



Relate

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The journal of developments in social services, policy and legislation in Ireland

Developments in legislation and services for children

Constitutional amendment

The Children's Referendum was passed in November 2012 but the constitutional changes agreed in that referendum are not yet in effect. This is because there is a challenge to the validity of the referendum and a decision on its validity has yet to be made by the Supreme Court. The constitutional changes involved are described in the November 2012 issue of *Relate*.

Policy in relation to children

The Department of Children and Youth Affairs is mainly responsible for policy in relation to children. Website: dcya.gov.ie. The Child and Family Agency (CFA) is the body which is mainly responsible for implementing those policies. Website: tusla.ie. On 1 January 2014, the CFA took over most of the functions formerly carried out by the Health Service Executive (HSE) in relation to children.

Better Outcomes, Brighter Futures: the National Policy Framework for Children & Young People 2014–2020 was published in April 2014.

The framework applies to children and young people up to the age of 24. Its purpose is to:

- Co-ordinate policy across all government departments and agencies
- Identify areas that have the potential to improve outcomes for children and young people
- Transform the effectiveness of existing policies, services and resources

The vision is "for Ireland to be one of the best small countries in the world in which to grow up and raise a family, and where the rights of all children and young

people are respected, protected and fulfilled; where their voices are heard and where they are supported to realise their maximum potential now and in the future”.

The framework identifies five outcomes as desirable for all children and young people, that they:

- Are active and healthy, with positive physical and mental wellbeing
- Are achieving their full potential in all areas of learning and development
- Are safe and protected from harm
- Have economic security and opportunity
- Are connected, respected and contributing to their world

These outcomes are to be achieved by focusing on the following areas:

- Better support for parents and families
- Earlier intervention and prevention: among other things, it is proposed that 70,000 children will be lifted out of consistent poverty by 2020; childhood health and wellbeing will be improved
- A culture that listens to and involves children and young people

- Ensuring quality services which will be outcomes-driven, effective, efficient and trusted
- Supporting effective transitions between child and adult services
- Cross-government and interagency collaboration and co-ordination

The framework sets out the policies that will be pursued under each of these headings.

It is proposed to publish an *Early Years Strategy* for children up to the age of six later this year. *Right from the Start: Report of the Expert Advisory Group on the Early Years Strategy* was published in September 2013. It is also proposed to publish a *National Youth Strategy* later this year. This strategy will focus on ensuring greater co-ordination in policy and service provision across government for young people aged 10–24 years and will aim to be responsive to current and emerging issues such as youth employment.

The *Tackling Youth Crime: Youth Justice Action Plan 2014–2018* was published in February 2014. The number of young people sentenced to detention has been reducing steadily in recent years. The focus of the action plan is to continue this trend and reduce the necessity for detention. Website: iyjs.ie

Child protection

In 2013, the HSE received 19,390 reports of child abuse (reports are now made to the CFA). Of these, about one third (6,421) alleged neglect; 27% (5,273) alleged emotional abuse; 22% (4,320) alleged physical abuse and 17% (3,376) alleged sexual abuse.

Children First Bill 2014

Children First: National Guidance for the Protection and Welfare of Children was first published in 1999 and a revised and updated version was published in 2011. It provides guidance on the identification, assessment, reporting and management of child abuse. These guidelines aim to help everyone to identify and respond to child abuse concerns but they set out specific measures that should be taken by social workers, Gardaí and other frontline staff in dealing with suspected abuse and neglect of children.

The Children First Bill 2014 provides that some elements of this guidance will be put on a statutory basis. In particular, it provides that certain professionals and other people working with children will be statutorily obliged to report concerns and complaints about child abuse. This is sometimes known

as “mandatory reporting” although the precise meaning of that phrase is not always clear. The guidance will continue to operate when the Bill becomes law but the obligations under the law will clearly take priority. The Bill also provides that providers of services to children must have procedures in place for assessing and dealing with risk and it provides for the co-ordination of implementation across government departments and other relevant bodies.

