

relate

information for all

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Contents

Page No.

1 Youth Justice

New arrangements for the administration of youth justice services have been introduced.

4 Proposed Changes to Children Act 2001

It is proposed to make a range of legal changes in relation to, among other things, the age of criminal responsibility and anti-social behaviour orders. Some parts of the Children Act 2001 have not yet been implemented.

6 Childcare

A new programme of grants for the development and enhancement of childcare facilities has been announced.

8 Comhairle Board

A new Chairman and a number of new members have been appointed to the board of Comhairle.

Youth Justice

The main legislation dealing with youth justice is the Children Act 2001. Some parts of this Act are not yet in force and it is proposed to introduce some changes to it. Changes have recently been introduced in the administrative arrangements for the provision of juvenile justice services. These changes were recommended in the Report of the Youth Justice Review Group. The Office of the Minister for Children has been given greater responsibilities in this area and in the childcare area.

It is proposed to amend the Criminal Justice Bill 2004 to give legislative effect to some of the proposals arising from the youth justice report. It is also proposed to amend it to provide for anti-social behaviour orders (ASBOs). A large number of other changes to the Bill are being proposed. These deal with, among other things, mandatory sentencing and control of firearms. Here we are looking only at the proposed changes in the youth justice area. We will cover the other changes at a later stage.

Office of the Minister for Children

The Office of the Minister for Children now has a wider range of responsibilities. It is within the Department of Health and Children. The Minister for Children is a Minister of State at the Departments of Education and Science, Health and Children, and Justice, Equality and Law Reform. The Office now has responsibility for:

- the Equal Opportunities Childcare Programme (which was in the Department of Justice, Equality and Law Reform)
- the programmes and activities of the National Children's Office: www.nco.ie policy and legislative work on child welfare and protection
- the youth justice service of the Department of Justice, Equality and Law Reform and
- the early years education functions of the Department of Education and Science



INSIDE: Young offenders p2
ASBOs p4
Childcare Programme p7

The Minister for Health and Children has overall ministerial responsibility for the first three of these. The youth justice service comes under the overall ministerial responsibility of the Minister for Justice, Equality and Law Reform and the education functions are the overall ministerial responsibility of the Minister for Education and Science. It is planned to have all of these functions operating from the one location.

Report of the Youth Justice Review Group

The Report of the Youth Justice Review Group describes and analyses the current provisions for dealing with young people under the age of 18 who are at risk of committing criminal offences or who have actually committed such offences. It concludes that the Children Act 2001 provides the appropriate legal basis for a system of youth justice and that the rest of its provisions should be implemented (see below for a list of those provisions which have not yet been implemented). Its main recommendations are:

Youth Justice Service

A Youth Justice Service (YJS) should be established on a non-statutory basis as an executive office of the Department of Justice, Equality and Law Reform with a remit to:

- Develop a unified youth justice policy including crime prevention
- Devise and implement a national youth justice strategy with links to other children-related strategies
- Assume responsibility for detention orders for all offenders under 18
- Implement the provisions of the Children Act 2001 in relation to community sanctions, restorative justice conferencing and diversion projects
- Co-ordinate service delivery at national and local level

The YJS should be established on an interim basis and should be subject to review within five years. The Group would prefer to have the service located within an environment of care and wider child-related services but such an environment is not available at present.

Schools for young offenders

Policy and operational responsibility for the residential (industrial and reformatory) schools for young offenders should be transferred from the Department of Education and Science to the YJS.

There are five residential schools (industrial and

reformatory schools) for young offenders. Trinity House School, Finglas Child and Adolescent Centre and Oberstown Boys' Centre cater for boys under 16 years committed on remand or for sentence. Oberstown Girls' Centre caters for girls under 17 years committed on remand and girls under 16 years committed for sentence. St Joseph's Special School receives the majority of its referrals from the Health Service Executive and the remainder are sent on remand or sentence by the courts. In 2004, 177 children in total were committed for remand or sentence to the five schools.

