

CHILDCARE

Leaflet No. 17



LEGAL AID BOARD

1890 615200
info@legalaidboard.ie
www.legalaidboard.ie

Introduction

The purpose of this leaflet is to provide you with some basic information about Court applications by the Health Service Executive (HSE) arising from concerns it has about the care or welfare of a child. The leaflet also sets out the services offered by the Legal Aid Board and other general contacts you might find useful. If you have been served with or given notice of an application taken by the HSE in relation to your child you should contact the Legal Aid Board who can direct you to your nearest law centre or you should look at the Board's website for information: www.legalaidboard.ie.

Background

The law provides that it is generally in the best interests of a child that he or she be brought up in his or her own family. It also recognises that there may be circumstances where a child is not receiving adequate care with their family or that their health and welfare is at risk. In those circumstances the HSE has a duty to monitor the welfare of the child and if necessary, to seek to have the child taken into its care. You may recognise that there are problems and that you are unable to care for your child at this particular time. In those circumstances you may seek to have the child placed voluntarily in the HSE's care. You can terminate this arrangement whenever you wish. If the HSE has strong concerns about your child's welfare and you do not wish to place your child in care, it can seek a Care Order from the Courts. It may also seek a Care Order if your child is in voluntary care and it believes that your child should remain there and you wish to have your child return to your care.

What is a Care Order?

A Care Order is an Order made by a Judge to place a child in the care of the HSE.

What is an interim Care Order or an Emergency Care Order?

An Interim Care Order or an Emergency Care Order is an Order made by a Judge that places your child in the care of the HSE for a short period. Judges may grant them where an application for a Care Order has been made but has not been heard yet. An Emergency Care Order can be made without you being given any notice of the application.

Who seeks the Care Order and where does the hearing take place?

Proceedings for a Care Order are always brought by the HSE and usually take place in the local District Court.

How will I know if the HSE is taking proceedings to have my child taken into care?

In most cases, the HSE will have said to you that they intend to take proceedings. If this is not the case, you may have received a letter from a solicitor engaged by the HSE which includes a document called a Notice of Application. This Notice informs you that the HSE will apply to a Court to have your child taken into care. If either of the above happens, you should consult a solicitor as soon as possible.

What should I do if I receive an Application for a Care Order and can't afford my own solicitor?

You should immediately contact your local law centre where Legal Aid Board staff will assist you in completing an application form. If you are in Dublin you can attend at the Legal Aid Board's office on the third floor in Dolphin House (where the District Court sits). You will be asked for information about your income and assets. The application will be processed as quickly as possible.

If proceedings have a Court date the law centre will prioritise the application, so you will receive the next available appointment with a solicitor. If proceedings are not instituted your application may or may not be prioritised depending on the circumstances so it is important to phone the law centre immediately if you are served with a Notice of Application on behalf of the HSE. Your solicitor will give you advice in relation to your case and also in relation to the steps that you might take that would have the effect of improving your chances of your child remaining in or returning to your care.

My child has already been taken into care. Can I apply for legal services?

Yes, in this case you should bring a copy of the Emergency / Interim Care Order with you when you visit the law centre.

Will my child's other parent be represented by the same solicitor?

Your solicitor will consider whether he or she should represent both of you if you are happy with this. It is often considered more appropriate that your spouse / partner be represented by a different solicitor. If this occurs your spouse / partner will have to make an application for legal services at another law centre.

What will happen at the Court hearing?

At the hearing the HSE will apply to the Court have your child taken into care and will give evidence as to why this should happen. The HSE has to establish that the child has been or is being assaulted, ill-treated, neglected or sexually abused or that his or her health development or welfare has been or will be avoidably impaired or neglected. Witnesses, for example, a social worker may be called to give evidence to the Judge. You will also be able to give evidence as will any witnesses who can help your case.

Who and what is a *Guardian ad litem*?

On some occasions the Court decides to appoint a *guardian ad litem* (GAL) and the Court may also appoint a solicitor to represent the GAL and / or the child. A *guardian ad litem* advises the Court on what is in the best interest of the child concerned. The GAL also makes the Judge aware of the child's own wishes. To do this the GAL consults with the child, the child's family, and any other organisations who know the child and the family. These consultations are crucial to ensure that the child's best interests are presented independently to the Court.

Who will make the decision as to whether a Care Order is granted?

The decision will be made by a Judge. There may be one or more hearings before the full case is heard, and the Judge may grant Interim Care Order(s) to the HSE while the case is ongoing.

If a Care Order is in place, what decisions can the HSE make?

The HSE may make decisions as to how the child's interests are best served, for example, it may decide to place the child with foster parents or in residential care.

How long can a care order last?

A Care Order may be made for as long as the child remains a child, i.e. up to the eve of the child's eighteenth birthday or for a shorter period as might be agreed or as a Court sees fit. Applications can be made by the HSE to renew orders.

What is a Supervision Order?

If the HSE has concerns about a child, but does not consider that it would be appropriate to seek a Care Order, it may apply for a supervision order. This allows HSE staff or appointees to visit the child and give advice to the child's parent(s) about caring for the child.

How can a Care Order be made?

Some parents may voluntarily place their child in the care of HSE. The HSE is obliged to apply to the District Court for a Care Order where it is of the opinion that a child needs care which will not otherwise be provided.

What can I do to assist my solicitor represent me?

In order to represent you to the best of their ability, your solicitor will require information from you. This is to enable your solicitor to make sure he / she has all of the information they need to represent you.

You should bring any letters or documents sent to you by the HSE or its solicitors to the immediate attention of your solicitor. You should always make yourself available for appointment / Court hearings and if you are unable to make an appointment / commitment due to illness, for example, you should notify the law centre as soon as you can.

Your solicitor will keep you informed in writing about the process and what the potential outcomes or likely outcome will be. Your solicitor may contact your GP as he or she will have significant information about the family and may be of assistance. In addition, if your family is able to support you, your solicitor may contact family members with your permission. Your solicitor may ask that they give evidence to benefit your case.

If an order is made, what happens next?

If an Order is made, your solicitor will advise you of the decision, any review dates that are set by the Court and of any other information they think relevant. Your solicitor also will discuss with you the merit or otherwise of appealing the decision to another Court, as well as the need to remain engaged with the HSE in relation to access to your child and the possibility of making an application to the Court for access if suitable arrangements cannot be agreed with the HSE.

Can the Court make other Orders?

The Court has discretion to make various Orders in relation to your child. As is noted in the previous paragraph it can make an Order for access to the child. The Court also has the power to discharge a Care Order if circumstances change and it is considered that your child can and should return home to you.

Head Office: Legal Aid Board, Quay Street, Cahirciveen, Co. Kerry.

Tel: (066) 947 1000

Fax: (066) 947 1035

Locall: 1890 615 200

Website: www.legalaidboard.ie