



Number 45 of 2015

Child Care (Amendment) Act 2015



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CHILD CARE (AMENDMENT) ACT 2015

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Number 45 of 2015

CHILD CARE (AMENDMENT) ACT 2015

An Act to provide for the preparation by the Child and Family Agency of aftercare plans to provide for the giving of assistance by the Agency, subject to the resources available to the Agency, to meet the needs of certain persons who have been in the care of that Agency; to provide for the inspection of premises in which it is proposed to provide early years service; and for those and other purposes, to amend the Child Care Act 1991; the Children Act 2001; the Health Act 2007; the Child and Family Agency Act 2013; and to provide for related matters. [10th December, 2015]

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act—

“Act of 2011” means the Child Care (Amendment) Act 2011;

“Principal Act” means the Child Care Act 1991.

Amendment of section 2 of Principal Act

2. Section 2 of the Principal Act is amended—

(a) by the insertion of the following definitions in subsection (1):

“ ‘Act of 2011’ means the Child Care (Amendment) Act 2011;

‘aftercare plan’ means an aftercare plan prepared under section 45B or 45C;

‘assessment of need’ shall be construed in accordance with section 45A;

‘eligible adult’, subject to subsections (1A) and (1B), means a person aged 18, 19 or 20 years who was in the care of the Child and Family Agency for a period of not less than 12 months in the 5 year period immediately prior to the person attaining the age of 18 years;

‘eligible child’, subject to subsections (1C) and (1D), means a child aged 16 years or over who—

- (a) is in the care of the Child and Family Agency and has been in the care of the Agency for a period of not less than 12 months since attaining the age of 13 years, or
- (b) was in the care of the Child and Family Agency for a period of not less than 12 months since attaining the age of 13 years but is no longer in the care of the Agency;”

and

- (b) by the insertion of the following subsections after subsection (1):

“(1A) (a) Where prior to the coming into operation of section 82 of the Child and Family Agency Act 2013 a person was in the care of the Health Service Executive in accordance with this Act for any period of time in the 5 year period immediately prior to the person attaining the age of 18 years, that period of time shall be considered as time spent in the care of the Child and Family Agency for the purpose of satisfying the 12 month period referred to in the definition of eligible adult.

- (b) Where a person was in the care of the Child and Family Agency for a period (including a period referred to in paragraph (a)) of less than 12 months in the 5 year period immediately prior to the person attaining the age of 18 years, a period of time spent by that person in accommodation made available by the Agency, or by the Health Service Executive prior to the coming into operation of section 82 of the Child and Family Agency Act 2013, under section 5 in the 5 year period immediately prior to the person attaining the age of 18 years shall be reckonable for the purpose of satisfying the 12 month period referred to in the definition of eligible adult.

(1B) A reference in the definition of eligible adult to the care of the Child and Family Agency includes—

- (a) a reference to the care of the Child and Family Agency pursuant to an interim special care order or a special care order under Part IVA, and
- (b) on or after the coming into operation of section 10 of the Act of 2011, a reference to special care within the meaning of Part IVA.

(1C) (a) Where prior to the coming into operation of section 82 of the Child and Family Agency Act 2013 a child was in the care of the Health Service Executive in accordance with this Act for any period of time since attaining the age of 13 years, that period of time shall be considered as time spent in the care of the Child and Family Agency for the purpose of satisfying the 12 month period referred to in the definition of eligible child.

- (b) Where a child is or has been in the care of the Child and Family Agency for a period (including a period referred to in paragraph

(a) of less than 12 months since attaining the age of 13 years, a period of time spent by the child in accommodation made available by the Agency, or by the Health Service Executive prior to the coming into operation of section 82 of the Child and Family Agency Act 2013, under section 5 since attaining the age of 13 years shall be reckonable for the purpose of satisfying the 12 month period referred to in the definition of eligible child.

(1D) A reference in the definition of eligible child to the care of the Child and Family Agency includes—

- (a) a reference to the care of the Child and Family Agency pursuant to an interim special care order or a special care order under Part IVA, and
- (b) on or after the coming into operation of section 10 of the Act of 2011, a reference to special care within the meaning of Part IVA.”.

Amendment of section 23J of Principal Act

3. Section 23J of the Principal Act is amended by the substitution of “42 and 47” for “42, 45 and 47”.

Amendment of section 23NO of Principal Act

4. Section 23NO (inserted by section 10 of the Act of 2011) is amended by the substitution of the following paragraph for paragraph (b):

- “(b) (i) the provision of care under this Act 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
- (ii) the assistance which may be provided by the Child and Family Agency in accordance with an aftercare plan where a person has been the subject of an interim special care order or a special care order and is an eligible child or eligible adult,
- and”.