The Special Residential Services Board deals with requests from the courts for places in the child detention schools.

Young offenders in prison

Responsibility for the detention of all offenders under 18 should be transferred from the Prison Service to the YJS with a view to developing the education-focused model of the detention schools for all children in detention.

Offenders under the age of 15 cannot be sent to prison. Male offenders aged 15 and female offenders aged 15 or 16 may be sent to prison only in exceptional circumstances. This can occur only in cases where the court certifies (under the Children Act 1908) that the young person is so unruly or depraved of character that he or she cannot be detained in a place of detention.

At present male offenders aged 16 and 17 are generally detained in St Patrick's Institution which is run by the Prison Service. (Offenders aged between 18 and 21 are also detained in St Patrick's.) At present, there are no designated places of detention for girls aged 17 and 18 and it is very rare for girls of this age to be sent to prison. The Children Act 2001 provides for the detention of offending children in child detention centres but this is not yet in effect. The Report recommends that the YJS have responsibility for the child detention centres.

Youth Justice Oversight Group

A national Youth Justice Oversight Group should be established with representatives of the YJS, the Garda Síochána, the Probation and Welfare Service, the Department of Education and Science, the National Educational Welfare Board, the Department of Health and Children, the Health Service Executive (HSE) and the Special Residential Services Board, to facilitate cross-agency collaboration and to monitor the implementation of a national youth justice strategy.

Local youth justice teams

Local youth justice teams should be established by the YJS to enhance local service delivery to troubled and troublesome children. These teams should involve agencies such as the HSE, Garda Síochána, Probation and Welfare Service, National Education Welfare Board, School Completion Programme, local authorities and community and voluntary sectors and should aim to:

- Identify gaps in services at local level and work to fill these gaps
- Ensure that local agencies adopt a more co-ordinated approach to improve the delivery of services to young offenders/those at risk of offending and their families
- Develop increased opportunities for early intervention
- Identify available resources to maximise cost effectiveness and achieve value for money
- Support best practice through joint training, problem sharing and information sharing

Care and education structures

The Department of Health and Children should develop a parallel structure for special care within the structure of the HSE and should review the statutory role of the Special Residential Services Board.

The Department of Education and Science should prepare a strategy for the provision of educational services in the new youth justice structure.

Implementation of the report

The government has decided to implement the report's main recommendations.

Youth Justice Service

A Youth Justice Service (YJS) is being established as an executive office of the Department of Justice, Equality and Law Reform. The office is under the direction of the Office of the Minister of State with responsibility for children. The remit of the YJS is:

- To develop a unified youth justice policy
- To devise and implement a national youth justice strategy
- To manage all youth detention facilities
- To manage the implementation of the Children Act 2001
- To establish and administer national and local youth justice oversight arrangements

Young offenders

Legal and administrative responsibility for the detention of offenders under 18 will be transferred from the Department of Education and Science and from the Prison Service. This requires changes in legislation and it is proposed to amend the Criminal Justice Bill 2004 to allow for this change.

Inspection of child detention centres

Child detention centres will be subject to inspection by the Social Services Inspectorate. The Social Services Inspectorate (SSI) currently inspects residential care units for non-offending children. It is to be put on a statutory basis by the proposed Health Information and Quality Authority (HIQA) Act.

It is expected that the SSI will be in the new statutory Office of the Chief Inspector of Social Services. This will have a much wider remit than at present. It is expected that the HIQA legislation will provide for the establishment of a registration system in respect of residential services for children, older people and people with disabilities to replace existing registration procedures in the Health (Nursing Homes) Act and the Child Care Acts. It is intended that the functions of the office of the chief inspector will include, among other things, monitoring of standards in respect of residential services for people with disabilities, older people and children.

Health and education services

The government has also agreed to the establishment within the Health Service Executive of a parallel national management structure for children in need of special care and support. The law will be amended to provide for the attendance by the Health Service Executive in court in order to advise on service options.

