

# Child Care (Amendment) Act 2007

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*Number 26 of 2007*

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## **CHILD CARE (AMENDMENT) ACT 2007**

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### ARRANGEMENT OF SECTIONS

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Amendment of Child Care Act 1991

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6. Amendment of section 50 of Principal Act.

7. Amendment of section 51 of Principal Act.

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17. Amendment of section 77 of Act of 2001.

18. Amendment of section 225 of Act of 2001.

19. New section 226A in Act of 2001.

20. Substitution of section 227 of Act of 2001.

21. Amendment of other Acts and of statutory instruments to change name of Special Residential Services Board to Children Acts Advisory Board.

### SCHEDULE

Amendment of Acts and Statutory Instruments to Change Name of Special Residential Services Board to Children Acts Advisory Board

#### PART 1

Amendment of Acts to Change Name of Special Residential Services Board to Children Acts Advisory Board

#### PART 2

Amendment of Statutory Instruments to Change Name of Special Residential Services Board to Children Acts Advisory Board

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Acts Referred to

|   |              |
|---|--------------|
| <u>Child Care Act 1991</u>                            | 1991, No. 17 |
| Child Care Acts 1991 and 2001                         |              |
| <u>Children Act 2001</u>                              | 2001, No. 24 |
| <u>Criminal Justice Act 2006</u>                      | 2006, No. 26 |
| <u>Finance Act 2004</u>                               | 2004, No. 8  |
| <u>Freedom of Information Act 1997</u>                | 1997, No. 13 |
| <u>Health Act 2004</u>                                | 2004, No. 42 |
| <u>Non-Fatal Offences Against the Person Act 1997</u> | 1997, No. 26 |
| <u>Taxes Consolidation Act 1997</u>                   | 1997, No. 39 |

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*Number 26 of 2007*

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**CHILD CARE (AMENDMENT) ACT 2007**

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AN ACT TO AMEND THE CHILD CARE ACT 1991 AND TO MAKE CONSEQUENTIAL AND OTHER AMENDMENTS TO THE CHILDREN ACT 2001; AND TO PROVIDE FOR RELATED MATTERS.

[8th May, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**PART 1**

Preliminary

Short title, collective  
citation and  
commencement.

1.— (1) This Act may be cited as the Child Care (Amendment) Act 2007.

(2) The Child Care Acts 1991 and 2001, section 75 of the Health Act 2004 (in so far as it amends the Child Care Acts 1991 and 2001), Part 2 , section 21 (in so far as it amends the Child Care Acts 1991 and 2001) and this subsection may be cited together as the Child Care Acts 1991 to 2007.

(3) The Children Act 2001 , section 75 of the Health Act 2004 (in so far as it amends the Children Act 2001 ), Part 12 of the Criminal Justice Act 2006 , Part 3 (except section 21 ) and this subsection may be cited together as the Children Acts 2001 to 2007.

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

## PART 2

### Amendment of Child Care Act 1991

Definition of "Principal Act".

**2.—** In this Part, " Principal Act " means the Child Care Act 1991 .

Amendment of section 29 of Principal Act.

**3.—** Section 29 of the Principal Act is amended by inserting the following subsections after subsection (4):

"(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,

(ii) subject to subsection (6), a person falling within a class of persons representing, and authorised in writing by, the Board, within the meaning of section 225 (1) (as amended by section 18 of the *Child Care (Amendment) Act 2007*) of the Children Act 2001 , for the purposes of this subsection, or

(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) The Board referred to in subsection (5)(a)(ii) shall consult with the Minister before authorising a class of persons for the purposes of subsection (5).

(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.”.

Amendment of Part VI of  
Principal Act.

**4.**— The following sections are inserted into the Principal Act after section 43:

“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.

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.”.

Substitution of section 49  
of Principal Act.

5.— Section 49 (as amended by item 54 of Part 6 of Schedule 7 to the Health Act 2004 ) of the Principal Act is repealed and the following section substituted:

“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).”.

Amendment of section 50  
of Principal Act.

**6.**— Section 50 (as amended by item 55 of Part 6 of Schedule 7 to the Health Act 2004 ) of the Principal Act is amended—

(a) in subsection (1), by inserting “or school age children” after “services”,

(b) in subsections (2)(a) and (c) and (3)(a), (b) and (c), by inserting “or school age services” after “services”, and

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

“(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 ).”.

