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*Number 17 of 1991*

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**CHILD CARE ACT 1991**

**REVISED**

**Updated to 10 July 2013**

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This Revised Act is an administrative consolidation of the *Child Care Act 1991*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Further Education and Training Act 2013* (25/2013), enacted 10 July 2013, and all statutory instruments up to and including *Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 6) (Retained Fire Fighters) Regulations 2013* (S.I. No. 254 of 2013), made 10 July 2013, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to [revisedacts@lawreform.ie](mailto:revisedacts@lawreform.ie).





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Number 17 of 1991

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**CHILD CARE ACT 1991**

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**Introduction**

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

**Related legislation**

***Child Care Acts 1991 to 2013:*** This Act is one of a group of Acts included in this collective citation, to be construed together as one (*Child Care (Amendment) Act 2013* (5/2013), s. 1(2)). The Acts in this group are:

- *Child Care Act 1991* (17/1991)
- *Children Act 2001* (24/2001), ss. 7-15 and 267
- *Health Act 2004* (42/2004), s. 75 in so far as it amends the *Child Care Acts 1991 and 2001*
- *Child Care (Amendment) Act 2007* (26/2007), s. 1(2), pt. 2 and s. 21 in so far as it amends the *Child Care Acts 1991 and 2001*
- *Child Care (Amendment) Act 2011* (19/2011), ss. 1-26, 28-31, 34, 36, 46, 48
- *Child Care (Amendment) Act 2013* (5/2013)

**Annotations**

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions. A version without annotations, showing only textual amendments, is also available.

An explanation of how to read annotations is available at

[www.lawreform.ie/annotations](http://www.lawreform.ie/annotations).

**Material not updated in this revision**

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

#### **Acts which affect or previously affected this revision**

- *Child Care (Amendment) Act 2013* (5/2013)
- *Child Care (Amendment) Act 2011* (19/2011)
- *Adoption Act 2010* (21/2010)
- *Child Care (Amendment) Act 2007* (26/2007)
- *Health Act 2007* (23/2007)
- *Health Act 2004* (42/2004)
- *Mental Health Act 2001* (25/2001)
- *Children Act 2001* (24/2001)
- *Children Act 1997* (40/1997)
- *Refugee Act 1996* (17/1996)
- *Domestic Violence Act 1996* (1/1996)

All Acts up to and including *Further Education and Training Act 2013* (25/2013), enacted 10 July 2013, were considered in the preparation of this revision.

#### **Statutory instruments which affect or previously affected this revision**

- *Supreme Court and High Court (Fees) Order 2013* (S.I. No. 239 of 2013)
- *Child Care Act 1991 (Section 29(7)) Regulations* (S.I. No. 467 of 2012)
- *Supreme Court and High Court (Fees) Order 2012* (S.I. No. 110 of 2012)
- *Child Care (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 488 of 2011)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Supreme Court and High Court (Fees) Order 2011* (S.I. No. 406 of 2011)
- *Supreme Court and High Court (Fees) Order 2008* (S.I. No. 200 of 2008)
- *Child Care (Pre-School Services) (No2) (Amendment) Regulations 2006* (S.I. No. 643 of 2006)
- *Child Care (Pre-School Services) (No2) Regulations 2006* (S.I. No. 604 of 2006)
- *Child Care (Pre-School Services) Regulations 2006* (S.I. No. 505 of 2006)
- *Civil Liability and Courts Act 2004 (Section 40(4)) Order 2005* (S.I. No. 338 of 2005)
- *Supreme Court and High Court (Fees) Order 2005* (S.I. No. 70 of 2005)
- *Child Care Act 1991 (Children's Residential Centres) (Superannuation) Order 2004* (S.I. No. 863 of 2004)
- *Child Care (Special Care) Regulations 2004* (S.I. No. 550 of 2004)
- *Child Care Act 1991 (Commencement) Order 2004* (S.I. No. 547 of 2004)
- *Supreme Court and High Court (Fees) Order 2004* (S.I. No. 444 of 2004)
- *Child Care (Pre-School Services) (Amendment) Regulations 1997* (S.I. No. 268 of 1997)
- *Child Care Act 1991 (Commencement) Order 1996* (S.I. No. 399 of 1996)
- *Child Care (Pre-School Services) Regulations 1996* (S.I. No. 398 of 1996)
- *Child Care (Standards in Children's Residential Centres) Regulations 1996* (S.I. No. 397 of 1996)
- *Child Care (Placement of Children With Relatives) Regulations 1995* (S.I. No. 261 of 1995)
- *Child Care (Placement of Children in Foster Care) Regulations 1995* (S.I. No. 260 of 1995)
- *Child Care (Placement of Children in Residential Care) Regulations 1995* (S.I. No. 259 of 1995)
- *Child Care Act 1991 (Commencement) Order 1995* (S.I. No. 258 of 1995)
- *Child Care Act 1991 (Commencement) (No. 3) Order 1992* (S.I. No. 349 of 1992)
- *Child Care Act 1991 (Commencement) (No. 2) Order 1992* (S.I. No. 264 of 1992)
- *Child Care Act 1991 (Children's Residential Centres) (Superannuation) (No. 2) Order 1992* (S.I. No. 125 of 1992)
- *Child Care Act 1991 (Children's Residential Centres) (Superannuation) Order 1992* (S.I. No. 124 of 1992)

- *Child Care Act 1991 (Commencement) Order 1992* (S.I. No. 123 of 1992)
- *Child Care Act 1991 (Commencement) Order* (S.I. No. 292 of 1991)

All statutory instruments up to and including *Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 6) (Retained Fire Fighters) Regulations 2013* (S.I. No. 254 of 2013), made 10 July 2013, were considered in the preparation of this revision.





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*Number 17 of 1991*

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**CHILD CARE ACT 1991**

**REVISED**

**Updated to 10 July 2013**

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#### ACTS REFERRED TO

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Children Act, 1908	8 Edw. 7, c. 67
Children Act, 1934	1934, No. 15
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Children (Amendment) Act, 1957	1957, No. 28
Children (Employment Abroad) Act, 1913	3 & 4 Geo. 5, c. 7
Courts Act, 1964	1964, No. 11
Courts Act, 1971	1971, No. 36
Defence Act, 1954	1954, No. 11
Guardianship of Infants Act, 1964	1964, No. 7
Health Act, 1953	1953, No. 26
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Health (Amendment) Act, 1987	1987, No. 3
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Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93
Public Offices Fees Act, 1879	42 & 43 Vict., c. 58
School Attendance Act, 1926	1926, No. 17



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Number 17 of 1991

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**CHILD CARE ACT 1991**

**REVISED**

**Updated to 10 July 2013**

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AN ACT TO PROVIDE FOR THE CARE AND PROTECTION OF CHILDREN AND FOR RELATED MATTERS. [10th July, 1991]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**Annotations**

**Modifications (not altering text):**

- C1** Act included in collective citation (13.03.2013) by *Child Care (Amendment) Act 2013* (5/2013), s. 1(2), commenced on enactment

**Short title, collective citations and commencement.**

**1.—** ...

(2) The Child Care Acts 1991 to 2011 and this Act may be cited together as the Child Care Acts 1991 to 2013.

Acts included or previously included in the collective citation:

- *Child Care (Amendment) Act 2013* (5/2013) (13.03.2013) by s. 1(2), commenced on enactment.
- *Child Care (Amendment) Act 2011* (19/2011) (other than sections 27, 32, 33, 35, 36, 37 to 45, 47 and 49) (8.09.2011) by s. 1(2), S.I. No. 453 of 2011.
- *Child Care (Amendment) Act 2007* (26/2007) (s. 1(2), pt. 2 and s. 21 in so far as it amends the *Child Care Acts 1991 and 2001*) (23.07.2007) by s. 1(2), S.I. No. 509 of 2007.
- *Health Act 2004* (42/2004) (s. 75 in so far as it amends the *Child Care Acts 1991 and 2001*) (23.07.2007) by *Child Care (Amendment) Act 2007* (26/2007), s. 1(2), S.I. No. 509 of 2007.
- *Children Act 2001* (24/2001) (pt. 2 and s. 267) (29.07.2004) by s. 1(2), S.I. No. 468 of 2004.
- *Child Care Act 1991* (17/1991) (29.07.2004) by *Children Act 2001* (24/2001), s. 1(2), S.I. No. 468 of 2004.

- C2** Functions transferred and “Department of Health” and “Minister for Health” construed (1.10.2011) by *Child Care (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 488 of 2011), arts. 2, 3, 7, commenced as per. art. 1(2).

**2.—** (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Children and Youth Affairs.

(2) References to the Department of Health contained in any Act or any instrument made thereunder and relating to any administration and business transferred by paragraph (1) shall,

from the commencement of this Order, be construed as references to the Department of Children and Youth Affairs.

**3.—** (1) The functions vested in the Minister for Health by or under the Child Care Acts 1991 to 2011 are transferred to the Minister for Children and Youth Affairs.

(2) References to the Minister for Health contained in any Act or instrument made thereunder and relating to any functions transferred by this Article shall, from the commencement of this Order, be construed as references to the Minister for Children and Youth Affairs.

...

**7.—**References to the Minister for Health contained in the memorandum and articles of association of any company and relating to any function transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Children and Youth Affairs.

...

- C3** Power of Court to make orders under Act provided (23.07.2007) by *Children Act 2001* (24/2001), s. 77, S.I No. 524 of 2007.

**Referral of case to health board.**

**77.—**(1) Where, in any proceedings in which a child is charged with an offence, it appears to the Court that it may be appropriate for a care order or a supervision order to be made under the Act of 1991 with respect to the child, the Court may, of its own motion or on the application of any person—

- (a) adjourn the proceedings and direct the health board for the area in which the child is for the time being residing to convene a family welfare conference in respect of the child, and
- (b) pending the outcome of the conference, make an emergency care order or a supervision order under the Act of 1991 in respect of the child.

...

- C4** Power of court to make orders under Act provided (27.03.1996) by *Domestic Violence Act 1996* (1/1996), ss. 7 and 9, commenced as per s. 25(1).

**Power to make orders, etc., under Child Care Act, 1991.**

**7.—**(1) Where in proceedings for any order under this Act, other than proceedings to which section 6 relates, it appears to the court that it may be appropriate for a care order or a supervision order to be made under the Child Care Act, 1991, with respect to a dependent person concerned in the proceedings, the court may, of its own motion or on the application of any person concerned, adjourn the proceedings and direct the health board for the area in which such dependent person resides or is for the time being to undertake an investigation or, as the case may be, further investigations of such dependent person's circumstances.

...

**Hearing of applications under various Acts together.**

**9.—**(1) Where an application is made to the court for an order under this Act, the court may, on application to it in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the orders referred to in subsection (2).

...

- (d) an order under the Child Care Act, 1991 .

- C5** Construction of references to “psychiatric examination, treatment or assessment” under Act restricted (1.11.2006) by *Mental Health Act 2001* (25/2001), s. 25(15), S.I. No. 411 of 2006.

**Involuntary admission of children.**

**25.—** ...

(15) References in sections 13(7), 18(3) and 19(4) of the Child Care Act, 1991, to psychiatric examination, treatment or assessment do not include references to treatment under this Act.

**Editorial Notes:**

- E1** Proceedings brought by HSE under collectively cited *Child Care Acts 1991 to 2013* exempted from fees (10.07.2013) by *Supreme Court and High Court (Fees) Order 2013* (S.I. No. 239 of 2013), art. 6(1)(d)(iii).
- E2** Setting of standards on safety and quality in relation to services provided by the HSE or a service provider in accordance with collectively cited *Child Care Acts 1991 and 2001* assigned to Health Information and Quality Authority (15.07.2007) by *Health Act 2007*, s. 8(1)(b)(i)(II), S.I. No. 226 of 2007.
- E3** District Court confirmed as 'Children Court' when exercising jurisdiction under pts. III, IV, IVA and V of Act (1.05.2002) by *Children Act 2001* (24/2001), s. 71(1)(a), S.I. No. 151 of 2002.
- E4** Application of Act extended to separated children by *Refugee Act 1996* (17/1996), s. 8(5)(a) as substituted (7.07.1999) by *Immigration Act 1999* (22/1999), s. 11(1)(c)(v), commenced on enactment.
- E5** Previous affecting provision: proceedings brought by HSE under collectively cited *Child Care Acts 1991 to 2011* exempted from fees (10.04.2012) by *Supreme Court and High Court (Fees) Order 2012* (S.I. No. 110 of 2012), art. 6(1)(d)(iii); revoked (10.07.2013) by *Supreme Court and High Court (Fees) Order 2013* (S.I. No. 239 of 2013), art. 13.
- E6** Previous affecting provision: proceedings brought by HSE under collectively cited *Child Care Acts 1991 to 2007* exempted from fees (22.08.2011) by *Supreme Court and High Court (Fees) Order 2011* (S.I. No. 406 of 2011), art. 6(c)(iii); revoked (10.04.2012) by *Supreme Court and High Court (Fees) Order 2012* (S.I. No. 110 of 2012), art. 11.
- E7** Previous affecting provision: proceedings brought by HSE under collectively cited *Child Care Acts 1991 to 2007* exempted from fees (7.07.2008) by *Supreme Court and High Court (Fees) Order 2008* (S.I. No. 200 of 2008); revoked (22.08. 2011) by *Supreme Court and High Court (Fees) Order 2011* (S.I. No. 406 of 2011), art. 10.
- E8** Previous affecting provision: proceedings brought by HSE under collectively cited *Child Care Acts 1991 and 2001* exempted from fees (15.01.2005) by *Supreme Court and High Court (Fees) Order 2005* (S.I. No. 70 of 2005), art. 7(1)(c)(iii); revoked (7.07.2008) by *Supreme Court and High Court (Fees) Order 2008* (S.I. No. 200 of 2008), art. 10.
- E9** Previous affecting provision: proceedings brought by HSE under collectively cited *Child Care Acts 1991 and 2001* exempted from fees (1.01.2004) by *Supreme Court and High Court (Fees) Order 2005* (S.I. No. 444 of 2004), art. 7(1)(c)(iii); revoked (15.01.2005) by *Supreme Court and High Court (Fees) Order 2005* (S.I. No. 70 of 2005), art. 11.

## PART I

### PRELIMINARY

Short title and commencement.

**1.—(1)** This Act may be cited as the Child Care Act, 1991.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

**Annotations****Editorial Notes:**

**E10** Power pursuant to section exercised (23.09.2004) by *Child Care Act 1991 (Commencement) Order 2004* (S.I. No. 547 of 2004). In relation to subs. (2), the *Adoption Act 1952* was repealed (1.11.2010) by *Adoption Act 2010* (21/2010), s. 7 and sch. 1 pt. 1, S.I. No. 511 of 2010.

2. (1) The 23rd day of September 2004 is fixed as the day on which Section 79 of, and the schedule to, the Child Care Act 1991 (No. 17 of 1991) come into operation, in so far as they relate to the unrepealed provisions specified in the third column of the Schedule thereto, of the enactments specified in the second column of that Schedule.

(2) In paragraph (1) of this Article, “unrepealed provisions” does not include section 119 of the Children Act 1908 (8 Edw. 7, c.67) and section 31 (2) of the Adoption Act 1952 (No. 25 of 1952).

**E11** Power pursuant to section exercised (18.12.1996) by *Child Care Act 1991 (Commencement) Order 1996* (S.I. No. 399 of 1996).

2. Sections 49 to 65 and section 67 of the Child Care Act, 1991 shall come into operation on the 18th day of December, 1996.

**E12** Power pursuant to section exercised (31.10.1995) by *Child Care Act 1991 (Commencement) Order 1995* (S.I. No. 258 of 1995).

2. Section 4, subsections (3) and (4) of section 6, sections 12 to 48, sections 68 and 70 and sections 75 to 78 of the Child Care Act, 1991 shall come into operation on the 31st day of October, 1995.

**E13** Power pursuant to section exercised (1.12.1992) by *Child Care Act 1991 (Commencement) (No. 3) Order 1992* (S.I. No. 349 of 1992).

2. Sections 3, 7 and 8 of the Child Care Act, 1991 shall come into operation on the 1st day of December, 1992.

**E14** Power pursuant to section exercised (1.10.1992) by *Child Care Act 1991 (Commencement) (No. 2) Act 1992* (S.I. No. 264 of 1992).

2. Section 5, subsections (1), (2) and (5) of section 6, and sections 11, 69, 72 and 73 of the Child Care Act, 1991 shall come into operation on the 1st day of October 1992.

**E15** Power pursuant to section exercised (1.06.1992) by *Child Care Act 1991 Commencement Order 1992* (S.I. No. 123 of 1992).

2. Sections 9, 10 and 66 of the Child Care Act, 1991 shall come into operation on the 1st day of June, 1992.

3. Section 79 of, and the Schedule to, the Child Care Act, 1991 shall, for the purpose of effecting the repeal of section 65 (2) of the Health Act, 1953 (No. 26 of 1953), come into operation on the 1st day of June, 1992.

**E16** Power pursuant to section exercised (1.12.1991) by *Child Care Act 1991 (Commencement) Order 1991* (S.I. No. 292 of 1991).

2. Part I and Sections 71 and 74 of the Child Care Act, 1991 shall come into operation on the 1st day of December, 1991.

Interpretation.

**2.—(1)** In this Act, except where the context otherwise requires—

“area”, in relation to F1[the Health Service Executive], means functional area;

“child” means a person under the age of 18 years other than a person who is or has been married;

“functions” includes powers and duties;

F2[...]

“the Minister” means the Minister for Health;

“parents” includes a surviving parent and, in the case of a child who has been adopted under the Adoption Acts, 1952 to 1988, or, where the child has been adopted outside the State, whose adoption is recognised by virtue of the law for the time being in force in the State, means the adopter or adopters or the surviving adopter;

“prescribed” means prescribed by regulations made by the Minister.

(2) In this Act—

- (a) a reference to a Part, section or Schedule is to a Part, section or Schedule of this Act unless it is indicated that a reference to some other enactment is intended;
- (b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended;
- (c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

#### Annotations

##### Amendments:

- F1** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 1(a), S.I. No. 887 of 2004.
- F2** Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 1(b), S.I. No. 887 of 2004.
- F3** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 3(a), not commenced as of date of revision.
- F4** Inserted by *Health Act 2007* (23/2007), s. 105 and sch. 2, pt. 1, item 1(a), not commenced as of date of revision.
- F5** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 3(b), not commenced as of date of revision.
- F6** Inserted by *Health Act 2007* (23/2007), s. 105 and sch. 2, pt. 1, item 1(b), not commenced as of date of revision.

##### Modifications (not altering text):

- C6** Prospective amending provisions:
  - definition inserted into subs. (1) by *Health Act 2007* (23/2007), s. 105 and sch. 2, pt. 1, item 1(a),
  - para. (da) in definition of “children’s residential centre” inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 3(b),
  - definitions inserted into subs. (1) by *Child Care (Amendment) Act 2011* (19/2011), s. 3(a), and
  - subs. (3) inserted by *Health Act 2007* (23/2007), s. 105 and sch. 2, pt. 1, item 1(b)
 not commenced as of date of revision.

##### Interpretation.

2.—(1) In this Act, except where the context otherwise requires—



F3[“Act of 2001” means the Children Act 2001;]

“area”, in relation to F1[the Health Service Executive], means functional area;

“child” means a person under the age of 18 years other than a person who is or has been married;

F4[‘children’s residential centre’ means an institution for the residential care of children in the care of the Health Service Executive or of other children in need of adequate care and protection but does not include—

(a) an institution managed by or on behalf of a Minister of the Government,

(b) an institution in which a majority of the children being maintained are being treated for acute illnesses or are being provided with palliative care,

(c) an institution for the care and maintenance of children with a disability,

(d) an institution approved in accordance with the Mental Health Acts 1945 to 2001,

F5[(da) a special care unit,]

(e) a children detention school as defined in section 3 of the Children Act 2001;]

“functions” includes powers and duties;

F2[...]

F3[‘interim special care order’ has the meaning assigned to it by Part IVA (as amended by the Child Care (Amendment) Act 2011);]

“the Minister” means the Minister for Health;

“parents” includes a surviving parent and, in the case of a child who has been adopted under the Adoption Acts, 1952 to 1988, or, where the child has been adopted outside the State, whose adoption is recognised by virtue of the law for the time being in force in the State, means the adopter or adopters or the surviving adopter;

“prescribed” means prescribed by regulations made by the Minister.

F3[‘special care’ has the meaning assigned to it by Part IVA (as amended by the Child Care (Amendment) Act 2011);]

‘special care order’ has the meaning assigned to it by Part IVA (as amended by the Child Care (Amendment) Act 2011);

‘special care unit’ has the meaning assigned to it by Part IVA (as amended by the Child Care (Amendment) Act 2011).]

(2) In this Act—

(a) a reference to a Part, section or Schedule is to a Part, section or Schedule of this Act unless it is indicated that a reference to some other enactment is intended;

(b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended;

(c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

F6[(3) For the purposes of the definition of ‘children’s residential centre’ in subsection (1), ‘institution’ means a home, centre or institution or part of a home, centre or institution.]

## PART II

### PROMOTION OF WELFARE OF CHILDREN

Functions of health boards.

3.—(1) It shall be a function of F7[the Health Service Executive] to promote the welfare of children F8[...] who are not receiving adequate care and protection.

(2) In the performance of this function, F9[the Health Service Executive] shall—

- (a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children F10[...];
- (b) having regard to the rights and duties of parents, whether under the Constitution or otherwise—
  - (i) regard the welfare of the child as the first and paramount consideration, and
  - (ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child; and
- (c) have regard to the principle that it is generally in the best interests of a child to be brought up in his own family.

(3) F11[The Health Service Executive] shall, in addition to any other function assigned to it under this Act or any other enactment, provide child care and family support services, and may provide and maintain premises and make such other provision as it considers necessary or desirable for such purposes, subject to any general directions given by the Minister under *section 69*.

(4) F12[...]

#### Annotations

##### Amendments:

- F7** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 2(a), S.I. No. 887 of 2004.
- F8** Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 2(a), S.I. No. 887 of 2004.
- F9** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 2(b), S.I. No. 887 of 2004.
- F10** Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 2(b), S.I. No. 887 of 2004.
- F11** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 2(c), S.I. No. 887 of 2004.
- F12** Deleted (30.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 4, S.I. No. 497 of 2011.

##### Editorial Notes:

- E17** Previous affecting provision: subs. (4) substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 2(d), S.I. No. 887 of 2004; deleted as per F-note above.

Voluntary care.

**4.—(1)** Where it appears to F13[the Health Service Executive that a child requires] care or protection that he is unlikely to receive unless he is taken into its care, it shall be the duty of F13[the Executive] to take him into its care under this section.

