



AN BILLE UM CHÚRAM LEANAÍ (LEASÚ) 2009
CHILD CARE (AMENDMENT) BILL 2009

Mar a ritheadh ag Seanad Éireann
As passed by Seanad Éireann

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AN BILLE UM CHÚRAM LEANAÍ (LEASÚ) 2009
CHILD CARE (AMENDMENT) BILL 2009

BILL

entitled

5 AN ACT TO AMEND AND EXTEND THE CHILD CARE ACT
1991; TO MAKE FURTHER PROVISION IN RELATION
TO THE CARE AND PROTECTION OF CHILDREN; TO
AMEND THE CHILDREN ACT 2001 AND THE HEALTH
10 ACT 2007; TO PROVIDE FOR THE DISSOLUTION OF
THE CHILDREN ACTS ADVISORY BOARD AND THE
TRANSFER OF ITS ASSETS, LIABILITIES AND
EMPLOYEES TO THE MINISTER FOR HEALTH AND
CHILDREN; TO REPEAL PART 11 OF THE CHILDREN
ACT 2001; AND TO PROVIDE FOR RELATED MATTERS.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Child Care (Amendment) Act 2010. Short title,
collective citations
and
commencement.

20 (2) The Child Care Acts 1991 to 2007 and this Act, other than sections 25, 30, 31, 33, 34 to 42 and 44 may be cited together as the Child Care Acts 1991 to 2010.

(3) The Children Acts 2001 to 2007, sections 25, 30, 31, 34 to 42 and 44 may be cited together as the Children Acts 2001 to 2010.

25 (4) The Health Acts 1947 to 2009 and section 33 may be cited together as the Health Acts 1947 to 2010.

(5) This Act, other than section 6, 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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2.—In this Act—

Interpretation.

“Act of 2001” means the Children Act 2001;

“Act of 2004” means the Health Act 2004;

“Act of 2007” means the Health Act 2007;

“Minister” means the Minister for Health and Children;

“Principal Act” means the Child Care Act 1991.

PART 2

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AMENDMENT OF PRINCIPAL ACT

Amendment of
section 2 of
Principal Act.

3.—Section 2 (as amended by the Act of 2007) of the Principal Act is amended in subsection (1)—

(a) by inserting the following definitions:

“ ‘Act of 2001’ means the Children Act 2001; 10

‘interim special care order’ has the meaning assigned to it by Part IVA (as amended by the *Child Care (Amendment) Act 2010*);

‘special care’ has the meaning assigned to it by Part IVA (as amended by the *Child Care (Amendment) Act 2010*); 15

‘special care order’ has the meaning assigned to it by Part IVA (as amended by the *Child Care (Amendment) Act 2010*);

‘special care unit’ has the meaning assigned to it by Part IVA (as amended by the *Child Care (Amendment) Act 2010*).”; 20

and

(b) in the definition of “children’s residential centre” (inserted by the Act of 2007), by inserting the following paragraph after paragraph (d) of that definition: 25

“(da) a special care unit,”.

Amendment of
section 4 of
Principal Act.

4.—Section 4 (as amended by the Act of 2004) of the Principal Act is amended in subsection (2), by inserting “, IVA (as amended by the *Child Care (Amendment) Act 2010*)” after “IV”.

Amendment of
section 9 of
Principal Act.

5.—Section 9 (as amended by the Act of 2004) of the Principal Act is amended, in subsection (2), by substituting “IV, IVA (as amended by the *Child Care (Amendment) Act 2010*)” for “IV”. 30

Amendment of
section 12 of
Principal Act.

6.—Section 12 (as amended by the Act of 2004) of the Principal Act is amended—

(a) in subsection (1)(b) by inserting “or an application for a warrant under section 35” after “under section 13”, and 35

(b) in subsection (4) by inserting “or an order referred to in section 35 has been made in respect of the child” after “person acting *in loco parentis*”.

7.—Section 18 (as amended by the Act of 2004) of the Principal Act is amended by inserting the following subsections after subsection (8):

Amendment of section 18 of Principal Act.

“(9) Where a care order—

5 (a) has been made in respect of a child and—

(i) during the period for which the care order has effect a special care order or an interim special care order is made in respect of the child, and

10 (ii) the care order ceases to have effect during the period for which the special care order or interim special care order has effect,

or

15 (b) has not been made in respect of a child and a special care order or an interim special care order has been made in respect of that child,

the Health Service Executive may apply for a care order in respect of that child during the period for which the special care order or interim special care order has effect.

20 (10) Where the District Court makes a care order, pursuant to the application referred to in subsection (9), during the period for which the special care order or interim special care order has effect, it shall direct that the care order shall take effect immediately following the expiration of the special care order or, as the case may be, interim special care order.”.

25 8.—Section 19 (as amended by the Act of 2004) of the Principal Act is amended by inserting the following subsections after subsection (7):

Amendment of section 19 of Principal Act.

“(8) Where a supervision order—

(a) has been made in respect of a child and—

30 (i) during the period for which the supervision order has effect a special care order or an interim special care order is made in respect of the child, and

35 (ii) the supervision order ceases to have effect during the period for which the special care order or interim special care order has effect,

or

40 (b) has not been made in respect of a child and a special care order or interim special care order has been made in respect of that child,

the Health Service Executive may apply for a supervision order in respect of that child during the period for which the special care order or interim special care order has effect.

(9) Where the District Court makes the supervision order, pursuant to the application referred to in subsection (8), during the period for which the special care order or interim special care order has effect, it shall direct that the supervision order shall take effect immediately following the expiration of the special care order or, as the case may be, interim special care order.”. 5

Amendment of Part IVA of Principal Act.

9.—Part IVA of the Principal Act (inserted by the Act of 2001) is amended by substituting the following Part for Part IVA—

“PART IVA 10

PROVISION OF SPECIAL CARE IN SPECIAL CARE UNITS

Interpretation. 23A.—In this Part—

‘Act of 2007’ means the Health Act 2007;

‘care requirements’ means the care a child requires having regard to his or her behaviour; 15

‘Children Act order’ means—

(a) a reprimand referred to in section 98 of the Act of 2001,

(b) an order referred to in paragraph (a), (b), (c), (d), (e) or (f) of section 98 of the Act of 2001, or 20

(c) a community sanction referred to in paragraph (a), (b), (c) or (d) of section 115 of the Act of 2001 and such sanction is not subject to a condition referred to in paragraph (d) of section 117 of the Act of 2001; 25

‘children detention order’ has the meaning assigned to it by section 3 of the Act of 2001;

‘custodial sentence’ means— 30

(a) a children detention order but does not include a children detention order the making of which has been deferred under section 144 of the Act of 2001,

(b) a detention and supervision order referred to in section 151 of the Act of 2001, or 35

(c) a sentence referred to in section 155 (as amended by the Criminal Justice Act 2006) of the Act of 2001; 40

‘family welfare conference’ has the meaning assigned to it by the Act of 2001;

‘guardian’, in relation to a child, means a person who—

(a) is a guardian of a child pursuant to the Guardianship of Infants Act 1964, or

(b) is appointed to be a guardian of the child by—

(i) deed or will, or

(ii) order of a court in the State,

and has not been removed from office;

‘interim special care order’ means an order made under section 23L;

‘relative’ has the meaning assigned to it in section 23O (inserted by the Act of 2001);

‘special care’ shall be construed in accordance with section 23C;

‘special care order’ means an order made under section 23H;

‘special care unit’ means premises, or a part of premises, comprising secure residential accommodation in which a child, in respect of whom a special care order or an interim special care order has been made, is detained for the purpose of the provision to that child of special care and includes accommodation and facilities required for the provision of special care;

‘suspended custodial sentence’ means a custodial sentence which does not take effect immediately it is imposed and does not include—

(a) a children detention order the making of which has been deferred under section 144 of the Act of 2001, or

(b) a period of detention which has been suspended under section 144(9)(b) of the Act of 2001.

Provision of special care and special care units.

23B.—(1) The Health Service Executive shall provide special care to a child in respect of whom a special care order or an interim special care order has been made for the period for which that special care order or interim special care order has effect.

(2) The Health Service Executive shall not detain a child in a special care unit unless the detention is pursuant to, and in accordance with, a special care order or an interim special care order made in respect of that child or the High Court has otherwise ordered.

(3) The Health Service Executive shall—

(a) provide special care units, and

- (b) maintain and administer special care units provided by it under paragraph (a),

and shall comply with regulations, if any, made under the Act of 2007 in relation to special care units and standards, if any, set out under section 8(1)(b) of the Act of 2007. 5

(4) Notwithstanding subsection (3) and subject to subsection (5), the Health Service Executive may, for the purposes of this Part, enter into an arrangement with a person under section 38 (as amended by the Act of 2007) of the Health Act 2004 in respect of the provision by that person of special care and the provision, maintenance and administration of a special care unit. 15

(5) Without prejudice to the generality of section 38 (as amended by the Act of 2007) of the Health Act 2004 and to any term, condition of or other matter relating to an arrangement under that section as the Health Service Executive, in accordance with that section, considers appropriate, for the purposes of this Part— 20

- (a) the provisions specified in subsection (6) shall apply to a person with whom that arrangement is entered into, 25

- (b) the Health Service Executive, in relation to an arrangement referred to in subsection (4), shall—

- (i) supervise and monitor the special care unit provided, maintained and administered under the arrangement and the provision of special care in that unit, and 30

- (ii) establish procedures for the notification to it of the release of a child pursuant to and in accordance with section 23NF(9), 35

- (c) where a child, in respect of whom a special care order or an interim special care order has been made— 40

- (i) is, without lawful authority or the consent or the knowledge of the Health Service Executive or the person with whom such arrangement is entered into, removed from a special care unit provided pursuant to such arrangement, 45

- (ii) absconds from a special care unit provided pursuant to such arrangement, 50

- (iii) fails to return, or is prevented from returning, to a special care unit

provided pursuant to such arrangement, or

- 5 (iv) is missing or is otherwise absent, without the consent or knowledge of the Health Service Executive or the person with whom such arrangement has been entered into, from a special care unit provided pursuant to such arrangement or place to which he or she has been released in accordance with section 23NF or 23NG,

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15 the person with whom such arrangement has been entered into shall forthwith inform the Health Service Executive,

- 20 (d) guidelines prepared and published by the Health Service Executive under section 23NO in respect of the procedures referred to in paragraphs (a) and (c) of that section shall apply to a person with whom such arrangement has been entered into, and

- 25 (e) nothing in that arrangement or this Act shall be construed as permitting the person, with whom the arrangement referred to in subsection (4) was entered into, to apply for—

30 (i) a special care order or an interim special care order,

(ii) an extension, discharge or variation of such order, or

(iii) the release of the child under section 23NF(1) or 23NG,

35 or to make an application to the High Court in respect of proceedings under or pursuant to this Part.

(6) The provisions referred to in subsection (5)(a) are—

40 (a) subsections (1), (2) and (3),

(b) subsections (1) and (5) of section 23D,

(c) section 23E(6),

(d) paragraphs (b) and (f) of subsection (1) of section 23ND, and

45 (e) paragraphs (a) and (b) of subsection (9) of section 23NF.

Special care. 23C.—In this Part ‘special care’ means the provision, to a child, of—

(a) care which addresses—

(i) his or her behaviour and the risk of harm it poses to his or her life, health, safety, development or welfare, and 5

(ii) his or her care requirements,

and includes medical and psychiatric assessment, examination and treatment, and

(b) educational supervision, 10

in a special care unit in which the child is detained and requires for its provision a special care order or an interim special care order directing the Health Service Executive to detain the child in a special care unit, which the Health Service Executive considers appropriate for the child, for the purpose of such provision and may, during the period for which the special care order or interim special care order has effect, include the release of the child from the special care unit— 15 20

(i) in accordance with section 23NF, and

(ii) where the release is required for the purposes of section 23D or 23E, in accordance with section 23NG.

Criminal proceedings and provision of special care.

23D.—(1) Where a child is charged with an offence and the proceedings in respect of that charge have not been determined, subject to subsection (6) and section 23E, nothing in this Act shall be construed as preventing the Health Service Executive from providing special care to such child in accordance with a special care order or an interim special care order. 25 30

(2) Without prejudice to the generality of subsection (1), subject to subsection (6) and section 23E— 35

(a) where a child is charged with an offence and the proceedings in respect of that charge have not been determined, nothing in this Act shall be construed as preventing— 40

(i) the Health Service Executive from applying for a special care order or an interim special care order and, where the order is made in respect of that child, from applying for an extension of that order under section 23J or, as the case may be, section 23N, in respect of that child, or 45

(ii) the High Court from hearing and determining an application referred to in subparagraph (i),

and

5 (b) where a special care order or an interim special care order has been made in respect of a child and that child is charged with an offence during the period for which a special care order or an interim special care order has effect, nothing in this Act shall be construed as—

10 (i) requiring the special care order or interim special care order to be discharged,

15 (ii) preventing the Health Service Executive from making an application to extend the period for which, under section 23J, a special care order or, under section 23N, an interim special care order, has effect, or

20 (iii) preventing the High Court from hearing and determining an application referred to in subparagraph (ii),

25 before the proceedings in respect of that charge are determined and the Health Service Executive shall, as soon as practicable, inform the Court hearing that charge that the child is the subject of a special care order, or an interim special care order, and of the period for which the order has effect.

