

Children (Amendment) Bill 2024

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PART 1
Preliminary and General

Head 1 Short title and commencement

Provide that:

1. This Act may be cited as the Children (Amendment) Act 2024.

2. This Act comes into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Explanatory note:

Head 1 is a standard provision concerning the Short Title of the Bill and commencement arrangements.

Head 2 Interpretation

Provide that:

In this Act -

- “Principal Act” means the Children Act 2001.

- “Act of 1983” means the Criminal Justice (Community Service) Act, 1983.

- “Act of 1907” means the Probation of Offenders Act, 1907.

Explanatory note:

Head 2 is a standard provision which defines the “Principal Act” as the Children Act 2001 and defines other Acts in the Bill.

PART 2

Amendments to the Principal Act

Head 3 Amendment to section 52 of Principal Act (Restriction on criminal proceedings against children)

Provide that:

1. The following subsection is inserted after subsection 52(4):

“(5) Where a person is charged with an offence and at the time of the alleged offence the person was under 14 years of age, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.”

Explanatory note:

The 2001 Act currently provides for procedural entitlements to those who are under 18 at the date of trial. It is proposed that the date determining eligibility for certain entitlements should be the age of the person at the time of the offence.

Section 52(4) provides that where a child who is under 14 is charged with an offence, only proceedings related to remand of the child to custody or on bail can take place. No further proceedings can take place without the consent of the Director of Public Prosecutions. The purpose of this Head is to provide this protection to persons who are now over the age of 14 but were under 14 at the time of the alleged offence.

The Head will insert a new subsection 52(5) which provides that where a person is charged with an offence and at the time of the offence the person was under the age of 14, then no further proceeding can be taken without the consent of the Director of Public Prosecutions other than to remand the person on custody or on bail.

The need to treat juvenile offenders differently from adult offenders is well-recognised, and is an obligation under international law. It is accepted that the actions of a young person should be judged with reference to the level of maturity and capacity to comprehend the impact of offending behaviour at the time an offence is committed.

Head 4 Insertion of new section 70A in Principal Act (Part 7 Interpretation)

Provide that:

1. The following section is inserted in Part 7, before section 71, of the Principal Act:

Interpretation

70A. *In this Part, –*

“relevant person” means a person who at the time of the alleged offence was a child.

Explanatory note:

Part 7 of the Act provides for the Children Court. It is proposed to allow the Children Court to hear cases of those who commit an alleged offence when they were under 18 but have turned 18 before or during proceedings.

The intention of this section is to create, for the purposes of Part 7 of the Act, a new category of legal person who commit an alleged offence when they were under 18 (and therefore a child) but have turned 18 before or during proceedings. This provision inserts an interpretation section in Part 7 and defines a ‘relevant person’ as a person who at the time of the alleged offence was a child. ‘Relevant person’ will be used throughout the Part.

The United Nations Committee on the Rights of the Child (the “UN Committee”), has stated that “child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process .” This reflects the accepted standard that young people are, by virtue of their inherent psychological and neurobiological immaturity, not as responsible for their behaviour as adults and therefore, are less morally culpable.

This amendment to the 2001 Act was recommended in the Youth Justice Strategy 2021 – 2027 and several subsequent Heads follow from this.

Head 5 Amendment to section 71 of the Principal Act

Provide that:

1. Delete subsection 71 and substitute for the following:

“(1) (a) The District Court, when hearing charges against children or when hearing applications for orders relating to a child at which the attendance of the child is required or when exercising any other jurisdiction conferred on the Children Court by or under this or any other Act or by Part III, IV [...] or V of the Act of 1991, shall be known as the Children Court and is referred to as “the Court” in this Part and [Parts 8 and 12A].

(b) The District Court, when hearing charges against relevant persons or when hearing applications for orders relating to a relevant person at which the attendance of the relevant person is required or when exercising any other jurisdiction conferred on the Children Court by or under this or any other Act, shall be known as the Children Court.

(c) When exercising any such jurisdiction the Court shall sit in a different building or room from that in which sittings of any other court are held or on different days or at different times from those on or at which sittings of any such other court are held.

(2) So far as practicable sittings of the Court shall be so arranged that persons attending are not brought into contact with persons in attendance at a sitting of any other court.

(3) Where—

(a) in the course of any proceedings before the Court it appears to it that the person charged or to whom the proceedings relate is 18 years of age or upwards, or

(b) in the course of any proceedings before the District Court sitting otherwise than as the Children Court it appears to the District Court that the person charged or to whom the proceedings relate is under the age of 18 years,

nothing in this section shall be construed as preventing the Court or the District Court, as the case may be, if it thinks it undesirable to adjourn the case, from proceeding to hear and determine it.

(4) The Court shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on it by or under this or any other enactment.

(5) Any reference to a juvenile court in any enactment in force immediately before the commencement of this section shall be construed as a reference to the Court.

Explanatory note:

Section 71 of the 2001 Act provides that the District Court, when handling cases involving children, will be known as the Children Court. The purpose of this Head is to provide that when the District Court is hearing cases involving ‘relevant persons’ (defined as a person who at the time of the alleged offence was a child), it will be known as the Children Court.

Head 6 Amendment to section 74 of the Principal Act

Provide that:

1. Delete subsection 74(1) and substitute for the following:

(1) Where—

(a) a child or a relevant person is charged with a summary offence and the charge is made jointly against the child or the relevant person and one or more adults,

(b) a child or a relevant person is charged with a summary offence and one or more adults are charged at the same time with aiding, abetting, counselling or procuring the commission of that offence,

(c) a child or a relevant person is charged with aiding, abetting, counselling or procuring the commission of a summary offence with which one or more adults are charged at the same time, or

(d) a child or a relevant person is charged with a summary offence arising out of circumstances which are the same as or connected with those giving rise to an offence with which one or more adults are charged at the same time,

the charge or charges against the child or the relevant person and the adult or adults shall be heard by the Court unless the Court considers that the charge or charges should be heard by the District Court sitting otherwise than as the Children Court.

Explanatory note:

Section 74 of the 2001 Act provides that the Children Court can hear cases where children are charged with summary offences jointly with adults. The purpose of this Head is to allow the Children Court to hear cases where children and ‘relevant persons’ have been jointly charged with adults for a summary offence.

