



**BILLE NA LEANAÍ (LEASÚ), 2015
CHILDREN (AMENDMENT) BILL 2015**

EXPLANATORY MEMORANDUM

Background/Object of the Bill

On 1 January 2012, responsibility for remand places in children detention schools under section 88 of the Children Act 2001 and responsibility for children detention schools under Part 10 of the Act transferred from the Minister for Justice and Equality to the Minister for Children and Youth Affairs. Responsibilities for other Parts of the Children Act remain with the Minister for Justice and Equality.

There are currently three children detention schools in the State comprised of: Trinity House, Oberstown Boys and Oberstown Girls, all of which are located on the same campus at Oberstown, near Lusk, Co. Dublin. The children detention schools currently accommodate girls aged under 18 years of age who are remanded in custody or subject to a detention order, boys aged under 18 who are ordered by the courts to be remanded in custody and boys aged 16 or under who are subject to a children detention order arising from criminal justice proceedings.

Significant initiatives and reforms have taken place in recent years on the Oberstown campus with a view to providing for the more efficient use of resources including the centralisation of services, common policies across the three schools and more efficient use of accommodation. This is complemented by a major capital development at the Oberstown campus to redevelop and expand facilities. This Bill reinforces these developments by providing a statutory basis for the amalgamation of the three children detention schools and for the deletion of provisions enabling the detention and remand of children in adult facilities.

Currently, the Act does not address the position of children who are convicted of summary offences and are still the subject of a detention order when they reach the age of 18. Therefore, the Bill provides for clarification of the treatment of all children who attain 18 years while they are in detention and are still subject to a children detention order whether they have been convicted of summary or indictable offences.

Consideration has been given to the principle of equality of treatment between children in children detention schools and adults in the adult prison system, which arose as a significant issue in the context of legal proceedings in the High Court in December 2013, in the case of “SB v the Minister for Justice”. In this case, the High Court ruled that there was an entitlement to remission of detention

in the children detention schools on the same basis as applies in the adult prison system.

Therefore, the Bill makes provision for remission in children detention schools incorporating a new disciplinary process and an appeal process where the sanction imposed is forfeiture of remission. The Bill also includes provisions for the arrest of children in detention for questioning by An Garda Síochána and a number of other amendments including the creation of an offence of supplying a mobile phone to a child in detention.

Main Provisions of the Bill

PART 1 — PRELIMINARY AND GENERAL

Section 1

Short title, collective citation, construction and commencement

This is a standard provision providing for the short title, collective citation, construction and commencement of the Bill.

Section 2

Definitions

This section provides for the definition of terms used in the Bill.

Section 3

Repeals and transitional arrangements relating to repeals

This section provides for the repeal of certain provisions of the Children Act 2001 consistent with the detention of all children convicted of offences in a children detention school or remanded in custody to a remand centre situated in a children detention school rather than Saint Patrick's Institution. A reference in an order or warrant issued by a court for the remand of a child to Saint Patrick's Institution or the detention of a child in Saint Patrick's Institution or a place of detention which has not been executed before the repeal of the relevant provision, shall following the repeal, be construed as a reference to a remand centre or children detention school specified in an order of the Minister. The section also provides for the repeal of section 144 of the Criminal Justice Act 2006 which was never commenced.

PART 2 — AMENDMENT OF PRINCIPAL ACT

Section 4

Amendment of section 3 of Principal Act

This section provides for the amendment of terms referred to in section 3 of the Children Act 2001. It also provides for the repeal of the reference to Saint Patrick's Institution consistent with the detention of all children convicted of offences in a children detention school or remanded in custody to a remand centre situated in a children detention school rather than Saint Patrick's Institution.

Section 5

Amendment of section 88 of Principal Act

This section provides for the amendment of section 88 of the Children Act 2001 to enable the Minister to designate all of a children detention school as a remand centre as an alternative to designating part only of a children detention school as a remand centre (as is currently provided for in the Act). It also provides for an amendment to ensure that where a child who is remanded in custody to a remand centre situated in a children detention school

attains 18 years during the period of the remand, the lawfulness of the remand or the period of the remand shall not be affected.

