

Chapter 5:

Relevant legislation

Summary:

The Committee identified a large range of legislation underpinning State involvement with the Magdalen Laundries. A significant amount of directly relevant legislation pre-dates the establishment of the State and was carried over from the pre-independence period. This Chapter sets out the relevant Acts and identifies their relevance to the Magdalen Laundries.

The relevant legislation is considered under the following four thematic groupings:

a – Criminal Law including probation and probation officers

This section sets out the legislation, including historic legislation, governing four areas- remand, probation, temporary release from prison and early release from prison. Among many other elements, it details the legislation, dating to 1914, which provided for Probation Orders with residence requirements and which was the basis in many cases for women entering the Magdalen Laundries following criminal convictions.

b – Children and the Industrial and Reformatory School framework

This section sets out the legislation relevant to detention of children from 1908 onwards, including the definition of so-called ‘places of safety’.

It includes general detail on the legal framework concerning children in Industrial and Reformatory Schools as well as the specific questions of release of children on licence from these Schools, as well as the period of supervision which followed discharge of children from them. The effect of this supervision was that until the age of 18 or 19 (until 1941) and until the age of 21 (after 1941), they remained under supervision and liable to recall. Release on licence and recall during post-discharge supervision were the basis in many cases for women being placed in the Magdalen Laundries either directly from or within a number of years of their discharge from an Industrial or Reformatory School.

c – Health and Health Authorities, including basis for public funding

This section provides information on the development of the structures of the health system and health authorities over time. It also includes detail on the framework for provision of public assistance in institutions run by organisations other than the State (including the recognition of “extern institutions”), and sets out the main provisions which permitted health sector grants to institutions, including Magdalen Laundries.

d – Employment and Factories

This section sets out the legislative requirements around workplaces (“factories”), including Magdalen Laundries. The enforcement mechanisms for those standards are also noted. This section includes detail both on relevant pre-State legislation (the Factory and Workshop Acts 1901-1920) as well as relevant legislation enacted after the establishment of the State, including, in particular, the Factories Act 1955.

Introduction

1. A variety of laws are relevant to and underpin the question of State involvement with the Magdalen Laundries. In some cases, legislation provided the basis for referral of a girl or woman to a Magdalen Laundry; or for funding or financial assistance to the Magdalen Laundries; while other Acts at different stages regulated the Laundries in a variety of ways.
2. A significant amount of the directly relevant legislation identified in this Chapter was carried over from the pre-independence period. It is possible that a lack of modern awareness of these Acts may have contributed to confusion or a mistaken sense that the Magdalen Laundries were unregulated or that State referrals of girls and women to the Laundries occurred in all cases without any legal basis.
3. This Chapter identifies the relevant legislation, including Acts adopted by the Oireachtas as well as legislation adopted by the British Parliament prior

to the establishment of the State but which remained in force in Ireland after 1922. Where it assists in shedding light on the scope or meaning of the relevant legislation, debate during passage of the relevant Act is also noted.

4. The manner in which these Acts operated in practice is detailed in other Chapters of this Report, through case-studies on the State referrals of girls and women to the Magdalen Laundries as well as funding of Magdalen Laundries and their inspection by the Factories Inspectorate.
5. A chronological list of the Acts (many now repealed) referred to in this Chapter is as follows:
 - Lunacy Acts of 1821 and 1826;
 - The Truck Acts 1831, 1887, 1896;
 - Dangerous Lunatics (Ireland) Act 1838;
 - Penal Servitude Acts 1853 to 1891;
 - Youthful Offenders Act 1901;
 - Factory and Workshop Act 1907;
 - Probation of Offenders Act 1907;
 - Children Act 1908;
 - Children Amendment Act 1910;
 - Criminal Justice Administration Act 1914;
 - Local Government (Temporary Provisions) Act 1923;
 - Local Government (Temporary Provisions)(Amendment) Act 1924
 - School Attendance Act 1926;
 - Criminal Justice (Amendment) Act 1935;
 - Conditions of Employment Act 1936;
 - Public Assistance Act 1937;
 - Public Assistance Act 1939;
 - Children Act 1941;
 - Mental Treatment Act 1945;
 - Health Act 1947;
 - Criminal Justice Act 1951;