The Bill is currently before the Dáil. The following is a general summary of its contents which may, of course, be changed as it makes its way through the Oireachtas.

The best interests of the child must be the paramount consideration when the CFA is performing its functions under the legislation.

Obligations on service providers

Providers of services to children are obliged to ensure, as far as practicable, that every child is safe from harm while availing of the service. When this legislation is in effect, relevant service providers will have specific obligations to make risk assessments and to have child safeguarding statements.

If you propose to provide a service to children you must, within three months of starting the service:

- Undertake a risk assessment: this is an assessment of any potential for harm to a child while availing of the service
- Prepare a child safeguarding statement: this is a written statement specifying the service being provided and the principles and procedures to be observed to ensure as far as practicable, that a child, while availing of the service, is safe from harm

If you are already providing a service, you must do this within three months of the legislation coming into effect.

The child safeguarding statement must include a written assessment of the risk and must specify the procedures:

- To manage the risk identified
- In respect of any member of staff who is the subject of any investigation relating to a child availing of the service
- For the selection or recruitment of any person as a member of staff with regard to that person's suitability to work with children
- For the provision of information and, where necessary, instruction and training, to staff in the identification of harm
- For reporting to the CFA
- For maintaining a list of people within the service who are "mandated persons" (see below)

The service provider must have a copy of the child safeguarding statement on display and must provide a copy to staff members and, on request, to parents and guardians of children using the service, to the CFA or to members of the public. The statements must be reviewed at least once every two years.

Relevant services

The Bill lists the services which are relevant for its provisions. They include any work or activity carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, children in:

- Early years services, schools, centres of education
- Hospitals or other centres providing physical or mental health services to children
- Residential centres for children in care and for children with disabilities
- Special care units, children detention centres
- Reception or accommodation centres which provide residential accommodation services to applicants for asylum where children may be accommodated (usually called direct provision centres)
- Centres providing residential accommodation services to victims of domestic violence where children may be accommodated

They also include any work or activity involving:

- The inspection of children's services
- The provision of treatment, therapy or counselling to children
- The provision of educational, research, training, cultural, recreational, leisure, social or physical activities to children
- Care or supervision of children
- Provision of advice or guidance services to children
- Work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs which would involve contact with children
- Work or activity as a driver of, or as an assistant to the driver, or as a conductor, or as a supervisor of children using a vehicle which is being hired or used only for the purpose of conveying children who are unaccompanied by a parent or guardian
- Work or activity which is carried out by a member of An Garda Síochána, a necessary and regular part of which consists mainly of the person having access to, or contact with, children

The requirement to have a child safeguarding statement does not apply if you provide services for a family member or on a non-commercial basis. So, for example, if you look after your grandchildren or if you occasionally help out at school and community events, this does not apply to you.

People who are required to report

The Bill provides that certain people must report child abuse concerns to the CFA. These are known as "mandated persons".

The Bill lists the people who are "mandated persons". They are:

- Doctors, nurses, dentists, psychologists and other registered healthcare professions
- Social workers and social care workers
- Emergency medical staff
- Probation officers
- Teachers
- Members of An Garda Síochána
- Guardians ad litem appointed under the Child Care Act 1991 (see page 7)
- People employed as managers of domestic violence shelters, homeless provision or emergency accommodation facilities, asylum seeker accommodation (direct provision) centres
- Addiction counsellors employed by a publicly-funded body
- Psychotherapists or people providing counselling who are registered with one of the voluntary professional bodies
- Managers of a language school or other recreational school where children live away from home
- Members of the clergy or pastoral care workers of a church or other religious community

- Directors of any institution where a child is detained by an order of a court
- Safeguarding officers, child protection officers or other persons who are employed (in a paid or unpaid capacity) for the purpose of performing the child welfare and protection function of religious, sporting, recreational, cultural, educational and other bodies and organisations offering services to children
- Childcare staff employed in a pre-school service
- People responsible for the care or management of a youth work service
- Professional youth workers
- Foster carers registered with the CFA
- People carrying on a regulated pre-school service

If you are a mandated person and you know, believe or have reasonable grounds to suspect (on the basis of knowledge arising in the course of your employment or profession) that a child has been harmed, is being harmed or is at risk of being harmed, you must report that knowledge, belief or suspicion to the CFA.