30 (3) Where a child is charged with an offence and the proceedings in respect of that charge have not been determined, without prejudice to section 24, when considering—

35 (a) an application for a special care order or an interim special care order in respect of that child,

40 (b) an application, in respect of that child, to extend the period for which—

45 (i) under and in accordance with section 23J, the special care order has effect, or

(ii) under and in accordance with section 23N, the interim special care order, has effect,

50 or

- (c) an application under section 23NG, in respect of that child, to vary the special care order or interim special care order to authorise the release of a child from a special care unit for the purposes of the hearing of that charge and any other matter relating to the conduct of the proceedings in which that charge is heard, 5

the High Court shall have regard, at all times, to the rights of the child who is the subject of that application including his or her rights in the proceedings in which that charge is heard and without prejudice to the generality of the foregoing, the High Court shall not make, or vary, such order or extend such period or give a direction in respect of such order, extension or variation which would prejudice, or otherwise interfere with, the rights of the child in the proceedings in which that charge is heard and the conduct of those proceedings. 10 15 20

(4) Where the Health Service Executive makes an application—

- (a) for a special care order or an interim special care order, or
- (b) to extend the period for which— 25
 - (i) under section 23J, the special care order has effect, or
 - (ii) under section 23N, the interim special care order has effect,

in respect of a child who is charged with an offence and the proceedings in respect of that charge have not been determined, the Health Service Executive shall— 30

- (i) inform the High Court of—
 - (I) that charge and those proceedings, 35
 - (II) any matter requiring the release of the child from the special care unit, under section 23NG, for the purposes of the hearing of that charge and the conduct of those proceedings, and 40
 - (III) without prejudice to the generality of subparagraph (II), any matter requiring the release of the child from the special care unit, under section 23NG, for the purposes of subsection (5)(b) and (5)(c), 45

and

- (ii) inform the Court hearing that charge—

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(I) of the application referred to in paragraph (a) and, where the High Court makes a special care order or an interim special care order, to inform the Court hearing that charge that the order concerned was made and the period for which it has effect, or

(II) of the application referred to in paragraph (b) and where the order has been extended, to inform the Court hearing that charge of the period for which that order was extended.

(5) Where a special care order or an interim special care order has been made in respect of a child who is charged with an offence and the proceedings in respect of that charge have not been determined, the Health Service Executive shall—

(a) convey the child to the Court hearing that charge,

(b) provide the child with access to the solicitor and counsel representing the child in the proceedings relating to that charge, and

(c) convey the child to any other place, or provide the child with access to any other person for the purposes of the representation of that child in, or any other matter relating to the hearing, or conduct, of those proceedings in respect of that charge.

(6) Where a child referred to in paragraph (a) or (b) of subsection (2) is remanded in custody, whether pursuant to section 88 (as amended by the Criminal Justice Act 2006) of the Act of 2001 or otherwise, before the proceedings in respect of that charge are heard and determined, nothing in this Act shall be construed as operating to prevent the remand of that child in custody and—

(a) the Health Service Executive shall not make an application for a special care order or an interim special care order or an application under section 23J or 23N in respect of that child and where such application was made but not determined before the child was remanded in custody, the Health Service Executive shall withdraw the application, or

(b) where a special care order or an interim special care order has been made and has effect before the child is remanded in custody, nothing in this Act shall be construed as requiring the Health

Service Executive to continue to provide special care to that child and the Health Service Executive shall apply to the High Court to have such special care order or interim special care order discharged. 5

(7) In this section, ‘Court hearing that charge’ includes the Children Court referred to in section 71 (as amended by the Criminal Justice Act 2006) of the Act of 2001. 10

Custodial sentence, deferred children detention order, Children Act order and provision of special care.

23E.—(1) Subject to subsections (7), (9) and (10), nothing in this Act shall be construed as preventing the Health Service Executive from providing special care, in accordance with a special care order or an interim special care order, to a child who has been found guilty, or convicted, of a criminal offence and where, following such conviction— 15

(a) a custodial sentence was imposed on the child and that sentence has been served, 20

(b) a suspended custodial sentence has been imposed on that child,

(c) the making of a children detention order has been deferred, in respect of that child, in accordance with section 144 of the Act of 2001, 25

(d) any detention imposed in accordance with section 144(9)(a) of the Act of 2001 on the child has been served, 30

(e) a period of detention, imposed in respect of the child in accordance with section 144(9)(b) of the Act of 2001, has been suspended, or

(f) a Children Act order has been made in respect of that child, 35

and without prejudice to the generality of the foregoing nothing in this Act shall be construed as preventing the Health Service Executive from applying for a special care order or an interim special care order and, where the order is made in respect of such child, from applying for an extension under section 23J or 23N in respect of such child, or as preventing the High Court from hearing and determining such application. 40 45

(2) Without prejudice to subsection (1), where a child is the subject of a special care order or an interim special care order and during the period for which the order has effect a suspended custodial sentence is imposed on that child, the making of a children detention order has been deferred in respect of that child under section 144 of the Act of 2001, a period of detention has, under section 50

144(9)(b) of the Act of 2001, been suspended in respect of that child or a Children Act order is made in respect of that child, subject to subsections (7), (9) and (10), nothing in this Act shall be construed as—

- (a) requiring the special care order or interim special care order to be discharged,
- (b) preventing the Health Service Executive from making an application to extend the period for which—
 - (i) under section 23J, such special care order has effect, or
 - (ii) under section 23N, such interim special care order, has effect,
- or
- (c) preventing the High Court from hearing and determining an application referred to in paragraph (b),

and the Health Service Executive shall, as soon as practicable, inform the Court which imposed the suspended custodial sentence, deferred making the children detention order, suspended the period of detention or made the Children Act order that the child is the subject of a special care order or an interim special care order and the period for which such order has effect.

(3) Where the Health Service Executive makes an application—

- (a) for a special care order or an interim special care order, or
- (b) to extend the period for which, under section 23J, a special care order or, under section 23N, an interim special care order, has effect,

and at the time the application is made a suspended custodial sentence has been imposed in respect of the child who is the subject of that application, the Health Service Executive shall—

- (i) inform the High Court of—
 - (I) such suspended custodial sentence and any terms, conditions and other requirements of such sentence, and
 - (II) any matter requiring the release of the child from the special care unit, under section 23NG, for the

purposes of such suspended custodial sentence and subsection (6),

and

(ii) inform the Court which imposed the suspended custodial sentence— 5

(I) of the application referred to in paragraph (a) and, where a special care order or interim special care order is made, to inform that Court accordingly and of the period for which the order has effect, or 10

(II) of the application referred to in paragraph (b), and where the order has been extended, to inform that Court of the period for which the order was extended. 15

(4) Where the Health Service Executive makes an application— 20

(a) for a special care order or an interim special care order, or

(b) to extend the period for which, under section 23J, a special care order or, under section 23N, an interim special care order, has effect, 25

and at the time the application is made the making of a children detention order has, in accordance with section 144 of the Act of 2001, been deferred in respect of the child who is the subject of that application, or a period of detention has, in respect of that child, been suspended under section 144(9)(b) of that Act, the Health Service Executive shall— 30

(i) inform the High Court— 35

(I) that the making of a children detention order has been deferred under and in accordance with section 144 of the Act of 2001, that a period of detention has not been imposed at the time of the making of the application, and of any terms, conditions and other requirements of such children detention order or, in respect of such suspended period of detention, and 40

(II) of any matter requiring the release of the child from the special care unit, under section 23NG, for the 45 50

purposes of such children detention order, or such suspension, and subsection (6),

and

5 (ii) inform the Court which deferred making such children detention order or suspended the period of detention—

10 (I) of the application referred to in paragraph (a) and, where a special care order or interim special care order is made, to inform that Court accordingly and the period for which the order has effect, or

15 (II) of the application referred to in paragraph (b), and, where the order has been extended, to inform that Court of the period for which the order was extended.

20 (5) Where the Health Service Executive makes an application—

(a) for a special care order or an interim special care order, or

25 (b) to extend the period for which, under section 23J, a special care order or, under section 23N, an interim special care order, has effect,

and at the time the application is made a Children Act order has been made in respect of the child who is the subject of that application, the Health Service Executive shall—

30 (i) inform the High Court of—

35 (I) the Children Act order concerned and the terms, conditions and other requirements of that order, and

40 (II) any matter requiring the release of the child from the special care unit, under section 23NG, for the purposes of the Children Act order concerned and subsection (6),

and

45 (ii) inform the Court which made the Children Act order—

(I) of the application referred to in paragraph (a) and, where the special care order or the interim special care order is made, to inform that Court accordingly and

the period for which the order has effect, or

- (II) of the application referred to in paragraph (b), and, where the order has been extended, to inform that Court of the period for which the order was extended.

(6) Where a child is the subject of a special care order or an interim special care order and during the period for which such order has effect—

- (a) a suspended custodial sentence has been imposed in respect of that child,
- (b) the making of a children detention order has, in respect of the child, been deferred under section 144 of the Act of 2001,
- (c) a period of detention has been suspended in accordance with section 144(9)(b) of the Act of 2001, or
- (d) a Children Act order is made in respect of the child,

the Health Service Executive shall take all steps reasonably open to it to assist that child to comply with the terms, conditions and other requirements of the suspended custodial sentence referred to in paragraph (a), the children detention order referred to in paragraph (b), the suspension referred to in paragraph (c) or the Children Act order referred to in paragraph (d), and, without prejudice to the generality of the foregoing, shall—

- (i) convey that child to any place which that child is required to attend pursuant to the custodial sentence referred to in paragraph (a), the children detention order referred to in paragraph (b), the suspension referred to in paragraph (c), or the Children Act order referred to in paragraph (d), and
- (ii) provide that child with access to any person for the purposes of complying with the terms, conditions or other requirements of the custodial sentence referred to in paragraph (a), the children detention order referred to in paragraph (b), the suspension referred to in paragraph (c), or the Children Act order referred to in paragraph (d).

(7) Where an application for a special care order or an interim special care order, or an application under section 23J or 23N, has been made in respect of a child and before that application has been determined—

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- (a) a custodial sentence is imposed on that child and is to take effect immediately,
 - (b) under section 144(9)(a) of the Act of 2001, a period of detention is imposed in respect of that child and such period of detention is to take effect immediately,
 - (c) a period of detention which had been suspended in accordance with section 144(9)(b) of the Act of 2001 is no longer suspended and such period of detention is to take effect immediately, or
 - (d) a suspended custodial sentence was imposed on that child but is no longer suspended and the custodial sentence is to take effect immediately,

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the Health Service Executive shall withdraw that application.

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(8) Where an application for a special care order or an interim special care order, or an application under section 23J or 23N, has been made in respect of a child and before that application has been determined—

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- (a) a suspended custodial sentence is imposed on that child,
 - (b) the making of a children detention order has been deferred, in respect of that child, under section 144 of the Act of 2001 or a period of detention has been suspended, in respect of that child, under section 144(9)(b) of that Act, or
 - (c) a Children Act order has been made in respect of that child,

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the Health Service Executive shall inform the High Court as soon as practicable of the suspended custodial sentence referred to in paragraph (a), the children detention order or suspension referred to in paragraph (b) or the Children Act order referred to in paragraph (c) and of any matter requiring the release of the child from the special care unit under section 23NG for the purposes of complying with such suspended custodial sentence, children detention order, suspension or Children Act order.

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(9) Where a child is the subject of a special care order or an interim special care order and during the period for which such order has effect—

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- (a) a custodial sentence is imposed on that child and is to take effect immediately it is imposed, or

- (b) a suspended custodial sentence was imposed on that child but is no longer suspended and the custodial sentence is to take effect immediately,

nothing in this Act relating to the provision of special care to that child pursuant to such special care order or interim special care order shall operate so as to prevent the child from serving that custodial sentence and without prejudice to the generality of the foregoing the Health Service Executive shall, as soon as practicable, apply to the High Court to discharge such special care order or such interim special care order.

(10) Where a child is the subject of a special care order or an interim special care order and the making of a children detention order has been deferred, in accordance with section 144 of the Act of 2001, in respect of that child, or a period of detention has been suspended in accordance with section 144(9)(b) of that Act, and during the period for which such special care order or interim special care order has effect—

- (a) a period of detention is imposed under section 144(9)(a) of the Act of 2001, in respect of that child and such period of detention is to take effect immediately, or

- (b) a period of detention which had been suspended in accordance with section 144(9)(b) of the Act of 2001 is no longer suspended and such period of detention is to take effect immediately,

nothing in this Act relating to the provision of special care to that child pursuant to such special care order or such interim special care order shall operate so as to prevent the child from being so detained and without prejudice to the generality of the foregoing the Health Service Executive shall, as soon as practicable, apply to the High Court to discharge such special care order or such interim special care order.

(11) Where a child is the subject of a special care order or an interim special care order and during the period for which such order has effect a suspended custodial sentence is imposed on that child—

- (a) the Health Service Executive shall inform the High Court of such suspended custodial sentence, any terms and conditions of such suspended custodial sentence and any matter requiring the release of the child from the special care unit, under section 23NG for the purposes of complying with such suspended custodial sentence, and

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(b) subject to subsection (9), the Health Service Executive shall, in accordance with such special care order or interim special care order and this Act, continue to provide special care to that child.

(12) Where a child is the subject of a special care order or an interim special care order and during the period for which such order has effect the making of a children detention order has been deferred, in accordance with section 144 of the Act of 2001, in respect of that child or a period of detention has been suspended in accordance with section 144(9)(b) of that Act—

(a) the Health Service Executive shall inform the High Court of such deferral or such suspension and of any terms and conditions of such deferral or suspension and of any matter requiring the release of the child from the special care unit, under section 23NG, for the purposes of complying with such deferral or suspension, and

(b) subject to subsection (10)(a) or (10)(b), the Health Service Executive shall, in accordance with such special care order or such interim special care order and this Act, continue to provide special care to the child.

(13) Where a child is the subject of a special care order or an interim special care order and during the period for which such order has effect a Children Act order is made in respect of that child—

(a) the Health Service Executive shall inform the High Court of such Children Act order, any terms and conditions of such Children Act order and any matter requiring the release of the child from the special care unit, under section 23NG for the purposes of complying with such Children Act order, and

(b) the Health Service Executive shall, in accordance with such special care order or interim special care order and this Act, continue to provide special care to that child.