(2) Without prejudice to the provisions of *Parts III, IV and VI*, nothing in this section shall authorise F14[the Health Service Executive] to take a child into its care against the wishes of a parent having custody of him or of any person acting *in loco parentis* or to maintain him in its care under this section if that parent or any such person wishes to resume care of him.

(3) Where F15[the Health Service Executive] has taken a child into its care under this section, it shall be the duty of F15[the Executive]—

(a) subject to the provisions of this section, to maintain the child in its care so long as his welfare appears to F15[the Executive] to require it and while he remains a child, and

(b) to have regard to the wishes of a parent having custody of him or of any person acting *in loco parentis* in the provision of such care.

(4) Without prejudice to the provisions of *Parts III, IV and VI*, where F16[the Health Service Executive] takes a child into its care because it appears that he is lost or that a parent having custody of him is missing or that he has been deserted or abandoned, F16[the Executive] shall endeavour to reunite him with that parent where this appears to F16[the Executive] to be in his best interests.

F17[(5) A child who was taken into care under this section by a health board before the amendment of this section by the Health Act 2004 and who is in the care of the health board immediately before the establishment day of the Health Service Executive shall be deemed for the purposes of this Act to have been taken into care by the Executive and to be in its care on and from that day.]

#### Annotations

##### Amendments:

- F13** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 3(a), S.I. No. 887 of 2004.
- F14** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 3(b), S.I. No. 887 of 2004.
- F15** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 3(c), S.I. No. 887 of 2004.
- F16** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 3(d), S.I. No. 887 of 2004.
- F17** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 3(e), S.I. No. 887 of 2004.
- F18** Substituted by *Child Care (Amendment) Act 2011* (19/2011), s. 5, not commenced as of date of revision.

##### Modifications (not altering text):

- C7** Prospective amending provision: subs. (2) amended by *Child Care (Amendment) Act 2011* (19/2011), s. 5, not commenced as of date of revision.

(2) Without prejudice to the provisions of *Parts III, F18[IV, IVA (as amended by the Child Care (Amendment) Act 2011)] and VI*, nothing in this section shall authorise F14[the Health Service Executive] to take a child into its care against the wishes of a parent having custody of him or of any person acting *in loco parentis* or to maintain him in its care under this section if that parent or any such person wishes to resume care of him.

Accommodation  
for homeless chil-  
dren.

**5.—**Where it appears to F19[the Health Service Executive that a child is homeless, the Executive shall] enquire into the child's circumstances, and F20[if it] is satisfied that there is no accommodation available to him which he can reasonably occupy, then, unless the child is received into the F21[care of the Executive] under the provisions of this Act, F22[the Executive shall take] such steps as are reasonable to make available suitable accommodation for him.

**Annotations****Amendments:**

- F19** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 4(a), S.I. No. 887 of 2004.
- F20** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 4(b), S.I. No. 887 of 2004.
- F21** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 4(c), S.I. No. 887 of 2004.
- F22** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 4(d), S.I. No. 887 of 2004.

Provision of  
adoption service.

**6.—F23**[(1) The Health Service Executive shall provide, or ensure the provision of, a service for the adoption of children in accordance with the Adoption Act 2010.]

**F23**[(2) For the purposes of this section, the Health Service Executive may enter into arrangements with an accredited body within the meaning of section 3 (1) of the Adoption Act 2010.]

(3) **F24**[The Health Service Executive] may take a child into its care with a view to his adoption and may maintain him in such care in accordance with the provisions of this Act until he is placed for adoption.

(4) Without prejudice to *Parts III, IV and VI*, nothing in this section shall authorise **F25**[the Health Service Executive] to take a child into its care against the wishes of a parent having custody of him or of any person acting *in loco parentis* or to maintain him in its care under this section if that parent or any such person wishes to resume care of him.

(5) The provisions of *section 10* shall apply with any necessary modifications in relation to any arrangement made under *subsection (2)*.

**Annotations****Amendments:**

- F23** Substituted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 158(a), S.I. No. 511 of 2010.
- F24** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 5(c), S.I. No. 887 of 2004.
- F25** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 5(d), S.I. No. 887 of 2004.

**Editorial Notes:**

- E18** Provision for establishment of adoption committees by the HSE to assist and advise the Adoption Authority in the performance of its functions under this section made (1.11.2010) by *Adoption Act 2010* (21/2010), s. 36(1) and (2)(a), S.I. No. 511 of 2010.
- E19** Previous affecting provision: subs. (1) and words in subs. (2) substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 5(a) and (b), S.I. No. 887 of 2004; superseded as per F-note above.

Child care advisory committees.

7.—(1) F26[The Health Service Executive shall establish for each functional area of the Executive a child care advisory committee to advise the Executive on the performance of its functions under this Act and the Executive shall consider and have regard to any advice so tendered to it.]

F27[(1A) A child care advisory committee that, before the amendment of this section by the Health Act 2004, was established for a functional area of a health board and that was in existence immediately before the establishment of the Health Service Executive shall be deemed to have been established by the Executive in compliance with subsection (1) of this section for the corresponding functional area of the Executive or for that area as redefined under section 67(3) of the Health Act 2004.]

(2) A child care advisory committee shall be composed of persons with a special interest or expertise in matters affecting the welfare of children, including representatives of voluntary bodies providing child care and family support services.

(3) A person shall not receive any remuneration for acting as a member of a child care advisory committee, but F28[the Health Service Executive] may make payments to any such member in respect of travelling and subsistence expenses incurred by him in relation to the business of the committee.

(4) Payments under this section shall be in accordance with a scale determined by the Minister, with the consent of the Minister for Finance.

(5) The Minister shall give general directions in relation to child care advisory committees which may include directions on any matter relating to the membership, constitution or business of committees (including a provision empowering a committee to co-opt one or more members) and F29[the Health Service Executive and each child care advisory committee] shall comply with any such directions.

F30[(5A) Directions given by the Minister in relation to child care advisory committees in existence immediately before the establishment day of the Health Service Executive shall, subject to the amendment or revocation of those directions under subsection (5B), apply to child care advisory committees established or deemed to have been established by the Executive, unless the Minister otherwise directs.]

F31[(5B) The Minister may amend or Revoke directions given in relation to child care advisory committees.]

(6) F32[The Health Service Executive] may, with the consent of the Minister, and shall, if so directed by the Minister, establish more than one child care advisory committee for F33[a functional area of the Executive] and where more than one committee is established the provisions of subsection (1) shall apply with the necessary modifications.

(7) Each child care advisory committee shall—

- (a) have access to non-personal information in relation to child care and family support services in its area,
- (b) consult with voluntary bodies providing child care and family support services in its area,
- (c) report on child care and family support services in its area, either on its own initiative or when so requested by the F34[Health Service Executive],
- (d) review the needs of children in its area who are not receiving adequate care and protection,

and where more than one child care advisory committee is established in F35[a functional area of the Health Service Executive], the provisions of this subsection shall apply with the necessary modifications.

**Annotations****Amendments:**

- F26** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(a), S.I. No. 887 of 2004.
- F27** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(a), S.I. No. 887 of 2004.
- F28** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(b), S.I. No. 887 of 2004.
- F29** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(c), S.I. No. 887 of 2004.
- F30** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(d), S.I. No. 887 of 2004.
- F31** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(d), S.I. No. 887 of 2004.
- F32** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(e), S.I. No. 887 of 2005.
- F33** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(e), S.I. No. 887 of 2005.
- F34** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(f)(i), S.I. No. 887 of 2005.
- F35** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 6(f)(ii), S.I. No. 887 of 2005.

**Modifications (not altering text):**

- C8** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.
2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.
- (2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.
3. The functions conferred on the Minister for Finance by or under the provisions of —
- (a) the enactments specified in Schedule 1, and
- (b) the statutory instruments specified in Schedule 2,
- are transferred to the Minister for Public Expenditure and Reform.
- ...
5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.
- ...

Schedule 1

Enactments

...

## Part 2

## 1922 to 2011 Enactments

Number and Year	Short Title	Provision
(1)	(2)	(3)
...	...	...
No. 17 of 1991	Child Care Act 1991	Sections 7(4) and 70(2)
...	...	...

Review of  
services.

**8.—F36[(1) The Health Service Executive shall—**

(a) not later than 6 months after the establishment day of the Executive, prepare for each health board the report that, but for the amendment of this section by the Health Act 2004, the health board would have been required to have prepared under this section, and

(b) annually thereafter prepare a report on the adequacy of the child care and family support services available in each functional area of the Executive.]

(2) Without prejudice to the generality of subsection (1), F37[the Health Service Executive] in preparing a report under this section shall have regard to the needs of children who are not receiving adequate care and protection and, in particular—

(a) children whose parents are dead or missing,

(b) children whose parents have deserted or abandoned them,

(c) children who are in the care of F38[the Executive],

(d) children who are homeless,

(e) children who are at risk of being neglected or ill-treated, and

(f) children whose parents are unable to care for them due to ill-health or for any other reason.

F39[(3) The Health Service Executive shall give notice of the preparation of a report under subsection (1) to—

(a) each child care advisory committee, and

(b) such bodies as the Executive sees fit whose purposes include the provision of child care and family support services,

and shall have regard to any views or information furnished by such committees or bodies in the preparation of the report.]

(4) F40[The Health Service Executive] shall submit a copy of any report prepared under this section to the Minister and may make copies of any such report available to such bodies as are mentioned in subsection (3) (b).

**Annotations**

**Amendments:**

**F36** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 7(a), S.I. No. 887 of 2004.

- F37** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 7(b)(i), S.I. No. 887 of 2004.
- F38** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 7(b)(ii), S.I. No. 887 of 2004.
- F39** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 7(c), S.I. No. 887 of 2004.
- F40** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 7(d), S.I. No. 887 of 2004.

Provision of services by voluntary bodies and other persons.

**9.—(1) F41[...]**

(2) F42[**Nothing in the Health Act 2004 shall empower the Health Service Executive**] to delegate to a voluntary body or any other person the duty conferred on it under *section 4* to receive certain children into care or the power to apply for an order under *Part III, IV or VI*.

**Annotations**

**Amendments:**

- F41** Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 8(a), S.I. No. 887 of 2004.
- F42** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 8(b), S.I. No. 887 of 2005.
- F43** Substituted by *Child Care (Amendment) Act 2011* (19/2011), s. 6, not commenced as of date of revision.

**Modifications (not altering text):**

- C9** Prospective amending provision: subs. (2) substituted by *Child Care (Amendment) Act 2011* (19/2011), s. 6, not commenced as of date of revision.
- (2) F42[**Nothing in the Health Act 2004 shall empower the Health Service Executive**] to delegate to a voluntary body or any other person the duty conferred on it under *section 4* to receive certain children into care or the power to apply for an order under *Part III, F43[IV, IVA (as amended by the Child Care (Amendment) Act 2011)] or VI*.

Assistance for voluntary bodies and other persons.

**10.—(1) F44[The Health Service Executive]** may, subject to any general directions given by the Minister and on such terms or conditions as it thinks fit, assist a voluntary body or any other person who provides or proposes to provide a child care or family support service similar or ancillary to a service which F44[**the Executive**] may provide under this Act—

(a) by a periodic contribution to funds of the body or person;

(b) by a grant;

(c) by a contribution in kind (whether by way of materials or labour or any other service).

F45[(2) Assistance given under this section to a voluntary body or other person that is a service provider as defined in section 2 of the Health Act 2004 shall be deemed for the purpose of Part 9 of that Act to have been given to the voluntary body or other person under section 39 of that Act.]



**Annotations****Amendments:**

- F44** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 9(a), S.I. No. 887 of 2004.
- F45** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 9(b), S.I. No. 887 of 2004.

Research.

**11.—**(1) The Minister may conduct or assist other persons in conducting research into any matter connected with the care and protection of children or the provision of child care and family support services.

(2) F46[The Health Service Executive] may conduct or assist other persons in conducting research into any matter connected with the functions assigned to F46[the Executive] under this Act.

**Annotations****Amendments:**

- F46** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 10, S.I. No. 887 of 2004.

## PART III

## PROTECTION OF CHILDREN IN EMERGENCIES

**Annotations****Editorial Notes:**

- E20** District Court termed 'Children Court' for the purpose of Part III of Act (23.07.2007) by *Children Act 2001* (24/2001), s. 71(a), S.I. No. 524 of 2007.

Power of Garda Síochána to take a child to safety.

**12.—**(1) Where a member of the Garda Síochána has reasonable grounds for believing that—

- (a) there is an immediate and serious risk to the health or welfare of a child, and
- (b) it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by F47[the Health Service Executive] under *section 13*, F48[or an application for a warrant under *section 35*].

the member, accompanied by such other persons as may be necessary, may, without 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, aircraft or hovercraft) and remove the child to safety.

(2) The provisions of *subsection (1)* are without prejudice to any other powers exercisable by a member of the Garda Síochána.

(3) Where a child is removed by a member of the Garda Síochána in accordance with *subsection (1)*, the child shall as soon as possible be delivered up to the custody of the F49[Health Service Executive].

(4) Where a child is delivered up to the custody of F50[the Health Service Executive] in accordance with *subsection (3)*, F50[the Executive] shall, unless it returns the child to the parent having custody of him or a person acting *in loco parentis* F51[or an order referred to in section 35 has been made in respect of the child], make application for an emergency care order at the next sitting of the District Court held in the same district court district or, in the event that the next such sitting is not due to be held within three days of the date on which the child is delivered up to the custody of F50[the Executive], at a sitting of the District Court, which has been specially arranged under *section 13(4)*, held within the said three days, and it shall be lawful for F50[the Executive] to retain custody of the child pending the hearing of that application.

F52[(5) Where a child was removed to safety in accordance with *subsection (1)* of this section or *section 254(4)* of the Children Act 2001 before the amendment of those provisions by the Health Act 2004 and the child is not delivered up to the custody of the health board concerned before the establishment day of the Health Service Executive—

(a) the child shall as soon as possible be delivered up to the custody of the Executive, and

(b) *subsection (4)* of this section applies in relation to the child as though the child had been delivered up to the Executive in accordance with *subsection (3)* of this section.]

#### Annotations

##### Amendments:

- F47** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 11(a), S.I. No. 887 of 2004.
- F48** Substituted (31.07.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 7(a), commenced on enactment.
- F49** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 11(b), S.I. No. 887 of 2004.
- F50** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 11(c), S.I. No. 887 of 2004.
- F51** Inserted (31.07.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 7(b), commenced on enactment.
- F52** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 11(d), S.I. No. 877 of 2004.

##### Modifications (not altering text):

- C10** Application of section extended (1.03.2007) by *Children Act 2001* (24/2001), s. 53(4) and (5), S.I. No. 64 of 2007.

##### Duty of Garda Síochána in relation to certain under-age children.

53.— ...

(5) Where, in relation to a child to whom *subsection (1)* applies, the member of the Garda Síochána concerned has reasonable grounds for believing—

(a) that there is an immediate and serious risk to the health or welfare of the child, and

(b) that it would not be sufficient for his or her protection from that risk to await the making of an application for an emergency care order by [the Health Service Executive] under section 13 of the Act of 1991,

the member may remove the child to safety, and Part III of the Act of 1991 shall then apply as if the removal were a removal under section 12 of that Act.

**C11** Application of section extended by (1.05.2002) *Children Act 2001* (24/2001), s. 254(4), S.I. No. 151 of 2002.

**Powers of arrest without warrant, etc.**

**254.— ...**

(4) Where a member of the Garda Síochána makes an arrest under this section and the member has reasonable grounds for believing that—

(a) there is an immediate and serious risk to the safety, health or wellbeing of the child, and

(b) it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by [the Health Service Executive] under section 13 of the Act of 1991,

the member may remove the child to safety and the provisions of Part III of the Act of 1991 shall then apply as if the removal were a removal under section 12 of that Act.

Emergency care order.

**13.—(1)** If a justice of the District Court is of opinion on the application of F53[the Health Service Executive] that there is reasonable cause to believe that—

(a) there is an immediate and serious risk to the health or welfare of a child which necessitates his being placed in the care of F53[the Health Service Executive], or

(b) there is likely to be such a risk if the child is removed from the place where he is for the time being,

the justice may make an order to be known and in this Act referred to as an “emergency care order”.

(2) An emergency care order shall place the child under the care of F54[the Health Service Executive] for a period of eight days or such shorter period as may be specified in the order.

(3) Where a justice makes an emergency care order, he may for the purpose of executing that order 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, aircraft or hovercraft) where the child is or where there are reasonable grounds for believing that he is and to deliver the child into the custody of the F55[Health Service Executive].

(4) The following provisions shall have effect in relation to the making of emergency care orders—

(a) any such order shall, subject to *paragraph (b)*, be made by the justice for the district in which the child resides or is for the time being;

(b) where a justice for the district in which the child resides or is for the time being is not immediately available, an order may be made by any justice of the District Court;

(c) an application for any such order may, if the justice is satisfied that the urgency of the matter so requires, be made *ex parte*;

(d) an application for any such order may, if the justice is satisfied that the urgency of the matter so requires, be heard and an order made thereon elsewhere than at a public sitting of the District Court.

(5) An appeal from an emergency care order shall not stay the operation of the order.

(6) It shall not be necessary in any application or order under this section to name the child if such name is unknown.

(7) (a) Where a justice makes an emergency care order, he may, of his own motion or on the application of any person, give such directions (if any) as he thinks proper with respect to—

(i) whether the address or location of the place at which the child is being kept is to be withheld from the parents of the child, or either of them, a person acting *in loco parentis* or any other person;

(ii) the access, if any, which is to be permitted between the child and any named person and the conditions under which the access is to take place;

(iii) the medical or psychiatric examination, treatment or assessment of the child.

(b) A direction under this subsection may be given at any time during the currency of the order and may be varied or discharged on the application of any person.

#### Annotations

#### Amendments:

**F53** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 12(a), S.I. No. 887 of 2004.

**F54** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 12(b), S.I. No. 887 of 2004.

**F55** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 12(c), S.I. No. 887 of 2004.

#### Modifications (not altering text):

**C12** Application of subs. (4) extended (1.11.2006) by *Mental Health Act 2001* (25/2001), s. 23(4), S.I. No. 411 of 2006.

#### Power to prevent voluntary patient from leaving approved centre.

**23.— ...**

(4) The provisions of section 13(4) of the Child Care Act, 1991, shall apply to the making of an application in respect of a child to whom this section applies with any necessary modifications.

**C13** References to 'psychiatric examination, treatment or assessment' under subs. (7) restricted (1.11.2006) by *Mental Health Act 2001* (25/2001), s. 25(15), S.I. No. 411 of 2006.

#### Involuntary admission of children.

**25.— ...**

(15) References in sections 13(7), 18(3) and 19(4) of the Child Care Act, 1991, to psychiatric examination, treatment or assessment do not include references to treatment under this Act.

Notification to be given by health board.

**14.—**(1)Where a child is delivered up to, or placed in the custody of, F56[**the Health Service Executive under this Part, the Executive**] shall as soon as possible inform or cause to be informed a parent having custody of him or a person acting *in loco parentis* of that delivery or placement unless that parent or person is missing and cannot be found.

(2)For the purposes of this section, a person shall be deemed to have been informed of the placing of a child in the custody of F57[**the Health Service Executive**] under section 13 if he is given or shown a copy of the emergency care order made under that section or if that person was present at the sitting of the court at which such order was made.

#### Annotations

##### Amendments:

- F56** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 13(a), S.I. No. 887 of 2004.
- F57** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 13(b), S.I. No. 887 of 2004.

Provision of accommodation for purposes of Part III.

**15.—**F58[**The Health Service Executive**] shall provide or make arrangements with the registered proprietors of children's residential centres or with other suitable persons for the provision of suitable accommodation for the purposes of this Part.

#### Annotations

##### Amendments:

- F58** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 14, S.I. No. 887 of 2004.
- F59** Substituted by *Health Act 2007* (23/2007), s. 105 and sch. 2, item 2, not commenced as of date of revision.

##### Modifications (not altering text):

- C14** Prospective amending provision: section substituted by *Health Act 2007* (23/2007), s. 105 and sch. 2, item 2, not commenced as of date of revision.

F59[**Provision of accommodation for purposes of Part III.**

**15.—**The Health Service Executive shall provide or make arrangements with suitable persons for the provision of suitable accommodation for the purposes of this Part.]

## PART IV

### CARE PROCEEDINGS

#### Annotations

##### Editorial Notes:

- E21** District Court termed 'Children Court' for the purpose of Part IV of Act (23.07.2007) by *Children Act 2001* (24/2001), s. 71(a), S.I. No. 524 of 2007.

Duty of health board to institute proceedings.

**16.**—Where it appears to F60[the Health Service Executive that a child] requires care or protection which he is unlikely to receive unless a court makes a care order or a supervision order in respect of him, it shall be the duty of the F61[Executive] to make application for a care order or a supervision order, as it thinks fit.

#### Annotations

#### Amendments:

**F60** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 15(a), S.I. No. 887 of 2005.

**F61** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 15(b), S.I. No. 887 of 2005.

Interim care order.

**17.**—(1) Where a justice of the District Court is satisfied on the application of F62[the Health Service Executive] that—

(a) an application for a care order in respect of the child has been or is about to be made (whether or not an emergency care order is in force), and

(b) there is reasonable cause to believe that any of the circumstances mentioned at *paragraph (a), (b) or (c) of section 18(1)* exists or has existed with respect to the child and that it is necessary for the protection of the child's health or welfare that he be placed or maintained in the care of F62[the Executive] pending the determination of the application for the care order,

the justice may make an order to be known and in this Act referred to as an "interim care order".

(2) An interim care order shall require that the child named in the order be placed or maintained in the care of the F63[Health Service Executive]—

(a) for a period not exceeding F64[F65[**twenty-nine days**]], or

(b) where the F63[Health Service Executive] and the parent having custody of the child or person acting *in loco parentis* consent, for a period exceeding F64[F65[**twenty-nine days**]],

and an extension or extensions of any such period may be granted (with the consent, F65[**where an extension is to exceed twenty-nine days**], of the persons specified in *paragraph (b)*) on the application of any of the parties if the justice is satisfied that grounds for the making of an interim care order continue to exist with respect to the child.

(3) An application for an interim care order or for an extension of such an order shall be made on notice to a parent having custody of the child or to a person acting *in loco parentis* except where, having regard to the interests of justice or the welfare of the child, the justice otherwise directs.

(4) Where an interim care order is made, the justice may order that any directions given under *subsection (7) of section 13* may remain in force subject to such variations, if any, as he may see fit to make or the justice may give directions in relation to any of the matters mentioned in the said subsection and the provisions of that section shall apply with any necessary modifications.

**Annotations****Amendments:**

- F62** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 16(a), S.I. No. 887 of 2004.
- F63** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 16(b), S.I. No. 887 of 2004.
- F64** Substituted (1.05.2002) by *Children Act 2001* (24/2001), s. 267(1)(a), S.I. No. 151 of 2002.
- F65** Substituted (13.03.2013) by *Child Care (Amendment) Act 2013* (5/2013), s. 1, commenced on enactment.