Responsibility for the continuation of educational services for young offenders in detention and the preparation of a global strategy on such services for all children in special residential accommodation will lie with the Department of Education and Science. The law will be amended to provide that the court will be obliged to consider educational needs when sentencing.

Proposed Changes to Children Act 2001

The government has decided to introduce a number of changes to the Children Act 2001. This will be done by amendments to the Criminal Justice Bill 2004. The final form and wording of these amendments are not yet fully clear and further changes may be made as they are discussed by the Oireachtas.

As already stated, it is proposed to amend the Children Act to allow for responsibility for all young offenders to be transferred to the Youth Justice Service. Among the other amendments which are proposed are the following: age of criminal responsibility, ASBOs and restriction of movement.

Age of criminal responsibility

The Children Act provides for the raising of the age of criminal responsibility from 7 to 12 but this has not been implemented. It is now proposed to change the provisions in the Children Act to provide that children under 12 may not be charged with most criminal offences. However, children aged 10 and 11 may be charged with the offences of murder, manslaughter, rape or aggravated sexual assault.

All prosecutions of children under 14 will have to be sanctioned by the Director of Public Prosecutions. At present, charges in the case of many minor offences are brought by the Gardaí. (See Relate, June 2005 for further information on the prosecution of offences.)

Sentences

It is proposed that the same maximum sentences will apply to children as apply to adults.

Anti-social behaviour orders (ASBOs)

It is proposed to introduce amendments to the Criminal Justice Bill 2004 to provide for anti-social behaviour orders. There will be separate provisions for such orders in the case of children aged 12–18 and for adults. Here we are concerned only with ASBOs for children. There are proposed provisions for preventing anti-social behaviour and for making ASBOs.

Anti-social behaviour – prevention

A child (aged 12–18) may be considered to have been engaged in anti-social behaviour if he/she has caused or is likely to cause any of the following to a person who is not a member of the household:

- Harassment
 - Serious fear, intimidation or distress or
 - Persistent danger, injury, damage, loss, fear, intimidation or distress resulting in the serious impairment of the enjoyment of life or property
- The local Gardaí may issue a warning to a child about anti-social behaviour. If, based on reports from the

local Gardaí which should include details of the warnings given, the Garda Superintendent is satisfied that a child

- Has behaved in an anti-social manner
- Is likely to continue to do so
- Has not previously been warned about such behaviour or, if he/she has, would benefit from intervention

then the Superintendent may call a meeting to discuss the child's behaviour. The following may be called to the meeting – the child, the parents/guardians, the Gardaí who gave the warnings, the Juvenile Liaison Officer (JLO) if the child is already in the diversion programme and any other person who might be able to help. A member of the local policing forum may also be asked to attend. (The Garda Síochána Act 2005 provides for the establishment of such forums but this has not yet been implemented – see Relate, September 2005).

If the Superintendent considers the child would benefit from this, the child and the parents may be asked to acknowledge that anti-social behaviour has occurred and to agree to stop it. A “good behaviour” contract may be drawn up and signed by the child and the parents. This contract will be for six months and may be renewed or extended for a further three months. The Superintendent may review the child's adherence to the contract at any time.

If the Superintendent considers that the child would not benefit from such a good behaviour contract, or the child and the parents are not willing to give the necessary undertakings, or where a child has not kept the contract, then he/she may refer the child to the diversion programme or may apply to the courts for an anti-social behaviour order (ASBO).

Anti-social behaviour orders

The District Court may make an ASBO in the case of a child aged 12–18 if the judge considers that:

- The child has continued or is likely to continue to behave in an anti-social way,
- The complaint is in all the circumstances reasonable, and
- Such an order is necessary to protect other people or their property from further anti-social acts by the child

The court proceedings will be regarded as civil and not criminal proceedings. The child will have the right to be heard and to cross-examine witnesses.