(14) In this section references to a custodial sentence being served means, in the case of a custodial sentence which is a detention and supervision order, that the period for which that order was made has expired.

Determination
by Health
Service
Executive that
child requires
special care.

23F.—(1) The Health Service Executive shall not apply for a special care order in respect of a child unless it is satisfied that the child has attained the age of 11 years and it has made a determination, in accordance with this section, that the child requires special care. 5

(2) Where—

(a) the Health Service Executive is satisfied that there is reasonable cause to believe that the behaviour of the child poses a real and substantial risk of harm to his or her life, health, safety, development or welfare, 10

(b) having regard to that behaviour and risk of harm, the Health Service Executive has assessed the care requirements of the child, and is satisfied that there is reasonable cause to believe that— 15

(i) the provision, or the continuation of the provision, by the Health Service Executive to the child of care, other than special care, and 20

(ii) treatment and mental health services, under, and within the meaning of, the Mental Health Act 2001, 25

will not adequately address that behaviour and risk of harm and those care requirements, and

(c) having regard to paragraph (b), the Health Service Executive is satisfied that there is reasonable cause to believe that the child requires special care to adequately address— 30

(i) that behaviour and risk of harm, and 35

(ii) those care requirements,

which it cannot provide to the child unless the High Court makes a special care order in respect of that child, 40

the Health Service Executive shall make arrangements to carry out the consultation referred to in subsection (3).

(3) The Health Service Executive—

(a) shall, subject to subsection (4), consult with— 45

(i) the child,

(ii) the parent having custody of the child, unless the parent is dead, missing or cannot be found, and

(iii) a guardian, if any, or a person, if any, acting *in loco parentis*, unless that guardian or person is missing or cannot be found,

and

(b) may, having regard to all the circumstances of the child, consult with—

(i) a relative of the child, or

(ii) a person who, in the opinion of the Health Service Executive, has knowledge of that child and his or her family or other circumstances,

in relation to the behaviour and risk of harm referred to in subsection (2)(a), the care requirements referred to in subsection (2)(b), the proposal to provide special care to the child and the detention of the child in a special care unit for that purpose.

(4) Where the Health Service Executive, having regard to the protection of the life, health, safety, development or welfare of the child, is satisfied that there is reasonable cause to believe it is not in the best interests of the child to consult with all or any of the following persons, it shall not consult with that person:

(a) the child;

(b) a parent having custody of the child;

(c) the guardian;

(d) a person acting *in loco parentis*.

(5) The Health Service Executive shall, subject to subsection (6), convene a family welfare conference in accordance with section 7 (as amended by the *Child Care (Amendment) Act 2010*) of the Act of 2001 if it is satisfied that there is reasonable cause to believe that the child requires special care, after having carried out the consultations in accordance with subsection (3) or not carried them out in accordance with subsection (4).

(6) Notwithstanding subsection (5), where the Health Service Executive is satisfied that, having regard to the protection of the life, health, safety, development or welfare of the child, there is reasonable cause to believe that it is not in the best interests of the child to convene the family welfare conference referred to in subsection (5), it may decide not to convene that conference.

(7) Where a family welfare conference—

(a) has been convened in accordance with subsection (5) and the Health Service Executive has had regard to the recommendations, if any, notified under section 12 of the Act of 2001, or

(b) has not been convened in accordance with subsection (6),

and the Health Service Executive is satisfied that there is reasonable cause to believe that the child requires special care it shall make a determination as to whether the child requires special care.

(8) Where the Health Service Executive determines that there is reasonable cause to believe that for the purposes of protecting the life, health, safety, development or welfare of the child, the child requires special care the Health Service Executive shall apply to the High Court for a special care order.

(9) Where the Health Service Executive applies for a special care order and, in accordance with subsection (4), it did not carry out the consultation referred to in subsection (3), it shall inform the High Court that the consultation was not carried out and of the grounds for not carrying out that consultation.

(10) Where the Health Service Executive applies for a special care order and it did not convene a family welfare conference in accordance with subsection (6), it shall inform the High Court that it did not convene that conference and of the grounds for not convening that conference.

(11) The Health Service Executive shall prepare and publish guidelines relating to the procedures for—

(a) carrying out a consultation for the purposes of this section, and

(b) convening a family welfare conference for the purposes of this section.

23G.—(1) An application for a special care order or an interim special care order shall, subject to subsection (6) and section 23L(3), be made on notice to—

Notice of application for special care order or interim special care order.

(a) a parent having custody of the child, unless the parent is dead, missing or cannot be found,

(b) a guardian of the child, if any, or a person, if any, acting *in loco parentis* unless that guardian or that person is dead, missing or cannot be found, and

5 (c) a guardian *ad litem*, where such guardian is appointed in accordance with section 26 (as amended by the *Child Care (Amendment) Act 2010*) in respect of proceedings under this Part and whose appointment has effect in accordance with section 26(4).

10 (2) Where having regard to all the circumstances of a child the Health Service Executive considers it appropriate for that child, it may inform any of the following persons of an application for a special care order or an interim special care order:

15 (a) a relative of the child;

(b) a person who, in the opinion of the Health Service Executive, has knowledge of that child and his or her family or other circumstances.

20 (3) The Health Service Executive shall inform the Garda Síochána of an application for a special care order or an interim special care order including an application for an interim special care order referred to in section 23L(3).

25 (4) The Health Service Executive shall, for the purposes of subsection (1), take all steps reasonably open to it to locate a person referred to in paragraphs (a) and (b) of subsection (1).

30 (5) The High Court, having regard to all the circumstances of the child, may direct that, in addition to the persons referred to in subsections (1) and (2), another person, who has knowledge of that child and his or her family or other circumstances, be informed of an application for a special care order or an interim special care order.

35 (6) Notwithstanding paragraphs (a) and (b) of subsection (1), the High Court, on the application of the Health Service Executive, may, having regard to the interests of justice or the protection of the life, health, safety, development or welfare of the child, direct that an application referred to in subsection (1) shall be made otherwise than on notice to a named person being a person to whom, pursuant to paragraphs (a) and (b) of subsection (1), such application is to be made on notice and the High Court may make such other provision and give other directions in respect of such notice, as it, having regard to all the circumstances of the child, considers necessary and in the best interests of the child.

50 Special care order. 23H.—(1) Where the High Court is satisfied that—

(a) the child has attained the age of 11 years,

- (b) the behaviour of the child poses a real and substantial risk of harm to his or her life, health, safety, development or welfare,
- (c) having regard to that behaviour and risk of harm and the care requirements of the child— 5
- (i) the provision, or the continuation of the provision, by the Health Service Executive to that child of care, other than special care, and 10
- (ii) treatment and mental health services under, and within the meaning of, the Mental Health Act 2001, 15
- will not adequately address that behaviour and risk of harm and those care requirements,
- (d) having regard to paragraph (c), the child requires special care to adequately address— 20
- (i) that behaviour and risk of harm, and
- (ii) those care requirements,
- which the Health Service Executive cannot provide to the child unless a special care order is made in respect of that child, 25
- (e) the Health Service Executive has carried out the consultation referred to in section 23F(3) or, where the Health Service Executive has not carried out that consultation, the High Court is satisfied that it is in the best interests of the child not to have carried out that consultation having regard to the grounds provided in accordance with section 23F(9), 30 35
- (f) in respect of the family welfare conference referred to in section 23F(5)— 40
- (i) the Health Service Executive has convened the family welfare conference and the Health Service Executive has had regard to the recommendations notified in accordance with section 12 of the Act of 2001, or 45
- (ii) it is in the best interests of the child that the family welfare conference was not convened having regard to the information and grounds 50

provided in accordance with section 23F(10),

- 5 (g) for the purposes of protecting the life, health, safety, development or welfare of the child, the child requires special care, and
- 10 (h) having regard to paragraphs (a) to (g), the detention of the child in a special care unit, as it is required for the purpose of providing special care to him or her, is in the best interests of the child,

the High Court may make a special care order in respect of that child.

15 (2) A special care order shall specify the period for which it has effect and that period shall not exceed 3 months from the day on which that order is made unless that period is extended under section 23J and shall—

- 20 (a) commit the child in respect of whom it is made to the care of the Health Service Executive,
- 25 (b) direct the Health Service Executive to detain that child in a special care unit, which the Health Service Executive considers appropriate for that child, for the purpose of providing that child with special care, and
- 30 (c) direct the Health Service Executive to provide special care to the child and to generally care for and maintain the child,

35 and the High Court may make such other provision and give directions, as it, having regard to all the circumstances of the child, considers necessary and in the best interests of the child.

(3) For the purposes of executing a special care order the High Court may—

- 40 (a) make an order directing a person who has actual custody of the child to deliver that child to the custody of the Health Service Executive,
- 45 (b) make an order directing the Garda Síochána to search for and find the child and to deliver the child to the custody of the Health Service Executive, at a special care unit specified by the Health Service Executive, and
- 50 (c) 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, if need be by force, any house or other place specified in the warrant, including any building or part of a building, tent, caravan, or other temporary or moveable structure, vehicle, vessel, or aircraft where the child is, or where there are reasonable grounds for believing that he or she is, and to deliver the child into the custody of the Health Service Executive at the special care unit in which the child is to be detained,

and the High Court may, in respect of such order or warrant, give directions as, having regard to all the circumstances of the child, it considers necessary and in the best interests of the child.

(4) Where the High Court makes a special care order the Health Service Executive shall inform the Garda Síochána immediately that the special care order has been made and of the terms and conditions of that order and an order made, or warrant issued, if any, under this section and an order, if any, made under section 23NA(1).

(5) A person shall be deemed to have been given, or shown, a copy of a special care order or an order made, or warrant issued, under subsection (3) if that person was present at the sitting of the High Court at which that special care order or that order was made or that warrant was issued.

Review of special care order.

23I.—(1) The High Court shall carry out a review referred to in subsection (4) in each 4 week period for which a special care order has effect and the High Court shall, when making the special care order, or extending it pursuant to an application under section 23J, specify the date or dates for such review.

(2) A review under this section shall, subject to a direction under section 23NA(2)(a), if any, be made on notice to the persons referred to, and in accordance with, paragraphs (a) to (c) of section 23G(1).

(3) The Health Service Executive—

(a) may, where it considers it appropriate to the circumstances of the child, inform a person referred to in section 23G(2), and

(b) shall, where a direction has been made under section 23NA(2)(b), inform the person in respect of whom that direction was made,

of a review under this section.

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(4) The High Court shall, when carrying out a review under this section, consider whether the child continues to require special care to adequately address his or her behaviour, the risk of harm to his or her life, health, safety, development or welfare posed by that behaviour and his or her care requirements and shall have regard to an assessment made in accordance with section 23ND(4).

(5) The High Court may vary a special care order pursuant to a review under this section and may make such other provision and give directions as it, having regard to all the circumstances of the child, considers necessary and in the best interests of the child.

(6) Where a day is specified for a review under this section and on that day the child concerned is—

- (a) pursuant to section 23NF, outside the State for the purpose referred to in section 23NF(2)(c), or
- (b) pursuant to section 23NG, released from the special care unit for a purpose referred to in section 23NG(1),

the review may be held on such date notwithstanding that the child is outside the State or released from the special care unit for such purpose.

Extension of period for which special care order has effect.

23J.—(1) Where a special care order has been made in respect of a child and the Health Service Executive is satisfied that there is reasonable cause to believe that—

- (a) the child is benefiting from the special care provided to him or her pursuant to the order,
- (b) notwithstanding paragraph (a) and having regard to the assessments made by the Health Service Executive under section 23ND(4), the risk of harm to the child posed by his or her behaviour continues to exist,
- (c) the child requires the continuation of the provision to him or her of special care to adequately address that behaviour and risk of harm and his or her care requirements which the Health Service Executive cannot continue to provide to the child unless the period for which that special care order has effect is extended,

(d) the provision of—

(i) care by the Health Service Executive to the child, other than special care, and

(ii) treatment and mental health services, under, and within the meaning of, the Mental Health Act 2001, 5

will not adequately address that behaviour or risk of harm or the care requirements of the child, and 10

(e) the continuation of the provision of the special care and, for that purpose, the continuation of the detention of the child in a special care unit, is required to protect his or her life, health, safety, development or welfare, 15

the Health Service Executive shall, subject to subsection (2), apply to the High Court to extend the period for which the special care order has effect for the purpose of continuing the provision of special care to that child. 20

(2) Not more than 2 applications may be made under this section.

(3) An application under this section shall, subject to a direction under section 23NA(2)(a), be made on notice to the persons referred to in, and in accordance with, paragraphs (a) to (c) of section 23G(1). 25

(4) The Health Service Executive—

(a) may, where it considers it appropriate to the circumstances of the child, inform a person referred to in section 23G(2), and 30

(b) shall, where a direction has been made under section 23NA(2)(b), inform the person in respect of whom that direction was made, 35

of an application under this section.

(5) The first application under this section shall be made before the expiration of the period specified in the special care order in accordance with section 23H(2). 40

(6) The final application under this section shall be made before the expiration of the period for which the special care order was extended pursuant to the first application. 45

(7) Where the High Court is satisfied that—

(a) the conditions specified in paragraphs (a) to (e) of subsection (1) are satisfied in respect of the child, and

(b) the continuation of the detention of the child in a special care unit is in the best interests of the child,

the High Court may, subject to subsection (8), extend the period for which the special care order has effect and the High Court may, having regard to all the circumstances of the child, vary the special care order and make such other provision and give directions as it considers necessary and in the best interests of the child.

(8) Each extension of the period for which a special care order has effect shall not exceed 3 months.