Care order.

**18.—**(1)Where, on the application of F66[the Health Service Executive with respect to a child], the court is satisfied that—

- (a)the child has been or is being assaulted, ill-treated, neglected or sexually abused, or
- (b)the child's health, development or welfare has been or is being avoidably impaired or neglected, or
- (c)the child's health, development or welfare is likely to be avoidably impaired or neglected,

and that the child requires care or protection which he is unlikely to receive unless the court makes an order under this section, the court may make an order (in this Act referred to as a "care order") in respect of the child.

(2)A care order shall commit the child to the care of the F67[Health Service Executive] for so long as he remains a child or for such shorter period as the court may determine and, in such case, the court may, of its own motion or on the application of any person, extend the operation of the order if the court is satisfied that grounds for the making of a care order continue to exist with respect to the child.

(3)Where a care order is in force, the F67[Health Service Executive] shall—

- (a)have the like control over the child as if it were his parent; and
- (b)do what is reasonable (subject to the provisions of this Act) in all the circumstances of the case for the purpose of safeguarding or promoting the child's health, development or welfare;

and shall have, in particular, the authority to—

- (i)decide the type of care to be provided for the child under *section 36*;
- (ii)give consent to any necessary medical or psychiatric examination, treatment or assessment with respect to the child; and
- (iii)give consent to the issue of a passport to the child, or to the provision of passport facilities for him, to enable him to travel abroad for a limited period.

(4) Any consent given by F68[the Health Service Executive] in accordance with this section shall be sufficient authority for the carrying out of a medical or psychiatric examination or assessment, the provision of medical or psychiatric treatment, the issue of a passport or the provision of passport facilities, as the case may be.

(5)Where, on an application for a care order, the court is satisfied that—

- (a)it is not necessary or appropriate that a care order be made, and

(b) it is desirable that the child be visited periodically in his home by or on behalf of F68[the Health Service Executive],

the court may make a supervision order under *section 19*.

(6) Between the making of an application for a care order and its determination, the court, of its own motion or on the application of any person, may give such directions as it sees fit as to the care and custody of, or may make a supervision order in respect of, the child who is the subject of the application pending such determination, and any such direction or supervision order shall cease to have effect on the determination of the application.

(7) Where a court makes a care order, it may in addition make an order requiring the parents of the child or either of them to contribute to the F69[Health Service Executive] such weekly or other periodic sum towards the cost of maintaining the child as the court, having regard to the means of the parents or either of them, thinks fit.

(8) An order under subsection (7) may be varied or discharged on application to the court by the parent required to contribute or by the F69[Health Service Executive].

#### Annotations

#### Amendments:

- F66** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 17(a), S.I. No. 887 of 2004.
- F67** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 17(b), S.I. No. 887 of 2004.
- F68** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 17(c), S.I. No. 887 of 2004.
- F69** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 17(d), S.I. No. 887 of 2004.
- F70** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 8, not commenced as of date of revision.

#### Modifications (not altering text):

- C15** Prospective amending provision: subss. (9) and (10) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 8, not commenced as of date of revision.

F70[(9) Where a care order—

(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

(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

(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.

(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.]



**C16** References to “psychiatric examination, treatment or assessment” under subs. (3) restricted (1.11.2006) by *Mental Health Act 2001* (25/2001), s. 25(15), S.I. No. 411 of 2006.

**Involuntary admission of children.**

**25.— ...**

(15) References in sections 13(7), 18(3) and 19(4) of the Child Care Act, 1991, to psychiatric examination, treatment or assessment do not include references to treatment under this Act.

Supervision  
order.

**19.—**(1) Where, on the application of F71[the Health Service Executive with respect to a child], the court is satisfied that there are reasonable grounds for believing that—

- (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or
- (b) the child’s health, development or welfare has been or is being avoidably impaired or neglected, or
- (c) the child’s health, development or welfare is likely to be avoidably impaired or neglected,

and it is desirable that the child be visited periodically by or on behalf of F71[the Health Service Executive], the court may make an order (in this Act referred to as a “supervision order”) in respect of the child.

(2) A supervision order shall authorise F72[the Health Service Executive] to have the child visited on such periodic occasions as the board may consider necessary in order to satisfy itself as to the welfare of the child and to give to his parents or to a person acting *in loco parentis* any necessary advice as to the care of the child.

(3) Any parent or person acting *in loco parentis* who is dissatisfied with the manner in which F72[the Health Service Executive] is exercising its authority to have a child visited in accordance with this section may apply to the court and the court may give such directions as it sees fit as to the manner in which the child is to be visited and F72[the Health Service Executive] shall comply with any such direction.

(4) Where a court makes a supervision order in respect of a child, it may, on the application of F72[the Health Service Executive], either at the time of the making of the order or at any time during the currency of the order, give such directions as it sees fit as to the care of the child, which may require the parents of the child or a person acting *in loco parentis* to cause him to attend for medical or psychiatric examination, treatment or assessment at a hospital, clinic or other place specified by the court.

(5) Any person who fails to comply with the terms of a supervision order or any directions given by a court under subsection (4) or who prevents a person from visiting a child on behalf of F72[the Health Service Executive] or who obstructs or impedes any such person visiting a child in pursuance of such an order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or both such fine and such imprisonment.

(6) A supervision order shall remain in force for a period of 12 months or such shorter period as may be specified in the order and, in any event, shall cease to have effect when the person in respect of whom the order is made ceases to be a child.

(7) On or before the expiration of a supervision order, a further supervision order may be made on the application of F72[the Health Service Executive] with effect from the expiration of the first mentioned order.

**Annotations****Amendments:**

- F71** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 18(a), S.I. No. 887 of 2004.
- F72** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 18(b), S.I. No. 887 of 2004.
- F73** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 9, not commenced as of date of revision.

**Modifications (not altering text):**

- C17** Prospective amending provision: subss. (8) and (9) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 9, not commenced as of date of revision.

F73[(8) Where a supervision order—

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

(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

(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

(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.]

- C18** References to “psychiatric examination, treatment or assessment” under subs. (4) restricted (1.11.2006) by *Mental Health Act 2001* (25/2001), s. 25(15), S.I. No. 411 of 2006.

**Involuntary admission of children.**

25.— ...

(15) References in sections 13(7), 18(3) and 19(4) of the Child Care Act, 1991, to psychiatric examination, treatment or assessment do not include references to treatment under this Act.

Proceedings under Guardianship of Infants Act, 1964, Judicial Separation and Family Law Reform Act, 1989, etc.

**20.—F74**[Where in any proceedings under section 7, 8, 11, 11B or Part III of the Guardianship of Infants Act, 1964, or in any case to which—

(a) section 3(3) of the Judicial Separation and Family Law Reform Act, 1989,

(b) section 6(b) or 10(f) of the Family Law Act, 1995, or

(c) section 5(2), 11(b) or 41 of the Family Law (Divorce) Act, 1996,

relates, or in any other proceedings for the delivery or return of a child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any person, adjourn the proceedings and direct F75[the Health Service Executive] to undertake an investigation of the child's circumstances.]

(2) Where proceedings are adjourned and the court gives a direction under *subsection (1)*, the court may give such directions as it sees fit as to the care and custody of, or may make a supervision order in respect of, the child concerned pending the outcome of the investigation by the F75[Health Service Executive.]

(3) Where the court gives a direction under *subsection (1)*, the F75[Health Service Executive] shall undertake an investigation of the child's circumstances and shall consider whether it should—

- (a) apply for a care order or for a supervision order with respect to the child,
- (b) provide services or assistance for the child or his family, or
- (c) take any other action with respect to the child.

(4) Where F75[the Health Service Executive] undertakes an investigation under this section and decides not to apply for a care order or a supervision order with respect to the child concerned, it shall inform the court of—

- (a) its reasons for so deciding,
- (b) any service or assistance it has provided, or it intends to provide, for the child and his family, and
- (c) any other action which it has taken, or proposes to take, with respect to the child.

F76[(5) Where, before the amendment of this section by the Health Act 2004, a health board was directed to undertake an investigation into a child's circumstances and the investigation has not been undertaken or all matters relating to or arising from the investigation have not been concluded before the establishment day of the Health Service Executive—

- (a) any direction given under this section by the court to the health board in respect of the child concerned shall be deemed to have been given to the Executive,
- (b) the investigation may be completed by the Executive, and
- (c) subsections (3) and (4) apply as though all of the investigation had been undertaken and completed by the Executive.]

#### Annotations

#### Amendments:

**F74** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 1(2).

**F75** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 19(a), S.I. No. 887 of 2004.

**F76** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 19(a), S.I. No. 887 of 2004.

Effect of appeal from orders.

**21.**—An appeal from an order under this Part shall, if the court that made the order or the court to which the appeal is brought so determines (but not otherwise), stay the operation of the order on such terms (if any) as may be imposed by the court making the determination

Variation or discharge of orders etc.

**22.**—The court, of its own motion or on the application of any person, may—

- (a) vary or discharge a care order or a supervision order,
- (b) vary or discharge any condition or direction attaching to the order, or
- (c) in the case of a care order, discharge the care order and make a supervision order in respect of the child.

Powers of court  
in case of invalid-  
ity of orders.

**23.**—Where a court finds or declares in any proceedings that a care order for whatever reason is invalid, that court may of its own motion or on the application of any person refuse to exercise any power to order the delivery or return of the child to a parent or any other person if the court is of opinion that such delivery or return would not be in the best interests of the child and in any such case the court, of its own motion or on the application of any person, may—

- (a) make a care order as if it were a court to which an application had been made by F77[the Health Service Executive] under *section 18*,
- (b) make an order remitting the matter to a justice of the District Court for the time being assigned to the district court district where the child resides or is for the time being or was residing or was at the time that the invalid order was made or the application therefor was made; and where the matter has been so remitted F77[the Health Service Executive] shall be deemed to have made an application under *section 18*,
- (c) direct that any order under *paragraph (a)* shall, if necessary, be deemed for the purposes of this Act to have been made by a justice of the District Court for the time being assigned to a district court district, specified by the court, or
- (d) where it makes an order under *paragraph (b)*, make a temporary order under *paragraph (a)* pending the making of an order by the court to which the matter or question has been remitted.

#### Annotations

#### Amendments:

- F77** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 20, S.I. No. 887 of 2004.

## F78[PART IVA

### CHILDREN IN NEED OF SPECIAL CARE OR PROTECTION]

#### Annotations

#### Amendments:

- F78** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004, (s. 24D commenced (1.03.2007) by S.I. No. 64 of 2007).

#### Editorial Notes:

- E22** District Court termed 'Children Court' for the purpose of Part IVA of Act (23.07.2007) by *Children Act 2001* (24/2001), s. 71(a), S.I. No. 524 of 2007.

**F78**[Duty of health board where child requires special care or protection.

**23A.**—(1) Where it appears to **F79**[the Health Service Executive that a child] requires special care or protection which he or she is unlikely to receive unless a court makes an order under this Part in respect of the child, being either—

(a) an order under section 23B (in this Part referred to as a ‘special care order’), or

(b) an order under section 23C (in this Part referred to as an ‘interim special care order’),

it shall, subject to subsection (2), be the duty of **F79**[the Health Service Executive] to apply for whichever of such orders is appropriate in the particular circumstances.

(2) Before applying for an order under this Part **F80**[the Health Service Executive] shall—

(a) arrange for the convening of a family welfare conference (within the meaning of the Children Act, 2001) in respect of the child, and

(b)**F81**[...]

(3) Where a parent or guardian of a child requests **F82**[the Health Service Executive] to apply for an order under this Part in respect of the child and **F82**[the Executive] decides not to do so, it shall inform the parent in writing of the reasons for its decision.]

**F83**[(4) Where, before the amendment of this section by the Health Act 2004, a health board arranged for the convening of a family welfare conference in respect of a child but the health board did not apply for an order under this Part in respect of the child before the establishment day of the Health Service Executive, the Executive shall be deemed for the purpose of an application by it for such order in respect of the child to have complied with the requirement of subsection (1)(a).

(5)**F84**[...]]

#### Annotations

#### Amendments:

**F78** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004, (s. 24D commenced (1.03.2007) by S.I. No. 64 of 2007).

**F79** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 21(a), S.I. No. 887 of 2005.

**F80** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 21(b), S.I. No. 887 of 2005.

**F81** Deleted (8.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 46(1)(a), S.I. No. 453 of 2011.

**F82** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 21 (c), S.I. No. 887 of 2005.

**F83** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 21(d), S.I. No. 887 of 2005.

**F84** Deleted (8.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 46(1)(b), S.I. No. 453 of 2011.

**F85** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

- C19** Prospective amending provisions: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

## F85[PART IVA

## CHILDREN IN NEED OF SPECIAL CARE OR PROTECTION

**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;

‘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
- (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;

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

‘custodial sentence’ means—

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

‘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.]

**Editorial Notes:**

**E23** Previous affecting provision: subs. (5) inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 21, S.I. No. 887 of 2004; repealed (8.09.2011) by *Child Care Amendment Act 2011* (19/2011), s. 46(1)(b), S.I. No. 453 of 2011.

**F86**[Special care order.

**23B.**—(1) A court may, on the application of **F87**[the Health Service Executive with respect to a child] **F88**[...] make a special care order in respect of the child if it is satisfied that—

(a) the behaviour of the child is such that it poses a real and substantial risk to his or her health, safety, development or welfare, and

(b) the child requires special care or protection which he or she is unlikely to receive unless the court makes such an order.

(2) A special care order shall commit the child to the care of the **F87**[Health Service Executive] for so long as the order remains in force and shall authorise it to provide appropriate care, education and treatment for the child and, for that purpose, to place and detain the child in a special care unit provided by or on behalf of the **F87**[Health Service Executive] pursuant to section 23K.

(3) Where a child is detained in a special care unit pursuant to a special care order, the **F87**[Health Service Executive] may take such steps as are reasonably necessary to prevent the child from—

(a) causing injury to himself or herself or to other persons in the unit, or

(b) absconding from the unit.

(4) (a) Subject to subsections (5) and (6), a special care order shall remain in force for a period to be specified in the order, being a period which is not less than 3 months or more than 6 months.

(b) The court may, on the application of the **F87**[Health Service Executive], extend the period of validity of a special care order if and so often as the court is satisfied that the grounds for making the order continue to exist with respect to the child concerned.

(5) If, while a special care order is in force in respect of a child, it appears to the **F87**[Health Service Executive] that the circumstances which led to the making of the order no longer exist with respect to the child, **F87**[it shall], as soon as practicable, apply to the court which made the order to have the order discharged.

(6) A special care order shall cease to have effect when the person in respect of whom it was made ceases to be a child.

(7) Where a special care order is in force, the **F87**[Health Service Executive] may—

(a) as part of its programme for the care, education and treatment of the child, place the child on a temporary basis in such other accommodation **F87**[as it] is empowered to provide for children in its care under section 36, or

(b) arrange for the temporary release of the child from the unit on health, education or compassionate grounds,

and any such placement or arrangement shall be subject to its control and supervision.

(8) Subject to this section, subsections (3), (4), (6), (7) and (8) of section 18 shall apply in relation to a special care order as they apply in relation to a care order, with any necessary modifications.]

**Annotations****Amendments:**

- F86** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).
- F87** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 22, S.I. No. 887 of 2004.
- F88** Deleted (8.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 46(1)(c), S.I. No. 453 of 2011.
- F89** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, subject to transitional provisions in s. 48, not commenced as of date of revision.

**Modifications (not altering text):**

- C20** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F89[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.

(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.

(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—

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

(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

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

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

(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,



- (ii) absconds from a special care unit provided pursuant to such arrangement,
  - (iii) fails to return, or is prevented from returning, to a special care unit provided pursuant to such arrangement, or
  - (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,
- the person with whom such arrangement has been entered into shall forthwith inform the Health Service Executive,
- (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
  - (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—
    - (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,
 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—
    - (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
    - (e) paragraphs (a) and (b) of subsection (9) of section 23NF.]

**Editorial Notes:**

- E24** Previous affecting provision: subs. (1) amended (23.07.2007) by *Child Care (Amendment) Act 2007* (26/2007), s. 21(1) and sch. part 1 item 2, S.I. No. 509 of 2007; amendment deleted (8.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 46(1)(c), S.I. No. 453 of 2011 as per F-note above.

**F90**[Interim special care order.

**23C.**—(1) Where a judge of the Children Court is satisfied on the application of **F91**[the Health Service Executive]—

**F91**[(a) That the Executive is complying with the requirements of section 23A(2) in relation to the making of an application for a special care order in respect of a child or is deemed under section 23A(4) and (5) to have complied with those requirements.]

(b) that there is reasonable cause to believe that—

- (i) the behaviour of the child is such that it poses a real and substantial risk to his or her health, safety, development or welfare, and
- (ii) it is necessary in the interests of the child, pending determination of the application for a special care order, that he or she be placed and detained in a special care unit provided under section 23K, the judge may make an interim special care order in respect of the child.

(2) An interim special care order shall require that the child named in the order be placed and detained in a special care unit—

(a) for a period not exceeding twenty-eight days, or

(b) where the F91[Health Service Executive] and the parent having custody of the child or a person acting *in loco parentis* consent, for a period exceeding twenty-eight days,

and the judge concerned may be order extend any such period, on the application of any of the persons specified in paragraph (b) and, where the period of the extension exceeds twenty-eight days, with the consent of those persons, if he or she is satisfied that the grounds for making the interim special care order continue to exist with respect to the child.

(3) An application for an interim special care order or for an extension of a period mentioned in subsection (2) shall be made on notice to a parent having custody of the child or a person acting *in loco parentis* or, where appropriate, to the F91[Health Service Executive], except where, having regard to the welfare of the child, the judge otherwise directs.

(4) Subsections (3) to (7) of section 13 shall apply in relation to an interim special care order as they apply in relation to an emergency care order, with any necessary modifications.]

#### Annotations

##### Amendments:

**F90** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F91** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 23(a)-(c), S.I. No. 887 of 2004.

**F92** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, subject to transitional provisions in s. 48, not commenced as of date of revision.

##### Modifications (not altering text):

**C21** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

##### F92[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

(ii) his or her care requirements,

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

(b) educational supervision,

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—

(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.]

F93[Duty of  
Garda Síochá-  
na where child  
needs special  
care or  
protection.

**23D.—**F94[...]

#### Annotations

#### Amendments:

- F93** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).
- F94** Repealed (23.07.2011) by *Child Care (Amendment) Act 2007* (26/2007), s. 15, S.I. No. 509 of 2007.
- F95** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

- C22** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### F95[**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.

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

(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—

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

and

(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—

- (i) requiring the special care order or interim special care order to be discharged,
- (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
- (iii) preventing the High Court from hearing and determining an application referred to in subparagraph (ii),

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.

(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—

- (a) an application for a special care order or an interim special care order in respect of that child,
- (b) an application, in respect of that child, to extend the period for which—
  - (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,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,

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.

(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—
  - (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—

- (i) inform the High Court of—
  - (I) that charge and those proceedings,
  - (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
  - (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),and
- (ii) inform the Court hearing that charge—
  - (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.

(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.]

#### Editorial Notes:

- E25** Previous affecting provision: section amended (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 24, S.I. No. 887 of 2004; superseded as per F-note above.

F96[Notification by health board.

**23E.—**(1)Where a child is placed in a special care unit pursuant to an interim special care order, the F97[Health Service Executive] shall as soon as possible inform or cause to be informed a parent having custody of the child or a person acting *in loco parentis* of the placement unless the parent or person is missing and cannot be found.

(2)For the purposes of this section, a person shall be deemed to have been informed of the placing of a child in a special care unit if the person is given or shown a copy of the interim special care order or if the person was present at the sitting of the court at which the order was made.]

#### Annotations

##### Amendments:

- F96** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).
- F97** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 25, S.I. No. 887 of 2004.
- F98** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

##### Modifications (not altering text):

- C23** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

F98[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—

- (a) a custodial sentence was imposed on the child and that sentence has been served,
- (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,
- (d) any detention imposed in accordance with section 144(9)(a) of the Act of 2001 on the child has been served,
- (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,

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.

(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 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—

(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

(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.

(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, 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 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—

(i) inform the High Court—

(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

(II) of any matter requiring the release of the child from the special care unit, under section 23NG, for the purposes of such children detention order, or such suspension, and subsection (6),

and

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

(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

(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.

(5) 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 Children Act order has been made in respect of the child who is the subject of that application, the Health Service Executive shall—

(i) inform the High Court of—

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

(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

(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—

- (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,

the Health Service Executive shall withdraw that application.

(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—

- (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,

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.

(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—

- (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

(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.]

F99 [Variation or discharge of special care orders.

**23F.—**(1) Without prejudice to section 23B(5), the court may, of its own motion or on the application of any person, vary or discharge a special care order.

(2) In discharging a special care order, the court may, of its own motion or on the application of F100 [the Health Service Executive] either—

(a) make a supervision order in respect of the child, or

(b) if the court is of opinion that—

(i) the child requires care and protection which he or she is unlikely to receive unless he or she remains in the care of F100 [the Health Service Executive], or

(ii) the delivery or return of the child to a parent or any other person would not be in the best interests of the child,

make a care order in respect of the child.]

#### Annotations

#### Amendments:

**F99** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F100** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 26, S.I. No. 887 of 2004.

**F101** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C24** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F101** [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.

(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,

(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—

(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 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, 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—
- (i) that behaviour and risk of harm, and
  - (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,
- 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—
- (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 2011) 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.]

**F102**[Appeals. **23G.**—Section 21 shall apply to an appeal from an interim special care order or a special care order as it applies to an appeal from an order under Part IV.]

#### Annotations

#### Amendments:

**F102** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F103** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C25** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### **F103**[Notice of application for special care order or interim special care order.

**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—

- (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
- (c) a guardian *ad litem*, where such guardian is appointed in accordance with section 26 (as amended by the *Child Care (Amendment) Act 2011*) in respect of proceedings under this Part and whose appointment has effect in accordance with section 26(4).

(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:

- (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.

(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).

(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).

(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.

(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.]

**F104**[Powers of court in case of invalidity of order.

**23H.**—Section 23 shall apply to a special care order as it applies to a care order, with the modification that the court may, as an alternative to making a special care order, make a care order in respect of the child.]

#### Annotations

#### Amendments:

**F104** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F105** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C26** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### **F105**[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—

(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,

(d) having regard to paragraph (c), 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 a special care order is made in respect of that child,

(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),

(f) in respect of the family welfare conference referred to in section 23F(5)—

(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

(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 provided in accordance with section 23F(10),

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

(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.

(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—

(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 the child and to generally care for and maintain the 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) For the purposes of executing a 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.