Amendment of section 45 of Principal Act

5. The Principal Act is amended by the substitution of the following section for section 45:

“Aftercare plan

45. (1) Subject to section 45A and subsection (3), the Child and Family Agency shall, in accordance with sections 45B or 45C, prepare an aftercare plan for an eligible child or an eligible adult, as the case may be, setting out the assistance that may be provided by the Agency to the eligible child on or after he or she attains the age of 18 years or to the eligible adult.

- (2) The Child and Family Agency shall, in accordance with section 45D, update an aftercare plan referred to in subsection (1).
- (3) The assistance that may be provided by the Child and Family Agency to an eligible child or an eligible adult, as the case may be, in accordance with an aftercare plan referred to in subsection (1) or an updated aftercare plan referred to in subsection (2) may be provided for so long as—
 - (a) the Agency is satisfied as to his or her need for the assistance, and
 - (b) subject to subsection (4), he or she has not attained the age of 21 years.
- (4) Where the Child and Family Agency is providing assistance to a person in accordance with an aftercare plan or an updated aftercare plan by arranging for the completion of his or her education and by contributing to his or her maintenance while he or she is completing his or her education, and that person attains the age of 21 years, the Child and Family Agency may continue to provide that assistance until—
 - (a) the completion of the course of education in which he or she is engaged, or
 - (b) the end of the academic year during which the person attains the age of 23,whichever is the earlier.
- (5) The Child and Family Agency may, subject to its available resources, implement an aftercare plan or an updated aftercare plan.”.

Assessment of need

6. The Principal Act is amended by the insertion of the following section after section 45 (amended by *section 5*):

“Assessment of need

- 45A. (1) The Child and Family Agency shall, prior to preparing an aftercare plan under section 45B or 45C, carry out an assessment (in this Act referred to as an ‘assessment of need’) of the needs of an eligible child on attaining the age of 18 years or an eligible adult, as the case may be.
- (2) The Child and Family Agency shall record the needs identified by an assessment of need in writing.
- (3) Without prejudice to the generality of subsection (1), an assessment of need shall include an assessment by the Child and Family Agency of the needs (if any) of the person being assessed in relation to—
 - (a) education,

- (b) financing and budgeting matters,
- (c) training and employment,
- (d) health and well-being,
- (e) personal and social development,
- (f) accommodation, and
- (g) family support.”.

Aftercare plan – eligible child

7. The Principal Act is amended by the insertion of the following section after section 45A (inserted by *section 6*):

“Aftercare plan – eligible child

45B. (1) The Child and Family Agency shall, where any need is identified in an assessment of need carried out in respect of an eligible child in the care of the Agency, prepare an aftercare plan for that child.

(2) An eligible child who is no longer in the care of the Child and Family Agency, or his or her parent, guardian or a person acting in *loco parentis* to him or her, may request the Agency to prepare an aftercare plan for that eligible child.

(3) Upon receipt of a request under subsection (2), the Child and Family Agency shall, where any need is identified in an assessment of need carried out in respect of the eligible child to whom the request relates, prepare an aftercare plan for that child.

(4) An aftercare plan prepared under subsection (1) or (3) shall set out the assistance that the Child and Family Agency may provide to the eligible child on or after that child attaining the age of 18 years to meet his or her needs as identified in the assessment of need, being assistance which may be provided to that person—

(a) directly by the Agency, or

(b) in accessing a service which is provided by—

(i) a public body or a person on behalf of the public body, where he or she may be eligible for the service, or

(ii) any other person, not being a public body, referred to in subsection (7)(b).

(5) The Child and Family Agency shall prepare an aftercare plan under subsection (1)—

(a) at least 6 months before he or she attains the age of 18 years, or

(b) within 3 months of that child having become an eligible child,

whichever is the later.

(6) Where the Child and Family Agency is required, in accordance with subsection (3), to prepare an aftercare plan following receipt of a request under subsection (2), the Agency shall prepare that plan—

- (a) at least 6 months before the eligible child referred to in subsection (2) attains the age of 18 years, or
- (b) within 3 months of receipt of that request,

whichever is the later.

(7) The Child and Family Agency, in preparing an aftercare plan for an eligible child under subsection (1) or (3)—

- (a) shall consult with a public body which provides, or any person who provides on behalf of the public body, a service for which the child may be eligible, and
- (b) may consult with any person, not being a public body, which provides or arranges to provide a service.

