passport facilities, as the case may be.

20 (7) In the absence of a consent referred to in subsection (4) being given by the foster parent or relative to whom an order under this section was granted, the Health Service Executive has authority to give consent in accordance with section 18(3) in relation to the child.

25 (8) Nothing in this section or section 18 shall be construed as making ineffective any consent that, by virtue of section 23 of the Non-Fatal Offences Against the Person Act 1997, would otherwise be an effective consent.

30 (9) Any arrangement that is in place or order that is in force under section 37 with respect to access to the child immediately before an order under this section is granted continues in place or in force, unless when granting the order—

35 (a) in the case of an arrangement under subsection (1) of section 37, the court makes an order under subsection (2) of that section, or

40 (b) in the case of an order under subsection (2) or (3) of section 37, the court varies or discharges that order.

45 (10) This section and section 43B are without prejudice to any other provisions of this Act, or any provisions of the regulations for the time being in force under this Act, that in the interests of a child in care assign functions to the Health Service Executive.

(11) For the purpose of this section and section 43B, 'relevant time' means—

50 (a) in relation to a child in care under section 4, immediately before the child

was taken into care under that section, and

- (b) in relation to a child in care under section 18, immediately before a care order was made in relation to the child. 5

Variation, discharge or cessation of order under section 43A.

43B.—(1) The court may vary or discharge an order under section 43A or any condition or restriction attaching to that order on the application of any of the following persons:

- (a) the Health Service Executive; 10
- (b) a foster parent or relative to whom the order was granted;
- (c) a parent having custody of the child concerned at the relevant time;
- (d) a person (other than the foster parent 15 or relative to whom the order was granted) acting *in loco parentis* to the child concerned.

(2) An order under section 43A ceases to have effect— 20

- (a) if the child concerned is in care under section 4, when care of the child is resumed by the parent or other person whose wishes the Health Service Executive is required under that 25 section to have regard to,
- (b) if the child concerned is the subject of a care order, when the care order is discharged under section 22 or ceases to have effect under section 44(2), 30
- (c) if the child concerned is, in accordance with section 43 and regulations made by the Minister, removed from the custody of the foster parent or relative to whom the order under section 43A was 35 granted, immediately on the child's removal,
- (d) if the foster parent or relative to whom the order under section 43A was granted requests the Health Service 40 Executive to remove the child concerned from his or her custody, when the child is removed in accordance with the request, or
- (e) when the child concerned attains the 45 age of 18 years or marries,

whichever is the sooner.”.

3.—(1) This Act may be cited as the Child Care (Amendment) Act 2006.

Short title,
collective citation
and
commencement.

5 (2) The Child Care Acts 1991 to 2001, section 75 of the Health Act 2004 (in so far as it amends those Acts) and this Act may be cited together as the Child Care Acts 1991 to 2006.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.



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**AN BILLE UM CHÚRAM LEANAÍ (LEASÚ) 2006
CHILD CARE (AMENDMENT) BILL 2006**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

This Bill amends the Child Care Act 1991 by inserting two new sections into Part VI of the Act.

The amendment provides that a foster parent or a relative who has had a child in their care for a continuous period of five years, the child having been placed with them by the Health Service Executive, may apply for a court order in relation to the care of the child.

Section 1

In section 1 the “Minister” is defined as the Minister for Health and Children and the “Principal Act” as the Child Care Act 1991.

Section 2

Section 2 sets out the provisions in relation to the granting of the orders and the variation, discharge or cessation of the orders.

It provides that a foster parent or relative may apply for such an order whether the child is in care on a voluntary basis under section 4 of the Principal Act or is the subject of a care order under section 18 of that Act. The conditions on which the court must be satisfied before granting such an order are set out.

The authority which an order granted confers on the foster parent or relative to whom it is granted, on behalf of the Health Service Executive, is specified. Provision is made for the court to impose conditions or restrictions as it thinks fit as to the extent of the authority granted.

The Health Service Executive’s authority to consent in the absence of consent from a foster parent or relative is also set out. Provision is made for any consent permissible under section 23 of the Non-Fatal Offences Against the Person Act 1997 to continue to be effective consent.

Provision is made for any access arrangements in place before the granting of an order to continue unless the court orders otherwise in accordance with section 37 of the Principal Act. Provision is made for any other functions of the Health Service Executive in relation to the interests of a child in accordance with any other provisions of

the Child Care Act 1991 or regulations made under the Act to continue in force.

Conditions for the variation or discharge of an order made under this Section are set out as well as the circumstances when an order granted under this section may cease to have effect.

Cost to the Exchequer

The Health Service Executive indicate that obtaining a care order in general costs approximately €400 to €900 in legal fees (unless complex issues arise) — however as indicated below no overall increased exchequer costs are envisaged. Whilst the Bill does not specify that the Health Service Executive should pay the cost of the court applications by foster parents/relatives, in practical terms it is likely that Health Service Executive may have to pay the costs of some foster parents/relatives though means tested free legal aid could apply.

Before granting an order, the Court would have to be satisfied that the Health Service Executive had consented to the arrangement. The Health Service Executive could do this on the basis of their existing records as to the performance and suitability of the foster parents/relatives. The Health Service Executive will be required to obtain the consent of the parent or the person acting in loco parentis in the case of a child in voluntary care or notify the parent or person acting in loco parentis in the case of a child who is the subject of a care order. These elements of work are encompassed within the current workload of the Health Service Executive in relation to foster care.

Once the revised arrangements are satisfactorily in place the level of contact and follow up between the Health Service Executive and the foster parents/relatives on day to day issues in respect of the child and the number of court directions sought under the existing section 47 of the Principal Act would reduce quite significantly (court directions would currently be sought in relation to consent to passports and medical examinations etc.) so that in overall terms even taking legal costs into account there would be no additional costs. In the longer term, overall costs should be reduced by these measures.

*An Roinn Sláinte agus Leanaí,
Iúil, 2006.*