In deciding whether or not to grant an ASBO, the judge takes into account:

- The particular circumstances of the person affected, and whether the behaviour would have the same effect on a reasonable person in such circumstances
- The number of occasions on which the behaviour has occurred
- The likelihood of recurrence
- The need for a proportionate response, and
- The application of the principle of minimum interference

The ASBO may prevent the child from doing specific things and may specify that the child must do other things, for example, the child may be required to attend school, to report to the Gardaí or other people in authority

The Court may make a temporary order for up to a month. The full ASBO may be valid for a period of up to two years.

Breach of an ASBO

A Garda may arrest without warrant a child who is the subject of an ASBO and who is found to be engaging in behaviour which is in breach of the order. The child may be found guilty of a summary offence – the maximum fine is €800 and the maximum combined fine and costs is €1,500.

Appeals against ASBOs

A child against whom an ASBO is made may appeal to the Circuit Court. The order will remain in force pending the appeal unless the District or the Circuit Court puts a stay on it.

Diversion programme

The aim of the diversion programme is to divert the child or young person from committing any further criminal offences. In general, any child (aged 12–18)

who has committed an offence and accepts responsibility for his/her criminal behaviour is considered for admission to a diversion programme. The child is not prosecuted for the offence which led to admission to the diversion programme. The child may then be cautioned, placed under the supervision of a Juvenile Liaison Officer (JLO) and a conference with the child, parents and other interested parties may be convened. (See Relate May 2004 for further information on the diversion programme.)

The Garda in charge must be satisfied that admission to the programme is appropriate having regard to the interests of the child and that it would not be inconsistent with the interests of society. The views of the victim of the crime may be taken into consideration but the victim is not involved in the decision to admit the child to the programme. An admission of involvement in criminal activity given in the context of the diversion programme is not admissible in evidence in a criminal trial.

Restriction of movement orders

It is proposed to allow the courts to make restriction of movement orders as alternatives to prison sentences for people aged over 18. The Children Act already provides for restriction (including curfews) and supervision orders for children aged 12–18. It is now proposed that restriction of movement orders may be made against people aged over 18 who have been convicted summarily of a specified list of offences, where the court finds it would be generally appropriate to impose a custodial sentence of at least three months. The offences are mainly public order offences and non-fatal offences against people. The people concerned may also be electronically monitored (electronic tagging). We will have further details on these provisions when they are enacted.

Implementation of Children Act

The main parts of the Children Act 2001 which have not yet been implemented are:

Age of criminal responsibility

As outlined above, it is proposed to make changes in this area.

Community sanctions

The Children Act 2001 provides for a range of community sanctions. They are:

- Probation order
- Community service order – this is only for children aged 16 or 17

- Day centre order
- Training or activities order
- Intensive supervision order
- Residential supervision order
- Suitable person order
- Mentor order
- Restriction of movement order (for example, a curfew may be imposed)
- Dual order (probation or day centre plus restriction of movement)

These sanctions can be accompanied by various conditions, for example in respect of school attendance, counselling, curfew. In general, the child would be supervised by a probation and welfare officer. Restriction of movement orders have been implemented but the others have not. It is planned to introduce some of them on a pilot basis later this year.

A pilot mentor project is due to start in the north Dublin area. The programme will serve as a model for the development of the mentor – family support – order.

Other sanctions available

Young offenders coming before the courts may be placed under the supervision of the Probation and Welfare Service in accordance with the Probation of Offenders Act 1907 or the Criminal Justice (Community Service) Act 1983 for those aged 16 years or over. Alternatively, the court may order that a family

conference be arranged by the Probation and Welfare Service.

Parental supervision orders

Parental supervision orders may be made where the court is satisfied that a wilful failure on the part of the parents contributed to the child's criminal behaviour. Such an order could require a parent to undergo treatment for addiction or to undergo a parenting course. This provision is not in effect but it is planned to introduce such orders on a pilot basis later this year.