Section 6

Provisions regarding children on remand

This section inserts a new section 88A into the Children Act 2001 to enable the transfer of children remanded in custody from one remand centre to another including where the remand centre is not situated in a children detention school. The Minister for Children and Youth Affairs may direct the transfer of a child remanded in custody from one remand centre to another under certain conditions after consultation with the Director or board of management, as appropriate, of each centre. A direction by the Minister may take place at the request of the Director or board of management, as appropriate, of a remand centre.

This section also inserts a new section 88B to provide for the application of the same disciplinary system to children on remand as applies to children detained in a children detention school on foot of a children detention order with some exceptions such as the provision relating to forfeiture or restoration of remission.

Section 7

Amendment of section 98 of Principal Act

This section provides for an amendment deleting the reference to “including an order under section 155(1),” from section 98 of the Children Act 2001 as section 155(1) does not provide for the making of any such order.

Section 8

Provisions regarding period of detention imposed by court

This section provides for the substitution of a new section 149 for the existing section 149 of the Children Act 2001 which will incorporate subsections (7) and (8) of section 155. It provides that a child, who is convicted of an offence, cannot receive a period of detention that would be greater than the period of detention or imprisonment that an adult could receive for the same offence. Where a period of detention greater than 3 years is imposed on a child, a court must give its reasons for doing so in open court.

Section 9

Amendment of section 151 of Principal Act

This section provides for the amendment of subsection 151(4) of the Children Act 2001 by the insertion of “on being granted remission of portion of his or her period of detention in a children detention school pursuant to regulations made under 221,” after “detention” and the deletion of “on earning remission of sentence by industry or good conduct or on being given temporary release under section 2 or 3 of the Act of 1960,”. The amendments on being incorporated into section 151 take account of the introduction of remission of detention in the children detention school system.

Section 10

Persons who attain 18 years of age while detained

This section substitutes a new section 155 for the existing section 155 of the Children Act 2001 providing for the transfer of a person, who turns 18 in detention who is still subject to a children detention order, to prison or a place of detention or for their continued detention in a children detention school for a period if they satisfy certain conditions.

If the person is engaged in education or training or if the period of detention remaining is less than 6 months, the Director may determine that the person can continue to be detained in the children detention school for a period not exceeding 6 months from the date of their 18th birthday.

Where the person completes or ceases to be engaged in the course of education or training or the period of 6 months from their 18th birthday is about to elapse, the Director shall, where a period of detention remains to be served by the person, request the Minister for Children and Youth Affairs to authorise the transfer of the person to a prison or place of detention provided under section 2 of the Act of 1970 to serve the remaining period of detention.

The section shall not apply to a person detained on foot of a children detention order which was made before the commencement of the section.

Section 11

Amendment of section 157 of Principal Act

This section amends section 157 providing for the definitions to apply for the purposes of Part 10 of the Children Act 2001.

Section 12

Permanent or temporary closure of children detention school or part thereof

This section provides for the substitution of a new section 163 for the existing section 163 of the Children Act 2001 providing for permanent or temporary closure of a children detention school or part thereof.

This section provides for the Minister to make an order to close a specified children detention school from a specified date if s/he is of opinion that it is not suitable or is no longer required for that purpose. It also provides for the various matters that the Minister must have regard to when forming an opinion on whether or not to make a closure order.

The Minister may also make a temporary closure order for a children detention school for a specified period of time if the board of management informs the Minister that it is unsuitable for the detention of children.

A closure or temporary closure order may also include the Minister's direction that children who are subject to a detention or remand order that was made by the Court but not executed prior to the closure of the children detention school shall be detained in such children detention school as specified in the Ministerial order or remanded to another remand centre specified in the order. Where a child was on an approved absence from the children detention school at the time of the closure order, s/he shall be on an approved absence from another children detention school as may be specified in the order.

A reference in an order or warrant issued by a court to a children detention school that has closed will be interpreted as a reference to the other children detention school specified in the closure order and the lawfulness of the detention and the period of detention of a child shall not be affected.

A child on an approved absence from a school which is closed or temporarily closed shall be regarded as being on an approved absence from the other children detention school specified in the closure order and the lawfulness of the detention and the period of detention of a child shall not be affected.

