

STATUTORY INSTRUMENTS

S.I. No. 549 of 2004

CHILDREN

(FAMILY WELFARE CONFERENCE)

REGULATIONS 2004

PUBLISHED BY THE STATIONERY OFFICE
DUBLIN

To be purchased directly from the
GOVERNMENT PUBLICATIONS OFFICE,
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2

Or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
51 ST. STEPHEN'S GREEN, DUBLIN 2
(Tel: 01 6476834/35/36/37; Fax: 01 6476843)

Or through any bookseller

Prn: 3515

Price: €2.54

S.I. No. 549 of 2004

CHILDREN

(FAMILY WELFARE CONFERENCE)

REGULATIONS 2004

REGULATION

1. CITATION
2. COMMENCEMENT
3. DEFINITIONS
4. WELFARE OF CHILD
5. CONVENING OF A FAMILY WELFARE CONFERENCE
6. ATTENDANCE AT A FAMILY WELFARE CONFERENCE
7. PROCEDURES OF A FAMILY WELFARE CONFERENCE
8. RECORDS
9. FUNCTIONS OF CHIEF EXECUTIVE OFFICER
10. GENERAL DIRECTIONS BY THE MINISTER

EXPLANATORY NOTE

S.I. No. 549 of 2004

CHILDREN (FAMILY WELFARE CONFERENCE) REGULATIONS 2004

I, Brian Lenihan, Minister of State at the Department of Health and Children, in exercise of the powers conferred on me by section 15 of the Children Act 2001 (No. 24 of 2001), which said powers are delegated to me by the Health and Children (Delegation of Ministerial Functions) Order of 2003 (S.I. No. 474 of 2003), hereby make the following Regulations:-

CITATION

1. These Regulations may be cited as the Children (Family Welfare Conference) Regulations 2004.

COMMENCEMENT

2. These Regulations shall come into operation on the 24th day of September 2004.

DEFINITIONS

3. In these regulations unless the context otherwise requires-

“coordinator” means a person appointed by a health board to convene a family welfare conference on its behalf and act as chairperson of that family welfare conference in accordance with section 7 of the Children Act 2001;

“family welfare conference” means a conference convened by a health board pursuant to section 7 of the Children Act 2001;

“guardian” means –

- (a) any legal guardian of a child,
- (b) any person who, in the opinion of the court having cognisance of any case in relation to a child or in which the child is concerned, has for the time being the charge or control over the child, or
- (c) any person who has custody or care of a child by order of a court, but does not include a health board;

“guardian *ad litem*” means a person appointed as guardian *ad litem* by a court under Part V of the Child Care Act 1991 as amended by the Children Act 2001;

“health board” means a board established under section 4 of the Health Act 1970 and the Eastern Regional Health Authority established under the Health (Eastern Regional Health Authority) Act 1999;

“parents” in relation to a child, means –

- (a) in case one parent has the sole custody, charge or care of the child, that parent,
- (b) in case the child has been adopted under the Adoption Acts, 1952 to 1998 (or, if adopted outside the State, his or her adoption is recognised under the law of the State), the adopter or adopters or the surviving adopter, and
- (c) in any other case, both parents;

“the Act” means the Children Act 2001;

“the Act of 1991 as amended” means the Child Care Act 1991 as amended by the Children Act 2001;

“the Minister” means the Minister for Health and Children;

“relative” in relation to a child, means a brother, sister, uncle or aunt or a spouse of the brother, sister, uncle or aunt or a grandparent or step-parent, of the child;

WELFARE OF CHILD

4. In any matter relating to-

- (a) the convening of a family welfare conference,
- (b) the proceedings of a family welfare conference,
- (c) inviting persons to attend a family welfare conference,
- (d) drawing up recommendations in respect of a child,

the coordinator and the participants in the family welfare conference shall, having regard to the rights and duties of parents, whether under the Constitution or otherwise-

- (i) regard the welfare of the child as the first and paramount consideration, and
- (ii) in as far as is reasonably practicable and subject to the obligation on the part of the health board to promote the health, safety, development and welfare of the child, give due consideration, having regard to his or her age and understanding, to the wishes of the child.

CONVENING OF A FAMILY WELFARE CONFERENCE

5. (1) Upon the appointment of a coordinator pursuant to Section 7 of the Act, the coordinator shall convene a family welfare conference and determine the date, time and place at which the family welfare conference is to be held.

(2) Before determining the date, time and place at which the family welfare conference is to be held, a coordinator shall, in as far as is reasonably practicable, consult the child in respect of whom the family welfare conference is being convened and his or her parents or guardian in relation to-

- (a) the date, time and place at which the family welfare conference is to be held;
- (b) subject to the provisions of section 9 of the Act and these regulations, the persons who shall be entitled to attend the family welfare conference;
- (c) subject to the provisions of section 10 of the Act and these regulations, the procedure to be adopted at the family welfare conference.

(3) Subject to the provisions of paragraph (2) a coordinator shall, as far as is reasonably practicable, ensure that those entitled to attend a family welfare conference are informed in writing of the date, time and place at which the family welfare conference is to be held.

(4) A health board shall, as far as is reasonably practicable, provide a coordinator with any information which is necessary for the proper functioning of the family welfare conference, which it may possess about a child, in respect of whom a family welfare conference is being convened, and his or her family, before the family welfare conference is held.

(5) A family welfare conference may be adjourned from time to time by the coordinator and be reconvened at a date, time and place determined by the coordinator, having consulted in accordance with the provisions of regulation 5 (2)(a), subject to any directions which may be made by a court.