(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.]

F106[Application of Part V.

**23I.**—Part V shall apply to proceedings relating to an application for an interim special care order or a special care order, with any necessary modifications.]

#### Annotations

#### Amendments:

**F106** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F107** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C27** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### F107[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.

(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.]

F108[Application of Part VI.

**23J.**—Section 37, 42, 45 and 47 shall apply to a child who is committed to the care of F109[the Health Service Executive] pursuant to an interim special care order or a special care order.]

**Annotations****Amendments:**

**F108** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F109** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 27, S.I. No. 887 of 2004.

**F110** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

**C28** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F110[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,

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

(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,

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.

(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).

(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

(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 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).



(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.

(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).]

**F111**[Provision of special care units by health boards.

**23K.—F112**[(1) For the purposes of sections 23B and 23C, the Health Service Executive may, with the Minister's approval, provide special care units and maintain special care units whether provided by the Executive or provided by a health board before the establishment day of the Executive.

(1A) The Health Service Executive may, subject to its available resources and any general directions issued by the Minister, make arrangements with a voluntary body or other person for the provision and operation of a special care unit by that body or person on behalf of the Executive.

(1B) Section 38 (2) to (9) of the Health Act 2004 shall apply with the necessary modifications in respect of an arrangement under this section with a voluntary body or other person for the provision and operation of a special care unit and the body or person making such arrangement with the Health Service Executive is for the purpose of Part 9 of that Act a service provider as defined in section 2 of that Act.]

(2) The Minister shall not approve of the provision of a special care unit unless—

- (a) having caused the unit to be inspected by a person authorised in that behalf by the Minister, and
- (b) having considered a report in writing of the inspection,

he or she is satisfied that the requirements of regulations under this section will be complied with by **F113**[the Health Service Executive,] voluntary body or other person, as the case may be, in relation to the unit.

(3) The duration of an approval of a special care unit by the Minister shall be 3 years from the date of approval, and thereafter the Minister may renew the approval for a further period, or further periods, of the like duration.

(4) The Minister, on approving of a special care unit, shall cause a certificate to that effect to be issued to the F114[Health Service Executive] and the certificate shall without further proof, unless the contrary is shown, be admissible in any proceedings as evidence that the unit has been approved of by the Minister for the purposes of sections 23B and 23C.

F115[(4A) A certificate issued by the Minister to a health board before the amendment of this section by the Health Act 2004 shall be deemed to have been issued to the Health Service Executive.]

(5) The Minister may cancel such a certificate if he or she is of opinion that the special care unit concerned is no longer suitable for use as such a unit or is no longer required for that purpose.

(6) The Minister shall make regulations with respect to the operation of special care units provided by or on behalf of F116[the Health Service Executive] under this section and for securing the welfare of children detained therein.

(7) Without prejudice to the generality of subsection (6), regulations under this section may prescribe requirements as to—

- (a) the maintenance, care and welfare of children while being detained in special care units,
- (b) the staffing of those units,
- (c) the physical standards in those units, including the provision of adequate and suitable accommodation and facilities,
- (d) the periodical review of the cases of children in those units and the matters to be considered in such reviews,
- (e) the records to be kept in those units and the examination and copying of any such records or of extracts therefrom by persons authorised in that behalf by the Minister, and
- (f) the periodical inspection of those units by persons authorised in that behalf by—

F117[(i) in case the units were provided in accordance with an arrangement referred to in subsection (1A), the Health Service Executive, and]

(ii) in any other case, the Minister in accordance with section 69.

F118[(8) Section 10(1) and (2) shall apply with any necessary modifications in relation to a voluntary body or other person with whom the Health Service Executive enters into an arrangement referred to in subsection (1A).]

(9) Nothing in this section shall empower F119[the Health Service Executive] to delegate to a voluntary body or any other person the power to apply for an order under section 23B or 23C.

(10) Where a child is detained in a special care unit provided under subsection F120[subsection (1A)], the provisions of section 23B(3) shall apply in relation to the voluntary body or other person providing or operating the unit.

(11) Nothing in this section shall authorise the placing of a child in a special care unit otherwise than in accordance with an interim special care order or a special care order.]

**Annotations****Amendments:**

- F111** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).
- F112** Substituted and inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 28(a), S.I. No. 887 of 2004.
- F113** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s.75 and sch. 7, pt. 6, item 28(b), S.I. No. 887 of 2004.
- F114** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s.75 and sch. 7, pt. 6, item 28(c), S.I. No. 887 of 2004.
- F115** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s.75 and sch. 7, pt. 6, item 28(d), S.I. No. 887 of 2004.
- F116** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s.75 and sch. 7, pt. 6, item 28(e), S.I. No. 887 of 2004.
- F117** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s.75 and sch. 7, pt. 6, item 28(f), S.I. No. 887 of 2004.
- F118** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s.75 and sch. 7, pt. 6, item 28(g), S.I. No. 887 of 2004.
- F119** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s.75 and sch. 7, pt. 6, item 28(h), S.I. No. 887 of 2004.
- F120** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s.75 and sch. 7, pt. 6, item 28(i), S.I. No. 887 of 2004.
- F121** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.
- F122** Substituted by *Health Act 2007* (23/2007), s. 105 and sch. 2 part 1 item 3(a), not commenced as of date of revision.
- F123** Deleted by *Health Act 2007* (23/2007), s 105 and sch. 2 part 1 item 3(b), not commenced as of date of revision.

**Modifications (not altering text):**

- C29** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F121[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—
  - (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 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,

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

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

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

(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.]

**C30** Prospective amending provision: subss. (2)(a) and (7)(f) amended by *Health Act 2007* (23/2007), s. 105 and sch. 2 part 1, item 3(a) and (b), not commenced as of date of revision.

(2) The Minister shall not approve of the provision of a special care unit unless—

(a) having caused the unit to be inspected F122[by the Office of the Chief Inspector of Social Services], and

...

(7) Without prejudice to the generality of subsection (6), regulations under this section may prescribe requirements as to—

...

(f) the periodical inspection of those units F123[...].

...

#### Editorial Notes:

**E26** Power pursuant to section exercised (24.09.2004) by *Child Care (Special Care) Regulations 2004* (S.I. No. 550 of 2004).

F124[Recovery of absconding child. **23L.—**Section 46 shall apply to the recovery of a child who absconds from a special care unit.]

#### Annotations

#### Amendments:

**F124** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F125** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C31** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

F125[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 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 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) 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).

(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.

(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.]

F126[Amendment of section 4.

**23M.**—References in section 4 to Parts III, IV and VI shall be construed as including references to this Part.]

#### Annotations

#### Amendments:

**F126** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F127** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C32** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F127**[Interim special care orders made *ex parte*: supplemental provisions.

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

(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,

(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),

(c) the High Court, where it makes an appointment under section 26 (as amended by the Child Care (Amendment) Act 2011) 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—

(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

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

(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.

(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).]

F128[Restriction. **23N.**—A child on being found guilty of an offence may not be ordered to be placed or detained in a special care unit.]

**Annotations****Amendments:**

**F128** Part IVA (ss. 23A-23N) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004 (s. 23D commenced (23.07.2007) by S.I. No. 524 of 2007 and repealed on the same date).

**F129** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

**C33** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F129**[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.

(2) Not more than one application 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).

(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

(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).

(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,

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

(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.

(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.



(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).

(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).]

F130[Sections 23H and 23L: supplemental provisions.

### 23NA.—]

#### Annotations

#### Amendments:

**F130** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C34** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### F130[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—

(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,

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

(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 a special care unit or place to which he or she has been released under section 23NF or 23NG.

(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—

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

(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
  - (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,
- 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.
- (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—
- (a) a parent having custody of the child concerned,
  - (b) a guardian of the child, if any, or
  - (c) a person *in loco parentis*,
- 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—
- (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,
  - (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 (1), and a direction, if any, made under subsection (2).
- (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—
- (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,
  - (b) of the name and location of the special care unit in which the child is detained, and
  - (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).
- (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.
- (6) Where—
- (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
  - (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).
- (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.

(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.]

F131[Failure to find child.

**23NB.—]**

#### Annotations

#### Amendments:

**F131** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C35** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

F131[**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.

(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.

(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).

(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.

(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.]

F132[Appeal and staying of order.

**23NC.—]**

#### Annotations

#### Amendments:

**F132** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

**C36** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F132[Appeal and staying of order.****23NC.— Where—**

- (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.]

**F133**[Functions of Health Service Executive when providing special care.

**23ND.—]****Annotations****Amendments:**

**F133** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

**C37** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F133[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—

- (a) shall have the like control over the child as if it were a parent of that child,
  - (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,
  - (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,
  - (d) shall have the authority to give consent to any medical or psychiatric examination, treatment or assessment in respect of the child,
  - (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—
    - (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
    - (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

(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.

(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.

(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

(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

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

(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.

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

(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—

(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, of that proposal, or

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

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

(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).]

F134[Discharge and variation of special care order or interim special care order.

**23NE.—]**

#### Annotations

#### Amendments:

**F134** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

**C38** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F134[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

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

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.

(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,

(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.

(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

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

(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—

(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

(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.

(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—

(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

(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).

(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—

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

**F135**[Release from special care unit under special care order or interim special care order.

**23NF.—]**

#### Annotations

#### Amendments:

**F135** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C39** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F135**[**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 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:

- (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;
- (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;
- (d) release on compassionate grounds;
- (e) educational and recreational outings from the special care unit;
- (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.

(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,
- (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.

(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).

(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).

(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,
- (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
- (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.

(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
- (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
- (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.

(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

(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—

(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,

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

**F136**[Release from special care unit for purposes of sections 23D and 23E.

**23NG.—**]

#### Annotations

#### Amendments:

**F136** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C40** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F136**[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:

(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);

(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);

(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);

(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);

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

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

(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—

(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

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

(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—

(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),

(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,

(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,

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) 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.]

**F137**[Hearing of proceedings. **23NH.—**]

#### Annotations

#### Amendments:

**F137** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C41** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F137**[Hearing of proceedings.

**23NH.—** Proceedings under this Part shall be heard otherwise than in public.]

F138[Return of child to Health Service Executive in certain circumstances.]

23NI.—]

#### Annotations

#### Amendments:

**F138** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C42** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F138**[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—

(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,

(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—

(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,

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.

(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 the child to the care of the Health Service Executive.

(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.

(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.

(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.

(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.

(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),

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.

(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.]

**F139**[Applica-  
tions for special  
care orders or  
interim special  
care orders  
generally.

**23NJ.—**

#### Annotations

#### Amendments:

**F139** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C43** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F139**[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—

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

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

(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—

(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,

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.]

F140[Application for directions. 23NK.—]

#### Annotations

#### Amendments:

**F140** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

- C44** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F140[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—

(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,

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.]

**F141**[Existing orders.

**23NL.—]**

**Annotations****Amendments:**

- F141** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

- C45** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F141[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.

(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—

(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

(d) a supervision order made under section 19.]

**F142**[Provision of information to certain persons.

**23NM.—]**

**Annotations****Amendments:**

**F142** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

**C46** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F142[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—

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

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

(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—

(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—

(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

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

**F143**[Request for appraisal of special care provided to child. **23NN.**—]

**Annotations****Amendments:**

**F143** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

**C47** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**F143[Request for appraisal of special care provided to child.]**

**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.

(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).

(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.

(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

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

(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,

(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,

(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

(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.

(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.

(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.

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

F144[Guidelines. 23NO.—]

#### Annotations

#### Amendments:

**F144** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

#### Modifications (not altering text):

**C48** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.



## F144[Guidelines.

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

(a) the procedures for—

(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

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

(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—

(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,

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

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

(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.]

F145[Offences. **23NP.—]****Annotations****Amendments:**

**F145** Part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

**Modifications (not altering text):**

**C49** Prospective amending provision: part IVA (ss. 23A-23NP) substituted and inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of date of revision, subject to transitional provisions in s. 48.

## F145[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

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

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 class B fine or imprisonment for a term not exceeding 6 months or both.

(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—

(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

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

(i) the special care unit, or

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

shall be guilty of an offence and shall be liable on summary conviction to a class B fine 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.]

## F146[PART IVB

## PRIVATE FOSTER CARE]

**Annotations****Amendments:**

**F146** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

F146[Definitions. **23O.**—In this Part—

‘authorised officer’ means a person appointed by a health board under section 23S;

F147[...]

‘private foster care arrangement’ means any arrangement or undertaking whereby a child is for more than 14 days in the full-time care, for reward or otherwise, of a person other than his or her parent or guardian, a person cohabiting with a parent or guardian or a relative, except where the child—

- (a) is residing at a boarding school and receiving full-time education,
- (b) is in an institution managed by or on behalf of a Minister of the Government or F148[the Health Service Executive],
- (c) is in an institution in which the majority of persons being cared for and maintained are being treated for acute illness,
- (d) is in an institution for the care and maintenance of children with a disability,
- (e) is in a mental institution within the meaning of the Mental Treatment Acts, 1945 to 1966,
- (f) is detained in a children detention school or children detention centre within the meaning of the Children Act, 2001,

F149[(g) is placed for adoption under an adoption order within the meaning of section 3 (1) of the Adoption Act 2010 or is the subject of an intercountry adoption effected outside the State recognised by that Act,]

(h) is in the care of F148[the Health Service Executive],

(i) is on holidays for a continuous period not exceeding 42 days,

(j) is placed with a person or body for primarily educational purposes, or

(k) is placed with a friend of the child's parent or guardian for a period not exceeding 42 days, while the parent or guardian is on holidays;

'relative', in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the whole blood, half blood or by affinity, and includes the spouse of any such person and any person cohabiting with any such person.]

#### Annotations

#### Amendments:

**F146** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F147** Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 29, S.I. No. 887 of 2004.

**F148** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7 pt. 6, item 29(c), S.I. No. 887 of 2004.

**F149** Substituted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 158(b), S.I. No. 511 of 2010.

**F150**[Notice of private foster care arrangement.

**23P.—(1)** A person arranging or undertaking a private foster care arrangement shall give notice to the health board in the manner specified in section 23Q not less than thirty days before the placement.

(2) Where a child is placed in a private foster care arrangement owing to an unforeseen emergency, both the person making the arrangement and the person undertaking it shall notify the health board in the manner specified in section 23Q as soon as practicable and not more than 14 days after the placement.

**F151**[(3) Any person arranging or undertaking a private foster care arrangement before the establishment day of the Health Service Executive who has submitted to a health board before that day the information the health board required in relation to the arrangement or undertaking shall be deemed to have complied with subsection (1).]]

#### Annotations

#### Amendments:

**F150** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F151** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 30, S.I. No. 887 of 2004.

#### Modifications (not altering text):

**C50** Application of section restricted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 15(2), S.I. No. 511 of 2010.

**Care of child pending placement.****15.—** ...

(2) Section 23P of the Child Care Act 1991 does not apply to—

- (a) the making of an arrangement by an accredited body under subsection (1), or
- (b) a person undertaking the care of a child under the arrangement.

F152[Information to be submitted to relevant health board.

**23Q.—**(1) Any person arranging or undertaking a private foster care arrangement shall submit to the F153[Health Service Executive] in writing—

- (a) the person's name and address,
- (b) the name, sex, date and place of birth and address of the child concerned,
- F152[(c) the name and address of the parent or guardian of the child,]
- (d) if the child's residence is changed, the child's new address,
- (e) if the private foster care arrangement terminates, the reasons for its termination,

and any other information that the F153[Health Service Executive] may consider necessary in relation to any persons involved in the arrangement.

(2) Any person arranging a private foster care arrangement shall submit to the F154[Health Service Executive], in writing, the name and address of the person undertaking the arrangement and any other information in respect of that person that F154[the Executive] may consider necessary.]

**Annotations****Amendments:**

**F152** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F153** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 31(a), S.I. No. 887 of 2004.

**F154** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 31(b), S.I. No. 887 of 2004.

F155[Duty in respect of children in private foster care.

**23R.—**Any person arranging or undertaking a private foster care arrangement in respect of a child shall regard the child's welfare as the first and paramount consideration.

(2) Any person undertaking such an arrangement shall take all reasonable measures to safeguard the health, safety and welfare of the child concerned.

(3) Any person arranging such an arrangement shall make all reasonable enquiries to ensure that the person undertaking it is in a position to comply with subsection (2).]

**Annotations****Amendments:**

**F155** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F156**[Authorised officers.

**23S.—(1)** **F157**[The Health Service Executive shall appoint such and so many of its employees] for the purposes of this Part.

(2) Each authorised officer shall be given a warrant of his or her appointment and, when exercising any power conferred by this Part, shall, on request by any person affected, produce the warrant or a copy thereof, together with a form of personal identification.]

**Annotations****Amendments:**

**F156** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F157** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 32, S.I. No. 887 of 2004.

**F158**[Inspection by authorised persons.

**23T.—(1)** Where the **F159**[Health Service Executive] has received a notice in accordance with section 23P in respect of a private foster care arrangement, an authorised officer may at all reasonable times enter any premises (including a private dwelling) in which the child concerned is residing.

(2) A judge of the District Court may, if satisfied on the sworn information of an authorised officer that there are reasonable grounds for believing that a private foster care arrangement has been arranged or undertaken and that the **F160**[Health Service Executive] has not received the requisite notice, issue a warrant authorising an authorised officer, accompanied if necessary by other persons, to enter, if need be by reasonable force, and inspect any premises (including a private dwelling) in which the child may be residing.

(3) An authorised officer, on entering any such premises, shall investigate the care and attention that the child is receiving and the condition of the premises with a view to ensuring that the person undertaking the arrangement is complying with his or her duty to take all reasonable measures to safeguard the child's health, safety and welfare.

(4) An authorised officer may request a member of the Garda Síochána to accompany him or her when carrying out an inspection]

**Annotations****Amendments:**

**F158** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F159** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 33(a), S.I. No. 887 of 2004.

**F160** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 33(b), S.I. No. 887 of 2004.

**F161**[Institution of proceedings by health board.

**23U.**—If **F162**[the Health Service Executive] believes—

- (a) that a person who is arranging or undertaking a private foster care arrangement has not notified it under section 23P, or
- (b) that such a person is not taking all reasonable measures to safeguard the health, safety and welfare of the child concerned,

it may apply to the District Court for one of the following orders:

- (i) that a supervision order under section 19 be made in respect of the child,
- (ii) that the child be taken into the care of **F162**[the Health Service Executive] under section 13, 17 or 18, or
- (iii) that the arrangement be terminated and the child returned to his or her parents or guardian,

and the Court may order accordingly.]

#### Annotations

#### Amendments:

**F161** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F162** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 34, S.I. No. 887 of 2004.

**F163**[Restrictions on private foster care arrangements in certain cases.

**23V.**—A person shall not arrange or undertake a private foster care arrangement for the purpose of adopting a child under **F164**[an adoption order within the meaning of section 3(1) of the Adoption Act 2010 or an intercountry adoption effected outside the State recognised by that Act.]

(2) Any person undertaking a private foster care arrangement in respect of a child shall not apply under those Acts to adopt the child unless—

- (a) the child is eligible for adoption under **F165**[the Adoption Act 2010], and
- (b) the **F166**[Health Service Executive] has consented to the continuance of the arrangement pending the completion of an assessment of that person under those Acts.

(3) If a **F167**[Health Service Executive] believes that a person who is arranging or undertaking a private foster care arrangement is doing so in contravention of subsection (1) or (2), it may apply to the District Court for an order either—

- (a) that the child be taken into its care under section 13, 17 or 18, or
- (b) that the arrangement be terminated and the child returned to his or her parents or guardian,

and the Court may order accordingly.]

**Annotations****Amendments:**

**F163** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F164** Substituted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 158(c), S.I. No. 511 of 2010.

**F165** Substituted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 158(d), S.I. No. 511 of 2010 as amended (31.07.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 49(c), commenced on enactment.

**F166** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 35(a), S.I. No. 887 of 2004.

**F167** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 35(b), S.I. No. 887 of 2004.

**Editorial Notes:**

**E27** Previous affecting provision: subs. (1) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004; superseded as per F-note above.

**F168**[Offences. **23W.**—(1) Any person—

(a) who while arranging or undertaking a private foster care arrangement does not notify the **F169**[Health Service Executive] under section 23P,

(b) who contravenes subsection (2) or (3) of section 23R,

(c) who refuses to allow an authorised officer to enter any premises in accordance with subsection (1) or (2) of section 23T or obstructs or impedes an authorised officer in the exercise of his or her powers under that section,

(d) who while arranging or undertaking a private foster care arrangement knowingly or wilfully makes or causes or procures any other person to make a false or misleading statement to the **F169**[Health Service Executive],

(e) who contravenes section 23V(1), or

(f) who does not comply with an order under paragraph (ii) or (iii) of section 23U or under section 23V(3),

is guilty of an offence and liable on summary conviction to a fine not exceeding £1,500

(2) Where a person is convicted of an offence under this section, the District Court may by order prohibit the person from arranging or undertaking a private foster care arrangement for such period as may be specified in the order.]

**Annotations****Amendments:**

**F168** Part IVB (ss. 23O-23X) inserted (23.09.2004) by *Children Act 2001* (24/2001), s. 16, S.I. No. 548 of 2004.

**F169** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 36, S.I. No. 887 of 2004.

F170[Saver.

**23X.**—This Part is without prejudice to any other provision of this Act or any provision of the Children Act, 2001, which imposes, in the interests of a child, duties or obligations on F171[the Health Service Executive] or a member of the Garda Síochána.]

**Annotations****Amendments:**

**F170** Inserted (23.09.2004) by *Children Act 2001* (24/2001), pt. 3, s. 16, S.I. No. 548 of 2004.

**F171** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 37, S.I. No. 887 of 2004.

**PART V****JURISDICTION AND PROCEDURE****Annotations****Modifications (not altering text):**

**C51** References to Part IV of Act in Part V (Jurisdiction and Procedure) to be construed as including references to parts IVA and IVB as provided (29.07.2004) by *Children Act 2001* (24/2001), s. 267(2), S.I. No. 468 of 2004.

**Amendment of sections 17(2) and 59 of Act of 1991.**

**267.**— ...

(2) References in Part V (Jurisdiction and Procedure) of the Act of 1991 to Part IV of that Act shall be construed as including references to Parts IVA and IVB (inserted by section 16 ) thereof.

**Editorial Notes:**

**E28** District Court termed 'Children Court' for the purpose of Part V of Act (23.07.2007) by *Children Act 2001* (24/2001), s. 71(a), S.I. No. 524 of 2007.

Welfare of child  
to be paramount.

**24.**—In any proceedings before a court under this Act in relation to the care and protection of a child, the court, having regard to the rights and duties of parents, whether under the Constitution or otherwise, shall—

(a) regard the welfare of the child as the first and paramount consideration, and

(b) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child.