A reference in an unexecuted remand order to a remand centre situated in a children detention school which is closed or temporarily closed shall be construed as a reference to the other remand centre specified in the closure order and the lawfulness of the remand and the period of remand of a child shall not be affected.

Any children detained in a children detention school which is closed or temporarily closed may be transferred to another children detention school or placed out under supervision in the community before the date of closure and children on remand may be transferred to another remand centre before the date of closure in accordance with section 88A.

The Minister is required to send a copy of a closure order or temporary closure order to specified persons and it must be laid before the Houses of the Oireachtas.

Section 13

Amalgamation of children detention schools

This section inserts a new section 163A into the Children Act 2001 providing for the amalgamation of two or more children detention schools. The Minister may provide for the amalgamation of two or more children detention schools and s/he shall have regard to certain matters when making an amalgamation order.

The amalgamation of children detention schools will not affect the lawfulness and period of detention or the lawfulness and period of remand of a child detained in a children detention school or remanded to a remand centre situated in a children detention school. If a remand centre is situated in a children detention school which is being amalgamated, the Minister will by order designate a remand centre to be situated in the amalgamated school.

Where the Minister makes an amalgamation order, s/he can direct that a child who is the subject of an unexecuted detention order, unexecuted remand order or who is on an approved absence from a school that has been amalgamated with another children detention school shall be detained in the amalgamated school or remanded in custody to a remand centre situated in the amalgamated school or shall be on an approved absence from the amalgamated school.

A reference in a detention order or remand order to a children detention school or a remand centre situated in a children detention school which has been amalgamated with another school that was in force on the amalgamation date but was not executed prior to the amalgamation of the children detention schools shall be construed as a reference to the amalgamated school or remand centre situated in the amalgamated school and the lawfulness of the detention and the period of detention and the lawfulness of remand and period of remand shall not be affected.

A child subject to a detention order who is on an approved absence from a children detention school which is amalgamated with another school is regarded as being on an approved absence from the amalgamated school. Any order, authorisation or notice given by a Director of the school which was amalgamated, in respect of the

approved absence, will have effect accordingly. The lawfulness of the detention and period of detention of a child shall not be affected following the expiry of the approved absence.

The board of management of the children detention schools which are amalgamated will cease to exist on the amalgamation date and a new board will be appointed.

The Director and staff of the children detention schools which are amalgamating will transfer to the amalgamated children detention school on the amalgamation date and will receive no less beneficial terms and conditions of service or remuneration than they received prior to the amalgamation date. Previous service with a children detention school which is amalgamated with another school will be reckonable for the purposes of employment legislation, as listed.

Any reference in an employment contract of a Director or staff member to a board of management of a children detention school or a children detention school which is the subject of an amalgamation order shall be construed as a reference to the board of management of the amalgamated children detention school.

The Minister shall send a copy of the amalgamation order to specified persons and the order shall be laid before the Houses of the Oireachtas.

Section 14

Final accounts and report

This section inserts a new section 174A into the Children Act 2001 and provides that, on the closure of a children detention school, the Minister will have final accounts prepared for the last accounting period or part thereof before the closure date and submit them to the Comptroller and Auditor General for audit within three months of the school's closure. Where a children detention school is amalgamated with another school, the board of management will have final accounts prepared and submitted to the Comptroller and Auditor General for audit within three months of the school's amalgamation. A copy of the audited accounts and the audit report must be presented to the Minister immediately after the audit. The Minister must lay the accounts and any reports before each House of the Oireachtas as soon as s/he receives them.

The Minister and the board of management of an amalgamated school must, within six months of the closure or amalgamation of a children detention school, ensure a final report on the performance of the functions of the school's board of management is prepared, for any period that had not previously been the subject of a report to the Minister. The Minister must lay the reports before each House of the Oireachtas as soon as s/he receives it.

Section 15

Amendment of section 179 of Principal Act

This section provides for the deletion of the words “*discipline and*” from section 179 of the Children Act 2001 to take account of the revised system of discipline and remission being introduced in the Bill. The Minister, under section 221, may make regulations relating to the acts that constitute disciplinary breaches and the power of the board of management to make rules relating to discipline is being revised accordingly. The board of management will continue to have the power to make rules in relation to good order.