- Health Act 1953;
 - Factories Act 1955;
 - Children (Amendment) Act 1957;
 - Criminal Justice Act 1960;
 - Health Act 1970;
 - Children Act 1989; and
 - Child Care Act 1991.
6. Other legislation which is material only to a small or specific area of the Report – for example the Electoral Acts 1923 and 1963, as they governed electoral registration, or legislation relating to registration of deaths – are dealt with in the relevant Chapters of the Report.
7. For clarity, the Acts covered in this Chapter are considered in thematic groupings. The four general themes for this purpose are:
- a. Criminal law, including probation and probation officers;
 - b. Children and the Industrial and Reformatory School framework;
 - c. Health and health authorities, including public funding; and
 - d. Employment and factories legislation.
8. In light of the fact that this Report deals only with the cases of girls and women who were admitted to and worked in the Magdalen Laundries, in the legislative extracts that follow, the terms “he” and “his” have been altered to “she” and “her”.

A. Criminal law, including legislative provision for probation and appointment of Probation Officers

Penal Servitude Acts 1853 to 1891

Youthful Offenders Act 1901

Probation of Offenders Act 1907

Criminal Justice Administration Act 1914

Criminal Justice (Amendment) Act 1935

Criminal Justice Act 1951

Criminal Justice Act 1960

9. This section sets out the legislative basis, as it applied in the period of relevance to this Report, in four areas, namely remand, probation, temporary release from prison; and early release from prison.

i. Remand

10. One of the earliest specific provisions (other than legislation on Reformatory Schools) in this area was the **Youthful Offenders Act 1901** (“the 1901 Act”). The Act¹ provided at section 4 for remand or committal of a child (a person under 14 years of age) or young person (a person under 16 years of age) to places other than prison. It provided at section 4(1) that a court of summary jurisdiction:

“on remanding or committing for trial any child or young person, may, instead of committing [her] to prison, remand or commit [her] into the custody of any fit person named in the commitment who is willing to receive [her] ... to be detained in that custody for the period for which [she] has been remanded, or until [she] is thence delivered by due course of law, and the person so named shall detain the child or young person accordingly; and if the child or young person escapes [she] may be apprehended without warrant and brought back to the custody in which [she] was placed”.²

11. Provision was also made for payment of maintenance in such cases.³

12. The **Criminal Justice Act 1960** (“the 1960 Act”) made significant provision in respect of remand for persons between the ages of 16 and 21. It defined

¹ Which made amendments to the application in Ireland of the Reformatory Schools Act 1893 and the Industrial Schools Acts Amendment Act 1894

² Youthful Offenders Act 1901, Section 4. The Act also makes a number of associated provisions, for instance the Court may “vary or revoke” the remand of commitment; and in case of revocation, the child or young person “may be committed to prison” (s. 4(3)).

³ Id

a remand institution as “an institution (other than a prison) whose use for the purposes of this Act has been approved of by the Minister”.⁴ Where existing law conferred a power to remand a person of not less than 16 and not more than 21 years of age in custody (pending trial or sentence), that power:

“shall be deemed to include a power to remand or commit the person in custody to a remand institution and the statute or instrument, as the case may be, shall have effect accordingly”.⁵

13. Any person detained in a remand institution was:

“deemed to be in the lawful custody of the person for the time being in charge of the institution during and until the expiration of the period for which [she] was remanded or committed”.⁶

Any person who “is absent without permission from the place of detention shall be deemed to have escaped from lawful custody”.⁷

14. The Act also included a provision to the effect that a person would not be detained in a remand institution “which is conducted otherwise than in accordance with the religion to which the person belongs”.⁸

ii. Probation

15. The basis for probation in Ireland continued, until 1935, to be governed solely by legislation enacted prior to establishment of the State.

16. The key piece of legislation in relation to probation for much of the period of relevance to this Report was the **Probation of Offenders Act 1907** (“the 1907 Act”). The Act, which is still in force in Ireland, albeit as amended,

⁴ Section 1 of the 1960 Act

⁵ Section 9(1) of the 1960 Act

⁶ Section 11(1) of the 1960 Act

⁷ Section 11(3) of the 1960 Act

⁸ Section 9(3) of the 1960 Act

sets out a full scheme in relation to the operation and implementation of probation. It established probation as a possibility both in relation to persons charged before a court of summary jurisdiction; as well as persons charged on indictment.