If the Children Court is satisfied of the guilt of the adult, the Children Court can impose a sentence that would have been imposed in the District Court. The child or ‘relevant person’ (defined as a person who at the time of the alleged offence was a child) will be sentenced by the Children Court.

Head 7 Amendment to section 75 of the Principal Act

Provide that:

1. Delete section 75 and substitute for the following:

“75.—(1) Subject to subsection (3), the Court may deal summarily with a child or a relevant person charged with any indictable offence, other than an offence which is required to be tried by the Central Criminal Court or manslaughter, unless the Court is of opinion that the offence does not constitute a minor offence fit to be tried summarily or, where the child or the relevant person wishes to plead guilty, to be dealt with summarily

(2) In deciding whether to try or deal with a child or a relevant person summarily for an indictable offence, the Court shall also take account of—

(a) the age and level of maturity of the child accused concerned, and

(b) any other facts that it considers relevant.

(3) The Court shall not deal summarily with an indictable offence where the child or the relevant person, on being informed by the Court of his or her right to be tried by a jury, does not consent to the case being so dealt with.

(4) In deciding whether or not to consent under subsection (3) a child may obtain—

(a) the assistance of his or her parent or guardian or, if the child is married to an adult, his or her spouse, or

(b) where the parent or guardian or adult spouse of the child does not for any reason attend the relevant proceedings, the assistance of any adult relative of the child or other adult who is accompanying the child at the proceedings.

(5) If at any time the Court ascertains that a child or a relevant person charged with an offence which is required to be tried by the Central Criminal Court or with manslaughter wishes to plead guilty and the Court is satisfied that he or she understands the nature of the offence and the facts alleged, the Court may, if the child or the relevant person signs a plea of guilty, send him or her forward for sentence with that plea to a court to which, but for that plea, the child or the relevant person would have been sent forward for trial.

(6) A child or a relevant person shall not be sent forward for sentence under subsection (5) without the consent of the Director of Public Prosecutions or (in relation to offences for which proceedings may not be instituted or continued except by, or on behalf or with the consent of, the Attorney General) the Attorney General’s consent.

(7) (a) Where a child or a relevant person is sent forward for sentence under this section, he or she may withdraw the written plea and plead not guilty to the charge.

(b) In that event—

(i) the court shall enter a plea of not guilty, which shall have the same effect in all respects as if the child or a relevant person had been sent forward for trial to that court on that charge in accordance with Part 1A (inserted by the Criminal Justice Act, 1999) of the Act of 1967,

(ii) the prosecutor shall cause to be served on the child or a relevant person any documents that under section 4B or 4C (as so inserted) of that Act are required to be served and have not already been served, and

(iii) the period referred to in subsection (1) of the said section 4B shall run from the date on which the not guilty plea is entered.”

Explanatory note:

Section 75 provides the Children Court with jurisdiction to deal summarily with children charged with indictable offences other than offences which are required to be tried in the Central Criminal Court.

The purpose of this Head is to extend this jurisdiction to ‘relevant persons’, meaning that the Children Court can deal summarily with persons who committed an indictable offence when they were a child. The Children Court will also be able to accept guilty pleas from ‘relevant persons’ for indictable offences which are required to be tried in the Central Criminal Court and will send them forward for sentencing in the Central Criminal Court. This cannot be done without the consent of the Director of Public Prosecutions or the Attorney General.

This approach better reflects the special considerations which apply in respect of criminal wrongdoing by juvenile offenders who lack the intellectual, social and emotional understanding of adults.

Head 8 Amendment to section 76 of the Principal Act

Provide that:

1. Delete subsection 76 and substitute for the following:

“76.—Where—

(a) a child or a relevant person is charged with an indictable offence and the charge is made jointly against the child or the relevant person and one or more adults,

(b) a child or a relevant person is charged with an indictable offence and one or more adults are charged at the same time with aiding, abetting, counselling or procuring the commission of that offence,

(c) a child or a relevant person is charged with aiding, abetting, counselling or procuring the commission of an indictable offence with which one or more adults are charged at the same time, or

(d) a child or a relevant person is charged with an indictable offence arising out of circumstances which are the same as or connected with those giving rise to an offence with which one or more adults are charged at the same time,

the Children Court shall deal with the child or the relevant person in accordance with section 75 and the adult or adults in accordance with the enactments governing proceedings in the District Court against a person charged with an indictable offence.”

Explanatory note:

Section 76 provides that the Children Court can hear cases where children are charged with indictable offences jointly with adults. The purpose of this head is to allow the Children Court to hear cases where children and ‘relevant persons’ have been jointly charged with adults for an indictable offence.

The Children Court will deal with children and relevant persons in accordance with section 75 of the 2001 and it will deal with adults in accordance with the enactments governing proceedings in the District Court for persons charged with indictable offences.

The need to treat juvenile offenders differently from adult offenders is well-recognised, and is an obligation under international law. It is accepted that the actions of a young person should be judged with reference to the level of maturity and capacity to comprehend the impact of offending behaviour at the time an offence is committed.

Head 9 Amendment to section 88 of the Principal Act

Provide that:

The following subsection is inserted after subsection 88(2):

“88(2A). In circumstances where the Court has the power to remand a child on bail, the Court shall not remand a child to a remand centre unless it is satisfied that remand centre can accommodate the child.

Explanatory note:

The purpose of this provision to ensure that the Children Court checks that there is a place available for the child in a remand centre before ordering the remand of the child. This excludes circumstances where serious offences are alleged under section 29 of the Criminal Procedure Act 1967 as the Children Court does not have the power to grant bail for these offences.

This provision aims to avoid situations where if there is no place available in Oberstown, a child might be remanded in custody at a Garda station. This would be incompatible with UN principles of children’s rights and juvenile justice which require children to be held in separate facilities from adults, which include distinct, child-centred staff, personnel, policies and practices.

Head 10 Amendment to section 93 of the Principal Act

Provide that:

1. Delete subsection 93 and substitute for the following:

“93.—(1) In relation to proceedings before any court concerning a child or a relevant person—

(a) no report which reveals the name, address or school of any child or relevant person concerned in the proceedings or includes any particulars likely to lead to the identification of any such child or relevant person shall be published or included in a broadcast or any other form of communication, and

(b) no still or moving picture of or including any such child or relevant person or which is likely to lead to his or her identification shall be so published or included.