(9) Where the High Court extends the period for which a special care order has effect (in this section referred to as the 'extended period') the extended period shall take effect—

(a) pursuant to the first application, immediately following the expiration of the period specified in the special care order in accordance with section 23H(2), and

(b) pursuant to the final application, immediately following the expiration of the previous extended period.

(10) Where an order was made under section 23NA(1) in respect of a child who is the subject of an application under this section, the High Court may, on the application of the Health Service Executive, extend the period for which that order has effect.

(11) An application under this section may be made, and heard, in respect of a child who, pursuant to section 23NF, is outside the State for the purpose referred to in section 23NF(2)(c).

Special care before determination under section 23F.

23K.—Where the Health Service Executive is taking all steps reasonably open to it to make a determination under section 23F in respect of a child and has not yet made that determination but it is satisfied that there is reasonable cause to believe that—

(a) the child has attained the age of 11 years,

(b) the behaviour of the child poses a real and substantial risk of harm to his or her life, health, safety, development or welfare of that child,

- (c) the risk of harm referred to in paragraph (b) is immediate,
- (d) having regard to that behaviour and risk of harm and having assessed the care requirements of that child— 5
 - (i) the provision, or the continuation of the provision, by the Health Service Executive to the child of care other than special care, and
 - (ii) treatment and mental health 10 services under, and within the meaning of, the Mental Health Act 2001,

will not adequately address that behaviour and risk of harm and those care 15 requirements,
- (e) having regard to paragraph (d), the child requires special care to adequately address—
 - (i) that behaviour and risk of harm, 20 and
 - (ii) those care requirements,

which it cannot provide to the child unless the High Court makes an interim special care order in respect of 25 that child,
- (f) for the purposes of protecting the life, health, safety, development or welfare of the child, the child requires special care, and 30
- (g) having regard to paragraph (c), the child requires special care immediately and before it has made a determination under section 23F,

the Health Service Executive shall, as soon as possible, apply to the High Court for an interim special care order. 35

Interim special care order. 23L.—(1) Where the High Court is satisfied that there is reasonable cause to believe that—

- (a) the child has attained the age of 11 40 years,
- (b) the Health Service Executive is taking all steps reasonably open to it to make a determination under section 23F,
- (c) the behaviour of the child poses a real 45 and substantial risk of harm to his or her life, health, safety, development or welfare,

(d) the risk of harm, referred to in paragraph (c), is immediate,

(e) having regard to that behaviour and risk of harm and the care requirements of the child—

(i) the provision, or the continuation of the provision, by the Health Service Executive to that child of care, other than special care, and

(ii) treatment and mental health services under, and within the meaning of, the Mental Health Act 2001,

will not adequately address that behaviour and risk of harm and those care requirements,

(f) having regard to paragraph (e), the child requires special care to adequately address—

(i) that behaviour and risk of harm, and

(ii) those care requirements,

which the Health Service Executive cannot provide to the child unless an interim special care order is made in respect of that child,

(g) for the purposes of protecting the life, health, safety, development or welfare of the child, the child requires special care,

(h) having regard to paragraph (d), the child requires special care immediately and it is required to be provided before the determination under section 23F is made in respect of that child, and

(i) having regard to paragraphs (a) to (h), the detention of the child in a special care unit, as it is required for the purpose of providing special care to him or her, is in the best interests of the child,

the High Court may make an interim special care order in respect of that child.

(2) An interim special care order shall specify the period for which it has effect and that period shall not exceed, subject to subsection (3), 14 days from the day on which that order is made unless that period is extended under section 23N and shall—

- (a) commit the child in respect of whom it is made to the care of the Health Service Executive,
- (b) direct the Health Service Executive to detain that child in a special care unit, which the Health Service Executive considers appropriate for that child, for the purpose of providing that child with special care, and
- (c) direct the Health Service Executive to provide special care to, and to generally care for and maintain, that child,

and the High Court may make such other provision and give directions, as it, having regard to all the circumstances of the child, considers necessary and in the best interests of the child.

(3) An application for an interim special care order may be made *ex parte* where the High Court is satisfied that the interests of justice, the welfare of the child or the protection of the life, health, safety, development or welfare of the child so require, and, subject to section 23M(6), where an interim special care order is made pursuant to an *ex parte* application the period for which such interim special care order has effect shall not exceed 8 days from the day on which it is made.

(4) For the purposes of executing an interim special care order the High Court may—

- (a) make an order directing a person who has actual custody of the child to deliver that child to the custody of the Health Service Executive,
- (b) make an order directing the Garda Síochána to search for and find the child and to deliver the child to the custody of the Health Service Executive, at a special care unit specified by the Health Service Executive, and
- (c) 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, if need be by force, any house or other place specified in the warrant, including any building or part of a building, tent, caravan, or other temporary or moveable structure, vehicle, vessel, or aircraft where the child is, or where there are reasonable grounds for believing that he or she is, and to deliver the child into the custody of the Health Service Executive at the special care unit in which the child is to be detained,

and the High Court may, in respect of such order or warrant, give directions as, having regard to all the circumstances of the child, it considers necessary and in the best interests of the child.

5 (5) Where the High Court makes an interim special care order, the Health Service Executive shall inform the Garda Síochána immediately that the interim special care order has been made and of the terms and conditions of that order and an order made, or warrant issued, if any, under this section and section 23NA(1).

10 (6) A person shall be deemed to have been given, or shown, a copy of an interim special care order or an order made, or warrant issued, under subsection (4) if that person was present at the sitting of the High Court at which that interim special care order or that order was made or that warrant was issued.

15 (7) If the Health Service Executive does not know the name of a child in respect of whom the application for an interim special care order is made, the Health Service Executive may make the application for the interim special care order without naming the child and the application shall contain such information in respect of the child to enable him or her to be identified for the purposes of the interim special care order.

Interim special care orders made *ex parte*: supplemental provisions.

20 23M.—(1) Where, in accordance with section 23L(3), the High Court makes an interim special care order pursuant to an *ex parte* application—

25 (a) the High Court shall appoint a day for which the hearing of an application for an interim special care order on notice to the persons referred to in section 23G(1) is returnable to the High Court, and, subject to subsection (7), the day appointed for such hearing shall not exceed 8 days from the day on which that interim special care order is made pursuant to the *ex parte* application,

30 (b) the High Court shall, subject to a direction under subsection (2), direct that a copy of the interim special care order made pursuant to the *ex parte* application and, subject to subsection (3), notice of the hearing referred to in paragraph (a), be served on a person referred to in, and in accordance with, paragraphs (a) and (b) of section 23G(1),

35 (c) the High Court, where it makes an appointment under section 26 (as amended by the *Child Care (Amendment) Act 2010*) in respect of

the proceedings, shall direct that a copy of the interim special care order made pursuant to the *ex parte* application and notice of the hearing referred to in paragraph (a) be served on a person appointed under that section, and

(d) the High Court may direct that a person referred to in section 23G(2) and section 23G(5), be informed of the making of that interim special care order and of the hearing referred to in paragraph (a),

and the High Court may direct that other information and documents be served on such persons and it may make such other provision and give directions, as it, having regard to all the circumstances, considers necessary and in the best interests of the child.

(2) The High Court, on the application of the Health Service Executive, may, having regard to the interests of justice or the protection of the life, health, safety, development or welfare of the child, direct that a copy of the interim special care order referred to in subsection (1)(b) not be served on a person referred to in subsection (1)(b).

(3) The High Court may, in respect of the hearing referred to in subsection (1)(a), make a direction under section 23G(6).

(4) The Health Service Executive—

(a) may inform a person referred to in section 23G(2) of the hearing referred to in subsection (1)(a), and

(b) shall, for the purposes of the hearing referred to in subsection (1)(a) and subject to a direction under subsection (2), take all steps reasonably open to it to locate a person referred to in paragraphs (a) and (b) of section 23G(1).

(5) Where the High Court makes an interim special care order at the hearing referred to in subsection (1)(a), it shall, when specifying, in accordance with section 23L(2), the period for which that order is to have effect, take into account the period for which the interim special care order made pursuant to the *ex parte* application has had effect and the cumulative period of the first-mentioned interim special care order and the interim special care order made pursuant to the *ex parte* application shall not, in accordance with section 23L(2), exceed 14 days.

(6) Where, at the hearing referred to in subsection (1)(a), the High Court—

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(a) makes an interim special care order, the interim special care order made pursuant to the *ex parte* application shall cease to have effect immediately following the making of the first-mentioned interim special care order, or

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(b) refuses to make an interim special care order it shall discharge the interim special care order made pursuant to the *ex parte* application.

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(7) Where the High Court makes an interim special care order pursuant to an *ex parte* application for a period which is less than 8 days, the day appointed for the hearing referred to in subsection (1)(a) shall not exceed the period for which such order is made.

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(8) Without prejudice to the generality of the foregoing, the High Court may give directions as it considers necessary and in the best interests of the child in respect of an application made *ex parte* for an interim special care order and in respect of the hearing referred to in subsection (1)(a) including directions relating to the service of a copy of the interim special care order made *ex parte* or pursuant to the hearing referred to in subsection (1)(a).

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Extension of period for which interim special care order has effect.

23N.—(1) Where an interim special care order has been made in respect of a child and the Health Service Executive has not yet made a determination under section 23F in respect of that child but it is satisfied that there is reasonable cause to believe that the conditions specified in paragraphs (a) to (e) of section 23J(1) are satisfied in respect of the child, the Health Service Executive shall, subject to subsections (2) and (8), apply to the High Court to extend the period for which the interim special care order has effect for the purpose of continuing the provision of special care to that child.

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(2) Not more than one application may be made under this section.

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(3) An application under this section shall, subject to a direction under section 23NA(2)(a), be made on notice to the persons referred to in, and in accordance with, paragraphs (a) to (c) of section 23G(1).

(4) The Health Service Executive—

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(a) may, where it considers it appropriate to the circumstances of the child, inform a person referred to in section 23G(2), and

(b) shall, where a direction was made under section 23NA(2)(b), inform the person

in respect of whom that direction was made,

of an application under this section.

(5) An application under this section shall be made before the expiration of the period specified in the interim special care order in accordance with section 23L(2). 5

(6) Where the High Court is satisfied that there is reasonable cause to believe that—

(a) the Health Service Executive is taking all steps reasonably open to it to make a determination in respect of the child under section 23F, 10

(b) the conditions specified in paragraphs (a) to (e) of section 23J(1) are satisfied in respect of the child, and 15

(c) the continuation of the detention of the child in a special care unit is in the best interests of the child,

the High Court may, subject to subsections (7) and (8), extend the period for which the interim special care order has effect, and the High Court may, having regard to all the circumstances of the child, vary the interim special care order and make such other provision and give directions as it considers necessary and in the best interests of the child. 20 25

(7) The extension of the period for which the interim special care order has effect shall not exceed 21 days.

(8) An application to extend the period for which an interim special care order has effect shall not be made in respect of an interim special care order, referred to in section 23L(3), which has been made pursuant to an *ex parte* application and in respect of which the hearing referred to in section 23M(1)(a) has not taken place. 30 35

(9) Where the High Court extends the period for which an interim special care order has effect (in this section referred to as the ‘extended period’) the extended period shall take effect immediately following the expiration of the period specified in the interim special care order in accordance with section 23L(2). 40

(10) Where an order was made under section 23NA(1) in respect of a child who is the subject of an application under this section, the High Court may, on the application of the Health Service Executive, extend the period for which that order has effect. 45

(11) An application under this section may be made, and heard, in respect of a child who, pursuant to section 23NF, is outside the State for the purpose referred to in section 23NF(2)(c).

5 Sections 23H
and 23L:
supplemental
provisions.

23NA.—(1) Where the High Court has made a special care order or an interim special care order in respect of a child, it may, on the application of the Health Service Executive, make an order, for the duration of the period for which that special care order or interim special care order has effect, directing the Garda Síochána, when requested by the Health Service Executive, to search for and find the child and to deliver the child to the custody of the Health Service Executive at a special care unit specified by the Health Service Executive where the child—

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20 (a) is, without lawful authority or the consent or knowledge of the Health Service Executive, removed from the custody of the Health Service Executive or from a special care unit,

(b) absconds from a special care unit or the custody of the Health Service Executive,

25 (c) fails to return, or is prevented from returning to—

(i) a special care unit, or

(ii) the custody of the Health Service Executive,

30 or

(d) is missing or is otherwise absent, without the consent or knowledge of the Health Service Executive, from a special care unit or place to which he or she has been released under section 23NF or 23NG.

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40 (2) Where the High Court makes a special care order or an interim special care order, the High Court, having regard to the interests of justice or the protection of the life, health, safety, development or welfare of the child, on its own motion or on the application of a parent, a guardian of the child, a person *in loco parentis* or the Health Service Executive—

45 (a) may, for the purpose of protecting the life, health, safety, development or welfare of the child—

50 (i) give directions in relation to the withholding of the address of the special care unit from a named person,

(ii) give directions in relation to the access, if any, to the child by a named person and the conditions under which that access is to be permitted, and 5

(iii) direct that, notwithstanding sections 23I(2), 23J(3), 23N(3), 23NE(6), 23NE(7), 23NE(8), 23NF(4) and 23NG(3), a review under section 23I and an application under sections 23J, 23N, 23NE, 23NF and 23NG, or any of them, shall be made otherwise than on notice to a named person, being a person to whom notice of such review or application is made pursuant to those sections, 10 15

and

(b) may, where it has made a direction under section 23G(5), for the purpose of protecting the life, health, safety, development or welfare of the child, direct that the person referred to in that subsection be informed of a review under section 23I and an application under sections 23J, 23N, 23NE, 23NF and 23NG, or any of them. 20 25

(3) Where the High Court makes a special care order or an interim special care order and before that order was made the Health Service Executive was unable to locate— 30

(a) a parent having custody of the child concerned,

(b) a guardian of the child, if any, or

(c) a person *in loco parentis*, 35

the Health Service Executive shall take all steps reasonably open to it to find that parent, guardian or person and, subject to a direction under subsection (2)(a) and section 23M(2), or any other order or direction of the High Court, inform him or her— 40

(i) that a special care order or an interim special care order has been made in respect of the child and the terms and conditions of that order, 45

(ii) of the name and location of the special care unit in which the child is detained, and

(iii) of an order made, or warrant issued, if any, under section 23H or 23L, an order, if any, made under subsection 50

(1), and a direction, if any, made under subsection (2).