17. In courts of summary jurisdiction, the test established was where the Court found the charge against a person proved, but was:

“of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation ... ”.⁹

18. Where any of these 6 conditions applied, the Act provided authority for the Court to:

“without proceeding to conviction, make an order either-

- (i) Dismissing the information or charge; or
- (ii) Discharging the offender conditionally on [her] entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order”.¹⁰

19. The test for the possibility of application of probation was essentially the same in relation to a charge on indictment of any offence punishable with imprisonment. In such cases, the Court was authorised “in lieu of imposing a sentence of imprisonment” to make an order:

⁹ Probation of Offenders Act 1907, Section 1

¹⁰ Id

“discharging the offender conditionally on [her] entering into a recognizance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order”.¹¹

20. The Act provided that conditions could be attached to a Probation Order. These could include “such additional conditions as the court may, having regard to the particular circumstances of the case” order, with respect to three general matters:

- a. for prohibiting the offender from associating with thieves and other undesirable persons, or from frequenting undesirable places;
- b. as to abstain from intoxicating liquor, where the offence was drunkenness or an offence committed under the influence of drink;
- c. generally for securing that the offender should lead an honest and industrious life”.¹²

21. The possibility of supervision by a Probation Officer was also provided for, with the Act permitting a condition:

“that the offender be under the supervision of such person as may be named in the order during the period specified in the order and such other conditions for securing such supervision as may be specified in the order”.¹³

22. The Court was required to provide a written notice to the person concerned, setting out in simple terms the conditions which she was required to observe. Conditions of release could be varied by the Court, which could discharge the recognizance, where satisfied that the conduct of the person concerned “has been such as to make it unnecessary that [she] should

¹¹ Probation of Offenders Act 1907, Section 1(2)

¹² Probation of Offenders Act 1907, Section 2(2)

¹³ Probation of Offenders Act 1907, Section 2(1)

remain longer under supervision”¹⁴, or, where a person failed to observe the conditions of release, the Court could issue a summons or warrant for arrest and the person could be remanded to custody and convicted and sentenced (as appropriate) for the original offence.¹⁵

23. The 1907 Act also made provision for appointment of Probation Officers as officers of the Court¹⁶; as well as “special probation officers, to be called children’s probation officers” who would generally be responsible for supervision of offenders under the age of 16.¹⁷ However, the Courts could also grant this role to a person who had not been appointed Probation

¹⁴ Probation of Offenders Act 1907, Section 5. “The court... may ... vary the conditions of the recognizance and may, on being satisfied that the conduct of that person has been such as to make it unnecessary that he should remain longer under supervision, discharge the recognizance”.

¹⁵ Probation of Offenders Act 1907. Section 6, Provision in case of offender failing to observe conditions of release:

- (1) If the court ... is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties ...
- (2) An offender so remanded to custody may be committed during remand to any prison to which the court having power to convict or sentence him has power to commit prisoners. In the case of a child or young person under the age of sixteen, he shall if remanded, be dealt with wherever practicable in accordance with the provisions of section four, subsection one, of the Youthful Offenders Act 1901.

A court before which a person is bound by his recognizance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt, convict and sentence him for the original offence or, if the case was one in which he court in the first instance might, under section fifteen of the Industrial Schools Act 1866, have ordered the offender to be sent to a certified industrial school, and the offender is still apparently under the age of twelve years, make such an order

¹⁶ Section 3(1) of the 1907 Act provides “There may be appointed as probation officer of officers for a petty sessional division such person or persons of either sex as the authority having power to appoint a clerk to the justices of that division may determine, and a probation officer when acting under a probation order shall be subject to the control of petty sessional courts for the division for which he is so appointed”.

¹⁷ Section 3(2) of the 1907 Act provides: “There shall be appointed, where circumstances permit, special probation officers, to be called children’s probation officers, who shall, in the absence of any reasons to the contrary, be named in a probation order made in the case of an offender under the age of sixteen”.