(6) A health board may, at any time after a family welfare conference is convened and before the family welfare conference takes place, instruct a coordinator to adjourn a family welfare conference, for the purpose of arranging an assessment of the child, in respect of whom the family welfare conference is being convened and shall, as soon as is reasonably practicable, inform the coordinator as to the earliest date on which the family welfare conference may be reconvened.

(7) Where a family welfare conference is adjourned the coordinator shall, as far as is reasonably practicable, inform every person entitled to attend the family welfare conference under section 9 of the Act.

ATTENDANCE AT A FAMILY WELFARE CONFERENCE

6. (1) Where a person attends a family welfare conference to provide information or advice pursuant to Section 10(3) of the Act, that person may attend the family welfare conference only for the purpose of providing that information or advice, except with the agreement of the coordinator.

(2) Subject to the provisions of Section 14(3) of the Act a person may attend a family welfare conference for the purposes of bona fide research, subject to the agreement of the coordinator and the health board and with the consent of the child's parents or guardian and as far as is reasonably practicable, the child, having regard to his or her age and understanding and no material arising from such research may be published or broadcast without the prior approval of the health board.

(3) No person may attend any part of the proceedings of a family welfare conference held in accordance with regulation 7(3) for the purpose of research.

(4) Without prejudice to regulation 7(7) any person who attends part or all of the proceedings of a family welfare conference shall not disclose confidential information obtained by him or her while participating (or as a result of having participated) as a member of a family welfare conference, save where the disclosure of such information is necessary to safeguard the safety and welfare of a child and is only disclosed to the health board or a member of the Garda Síochána.

(5) In paragraph (4) confidential means that which is expressed to be confidential either as regards particular information or information of a particular class or description.

PROCEDURES OF A FAMILY WELFARE CONFERENCE

7. (1) The coordinator shall determine the procedures to be followed by the family welfare conference, subject to the provisions of the Act and these regulations and any general directions that may be made by the Minister.

(2) The coordinator shall, as far as is reasonably practicable, inform each person entitled to attend a conference, in writing, of the procedures and objectives of the conference.

(3) In the course of the proceedings of the conference the coordinator shall allocate such time, on such occasions, as he or she may think is reasonably necessary, to the child and his or her parents or guardian and, where appropriate, relatives to consider any aspect of the proceedings or any recommendations that the conference proposes to make and such time shall be known as the family's private time.

(4) Where a coordinator allocates time to the child and his or her family in accordance with paragraph (3) any other person may attend at the request of the child and his or her parents or guardian or relatives, subject to the agreement of the coordinator.

(5) Where a coordinator considers that it will not be possible to obtain unanimous agreement (disregarding any disagreement mentioned in section 8 (2) of the Act), with regard to recommendations, in accordance with the provisions of Section 8 of the Act, he or she shall inform the health board and the board shall make a determination in respect of the child.

(6) Where a person entitled or invited to attend a family welfare conference informs a coordinator that he or she is unable to attend, the coordinator shall, as far as is reasonably practicable, ascertain the views of that person, if any, in respect of the purpose of the family welfare conference and ensure that those views are made known to the family welfare conference.

(7) The coordinator shall ensure that a record is kept of any decisions or recommendations made by the coordinator or the family welfare conference including any recommendations made by any person or persons attending the family welfare conference and shall submit those records to the health board on completion of the family welfare conference.

(8) In the course of its proceedings the family welfare conference shall, as far as is reasonably practicable, have regard to the individual needs, religion, ethnic and cultural background of the child and his or her parents or guardian and the language mainly spoken by the child and his or her family or guardian.

(9) The provisions of paragraph (8) are subject to:

(a) the duty of the health board and the family welfare conference to promote the health, safety, development and welfare of the child

and

(b) the requirements for the proper functioning of the family welfare conference.

RECORDS

8. (1) A health board shall maintain a record in relation to each child in respect of whom a family welfare conference has been convened under section 7 of the Act and the records shall as far as is reasonably practicable include:

(a) a copy of the birth certificate of the child,

(b) the name(s) and address(es) of the child's parents or guardian and any guardian *ad litem*,

(c) the reason why a family welfare conference was convened in respect of the child,

(d) any medical, psychological, social and educational reports on the child, including background information on the child's family,

- (e) a record of any services offered to or availed of by the child and his or her family provided under the Act of 1991 as amended,

and

- (f) a record of any order made under sections 13, 17, 18, 19, 23B or 23C of the Act of 1991 as amended or any other order made by a court, in respect of the child.

(2) A health board shall maintain a record of each family welfare conference that is convened in accordance with section 7 of the Act and the record shall, as far as is reasonably practicable include:

- (a) the decisions or recommendations of the family welfare conference as recorded and submitted by the coordinator under regulation 7(7),
- (b) the persons who attended part or all of the proceedings of the family welfare conference and the capacity in which they attended the family welfare conference,

and

- (c) the persons who were requested by a coordinator to attend part or all of the proceedings and who did not attend part or all of the proceedings and the reasons therefore.

(3) Every record kept by a health board under this regulation shall be preserved in perpetuity

FUNCTIONS OF CHIEF EXECUTIVE OFFICER

9. The functions of a health board under these regulations shall be functions of the chief executive officer of the board or any person acting as deputy chief executive officer in accordance with section 13 of the Health Act 1970 as amended.

GENERAL DIRECTIONS BY THE MINISTER

10. The Minister may give general directions which are not inconsistent with these regulations or the provisions of Part 2 of the Act for the purposes of enabling these regulations to have full effect and for their due administration.

Given under my hand,

24th day of September 2004

BRIAN LENIHAN

BRIAN LENIHAN

Minister of State at the Department of Health and Children

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These regulations prescribe certain matters in relation to family welfare conferences under Part 2 of the Children Act 2001 for the purposes of enabling the provisions of Part 2 to have full effect and for its due administration.