**Annotations****Amendments:**

**F172** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 11, not commenced as of date of revision.

**Modifications (not altering text):**

**C52** Prospective amending provision: words inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 11, not commenced as of date of revision.

**Welfare of child to be paramount.**



**24.**—In any proceedings before a court under this Act in relation to the care and protection of a child F172[and in proceedings before the High Court under Part IVA (as amended by the Child Care (Amendment) Act 2011) in relation to special care], the court, having regard to the rights and duties of parents, whether under the Constitution or otherwise, shall—

- (a) regard the welfare of the child as the first and paramount consideration, and
- (b) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child.

Power of court to join child as a party and costs of child as a party.

**25.**—(1) If in any proceedings under Part IV or VI the child to whom the proceedings relate is not already a party, the court may, where it is satisfied having regard to the age, understanding and wishes of the child and the circumstances of the case that it is necessary in the interests of the child and in the interests of justice to do so, order that the child be joined as a party to, or shall have such of the rights of a party as may be specified by the court in, either the entirety of the proceedings or such issues in the proceedings as the court may direct. The making of any such order shall not require the intervention of a next friend in respect of the child.

(2) Where the court makes an order under *subsection (1)* or a child is a party to the proceedings otherwise than by reason of such an order, the court may, if it thinks fit, appoint a solicitor to represent the child in the proceedings and give directions as to the performance of his duties (which may include, if necessary, directions in relation to the instruction of counsel).

(3) The making of an order under *subsection (1)* or the fact that a child is a party to the proceedings otherwise than by reason of such an order shall not prejudice the power of the court under *section 30(2)* to refuse to accede to a request of a child made thereunder.

(4) Where a solicitor is appointed under *subsection (2)*, the costs and expenses incurred on behalf of a child exercising any rights of a party in any proceedings under this Act shall be paid by the F173[Health Service Executive.] F173[The Executive] may apply to the court to have the amount of any such costs or expenses measured or taxed.

(5) The court which has made an order under *subsection (2)* may, on the application to it of F173[the Health Service Executive], order any other party to the proceedings in question to pay to F173[the Executive] any costs or expenses payable by F173[the Executive] under *subsection (4)*.

#### Annotations

#### Amendments:

**F173** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 38, S.I. No. 887 of 2004.

**F174** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 12(a) and (b), not commenced as of date of revision.

#### Modifications (not altering text):

**C53** Prospective amending provision: words inserted in subs. (1) and new subs. (6) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 12(a) and (b), not commenced as of date of revision.

#### Power of court to join child as a party and costs of child as a party.

**25.**—(1) If in any proceedings under Part IV F174[, IVA (as amended by the Child Care (Amendment) Act 2011)] or VI the child to whom the proceedings relate is not already a party, the court may, where it is satisfied having regard to the age, understanding and wishes of the child and the circumstances of the case that it is necessary in the interests of the child and in the interests of

justice to do so, order that the child be joined as a party to, or shall have such of the rights of a party as may be specified by the court in, either the entirety of the proceedings or such issues in the proceedings as the court may direct. The making of any such order shall not require the intervention of a next friend in respect of the child.

...

F174[(6) In this section, where the proceedings are proceedings under Part IVA (as amended by the Child Care (Amendment) Act 2011), 'court' means the High Court.]

Appointment of guardian *ad litem* for a child.

**26.—**(1) If in any proceedings under *Part IV* or *VI* the child to whom the proceedings relate is not a party, the court may, if it is satisfied that it is necessary in the interests of the child and in the interests of justice to do so, appoint a guardian *ad litem* for the child.

(2) Any costs incurred by a person in acting as a guardian *ad litem* under this section shall be paid by the F175[Health Service Executive]. The F175[Health Service Executive] may apply to the court to have the amount of any such costs or expenses measured or taxed.

(3) The court which has made an order under *subsection (1)* may, on the application to it of F175[the Health Service Executive], order any other party to the proceedings in question to pay to F175[the Executive] any costs or expenses payable by F175[the Executive] under *subsection (2)*.

(4) Where a child in respect of whom an order has been made under *subsection (1)* becomes a party to the proceedings in question (whether by virtue of an order under *section 25 (1)* or otherwise) then that order shall cease to have effect.

#### Annotations

##### Amendments:

**F175** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 39, S.I. No. 887 of 2004.

**F176** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 13(a), not commenced as of date of revision.

**F177** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 13(b), not commenced as of date of revision.

**F178** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 13(c), not commenced as of date of revision.

**F179** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 13(d), not commenced as of date of revision.

**F180** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 13(e), not commenced as of date of revision.

##### Modifications (not altering text):

**C54** Prospective amending provision: words inserted in subss. (1) and (2) and new subss. (2A), (2B), (2C), (3A) and (5) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 13(a)-(e), not commenced as of date of revision.

##### Appointment of guardian *ad litem* for a child.

**26.—**(1) If in any proceedings under *Part IV* F176[, *IVA* (as amended by the *Child Care (Amendment) Act 2011*)] or *VI* the child to whom the proceedings relate is not a party, the court may, if it is satisfied that it is necessary in the interests of the child and in the interests of justice to do so, appoint a guardian *ad litem* for the child.

(2) Any costs F177[reasonably] incurred by a person in acting as a guardian *ad litem* under this section shall be paid by the F175[Health Service Executive]. The F175[Health Service Executive] may apply to the court to have the amount of any such costs or expenses measured or taxed.

F178[(2A) Where the court makes an appointment under subsection (1) (as amended by the Child Care (Amendment) Act 2011), 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*.

(2B) A guardian *ad litem* shall for the purpose of the proceedings for which he or she is appointed promote the best interests of the child concerned and convey the views of that child to the court, in so far as is practicable, having regard to the age and understanding of the child.

(2C) Where the court makes an appointment under subsection (1) (as amended by the Child Care (Amendment) Act 2011)—

(a) the guardian *ad litem* concerned may instruct a solicitor to represent him or her in respect of those proceedings and, if necessary, having regard to the circumstances of the case, may instruct counsel in respect of those proceedings, and

(b) where a guardian *ad litem* instructs a solicitor or counsel or both pursuant to paragraph (a), the costs and expenses reasonably incurred for that purpose 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 or expenses measured or taxed.]

...

F179[(3A) The court 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).]

...

F180[(5) In this section, where the proceedings are proceedings under Part IVA (as amended by the Child Care (Amendment) Act 2011), 'court' means the High Court.]

#### Editorial Notes:

- E29** Guardian *ad litem* appointed under section designated as a prescribed person for the purposes of *Civil Liability and Courts Act 2004* (31/2004), s. 40(4) (1.07.2005) by *Civil Liability and Courts Act 2004* (Section 40(4)) Order 2005 (S.I. No. 338 of 2005), art. 3 and sch. item 19.

Power to procure reports on children.

**27.—**(1) In any proceedings under *Part IV* or *VI* the court may, of its own motion or on the application of any party to the proceedings, by an order under this section give such directions as it thinks proper to procure a report from such person as it may nominate on any question affecting the welfare of the child.

(2) In deciding whether or not to request a report under *subsection (1)* the court shall have regard to the wishes of the parties before the court where ascertainable but shall not be bound by the said wishes.

(3) A copy of any report prepared under *subsection (1)* shall be made available to the counsel or solicitor, if any, representing each party in the proceedings or, if any party is not so represented, to that party and may be received in evidence in the proceedings.

(4) Where any person prepares a report pursuant to a request under *subsection (1)*, the fees and expenses of that person shall be paid by such party or parties to the proceedings as the court shall order.

(5) The court, if it thinks fit, or any party to the proceedings, may call the person making the report as a witness.

**Annotations****Amendments:**

**F181** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 14(a), not commenced as of date of revision.

**F182** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 14(b), not commenced as of date of revision.

**Modifications (not altering text):**

**C55** Prospective amending provision: words inserted in subs. (1) and subss. (6) and (7) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 14(a) and (b), not commenced as of date of revision.

**Power to procure reports on children.**

**27.**—(1) In any proceedings under *Part IV* F181[IVA (as amended by the *Child Care (Amendment) Act 2011*)] or *VI* the court may, of its own motion or on the application of any party to the proceedings, by an order under this section give such directions as it thinks proper to procure a report from such person as it may nominate on any question affecting the welfare of the child.

...

F182[(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 2011*) 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 2011*), ‘court’ means the High Court.]

Jurisdiction.

**28.**—(1) The District Court and the Circuit Court on appeal from the District Court shall have jurisdiction to hear and determine proceedings under *Part III, IV or VI*.

(2) Proceedings under *Part III, IV or VI* may be brought, heard and determined before and by a justice of the District Court for the time being assigned to the district court district where the child resides or is for the time being.

**Annotations****Amendments:**

**F183** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 15(1)(a), not commenced as of date of revision.

**F184** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 15(1)(b), not commenced as of date of revision.

**F185** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 15(2), not commenced as of date of revision.

**Modifications (not altering text):**

**C56** Prospective amending provision: words inserted in subss. (1) and (2) and new subss. (3) and (4) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 15, not commenced as of date of revision.

**Jurisdiction.**

**28.**—(1) The District Court and the Circuit Court on appeal from the District Court shall have jurisdiction to hear and determine proceedings under *Part III, IV or VI* F183[and summary proceedings for an offence under section 23NP (inserted by the *Child Care (Amendment) Act 2011*).]

(2) Proceedings under *Part III, IV or VI* F184[, and summary proceedings for an offence under section 23NP (inserted by the *Child Care (Amendment) Act 2011*).] may be brought, heard and

determined before and by a justice of the District Court for the time being assigned to the district court district where the child resides or is for the time being.

**F185[(3) The High Court shall have jurisdiction to hear and determine—**

- (a) proceedings under Part IVA (as amended by the Child Care (Amendment) Act 2011), other than proceedings under section 23NP (inserted by the Child Care (Amendment) Act 2011),
- (b) any application or other matter under, and in accordance with, this Act (as amended by the Child Care (Amendment) Act 2011) 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 2011),
- (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 2011) that relates to proceedings under Part IVA (as amended by the Child Care (Amendment) Act 2011) 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
- (d) without prejudice to the generality of paragraph (b), any proceedings relating to section 37 (as amended by the Child Care (Amendment) Act 2011) 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.

(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.]

earing of  
proceedings.

**29.—(1) Proceedings under *Part III, IV* or *VI* shall be heard otherwise than in public.**

(2) The provisions of sections 33 (1), 33 (2) and 45 of the Judicial Separation and Family Law Reform Act, 1989, shall apply to proceedings under *Part III, IV* or *VI* as they apply to proceedings to which those provisions relate.

(3) The District Court and the Circuit Court on appeal from the District Court shall sit to hear and determine proceedings under *Part III, IV* or *VI* at a different place or at different times or on different days from those at or on which the ordinary sittings of the Court are held.

(4) Proceedings before the High Court in relation to proceedings under *Part III, IV* or *VI* shall be as informal as is practicable and consistent with the administration of justice.

**F186[(5) Nothing contained in this section shall operate to prohibit—**

- (a) the preparation of a report of proceedings under *Part III, IV* or *VI* by—
  - (i) a barrister or a solicitor, F187[or]
  - (ii) F188[...]
  - (iii) a person falling within any other class of persons specified in regulations made under subsection (7) for the purposes of this subsection,
- (b) the publication of a report prepared in accordance with paragraph (a), or
- (c) the publication of the decision of any court in such proceedings,

in accordance with rules of court, provided that the report or decision does not contain any information which would enable the parties to the proceedings or any child to which the proceedings relate to be identified and, accordingly, unless in the special circumstances of the matter the court, for reasons which shall be specified in the direction, otherwise directs, a person referred to in paragraph (a) may, for the purposes of preparing such a report—

- (i) attend the proceedings, and
  - (ii) have access to any relevant court documents,
- subject to any directions the court may give in that behalf.

(6) F189[...]

(7) The Minister may, after consultation with the Minister for Justice, Equality and Law Reform, make regulations specifying a class of persons for the purposes of subsection (5) if the Minister is satisfied that the publication of reports prepared in accordance with subsection (5)(a) by persons falling within that class is likely to provide information which will assist in the better operation of this Act, in particular in relation to the care and protection of children.

(8) Nothing contained in this section shall be construed to prejudice the generality of—

(a) any other provision of this Act (including this Act as amended by the Child Care (Amendment) Act 2007) or any thing which may be done under any such provision, or

(b) section 267(2) of the Children Act 2001.

(9) In subsection (5), ‘proceedings’ include proceedings commenced but not completed before the commencement of that subsection.]

#### Annotations

##### Amendments:

**F186** Inserted (23.07.2007) by *Child Care (Amendment) Act 2007* (26/2007), s. 3, S.I. No. 509 of 2007.

**F187** Inserted (8.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 46(2)(a)(i), S.I. No. 453 of 2011.

**F188** Deleted (8.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 46(2)(a)(ii), S.I. No. 453 of 2011.

**F189** Deleted (8.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 46(2)(b), S.I. No. 453 of 2011.

##### Editorial Notes:

**E30** Power pursuant to subs. (7) exercised (28.11.2012) by *Child Care Act 1991 (Section 29(7)) Regulations* (S.I. No. 467 of 2012).

**E31** Previous affecting provision: subs. (5)(a)(ii) inserted (23.07.2007) by *Child Care (Amendment) Act 2007* (26/2007), s. 3, S.I. No. 509 of 2007; deleted as per F-note above.

**E32** Previous affecting provision: subs. (6) inserted (23.07.2007) by *Child Care (Amendment) Act 2007* (26/2007), s. 3, S.I. No. 509 of 2007; deleted as per F-note above.

Power to proceed in absence of child.

**30.—**(1) It shall not be necessary in proceedings under *Part III, IV or VI* for the child to whom the proceedings relate to be brought before the court or to be present for all or any part of the hearing unless the court, either of its own motion or at the request of any of the parties to the case, is satisfied that this is necessary for the proper disposal of the case.

(2) Where the child requests to be present during the hearing or a particular part of the hearing of the proceedings the court shall grant the request unless it appears

to the court that, having regard to the age of the child or the nature of the proceedings, it would not be in the child's interests to accede to the request.

#### Annotations

##### Amendments:

**F190** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 16(a), not commenced as of date of revision.

**F191** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 16(b), not commenced as of date of revision.

##### Modifications (not altering text):

**C57** Prospective amending provision: words in subs. (1) and subs. (3) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 16, not commenced as of date of revision.

##### Power to proceed in absence of child.

**30.**—(1) It shall not be necessary in proceedings under *Part III, IV* F190[, *IVA (as amended by the Child Care (Amendment) Act 2011)*] or *VI* for the child to whom the proceedings relate to be brought before the court or to be present for all or any part of the hearing unless the court, either of its own motion or at the request of any of the parties to the case, is satisfied that this is necessary for the proper disposal of the case.

(2) Where the child requests to be present during the hearing or a particular part of the hearing of the proceedings the court shall grant the request unless it appears to the court that, having regard to the age of the child or the nature of the proceedings, it would not be in the child's interests to accede to the request.

F191[(3) In subsection (1) and (2), where the proceedings are proceedings under *Part IVA (as amended by the Child Care (Amendment) Act 2011)*, 'court' means the High Court.]

Prohibition on publication or broadcast of certain matters.

**31.**—(1) No matter likely to lead members of the public to identify a child who is or has been the subject of proceedings under *Part III, IV* or *VI* shall be published in a written publication available to the public or be broadcast.

(2) Without prejudice to *subsection (1)*, the court may, in any case if satisfied that it is appropriate to do so in the interests of the child, by order dispense with the prohibitions of that subsection in relation to him to such extent as may be specified in the order.

(3) If any matter is published or broadcast in contravention of *subsection (1)*, each of the following persons, namely—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(b) in the case of any other publication, the person who publishes it, and

(c) in the case of a broadcast, any body corporate who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or both.

(4) Nothing in this section shall affect the law as to contempt of court.

(5) In this section—

“broadcast” means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

“written publication” includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

#### Annotations

#### Amendments:

**F192** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 17(a), not commenced as of date of revision.

**F193** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 17(b), not commenced as of date of revision.

#### Modifications (not altering text):

**C58** Prospective amending provision: words in subs. (1) and subs. (5A) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 16, not commenced as of date of revision.

#### Prohibition on publication or broadcast of certain matters.

**31.—**(1) No matter likely to lead members of the public to identify a child who is or has been the subject of proceedings under *Part III, IV* F192[, *IVA (as amended by the Child Care (Amendment) Act 2011)*] or *VI* shall be published in a written publication available to the public or be broadcast.

...

F193[(5A) In this section, where the proceedings are proceedings under *Part IVA (as amended by the Child Care (Amendment) Act 2011)*, ‘court’ means the High Court.]

Presumption and determination of age.

**32.—**In any application for an order under *Part III, IV* or *VI*, the court shall make due inquiry as to the age of the person to whom the application relates and the age presumed or declared by the court to be the age of that person shall, until the contrary is proved, for the purposes of this Act, be deemed to be the true age of that person.

#### Annotations

#### Amendments:

**F194** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 18(a), not commenced as of date of revision.

**F195** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 18(b), not commenced as of date of revision.

#### Modifications (not altering text):

**C59** Prospective amending provision: words inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 18, not commenced as of date of revision.

#### Presumption and determination of age.

**32.—**In any application for an order under *Part III, IV* or *VI*, the court F194[, or for a special care order or an interim special care order under *Part IVA (as amended by the Child Care (Amendment) Act 2011)*, the High Court)] shall make due inquiry as to the age of the person to whom the application relates and the age presumed or declared by the court F195[, or as the case may be, the



**High Court,**] to be the age of that person shall, until the contrary is proved, for the purposes of this Act, be deemed to be the true age of that person.

Rules of court.

**33.—**(1) For the purpose of ensuring the expeditious hearing of applications under *Part III, IV or VI*, rules of court may make provision for the service of documents otherwise than under section 7 of the Courts Act, 1964 (as amended by section 22 of the Courts Act, 1971) in circumstances to which the said section 7 relates.

(2) Rules of court may make provision for the furnishing of information and documents by parties to proceedings under *Part III, IV or VI* to each other or to solicitors acting for them.

(3) This section is without prejudice to section 17 of the Interpretation Act, 1937, which provides for rules of court.

#### Annotations

#### Amendments:

**F196** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 19(a), not commenced as of date of revision.

**F197** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 19(b), not commenced as of date of revision.

#### Modifications (not altering text):

**C60** Prospective amending provision: subs. (1A) and words in subs. (2) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 19, not commenced as of date of revision.

#### Rules of court.

**33.—**(1) For the purpose of ensuring the expeditious hearing of applications under *Part III, IV or VI*, rules of court may make provision for the service of documents otherwise than under section 7 of the Courts Act, 1964 (as amended by section 22 of the Courts Act, 1971) in circumstances to which the said section 7 relates.

**F196[(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 2011), rules of court may make provision for the service of superior court documents otherwise than under section 23 of the Courts Act 1971.]**

(2) Rules of court may make provision for the furnishing of information and documents by parties to proceedings under *Part III, IV* **F197[, IVA (as amended by the Child Care (Amendment) Act 2011)]** or *VI* to each other or to solicitors acting for them.

...

Failure or refusal to deliver up a child.

**34.—**(1) Without prejudice to the law as to contempt of court, where the District Court has made an order under *Part III or IV* directing that a child be placed or maintained in the care of **F198[the Health Service Executive]**, any person having the actual custody of the child who, having been given or shown a copy of the order and having been required, by or on behalf of **F198[the Executive]**, to give up the child to **F198[the Executive]**, fails or refuses to comply with the requirement shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or both such fine and such imprisonment.

(2) For the purposes of this section, a person shall be deemed to have been given or shown a copy of an order made under *Part III or IV* if that person was present at the sitting of the court at which such an order was made.

**Annotations****Amendments:**

**F198** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 40, S.I. No. 887 of 2004.

Warrant to search for and deliver up a child.

**35.**—Where a justice has made an order under *Part IV* directing that a child be placed or maintained in the care of F199[the Health Service Executive], a justice may for the purpose of executing that order 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, aircraft or hovercraft) where the child is or where there are reasonable grounds for believing that he is and to deliver the child into the custody of F199[the Health Service Executive].

**Annotations****Amendments:**

**F199** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 41, S.I. No. 887 of 2004.

## PART VI

## CHILDREN IN THE CARE OF HEALTH BOARDS

Accommodation and maintenance of children in care.

**36.**—(1) Where a child is in the F200[care of the Health Service Executive], F200[the Executive shall] provide such care for him, subject to its control and supervision, in such of the following ways as it considers to be in his best interests—

- (a) by placing him with a foster parent, or
- (b) by placing him in residential care (whether in a children's residential centre registered under Part VIII, in a residential home maintained F200[by the Executive] or in a school or other suitable place of residence), or
- (c) in the case of a child who may be eligible for adoption under the Adoption Acts, 1952 to 1988, by placing him with a suitable person with a view to his adoption, or
- (d) by making such other suitable arrangements (which may include placing the child with a relative) F200[ as the Executive] thinks proper.

(2) In this Act, “foster parent” means a person other than a relative of a child who is taking care of the child on behalf of F200[the Health Service Executive] in accordance with regulations made under section 39 and “foster care” shall be construed accordingly.

(3) Nothing in this section shall prevent F200[the Health Service Executive] sending a child in its care to any hospital or to any institution which provides nursing or care for children suffering from physical or mental disability.

**Annotations****Amendments:**

- F200** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 42(a) and (b), S.I. No. 887 of 2004.
- F201** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 20(a), not commenced as of date of revision.
- F202** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 20(b), not commenced as of date of revision.
- F203** Substituted by *Health Act 2007*, s. 105 and sch. 2 part 1 item 4, not commenced as of date of revision.

**Modifications (not altering text):**

- C61** Prospective affecting provision: words in subs. (1) and subs. (4) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 20, not commenced as of date of revision.

**Accommodation and maintenance of children in care.**

**36.**—(1) Where a child is in the F200[care of the Health Service Executive], F201[subject to subsection (4),] F200[the Executive shall] provide such care for him, subject to its control and supervision, in such of the following ways as it considers to be in his best interests—...

...

F202[(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.]

- C62** Prospective affecting provision: subs. (1)(b) substituted by *Health Act 2007* (23/2007), s. 105 and sch. 2 part 1 item 4, not commenced as of date of revision.

F203[(b) by placing him or her in residential care (whether in a children's residential centre or in a school or other suitable place of residence), or]

Access to children in care.

**37.**—(1) Where a child is in the care of F204[the Health Service Executive] whether by virtue of an order under Part III or IV or otherwise, F204[the Executive] shall, subject to the provisions of this Act, facilitate reasonable access to the child by his parents, any person acting *in loco parentis*, or any other person who, in the opinion of F204[the Executive], has a *bona fide* interest in the child and such access may include allowing the child to reside temporarily with any such person.