(8) Notwithstanding section 9 of the Child and Family Agency Act 2013, where the Child and Family Agency, in preparing an aftercare plan under subsection (1) or (3) has been unable, after reasonable efforts have been made, to ascertain the views of the eligible child to whom the plan relates, the Agency shall prepare an aftercare plan for that eligible child.

(9) The Child and Family Agency, in preparing an aftercare plan under subsection (1) or (3) for an eligible child—

- (a) shall take all reasonable steps to consult with each parent and guardian of, and person acting in *loco parentis* to, that child, and
- (b) may consult with any other person who the Child and Family Agency considers has a close personal or professional relationship with that child,

unless the Agency considers that in all the circumstances it is not in the best interests of that child to consult with any of those persons.

(10) The Child and Family Agency shall, in preparing an aftercare plan for an eligible child under subsection (1) or (3), have due regard to the resources available to the Agency to implement that plan.

(11) In this section—

‘guardian’, in relation to an eligible child, means a person who—

- (a) is a guardian of the child pursuant to the Guardianship of Infants Act 1964 and who—
 - (i) is a parent of the child and has custody of that child, or

- (ii) not being a parent of the child, has custody of that child to the exclusion of any living parent of that child, 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;

‘public body’ has the same meaning as it has in section 2 of the Child and Family Agency Act 2013;

‘service’ means a service or support, available to or accessible by the public generally or a section of the public, where the service or support would assist in meeting any need of a person identified in the assessment of need carried out in respect of that person.”.

Aftercare plan – eligible adult

8. The Principal Act is amended by the insertion of the following section after section 45B (inserted by *section 7*):

“Aftercare plan - eligible adult

- 45C.** (1) An eligible adult or a person authorised in writing to make a request on behalf of an eligible adult may request the Child and Family Agency to prepare an aftercare plan for the eligible adult where the Agency has not previously prepared a plan for that eligible adult.
- (2) Upon receipt of a request under subsection (1), the Child and Family Agency shall, where any need is identified in an assessment of need carried out in respect of the eligible adult, prepare an aftercare plan setting out the assistance that the Agency may provide to the eligible adult to meet the needs as identified in the assessment, being assistance which may be provided to that eligible adult—
- (a) directly by the Agency, or
 - (b) in accessing a service which is provided by—
 - (i) a public body or a person on behalf of the public body, where that eligible adult may be eligible for the service, or
 - (ii) any other person, not being a public body, referred to in subsection (4)(b).
- (3) The Child and Family Agency shall prepare an aftercare plan under subsection (2) within 3 months of receipt of a request made under subsection (1).
- (4) The Child and Family Agency in preparing an aftercare plan under subsection (2)—

- (a) shall consult with a public body which provides, or any person who provides on behalf of the public body, a service for which the eligible adult may be eligible, and
 - (b) may consult with any person, not being a public body, which provides, or arranges to provide, a service.
- (5) The Child and Family Agency may, with the consent of the eligible adult, consult with any person who the Agency considers may be of assistance to the Agency in preparing the aftercare plan.
- (6) The Child and Family Agency shall, in preparing an aftercare plan under subsection (2), have due regard to the resources available to the Agency to implement that plan.
- (7) Where on the coming into operation of this section the Child and Family Agency is providing assistance to a person in accordance with section 45 (prior to the amendment of that section by *section 5* of the *Child Care (Amendment) Act 2015*)—
- (a) the Agency shall continue to provide such assistance in accordance with that section as if it had not been so amended, and
 - (b) if that person is an eligible adult he or she may make a request under subsection (1).
- (8) In this section, ‘public body’ and ‘service’ have the same meaning as they have in section 45B.”.

Review and update of aftercare plan

9. The Principal Act is amended by the insertion of the following section after section 45C (inserted by *section 8*):

“Review and update of aftercare plan

- 45D.** (1) A person in respect of whom an aftercare plan is in operation, or a person who is authorised in writing to make a request on his or her behalf, may request the Child and Family Agency to review the operation of the plan where—
- (a) there has been a significant change in the circumstances of the person to whom the plan relates since the preparation of, or last review of, that plan,
 - (b) the assistance being provided under that plan is not meeting a need of the person as identified in the assessment of need, or
 - (c) the person requires additional assistance—
 - (i) to that set out in that plan to meet the needs identified in the assessment of need, or