(2) A court may dispense, in whole or in part, with the requirements of this section in relation to a child or a relevant person if satisfied that to do so is necessary—

(a) where the child or relevant person is charged with an offence—

(i) to avoid injustice to the child or relevant person,

(ii) where the child or relevant person is unlawfully at large, for the purpose of apprehending the child or relevant person, or

(iii) in the public interest,

or

(b) where the child is subject to an order under section 257D—

(i) to avoid injustice to the child, or

(ii) to ensure that the order is complied with.

(3) Where a court dispenses with any requirements of this section, it shall explain in open court the reasons for its decision.

(4) Subsections (3) to (6) of section 51 of this Act shall apply, with the necessary modifications, to matters published or included in a broadcast or other form of communication in contravention of subsection (1).

(5) This section shall apply in relation to proceedings on appeal from a court, including proceedings by way of case stated.

(6) This section shall not affect the provisions of any enactment concerning the anonymity of an accused or the law relating to contempt of court.

(7) In this section ‘relevant person’ means a person who at the time of the alleged offence was a child.”

Explanatory note:

Section 93 provides anonymity for children during proceedings. The High Court and the Court of Appeal have held that anonymity only applies when a person is under 18. If the person turns 18 during proceedings or other proceeding related to the matter, for example, an appeal, that person loses their anonymity.

The purpose of this amendment is to provide anonymity to a 'relevant person', meaning; a person who at the time of the alleged offence was a child.

It is accepted that the actions of a young person should be judged with reference to the level of maturity and capacity to comprehend the impact of offending behaviour at the time an offence is committed. Among the reasons for treating juveniles differently is the juvenile's capacity for rehabilitation as a young person. Anonymity is important to afford the young person the opportunity to become a productive member of society.

Head 11 Amendment to section 95 of the Principal Act (Interpretation (Part 9))

Provide that:

Section 95 of the Children Act 2001 is amended by the deletion of the definition of “parental supervision order”.

Explanatory note:

This Head provides for an amendment to section 95 of the Principal Act to delete the definition of “parental supervision order”. This deletion is a consequence of the proposed repeal of Sections 111 to 114 of the 2001 Act, which provide for parental supervisions orders.

Consultation with stakeholders revealed that these orders are ineffective in practice and should be abolished. Internationally, it is generally not accepted that parents of children in conflict with the law should be criminalised, and judges are therefore not prepared to use such orders. These types of orders are unlikely to contribute to parents becoming active partners in the social reintegration of their child.

One of the main principles of the Children Act 2001 is also that it is desirable to preserve and strengthen the relationship between children and their parents and family members. The use of such orders is therefore undesirable to prevent any possible development of animus or resentment between child and parent.

Head 12 Insertion of section 116(2A) in Principal Act

Provide that:

The following subsection is inserted after section 116(2):

“116(2A). Where subsection 138(2) applies-

- a) the court will specify the conditions which will continue after the child has attained the age of 18.*
- b) Any conditions which a community sanction imposed on a child was made subject, will continue to apply, beyond the person’s 18th birthday, with any necessary modification, as if the references to ‘child’ in that section were substituted references to ‘person’.*
- c) Where subsection 138(2) applies, the Court, on application of a probation officer, may vary the order if it appears to it that it would be in the interests of justice to do so, having regard to the circumstances which have arisen since the order was made.*
- d) Where an order is varied under this subhead, the Court shall cause certified copies of the order so varied to be sent to -*
 - i) the person to whom the order applies*
 - ii) the probation officer who is supervising the person.”*

Explanatory Note:

The purpose of this Head is to provide for situations in which the court is applying a community sanction that it will remain valid when the child attains the age of 18 (probation order, intensive supervision order or probation (training and activities) order), in accordance with the new section 138(2).

The purpose of this is to ensure that where a child will turn 18 years of age during the duration of the order, the court has the option of imposing a community sanction under the 2001 Act which will remain extant and can be enforced after the child attains the age of 18.

Head 13 Amendment of section 124 of the Principal Act

Provide that:

1. The following subsection is inserted after subsection 124(6)(d):

“(e) where subsection 124(10) applies, the conditions which will continue to apply where the child will attain the age of 18 during the duration of the order.”

2. The following subsection is inserted after section 124(9)

“(10) Where an order under this section has been made, and, the person in respect of whom the order is made attains the age of 18 –

(a) Any conditions which a community sanction imposed on a child was made subject, will continue to apply, beyond the person’s 18th birthday, with any necessary modification, as if the references to ‘child’ in that section were substituted references to ‘person’.

(b) Where this subsection applies, the Court, on application of a probation officer, may vary the order if it appears to it that it would be in the interests of justice to do so, having regard to the circumstances which have arisen since the order was made.

(c) Where an order is varied under this subhead, the Court shall cause certified copies of the order so varied to be sent to -

(i) the person to whom the order applies

(ii) the probation officer who is supervising the person.

Explanatory Note:

Some of the sanctions provided for in the Children Act are unenforceable once a child turns 18 years old. The purpose of this Head is to provide for situations where the court is applying a probation (training and activities programme) order that will remain valid when the child attains the age of 18.

The Head also provides that the court can vary this order on application of a Probation Officer.

Head 14 Amendment of section 125 of the Principal Act

Provide that:

1. Delete subsection 125(3)(b) and substitute for the following:

“(b) to reside at a residence agreed by the probation officer during the period of intensive supervision, and”

2. Delete subsections 125(6) and subsection 125(7) and substitute for the following:

“(6) Subject to subsection (7), the period of probation intensive supervision shall be for such period as is specified in the order, being not less than 6 months and not exceeding—

- (i) on summary conviction, 18 months subject to review after 9 months,*
- (ii) on conviction on indictment, 2 years subject to review after 12 months,*

and shall commence on a date to be determined by the probation officer supervising the child

(7) On a review of a period of intensive supervision in accordance with subsection (6), the court, having heard the child, his or her parents or guardian and the probation officer supervising the child, may—

- (a) reduce the period, or*
- (b) affirm it.”*

3. The insertion of the following after 125(9)(e):

“(f) Any conditions which a community sanction imposed on a child was made subject, will continue to apply, beyond the person’s 18th birthday, with any necessary modification, as if the references to ‘child’ in that section were substituted references to ‘person’.

(g) the court will specify the conditions which will continue after the child has attained the age of 18.”