(2) Any person who is dissatisfied with arrangements made F204[by the Health Service Executive under subsection (1) or by a health board under that subsection before the amendment of the subsection by the Health Act 2004] may apply to the court, and the court may—

(a) make such order as it thinks proper regarding access to the child by that person, and

(b) vary or discharge that order on the application of any person.

(3) The court, on the application of F204[the Health Service Executive], and if it considers that it is necessary to do so in order to safeguard or promote the child's welfare, may—

(a) make an order authorising F204[the Executive] to refuse to allow a named person access to a child in its care, and

(b) vary or discharge that order on the application of any person.

(4) This section is without prejudice to *section 4 (2)*.

#### Annotations

##### Amendments:

**F204** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 43(a)-(c), S.I. No. 887 of 2004.

**F205** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 21(a), not commenced as of date of revision.

**F206** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 43(a)-(c), S.I. No. 887 of 2004.

**F207** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 21(b), not commenced as of date of revision.

**F208** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 21(c), not commenced as of date of revision.

##### Modifications (not altering text):

**C63** Prospective amending provisions: subss. (1A) and (5) and words in subs. (2) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 21, not commenced as of date of revision.

##### Access to children in care.

**37.— ...**

F205[(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 2011*), 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.]

(2) Any person who is dissatisfied with arrangements made F206[by the Health Service Executive under subsection (1) or by a health board under that subsection before the amendment of the subsection by the *Health Act 2004*] F207[or with arrangements made by the Health Service Executive under subsection (1A) (inserted by the *Child Care (Amendment) Act 2011*)] may apply to the court, and the court may—...

...

F208[(5) In this section, in proceedings under Part IVA (as amended by the *Child Care (Amendment) Act 2011*), 'court' means the High Court.]

Provision of residential care by health boards.

**38.—**F209[The Health Service Executive] shall make arrangements with the registered proprietors of children's residential centres or with other suitable persons to ensure the provision of an adequate number of residential places for children in its care.

(2) F209[The Health Service Executive] may, with the approval of the Minister, provide and maintain a residential centre or other premises for the provision of residential care for children in care.

(3) The Minister shall make regulations with respect to the conduct of homes or other premises provided by F209[the Health Service Executive] under this section and for securing the welfare of children maintained therein.

(4) Without prejudice to the generality of subsection (3), regulations under this section may—

- (a) prescribe requirements as to the maintenance, care and welfare of children while being maintained in centres,
- (b) prescribe requirements as to the numbers, qualifications and availability of members of the staffs of centres,
- (c) prescribe requirements as to the design, maintenance, repair, cleaning and cleanliness, ventilation, heating and lighting of centres,
- (d) prescribe requirements as to the accommodation (including the amount of space in bedrooms, the washing facilities and the sanitary conveniences) provided in centres,
- (e) prescribe requirements as to the food provided for children while being maintained in centres,
- (f) prescribe requirements as to the records to be kept in centres and for the examination and copying of any such records or of extracts therefrom by officers of the Minister.

#### Annotations

#### Amendments:

**F209** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 44, S.I. No. 887 of 2004.

**F210** Substituted by *Health Act 2007* (23/2007), s. 105 and sch. 2, pt. 1, item 5(a) and (b), not commenced as of date of revision.

**F211** Repealed by *Health Act 2007* (23/2007), s. 104 and sch. 1, pt. 1, not commenced as of date of revision.

**F212** Repealed by *Health Act 2007* (23/2007), s. 104 and sch. 1, pt. 1, not commenced as of date of revision.

#### Modifications (not altering text):

**C64** Prospective amending provisions: subss. (1) and (2) substituted and subss. (3) and (4) repealed by *Health Act 2007* (23/2007), s. 105 and sch. 2 pt. 1 and s. 104 and sch. 1, pt. 1, not commenced as of date of revision.

#### Provision of residential care by health boards.

**38.—F210[(1) The Health Service Executive may make arrangements with suitable persons to ensure the provision of an adequate number of residential places for children in its care.**

**(2) The Health Service Executive may provide and maintain a children's residential centre or other premises for the provision of residential care for children in care.]**

**(3) F211[...]**

**(4) F212[...]**

**C65** Meaning of premises under section extended by *Children Act 2001* (24/201), s. 159(5) as substituted (1.03.2007) by *Criminal Justice Act 2006* (26/2006), s. 146, S.I. No. 65 of 2007.

#### [Certified schools under Act of 1908.

**159.— ...**

**(5) Any reference in any enactment to a reformatory school or an industrial school shall, on the commencement of this section in relation to it, be construed as a reference to a children detention school or, as the case may be, premises provided and maintained by the Health Service Executive under section 38(2) of the Act of 1991.]**

**Editorial Notes:**

- E33** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Residential Care) Regulations 1995* (S.I. No. 259 of 1995).

Regulations as to foster care.

**39.—(1)** The Minister shall make regulations in relation to the placing of children in foster care by F213[the Health Service Executive] under *section 36* and for securing generally the welfare of such children.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may—

- (a) fix the conditions under which children may be placed in foster care;
- (b) prescribe the form of contract to be entered into by F213[the Health Service Executive] with foster parents;
- (c) provide for the supervision and visiting by F213[the Health Service Executive] of children in foster care.

**Annotations****Amendments:**

- F213** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 45(a) and (b), S.I. No. 887 of 2004.

**Editorial Notes:**

- E34** Role given to Chief Inspector to inspect performance by the HSE of its functions under section by *Health Act 2007* (23/2007), s. 41(1)(a), not commenced as of date of revision.
- E35** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Foster Care) Regulations 1995* (S.I. No. 260 of 1995).

Regulations as to residential care.

**40.—(1)** The Minister shall make regulations in relation to the placing of children in residential care (whether in children's residential centres or in other institutions) by F214[the Health Service Executive] under *section 36* and for securing generally the welfare of such children.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may—

- (a) fix the conditions under which children may be placed in residential care;
- (b) prescribe the form of contract to be entered into by F214[the Health Service Executive] with persons providing residential care;
- (c) provide for the supervision and visiting by F214[the Health Service Executive] of children in residential care.

**Annotations****Amendments:**

- F214** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 46(a) and (b), S.I. No. 887 of 2004.

**Editorial Notes:**

- E36** Role given to Chief Inspector to inspect performance by the HSE of its functions under section by *Health Act 2007* (23/2007), s. 41(1)(a), not commenced as of date of revision.
- E37** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Residential Care) Regulations 1995* (S.I. No. 259 of 1995).

Regulations as to placement with relatives.

**41.—(1)** The Minister shall make regulations in relation to the making of arrangements by F215[the Health Service Executive] under *section 36 (1) (d)* for the care of children and for securing generally the welfare of such children.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may—

- (a) fix the conditions under which children may be placed by F215[the Health Service Executive] with relatives;
- (b) prescribe the form of contract to be entered into by F215[the Health Service Executive] with relatives;
- (c) provide for the supervision and visiting by F215[the Health Service Executive] of children placed with relatives.

**Annotations****Amendments:**

- F215** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 47(a)-(c), S.I. No. 887 of 2004.

**Editorial Notes:**

- E38** Role given to Chief Inspector to inspect performance by the HSE of its functions under section by *Health Act 2007* (23/2007), s. 41(1)(a), not commenced as of date of revision.
- E39** Power pursuant to section exercised (31.11.1995) by *Child Care (Placement of Children With Relatives) Regulations 1995* (S.I. No. 261 of 1995).

Review of cases of children in care.

**42.—(1)** The Minister shall make regulations requiring the case of each child in the care of F216[the Health Service Executive] to be reviewed in accordance with the provisions of the regulations.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision—

- (a) as to the manner in which each case is to be reviewed,
- (b) as to the frequency of reviews, and
- (c) requiring the F216[Health Service Executive] to consider whether it would be in the best interests of the child to be given into the custody of his parents.

**Annotations****Amendments:**

**F216** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 48(a) and (b), S.I. No. 887 of 2004.

**F217** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 22, not commenced as of date of revision.

**Modifications (not altering text):**

**C66** Prospective amending provision: subs. (3) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 22, not commenced as of date of revision.

**Review of cases of children in care.**

**42.— ...**

**F217**[(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.]

**Editorial Notes:**

**E40** Role given to Chief Inspector to inspect performance by the HSE of its functions under section by *Health Act 2007* (23/2007), s. 41(1)(a), not commenced as of date of revision.

**E41** Power pursuant to section exercised (24.09.2004) by *Child Care (Special Care) Regulations 2004* (S.I. No. 550 of 2004).

**E42** Power pursuant to section exercised (31.11.1995) by *Child Care (Placement of Children With Relatives) Regulations 1995* (S.I. No. 261 of 1995).

**E43** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Foster Care) Regulations 1995* (S.I. No. 260 of 1995).

**E44** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Residential Care) Regulations 1995* (S.I. No. 259 of 1995).

Removal from placement.

**43.—F218**[(1) The Health Service Executive may, in accordance with any regulations made by the Minister, remove a child in its care from the custody of any person with whom the child has been placed under section 36 before or after the amendment of that section by the Health Act 2004.]

(2) Where a person refuses or neglects to comply with a request of F218[the Health Service Executive] to deliver up a child in accordance with regulations made under subsection (1), F218[the Executive] may apply to the District Court for an order directing that person to deliver up the child to the custody of F218[the Executive] and the justice may, if he considers that it is in the best interests of the child so to do, make such an order.

(3) Without prejudice to the law as to contempt of court, where the District Court has made an order under subsection (2) (requiring that a child be delivered up to the custody of F218[the Health Service Executive]), any person having the actual custody of the child who, having been given or shown a copy of the order and having been required, by or on behalf of F218[the Executive], to give up the child to F218[the Executive], fails or refuses to comply with the requirement shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or both such fine and such imprisonment.

(4) For the purposes of this section, a person shall be deemed to have been given or shown a copy of an order made under subsection (2) if that person was present at the sitting of the court at which such an order was made.



(5) Where a child is removed from the custody of a person in pursuance of this section, any contract between F218[the Health Service Executive] and that person in respect of the child shall terminate immediately upon the removal.

(6) The provisions of this section are without prejudice to the power of F218[the Health Service Executive] to apply for an order under *Part III* or *IV*.

#### Annotations

##### Amendments:

**F218** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 49(a)-(e), S.I. No. 887 of 2004.

##### Editorial Notes:

- E45** Power pursuant to section exercised (31.11.1995) by *Child Care (Placement of Children With Relatives) Regulations 1995* (S.I. No. 261 of 1995).
- E46** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Foster Care) Regulations 1995* (S.I. No. 260 of 1995).
- E47** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Residential Care) Regulations 1995* (S.I. No. 259 of 1995).

**F219**[Orders relating to children in care of same foster parent or relative for five years or more.

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

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

- (a) the foster parent or relative has been taking care of the child for a period of not less than five years beginning on the date of placement in accordance with this Act and ending on the date of application,
- (b) the granting of the order is in the child's best interests,
- (c) the Health Service Executive has consented in advance to the granting of the order,
- (d) the Health Service Executive has, on behalf of the foster parent or relative—
  - (i) if the child is in its care under section 4, obtained the consent to the granting of the order of a parent having custody of the child at the relevant time or of a person (other than the foster parent or relative) acting *in loco parentis* to the child, or
  - (ii) if the child is in its care under section 18, given notice of the application to a parent having custody of the child at the relevant time or of a person (other than the foster parent or relative) acting *in loco parentis* to the child, and
- (e) the child's wishes have, in so far as is practicable, been given due consideration having regard to the age and understanding of the child.

(3) In determining whether a foster parent or relative has been taking care of a child for the period required by subsection (2)(a), any interruption of the placement during that period shall be disregarded unless the total number of days of interruption, whether consecutive or not, exceeds 30.

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

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

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

(5) Subject to any conditions or restrictions imposed under subsection (6), an order under this section shall authorise the foster parent or relative to whom it is granted—

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

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

(i) any necessary medical or psychiatric examination, treatment or assessment with respect to the child, and

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

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

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

(8) In the absence of a consent referred to in subsection (5) being given by the foster parent or relative to whom an order under this section was granted, the Health Service Executive has authority to give consent in accordance with section 18(3) in relation to the child.

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

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

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

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

(11) Subsection (10) is without prejudice to the jurisdiction of the court to make, at any time, an order under section 37 with respect to access to the child or to vary or discharge such an order, including an order continued or varied pursuant to that subsection.

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

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

(a) in relation to a child in care under section 4, immediately before the child was taken into care under that section, and

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

#### Annotations

#### Amendments:

**F219** Inserted (23.07.2007) by *Child Care (Amendment) Act 2007* (26/2007), s. 4, S.I. No. 509 of 2007.

**F220** [Variation, discharge or cessation of order under section 43A.

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

(a) the Health Service Executive;

(b) a foster parent or relative to whom the order was granted;

(c) a parent having custody of the child concerned at the relevant time;

(d) a person (other than the foster parent or relative to whom the order was granted) acting *in loco parentis* to the child concerned;

(e) a person who, in the opinion of the court, has a *bona fide* interest in the child concerned.

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

(a) if the child concerned is in care under section 4, when care of the child is resumed by the parent or other person whose wishes the Health Service Executive is required under that section to have regard to,

(b) if the child concerned is the subject of a care order, when the care order is discharged under section 22 or ceases to have effect under section 44(2),

(c) if the child concerned is, in accordance with section 43 and regulations made by the Minister, removed from the custody of the foster parent or relative to whom the order under section 43A was granted, immediately on the child's removal,

(d) if the foster parent or relative to whom the order under section 43A was granted requests the Health Service Executive to remove the child concerned from his or her custody, when the child is removed in accordance with the request, or

(e) when the child concerned attains the age of 18 years or marries,

whichever is the sooner.]

#### Annotations

#### Amendments:

**F220** Inserted (23.07.2007) by *Child Care (Amendment) Act 2007* (26/2007), s. 4, S.I. No. 509 of 2007.

Children who  
become adopted.

**44.—**F221[(1) Where a child is adopted under the Adoption Act 2010 and the child, immediately before the adoption, was being maintained in foster care by the Health Service Executive with the adopter or adopters, the Health Service Executive, subject to—

(a) any general directions that may be given by the Minister, and

(b) any conditions that may be imposed by the Health Service Executive,

may contribute to the child's maintenance as if the child continued to be in foster care.

(2) Where a child is adopted under the Adoption Act 2010, any care order in force in respect of the child ceases to have effect.]

#### Annotations

#### Amendments:

**F221** Substituted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 158(e), S.I. No. 511 of 2010.

#### Editorial Notes:

**E48** Previous affecting provision: subs. (1) substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 50(a) and (b), S.I. No. 887 of 2004; substituted as per F-note above.

Aftercare.

**45.—**(1) (a) Where a child leaves the care of F222[the Health Service Executive], F222[the Executive] may, in accordance with *subsection (2)*, assist him for so long as F222[the Executive] is satisfied as to his need for assistance and, subject to *paragraph (b)*, he has not attained the age of 21 years.

(b) Where F222[the Health Service Executive] is assisting a person in accordance with *subsection (2) (b)*, and that person attains the age of 21 years, F222[the Executive] may continue to provide such assistance until the completion of the course of education in which he is engaged.

(2) F222[The Health Service Executive] may assist a person under this section in one or more of the following ways—

(a) by causing him to be visited or assisted;

(b) by arranging for the completion of his education and by contributing towards his maintenance while he is completing his education;

(c) by placing him in a suitable trade, calling or business and paying such fee or sum as may be requisite for that purpose;

(d) by arranging hostel or other forms of accommodation for him;

(e) by co-operating with housing authorities in planning accommodation for children leaving care on reaching the age of 18 years.

(3) Any arrangement made by F222[the Health Service Executive] under section 55 (4) or (5) of the Health Act, 1953, in force immediately before the commencement of this section shall continue in force as if made under this section.

(4) In providing assistance under this section, F222[the Health Service Executive] shall comply with any general directions given by the Minister.

**Annotations****Amendments:**

**F222** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 51, S.I. No. 887 of 2004.

**F223** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 23, not commenced as of date of revision.

**Modifications (not altering text):**

**C67** Prospective amending provision: subs. (5) inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 23, not commenced as of date of revision.

F223[(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 2011).]

Recovery of children removed from care etc.

**46.—(1)** The provisions of this section shall apply to any child who is in the care of F224[the Health Service Executive] and who is, without lawful authority, removed from the custody of F224[the Executive] or from the custody of any person who is taking care of him on behalf of F224[the Executive] or prevented from returning to such custody at the end of any period of leave.

(2) The F224[the Executive] may request the Garda Síochána to search for the child and to deliver him up to the custody of the F224[Executive] and the Garda Síochána may take all reasonable measures to comply with such a request.

F225[(2A) A request made by a health board to the Garda Síochána under subsection (2) before the amendment of that subsection by the Health Act 2004 shall be deemed to have been made by the Health Service Executive if the child in respect of whom the request was made is not delivered up to the health board before the establishment day of the Executive.]

(3) A justice of the District Court may, if satisfied by information on oath that there are reasonable grounds for believing that a person specified in the information can produce the child named in the application, make an order directing that person to deliver up the child to the custody of the F224[the Health Service Executive].

(4) Without prejudice to the law as to contempt of court where the District Court has made an order under *subsection (3)* directing that a child be delivered up to the care of F224[the Health Service Executive], any person having the actual custody of the child who, having been given or shown a copy of the order and having been required, by or on behalf of F224[the Executive], to give up the child to F224[the Executive], fails or refuses to comply with the requirement shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or both such fine and such imprisonment.

(5) For the purposes of this section, a person shall be deemed to have been given or shown a copy of an order made under *subsection (3)* if that person was present at the sitting of the court at which such an order was made.

(6) A justice of the District Court may, if satisfied by information on oath that there are reasonable grounds for believing that the child named in the application is in any house or other place (including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel, aircraft or hovercraft) specified in the information, 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 the house or other place for the child; and if the child is found he shall be returned to the custody of F224[the Health Service Executive].

(7) An application for an order under *subsection (3)* may, if the justice is satisfied that the urgency of the matter so requires, be made *ex parte*.

(8) An application for an order under *subsection (3)* or for a warrant under *subsection (6)* may, if the justice is satisfied that the urgency of the matter so requires, be heard and an order made thereon elsewhere than at a public sitting of the District Court.

(9) Without prejudice to *section 28*—

(a) an order under *subsection (3)* may be made by a justice of the District Court for the time being assigned to the district court district where the person specified in the information resides or is for the time being, and

(b) a warrant under *subsection (6)* may be issued by a justice for the time being assigned to the district where the house or other place specified in the information is situated,

and, in either case, where such justice is not immediately available the order may be made, or the warrant issued, by any justice of the District Court.

#### Annotations

#### Amendments:

**F224** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 52(a), (b), (d), (e) and (f), S.I. No. 887 of 2004.

**F225** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 52(c), S.I. No. 887 of 2004.

**F226** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 24, not commenced as of date of revision.

#### Modifications (not altering text):

**C68** Prospective amending provision: words inserted in subs. (1) by *Child Care (Amendment) Act 2011* (19/2011), s. 24, not commenced as of date of revision.

#### Recovery of children removed from care etc.

**46.**—(1) The provisions of this section shall apply to any child who is in the care of F224[the Health Service Executive]F226[, other than special care under Part IVA (as amended by the Child Care (Amendment) Act 2011),] and who is, without lawful authority, removed from the custody of F224[the Executive] or from the custody of any person who is taking care of him on behalf of F224[the Executive] or prevented from returning to such custody at the end of any period of leave.

Application for directions.

**47.**—Where a child is in the care of F227[the Health Service Executive], the District Court may, of its own motion or on the application of any person, give such directions and make such order on any question affecting the welfare of the child as it thinks proper and may vary or discharge any such direction or order.

#### Annotations

#### Amendments:

**F227** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 53, S.I. No. 887 of 2004.

**F228** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 25, not commenced as of date of revision.

**Modifications (not altering text):**

**C69** Prospective amending provision: words inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 25, not commenced as of date of revision.

**Application for directions.**

**47.**—Where a child is in the care of F227[the Health Service Executive] F228[subject to section 23NK (inserted by the *Child Care (Amendment) Act 2011*)], the District Court may, of its own motion or on the application of any person, give such directions and make such order on any question affecting the welfare of the child as it thinks proper and may vary or discharge any such direction or order.

Transitional provisions.

**48.**—(1) On the commencement of *Part IV* any child who is in the care of a health board pursuant to an order made under *Part II* or *IV* of the Children Act, 1908 shall be deemed to be the subject of a care order committing him to the care of that health board and the provisions of *Part IV* shall apply with the necessary modifications.

(2) Where, on the commencement of *Part IV*, a child is in the care of a health board pursuant to an order made under section 21 or 24 of the Children Act, 1908 in respect of the commission of an offence against him and the person charged with the commission of the offence is acquitted of the charge or the charge is dismissed for want of prosecution, any care order to which the child is deemed to be subject under *subsection (1)* shall forthwith be void, but without prejudice to anything that may have been lawfully done under it.

(3) Nothing in this Act shall affect an order made under *Part II* or *IV* of the Children Act, 1908 committing a child to the care of a relative or fit person other than a health board.

(4) On the commencement of *Part III*, any child who is being detained in a place of safety under any provision of the Children Act, 1908 shall be deemed to have been received into that place pursuant to an emergency care order on the date of such commencement.

(5) Where, on the commencement of *Part II*, a child is in the care of a health board otherwise than by virtue of a court order, he shall be deemed to have been taken into care under *section 4* on the date of such commencement.

(6) Where, on the commencement of *Part VI*, a child is boarded-out by a health board, he shall be deemed to have been placed by the health board in foster care under an arrangement made under *section 36*.

(7) Where, on the commencement of *Part VI*, a health board is contributing towards the maintenance of a child in accordance with section 55 (9) (c) of the Health Act, 1953, the board may, subject to such conditions as it sees fit, continue to contribute to the maintenance of the child as if he were in foster care.

(8) Where, on the commencement of *Part VI*, a child is being maintained by a health board in a home or school approved by the Minister for the purposes of section 55 of the Health Act, 1953, he shall be deemed to have been placed in residential care by the health board under an arrangement made under *section 36*.

(9) Nothing in *section 67* shall affect the operation of an order committing a child to a certified industrial school to which that section applies.

## PART VII

## SUPERVISION OF PRE-SCHOOL SERVICES

Definitions for  
Part VII.

**49.—**In this Part—

“authorised person” means a person appointed under section 54 to be an authorised person for the purposes of this Part;

“national school” has the meaning assigned to it in the School Attendance Act, 1926;

“pre-school child” means a child who has not attained the age of six years and who is not attending a national school or a school providing an educational programme similar to a national school;

“pre-school service” means any pre-school, play group, day nursery, creche, day-care or other similar service which caters for pre-school children, including those grant-aided by F229[the Health Service Executive.]

