

HEADS AND GENERAL SCHEME OF THE CHILD CARE (AMENDMENT) BILL 2023

SUBMISSION OF BYRNEWALLACE LLP 9 MAY 2023

ByrneWallace LLP was requested by the Cathaoirleach of the Oireachtas Joint Committee of Children, Equality, Disability, Integration and Youth to prepare a written submission on the provisions of this Bill.

ByrneWallace LLP are advisors to and representatives of the Child and Family Agency since 2003 and are well positioned to comment on the above Heads of Bill.

ByrneWallace LLP manages over 100 child protection cases per week before the District Court and ByrneWallace LLP welcomes many of the proposed amendments in the submissions.

We have set out our commentary under each Head as we considered appropriate as follows:

HEAD 6

New Section 3

We note that the Department is proposing to reorient this section so that assessments of reports of harm will be dealt with by amendments to the Children First Act and we believe this is a welcome development.

HEAD 7

New Section 4(2):

“Where the Agency proposes to take a child into care under this section is shall –

- (a) Provide an information document to the child, the parents of the child or the person acting in loco parentis.....”

We would question the necessity to provide such information to the child as it may be completely inappropriate in certain circumstances. We would suggest this be qualified to say that it will depend on the child’s age and level of understanding.

New Section 4 (3) & (4) are positive developments and will help to ensure that the child’s case does not drift.

HEAD 10

New Section after Section 7

The inclusion of a duty on relevant bodies to cooperate is welcome. We note however, the wording indicates “may cooperate” rather than “shall cooperate”

Subsection (10) states “the obligations on a relevant body under this section are in respect of:

(a) Children under the age of 18

(b) Eligible adults in respect of whom there is an aftercare plan under Section 45 of the Principal Act.

We would question the legality of subsection 10(b) given that the information in question relates to an adult.

HEAD 13

New Section 12(3) (b):

“Where a child is removed by a member of the Garda Síochána in accordance with subsection (1), the member shall –

- (a) Deliver up the child as soon as possible to the custody of the Child and Family Agency, or
- (b) Consult with the Agency to determine whether the child is known to the Agency, and in such cases, the Agency may direct the member to deliver the child into the custody of a named person in the child’s family”

New Section 12(4):

- (a) “Where the child is delivered up to the custody of the Child and Family Agency in accordance with subsection 3(a), or a named person in accordance with subsection 3(b), the Agency shall, unless it returns the child to the parent having custody or person acting in loco parentis....make an application for an Emergency Care Order”

We would suggest that this would also include “unless it returns the child to the parent having custody or person acting in loco parentis *or the child has been taken in to care under Section 4*, the Agency shall...”

We suggest that there should be more clarity on who a named person in a family may be. We also suggest that it should be more clearly articulated that the Agency can direct the member to deliver the child to a named person either with the consent of the parent or where parent is not contactable. We question whether the Agency should be able to place with named family member against the wishes of a parent, as no court order has been made, no hearing has taken place. In addition to this if the parent does not consent it could mean that there would be interference with the placement over the currency of the section 12.

Is it the case that the child still remains in the custody of the Agency if placed with a family member?

HEAD 14

New Section 13 (3) allows for an ECO to be extended to a period not exceeding 15 days. The difficulty with this is that if the child has been in care on an ECO for 8 days then the immediate and serious risk will likely have receded and it might therefore be very difficult to prove to the court that there is likely to be such a risk if the child is returned. Perhaps consideration could be given to allowing the court to grant the ECO in the first place for up to 15 days depending on the circumstances, or set out specific grounds for the making of an extension of an Emergency Care Order.

HEAD 17

New Section 17

We suggest that the word “renewal” is not used and instead the word “extension” is used as has been the case to date, for the avoidance of confusion.

We suggest it is likely there will be push back from parents’ legal representatives to the proposal in the new Section 2B which would allow the court without consent to extend an ICO for up to 90 days. It does make sense when an assessment is underway but often legal representatives use court dates to encourage their clients to engage with the Agency and to keep them on track.

We suggest that 2 C include a parental capacity assessment specifically.

HEAD 19

New Section 19

We would suggest Section 19(5)(a) should include “whether it is necessary to apply to the court for an interim care order, care order or a *further* supervision order”

We believe the New Section 19 (3) (a) (b) & (c) are particularly helpful.

HEAD 21

New Section 25

We suggest that section 25 (2) be amended to indicate that any solicitor appointed to act on behalf of a child must be Garda Vetted.

HEAD 22

New Section after Section 28

This is a welcome development which complements the section set out at Head 10.

HEAD 23

We support the presumption in favour of the admissibility of hearsay evidence of children in care proceedings.

HEAD 24

We note that there is a presumption that any application relates to a child. It would be helpful if the Act specified what application is to be made in the event the Agency becomes of the view that the subject of the application is not a child.

HEAD 27

We believe that section 47 in its current state is too wide in that any person can make an application and we suggest those who are authorised to make an application should be limited to the parties to the proceedings, the Guardian ad Litem and the Court.

HEAD 44

This stand-alone section is a welcome development and clearly establishes the Agency's authority to receive and assess report of harm. It might be helpful to specifically state that the issue of assessment of risk to the particular child or other children is also the function of the Agency.

Further suggested amendments:

Section 22 – We believe this section should specify that it applies to Emergency Care Orders, Interim Care Orders and Care Orders.

Section 35 – We believe that the section allows for “a member of an Garda Síochána” to execute the warrant but the District Court Form requires the Garda to be named which is incongruous with the Act.

Byrne Wallace LLP