Officer of any Court, if it considered “that the special circumstances of the case render it desirable”.¹⁸

24. This broad provision opened up the possibility of persons being appointed by the Courts to effectively serve as a Probation Officer on an ad hoc basis. Such persons were paid remuneration and out of pocket expenses¹⁹, while regularly appointed Probation Officers were paid a salary²⁰.
25. The duties of Probation Officers, as set out in the 1907 Act, were that, subject to the direction of the Court, the probation officer was required:
- a. To visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the probation officer may think fit;
 - b. To see that [she] observes the conditions of [her] recognizance
 - c. To report to the court as to [her] behaviour;
 - d. To advise, assist and befriend [her] and, when necessary, to endeavour to find [her] suitable employment.²¹
26. The **Criminal Justice Administration Act 1914** (“the 1914 Act”) amended the 1907 Act so as to address some of the difficulties identified by way of 7 years of its operation, including specific issues raised by the 1910 Report of the Inter-Departmental Committee on the Probation Act.
27. Whereas the 1907 Act had permitted appointment of persons as Probation Officers on an ad hoc basis where the particular facts of a case merited it, the 1914 Act created a formal structure for recognition of societies for the care of youthful offenders and appointment of Voluntary Probation Officers drawn from those societies in cases of offenders below the age of 21.

¹⁸ Section 3(3) of the 1907 Act

¹⁹ Section 3(5) of the 1907 Act

²⁰ Section 3(4) of the 1907 Act

²¹ Probation of Offenders Act 1907, Section 4

28. Section 7 of the 1914 Act provided in pertinent part that:

(1) If a society is formed or is already in existence having as its object or amongst its objects the care and control of persons under the age of twenty-one whilst on probation under the Probation of Offenders Act 1907, or of persons whilst placed out on licence from a reformatory or industrial school or Borstal institution, or under supervision after the determination of the period of their detention in such a school or institution or under supervision in pursuance of this Act, or some one or more of such objects the society may apply to the Secretary of State for recognition, and the Secretary of State, if he approves of the constitution of the society and is satisfied as to the means adopted by the society for securing such objects as aforesaid, may grant his recognition to the society.

(2) Where a probation order is made by a court of summary jurisdiction in respect of a person who appears to the court to be under the age of twenty-one, the court may appoint any person provided by a recognised society to act as probation officer in the case".²²

29. Expenses could be paid to the recognised society in such cases.²³

30. Another and even more significant amendment of the 1907 Act brought about by the 1914 Act related to the conditions which may apply in cases of probation. The 1914 Act amended section 2 of the 1907 Act, so as to include conditions as to *residence* as one of the permissible conditions which a Court might include in Probation Orders from that point onwards. The additional permissible conditions established were conditions as to:

²² Criminal Justice (Administration) Act 1914, Section 7.

²³ Criminal Justice (Administration) Act 1914, Section 7(4). "There may be paid to a recognised society out of moneys provided by Parliament towards the expenses incurred by the society such sums on such conditions as the Secretary of State, with the approval of the Treasury, may recommend".

“residence, abstention from intoxicating liquor, and any other matters as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences”²⁴.

31. This meant that, from enactment of the 1914 Act onwards, it was lawful for Courts, when making a Probation Order, to include therein as a condition of probation a requirement for the person concerned to live at a specified place. As the maximum duration of probation under the Acts was 3 years, the maximum duration of any such possible condition was also 3 years.
32. The 1914 Act made a number of other amendments, including amendments which in effect strengthened the role of the Probation Officer (for example, by providing that variance of conditions or discharge from supervision by the Courts were capable of being triggered by application of the Probation Officer).²⁵
33. The **Criminal Law (Amendment) Act 1935** (“the 1935 Act”), enacted in the aftermath of the Carrigan Report, included a number of provisions in relation to incest, rape, sexual abuse and prostitution. It also amended the Probation of Offenders Act 1907, insofar as applied to prostitution offences,

²⁴ Section 8 of the 1914 Act, amending section 2(2) of the 1907 Act.

²⁵ Section 9 of the 1914 Act, amending section 5 of the 1907 Act.