F230[...]

#### Annotations

#### Amendments:

**F229** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 54(a), S.I. No. 887 of 2004.

**F230** Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 54(b), S.I. No. 887 of 2004.

**F231** Substituted by *Child Care (Amendment) Act 2007* (26/2007), s. 5, not commenced as of date of revision.

#### Modifications (not altering text):

**C70** Prospective amending provision: section substituted by *Child Care (Amendment) Act 2007* (26/2007), s. 5, not commenced as of date of revision.

#### F231[Definitions for Part VII.

**49.—** In this Part—

‘authorised person’ means a person appointed under section 54 to be an authorised person for the purposes of this Part;

‘pre-school child’ means a child—

(a) who has not attained the age of six years, and

(b) who is not attending—

(i) a school, or

(ii) an establishment which provides an education programme similar to that provided by a school;

‘pre-school service’ means any pre-school, play group, day nursery, crèche, day-care or other similar service which caters for pre-school children, including those grant-aided by the Health Service Executive;

‘school’ means an establishment which provides—

(a) primary education to its students,

(b) early childhood education, or

(c) both primary education to its students and early childhood education;

‘school age child’ means a child who is attending a school age service;

‘school age service’ means a childcare service—

(a) provided on a regular basis for children (or a class of children) who attend—

(i) a school, or



- (ii) an establishment which provides an educational programme similar to that provided by a school,
- (b) provided outside of normal school hours, and
- (c) the basis of access to which is made publicly known to the parents and guardians of children referred to in paragraph (a).]

Regulations as to pre-school services.

**50.—**(1) The Minister shall, after consultation with the Minister for Education and the Minister for the Environment, make regulations for the purpose of securing the health, safety and welfare and promoting the development of pre-school children attending pre-school services.

(2) Without prejudice to the generality of *subsection (1)*, regulations may—

- (a) prescribe requirements as to the heating, lighting, ventilation, cleanliness, repair and maintenance of premises in which pre-school services are carried on and as to the equipment and facilities to be provided;
- (b) provide for the enforcement and execution of the regulations by F232[the Health Service Executive];
- (c) prescribe the annual fees to be paid to F232[the Health Service Executive] by persons carrying on pre-school services towards the cost of inspections under this Part.

(3) Regulations under this section may—

- (a) make different provision for different classes of pre-school services;
- (b) prescribe different requirements for different classes of pre-school services;
- (c) provide for exemptions from any provision or provisions of the regulations for a specified class or classes of pre-school services

(4) The Public Offices Fees Act, 1879, shall not apply in respect of any fees paid under regulations under this section.

#### Annotations

#### Amendments:

**F232** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 55, S.I. No. 887 of 2004.

**F233** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 6(a), not commenced as of date of revision.

**F234** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 6(b), not commenced as of date of revision.

**F235** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 6(c), not commenced as of date of revision.

#### Modifications (not altering text):

**C71** Prospective amending provision: words in subss. (1), (2) and subs. (3A) inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 6, not commenced as of date of revision.

#### Regulations as to pre-school services.

**50.—**(1) The Minister shall, after consultation with the Minister for Education and the Minister for the Environment, make regulations for the purpose of securing the health, safety and welfare

and promoting the development of pre-school children attending pre-school services F233[or school age children].

(2) Without prejudice to the generality of *subsection (1)*, regulations may—

- (a) prescribe requirements as to the heating, lighting, ventilation, cleanliness, repair and maintenance of premises in which pre-school services F234[or school age services] are carried on and as to the equipment and facilities to be provided;
- (b) provide for the enforcement and execution of the regulations by F232[the Health Service Executive];
- (c) prescribe the annual fees to be paid to F232[the Health Service Executive] by persons carrying on pre-school services F234[or school age services] towards the cost of inspections under this Part.

(3) Regulations under this section may—

- (a) make different provision for different classes of pre-school services F234[or school age services];
- (b) prescribe different requirements for different classes of pre-school services F234[or school age services];
- (c) provide for exemptions from any provision or provisions of the regulations for a specified class or classes of pre-school services F234[or school age services].

F235[(3A) On and after the commencement of section 13 of the Child Care (Amendment) Act 2007, regulations may be made under this section to apply to persons falling within section 58(2) (as inserted by such section 13).]

(4) The Public Offices Fees Act, 1879, shall not apply in respect of any fees paid under regulations under this section.

#### Editorial Notes:

- E49** Power pursuant to section exercised (3.09.2007 and 19.12.2006) by *Child Care (Pre-School Services) (No2) Regulations 2006* (S.I. No. 604 of 2006) as amended (19.12.2006) by *Child Care (Pre-School Services) (No2) (Amendment) Regulations 2006* (S.I. No. 643 of 2006).
- E50** Power pursuant to section exercised (19.12.2006) by *Child Care (Pre-School Services) (No2) (Amendment) Regulations 2006* (S.I. No. 643 of 2006).
- E51** Previous affecting provision: power pursuant to section exercised (2.01.2007) by *Child Care (Pre-School Services) Regulations 2006* (S.I. No. 505 of 2006); revoked by *Child Care (Pre-School Services) (No2) Regulations 2006* (S.I. No. 604 of 2006), art. 3(2) as amended (19.12.2006) by *Child Care (Pre-School Services) (No2) Regulations 2006* (S.I. No. 643 of 2006), reg. 3(2).
- E52** Previous affecting provision: power pursuant to section exercised (20.06.1997) by *Child Care (Pre-School Services) (Amendment) Regulations 1997* (S.I. No. 268 of 1997); revoked (2.01.2007) by *Child Care (Pre-School Services) Regulations 2006* (S.I. No. 505 of 2006), art. 2.
- E53** Previous affecting provision: power pursuant to section exercised (31.12.1996) by *Child Care (Pre-School Services) Regulations 1996* (S.I. No. 398 of 1996); revoked (2.01.2007) by *Child Care (Pre-School Services) Regulations 2006* (S.I. No. 505 of 2006), art. 2.

F236[Notice to Health Service Executive.

**51.—(1)** A person who proposes to carry on a preschool service shall give notice to the Health Service Executive in the prescribed manner.

(2) A person who, before the amendment of this section by the Health Act 2004, gave notice to a health board in the prescribed manner shall be deemed for the purposes of this Part to have given notice to the Health Service Executive.]

**Annotations****Amendments:**

**F236** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 56, S.I. No. 887 of 2004.

**F237** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 7, not commenced as of date of revision.

**Modifications (not altering text):**

**C72** Prospective amending provision: subs. (3) and (4) inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 7, not commenced as of date of revision.

F237[(3) A person carrying on a school age service on the commencement of this subsection shall give notice to the Health Service Executive in the prescribed manner.

(4) A person who, after the commencement of subsection (3), proposes to carry on a school age service shall give notice to the Health Service Executive in the prescribed manner.]

Duty of person carrying on pre-school service.

**52.—** It shall be the duty of every person carrying on a pre-school service to take all reasonable measures to safeguard the health, safety and welfare of pre-school children attending the service and to comply with regulations made by the Minister under this Part.

**Annotations****Amendments:**

**F238** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 8(a), not commenced as of date of revision.

**F239** Substituted by *Child Care (Amendment) Act 2007* (26/2007), s. 8(b), not commenced as of date of revision.

**Modifications (not altering text):**

**C73** Prospective amending provision: amendments by *Child Care (Amendment) Act 2007* (26/2007), s. 8, not commenced as of date of revision.

**Duty of person carrying on pre-school service.**

**52.—**It shall be the duty of every person carrying on a pre-school service F238[or school age service] to take all reasonable measures to safeguard the health, safety and welfare of pre-school children attending F239[the pre-school service or school age children attending the school age service, as the case may be,] and to comply with regulations made by the Minister under this Part.

Supervision of pre-school services.

**53.—**F240[The Health Service Executive] shall cause to be visited from time to time each pre-school service F241[...] in order to ensure that the person carrying on the service is fulfilling the duties imposed on him under section 52.

**Annotations****Amendments:**

**F240** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 57, S.I. No. 557 of 2004.

**F241** Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 57, S.I. No. 887 of 2004.

**F242** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 9, not commenced as of date of revision.

**Modifications (not altering text):**

**C74** Prospective amending provision: words inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 9, not commenced as of date of revision.

**Supervision of pre-school services.**

**53.**—F240[The Health Service Executive] shall cause to be visited from time to time each pre-school service F242[or school age service] F241[...] in order to ensure that the person carrying on the service is fulfilling the duties imposed on him under *section 52*.

**Editorial Notes:**

**E54** Role given to Chief Inspector to inspect performance by the HSE of its functions under section by *Health Act 2007* (23/2007), s. 41(1)(a), not commenced as of date of revision.

Authorised persons.

**54.**—(1) F243[The Health Service Executive shall appoint such and so many of its employees] as it thinks fit to be authorised persons for the purposes of this Part.

(2) F243[The Health Service Executive] may, with the consent of the Minister for Education, appoint an officer of that Minister to be an authorised person for the purposes of this Part.

(3) Every authorised person shall be furnished with a warrant of his appointment as an authorised person, and, when exercising any power conferred on an authorised person under this Part, shall, if requested by any person affected, produce the warrant to that person.

**Annotations**

**Amendments:**

**F243** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 58, S.I. No. 887 of 2004.

Inspection by authorised persons.

**55.**—(1) Where the F244[Health Service Executive] has received notification in accordance with *section 51* in respect of a pre-school service an authorised person shall be entitled at all reasonable times to enter any premises (including a private dwelling) in which the service is being carried on.

(2) A justice of the District Court may, if satisfied on information on oath that there are reasonable grounds for believing that a pre-school service is being carried on in any premises (including a private dwelling) in respect of which notice has not been received by the F244[Health Service Executive] in accordance with *section 51*, issue a warrant authorising a person appointed by the F244[Executive] in accordance with *section 54* to enter and inspect the premises.

(3) An authorised person who enters any premises in accordance with *subsection (1)* or *(2)* may make such examination into the condition of the premises and the care and attention which the pre-school children are receiving as may be necessary for the purposes of this Part.

(4) A warrant under *subsection (2)* may be issued by a justice of the District Court for the time being assigned to the district court district where the premises are situated.

**Annotations****Amendments:**

**F244** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 59, S.I. No. 887 of 2004.

**F245** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 10(a), not commenced as of date of revision.

**F246** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 10(b), not commenced as of date of revision.

**Modifications (not altering text):**

**C75** Prospective amending provision: words inserted in subss. (1), (2) and (3) by *Child Care (Amendment) Act 2007* (26/2007), s. 10, not commenced as of date of revision.

**Inspection by authorised persons.**

**55.**—(1) Where the F244[Health Service Executive] has received notification in accordance with *section 51* in respect of a pre-school service F245[or school age service] an authorised person shall be entitled at all reasonable times to enter any premises (including a private dwelling) in which the service F245[or school age service] is being carried on.

(2) A justice of the District Court may, if satisfied on information on oath that there are reasonable grounds for believing that a pre-school service F245[or school age service] is being carried on in any premises (including a private dwelling) in respect of which notice has not been received by the F244[Health Service Executive] in accordance with *section 51*, issue a warrant authorising a person appointed by the F244[Executive] in accordance with *section 54* to enter and inspect the premises.

(3) An authorised person who enters any premises in accordance with *subsection (1)* or *(2)* may make such examination into the condition of the premises and the care and attention which the pre-school children F246[or school age children] are receiving as may be necessary for the purposes of this Part.

(4) A warrant under *subsection (2)* may be issued by a justice of the District Court for the time being assigned to the district court district where the premises are situated.

Provision by health boards of pre-school services and information.

**56.**—(1) F247[The Health Service Executive] may, subject to any general directions given by the Minister, provide pre-school services F248[...] and provide and maintain premises for that purpose.

(2) The Minister may, after consultation with the Minister for Education and the Minister for the Environment, make regulations for the purpose of securing the health, safety and welfare and promoting the development of children attending pre-school services provided by F247[the Health Service Executive].

F247[(3) The Health Service Executive shall make available to any interested person information on pre-school services in any of its functional areas, whether those services are provided by the Executive or otherwise.]

**Annotations****Amendments:**

**F247** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 60, S.I. No. 887 of 2004.

**F248** Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 60, S.I. No. 887 of 2004.

**F249** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 11(a), not commenced as of date of revision.

**F250** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 11(b), not commenced as of date of revision.

**Modifications (not altering text):**

**C76** Prospective amending provision: words inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 11, not commenced as of date of revision.

**Provision by health boards of pre-school services and information.**

**56.**—(1) F247[**The Health Service Executive**] may, subject to any general directions given by the Minister, provide pre-school services F249[**or school age services**] F248[...] and provide and maintain premises for that purpose.

(2) The Minister may, after consultation with the Minister for Education and the Minister for the Environment, make regulations for the purpose of securing the health, safety and welfare and promoting the development of children attending pre-school services F249[**or school age services**] provided by F247[**the Health Service Executive**].

F247[(3) **The Health Service Executive shall make available to any interested person information on pre-school services F250[or school age services] in any of its functional areas, whether those services are provided by the Executive or otherwise.**]

Offences under  
Part VII.

**57.**—(1) A person who—

(a) refuses to allow an authorised person to enter any premises in accordance with *subsection (1) or (2) of section 55* or who obstructs or impedes an authorised person in the exercise of any of his powers under *subsection (3) of that section*, or

(b) contravenes the requirements of this Part or of any regulations made thereunder,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

(2) Where a person is convicted of an offence under this Part the court may, either in addition to or in substitution for the imposition of a fine, by order declare that the person shall be prohibited for such period as may be specified in the order from carrying on a pre-school service.

(3) A person who contravenes an order made under *subsection (2)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or both.

**Annotations**

**Amendments:**

**F251** Inserted by *Child Care (Amendment) Act 2007* (26/2007), s. 12, not commenced as of date of revision.

**Modifications (not altering text):**

**C77** Prospective amending provision: words inserted in subs. (2) by *Child Care (Amendment) Act 2007* (26/2007), s. 12, not commenced as of date of revision.

(2) Where a person is convicted of an offence under this Part the court may, either in addition to or in substitution for the imposition of a fine, by order declare that the person shall be prohibited for such period as may be specified in the order from carrying on a pre-school service F251[**or school age service, or both**].

Exemptions from provisions of this Part.

**58.**—For the avoidance of doubt it is hereby declared that the provisions of this Part shall not apply to—

- (a) the care of one or more pre-school children undertaken by a relative of the child or children or the spouse of such relative,
- (b) a person taking care of one or more pre-school children of the same family and no other such children (other than that person's own such children) in that person's home,
- (c) a person taking care of not more than 3 pre-school children of different families (other than that person's own such children) in that person's home.

#### Annotations

#### Amendments:

**F252** Substituted by *Child Care (Amendment) Act 2007* (26/2007), s. 13, not commenced as of date of revision.

#### Modifications (not altering text):

**C78** Prospective amending provision: section substituted by *Child Care (Amendment) Act 2007* (26/2007), s. 13, not commenced as of date of revision.

#### **F252**[Exemptions.

**58.**— (1) Regulations under section 50 and sections 51 to 57 shall not apply to—

- (a) the care of one or more children undertaken by a relative of the child or children or the spouse of such relative, or
- (b) a person taking care of one or more children of the same family and no other children (other than that person's own children) in that person's home.

(2) Sections 51 to 57 shall not apply to a person taking care of not more than 5 children, of whom not more than 3 may be pre-school children, of different families (but excluding that person's own children) in that person's home.

(3) In this section, 'child' means a person who has not attained the age of 18 years.]

## PART VIII

### CHILDREN'S RESIDENTIAL CENTRES

Definitions for Part VIII

**59.**—In this Part—

"children's residential centre" means any home or other institution for the residential care of children **F253**[in the care of the Health Service Executive] or other children who are not receiving adequate care and protection excluding—

- (a) an institution managed by or on behalf of a Minister of the Government or **F254**[the Health Service Executive],
- (b) an institution in which a majority of the children being maintained are being treated for acute illnesses,
- (c) **F255**[...]
- (d) a mental institution within the meaning of the Mental Treatment Acts, 1945 to 1966,

(e) an institution which is a “certified school” within the meaning of Part IV of the Children Act, 1908, functions in relation to which stand vested in the Minister for Education;

“centre” means a children’s residential centre;

F256[“register” means a register of children’s residential centres that is established or deemed to have been established by the Health Service Executive under section 61, and cognate words shall be construed accordingly;]

“registered proprietor”, in relation to a registered children’s residential centre, means the person whose name is entered in the register as the person carrying on the centre;

“the regulations” means the regulations under section 63 .

#### Annotations

#### Amendments:

**F253** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 61(a), S.I. No. 887 of 2005.

**F254** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 61(a), S.I. No. 887 of 2005.

**F255** Deleted (1.05.2002) by *Children Act 2001* (24/2001), s. 267(1), S.I. No. 151 of 2002.

**F256** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 61(b), S.I. No. 887 of 2005.

**F257** Repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

#### Modifications (not altering text):

**C79** Prospective amending provision: repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

#### Definitions for *Part VIII*

59.—F257[...]

Prohibition of unregistered children’s residential centres.

**60.—**(1) A person shall not carry on a children’s residential centre unless the centre is registered and the person is the registered proprietor thereof.

(2) A person shall not be in charge of a centre unless the centre is registered. (3) Any person who contravenes a provision of this section shall be guilty of an offence.

#### Annotations

#### Amendments:

**F258** Repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

#### Modifications (not altering text):

**C80** Prospective amending provision: repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

#### Prohibition of unregistered children’s residential centres.

60.—F258[...]



Registration of  
children's residen-  
tial centres.

**61.—F259**[1] The Health Service Executive shall establish and maintain a register of children's residential services in each functional area of the Executive.]

**F260**[(1A) For the purpose of subsection (1), each register of children's residential centres established by a health board before the amendment of this section by the Health Act 2004 shall be deemed to have been established by the Health Service Executive and shall be maintained by the Executive.]

(2) (a) There shall be entered in a register in respect of each centre registered therein the name of the person by whom it is carried on, the name of the person who is in charge of it, the address of the premises in which it is carried on, a statement of the number of children who can be accommodated in the centre, the date on which the registration is to take effect (referred to subsequently in this section as "the date of registration") and such other (if any) particulars as may be prescribed.

(b) A register maintained under this section shall be made available for inspection free of charge by members of the public at all reasonable times.

(3) (a) **F261**[The Health Service Executive] may, on application to it in that behalf by a person who proposes to carry on a centre **F262**[...], register or refuse to register the centre.

(b) Subject to the provisions of this section, the period of a registration shall be 3 years from the date of registration.

**F263**[(c) An application for registration made to a health board before the amendment of this subsection by the Health Act 2004 shall be deemed to have been made to the Health Service Executive if the health board has not, before the establishment day of the Executive, registered or refused to register the centre in relation to which the application was made.]

(4) **F264**[The Health Service Executive] may remove a centre from the register.

(5) **F265**[The Health Service Executive] shall not—

(a) refuse to register a centre in relation to which an application for its registration has been duly made, or

(b) remove a centre from the register,

unless—

(i) it is of opinion that—

(I) the premises to which the application or, as the case may be, the registration relates do not comply with the regulations, or

(II) the carrying on of the centre will not be or is not in compliance with the regulations, or

(ii) the applicant or the registered proprietor, as the case may be, or the person in charge or, as the case may be, proposed to be in charge of the centre has been convicted of an offence under this Part or of any other offence that is such as to render the person unfit to carry on or, as the case may be, to be in charge of the centre, or

(iii) the applicant or the registered proprietor, as the case may be, has failed or refused to furnish **F265**[Health Service Executive] with information requested by it pursuant to subsection (8) or has furnished **F265**[Health Service Executive] with information that is false or misleading in a material particular, or

(iv) the registered proprietor has, not more than one year before the date from which the registration or removal from the register would take effect, contravened a condition under subsection (6).

(6) (a) F266[The Health Service Executive] may—

- (i) at the time of registration or subsequently attach to the registration conditions in relation to the carrying on of the centre concerned and such other matters as it considers appropriate having regard to its functions under this Part,
- (ii) attach different conditions to the registration of different centres, and
- (iii) amend or revoke a condition of registration.

(b) Conditions imposed under this subsection or amendments and revocations under this subsection shall be notified in writing to the registered proprietor of the centre concerned.

F267[(6A) Conditions imposed, amended or revoked by a health board before the amendment of this subsection by the Health Act 2004 shall be deemed to have been imposed, amended or revoked by the Health Service Executive.]

(7) An application for registration shall be in the prescribed form or in a form to the like effect.

(8) (a) F268[The Health Service Executive] may request an applicant for registration or, as the case may be, a registered proprietor to furnish it with such information as it considers necessary for the purposes of its functions under this Part.

(b) A person who, whether in pursuance of a request or otherwise, furnishes information to F269[the Health Service Executive] for the purposes of this Part that is false or misleading in a material particular shall be guilty of an offence unless he shows that, at the time the information was furnished F269[to the Executive], he was not aware that it was false or misleading in a material particular.

(9) The registered proprietor of a centre who proposes to carry on the centre immediately after the expiration of the period of registration of the centre may apply under subsection (3) to the F270[Health Service Executive] not less than 2 months before such expiration for the registration of the centre and, F270[if the Executive] does not notify him before such expiration that it proposes to refuse to register the centre, it shall register the centre and its date of registration shall be the day following the day of such expiration.

(10) (a) Where a registered children's residential centre commences to be carried on by a person other than the registered proprietor—

- (i) the centre shall thereupon cease to be registered,
- (ii) the person shall (if he has not done so before such commencement) apply not later than 4 weeks after it to F271[the Health Service Executive] for the registration of the centre, and, if the application is granted, the date of registration of the centre shall be that of the day following the day of the cesser aforesaid,
- (iii) if the application aforesaid is duly made, and is not refused then, during the period from the commencement aforesaid until the centre is registered, it shall be deemed, for the purposes of section 60 to be registered and there shall be deemed to be attached to the registration any conditions attached to the previous registration.

(b) A person who contravenes paragraph (a) (ii) shall be guilty of an offence.

(11) (a) Where F272[the Health Service Executive] proposes to refuse to register a children's residential centre, to remove a centre from the register, to attach a condition to, or amend or revoke a condition attached to, a registration, it shall

notify in writing the applicant or the registered proprietor, as the case may be, of its proposal and of the reasons for it.

(b) A person who has been notified of a proposal under paragraph (a) may, within 21 days of the receipt of the notification, make representations in writing to the F273[Health Service Executive] F273[and the Executive] shall—

(i) before deciding the matter, take into consideration any representations duly made to it under this paragraph in relation to the proposal, and

(ii) notify the person in writing of its decision and of the reasons for it.