If a child discloses to you, in the course of your employment or profession, a belief that he or she has been harmed, is being harmed or is at risk of being harmed, you must report this to the CFA.

You are not obliged to report what could be otherwise be regarded as sexual abuse if:

- You know or believe that a child who is aged 15 or more and less than 17 is engaged in sexual activity and
- The other person involved is not more than two years older and
- You know or believe that there is no material difference in capacity or maturity between the two people concerned and
- The child has told you that he or she does not want the matter reported

(It is always a criminal offence to engage in sexual activity with children under the age of 15 and it may be an offence with children under the age of 17.)

You are required to report in cases where you become aware of the relevant information after the legislation comes into effect even if the actual harm occurred before the legislation came into effect. You are not obliged to report cases about which you became aware before the legislation comes into effect. You may have a non-statutory obligation to report under the *Children First: National Guidance for the Protection and Welfare of Children* and this will continue. Certain people have reporting obligations under other legislation and these obligations are not changed.

The obligation to report under this legislation is in addition to any other reporting obligations such as the obligations under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (see *Relate*, September 2012).

The Children First Bill 2014 sets out what the CFA is to do when it receives such reports. Among other things, the agency may ask you to help in assessing the risk to the child and you are obliged to provide this help.

Children First Inter-Departmental Implementation Group

The Bill provides for the establishment on a statutory basis of a Children First Inter-Departmental Implementation Group. This group will be chaired by the Department of Children and Youth Affairs and will include representatives from all government departments, the Gardaí and the CFA. The main function of this group will be to promote and monitor compliance with the legislation by all government departments and to ensure a consistent approach. Such a group has already been established on an administrative basis.

Each government department will be required to have a sectoral implementation plan covering itself and any relevant bodies under its aegis.

Garda vetting

The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 has not yet come into effect. (The Bill was described in the September 2012 issue of *Relate*). The Act sets out procedures to allow the disclosure of criminal records and specified information for vetting purposes. Specified information is frequently described as "soft information". It is information that is not a court-determined criminal record but raises a concern that a particular person poses a threat to children or vulnerable people. Before specified information can be disclosed, the person who is the subject of the information must be given a copy of that information and must be given the opportunity to challenge the proposed disclosure.

The parts of the Act relating to the disclosure of convictions need to be amended in the light of the European Convention on Human Rights. In November 2013, the Government decided to amend the Act to provide that certain minor convictions which are over seven years old would not be disclosed in the vetting process. The legislation will continue to provide that more serious offences such as all sexual offences, offences against the person, serious motoring offences, firearms offences, robbery, or any offence for which the person is convicted on indictment will continue to be disclosed. The amendments will be contained in amendments to the Criminal Justice (Spent Convictions) Bill 2012. This Bill is currently before the Dáil.

It is also proposed to amend the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 to provide that where two or more organisations are jointly responsible for the employment of a person, whether the person is paid or unpaid, the organisations can agree in writing that one of them will be responsible for dealing with the Garda vetting, and the other organisation may rely on that fact.