4. The insertion of the following subsection after subsection 125(12):

“(13) Where an order under this section has been made, and, the person in respect of whom the order is made attains the age of 18 –

(a) the order remains extant beyond the person’s 18th birthday,

(b) In relation to subsection (7), substitute “the person in relation to whom the order is in force” for “the child, his or her parents or guardian”

(c) The Court, on application of a probation officer, may vary the order if it appears to it that it would be in the interests of justice to do so, having regard to the circumstances which have arisen since the order was made.”

Explanatory note:

The purpose of this Head ensures that Probation (intensive supervision) orders remains enforceable after a child turns 18 years old.

Subhead 1: Section 125(3) specifies the conditions of the Intensive Supervision Order. One of which requires the child “(b) to reside at a specified residence during the period of intensive supervision”. The Probation Service has highlighted difficulties with this provision in light of the proposal to extend the period of intensive supervision; as it may not be possible for the child to remain at the specified residence for the duration of the order due to their individual circumstances. The provision will amend the subsection to provide some flexibility, i.e. the child will reside at a residence as agreed by the probation officer.

Subhead 2: The purpose of this provision is to allow for a longer period of intensive supervision under section 125. Currently, the maximum period of intensive supervision is 180 days with a review after 60 days where the period of supervision exceeds 90 days. The proposed Head will provide that the maximum period of intensive supervision will be 18 months, in the case of summary conviction, with a review after 9 months, or 2 years on conviction on indictment, with a review after 12 months. A minimum duration of 6 months would also apply.

Subhead 3: This will allow an intensive supervision order to apply in relation to older children who will turn 18 during the duration of the supervision period. Currently, community sanctions expire 6 months after the child attains 18.

Subhead 4: This will provide for the variation of such an order on application of a probation officer. This will allow for greater use of the order as the court is satisfied that the supervision aspect of an order remains extant after a child’s 18th birthday.

Head 15 Insertion of new section 125A in the Principal Act (Non-compliance with a probation (intensive supervision) order)

Provide that:

The insertion of the following section after section 125:

“125A. (1) This subhead will apply where a child or person has failed to comply with an order under section 125 or any condition of such an order.

(2) Where an order under section 125 is in force and it appears to the court which made the order, on application by the probation officer who is supervising the child concerned, that the child has failed, without reasonable cause, to comply with the order or any condition to which it is subject, the court may—

- (a) direct the child to comply with the order or any such condition in so far as it has not been complied with,*
- (b) revoke the order and substitute another community sanction, or*
- (c) revoke the order and deal with the case in any other way in which it could have been dealt with before the order was made.*

(3) The matters to be taken into account by the court in arriving at a decision pursuant to subsection (1) shall include the extent to which, and the period during which, the child has complied with the order in question and any conditions to which it is subject.

(4) Where the court proposes to exercise its powers under this section, it shall summon the child to appear before it and, if the child does not do so, may issue a warrant for his or her arrest.

(5) Where an order under section 125 is in place and, the person in respect of whom the order is made attains the age of 18, and it appears to the court which made the order, on application by the probation officer who is supervising the person concerned, that the person has failed, without reasonable cause, to comply with the order or any condition to which it is subject, the court may –

- (a) direct the person to comply with the order or any such condition in so far as it has not been complied with, or*
- (b) revoke the order and substitute another community sanction.*

(6) The matters to be taken into account by the court, in arriving at a decision pursuant to subsection (5) shall include the extent to which, and the period during which, the person complied with the order in question and any conditions to which it is subject.

(7) Where the court proposes to exercise its powers under subsection (5), it shall summon the person to appear before it and, if the person does not do so, it may issue a warrant for his or her arrest.”

Explanatory note:

Section 125A will provide for options in relation to non-compliance with an intensive supervision order.

Currently, failure to observe conditions of probation is dealt with under section 128 of the Act which provides, where a person who fails to observe a condition of probation is a child, the court may, in addition to powers under section 6 of the Probation Act 1907, direct the child to comply with the condition or revoke the order and substitute another community sanction.

The new section 125A will deal specifically with non-compliance with an intensive supervision order. The same two options as provided for under section 128 will apply, together with a third option to revoke the order and deal with it in any other way in which it could have been dealt with before the order was made.

This new provision will also deal with non-compliance where a person to whom the order applies has turned 18. The options available to the court will be to direct the person to comply with the order or revoke the order and substitute an appropriate community sanction.

Head 16 Insertion of new subsection 128(3) in the Principal Act

Provide that:

The insertion of the following subsection after 128(2):

“(3) If a person who has failed to observe any condition of a recognisance under section 6 of the Act of 1907 was a child when the recognisance was entered into, the court may, in addition to its powers under that section –

- (a) direct that the person comply with the condition in so far as it has not been complied with, or*
- (b) revoke the order and substitute another community sanction.*

Explanatory Note:

The purpose of this Head is to address non-compliance of community sanctions which are classified as probation orders under the 2001 Act. Specifically, it will address probation orders under section 2 of the Probation of Offenders Act 1907 Act and probation (training and activities) orders under section 124 of the 2001 Act.

The new subsection will deal with non-compliance of probation orders and probation (training and activities) orders where a person has turned 18 during the duration of the order but acknowledging the fact that the recognisance was entered into when the person was still a child under the Act.

The court will have the power to direct the person comply with the order or substitute another community sanction.

Non-compliance with intensive supervision orders is dealt with separately under new subhead 125A.

Head 17 Amendment to section 138 of the Principal Act

Provide that:

1. Delete section 138 and substitute for the following:

“138 (1) A community sanction, other than orders referred to under subsection (2), shall, unless it sooner expires or the context otherwise requires, expire when the person in respect of whom the order was made attains the age of 18 years.

(2) Where a court has made an order for a community sanction under section 3 of the Act of 1983, section 2 of the Act of 1907, section 124 of the 2001 Act or section 125 of the 2001 Act, the person in respect of whom the order is made attains the age of 18 during the duration of the order, the order shall remain extant beyond the person’s 18th birthday for the duration therein specified.”

Explanatory Note:

The purpose of this Head is to provide that specified community sanctions to which a child is subject will remain extant, and can be enforced, where a child turns 18 during the duration of the order. Currently, section 138 specifies that all community sanctions expire once the person attains the age of 18 years and six months.