(12) A notification of a proposal of F274[the Health Service Executive] under subsection (11) shall include a statement that the person concerned may make representations to F274[the Health Service Executive] within 21 days of the receipt by him of the notification and a notification of a decision of F274[the Health Service Executive] under subsection (11) shall include a statement that the person concerned may appeal to the District Court under section 62 against the decision within 21 days from the receipt by him of the notification.

(13) Where, in relation to a children's residential centre, there is a contravention of a condition of registration, the registered proprietor and the person in charge of the centre shall be guilty of an offence.

#### Annotations

#### Amendments:

**F259** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(a), S.I. No. 887 of 2005.

**F260** Inserted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 61(a), S.I. No. 887 of 2005.

**F261** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(b), S.I. No. 887 of 2005.

**F262** Deleted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(b), S.I. No. 887 of 2005.

**F263** Inserted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(c), S.I. No. 887 of 2005.

**F264** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(d), S.I. No. 887 of 2005.

**F265** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(e), S.I. No. 887 of 2005.

**F266** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(f), S.I. No. 887 of 2005.

**F267** Inserted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(g), S.I. No. 887 of 2005.

**F268** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(h), S.I. No. 887 of 2005.

**F269** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(i), S.I. No. 887 of 2005.

**F270** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(j), S.I. No. 887 of 2005.

**F271** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(k), S.I. No. 887 of 2005.

**F272** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(l), S.I. No. 887 of 2005.

**F273** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(m), S.I. No. 887 of 2005.

**F274** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 62(n), S.I. No. 887 of 2005.

**F275** Repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

**Modifications (not altering text):**

**C81** Prospective amending provision: repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

**Registration of children's residential centres.**

**61.—F275[...]**

**Editorial Notes:**

**E55** Power pursuant to section exercised (31.12.1996) by *Child Care (Standards in Children's Residential Centres) Regulations 1996* (S.I. No. 397 of 1996).

**Appeals.**

**62.—**(1) A person, being the registered proprietor or, as the case may be, the person intending to be the registered proprietor, of a children's residential centre, may appeal to the District Court against a decision of F276[the Health Service Executive] to refuse to register the centre, to remove the centre from the register or to attach a condition, or to amend or revoke a condition attached, to the registration of the centre and such an appeal shall be brought within 21 days of the receipt by the person of the notification of the decision under section 61 and that court may, as it thinks proper, confirm the decision or direct F276[the Health Service Executive], as may be appropriate, to register, or to restore the registration of, the centre, to withdraw the condition or the amendment to or revocation of a condition, to attach a specified condition to the registration or to make a specified amendment to a condition of the registration.

(2) The jurisdiction conferred on the District Court by this section shall be exercised by the justice of the District Court for the time being assigned to the district court district in which the centre concerned is situated.

(3) A decision of the District Court under this section on a question of fact shall be final.

(4) Where a notification of a decision specified in subsection (1) (other than a decision to refuse to register a centre which was not registered or deemed to be registered at the time of the relevant application for registration) is given under section 61, then—

- (a) during such period from such notification (not being less than 21 days) as the F277[Health Service Executive] considers reasonable and specifies in the notification, the centre shall be treated as if the decision had not been made and, if the decision was to refuse an application under paragraph (a) of section 61 (10) for registration, be treated as if it had been registered and the registration had attached to it any conditions attached to the relevant registration that had ceased by virtue of subparagraph (i) of the said paragraph (a), and

(b) if an appeal against the decision is brought under this section, during—

- (i) the period from the end of the period aforesaid until the determination or withdrawal of the appeal or any appeal therefrom or from any such appeal, and
- (ii) such further period (if any) as the court concerned considers reasonable and specifies in its decision, the centre shall—
- (I) be treated for the purposes of section 61 as if the appeal had been upheld, and
- (II) if the appeal was against a decision of the F277[Health Service Executive] to refuse an application under paragraph (a) of section 61 (10) for registration, be treated as if the registration had attached to it any conditions attached to the relevant registration that had ceased by virtue of subparagraph (i) of the said paragraph (a).

(5) The F278[Health Service Executive] shall be given notice of an appeal under this section and shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

#### Annotations

#### Amendments:

**F276** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 63(a), S.I. No. 887 of 2005.

**F277** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 63(b), S.I. No. 887 of 2005.

**F278** Substituted by (1.01.2005) *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 63(c), S.I. No. 887 of 2005.

**F279** Repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

#### Modifications (not altering text):

**C82** Prospective amending provision: section repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

#### Appeals.

62.—F279[...]

Regulations in relation to children's residential centres.

**63.**—(1) The Minister shall, for the purpose of ensuring proper standards in relation to children's residential centres, including adequate and suitable accommodation, food and care for children while being maintained in centres, and the proper conduct of centres, make such regulations as he thinks appropriate in relation to centres.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

- (a) prescribe requirements as to the maintenance, care and welfare of children while being maintained in centres,
- (b) prescribe requirements as to the numbers, qualifications and availability of members of the staffs of centres,
- (c) prescribe requirements as to the design, maintenance, repair, cleaning and cleanliness, ventilation, heating and lighting of centres,

- (d) prescribe requirements as to the accommodation (including the amount of space in bedrooms, the washing facilities and the sanitary conveniences) provided in centres,
  - (e) prescribe requirements as to the food provided for children while being maintained in centres,
  - (f) prescribe requirements as to the records to be kept in centres and for the examination and copying of any such records or of extracts therefrom by F280[employees of the Health Service Executive],
  - (g) provide for the inspection of premises in which centres are being carried on or are proposed to be carried on or that are reasonably believed by F281[the Health Service Executive] to be premises in which a centre is being carried on and otherwise for the enforcement and execution of the regulations by F281[the Executive and its employees].
- (3) (a) Where, in relation to a centre, there is a failure or refusal to comply with a provision of the regulations, the registered proprietor and the person in charge of the centre shall be guilty of an offence.
- (b) A person who fails or refuses to comply with a provision of the regulations shall be guilty of an offence.
- (4) (a) Where a person is convicted of an offence under this section, the Circuit Court may, on the application of the F282[Health Service Executive], brought not more than six months after the conviction or, in the case of a` appeal against the conviction, the final determination of it or of any further appeal (if it is a determination affirming the conviction) or the withdrawal of any such appeal therefrom, by order declare that the person shall be disqualified during such period as may be specified in the order from carrying on, being in charge, or concerned with the management, of the centre to which the conviction related or, at the discretion of that Court, any centre.
- (b) A person in respect of whom an order is made under this subsection shall not during the period specified in the order carry on, be in charge, or concerned with the management, of the centre specified in the order or, if the order so specifies, of any centre.
- (c) A person who contravenes paragraph (b) shall be guilty of an offence.
- (d) Notice of an application under this subsection shall be given to the person convicted of the offence concerned and he shall be entitled to appear, be heard and adduce evidence on the hearing of the application.
- (e) The jurisdiction conferred on the Circuit Court by this subsection shall be exercised by the judge of the Circuit Court for the time being assigned to the circuit in which the premises concerned are situated.
- (5) A person who wilfully obstructs or interferes with F283[the Health Service Executive or any of its employees] in the performance of functions under the regulations or who fails or refuses to comply with a requirement of F283[the Health Service Executive or any of its employees] under such regulations shall be guilty of an offence.

#### Annotations

#### Amendments:

**F280** Substituted (1.01.2005) by *Health Act 2004* (24/2004), s. 75 and sch. 7, pt. 6, item 64(a), S.I. No. 887 of 2004.

**F281** Substituted (1.01.2005) by *Health Act 2004* (24/2004), s. 75 and sch. 7, pt. 6, item 64(b), S.I. No. 887 of 2004.

**F282** Substituted (1.01.2005) by *Health Act 2004* (24/2004), s. 75 and sch. 7, pt. 6, item 64(c), S.I. No. 887 of 2004.

**F283** Substituted (1.01.2005) by *Health Act 2004* (24/2004), s. 75 and sch. 7, pt. 6, item 64(d), S.I. No. 887 of 2004.

**F284** Repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

**Modifications (not altering text):**

**C83** Prospective amending provision: section repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

**Regulations in relation to children's residential centres.**

**63.—F284[...]**

**Editorial Notes:**

**E56** Power pursuant to section exercised (31.12.1996) by *Child Care (Standards in Children's Residential Centres) Regulations 1996* (S.I. No. 397 of 1996).

Offences under  
*Part VIII.*

**64.—**A person guilty of an offence under this Part shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both.

**Annotations**

**Amendments:**

**F285** Repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

**Modifications (not altering text):**

**C84** Prospective amending provision: section repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

**64.—F285[...]**

Discontinuance of  
centre.

**65.—**(1) Where the registered proprietor of a children's residential centre intends to cease to carry on the centre, he shall give six months' notice in writing to the F286[Health Service Executive] and at the expiration of six months from the date of the notice (unless before that time the notice is withdrawn or the period of registration has expired) the centre shall cease to be registered under this Part.

(2) F287[The Health Service Executive] may, if it so thinks fit, accept a shorter period of notice for the purposes of subsection (1) and the provisions of that subsection shall apply with the necessary modifications.

F288[(3) A notice given to a health board in accordance with subsection (1) before the amendment of that subsection by the Health Act 2004 shall be deemed to have been given to the Health Service Executive.]

**Annotations****Amendments:**

**F286** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 65(a), S.I. No. 887 of 2005.

**F287** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 65(b), S.I. No. 887 of 2005.

**F288** Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 65(c), S.I. No. 887 of 2005.

**F289** Repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

**Modifications (not altering text):**

**C85** Prospective amending provision: section repealed by *Health Act 2007* (23/2007), s. 104(1) and sch. 1, pt. 1, not commenced as of date of revision.

65.—F289[...]

Superannuation  
of certain staff.

**66.**—F290[(1) An employee of a children's residential centre to which this section applies shall, for the purposes of sections 23, 60(6) and 61 of the Health Act 2004, be deemed to be employed by the Health Service Executive.]

(2) In this section, "employee" means a person employed by a children's residential centre who is the holder in a wholtime capacity of a position, the establishment, remuneration and conditions of service of which have been approved by the F290[Health Service Executive], with the consent of the Minister.

(3) This section applies to a children's residential centre which—

(a) is not directly operated or administered by F291[the Health Service Executive],

(b) is funded by F291[the Health Service Executive], and

(c) is specified by the Minister for the purpose of this section.

**Annotations****Amendments:**

**F290** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 66(a) and (b), S.I. No. 887 of 2004.

**F291** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 66(c), S.I. No. 887 of 2005.

**Editorial Notes:**

**E57** Power pursuant to section exercised (20.12.2004) by *Child Care Act, 1991 (Children's Residential Centres) (Superannuation) Order 2004* (S.I. No. 863 of 2004).

**E58** Power pursuant to section exercised (1.06.1992) by *Child Care Act 1991 (Children's Residential Centres) (Superannuation) (No. 2) Order 1992* (S.I. No. 125 of 1992).

**E59** Power pursuant to section exercised (26.05.1992) by *Child Care Act 1991 (Children's Residential Centres) (Superannuation) Order 1992* (S.I. No. 124 of 1992).



Transitional provisions.

**67.—**(1) On the commencement of this Part, every institution which, immediately before such commencement, was an industrial school certified in accordance with Part IV of the Children Act, 1908, functions in relation to which stood vested in the Minister, shall cease to be so certified and shall be deemed to be registered under this Part as a children's residential centre.

(2) On the commencement of this Part, every school which, immediately before such commencement, was a school approved (or deemed to be approved) for the purposes of section 55 of the Health Act, 1953 shall be deemed to be registered under this Part as a children's residential centre.

## PART IX

### ADMINISTRATION

Regulations.

**68.—**(1) The Minister may make regulations—

- (a) for any purpose in relation to which regulations are provided for by any of the provisions of this Act, and
- (b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.

(2) Every order and regulation made under any provision of an enactment repealed by this Act and in force immediately before such repeal shall continue in force under the corresponding provision, if any, of this Act, subject to such adaptations and modifications as the Minister may by regulations make to enable any such order or regulation to have effect in conformity with this Act.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

#### Annotations

##### Editorial Notes:

- E60** Power pursuant to section exercised (3.09.2007 and 19.12.2006) by *Child Care (Pre-School Services) (No2) Regulations 2006* (S.I. No. 604 of 2006) as amended (19.12.2006) by *Child Care (Pre-School Services) (No2) (Amendment) Regulations 2006* (S.I. No. 643 of 2006).
- E61** Power pursuant to section exercised (19.12.2006) by *Child Care (Pre-School Services) (No2) (Amendment) Regulations 2006* (S.I. No. 643 of 2006).
- E62** Power pursuant to section exercised (24.09.2004) by *Child Care (Special Care) Regulations 2004* (S.I. No. 550 of 2004).
- E63** Power pursuant to section exercised (31.12.1996) by *Child Care (Standards in Children's Residential Centres) Regulations 1996* (S.I. No. 397 of 1996).
- E64** Power pursuant to section exercised (31.11.1995) by *Child Care (Placement of Children With Relatives) Regulations 1995* (S.I. No. 261 of 1995).
- E65** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Foster Care) Regulations 1995* (S.I. No. 260 of 1995).
- E66** Power pursuant to section exercised (31.10.1995) by *Child Care (Placement of Children in Residential Care) Regulations 1995* (S.I. No. 259 of 1995).

- E67** Previous affecting provision: power pursuant to section exercised (2.01.2007) by *Child Care (Pre-School Services) Regulations 2006* (S.I. No. 505 of 2006); revoked (7.12.2007) by *Child Care (Pre-School Services) (No2) Regulations 2006* (S.I. No. 604 of 2006), reg. 3(2).
- E68** Previous affecting provision: power pursuant to section exercised (20.06.1997) by *Child Care (Pre-School Services) (Amendment) Regulations 1997* (S.I. No. 268 of 1997); revoked (2.01.2007) by *Child Care (Pre-School Services) Regulations 2006* (S.I. No. 505 of 2006), reg. 2.
- E69** Previous affecting provision: power pursuant to section exercised (31.12.1996) by *Child Care (Pre-School Services) Regulations 1996* (S.I. No. 398 of 1996); revoked (2.01.2007) by *Child Care (Pre-School Services) Regulations 2006* (S.I. No. 505 of 2006), reg. 2.

Powers of the Minister.

**69.—**(1) The Minister may give general directions to F292[the Health Service Executive] in relation to the performance of the functions assigned to it by or under this Act and F292[the Executive] shall comply with any such direction.

(2) The Minister may cause to be inspected any service provided or premises F293[maintained by the Health Service Executive, or by a person who is taking care of a child on behalf of the Health Service Executive, under this Act, or by a person referred to in section 23B(4) (inserted by section 10 of the Child Care (Amendment) Act 2011)].

(3) An inspection under this section shall be conducted by a person authorised in that behalf by the Minister (in this section referred to as an authorised person).

(4) An authorised person conducting an inspection under this section may—

(a) enter any premises F294[maintained by the Health Service Executive, or by a person who is taking care of a child on behalf of the Health Service Executive, under this Act, or by a person referred to in section 23B(4) (inserted by section 10 of the Child Care (Amendment) Act 2011)] and make such examination into the state and management of the premises and the treatment of children therein as he thinks fit, and

(b) examine such records and interview F295[employees of the Health Service Executive or of a person referred to in paragraph (a)] as he thinks fit.

(5) The Minister may direct F292[the Health Service Executive] to supply him with such reports and statistics in relation to the performance of the functions assigned to it by or under this Act as he may require and F292[the Health Service Executive] shall comply with any such direction.

#### Annotations

#### Amendments:

**F292** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 67, S.I. No. 887 of 2004.

**F293** Substituted (30.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 26(a), S.I. No. 497 of 2011.

**F294** Substituted (30.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 26(b), S.I. No. 497 of 2011.

**F295** Substituted (30.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 26(c), S.I. No. 497 of 2011.

**Editorial Notes:**

- E70** Previous affecting provision: subss. (2) and (3) amended by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6 item 67(b) and (c); superseded as per F-note above.

Charges for  
certain services.

**70.**—(1) In making available a service under *section 3, 4 or 56*, the F296[**Health Service Executive**] shall from time to time determine in each case whether such service shall be provided without charge or at such charge as it considers appropriate.

(2) In making a determination in accordance with *subsection (1)* F296[**the Health Service Executive**] shall comply with any general directions given by the Minister with the consent of the Minister for Finance.

(3) For the purposes of determining what charge, if any, should be made on any person for a service, F296[**the Health Service Executive**] may require that person to make a declaration in such form as it considers appropriate in relation to his means and may take such steps as it thinks fit to verify the declaration.

(4) Where a person is recorded by F296[**the Health Service Executive**] as entitled, because of specified circumstances, to a service without charge, he shall notify F296[**the Executive**] of any relevant change in those circumstances.

(5) Any charge which may be made by F296[**the Health Service Executive**] under this Act may, in default of payment, be recovered as a simple contract debt in any court of competent jurisdiction from the person on whom the charge is made or, where the person has died, from his legal personal representative.

**Annotations****Amendments:**

- F296** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 68, S.I. No. 887 of 2004.

**Modifications (not altering text):**

- C86** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

## Schedule 1

## Enactments

...

## Part 2

## 1922 to 2011 Enactments

Number and Year	Short Title	Provision
(1)	(2)	(3)
...	...	...
No. 17 of 1991	Child Care Act 1991	Sections 7(4) and 70(2)
...	...	...

Prosecution of offences.

**71.—**(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the F297[Health Service Executive] or by any other person.

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

(3) Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been committed with the consent or approval of, or to have been attributable to any neglect on the part of, any person who, when the offence was committed, was director, member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body, that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly.

**Annotations****Amendments:**

**F297** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, pt. 6, item 69, S.I. No. 887 of 2004.

Functions of chief executive officer.

**72.—**F298[...]

**Annotations****Amendments:**

**F298** Repealed (1.01.2005) by *Health Act 2004* (42/2004), s. 73 and sch. 4, pt. 1, S.I. No. 887 of 2004.

Expenses.

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

## PART X

## MISCELLANEOUS AND SUPPLEMENTARY

Sale etc. of solvents.

**74.—**(1) It shall be an offence for a person to sell, offer or make available a substance to a person under the age of eighteen years or to a person acting on behalf of that person if he knows or has reasonable cause to believe that the substance is, or its fumes are, likely to be inhaled by the person under the age of eighteen years for the purpose of causing intoxication.

(2) In proceedings against any person for an offence under *subsection (1)*, it shall be a defence for him to prove that at the time he sold, offered or made available the substance he was under the age of eighteen years and was acting otherwise than in the course of or furtherance of a business.

(3) In proceedings against any person for an offence under *subsection (1)* it shall be a defence for him to prove that he took reasonable steps to assure himself that the person to whom the substance was sold, offered or made available, or any person on whose behalf that person was acting, was not under the age of eighteen years.

(4) A person who is guilty of an offence under *subsection (1)* shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) Subject to *subsection (6)*, a court by which a person is convicted of an offence under this section may order anything shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court thinks fit.

(6) A court shall not order anything to be forfeited under this section unless an opportunity is given to any person appearing to the court to be the owner of or otherwise interested in it to show cause why the order should not be made.

(7) A member of the Garda Síochána may seize any substance which is in the possession of a child in any public place and which the member has reasonable cause to believe is being inhaled by that child in a manner likely to cause him to be intoxicated. Any substance so seized may be destroyed or otherwise disposed of in such a manner as a member of the Garda Síochána not below the rank of Superintendent may direct.

(8) This section is without prejudice to the provisions of the Misuse of Drugs Acts, 1977 and 1984.

Amendment of section 17 of the School Attendance Act, 1926.

**75.—**Section 17 of the School Attendance Act, 1926 (which deals with the failure of a parent to comply with the Act) is hereby amended by the substitution for paragraph (b) of subsection (4) of the following:—

“(b) having heard the health board for the area in which he is resident, make a care order committing him to the care of that board and in such case the provisions of *Part IV* of the *Child Care Act, 1991* shall apply as if the order were an order made thereunder.”.

Amendment of section 15 of the Guardianship of Infants Act, 1964.

**76.—**Section 15 of the Guardianship of Infants Act, 1964 (which gives power to the court to order repayment of costs of bringing up an infant) is hereby amended by the insertion in paragraph (b) after the words “assistance has been provided for the infant by a health authority under section 55 of the Health Act, 1953,” of the words “or that at any time the infant has been maintained in the care of a health board under *section 4* of the *Child Care Act, 1991*”.

Amendment of section 16 of the Guardianship of Infants Act, 1964.

**77.—**Section 16 of the Guardianship of Infants Act, 1964 (which requires the court in making an order for the delivery of an infant to its parent to have regard to the conduct of the parent) is hereby amended by the insertion in paragraph (b) after the words “or to be provided with assistance by a health authority under section 55 of the Health Act, 1953” of the words “or to be maintained in the care of a health board under *section 4* of the *Child Care Act, 1991*”.

Maintenance —  
saver in relation  
to members of  
Defence Forces.

**78.**—(1) Section 98 of the Defence Act, 1954 (which provides for deductions from pay of members of the Permanent Defence Force and reservists called out on permanent service in respect of court orders under sections 75, 82 or 99 of the Children Act, 1908) shall apply in like manner to an order made under *section 18*.

(2) Section 107 of the Defence Act, 1954 (which provides that court orders made under the aforementioned sections against a member of the Permanent Defence Force or a reservist during any period when he is called out on permanent service shall not be enforceable by imprisonment) shall apply in like manner in the case of an order made under section 18.

Repeals.

**79.**—The enactments specified in the *Schedule* are hereby repealed to the extent specified in the *third column*.

#### Annotations

#### Editorial Notes:

- E71** Power pursuant to section exercised (31.10.1995) by *Child Care Act 1991 (Commencement) Order 1995* (S.I. No. 258 of 1995).

## Section 79.

## SCHEDULE

## ENACTMENTS REPEALED

Session and Chapter or Number and Year	Short Title	Extent of Repeal
4 Edw. 7, c.15.	Prevention of Cruelty to Children Act, 1904	The whole Act.
8 Edw. 7, c.67.	Children Act, 1908.	Part 1, Sections 13 and 15, Sections 20 to 26, Sections 34, 36 and 38 (1), Section 58 (1), (5), (6), (7) and (8), Section 59, Section 74 (11), Sections 118, 119, 122 and 126.
3 & 4 Geo. 5, c.7.	Children (Employment Abroad) Act, 1913.	The whole Act.
No. 15 of 1934.	Children Act, 1934.	The whole Act.
No. 12 of 1941.	Children Act, 1941.	Section 10 (1).
No. 25 of 1952.	Adoption Act, 1952.	Section 31 (2).
No. 26 of 1953.	Health Act, 1953.	Sections 55, 56, 57 and 65 (2).
No. 28 of 1957.	Children (Amendment) Act, 1957.	Sections 2, 3 and 10.
No. 2 of 1964.	Adoption Act, 1964.	Section 10.