Amendment of section 51  
of Principal Act.

**7.**— Section 51 (as substituted by item 56 of Part 6 of Schedule 7 to the Health Act 2004 ) of the Principal Act is amended by inserting the following subsections after subsection (2):

“(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.”.

Amendment of section 52  
of Principal Act.

**8.**— Section 52 of the Principal Act is amended—

(a) by inserting “or school age service” after “pre-school service”,  
and

(b) by deleting “the service” and substituting “the pre-school  
service or school age children attending the school age  
service, as the case may be,”.

Amendment of section 53  
of Principal Act.

**9.**— Section 53 (as amended by item 57 of Part 6 of Schedule 7 to the  
Health Act 2004 ) of the Principal Act is amended by inserting “or school  
age service” after “pre-school service”.

Amendment of section 55  
of Principal Act.

**10.**— Section 55 (as amended by item 59 of Part 6 of Schedule 7 to the  
Health Act 2004 ) of the Principal Act is amended—

(a) in subsections (1) and (2), by inserting “or school age service”  
after “service”, and

(b) in subsection (3), by inserting “or school age children” after  
“children”.

Amendment of section 56  
of Principal Act.

**11.**— Section 56 (as amended by item 60 of Part 6 of Schedule 7 to the  
Health Act 2004 ) of the Principal Act is amended—

(a) in subsections (1) and (2), by inserting “or school age services”  
after “services”, and

(b) in subsection (3), by inserting “or school age services” after  
“pre-school services”.

Amendment of section 57  
of Principal Act.

**12.**— Section 57(2) of the Principal Act is amended by inserting “or  
school age service, or both” after “service”.

Substitution of section 58  
of Principal Act.

**13.**— Section 58 of the Principal Act is repealed and the following section  
substituted:

“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 3

#### Consequential and other Amendments to Children Act 2001

Definition of "Act of 2001".

**14.**— In this Part, "Act of 2001" means the Children Act 2001 .

Amendment of section 16 of Act of 2001.

**15.**— Section 16 of the Act of 2001 is amended by repealing it only to the extent that it provides for the insertion of section 23D, as set out in such section 16, into the Child Care Act 1991 .

Amendment of section 76A of Act of 2001.

**16.**— Section 76A(1)(c) (inserted by section 132 of the Criminal Justice Act 2006 ) of the Act of 2001 is amended by deleting "and, pending its outcome, to make an emergency care order or a supervision order under the Act of 1991 in respect of the child".

Amendment of section 77 of Act of 2001.

**17.**— Section 77(1) (as amended by item 13 of Part 11 of Schedule 7 to the Health Act 2004 ) of the Act of 2001 is amended—

(a) in paragraph (a), by deleting ", and" and substituting "if in the Court's view it is practicable for the Health Service Executive to hold such a conference having regard to the age of the child and his or her family and other circumstances," and

(b) by deleting paragraph (b).

Amendment of section 225  
of Act of 2001.

**18.**— Section 225(1) of the Act of 2001 is amended, in the definition of “Board”, by inserting “and known, after the commencement of section 226A, as the Children Acts Advisory Board” after “section 226”.

New section 226A in Act of  
2001.

**19.**— The following section is inserted in the Act of 2001 after section 226:

“Change of name of Board.

226A.— On the commencement of this section, the Board shall be known as the Children Acts Advisory Board, or in the Irish language An Bord Comhairleach um Achtanna na Leanaí.”.

Substitution of section 227  
of Act of 2001.

**20.**— Section 227 (as amended by item 17 of Part 11 of Schedule 7 to the Health Act 2004 and section 156 of the Criminal Justice Act 2006 ) of the Act of 2001 is repealed and the following section substituted:

“Functions of Board.

227.— (1) The Board shall—

- (a) on request advise the Ministers on policy issues relating to the coordinated delivery of services under this Act and the Act of 1991 (including residential accommodation and support services to children detained in children detention schools and special care units),
- (b) publish guidance on the qualifications, criteria for appointment, training and role of any guardian *ad litem* appointed for children in proceedings under the Act of 1991,
- (c) in consultation with the Health Service Executive, prepare and publish criteria for the admission to and discharge from special care units of children subject to special care and interim special care orders,