However, where a person has turned 18 during the duration of the order, all of the existing provisions relating to community sanctions refer to “child” and therefore present difficulties with enforcement. While some of the community sanctions are amenable to extension beyond age 18, others are clearly designed to be suitable to children and not to adults.

Under subhead 138(1), probation orders, intensive supervision orders and probation (training and activities) orders will remain extant where the child turns 18 during the duration of the order.

Under subhead 183(2), the following community sanctions will expire at 18: day centre order (section 118); probation (residential supervision) order (section 126); suitable person (care and supervision) order (section 129); mentor (family support) order (section 131); restriction on movement order (section 133); dual order (section 137).

Head 18 Amendment of section 144 of the Principal Act

Provide that:

1. In subsection (1) delete the words “or for any other reason”.
2. Delete subsections (5), (6), (7), (8) and (9).
3. Delete subsection (10) and substitute for the following:

“(10)(1)Where—

(a) the Director of a children detention school applies to the court pursuant to an order under subsection (4), and

(b) the court proposes to make a children detention order,

it may issue a summons requiring the child to appear before it and, if the child does not appear in answer to the summons, may issue a warrant for his or her arrest.

(2) “Where—

(a) the court proposes to make an order under subsection (10)(1)(b) and,

(b) the person’s 18th birthday has occurred,

(c) the court may substitute the period of detention in the order with a period of imprisonment, for the same or any shorter period,

the court may issue a summons requiring the person to appear before if and, if the person does not appear in answer to the summons, may issue a warrant for his or her arrest.

(3) The Director of a children detention school shall apply to the court pursuant to the order under subsection (4) no later than 3 months from the date of the adjourned hearing.”

Explanatory Note:

This Head will provide for the deferment of a detention order only in circumstances where no place is available in a Children Detention Centre. It will also address a lacuna in the law whereby if the child was over 18 at the deferred hearing, the court would now be able to impose a sentence of imprisonment.

The option to defer ‘for any other reason’ will be removed and will be replaced by a new sanction (Head 19), namely a Deferred Sentence Supervision Order.

Head 19 Insertion of section 144A in Principal Act

Provide that:

The insertion of the following section after section 144:

“144A. (1) Without prejudice to section 145, where a court—

- (a) has considered a probation officer's report or any other report made pursuant to this Part,*
- (b) has heard the evidence of any person whose attendance it may have requested, including any person who made such a report,*
- (c) has given the parent or guardian of the child concerned (or, if the child is married, his or her spouse), if present in court for the proceedings, or, if not so present, an adult relative of the child or other adult accompanying the child, an opportunity to give evidence, and*
- (d) is of opinion that the appropriate way of dealing with the child would be to make a children detention order,*

it may in place of a detention order, having regard to section 96, make a deferred sentence supervision order, in accordance with the provisions of this section.

(2)(a) The court shall make a deferred sentence supervision order only if the court is satisfied that, having regard to the nature of the offence and the age, level of understanding, character and circumstances of the child concerned, it would be in the interests of justice to do so.

(b) The court shall not make a deferred sentence supervision order unless the child gives an undertaking to comply with the conditions that may be specified in the deferred sentence supervision order

(3) Where the court makes a deferred sentence supervision order, the court shall adjourn the hearing and order that the child concerned be placed under the supervision of a probation officer.

(4) Before making a deferred sentence supervision order, the court shall state in open court—

- (a) the effect of the order,*
- (b) the date of the resumed court hearing, and*
- (c) that the court will take into account at that hearing the information in the probation officer's report concerning the child's conduct in the meantime and the other matters mentioned in subsection (7)(b).*

(5) The court shall also explain to the child in open court in language appropriate to the level of understanding of the child—

- (a) why a deferred sentence supervision order is being made and for what period,*
- (b) any of the conditions referred to in section 117 which the court suggests should be complied with by the child during that period,*
- (c) the expectation of the court that the child will be of good conduct during that period and the possible consequences for the child of his or her failure to comply with any such conditions, and*
- (d) the expectation of the court that the child's parents or guardian, where appropriate, will help and encourage the child to comply with any such conditions and not commit further offences.*

(6) (a) The probation officer under whose supervision the child has been placed shall prepare a report on the child for consideration by the court at the resumed hearing.

(b) The report shall contain information on the child's conduct after the finding of guilt, including the extent to which the child has complied with any conditions suggested by the court, on any change in the child's circumstances and on any reparation by the child to the victim, together with any other information which the officer considers to be relevant.

(c) The officer shall make all reasonable endeavours to ensure that the report is lodged with the clerk or other proper officer of the court at least 4 working days before the date of the resumed hearing.

(7) Where an order under section 144A is in place and it appears to the court which made the order, on application by the probation officer who is supervising the child concerned, that the child has failed, without reasonable cause, to comply with the order or any condition to which it is subject, the court may –

(a) direct the person to comply with the order or any such condition in so far as it has not been complied with, or

(b) revoke the order and impose a detention order, or

(c) revoke the order and impose a detention and supervision order.

(8) The resumed court hearing shall take place not later than one year from the date of the adjourned hearing and may take place notwithstanding that the child has attained the age of 18 years in the meantime.

(9) At the resumed hearing the court shall consider the report prepared by the probation officer and, if the court thinks it necessary, hear evidence from the officer and shall by order –

(a) discharge the child forthwith,

(b) on application to it by the Probation Service, the court may, only once, if good reason, extend the duration of the supervision period for a maximum period of 6 months,

(c) impose a community sanction appropriate to the age of the child concerned,

(d) impose a detention and supervision order, or

(e) impose a detention order

and shall explain to the child in open court the reasons for its decision in language that the child understands.

(10) Where a court makes a deferred sentence supervision order in relation to a child

(1) And the person's 18th birthday will occur before the order expires (which in this section shall be known as the ('relevant date'), the court will specify which of the conditions, under subsection (6), which will continue to apply, with any necessary modifications, after the relevant date.

(2) Where the relevant date occurs before the deferred sentence supervision order has expired, section 117 will continue to apply with any necessary modifications, as if for references to 'child' in that section were substituted references to 'person'.