The Garda Central Vetting Unit operates vetting on an administrative basis and in accordance with the proposed

changes. This means that the following are not disclosed:

- Certain minor offences that are more than seven years old where the person has not subsequently reoffended
- Minor motoring or public order offences which are more than seven years old will not be disclosed in any case
- Cases where the District Court has applied the Probation of Offenders Act 1907 will not be disclosed unless the offence in question is a sexual offence or an offence against the person

Children in care

In May 2014, there were 6,517 children in the care of the CFA. The vast majority were in foster care, 4,182 were in general foster care and 1,872 were in foster care with relatives. There were 341 children in general residential care; 152 of these were in a private residential placement. There were 16 children in three residential special care units and three in a residential high support unit. The last child left the residential high support unit in June 2014 and it is being converted to a special care unit. There were seven children in out-of-state secure placement and 96 were in other care placements. Other care placements include, for example, children who may be at home on a care order under supervision as part of a family re-unification plan; young people subject to a care order but in a detention centre; placement in a residential centre for young people with a disability; and young people placed in supported lodgings. Of all the children in care, 94% had an allocated social worker.

A child is placed in a private residential centre when no suitable CFA placement is available and the placement has been assessed as meeting the needs of the child. The average weekly cost of such placements in 2013 was €5,000.

Special care involves the detention of a child for his or her own welfare and protection in a special care unit by order of the High Court; it does not mean that the child has been convicted of a criminal offence. Special care units usually offer psychological and psychiatric supports. There were four young people on the waiting list for special care in June 2014.

Aftercare

About 450 young people leave care each year. About 45% of those who have been fostered stay with their foster family while continuing in education or training or accessing employment. The arrangements for helping young people when they leave the care system are described in *Relate*, April 2014. Generally, the main help involves finding accommodation. At the end of March 2014, there were 1,539 young people receiving aftercare services from the CFA. The

CFA is establishing interagency aftercare committees at local level bringing together local authorities, the HSE and other statutory and voluntary agencies. These committees will develop interagency aftercare plans for young people, particularly for those with complex needs, including housing requirements.

A protocol is being developed by the CFA and the County and City Managers' Association to deal with accommodation issues of young people leaving care.

There is draft legislation to provide for a statutory obligation to prepare an aftercare plan; the Bill has not yet been published.

Children detention schools

There are three children detention schools, two for boys up to the age of 17 and one for girls up to the age of 18. They are governed by the Children Act 2001. The average annual cost of detaining a child in these schools was €314,000 in 2013.

Between January and June 2014, there were 102 young people in custody in a children detention school.

It is expected that the commitment to end the practice of detaining children in adult prison facilities will be fully implemented this year. At present, 17-year-old males may be held in adult prisons but they will be transferred to the children detention schools later this year. A working group has been established to report on all issues arising from this planned transfer.

Pre-school services

At present, pre-school services are subject to the Child Care (Pre-School Services) (No.2) Regulations 2006 (SI 604/2006). Services providing care for pre-school children are required to notify their service to the Child and Family Agency and are subject to inspection by the agency. The services covered by the regulations include full-time, part-time and sessional services as well as childminders taking care of more than

three pre-school children from different families in the childminder's home.

The Child and Family Agency Act 2013 contains further provisions in respect of pre-school services and, as a result, these regulations will have to be amended. The Act provides for a stronger inspection regime, provides a statutory basis for the registration of early years services, and for the setting

of minimum qualification standards for staff working with children in early years services. A new registration system will require childcare services to register with the CFA in advance of opening. New National Quality Standards for Early Years Services, which will set out the outcomes and supporting criteria against which the quality of childcare services will be measured, are expected to be issued in 2014.

Family relationships

Adoption

The Adoption Act 1952 was the first piece of legislation dealing with adoption in Ireland. Prior to that, children may have been described as "adopted" but this was not their legal status. Between 1953 and 2012, there were over 44,000 adoptions in Ireland. Records exist in respect of these adoptions. The extent of the information provided in those records may vary.

Informal adoption arrangements may also have been put in place in this period and there are some suggestions that there were some illegal registrations of births, that is, some births were registered to people who were not the biological parents. Clearly, there are no records available in the case of informal arrangements. Birth registrations are available but it may not be possible to establish if they are illegal.