- (d) subject to subsection (6) of section 29 (as amended by section 3 of the *Child Care (Amendment) Act 2007*) of the Act of 1991, authorise in writing a class or classes of persons representing the Board to prepare reports referred to in, and for the purposes of, subsection (5) of that section 29,
- (e) give its views on any proposal of the Health Service Executive, pursuant to section 23A(2)(b) (inserted by section 16 of this Act), to apply for a special care order under Part IVA of the Act of 1991,
- (f) using published sources, report on the level and nature of residential accommodation and support services to children detained in children detention schools and special care units,
- (g) promote enhanced inter-agency co-operation (including the sharing of information) under this Act and the Act of 1991,
- (h) promote, organise or take part in meetings, seminars, conferences, lectures or demonstrations (whether in the State or elsewhere) in relation to its functions set out in paragraphs (a) to (g), and
- (i) conduct or commission research, and collect, maintain, research and evaluate statistics and other data, relating to its functions set out in paragraphs (a) to (h).

(2) The Board, in performing its functions, shall have regard to the policies and objectives of the Government or any Minister of the Government in so far as they may affect or relate to those functions.

(3) The Board shall have all such powers as are necessary or expedient for the exercise of its functions.”.

Amendment of other Acts  
and of statutory  
instruments to change  
name of Special  
Residential Services  
Board to Children Acts  
Advisory Board.

**21.—** (1) The Acts specified in Part 1 of the Schedule are amended as indicated in that Part.

(2) The statutory instruments specified in Part 2 of the Schedule are amended as indicated in that Part.

## SCHEDULE

Amendment of Acts and Statutory Instruments to Change Name of Special  
Residential Services Board to Children Acts Advisory Board

Section 21 .

### PART 1

Amendment of Acts to Change Name of Special Residential Services  
Board to Children Acts Advisory Board

| Item | Provision affected   | Amendment  |
|------|--|--|
| 1.   | Section 23A(2)(b) (as inserted by <u>section 16</u> of the <u>Children Act 2001</u> and amended by <u>section 75</u> of the <u>Health Act 2004</u> ) of the <u>Child Care Act 1991</u> | Delete “Special Residential Services Board” and substitute “Children Acts Advisory Board”. |
| 2.   | Section 23B(1) (as inserted by <u>section 16</u> of the <u>Children Act 2001</u> and amended by <u>section 75</u> of the <u>Health Act 2004</u> ) of the <u>Child Care Act 1991</u>    | Delete “Special Residential Services Board” and substitute “Children Acts Advisory Board”. |
| 3.   | Paragraph 143 (inserted by section 5(e) of the <u>Finance Act 2004</u> ) of the <u>Taxes Consolidation Act 1997</u>  | Delete “Special Residential Services Board” and substitute “Children Acts Advisory Board”. |

## PART 2

Amendment of Statutory Instruments to Change Name of Special Residential Services Board to Children Acts Advisory Board

| Item | Provision affected   | Amendment   |
|------|--|---|
| 1.   | Regulation 3 of the Child Care (Special Care) Regulations 2004 ( <u>S.I. No. 550 of 2004</u> ) | <p>(a) Insert the following after the definition of "authorised officer":</p> <p>“ “Children Acts Advisory Board” means the Board within the meaning of section 225 (1) (as amended by <u>section 18</u> of the <i>Child Care (Amendment) Act 2007</i>) of the <u>Children Act 2001</u> ;”.</p> <p>(b) Delete the definition of “Special Residential Services Board”.</p> |
| 2.   | Regulation 25 (2)(o) of the Child Care (Special Care) Regulations 2004                         | Delete “Special Residential Services Board” and substitute “Children Acts Advisory Board”.  |
| 3.   | Regulation 26 of the Child Care (Special Care) Regulations 2004                                | <p>(a) In paragraph (3)(b)(iv), delete “Special Residential Services Board” and substitute “Children Acts Advisory Board”.</p> <p>(b) In paragraph (9), delete “Special Residential Services Board” and substitute “Children Acts Advisory Board”.</p>  |

4. Schedule to the Ethics In column (2), opposite  
in Public Office reference number 182,  
(Prescribed Public delete “Special Residential  
Bodies, Designated Services Board” and substitute  
Directorships of Public “Children Acts Advisory Board”.  
Bodies and Designated  
Positions in Public  
Bodies) Regulations  
2004

5. Schedule to the Delete “Special Residential  
Freedom of Information Services Board” and substitute  
Act 1997 (Prescribed “Children Acts Advisory Board”.  
Bodies) Regulations  
2006