Child detention schools and centres

The provisions of the Act in relation to child detention schools and detention centres have not been implemented and it is proposed to make further changes in these provisions – see above.

Under the Act, as a last resort, the court may order that a child be detained in a child detention school (if aged under 16 and a place is available) or a place of detention (if aged 16–18) – this will be called a child detention order. The period of detention in a child detention school cannot be more than 3 years. The court may make a detention and supervision order in respect of a child aged over 16.

The Act provides that the existing industrial and reformatory schools are to become child detention schools and that other schools may be designated as such. The provisions cannot be brought into effect until separate detention facilities are provided girls aged 16 and 17.

Childcare

It is difficult to know exactly how many children are in childcare as many of the arrangements are informal and there is no obligation on many of the providers to register or inform anyone. Under the Child Care (Pre-School Services) Regulations 1996, a range of childcare facilities must be notified to the Health Service Executive (HSE) – these include pre-schools, playgroups, day nurseries, crèches, childminders caring for more than three pre-school children and other similar services catering for pre-school children. At the end of 2004, there were approximately 80,000 childcare places notified to the HSE.

City and County Childcare Committees (CCC)

There are 33 City and County Childcare Committees. They were established in 2001 to prepare and deliver a five-year childcare development strategy plan to address the specific childcare needs of each local area. Each CCC prepares an annual action plan which is funded by the Equal Opportunities Childcare Programme (EOCP).

The Committees are composed of representatives of groups such as parents, childcare providers, farming

organisations, employers, community and voluntary sector, national voluntary childcare organisations, trade unions, area partnerships and community partnerships, statutory bodies and government departments.

Childminders caring for up to three children in their own homes must notify the relevant City or County Childcare Committee if they wish to avail of the tax exemption of €10,000 introduced in this year's Budget.

They may get some advice from the Committee but the Committee is not required to set or monitor standards for them.

Inspection of childcare facilities

The HSE is obliged to inspect the notified facilities to ensure that they meet the standards set in the regulations. Reports on such facilities may be accessed under the Freedom of Information legislation. There are plans at present to introduce new standards in this area but it does not seem likely that they will apply more widely. It is expected that these standards will be monitored by the proposed new statutory Office of Chief Inspector of Social Services. The City or County Childcare Committees do not have any role in setting or monitoring standards.

Garda vetting

There is no general requirement that childcare workers be vetted by the Gardaí. There is a requirement in those childcare centres whose staffing costs are subsidised under the EOCP that the subsidised staff "must have any clearance prescribed by the Department of Justice, Equality and Law Reform". In 2005, an inter-agency working group on Garda vetting issued a report and a strategy for improving national vetting arrangements from a child protection perspective. This strategy provided for an expansion in the criminal record vetting service provided by the Garda central vetting unit to all organisations which recruit people who have substantial, unsupervised access to children and vulnerable adults. The Garda central vetting unit is now located in Thurles, County Tipperary. It is expected that an expanded service will be available soon.

State support for childcare

The current childcare programme is called the Equal Opportunities Childcare Programme (EOCP) 2000-2006 and is part of the National Development Plan. The programme provides capital grants for community not-for-profit childcare centres and for private childcare providers. It also provides grants to community not-for-profit childcare centres in disadvantaged areas to help pay staff costs and it provides funding for quality improvement measures. The EOCP has involved investment of almost €500 million in childcare facilities; approximately €182 million of this comes from EU structural funds. The programme was managed by the Department of Justice, Equality and Law Reform with the day-to-day operation being overseen by Pobal (formerly ADM Ltd). Responsibility for the programme has now been transferred to the Office of the Minister for Children (see above).

Capital grants

Up to the end of August 2005, 1,500 capital grants had been approved. Of these, 816 were made to private sector providers. By the end of June 2005, 26,000 new childcare places had been created. By the time the programme ends, it is expected that 38,500 new places will have been created.