5 (4) Where the High Court makes a direction referred to in section 23G(6) and, following that direction, makes a special care order or an interim special care order in respect of the child, subject to that direction, or other order or direction of the High Court including a direction referred to in subsection (2)(a), the Health Service Executive shall take all steps reasonably open to it to inform that parent or person—

10 (a) that the special care order or interim special care order has been made in respect of the child and the terms and conditions of that order,

15 (b) of the name and location of the special care unit in which the child is detained, and

20 (c) of an order made, or warrant issued, if any, made under section 23H, or 23L, an order, if any, made under subsection (1), and a direction, if any, made under subsection (2).

25 (5) Where the High Court makes a special care order or an interim special care order, the Health Service Executive, may apply to the High Court for an order to require a parent, or both parents, to pay to the Health Service Executive a sum of money as a contribution towards the cost of maintaining the child, in each week or other period and the application shall be on notice to the parent concerned or both of them.

30 (6) Where—

35 (a) an application under subsection (5) is made, the High Court shall have regard to the means of a parent, or both parents, and where it makes the order it may give directions and make such other provision as it considers necessary, and

40 (b) the High Court makes the order referred to in subsection (5), a parent, or both parents, may apply to the High Court to vary or discharge the order to pay the sum of money referred to in subsection (5).

45 (7) Where the High Court makes an interim special care order, the Health Service Executive shall, as soon as possible, take all steps reasonably open to it to make a determination, in respect of the child concerned, under, and in accordance with, section 23F.

(8) A person shall be deemed to have been given, or shown, a copy of an order referred to in subsection (1) if that person was present at the sitting of the High Court at which that order was made. 5

(9) The duration of the period for which the order made under subsection (1) has effect, may be extended with an application under section 23J or 23N.

Failure to find child.

23NB.—(1) Where a child, in respect of whom a special care order or an interim special care order has been made, has not been found within 3 days of the making of that order the Health Service Executive shall, on notice to the persons referred to in subsection (3), notify the High Court as soon as practicable after those 3 days have expired, that the child has not been found and of all steps taken, and proposed to be taken, by the Health Service Executive and the Garda Síochána to find the child. 10 15 20

(2) The High Court may, following the notification under subsection (1), give directions and make such other provision in relation to that order and the execution of that order as it considers necessary and in the best interests of the child. 25

(3) A notification under subsection (1) shall, subject to a direction referred to in section 23G(6) or 23M(2), and section 23NA(2)(a), be made on notice to a person referred to in, and in accordance with, paragraphs (a) to (c) of section 23G(1). 30

(4) Where a direction was made under section 23NA(2)(b), the Health Service Executive shall inform the person in respect of whom that direction was made, of the notification under this section. 35

(5) Where the Health Service Executive considers it appropriate to the circumstances of the child, it may inform a person referred to in section 23G(2) of the notification under this section.

Appeal and staying of order.

23NC.—Where— 40

(a) a special care order or an interim special care order, or

(b) an extension under section 23J or 23N,

is appealed, the High Court, may direct that the special care order, interim special care order or extension is to be stayed pending the hearing and determination of the appeal. 45

Functions of Health Service Executive when providing special care.

23ND.—(1) Where a special care order or an interim special care order has effect the Health Service Executive— 50

(a) shall have the like control over the child as if it were a parent of that child,

5 (b) shall do what is reasonable, subject to this Part, to promote his or her health, development or welfare and protect his or her life, health, safety, development or welfare, having regard to all the circumstances of the child,

10 (c) shall have the authority to decide on the special care to be provided to the child having regard to his or her care requirements and the special care unit in which a child is to be detained,

15 (d) shall have the authority to give consent to any medical or psychiatric examination, treatment or assessment in respect of the child,

20 (e) shall have the authority to give consent to the application for, and issuing of, a passport to the child, or the provision of passport facilities to the child, for the purpose of—

25 (i) obtaining medical or psychiatric assessment, examination and treatment outside the State,

(ii) permitting the child to reside, outside the State, with a parent or relative, or

30 (iii) obtaining such assessment, examination and treatment referred to in subparagraph (i) and permitting such residence referred to in subparagraph (ii),

in accordance with section 23NF, and

35 (f) shall take all steps that are reasonably open to it to prevent the child from absconding from the special care unit or the custody of the Health Service Executive.

40 (2) Where the Health Service Executive has given its consent in accordance with this section, such consent shall be sufficient authority for the carrying out of any medical or psychiatric assessment or examination, or the provision to the child of medical or psychiatric treatment, or the issue of a passport or the provision of passport facilities.

45 (3) Nothing in subsection (1)(d) or (2) shall be construed as making ineffective any consent which would have been effective if those provisions had not been enacted.

(4) Where a child is detained in a special care unit, the Health Service Executive—

(a) shall, from time to time, continue to assess his or her care requirements, and 5

(b) having made an assessment referred to in paragraph (a), shall from time to time—

(i) assess the effect of the special care provided to the child in relation to his or her care requirements, the behaviour of the child and risk of harm posed by that behaviour, and 10

(ii) satisfy itself that the child continues to require special care to adequately address that behaviour and risk of harm and those care requirements. 15

(5) The Health Service Executive may release the child from the special care unit for the purpose referred to in section 23NF(2)(c), in accordance with section 23NF. 20

(6) The Health Service Executive may transfer a child from one special care unit to another special care unit. 25

(7) Where the Health Service Executive proposes to transfer a child to another special care unit, subject to a direction under section 23NA(2)(a), the Health Service Executive shall— 30

(a) notify, subject to paragraph (b)—

(i) a parent having custody of the child unless the parent is dead, missing or cannot be found, and

(ii) a guardian, if any, of the child unless the guardian is missing or cannot be found, 35

of that proposal, or

(b) where the transfer is required for the immediate safety of the child, notify— 40

(i) a parent having custody of the child unless the parent is dead, missing or cannot be found, and

(ii) a guardian, if any, of the child unless the guardian is missing or cannot be found, 45

of the location of the special care unit to which the child has been transferred.

5 (8) The Health Service Executive shall, for the purposes of subsection (7), take all steps reasonably open to it to locate a person referred to in paragraph (a) or (b) of subsection (7).

10 Discharge and variation of special care order or interim special care order.

23NE.—(1) Where a special care order or an interim special care order has effect and the Health Service Executive is satisfied that there is reasonable cause to believe that—

(a) the care requirements of the child have changed and the child no longer requires special care, or

15 (b) the child is not benefiting from special care,

20 the Health Service Executive shall, subject to subsection (6), apply to the High Court to have the special care order or the interim special care order discharged.

(2) A special care order or an interim special care order shall cease to have effect when the child in respect of whom it was made attains 18 years of age.

25 (3) The High Court may, subject to subsections (7) and (8), discharge a special care order or an interim special care order—

(a) of its own motion,

30 (b) on the application of a parent of the child, a guardian of the child or a person *in loco parentis*, or

(c) on the application of the Health Service Executive pursuant to section 23D or 23E, or both of them.

35 (4) The High Court may vary a special care order or an interim special care order—

(a) of its own motion,

(b) on the application of the Health Service Executive, or

40 (c) on the application of a person referred to in subsection (3)(b).

45 (5) When considering an application to discharge or vary a special care order or an interim special care order under this section, other than an application referred to in subsection (3)(c), the High Court shall satisfy itself that the discharge or variation is in the best interests of the child, having regard to his or her behaviour and the risk of harm

it poses to his or her life, health, safety, development or welfare.

(6) An application referred to in subsection (1), (3)(c) or (4)(b) shall, subject to a direction under section 23NA(2)(a), be made on notice to the persons referred to in, and in accordance with, paragraphs (a) to (c) of section 23G(1) and where— 5

(a) a direction has been made under section 23NA(2)(b), the Health Service Executive shall inform the person in respect of whom that direction was made of the application, and 10

(b) the Health Service Executive is satisfied it is appropriate to the circumstances of the child, it may inform a person referred to in section 23G(2) of the application. 15

(7) An application referred to in subsection (3)(a) or (4)(a) shall, subject to a direction under section 23NA(2)(a), be made on notice to the Health Service Executive and the persons referred to in, and in accordance with, paragraphs (a) to (c) of section 23G(1), and— 20

(a) where a direction has been made under section 23NA(2)(b), the Health Service Executive shall inform the person in respect of whom that direction was made of the application, and 25

(b) where the Health Service Executive is satisfied it is appropriate to the circumstances of the child, it may inform a person referred to in section 23G(2). 30

(8) An application referred to in subsection (3)(b) or (4)(c) shall be made on notice to the Health Service Executive, and subject to a direction under section 23NA(2)(a), the persons, other than the person making the application, referred to in, and in accordance with, paragraphs (a) to (c) of section 23G(1), and— 35

(a) the person making the application may inform a person referred to in section 23G(2) of the application, and 40

(b) where a direction has been made under section 23NA(2)(b), the person making the application shall inform the person in respect of whom that direction was made of that application. 45

Release from special care unit under special care order or interim special care order.

23NF.—(1) Notwithstanding the detention of a child in a special care unit pursuant to a special care order or an interim special care order, the Health Service Executive may apply to the High Court to vary that special care order or interim special care order to authorise the release of the 50

child from the special care unit for all or any of the purposes referred to in subsection (2).

(2) The purposes referred to in subsection (1) are:

- 5 (a) to place the child in a children's residential centre or to permit the child to reside with a parent or a relative, including a parent or relative who resides outside the State, for a specified period as the Health Service Executive considers appropriate having regard to the care requirements of the child;
- 10
- 15 (b) the provision to the child of medical or psychiatric examination, treatment or assessment;
- (c) the provision to the child, outside the State, of medical or psychiatric examination, treatment or assessment;
- 20 (d) release on compassionate grounds;
- (e) educational and recreational outings from the special care unit;
- 25 (f) to promote the welfare of the child, having regard to his or her care requirements and to adequately address his or her behaviour and the risk of harm it poses to his or her life, health, safety, development or welfare.

30 (3) An application under this section may be made—

- (a) with an application for a special care order or interim special care order,
- (b) at a review under section 23I,
- 35 (c) with an application under section 23J or 23N, or
- (d) at any other time during the period for which the special care order or interim special care order has effect.

40 (4) An application referred to in subsection (3)(d) shall be made, subject to a direction under section 23NA(2)(a), on notice to the persons referred to in, and in accordance with, paragraphs (a) to (c) of section 23G(1).

45 (5) Where the Health Service Executive considers it appropriate to the circumstances of the child, it may inform a person referred to in section 23G(2) of an application referred to in subsection (3)(d).

(6) Where a direction has been made under section 23NA(2)(b) in respect of an application under this section, the Health Service Executive shall inform the person in respect of whom that direction was made of an application referred to in subsection (3)(d). 5

(7) The High Court may—

(a) vary the special care order or interim special care order to authorise the release of the child from the special care unit during the period for which the special care order or interim special care order has effect for all or any of the purposes referred to in subsection (2) where it is satisfied that the release is necessary for the protection of his or her life, health, safety, development or welfare and is in the best interests of the child, 10 15

(b) make such other provision and give directions in respect of the release as the High Court, having regard to all the circumstances of the child, considers necessary and in the best interests of the child, and 20 25

(c) without prejudice to the generality of paragraphs (a) and (b), vary the special care order or interim special care order for a specified period or a number of specified periods and may include terms and conditions as the High Court, having regard to all the circumstances of the child, considers necessary and in the best interests of the child. 30 35

(8) Without prejudice to the generality of subsection (7), a variation under this section may provide for the care of the child during the release and where the release is for the purpose—

(a) referred to in subsection (2)(c), or 40

(b) referred to in subsection (2)(a) and the parent or relative concerned resides outside the State,

the variation, or direction, may provide—

(i) in respect of the purpose referred to in paragraph (a), for the placement of the child in a specified place in which such examination, treatment or assessment is to be provided to the child, or 45

(ii) in respect of the purpose referred to in paragraph (b), any matter relating to the residence of the child with the parent or relative concerned. 50

(9) Notwithstanding subsection (1), the Health Service Executive may release a child from a special care unit where—

- (a) the child requires medical treatment, assessment or examination immediately, or
- (b) the release is required immediately on compassionate grounds.

(10) After a release referred to in subsection (9) the Health Service Executive shall—

- (a) inform the High Court as soon as practicable, of the release and the reasons for it,
- (b) subject to a direction under section 23NA(2)(a), inform a person referred to in section 23G(1)(a) as soon as possible of the release and the reasons for it unless he or she is dead, missing or cannot be found, and
- (c) where appropriate to the circumstances of the child and subject to a direction under section 23NA(2)(a), inform a person referred to in section 23G(1)(b) as soon as possible of the release and the reasons for it unless he or she is dead, missing or cannot be found.

(11) Where a child has been released from a special care unit under subsection (9) and the Health Service Executive considers it appropriate, having regard to the circumstances of the child, it may, subject to a direction under section 23NA(2)(a), inform any other person, including a person referred to in section 23G(2) of the release and the reasons for it.

(12) Where a child has been released under subsection (9) and a direction has been made under section 23NA(2)(b) in respect of an application under this section, the Health Service Executive shall inform the person in respect of whom that direction was made, of the release under this section.