Information about the adoption of an individual may be got from the Adoption Authority of Ireland (Website: aai.gov.ie) and/or the CFA. Mother and baby homes and adoption agencies are also likely to have relevant information. In practice, a number of the adoption agencies no longer operate as such and they have transferred their records to the CFA. Various residential facilities for children including some mother and baby homes transferred their records to the health authorities when they closed down. These records are now held by the CFA. The records usually include basic legal documentation in relation to the adoption, such as application forms, birth certificates for children and adoptive parents, marriage certificates and consent documentation. Non-identifying information regarding the birth parent is generally provided to an adopted person.

The National Adoption Contact Preference Register was established in 2005 to help adopted people and their natural families to make contact with each other, exchange information or state their contact preferences. It allows for people who were party to illegal birth registrations to register for future contact. The register is operated by the Adoption Authority of Ireland.

It is proposed to publish the Adoption (Information and Tracing) Bill in the near future. This will aim to clarify the right to information and tracing. However, there are legal and constitutional issues arising, in particular in seeking to reconcile an adopted person's request for information about his or her identity with the right to privacy of his or her birth parent.

Children and parents

The first draft of a General Scheme of a Children and Family Relationships Bill 2014 was published in January 2014. A revised draft was published in September 2014. It is expected that the Bill itself will be published later this year.

Most children live with their biological parents and those parents are married to each other. However, a significant number of children do not live in such families. The aim of the Bill is to put in place a legal structure to deal with diverse parenting situations and to clarify the rights and responsibilities of parents in these situations.

The Guardianship of Infants Act 1964 is the main legislation dealing with guardianship, custody of and access to children. The Status of Children Act 1987 sets out the law in relation to paternity and children born outside marriage (this is the legislation that removed the status of illegitimacy). The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provided for the recognition of civil partnerships between same sex couples; it did not deal with the legal status of children in such relationships. There is no specific legislation dealing with the situation of children born by means of assisted human reproduction or surrogacy arrangements.

The Law Reform Commission (LRC) published its report, *Legal Aspects of Family Relationships* in 2010. Website: lawreform.ie. The revised General Scheme of a Children and Family Relationships Bill 2014 as published largely follows the recommendations in this report. The LRC had recommended that the terminology be changed but this is not proposed in the General Scheme as the terms are used in

the Constitutional amendments. The LRC wanted to replace "guardianship" with "parental responsibility", "custody" with "day-to-day care" and "access" with "contact".

The following is a brief summary of the main proposals in the revised General Scheme.

Adoption

At present, the law allows for the adoption of children by married couples and by single individuals. The single people who adopt may be heterosexual or homosexual. The law does not allow for joint adoption by cohabiting couples or by civil partners. It is proposed to extend eligibility to jointly adopt a child by civil partners and to cohabiting couples who have been living together for at least three years.

Guardianship, custody and access

It is proposed to repeal the Guardianship of Infants Act 1964, re-enact some of its provisions and replace others. At present, when making decisions under this Act, the court is obliged to regard the "welfare" of the child as the paramount consideration; it is proposed to change this to the "best interests" of the child. This change is being made arising from the changes in the Constitution agreed in the Children's Referendum (see above). The legislation will also set out the factors that the court must consider when trying to establish where the child's best interests lie, for example, the benefit of meaningful relationships with both parents, the views of the child (if they can be established); the needs of the child; history of upbringing and care; religious, spiritual and linguistic needs; harm suffered or which the child is at risk of suffering; custody arrangements; any family or domestic violence and its impact on both the safety of the child and other family members.

It is proposed to set out a statutory description of the powers, responsibilities and rights of a guardian and the duty to exercise those in the best interests of the child.

Non-marital fathers who cohabit with the child's mother for at least 12 months, including at least three months after the birth, will be automatically regarded as the legal fathers and will have automatic guardianship rights.