Section 16

Superannuation

This section substitutes a new section 184 for the existing section 184 of the Children Act 2001 and provides that the board of management of a children detention school shall prepare and submit to the Minister a superannuation scheme for staff under its management (including the Director). Benefits under schemes prepared under this section will not be granted to persons to whom the Single Public Service Pension Scheme applies under the Public Service Pensions (Single Scheme and Other Provisions) Act 2012. All schemes under this section must fix the time and conditions of retirement. These may be fixed differently for different classes of persons.

A board of management may, at any time, submit a scheme to the Minister that would amend or revoke a scheme that was previously approved under this section. A board of management shall carry out any scheme or amending scheme submitted under this section and approved by the Minister with the consent of the Minister for Public Expenditure and Reform. Any dispute relating to the superannuation benefit to be paid to any person pursuant to a scheme under this section will be dealt with in a manner specified in the scheme and the scheme must provide for an appeal of a determination.

A superannuation benefit will not be granted to persons no longer employed by the children detention schools unless it is in accordance with an approved scheme under section 184 or an arrangement approved by the Minister and the Minister for Public Expenditure and Reform.

Except in accordance with an agreement negotiated with a trade union or staff association and approved by the Minister with the consent of the Minister for Public Expenditure and Reform, a superannuation scheme under section 184 will provide for the granting of superannuation benefits on terms and conditions that are not less favourable than those that would have applied before the commencement of the section. This will not apply where the consent of any relevant Minister(s) was required for a scheme but was not obtained. Any period of service that was regarded as reckonable service for the purposes of a superannuation scheme prior to the commencement of section 184 shall continue to be regarded as a period of reckonable service for the purpose of any scheme under this section.

Where in the period beginning on the commencement of the section and ending before the commencement of a scheme under this section, a superannuation benefit becomes due for payment in respect of a member of staff of a children detention school to whom the Single Service Pension Scheme does not apply, the benefit shall be calculated for payment by the board of management in accordance with such schemes as applied to the person before the commencement of this section. This shall not apply where the consent of any relevant Minister(s) was required for a scheme but was not obtained.

Every scheme or arrangement relating to the superannuation of any member of staff or former staff of a children detention school that is in force immediately prior to the commencement of section 184 will continue in force except where consent from a relevant Government Minister(s) was required but was not obtained.

The Minister will cause each scheme under section 184 to be laid before the Houses of the Oireachtas as soon as it is approved. The scheme may be annulled by either House within 21 days of the next sitting.

Section 17

Inquiry into alleged disciplinary breach

This section substitutes a new section 201 for the existing section 201 of the Children Act 2001. It provides that the Director may hold an inquiry into an alleged disciplinary breach by a child. Where the Director decides to hold an inquiry, the child will be informed of the alleged breach and date and time of the inquiry. The Minister may prescribe the procedures of an inquiry. At the conclusion of the inquiry, if the Director finds that the child committed the breach, s/he will record the finding and any sanction imposed. If the Director does not find that the child committed a disciplinary breach, s/he will record a finding that the allegation was not substantiated.

Section 18

Provisions consequent upon finding of disciplinary breach

This section inserts a new section 201A into the Children Act 2001 and provides that the Director may impose one or more sanctions as specified on a child who is found by an inquiry to have committed a disciplinary breach.

The Director may suspend or partially suspend a sanction (other than forfeiture of remission), subject to conditions, for a period not exceeding three months from the date that the child is informed of the finding and the imposition of a sanction.

If a child does not comply with a condition attached to a suspension, the sanction shall take effect immediately or from a specified date or the sanction may be abated and take effect in the manner as abated. If a child complies with the conditions attached to the suspension, then the sanction will cease to have effect at the end of the period of suspension.

Remission may be restored by the Director if restoration is justified by the child's performance over time or the child has performed an exceptionally meritorious act.

This new provision will not prevent the Director from taking immediate measures to maintain order and discipline or the security of the children detention school.

Where the Director imposes a sanction on a child, he or she shall explain to the child, in ordinary language, the content of section 201B(1) which provides for a petition to the Minister in respect of the sanction. If the sanction includes forfeiture of remission, the Director will also explain, in ordinary language, the content of section 201C(1) which provides for an appeal to an Appeal Tribunal against forfeiture of remission.