(13) Where a child is released for the purpose referred to in subsection (9)(a) the child may remain in the place in which such treatment, assessment or examination is provided to him or her for such period as is required for such treatment, assessment or examination.

(14) Where a child is released from the special care unit pursuant to this section, including a release referred to in subsection (9), the period of the release concerned shall be included in the period for which the special care order or the interim special care order has effect.

(15) Without prejudice to the generality of subsections (7) and (8), where a child is released from the special care unit—

(a) for the purpose referred to in subsection (2)(c), or 5

(b) the purpose, referred to in subsection (2)(a) and the parent or relative concerned resides outside the State,

the High Court shall satisfy itself of all factors relevant to the welfare of the child in respect of— 10

(i) the provision, referred to in subsection (2)(c), to the child of medical or psychiatric examination, treatment or assessment outside the State, or

(ii) the residence of the child with a parent or relative, referred to in subsection (2)(a), outside the State, 15

before it varies the special care order or the interim special care order concerned.

Release from special care unit for purposes of sections 23D and 23E.

23NG.—(1) Notwithstanding the detention of a child in a special care unit pursuant to a special care order or an interim special care order, the Health Service Executive may apply to the High Court to vary that special care order or interim special care order to authorise the release of the child from the special care unit for all or any of the following: 20 25

(a) for the purposes referred to in section 23D(3)(c);

(b) for the purposes referred to in section 23D(4)(i) and section 23D(5); 30

(c) for the purposes of complying with any terms, conditions and other requirements of a Children Act order referred to in sections 23E(5)(i), 23E(8) and 23E(13); 35

(d) for the purposes of complying with any terms, conditions and other requirements of a children detention order the making of which has been deferred under section 144 of the Act of 2001, referred to in sections 23E(4)(i), 23E(8) and 23E(12); 40

(e) for the purposes of complying with any terms, conditions and other requirements of the suspension, under section 144(9)(b) of the Act of 2001, of a period of detention referred to in sections 23E(4)(i), 23E(8) and 23E(12); 45 50

(f) for the purposes of complying with a suspended custodial sentence referred to in sections 23E(3)(i), 23E(8) and 23E(11);

5 (g) for the purposes referred to in section 23E(6);

10 (h) for any other purpose in respect of which the release of the child is required pursuant to section 23D or 23E.

(2) An application under this section may be made—

15 (a) with an application for a special care order or interim special care order, at a review under section 23I or with an application under section 23J or 23N, or

20 (b) at any other time during the period for which the special care order or interim special care order has effect.

25 (3) An application referred to in subsection (2)(b) shall be made, subject to a direction under section 23NA(2)(a), on notice to the persons referred to in, and in accordance with, paragraphs (a) to (c) of section 23G(1).

(4) The High Court may—

30 (a) vary the special care order or interim special care order to authorise the release of the child from the special care unit during the period for which the special care order or interim special care order has effect for all or any of the purposes referred to in subsection (1),

35 (b) make such other provision and give directions in respect of the release under this section as the High Court, having regard to all the circumstances of the child, considers necessary and in the best interests of the child,

40 (c) without prejudice to the generality of paragraphs (a) and (b), vary the special care order or interim special care order for a specified period or a number of specified periods and may include terms and conditions as the High Court, having regard to all the circumstances of the child, considers necessary and in the best interests of the child,

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and without prejudice to the generality of the foregoing where the release is for the purposes

referred to in paragraph (a) or (b) of subsection (1) or for any other purpose for which the release of the child is required pursuant to section 23D, the variation shall be made in accordance with section 23D(3). 5

(5) Where a child is released from the special care unit pursuant to this section the period of the release shall be included in the period for which the special care order or the interim special care order has effect. 10

Hearing of proceedings. 23NH.—Proceedings under this Part shall be heard otherwise than in public.

Return of child to Health Service Executive in certain circumstances. 23NI.—(1) Where a child, in respect of whom a special care order or an interim special care order has been made— 15

(a) is, without lawful authority or the consent or the knowledge of the Health Service Executive, removed from the custody of the Health Service Executive or a special care unit, 20

(b) absconds from a special care unit or the custody of the Health Service Executive,

(c) fails to return, or is prevented from returning, to— 25

(i) a special care unit, or

(ii) the custody of the Health Service Executive,

or

(d) is missing or is otherwise absent, without the consent or knowledge of the Health Service Executive, from the special care unit or place to which he or she has been released in accordance with section 23NF or 23NG, 30 35

the Health Service Executive shall request the Garda Síochána to search for the child and return the child to the custody of the Health Service Executive at the special care unit specified by the Health Service Executive. 40

(2) Where a request has, in accordance with subsection (1), been made, the Garda Síochána may take all reasonable measures to comply with the request.

(3) Where the Health Service Executive has reasonable grounds for believing that a person can produce a child referred to in subsection (1), the Health Service Executive shall apply to the High Court for an order directing that person to deliver 45

the child to the care of the Health Service Executive.

5 (4) Where an application referred to in subsection (3) is made and the High Court is satisfied by information on oath that there are reasonable grounds for believing that a person specified in the information can produce that child, the High Court may make an order directing that person to deliver up that child to the custody of the Health Service Executive and may, for the purpose of that order, give directions as it considers necessary and in the best interests of the child.

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15 (5) A person shall be deemed to have been given, or shown, a copy of a warrant issued under subsection (6) if that person was present at the sitting of the High Court at which the warrant was issued.

20 (6) Where the High Court is satisfied by information on oath that there are reasonable grounds for believing that a child referred to in subsection (1), and who is named in an application, is in a house or other place, including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel or aircraft, specified in the information, the High Court may, on the application of the Health Service Executive in respect of a child referred to in subsection (1), 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, if need be by force, and to search any house or other place specified in the warrant, where the child is, or where there are reasonable grounds for believing that he or she is, and to return the child to the custody of the Health Service Executive at the special care unit specified by the Health Service Executive.

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35
40 (7) An application for an order under subsection (3) may be made *ex parte* and may be heard if the High Court is satisfied—

- (a) of the urgency of the matter,
- (b) that it is necessary for the purpose of protecting the life, health, safety, development or welfare of the child, or
- (c) that it is in the interests of justice to do so.

45
50 (8) Where a member of the Garda Síochána has reasonable grounds for believing that—

- (a) there is an immediate and serious risk to the life, health, safety, development or welfare of a child referred to in subsection (1), and

(b) it would not be sufficient for the protection of that child from such immediate and serious risk to await the making of an application for a warrant under subsection (6), 5

the member, accompanied by such other persons as may be necessary, may, without a warrant, enter, if need be by force, any house or other place, including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel or aircraft, and remove the child to safety and return the child to the custody of the Health Service Executive at the special care unit specified by the Health Service Executive. 10 15

(9) Subsection (8) is without prejudice to any other powers exercisable by a member of the Garda Síochána.

(10) Where a child is removed to safety by a member of the Garda Síochána in accordance with subsection (8), the child shall be returned to the custody of the Health Service Executive at the special care unit specified by the Health Service Executive. 20

Applications for special care orders or interim special care orders generally.

23NJ.—(1) Nothing in this Act shall be construed as preventing the Health Service Executive from applying for a special care order or an interim special care order, in respect of a child who has previously been the subject of— 25

(a) an application for a special care order or an interim special care order, 30

(b) a special care order, whether or not the period for which it had effect was extended in accordance with section 23J, or 35

(c) an interim special care order, whether or not the period for which it had effect was extended in accordance with section 23N.

(2) Where a special care order has been made in respect of a child, whether or not the period for which it had, or has, effect was extended in accordance with section 23J, the Health Service Executive may apply for another special care order in respect of that child— 40 45

(a) at any time after the first-mentioned special care order ceased to have effect, or

(b) during the period for which the first-mentioned special care order has effect, 50

and where the High Court, pursuant to an application to which paragraph (b) refers, makes the special care order, the first-mentioned special care order shall cease to have effect immediately following the making of that special care order.

(3) Where an interim special care order has been made in respect of a child, whether or not the period for which it had effect was extended in accordance with section 23N, the Health Service Executive may apply for another interim special care order in respect of that child, subject to subsection (4), at any time after the first-mentioned interim special care order ceased to have effect.

(4) Subsection (3) shall not apply in respect of a hearing, referred to in section 23M(1)(a), held pursuant to the making of an interim special care order *ex parte*.

(5) Where an interim special care order has been made in respect of a child, whether or not the period for which it had, or has, effect was extended in accordance with section 23N, the Health Service Executive may apply for a special care order in respect of that child—

- (a) at any time after the interim special care order ceased to have effect, or
- (b) during the period for which the interim special care order has effect,

and where the High Court, pursuant to an application to which paragraph (b) refers—

- (i) makes the special care order, the interim special care order shall cease to have effect immediately following the making of that special care order, or
- (ii) if the High Court refuses to make the special care order it shall discharge the interim special care order.

(6) The Health Service Executive may apply for a special care order, or an interim special care order, in respect of a child who is, or has previously been the subject of an order of the High Court the effect of which was to detain a child in secure residential accommodation and such application may be made, in accordance with this Part—

- (a) at any time after that High Court order ceased to have effect, or
- (b) during the period for which that High Court order has effect,

and where the High Court, pursuant to an application to which paragraph (b) refers, makes the

special care order or, as the case may be, the interim special care order it shall give directions in respect of the cessation of the effect of that High Court order.

Application for directions. 23NK.—Where a child is in the care of the Health Service Executive pursuant to a special care order or an interim special care order, the High Court may— 5

(a) of its own motion, or

(b) on the application of the Health Service Executive, a parent, the guardian of the child or a relative, 10

give directions or make an order on any question affecting the welfare of the child as the High Court thinks proper and may vary or discharge any such direction or order. 15

Existing orders. 23NL.—(1) Where an existing order has effect in respect of a child on the day on which a special care order or an interim special care order is made in respect of that child, subject to subsection (2), the provision of special care to that child by the Health Service Executive shall take precedence over the care provided to the child pursuant to such existing order during the period for which the special care order or interim special care order has effect. 20 25

(2) Where an existing order has effect for a specified period, nothing in subsection (1) shall be construed as affecting that period.

(3) In this section ‘existing order’ means— 30

(a) an interim care order made under section 17,

(b) a care order made under section 18,

(c) an emergency order made under section 13, or 35

(d) a supervision order made under section 19.

Provision of information to certain persons. 23NM.—(1) The Health Service Executive shall, from time to time during the period for which a special care order or an interim special care order has effect and subject to a direction under section 23NA(2)(a), provide— 40

(a) a parent having custody of the child unless the parent is dead, missing or cannot be found, and 45

(b) a guardian of the child unless the guardian is missing or cannot be found, or a relative,

5 with information relating to the child having regard to the special care provided to him or her, his or her care requirements, the behaviour of the child before the provision of special care and the risk it poses to his or her life, health, safety, development or welfare.

10 (2) The Health Service Executive shall, for the purposes of subsection (1), take all steps reasonably open to it to locate a person referred to in paragraphs (a) and (b) of subsection (1).

(3) Without prejudice to the generality of subsection (1), information provided pursuant to that subsection includes information in respect of—

15 (a) the benefits of special care having regard to the care requirements of the child, and

(b) an incident, if any, relating to the child which—

20 (i) has occurred in the special care unit or during a period for which the child was released from the special care unit pursuant to section 23NF or 23NG, and

25 (ii) has had, or is likely to have, an adverse affect on that child.

Request for appraisal of special care provided to child.

30 23NN.—(1) A parent of a child who is the subject of a special care order or an interim special care order, a guardian or a person who has a *bona fide* interest in the child, may request, in writing, the Health Service Executive to carry out an appraisal of the child in respect of the special care provided to him or her, the care requirements of the child, the behaviour of the child before the provision of such special care and the risk such behaviour poses to his or her life, health, safety, development or welfare.

40 (2) Where a request under subsection (1) is made, the Health Service Executive shall, subject to subsection (3), carry out an appraisal referred to in subsection (1).

45 (3) Where, pursuant to a request referred to in subsection (1), the Health Service Executive decides not to carry out an appraisal, the Health Service Executive shall inform, in writing, the person who made the request of that decision and the reasons for it.

50 (4) Where the Health Service Executive decides not to carry out an appraisal pursuant to a request referred to in subsection (1), the person who made that request may appeal the decision in accordance with this section within 14 days of receipt of the written notification in the prescribed form stating the reasons for the appeal.

(5) Where the Health Service Executive receives an appeal under subsection (4) it shall, with the consent of the Minister, appoint a person who—

(a) has, in the opinion of the Health Service Executive, the necessary qualifications, training or experience, or a combination thereof, and 5

(b) is not an employee of the Health Service Executive. 10

(6) The person appointed pursuant to subsection (5) to consider an appeal under subsection (4) shall—

(a) be independent in the performance of his or her functions, 15

(b) comply with guidelines issued under subsection (10) by the Health Service Executive in respect of the procedure to be followed with respect to the consideration of the appeal, 20

(c) consider any written or oral objections made by the appellant in support of the appeal,

(d) make a decision in writing determining the appeal as soon as practicable in all the circumstances of the case, and 25

(e) send a copy of the decision referred to in paragraph (d) to the appellant and the Health Service Executive together with the reasons for that decision. 30

(7) The appellant or the Health Service Executive may appeal to the High Court against the decision referred to in subsection (6)(d) on a point of law.

(8) An appeal under subsection (7) shall, where the appellant requests, be heard otherwise than in public. 35

(9) A decision of the High Court on an appeal under subsection (7) shall be final except that, by leave of the High Court, an appeal from the decision shall lie to the Supreme Court on a specified question of law. 40

(10) The Health Service Executive shall issue guidelines in respect of the procedure to be followed in respect of an appeal under this section. 45

Guidelines.