It is proposed to allow certain people who are not the child's parents to apply for guardianship. You may apply for guardianship of a child of whom you are not the parent if:

- You are married to, in a civil partnership with, or cohabiting with the parent of the child for more than three years and you have shared with that parent responsibility for the child's day-to-day care for more than two years, or

- You are an adult who has provided for a child's day-to-day care for a continuous period of more than 12 months, and the child has no parent or guardian who is willing or able to be the guardian of the child

However, if you are appointed a guardian under these new arrangements and the child has a parent still living, your guardianship role will be limited to making day-to-day decisions about the child. Major decisions in relation to, for example, where the child lives, education and religion will continue to be made by the parent unless the court, taking account of the best interests of the child, orders otherwise.

The majority of Irish domestic adoptions at present are adoptions by a biological mother together with her husband (the husband not being the biological father of the child). This proposal will facilitate husbands becoming joint guardians of children in such relationships where it is in the best interests of the child without mothers having to go through the procedure of adopting their own child.

There are also provisions for people who are eligible for guardianship to apply for custody in certain circumstances.

It is proposed to simplify the application process for access. At present, there is a two-stage process for people other than parents when applying for access, for example, a grandparent must apply for leave to apply for access and then for the access.

A child over the age of 12 must be consulted in relation to applications for guardianship, custody and access orders. Such children will also have rights to refuse consent to certain decisions and arrangements.

Voice of the child

The first draft General Scheme provided for changes to the *guardian ad litem* system. A guardian ad litem is an independent person appointed by the court to represent the wishes and interests of a child in specified court proceedings. They are appointed where the judge considers it to be in the interests of the child and in the interests of justice. The proposed changes to the guardian ad litem system have been replaced in the revised General Scheme by a new proposal that the court will have the power to appoint a "child's view expert" to help establish the views of the child.

Enforcement of court orders

It is proposed to give more enforcement options to the courts for cases where parents refuse to comply with court orders, for example, when access is denied or delayed. If a parent consistently violates a custody or access order, he or she may be required to attend a post-separation parenting programme, give the other parent compensatory time with the child, or refund the parent for expenses incurred.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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At present, the main option is to imprison a parent for contempt of court but this is not regarded as a satisfactory solution and is rarely used by judges.

Parentage generally

At present, a husband is presumed to be the father of a child born to a married woman. This presumption can be rebutted. It is proposed to change this so that a husband will be presumed not to be the father of the child if the birth occurs more than 10 months after they separate.

Parentage in assisted reproduction

The General Scheme sets out how parentage is to be assigned in cases of assisted human reproduction (other than surrogacy). The birth mother will be the mother in all cases. The child's other parent will be determined by the genetic connection to the child and by the relationship between the mother and the other person. Where there is no genetic link between the child and other person, the other parent may be a consenting spouse, civil partner or cohabiting partner.

A child who is born through assisted reproduction involving a donor will have the right to trace his or her identity. In general, anonymous donors will not be allowed; there are some exceptions for arrangements put in place before the law comes into effect. Hospitals and clinics will be required to give details of such births and details of the donors to a special register. In general, and subject to certain conditions, the children concerned will be able to access this register from the age of 18. The donor and other parent will also be entitled to access certain information from the register.

Surrogacy

The first draft of the General Scheme included proposals to give legal recognition to non-commercial surrogacy arrangements but to prohibit people or agencies from advertising surrogacy services or from persuading women to act as surrogates. It has now been decided not to deal with surrogacy in the Bill. A Supreme Court decision on parentage in surrogacy is awaited.

Child maintenance

It is proposed that the spouse, civil partner or cohabiting partner of a child's parent may be made liable for the maintenance of a dependent child. The exact liability will depend on the nature and duration of the relationship between the child and the other person.

The maintenance needs of a child may also be taken into account when orders are being made in cases where a civil partnership is being dissolved.

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