- (ii) to meet any additional need which has arisen since that assessment of need was carried out.
- (2) Where the person referred to in subsection (1) satisfies the Child and Family Agency that paragraph (a), (b) or (c) of subsection (1) applies in respect of a request under that subsection, the Agency shall carry out a review of the operation of the aftercare plan within 3 months of receipt of a request made under that subsection.
- (3) In carrying out a review under subsection (2), the Child and Family Agency shall consult with any public body which provides, or any person who provides on behalf of the public body, a service—
- (a) referred to in the aftercare plan and identified by the Agency as being relevant to the review, or
- (b) which is part of the additional assistance referred to in subsection (1)(c) and is additional to any service identified in the aftercare plan.
- (4) In carrying out a review under subsection (2), the Child and Family Agency may consult with any person, not being a public body which provides a service—
- (a) referred to in the aftercare plan and identified by the Agency as being relevant to the review, or
- (b) which is part of the additional assistance referred to in subsection (1)(c) and is additional to any service identified in the aftercare plan.
- (5) The Child and Family Agency shall, in reviewing an aftercare plan under subsection (2), take all reasonable steps to consult, with the consent of the person to whom the plan relates, with any person who the Agency considers may be of assistance to the Agency in reviewing that plan.
- (6) The Child and Family Agency may update an aftercare plan following a review under subsection (2).
- (7) The Child and Family Agency shall, in updating an aftercare plan under subsection (6), have due regard to the resources available to the Agency to implement any updated plan.
- (8) In this section—
- ‘public body’ has the same meaning as it has in section 45B;
- ‘service’ has the same meaning as it has in section 45B save that for the purposes of this section the reference to ‘any need of a person identified in the assessment of need carried out in respect of that person’ shall be taken to include any additional need of that person identified in a request under subsection (1)(c)(ii).’.

Amendment of section 58D of Principal Act

10. Section 58D of the Principal Act is amended by the insertion of the following subsection after subsection (8):

“(8A) The Agency shall refuse to register an applicant where the applicant—

- (a) refuses to allow an authorised person, in accordance with subsection (1A) of section 58J, to enter the premises in which the applicant proposes to provide the prescribed early years service, or
- (b) obstructs or impedes an authorised person in the exercise of any of his or her powers under subsection (3A) of that section.”.

Amendment of section 58H of Principal Act

11. Section 58H of the Principal Act is amended by—

- (a) the designation of the section as subsection (1), and
- (b) the insertion of the following subsection after subsection (1):

“(2) The Agency may cause to be visited the premises in which an applicant proposes to provide a prescribed early years service to ascertain if the premises comply with this Part.”.

Amendment of section 58J of Principal Act

12. Section 58J of the Principal Act is amended by—

- (a) the insertion of the following subsection after subsection (1):

“(1A) An authorised person may, at all reasonable times, enter any premises in which an applicant proposes to provide a prescribed early years service for the purpose of ascertaining if the premises comply with this Part.”,

and

- (b) the insertion of the following subsection after subsection (3):

“(3A) An authorised person who enters any premises in accordance with subsection (1A) may make such examination into the condition of the premises as may be necessary for the purposes of this Part.”.

Miscellaneous amendments to Principal Act

13. The provisions of the Principal Act specified in *column (2)* of *Part 1* of *Schedule 1* are amended to the extent specified in *column (3)* of that Part.

Amendments to other Acts

14. Each Act specified in *columns (2)* and *(3)* of *Part 2* of *Schedule 1* is amended to the extent specified in *column (4)* of that Part.

Repeals

- 15.** Each Act specified in *columns (2) and (3)* of *Schedule 2* is repealed to the extent specified in *column (4)*.

Short title, collective citation and commencement

- 16.** (1) This Act may be cited as the Child Care (Amendment) Act 2015.
- (2) This Act, other than *sections 14 and 15*, shall be included in the collective citation "*Child Care Acts 1991 to 2015*".
- (3) This Act shall come into operation on such day or days as the Minister for Children and Youth Affairs 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 provisions.