- (3) *Where the relevant date has occurred before the resumed hearing, the court shall, in determining the sentence to be imposed on the person, have regard to the extent to which the person has complied with the conditions of the deferred sentence supervision order.*
- (4) *Where the relevant date has occurred before the resumed hearing, the court shall consider the report prepared by the probation officer and, hear evidence from the officer and shall, having regard to the extent to which the person has complied with conditions, by order—*
- (a) discharge the person forthwith,*
 - (b) impose a community sanction, or*
 - (c) impose a sentence of imprisonment and may suspend the whole or any portion of the sentence so imposed.”*

Explanatory Note:

The Supreme Court has held that there is no power for judges to suspend sentences for children.

Over the course of the consultation process, it was the view of stakeholders that suspending sentences for children would not be appropriate as they would not be given the opportunity to deal with their offending behaviour.

The Law Reform Commission has recommended providing for Deferred Sentence Supervision Orders. A Deferred Sentence Supervision Order will allow for sentencing to be deferred while the child is under the supervision of the Probation Service until a deferment hearing, when the sentence will be determined. The sentencing hearing can be deferred for up to a year. This allows the court to take into consideration how the child has complied with supervision before deciding on the sentence, which gives the child an opportunity to deal with their offending behaviour.

A deferred sentence supervision order will provide that the court has the option to discharge the child forthwith where he or she has complied with the conditions of the deferred sentence supervision order.

This Head also provides options open to the court where a deferment hearing takes place after the subject has turned 18, including providing for a sentence of imprisonment. Such a sentence could be fully or partly suspended, given that the person will have turned 18.

Head 20 Amendment of Section 146 of Principal Act

Provide that:

Delete section (146) and substitute for the following:

“(1) A court which has deferred the making of a children detention order in relation to a child pursuant to section 144—

(a) may make the order before the expiration of the period of deferment if during that period the child is found guilty of any offence, and

(b) where it proposes to make such an order, whether on the date originally specified by the court or by virtue of paragraph (a) before that date, may issue a summons requiring the child to appear before it and, if the child does not do so, may issue a warrant for his or her arrest.

(2) A Court which has made a deferred sentence supervision order in relation to a child pursuant to Section 144A

—

(a) may make the order before the expiration of the specified period if during that period the child is found guilty of any offence, and

(b) where it proposes to make such an order, whether on the date originally specified by the court or by virtue of paragraph (a) before that date, may issue a summons requiring the child to appear before it and, if the child does not do so, may issue a warrant for his or her arrest.

(3) A Court which has made a deferred sentence order in relation to a child pursuant to Section 144A, and the person’s 18th birthday has occurred—

(a) may make the order before the expiration of the specified period if during that period the person is found guilty of any offence, and

(b) where it proposes to make such an order, whether on the date originally specified by the court or by virtue of paragraph (a) before that date, may issue a summons requiring the person to appear before it and, if the person does not do so, may issue a warrant for his or her arrest.”

Explanatory Note:

The purpose of this proposal is that the court has a suitable range of options for sentencing children. Section 146 provides for the finding of guilt during deferment. The provision allows the court to make an order if the child has been found guilty of any offence during the period of deferment of detention. The court can also make an order if the child has been found guilty of any offence during a deferred sentence supervision order (new section 144A), it also provides for orders to be made if the person’s 18th birthday occurred during the deferred sentence supervision order.

Head 21 Amendment of section 151 of the Principal Act

Provide that:

Delete section 151 and substitute for the following:

“ (1) Where a court is satisfied that detention is the only suitable way of dealing with a child, in determining the sentence to be imposed, it may, instead of making a children detention order, make a detention and supervision order.

(2) In considering that matter, the court shall have regard to –

(a) the principles set out in section 96, section 143, and section 149

(b) the need for a period of supervision, after the child has been released into the community

(c) the need to prevent the commission of further offences

(d) the need to continue to rehabilitate the child, having regard to section 158 and the principles therein

(3) For the purposes of this section, the court may, if it thinks necessary to do so, receive evidence or submissions from any persons concerned

(4) Subject to section 155, where applicable, a detention and supervision order shall provide for a period of detention in a children detention school followed by supervision in the community.

(5) A detention and supervision order, in so far as it relates to detention, shall be deemed for all purposes to be a children detention order and will be subject to section 155 where applicable.

(6) The court shall determine, having regard to paragraphs a-d of subsection (2), the period to be spent in detention, subject to section 155 where applicable, and the period to be spent under supervision.

(7) During the supervision period, the child shall be under the supervision of the probation officer and will be required to comply with such conditions as are specified in the sentence imposed by the court.

(8) A detention and supervision order may specify such conditions provided for in section 117 as the court considers necessary for helping to ensure that the child concerned is of good behaviour and for reducing the likelihood of the child's committing any further offences.

(9) Conditions shall include a condition requiring the child to attend all appointments with the probation officer whose supervision he or she is under and to comply with the lawful instructions of that officer.

(10) Where a court has imposed a detention and supervision order, the court may, on the application of a probation officer not more than one month before the date of the child's intended release from detention, or any time during the supervision period, amend any condition referred to in the original order or include one or more further conditions as provided for in this section.

(11) Where a court makes a detention and supervision order in relation to a child, and the person's 18th birthday will occur before the supervision portion of the order commences, (which in this section shall be known as the 'relevant date'),

- (a) The order remains extant beyond the relevant date, and*
- (b) the court will specify which of the conditions, specified under subsection 8, will continue to apply, with any necessary modifications, after the relevant date.*
- (c) conditions specified under this section, as provided for in section 117, will continue to apply with any necessary modifications, as if for references to 'child' in that section were substituted references to 'person'.*

(12)(1) Where the supervision portion of an order under this section is in force, and it appears to the court which made the order, on application by the probation officer who is supervising the child concerned, that the child has failed, without reasonable cause, to comply with the order or any condition to which it is subject, the court may-

- (a) Direct that the child comply with the order or any such conditions in so far as it has not been complied with,*
 - (b) Vary a condition specified in the order or impose further conditions provided for in section 117,*
 - (c) the court which made the detention and supervision order may, only once, if good reason, extend the duration of the supervision period for a maximum period of 12 months.*
- (2) Notwithstanding (a) and (b) of subsection 1, where there is a serious or persistent failure to comply with conditions, without reasonable excuse, the child shall be found guilty of an offence and shall be liable on summary conviction to a period of detention not exceeding 12 months.*
- (3) Subject to subsection (4), the conviction of a child under this section shall not prevent the supervision period conditions from continuing to have effect.*
- (4) If an order of detention is imposed on a child under this section, that order of detention shall, for the period the child spends in a children's detention centre on foot of that order, operate to suspend the supervision period conditions and the period for which those conditions are so suspended shall not be reckoned in calculating the date on which the supervision period expires.*
- (5) The matters to be taken into account by the court in arriving at a decision pursuant (1) or (2) shall include the extent to which, and the period during which, the child has complied with the order in question and any conditions to which it is subject.*
- (6) Where the court proposes to exercise its powers under subsection (1) or (2), it shall summon the child to appear before it and, if the child does not do so, may issue a warrant for his or her arrest.*