23NO.—The Health Service Executive shall prepare and publish guidelines in respect of—

(a) the procedures for—

5

(i) the discharge of children from special care units including the discharge or release of children who are to remain in the care of the Health Service Executive pursuant to an order under the Act other than under this Part, and

10

(ii) the release, in accordance with section 23NF and 23NG, of children from a special care unit,

15

(b) the provision of care under this Act, including aftercare referred to in section 45, to a child when a special care order or an interim special care order made in respect of that child ceases to have effect, and

(c) informing the Garda Síochána and other persons, of children—

20

(i) who are, without lawful authority or the consent or knowledge of the Health Service Executive, removed from the custody of the Health Service Executive or a special care unit,

25

(ii) who abscond from a special care unit or the custody of the Health Service Executive,

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(iii) who fail to return, or are prevented from returning, to a special care unit or the custody of the Health Service Executive, or

35

(iv) who are missing or otherwise absent, without the consent or knowledge of the Health Service Executive, from the special care unit or place to which children are released in accordance with sections 23NF and 23NG.

40

Offences.

23NP.—(1) Without prejudice to the law relating to contempt of court, where the High Court—

(a) makes an order under section 23H(3)(a),

(b) makes an order under section 23L(4)(a), or

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(c) makes an order under section 23NI(4),

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and the person who has actual custody of the child has been given or shown a copy of the order referred to in paragraph (a), (b) or (c) and has been required, by or on behalf of the Health Service Executive, to give up that child to the Health Service Executive, and that person fails or

refuses to comply with the order, that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both. 5

(2) Without prejudice as to the law as to contempt of court, where a special care order or an interim special care order has been made in respect of a child, a person who—

(a) without lawful authority, removes that child from— 10

(i) a special care unit,

(ii) the custody of the Health Service Executive, any person who is taking care of the child on behalf of the Health Service Executive or a person referred to in section 23B(4), or 15

(iii) the place to which he or she has been released under section 23NF or 23NG, 20

or

(b) prevents the child, where that child is released from the special care unit in accordance with section 23NF or 23NG, from returning to— 25

(i) the special care unit, or

(ii) the custody of the Health Service Executive or a person referred to in paragraph (a)(ii), 30

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(3) For the purposes of this section, a person shall be deemed to have been given or shown a copy of an order referred to in paragraph (a), (b) or (c) of subsection (1) if that person was present at the sitting of the High Court at which that order was made.”. 35 40

Amendment of section 24 of Principal Act.

10.—Section 24 of the Principal Act is amended by inserting “, and in proceedings before the High Court under Part IVA (as amended by the *Child Care (Amendment) Act 2010*) in relation to special care” after “the care and protection of a child”.

Amendment of section 25 of Principal Act.

11.—Section 25 (as amended by the Act of 2004) of the Principal Act is amended— 45

(a) in subsection (1), by inserting “, IVA (as amended by the *Child Care (Amendment) Act 2010*)” after “Part IV”, and

(b) by inserting the following subsection after subsection (5):

5 “(6) In this section, where the proceedings are proceedings under Part IVA (as amended by the *Child Care (Amendment) Act 2010*), ‘court’ means the High Court.”.

12.—Section 26 (as amended by the Act of 2004) of the Principal Act is amended—

Amendment of section 26 of Principal Act.

10 (a) in subsection (1), by inserting “, IVA (as amended by the *Child Care (Amendment) Act 2010*)” after “Part IV”,

(b) in subsection (2), by inserting “reasonably” after “Any costs”,

(c) by inserting the following subsections after subsection (2):

15 “(2A) Where the court makes an appointment under subsection (1) (as amended by the *Child Care (Amendment) Act 2010*), without prejudice to the generality of subsection (1), the court shall give directions relating to the service of documents for the proceedings concerned on the guardian *ad litem* and, where an appointment is made under subsection (2C), on the solicitor acting for him or her.

(2B) A guardian *ad litem* shall for the purpose of the proceedings for which he or she is appointed—

25 (a) promote the best interests of the child and convey the views of the child concerned to the court, in so far as is practicable, having regard to the age and understanding of the child, and

30 (b) where a solicitor is appointed under subsection (2C), instruct him or her and where directions are given under that subsection the guardian *ad litem* shall comply with those directions.

(2C) Where the court makes an appointment under subsection (1) (as amended by the *Child Care (Amendment) Act 2010*)—

35 (a) the court may, if it thinks fit, appoint a solicitor to represent the guardian *ad litem* in respect of those proceedings and give directions as to the performance by the solicitor of his or her duties, which may include, if necessary, having regard to the circumstances of the case, directions in relation to the instruction of counsel, and

45 (b) where an appointment is made and directions given under this subsection the costs and expenses reasonably incurred on behalf of the guardian *ad litem* performing his or her functions pursuant to subsection (2B)(b) shall be paid by the Health Service Executive and the Health Service Executive may apply to the

court to have the amount of any such costs of expenses measured or taxed.”,

(d) by inserting the following subsection after subsection (3):

“(3A) Where the court makes an order under subsection (2C) (inserted by the *Child Care (Amendment) Act 2010*), it may, on the application to it of the Health Service Executive, order any other party to the proceedings in question to pay to the Health Service Executive any costs or expenses payable by the Health Service Executive under subsection (2C).”

(e) in subsection (4) by inserting “and an appointment, if any, under subsection (2C) (inserted by the *Child Care (Amendment) Act 2010*)” after “then that order”, and

(f) by inserting the following subsection after subsection (4):

“(5) In this section, where the proceedings are proceedings under Part IVA (as amended by the *Child Care (Amendment) Act 2010*), ‘court’ means the High Court.”

Amendment of section 27 of Principal Act.

13.—Section 27 of the Principal Act is amended—

(a) in subsection (1), by inserting “, IVA (as amended by the *Child Care (Amendment) Act 2010*)” after “Part IV”, and

(b) by inserting the following subsections after subsection (5):

“(6) In this section, a reference to the party or parties includes a guardian *ad litem*, if any, appointed in accordance with section 26 (as amended by the *Child Care (Amendment) Act 2010*) in respect of the proceedings concerned.

“(7) In this section, where the proceedings are proceedings under Part IVA (as amended by the *Child Care (Amendment) Act 2010*), ‘court’ means the High Court.”

Amendment of section 28 of Principal Act.

14.—(1) Section 28 of the Principal Act is amended—

(a) in subsection (1) by inserting “and summary proceedings for an offence under section 23NP (inserted by the *Child Care (Amendment) Act 2010*)” after “Part III, IV or VI”, and

(b) in subsection (2) by inserting “, and summary proceedings for an offence under section 23NP (inserted by the *Child Care (Amendment) Act 2010*),” after “Part III, IV or VI”.

(2) Section 28 of the Principal Act is amended by inserting the following subsections after subsection (2):

“(3) The High Court shall have jurisdiction to hear and determine—

(a) proceedings under Part IVA (as amended by the *Child Care (Amendment) Act 2010*), other than proceedings under section 23NP (inserted by the *Child Care (Amendment) Act 2010*),

5 (b) any application or other matter under, and in accordance with, this Act (as amended by the *Child Care (Amendment) Act 2010*) that relates to a special care order, an interim special care order or the hearing and determination of proceedings for special care under Part IVA (as amended by the *Child Care (Amendment) Act 2010*),

10 (c) without prejudice to the generality of paragraph (b), any application or other matter under, and in accordance with, Part V (as amended by the *Child Care (Amendment) Act 2010*) that relates to proceedings under Part IVA (as amended by the *Child Care (Amendment) Act 2010*) for special care, and the hearing and determination of such proceedings other than proceedings under section 31(3) which relate to proceedings under Part IVA, and

15 (d) without prejudice to the generality of paragraph (b), any proceedings relating to section 37 (as amended by the *Child Care (Amendment) Act 2010*) in so far as they concern a child who is the subject of a special care order or an interim special care order during the period for which the order concerned has effect.

20 (4) The District Court, and the Circuit Court on appeal from the District Court, shall have jurisdiction to hear and determine an application for a care order or a supervision order notwithstanding that, at the time that application is made, a special care order or an interim special care order has effect in respect of the child concerned.”.

25 **15.—Section 30 of the Principal Act is amended—**

Amendment of section 30 of Principal Act.

30 (a) in subsection (1) by inserting “, IVA (as amended by the *Child Care (Amendment) Act 2010*)” after “Part III, IV”, and

(b) by inserting the following subsection after subsection (2):

35 “(3) In subsection (1) and (2), where the proceedings are proceedings under Part IVA (as amended by the *Child Care (Amendment) Act 2010*), ‘court’ means the High Court.”.

16.—Section 31 of the Principal Act is amended—

Amendment of section 31 of Principal Act.

40 (a) in subsection (1) by inserting “, IVA (as amended by the *Child Care (Amendment) Act 2010*)” after “Part III, IV”, and

(b) by inserting the following subsection after subsection (5):

45 “(5A) In this section, where the proceedings are proceedings under Part IVA (as amended by the *Child Care (Amendment) Act 2010*), ‘court’ means the High Court.”.

Amendment of section 32 of Principal Act.

17.—Section 32 of the Principal Act is amended by—

- (a) inserting “, or for a special care order or an interim special care order under Part IVA (as amended by the *Child Care (Amendment) Act 2010*), the High Court”, after “Part III, IV or VI, the court”, and 5
- (b) inserting “, or as the case may be, the High Court,” after “declared by the court”.

Amendment of section 33 of Principal Act.

18.—Section 33 of the Principal Act is amended—

- (a) by inserting the following subsection after subsection (1):
 - “(1A) For the purposes of ensuring the expeditious hearing of applications and proceedings under, and in relation to, Part IVA (as amended by the *Child Care (Amendment) Act 2010*), rules of court may make provision for the service of superior court documents otherwise than under section 23 of the Courts Act 1971.”, 10 15
- and
- (b) in subsection (2), by inserting “, IVA (as amended by the *Child Care (Amendment) Act 2010*)” after “Part III, IV”.

Amendment of section 36 of Principal Act.

19.—Section 36 of the Principal Act is amended—

- (a) in subsection (1) (as amended by the Act of 2004) by inserting “subject to subsection (4),” after “Health Service Executive,”, and 20
- (b) by inserting the following subsection after subsection (3):
 - “(4) A placement referred to in subsection (1) shall not be made in respect of a child who is the subject of a special care order or an interim special care order during the period for which that order has effect.”. 25

Amendment of section 37 of Principal Act.

20.—Section 37 of the Principal Act is amended—

- (a) by inserting the following subsection after subsection (1)—
 - “(1A) Where a child is in the care of the Health Service Executive pursuant to a special care order or an interim special care order, the Health Service Executive shall, subject to this Act, and to a direction, if any, given under section 23NA(2)(a) (inserted by the *Child Care (Amendment) Act 2010*), and in accordance with that special care order or interim special care order and that direction, if any, facilitate reasonable access to the child in the special care unit by his or her parents, a person acting *in loco parentis*, a guardian or any other person who, in the opinion of the Health Service Executive, has a *bona fide* interest in the child.”, 30 35 40
- (b) in subsection (2) by inserting “or with arrangements made by the Health Service Executive under subsection (1A) (inserted by the *Child Care (Amendment) Act 2010*)”

after “Health Act 2004” (inserted by the Act of 2004),
and

(c) by inserting the following subsection after subsection (4):

5 “(5) In this section, in proceedings under Part IVA (as
amended by the *Child Care (Amendment) Act 2010*),
‘court’ means the High Court.”.

21.—Section 42 (as amended by the Act of 2004) of the Principal Act is amended by inserting the following subsection after subsection (2):

Amendment of
section 42 of
Principal Act.

10 “(3) Regulations under this section shall not apply to children
who are the subject of special care orders or interim special care
orders during the period those orders have effect.”.

22.—Section 45 (as amended by the Act of 2004) of the Principal Act is amended by inserting the following subsection after subsection (4):

Amendment of
section 45 of
Principal Act.

“ (5) For the purposes of this section, the reference in subsection (1)(a) to the care of the Health Service Executive includes special care provided under Part IVA (as amended by the *Child Care (Amendment) Act 2010*).”.

20 **23.**—Section 46 (as amended by the Act of 2004) of the Principal Act is amended in subsection (1) by inserting, “, other than special care under Part IVA (as amended by the *Child Care (Amendment) Act 2010*),” after “in the care of the Health Service Executive”.

Amendment of
section 46 of
Principal Act.

25 **24.**—Section 47 (as amended by the Act of 2004) of the Principal Act is amended by inserting, “subject to section 23NK (inserted by the *Child Care (Amendment) Act 2010*)”, after “in the care of the Health Service Executive”.

Amendment of
section 47 of
Principal Act.

PART 3

AMENDMENT OF ACT OF 2001

30 **25.**—Section 3 (as amended by the Act of 2004) of the Act of 2001 is amended, in subsection (1), by inserting the following definition after the definition of “school”:

Amendment of
section 3 of Act of
2001.

35 “ ‘special care order’ has the meaning assigned to it by Part IVA
(as amended by the *Child Care (Amendment) Act 2010*) of the
Act of 1991;”.

26.—Section 7 (as amended by the Act of 2004) of the Act of 2001 is amended in subsection (1), by substituting the following paragraph for paragraph (b):

Amendment of
section 7 of Act of
2001.

40 “(b) a family welfare conference is to be convened pursuant
to section 23F (as amended by the *Child Care
(Amendment) Act 2010*) of the Act of 1991;”.