SCHEDULE 1

Section 13

MISCELLANEOUS AMENDMENTS

Part 1

MISCELLANEOUS AMENDMENTS TO PRINCIPAL ACT

| Item (1) | Provision affected (2) | Amendment (3) |
|-------------|---|---|
| 1 | section 2 (inserted by section 105 of and Item 1 Part 1 of Schedule 2 to the Health Act 2007) | In the definition of “children’s residential centre” substitute “Child and Family Agency” for “Health Service Executive”. |
| 2 | section 15 (amended by section 105 of and Item 2 Part 1 of Schedule 2 to the Health Act 2007) | Substitute “Child and Family Agency” for “Health Service Executive”. |
| 3 | section 18 (amended by section 8 of the Act of 2011) | In subsection (9) (inserted by section 8 of the Act of 2011), substitute “Child and Family Agency” for “Health Service Executive”. |
| 4 | section 19 (amended by section 9 of the Act of 2011) | In subsection (8) (inserted by section 9 of the Act of 2011), substitute “Child and Family Agency” for “Health Service Executive”. |
| 5 | Part IVA (amended by section 10 of the Act of 2011) | In the whole Part, substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs. |
| | | In section 23B(4) (amended by section 10 of the Act of 2011), substitute “section 58 of the Child and Family Agency Act 2013” for “section 38 (as amended by the Act of 2007) of the Health Act 2004”. |
| | | In section 23B(5) (amended by section 10 of the Act of 2011), substitute “section 58 of the Child and Family Agency Act 2013” for “section 38 (as amended by the Act of 2007) of the Health Act 2004.”. |
| | | In section 23F (amended by section 97 of the Child and Family Agency Act 2013), substitute the following subsection for subsection (12): |

| Item (1) | Provision affected (2) | Amendment (3) |
|-------------|---|---|
| | | “(12) Where the Health Service Executive convened a family welfare conference in respect of a child pursuant to subsection (5) and a determination was not made by the Health Service Executive pursuant to subsection (7) before the establishment of the Child and Family Agency, that Agency shall be deemed for the purposes of this section to have convened the conference.”. |
| 6 | section 26 (amended by section 13 of the Act of 2011) | In subsections (2C) and (3A) (inserted by section 13 of the Act of 2011), substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs. |
| 7 | section 36 | In subsection (1), insert “subject to subsection (4),” after “Child and Family Agency,” and insert the following subsection after subsection (3): “(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.”. |
| 8 | section 37 (amended by section 21 of the Act of 2011) | In subsection (1A) (inserted by section 21 of the Act of 2011), substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs. |
| 9 | section 38 (amended by section 105 of and Item 5 Part 1 of Schedule 2 to the Health Act 2007) | In subsections (1) and (2), substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs. |
| 10 | section 46 | In subsection (1), insert “, other than special care under Part IVA,” after “in the care of the Child and Family Agency”. |
| 11 | section 47 | Insert “subject to section 23NK (inserted by section 10 of the Act of 2011)”, after “in the care of the Child and Family Agency”. |

Part 2

Section 14

AMENDMENTS TO OTHER ACTS

| Item (1) | Number and Year (2) | Short Title (3) | Amendment (4) |
|-------------|------------------------|--------------------|--|
| 1 | No. 24 of 2001 | Children Act 2001 | Section 8: In subsection (1)(d) (inserted by section 29 of the Act of 2011), substitute “Child and Family Agency” for “Health Service Executive”. |
| 2 | No. 23 of 2007 | Health Act 2007 | Section 41: Substitute the following for subsection (1) (a): <p style="margin-left: 40px;">“(a) inspect the performance—</p> <p style="margin-left: 80px;">(i) by the Executive of the Executive’s functions under section 10 of the Health (Nursing Homes) Act 1990, and</p> <p style="margin-left: 80px;">(ii) by the Agency of the Agency’s functions under sections 39 to 42 and section 53 of the Child Care Act 1991.”.</p> |
| 3 | | | Section 45: <p style="margin-left: 40px;">(a) Substitute the following subsection for subsection (1)—</p> <p style="margin-left: 80px;">“(1) The Minister for Children and Youth Affairs, by written direction, may require the Agency to carry out inspections of children’s residential centres, as defined in section 2(1) of the Child Care Act 1991, which are provided in accordance with section 38(1) of that Act.”,</p> <p style="margin-left: 80px;">and</p> <p style="margin-left: 40px;">(b) in subsections (2) to (5), substitute “Agency” for</p> |

| Item (1) | Number and Year (2) | Short Title (3) | Amendment (4) |
|-------------|------------------------|----------------------------------|---|
| | | | “Executive or the Agency” in each place where it occurs. |
| 4 | | | Section 64 (amended by section 97 of and Item 10 Part 20 of Schedule 2 to the Child and Family Agency Act 2013): In subsections (1) to (4), substitute “Executive or the Agency as the case may be” for “Executive or the Agency as the case may” in each place where it occurs. |
| 5 | No. 40 of 2013 | Child and Family Agency Act 2013 | In section 57(2), substitute “Part VIIA” for “Part VII”. |

SCHEDULE 2

Section 15

ACTS REPEALED

| Item (1) | Number and Year (2) | Short Title (3) | Extent of Repeal (4) |
|-------------|---------------------------|---------------------------------------|--------------------------------|
| 1 | No. 19 of 2011 | Child Care (Amendment) Act 2011 | Sections 6, 20, 23, 24 and 25. |