“The court before which any person is bound by a recognisance under this Act to appear for conviction and sentence or for sentence-

- a. may at any time if it appears to it, upon the application of the probation officer, that it is expedient that the terms or conditions of the recognisance should be varied, summon the person bound by the recognisance to appear before it, and, if he fails to show cause why such variation should not be made, vary the terms of the recognisance by extending or diminishing the duration thereof (so, however, that it shall not exceed three years from the date of the original order), or by altering the conditions thereof, or by inserting additional conditions; or
- b. may on application being made by the probation officer, and on being satisfied that the conduct of the person bound by the recognisance has been such as to make it unnecessary that he any longer be under supervision, discharge the recognisance”.

to establish as additional consideration for the imposition of probation rather than imprisonment the following:

“the prospects of the moral reclamation of the person or persons charged”.²⁶

iii. Temporary Release from Prison

34. Until 1960, there was no legislative basis in Ireland for temporary release of a person from prison during the term of his or her sentence. However, “in practice, parole has been granted to certain prisoners” for what were summarised as humanitarian or other exceptional reasons.²⁷ Regarding such cases, it was recorded in 1960 that:

“all returned promptly at the expiration of the period granted, but if they had not returned, they could not have been compelled to do so”.²⁸

35. A legal basis for temporary release of a person serving a sentence of imprisonment was established by the **Criminal Justice Act 1960** (“the 1960 Act”). It provided that:

“The Minister may make rules providing for the temporary release, subject to such conditions (if any) as may be imposed in each particular case, of persons serving a sentence of penal servitude or imprisonment ...”.²⁹

36. The Act required that if temporary release was subject to conditions, those conditions “shall be communicated to the person at the time of [her] release

²⁶ Criminal Law (Amendment) Act 1935, section 16(2)

“The Probation of Offenders Act, 1907, shall apply to offences under this section as if the words “or to the prospects of the moral reclamation of the person or persons charged” were inserted in sub-section (1) of section 1 of that Act immediately before the words “it is inexpedient to inflict any punishment”.

²⁷ Memorandum for the Government on the Proposed Criminal Justice Bill, 9 December 1958, NAI Department of An Taoiseach S13290 A/1

²⁸ *Id*

²⁹ Section 2(1) of the Criminal Justice Act 1960

by notice in writing” and she was required to comply with those conditions.³⁰

37. Breach of a condition of release resulted in that person being deemed “unlawfully at large”³¹, which was an offence.³² The Act provided that a member of An Garda Síochána was empowered to:

“arrest without warrant a person whom he suspects to be unlawfully at large and may take such person to the place in which [she] is required in accordance with law to be detained”.³³

38. The 1960 Act also provided for temporary release from detention in a psychiatric institution of persons termed ‘criminal lunatics’, that is, persons “detained in a district mental hospital or Central Mental Hospital by warrant order or direction of the Government or the Minister...”, provided the person was not considered to be “dangerous to [herself] or to others”.³⁴ Consent could be given either in relation to a particular release or more generally to release “from time to time during a specified period of that criminal lunatic”.³⁵

³⁰ Section 4(1) and (2) of the Criminal Justice Act 1960

³¹ Section 6(1) of the 1960 Act. “A person who, by reason of having been temporarily released under section 2 or section 3 of this Act, is at large shall be deemed to be unlawfully at large if

(a) the period for which [she] was temporarily released has expired, or

(b) a condition to which [her] release was made subject has been broken”.

³² Section 6(2) of the 1960 Act. “A person who is unlawfully at large shall be guilty of an offence under this section and on summary conviction thereof shall be liable to imprisonment for a term not exceeding six months”.

³³ Section 7 of the 1960 Act

³⁴ Section 3 of the 1960 Act provides “a ‘criminal lunatic’ means a person who is detained in a district mental hospital or in the Central Mental Hospital by warrant, order or direction of the Government or the Minister or under the provisions of section 91 of the Army Act, 1881, or of the Defence Act 1954, and, if he is undergoing a sentence of penal servitude or imprisonment, or of detention in Saint Patrick’s Institution, whose sentence has not expired”.