Notwithstanding the imposition of a sanction, a child can be on an approved absence, released under section 209 or discharged under section 210.

This section also inserts a new section 201B into the Children Act 2001 and provides that a child who is found by the Director to have committed a disciplinary breach and on whom a sanction was imposed, may petition the Minister, within seven days of being informed of the finding and sanction, concerning the finding or

sanction or both. The Minister can affirm, modify, suspend or revoke a sanction and will notify the child accordingly.

This section also inserts a new section 201C into the Children Act 2001 and provides for a child to notify the Director of his/her intention to appeal against the finding of a disciplinary breach or sanction of forfeiture of remission, or both, and the Director will refer the matter to an Appeal Tribunal within seven days. The Tribunal may invite the child and Director to make written submissions. The child will be informed of and invited to the hearing and informed that s/he may avail of legal aid, advice or representation. If the appeal relates only to the sanction imposed, the Tribunal may limit the hearing to issues relating to the sanction. The Appeal Tribunal may, not later than 21 days of the hearing of the appeal, affirm or annul the finding of a disciplinary breach or sanction imposed, vary the period of remission to be forfeited for a period not exceeding 14 days or substitute any other sanction provided for in section 201A. The decision shall be notified to the Director, the child, the child's parents where the child is under 18 and the Child and Family Agency, as appropriate.

The Minister for Justice and Equality, with the consent of the Minister for Public Expenditure and Reform, may make regulations relating to the granting of legal aid.

This section also provides that the Minister may establish, in writing and for a specified period, an independent Appeal Tribunal(s) to adjudicate on appeals under section 201C.

The Minister can appoint a practising barrister or solicitor of not less than seven years standing to constitute an Appeal Tribunal. The appointment will be subject to such terms and conditions as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform. A person constituting an Appeal Tribunal may resign by a letter to the Minister. The Minister may remove a person constituting an Appeal Tribunal from the position for misbehaviour or if the person has become incapable of effectively performing the functions of an Appeal Tribunal. The Appeal Tribunal can determine its own procedure subject to any general directions given by the Minister to ensure consistency across Tribunals.

Section 19

Amendment of section 205 of Principal Act

This section amends section 205 of the Children Act 2001 and provides for the Minister to suspend for a specified period of time the temporary leave programme of a child or children in a children detention school if it is not in the best interests of the child, the children detention school or society generally and notwithstanding that the Director may have altered the programme of temporary leave.

This amendment to section 205 will not apply to temporary leave programmes that stand suspended or altered immediately before the commencement of this section.

Section 20

Amendment of section 206 of Principal Act

This section amends section 206 of the Children Act 2001 and provides that, where a Director is of opinion when formulating or altering a temporary leave programme for a child aged over 18 years who is detained in a children detention school pursuant to section

155, that it is not appropriate to apply subsection (1) of section 206, which relates to a child being in the care of his or her parents or guardian or a responsible person, then specified subsections of section 206 shall not apply or shall apply with modifications. In forming an opinion under the section, the Director will take into account the child's record of behaviour in detention, family circumstances, the child's health and any other matters affecting the child's suitability that the Director considers relevant.

Section 21

Amendment of section 207 of Principal Act

This section amends section 207 of the Children Act 2001 and provides that, where a child is aged 18 years or over, a Director may authorise the placing out of a child without a requirement for the child to reside with any person but with a requirement that the child must reside at a place specified or approved by the Director. In these circumstances, certain provisions may not apply to the authorisation, the Director or the child.

In forming an opinion under the section, the Director will take into account the child's record of behaviour while in detention, family circumstances, the child's health and any other matters affecting the child's suitability that the Director considers relevant.

Section 22

Amendment of section 215 of Principal Act

This section amends section 215 of the Children Act 2001 to provide for the arrest by An Garda Síochána of a person who has escaped from a children detention school including the arrest of that person after their 18th birthday. Where a person who has escaped has attained the age of 18 years but is below the age of 18 years and 6 months and is returned by the Gardaí or otherwise returns to a children detention school, the Director may determine that the person shall continue to be detained in a children detention school or transferred to prison pursuant to section 155 with the necessary modifications.