Staff costs

In order to get help with staff costs, the community not-for-profit childcare centres must show that they are providing childcare in areas of significant disadvantage and that they are supporting disadvantaged parents to access employment, education or training. About 830 such centres are getting help with staff costs; this involves about 2,300 childcare workers. The original plan was that these centres would get help with staff costs for three years and that they would be self-sustaining after that. It has now been decided to continue this funding until 31 December 2007 for all groups whose first three-year funding had ended.

Childminders

The programme provides help to childminders in relation to improving quality. The CCCs get annual funding for the implementation of the National Childminding Initiative. This supports training, networking, information needs and a quality awareness programme for childminders. Funding is also available under this initiative to childminders to enhance their service, through small developmental capital grants of up to 90% of the total cost, with a maximum of €630.

Childcare Programme 2006-2010

The EOCP is being replaced by the National Childcare Investment Programme (NCIP) 2006-2010 which is being implemented by the Office of the Minister for Children. (Applications under the EOCP will continue to be processed.) The new programme will also provide capital and staffing costs grants. Applicants may get application forms from the local City or County Childcare Committee and may get help from the CCC in making the application. The applications will be assessed by Pobal and the decision made by the Office of the Minister for Children.

The programme aims to create an extra 50,000 childcare places, approximately 22,000 will be in the private sector and 28,000 in the community and voluntary sector. About 10,000 of these new places will be for children aged 3 to 4 years and will provide an early childhood care and education focus; 5,000 places will be for children of school-going age outside

of normal school times. There is no EU funding involved in this programme.

Among the factors that will be taken into account when assessing applications are:

- Local need for childcare facilities
- At least five new places must be provided to avail of the capital grants
- Extent to which the project will provide affordable childcare to disadvantaged families – the level of poverty and disadvantage will be determined by a number of factors including the geographic location (for example, whether the project is in a RAPID or CLAR area), and the numbers of lone parents and medical card holders
- Quality of the service being provided

Private capital grants

The programme will provide capital grants to private childcare providers of up to €100,000 towards the cost of developing a childcare facility in a catchment area where there is a demonstrated childcare need. One applicant may apply in respect of a number of catchment areas but there is an overall limit of €500,000 for any one applicant. All applicants must provide at least 25% of the total funding required.

Community grants

Community or not-for-profit childcare providers may apply for grant assistance of up to €1 million per project based on a demonstrated childcare need in the area. The level of funding granted will be determined by the number of places which the group proposes to provide and the sustainability of the project.

Childminders

There will also be a capital grant scheme for childminders and a new scheme to help parent and toddler groups.

Staffing costs

Help may be available with staffing costs as follows:

- Funding in the initial start up/support phase for community not-for-profit services where there is a demonstrated level of disadvantage

- Funding to support families and communities to break the cycle of poverty and disadvantage
- Where the childcare service is being provided in a mixed social area it will be expected to become sustainable over the short to medium term. All services will be required to operate a tiered system of charges, based on parental ability to pay.

Groups getting staffing funding under the EOCP will be able to apply for similar funding from the new programme when their current funding runs out.

Further information

Information is available from:

The County/City Childcare Committees: addresses are at www.pobal.ie

The Office of the Minister for Children

www.omc.gov.ie

Lo-call 1890 20 90 30

Pobal

www.pobal.ie

Tel: (01) 240 0727

Comhairle Board

The Minister for Social and Family Affairs has appointed a new Chairman to Comhairle and a number of new Board members have also been appointed. The current Board members are:

Mr Chris Glennon (Chair)

Ms Máirín Byrne

Mr Gerry Daly

Ms Detta Fanning

Ms Hilary Haydon

Mr John Hogan

Mr Hubert Kearns

Ms Mary Lyne

Ms Maria Mangan

Mr Joe Meagher

Mr Martin Naughton

Mr David Ormonde

Mr James Smyth

Mr Michael Walsh

Ms Patricia Walshe

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