27.—Section 8 (as amended by the Act of 2004) of the Act of 2001
is amended—

- (a) in subsection (1) by substituting “A family welfare conference” for “A family welfare conference shall”,
- (b) in paragraph (a) of subsection (1)— 5
 - (i) by substituting “referred to in section 7(1)(b), shall consider whether” for “decide if”,
 - (ii) by substituting “requires” for “is in need of”, and
 - (iii) by substituting “under Part IVA (as amended by the *Child Care (Amendment) Act 2010*)” for “or protection 10
which the child is unlikely to receive unless an order is made in respect of him or her under Part IVA (inserted by this Act)”,
- (c) in paragraph (b) of subsection (1)—
 - (i) by substituting “referred to in section 7(1)(b), shall, if 15
it is considered that the child requires special care” for “if it decides that a child is in such need”, and
 - (ii) by substituting “a special care order,” for “an order under that Part, and”,
- (d) in paragraph (c) of subsection (1)— 20
 - (i) by substituting “referred to in section 7(1)(a) shall,” for “if it does not so decide,”
 - (ii) by substituting “a care order, a supervision order, a special care order or other care” for “a care order or a supervision order”, and 25
 - (iii) by substituting “in respect of the child, and” for “in respect of the child.”,
- and
- (e) in subsection (1) by inserting the following paragraph after 30
paragraph (c):
 - “(d) referred to in section 7(1)(b) shall, if it is considered that the child does not require special care, make such recommendations to the Health Service Executive in relation to the care or protection of the child as the conference 35
considers necessary, including, where appropriate, care, other than special care, under the Act of 1991.”.

28.—Section 10 of the Act of 2001 is amended by inserting the
following subsection after subsection (3): 40

- “(4) The procedure referred to in subsection (1) shall—
 - (a) be consistent with fairness and natural justice, and

(b) include a procedure for consulting with the child and for ascertaining the wishes of the child in respect of whom the conference, referred to in subsection (1), has been convened.”.

5 **29.**—Section 13 (as amended by the Act of 2004) of the Act of 2001 is amended in subsection (1) by deleting paragraph (a). Amendment of section 13 of Act of 2001.

30.—Section 71 of the Act of 2001 is amended in subsection (1)(a) by deleting “, IVA (inserted by this Act)”. Amendment of section 71 of Act of 2001.

10 **31.**—Section 77 (as amended by the Child Care (Amendment) Act 2007) of the Act of 2001 is amended— Amendment of section 77 of Act of 2001.

 (a) in subsection (1) by inserting “or for the provision to that child of other care under the Act of 1991 (as amended by the *Child Care (Amendment) Act 2010*) or otherwise” after “Act of 1991 with respect to the child”, and

15 (b) in subsection (1)(a) by substituting “circumstances.” for “circumstances,”.

32.—Section 267 of the Act of 2001 is amended, in subsection (2), by substituting “Part” for “Parts IVA and”. Amendment of section 267 of Act of 2001.

PART 4

20 AMENDMENT OF ACT OF 2007

33.—(1) Section 2 of the Act of 2007 is amended— Amendment of Act of 2007.

 (a) in subsection (1), in the definition of “designated centre”—

25 (i) by inserting the following paragraph after paragraph (a):

 “(aa) that is a special care unit,”,

 (ii) by deleting paragraph (v),

 (b) in subsection (1), by substituting the following definition for the definition of “special care unit”:

30 “ ‘special care unit’ has the meaning assigned to it by Part IVA (as amended by the *Child Care (Amendment) Act 2010*) of the Child Care Act 1991;”,

 (c) in subsection (2), by inserting “unit,” after “home,” in each place where it occurs, and

35 (d) by inserting the following subsection after subsection (2):

 “(2A) For the purposes of the definition of designated centre (as amended by the *Child Care (Amendment) Act 2010*) in subsection (1) and construing references to persons resident in, residents of, and persons who can be

accommodated in, a designated centre, such references shall be construed as including children detained in a special care unit in accordance with the Child Care Act 1991 (as amended by the *Child Care (Amendment) Act 2010*).”.

5

(2) Section 8 of the Act of 2007 is amended in subsection (1)(c) by deleting “, special care units”.

(3) Section 41 of the Act of 2007 is amended in subsection (1) by deleting paragraph (d).

(4) Section 73 of the Act of 2007 is amended— 10

(a) in subsection (2)(c), by deleting “or special care unit”, and

(b) in subsection (4)(a) by deleting “or a special care unit”.

(5) Section 75 of the Act of 2007 is amended in subsection (2)(a) by deleting “or special care unit”.

(6) Schedule 2 of the Act of 2007 is amended in Part 1 by deleting 15
Item 3.

PART 5

DISSOLUTION OF CHILDREN ACTS ADVISORY BOARD

Definition.

34.—In this Part “Board” means the Children Acts Advisory Board. 20

Dissolution of Board.

35.—The Board shall be dissolved on the commencement of this Part.

Transfer of rights and liabilities.

36.—(1) All rights and liabilities of the Board arising by virtue of any contract or commitment (expressed or implied) entered into by the Board before the commencement of this Part shall, on such commencement, stand transferred to the Minister. 25

(2) Every right and liability transferred by *subsection (1)* may, on and after the transfer, be sued on, recovered or enforced by or against the Minister in his or her name and it shall not be necessary for the Minister to give notice to the person whose right or liability 30
is transferred by that subsection of such transfer.

Transfer of certain property.

37.—(1) All land which, immediately before the commencement of this Part, was vested in the Board and all rights, powers and privileges relating to or connected with that land are, on such commencement, without any conveyance or assignment, transferred to and 35
vested in the Minister.

(2) All property other than land, including choses-in-action, which immediately before the commencement of this Part was the property of the Board shall, on such commencement, stand transferred to the Minister without any assignment. 40

(3) Every chose-in-action transferred by *subsection (2)* may, on and after the commencement of this Part, be sued upon, recovered

or enforced by the Minister in his or her name and it shall not be necessary for the Minister to give notice to any person bound by the chose-in-action of the transfer effected by that subsection.

5 (4) Any moneys, stocks, shares and securities transferred to the Minister by *subsection (2)* which, immediately before the commencement of this Part, are in the name of the Board shall, upon the request of the Minister, be transferred into his or her name.

10 **38.—(1)** As soon as may be after the commencement of this Part, but not later than one year thereafter, the Minister shall cause to be prepared final accounts of the Board, in respect of the accounting year or part of an accounting year of the Board ending immediately before the commencement of this Part. Final accounts.

15 (2) Accounts prepared pursuant to this section shall be submitted as soon as may be by the Minister to the Comptroller and Auditor General for audit, and, immediately after the audit, a copy of the accounts as audited and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies of those audited accounts and that report to be laid before each House of the Oireachtas.

20 **39.—(1)** As soon as may be after the commencement of this Part, but not later than one year thereafter, the Minister shall cause to be prepared a final report of the Board's activities in respect of such period as has not already been the subject of a report to the Minister and ending immediately before the commencement of this Part. Preparation of final report.

25 (2) The Minister shall cause copies of the final report referred to in *subsection (1)* to be laid before each House of the Oireachtas.

30 **40.—**Where, immediately before the commencement of this Part legal proceedings to which the Board is a party are pending, the name of the Minister shall be substituted in the proceedings for the name of the Board and the proceedings shall not abate by reason of such substitution. Pending legal proceedings.

35 **41.—(1)** (a) Subject to *paragraph (b)*, every person who, immediately before the commencement of this Part is an employee of the Board shall, on such commencement, hold an unestablished position in the Civil Service. Transfer of staff of Board.

40 (b) Every person who, immediately before the commencement of this Part, is a fixed-term employee of the Board shall, on such commencement, hold an unestablished position as a fixed-term employee of the Minister for the duration of his or her contract of employment.

45 (2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, on the commencement of this Part, be brought to less beneficial conditions of remuneration than the conditions of remuneration to which he or she was subject immediately before the commencement of this Part.

(3) The previous service of a person referred to in *subsection (1)* shall be reckonable for the purposes of, but subject to any exceptions or exclusions in:

- (a) the Redundancy Payments Acts 1967 to 2007;
- (b) the Protection of Employees (Part-Time Work) Act 2001;
- (c) the Protection of Employees (Fixed-Term Work) Act 2003;
- (d) the Organisation of Working Time Act 1997; 5
- (e) the Terms of Employment (Information) Acts 1994 and 2001;
- (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
- (g) the Unfair Dismissals Acts 1977 to 2007; 10
- (h) the Maternity Protection Acts 1994 and 2004;
- (i) the Parental Leave Acts 1998 and 2006;
- (j) the Adoptive Leave Acts 1995 and 2005;
- (k) the Carer's Leave Act 2001.

(4) Any superannuation benefits awarded to or in respect of a 15 person referred to in *subsection (1)* and the terms relating to those benefits shall be no less favourable than those applicable to or in respect of that person immediately before the commencement of this Part.

(5) The pension payments and other superannuation liabilities of 20 the Board in respect of its former employees become on the commencement of this Part the liabilities of the Minister for Finance.

(6) A person referred to in *subsection (1)* shall undertake such duties as the Minister may from time to time direct.

(7) A person referred to in *subsection (1)* shall be subject to and 25 employed in accordance with the Civil Service Regulation Acts 1956 to 2005 and the Ethics in Public Office Acts 1995 to 2001.

(8) In this section—

“Act of 2004” means the Public Service Management (Recruitment and Appointments) Act 2004; 30

“Civil Service” has the meaning assigned to it by the Act of 2004;

“contract of employment” has the meaning assigned to it by the Protection of Employees (Fixed-Term Work) Act 2003;

“fixed-term employee” has the meaning assigned to it by the Protection of Employees (Fixed-Term Work) Act 2003; 35

“recognised trade union or staff association” means a trade union or staff association recognised by the Minister for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions of employees;

“unestablished position” has the meaning assigned to it by the Act 40 of 2004.

42.—The expenses incurred by the Minister in the administration Expenses.
of this Part shall, to such extent as may be sanctioned by the Minister
for Finance, be paid out of moneys provided by the Oireachtas.

5 43.—Section 29 (as amended by the Child Care (Amendment) Act Amendment of
2007) of the Principal Act is amended— section 29 of
Principal Act.

(a) in subsection (5)—

(i) in paragraph (a)(i) by inserting “or” after “solicitor,”,

(ii) by deleting paragraph (a)(ii),

and

10 (b) by deleting subsection (6).

44.—Part 11 (as amended by the Child Care (Amendment) Act Repeal.
2007) of the Act of 2001 is repealed.

PART 6

MISCELLANEOUS

15 45.—(1) Where, immediately before the coming into operation of Transitional
section 9 a child is detained in secure residential accommodation pur- provisions.
suant to an order of the High Court the effect of which is to permit
the detention of, and care for, a child in secure residential accom-
modation to protect his or her welfare and that accommodation is,
20 on the commencement of *section 9*, a special care unit, section 23B(2)
(as amended by *section 9*) of the Principal Act shall not apply to the
child who is the subject of that High Court order for the remainder
of the period specified in that High Court order.

25 (2) Where, immediately before the coming into operation of
section 9, a child has been placed and detained in a special care unit
in accordance with a special care order made under section 23B
(inserted by the Act of 2001) of the Principal Act—

30 (a) that special care order shall remain in force from the date
on which that section comes into operation until the end
of the period for which that order has effect, and

(b) section 23B(2) (as amended by *section 9*) of the Principal
Act shall not apply to that child during the period for
which that order has effect.

35 (3) Where, immediately before the coming into operation of
section 9, a child has been placed and detained in a special care unit
in accordance with an interim special care order made under section
23C (inserted by the Act of 2001) of the Principal Act—

40 (a) that interim special care order shall remain in force from
the date on which *section 9* comes into operation until
the end of the period for which it has effect, and

(b) section 23B(2) (as amended by *section 9*) of the Principal
Act shall not apply to that child during the period for
which that order has effect.

(4) Where, before the coming into operation of *section 9*, proceedings have been instituted in the District Court under Part IVA (inserted by the Act of 2001) of the Principal Act and those proceedings have not been determined by the day on which *section 9* comes into operation— 5

- (a) those proceedings shall continue to be determined pursuant to that Part notwithstanding its repeal by *section 9*,
- (b) any order made pursuant to those proceedings shall remain in force from the date on which it is made until the end of the period for which it has effect, and 10
- (c) *section 23B(2)* (as amended by *section 9*) of the Principal Act shall not apply to that child during the period for which that order has effect.

(5) An appeal from an order referred to in *subsection (2)*, *(3)* or *(4)* shall be treated as proceedings under, and shall continue to be determined pursuant to, Part IVA (inserted by the Act of 2001) of the Principal Act notwithstanding the repeal of that Part by *section 9*, and *subsections (4)(b)* and *(4)(c)* shall apply to an order made pursuant to such appeal. 15

(6) A person who immediately before the relevant date was carrying on the business of providing special care to children in a special care unit may continue to do so, notwithstanding *section 46* of the Act of 2007, for a period not exceeding one year from the relevant date. 20

(7) A person referred to in *subsection (6)* shall notify the chief inspector that the person is carrying on the business referred to in *subsection (6)*, as soon as practicable, but not later than 6 months after the relevant date. 25

(8) During the period referred to in *subsection (6)*, the Act of 2007 applies to the person referred to in *subsection (6)* and to the special care unit referred to in *subsection (6)* as if the special care unit were a registered designated centre under the Act of 2007 and that person is registered as its registered provider. 30

(9) In *subsections (6)* to *(8)*—

“chief inspector” has the meaning assigned to it by the Act of 2007; 35

“relevant date” means—

- (a) the date on which *section 33* comes into operation, or
- (b) the date on which Part 8 of the Act of 2007 comes into operation,

whichever is the later; 40

“special care unit” means secure residential accommodation in which children are detained pursuant to an order of the High Court or a special care unit referred to in Part IVA (inserted by the Act of 2001) of the Principal Act, or both, that is a designated centre within the meaning of *section 2(1)* (as amended by this Act) of the Act of 2007. 45