Where a person under 18 years and 6 months is returned to a children detention school or otherwise returns and that person prior to his or her escape had been detained pursuant to section 155, the Director may make a new determination under that section in respect of the person or may request the Minister to authorise a transfer of the person to a prison or a place of detention.

Where a person who attains the age of 18 years and 6 months during the period of his or her escape and is returned to a children detention school or otherwise returns, the Director shall immediately transfer the person to a prison or a place of detention pursuant to an authorisation of the Minister.

Section 23

Amendment of section 217 of Principal Act

This section amends section 217 of the Children Act 2001 to include in section 217 the offence of harbouring children who have escaped under section 215 who are now adults.

Section 24

Unauthorised provision of mobile telecommunications device

This section inserts a new section 218A and provides that it is an offence to supply or attempt to supply a mobile telecommunications device to a child detained in a children detention school, on remand

in a remand centre or in lawful custody outside a children detention school or remand centre. On summary conviction for an offence, a person is liable to a class D fine or imprisonment for not more than 6 months.

Section 25

Amendment of section 221 of Principal Act

This section amends section 221 of the Children Act 2001 and provides that the Minister may make regulations in relation to remission of portion of a child's period of detention pursuant to a children detention order, the acts that constitute disciplinary breaches and the specific disciplinary breaches that may result in forfeiture of remission.

PART 3 -MISCELLANEOUS

Section 26

Definitions (Part 3)

This section provides the definition of terms used in Part 3 of the Bill.

Section 27

Amendment of section 1 of Act of 1908

This section amends section 1(1) of the Prevention of Crime Act 1908 and revises the reference to the age of children detained in Saint Patrick's Institution from "sixteen" to "eighteen". This is consistent with other amendments in the Bill reflecting that children will no longer be detained in Saint Patrick's Institution and that all children will be detained in a children detention school.

Section 28

Amendment of section 10 of Act of 1914

This section amends section 10(1)(a) of the Criminal Justice Administration Act 1914 and revises the reference to the age of children detained in Saint Patrick's Institution from "sixteen" to "eighteen". This is consistent with other amendments in the Bill reflecting that children will no longer be detained or remanded to Saint Patrick's Institution and that all children will be detained in a children detention school or remanded to a remand centre situated in a children detention school.

Section 29

Amendment of section 13 of Act of 1960

This section amends section 13(1) of the Criminal Justice Act 1960 and revises the reference to the age of children detained in Saint Patrick's Institution from "seventeen" to "eighteen" and also provides for the deletion of subsection (2) relating to the detention of 16 year olds in Saint Patrick's Institution. This is consistent with other amendments in the Bill reflecting that children will no longer be detained in Saint Patrick's Institution and that all children will be detained in a children detention school.

Section 30

Amendment of section 42 of Criminal Justice Act 1999

This section amends section 42 of the Criminal Justice Act 1999 to provide for the arrest by the Gardaí of a child in detention on a detention order or on remand in a remand centre situated in a children detention school for questioning in relation to an offence or offences other than those for which he or she is in detention or on remand.

Section 31

Transitional arrangements in relation to sections 27 to 29

This is a transitional provision to provide that the amendments to the 1908, 1914 and 1960 Acts shall not affect the lawfulness of any detention or remand in custody, as the case may be, under any of the three Acts. It also provides that any person under 18 years ordered to be detained or remanded by order of a court under any of the Acts where such order was in force upon the commencement of the amendment to the sections but which was not executed shall be detained or remanded in a children detention school or remand centre, as the case may be, specified in an order under the section. A reference in an order or warrant issued by a court under any of the Acts to Saint Patrick's Institution will, after the commencement date, be construed as a reference to a children detention school or remand centre specified in an order of the Minister under the section. The lawfulness of the custody of a person shall not be affected where he or she is detained in a children detention school or remanded in custody to a remand centre situated in a children detention school specified in an order of the Minister under the section. The Minister, may, by order, specify a children detention school or a remand centre for the purposes of the section.

Financial Implications

It is not expected that the measures contained in the Bill will result in any significant costs to the Exchequer.