(13)(1) Where an order under this section is in force, and the person's 18th birthday will occur before the order expires, and it appears to the court which made the order, on application by the probation officer who is supervising the person concerned, that the person has failed, without reasonable cause, to comply with the order or any condition to which it is subject, the court may-

- (a) Direct that the person comply with the order or any such conditions in so far as it has not been complied with,*
- (b) Vary a condition specified in the order*
- (c) On application to it by the probation officer, the court which made the detention and supervision order may, only once, if good reason, extend the duration of the supervision period for a maximum period of 12 months.*

(2) Notwithstanding (a) and (b), where there is a serious or persistent failure to comply with conditions, without reasonable excuse, the person shall be found guilty of an offence and shall be liable on summary conviction to a period of imprisonment not exceeding 12 months.

(3) Subject to subsection (4), the conviction of a person under this section shall not prevent the supervision period conditions from continuing to have effect.

(4) If an order of imprisonment is imposed on a person under this section, that order of imprisonment shall, for the period the person spends in imprisonment on foot of that order, operate to suspend the supervision period conditions and the period for which those conditions are so suspended shall not be reckoned in calculating the date on which the supervision period expires.

(5) The matters to be taken into account by the court in arriving at a decision pursuant to subsection (1) or (2) shall include the extent to which, and the period during which, the person has complied with the order in question and any conditions to which it is subject.

(6) Where the court proposes to exercise its powers under subsection (1) or (2), it shall summon the person to appear before it and, if the child does not do so, may issue a warrant for his or her arrest."

Explanatory Note:

The primary intention of this Head is to ensure that detention and supervision orders are available to the courts as a sentencing option for children who will turn 18 during the duration of the order. Legal advice has indicated that the supervision portion of a detention and supervision order is unenforceable once a child has turned 18.

The Head will also remove the requirement that half of the period is spent in detention and half under supervision in the community. This will provide the court with more flexibility to structure the order as the court sees fit in terms of the split between detention and supervision.

The Head will include the power of court, on the application of a probation officer not more than one month before the date of the child/young person's release from detention/prison, or any time during the supervision period, to amend any condition of the supervision portion. It will also allow for the Court to consider the situation of a young person who has reached the age of 18 with regard to conditions attaching and to deal with non-compliance with the supervision portion of the order, including where a person has turned 18, reflecting the fact that this type of order will often relate to serious crime committed by children.

Head 22 Insertion of new Part 9A in the Principal Act

Provide that:

The Act of 2001 is amended by the insertion of the following Part after section 156B:

“Part 9A

POWERS OF COURTS IN RELATION TO RELEVANT PERSONS

Interpretation (Part 156C)

156C - In this Part “relevant person” means a person who at the time of the alleged offence was a child.”

“compensation order” has the meaning assigned to it by section 6 of the Criminal Justice Act, 1993;

“probation order” has the meaning assigned to it by section 2 of the Act of 1907.”

Explanatory note:

The purpose of this Head is to insert a new Part 9A which sets out the powers of the courts in relation to a person who committed an offence when they were a child. Young adults who have committed offences as children must have the opportunity to build meaningful futures and be treated fairly.

As noted above with respect to Part 7 of the Act, the UN Committee on the Rights of the Child has sought that child justice systems extend protection to children who were below the age of 18 at the time of the commission of the offence, but turn 18 during the trial or sentencing processes. These proposals will apply to the processing of an offence with reference to age at the time it is committed, irrespective of the age of the young person when the case actually comes to Court.

The purpose of this Part is to also set out the principles to be adhered to when a young person is before the courts. It also sets out sentencing options available to the judiciary when a penalty for an offence is not fixed in law.

Section 156C is a standard provision which defines the meanings used throughout Part 9A. A “relevant person” means a person who at the time of the alleged offence was a child.

Head 23 Insertion of new section 156D in to Principal Act

Provide that:

The insertion of the following section after section 156C:

“156D (1) Any penalty imposed on a relevant person for an offence should cause as little interference as possible with the relevant person’s legitimate activities and pursuits, should take the form most likely to maintain and promote the development of the relevant person and should take the least restrictive form that is appropriate in the circumstances; in particular, a period of imprisonment should be imposed only as a measure of last resort.

(2) A court may take into consideration as mitigating factors the age and level of maturity at the time of the offence in determining the nature of any penalty imposed, unless the penalty is fixed by law.

(3) The penalty imposed on a relevant person for an offence should be no greater than that which would be appropriate in the case of an adult who commits an offence of the same kind and may be less, where so provided for in this Part.”

Explanatory note:

The purpose of this section is to set principles for dealing with those young persons who committed the offence when they were a child but are now over the age of 18. It is accepted that the actions of these young person should be judged with reference to the level of maturity and capacity to comprehend the impact of offending behaviour at the time an offence is committed.

This section is modelled after section 96 of the 2001 Act which provides for the principles relating to the exercise of criminal jurisdiction over children.

156D(1) provides that the sentence should have little interference with a relevant persons legitimate activities. This is modelled after section 96(2)

156D(2) provides that the court shall take into account the age and maturity of the relevant person when the offence was committed sentence when determining the sentence. This is modelled after section 96(3)

156D(3) provides that the penalty imposed shall be no greater than a sentence an adult would receive for the same offence. This is modelled after section 96(4).

Head 24 Insertion of new section 156E in to Principal Act

Provide that:

1. The insertion of the following section after section 156D:

“156E Where a court is satisfied of the guilt of a relevant person whom it has dealt with summarily for any offence and is of opinion that the appropriate penalty is or includes a fine, the fine shall not exceed half maximum the amount which the District Court could impose on a person who committed the offence as an adult on summary conviction for such an offence.”

Explanatory note:

The 2001 Act currently provides for procedural entitlements to those who are under 18 at the date of trial, it is proposed that the date determining eligibility for these entitlements should be the age of the person at the time of the offence.

The purpose of this amendment is to provide that the maximum fine a court can impose on a ‘relevant person’ is half what the District Court could impose on a person of full age and capacity.

A ‘relevant person’ is a person who at the time of the alleged offence was a child.

This approach better reflects the special considerations which apply in respect of criminal wrongdoing by juvenile offenders who lack the intellectual, social and emotional understanding of adults.

Head 25 Insertion of new section 156F in to Principal Act

Provide that:

1. The insertion of the following section after section 156E:

“156F (a) Subject to section 108, in determining the amount of a fine to be imposed on a relevant person, and

(b) in determining whether to award costs against a relevant person and the amount of any such costs,

the court, among other considerations, shall have regard to the relevant person’s present and future means in so far as they appear or are known to the court and for that purpose may require the relevant person to give evidence as to those means and his or her financial commitments.”

Explanatory note:

The 2001 Act currently provides for procedural entitlements to those who are under 18 at the date of trial, it is proposed that the date determining eligibility for these entitlements should be the age of the person at the time of the offence.

The purpose of this amendment is to provide that where a court is determining the amount of a fine or determining whether to order costs against a relevant person, the court shall have regard to the present and future earnings of the ‘relevant person’.

A ‘relevant person’ is a person who at the time of the alleged offence was a child.

This approach better reflects the special considerations which apply in respect of criminal wrongdoing by juvenile offenders who lack the intellectual, social and emotional understanding of adults.

Head 26 Insertion of new section 156G in to Principal Act

Provide that:

1. The insertion of the following section after section 156F:

“156G (1) Where a court orders a relevant person to pay a fine, costs or compensation and the relevant person is in default—

(a) the court shall not order that the relevant person be imprisoned and

(b) in lieu of such an order, the court may make one or more than one of the following orders:

(i) in the case of a fine, an order reducing its amount,

(ii) an order allowing time, or further time, for payment of the fine, costs or compensation,

(iii) an order imposing a community sanction appropriate to the age of the relevant person.

(2) An order under subsection (1)(b) shall be deemed for the purposes of this or any other Act to be an order made on a finding of guilt.”

Explanatory note:

The 2001 Act currently provides for procedural entitlements to those who are under 18 at the date of trial, it is proposed that the date determining eligibility for these entitlements should be the age of the person at the time of the offence.

The purpose of this amendment is to provide that where a ‘relevant person’ has defaulted in a payment of a fine, costs or compensation, the court cannot order the ‘relevant person’ to be imprisoned.

Section 156G(b) sets out what the court can order which includes: an order reducing the amount; to give the ‘relevant person’ more time; or to impose an appropriate community sanction.

A ‘relevant person’ is a person who at the time of the alleged offence was a child.

This approach better reflects the special considerations which apply in respect of criminal wrongdoing by juvenile offenders who lack the intellectual, social and emotional understanding of adults.

Head 27 Amendment of section 167 of the Principal Act

Provide that:

- (1) In subsection (1), delete “12” and substitute “13”.
- (2) In subsection (4)(b), delete “nominated by the Minister for Health and Children”.
- (3) Delete subsection (4)(c) and substitute the following:

“(4)(c) two shall be officers of the Minister for Education, one of whom shall be a member of the relevant Education and Training Board”

‘Education and Training Board’ has the same meaning as in Education and Training Boards Act 2013

Explanatory note:

Changes to the Board of Oberstown

The purpose of this amendment to remove the responsibility of nominating an employee of the Child and Family Agency to the Board of Oberstown from the “Minister of Health and Children” as it was then, to the Minister CEDIY who has responsibility for the Child and Family Agency.

The Head will also increase the number of members on the Board to allow an additional member to be nominated by the Minister for Education who is to be a member of the Education and Training Board.

Head 28 Repeals

Provide that:

The following are repealed –

- (a) Section 94(2) of the Children Act 2001;
- (b) Section 111 of the Children Act 2001;
- (c) Section 112 of the Children Act 2001;
- (d) Section 113 of the Children Act 2001;
- (e) Section 114 of the Children Act 2001.

Explanatory note:

Subsection 94(2) of the Children Act 2001 provides that the order or decision of the Children Court must be announced in public. This will be repealed following recommendations from the *O'Malley Review of the Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*. The report recommended that provisions which provide that the decision or verdict shall be announced in public in trials should be repealed where it could lead to the identification of vulnerable people. Children are vulnerable due to their age. This will not impinge upon the verdict or decision being reported in public.

Sections 111 to 114 provide for orders in relation to parents or guardians. Section 111 provides for a parental supervision order, section 112 provides for non-compliance with a parental supervision order, 113 provides for compensation by a parent or guardian and 114 provides for the binding over of a parent or guardian.

Consultation with stakeholders revealed that these orders are ineffective in practice and should be abolished. It is not acceptable internationally to criminalise parents of children in conflict with the law and judges are therefore not prepared to use such orders. These types of orders are unlikely to contribute to parents becoming active partners in the social reintegration of their child.

One of the main principles of the Children Act 2001 is that it is desirable to preserve and strengthen the relationship between children and their parents and family members. The use of such orders is therefore undesirable to prevent any possible development of animus or resentment between child and parent.

PART 3

Miscellaneous

Head 29 Amendment to the Bail Act 1997

Provide that:

1. Insert the following after section 9(13)

“(14) Where the person referred to in subsection (12) is a relevant person within the meaning of section 156G of the Children Act 2001, non-compliance with an order under subparagraph (i) of subsection (1) or with any variation of it under subsection (10) shall be treated as a default in payment of a fine, costs or compensation under the said section 156H and the provisions of that section shall apply accordingly.”

Explanatory Note

Certain entitlements are afforded to those who are under 18 at the date of trial, it is proposed that the date determining eligibility for these entitlements should be the age of the person at the time of the offence.

The purpose of this provision, is that if a ‘relevant person’ fails to pay their recognisance then the court can use the options set out in the new section 156G of the Children Act 2001. This is provided for children in section 9(12) of the Bail Act 1997.

A ‘relevant person’ is a person who at the time of the alleged offence was a child.

This approach better reflects the special considerations which apply in respect of criminal wrongdoing by juvenile offenders who lack the intellectual, social and emotional understanding of adults.