Section 3(2) of the 1960 Act relates to “a criminal lunatic who, in the opinion of the person in charge, is not dangerous to himself or to others may, with the consent of the Minister, be released temporarily by the person in charge subject to such conditions (if any) as he may, with the consent of the Minister, impose”.

³⁵ Section 3(3)(a) of the 1960 Act

iv. Early Release from Prison

39. The situation regarding early release from prison was somewhat different. The legislative basis for early release from prison, for much of the period of relevance to this Report, was the Penal Servitude Acts 1853 to 1891.
40. These Acts provided, in pertinent part, for release on “conditional licence” from prison. A person discharged from prison in this way remained on licence until his or her sentence expired and subject to a number of requirements, including reporting to the local police.³⁶ The Acts also provided for power of arrest without warrant of:
- “any holder of a licence under the Penal Servitude Acts ... whom he reasonably suspects of having committed any offence...”³⁷
41. In later years, the Criminal Justice Act 1951 (“the 1951 Act”) conferred a power on the Government (with the exception of capital cases) to:
- “commute or remit, in whole or in part, any punishment imposed by a Court exercising criminal jurisdiction, subject to such conditions as they may think proper”.³⁸
42. Further, the powers of the 1960 Act (detailed above) and secondary legislation adopted thereunder³⁹ were also in practice utilised to permit conditional release effectively for the balance of a sentence.⁴⁰
43. More recent laws and practice relating to temporary and early release are not detailed in this Section, given that they were enacted and adopted after

³⁶ Penal Servitude Acts 1853 to 1891. Or see generally Kilcommins, O’Donnell, O’Sullivan, Vaughan, *Crime Punishment and the Search for Order in Ireland*, IPA 2010, at 18

³⁷ Penal Servitude Act 1891, Section 2

³⁸ Criminal Justice Act 1951, Section 23(1). Section 23(3) permitted delegation of the power to the Minister for Justice.

³⁹ Prisoners (Temporary Release) Rules, SI 167 of 1960

⁴⁰ See generally e.g. O’Malley, *The ends of sentence: imprisonment and early release decisions in Ireland*. Padfield, van Zyl Smith and Dünkel (eds), *Release from Prison: European Policy and Practice*

closure of the last Magdalen Laundry in 1996 and are therefore not relevant to this Report.

B. Legislation relating to Children; and in particular to Industrial and Reformatory Schools

Children Act 1908

School Attendance Act 1926

Children Act 1941

Children (Amendment) Act 1957

Children Act 1989

44. This section sets out the legislative basis, as it applied in the period of relevance to this Report, to detention of children and the framework of Industrial and Reformatory Schools (including release on licence, discharge and post-discharge supervision).

45. The **Children Act 1908** (“the 1908 Act”) is a key piece of legislation in this respect. It remained in force after the foundation of the State and was amended on a number of occasions both before and after 1922.⁴¹

46. The provisions of this Act, as amended, in relation to release of children on licence from Industrial or Reformatory School; and also their supervision post-release are crucial to an understanding of the pathways between Industrial and Reformatory Schools and the Magdalen Laundries.

i. Detention of a child; and temporary detention in a “Place of safety”

47. The relevant provision of the Youthful Offenders Act 1901 on remand or committal of a child or young person (under 14 or 16 years respectively)

⁴¹ Children (Amendment) Act 1910 and the Children (Amendment) Acts 1929, 1934, 1941, 1949, 1957 and 1989

was noted in section A above. Detention of children was also provided for in contexts other than that of a child accused of a crime.

48. Part II of the Children Act 1908 provided, in pertinent part, for the arrest of persons accused of offences relating to ill-treatment or neglect of children. It also provided for the detention in a 'place of safety' of a child or young person in respect of whom an offence had been committed or was believed to have been committed".⁴²

49. A police officer ("a constable or any person authorised by a justice") was empowered to take such a child to any such place of safety. The expression "place of safety" was defined as :

"any workhouse or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive an infant, child or young person".⁴³

50. The child or young person could be detained in such a place of safety until brought before a court, which Court could make an order for his or her care and detention until a possible charge was made against the person suspected of the offence.

51. Where a child or young person was committed to a person's care in this way, the Act provided that that person would "have the like control over the child or young person as if he were his parent".⁴⁴ An offence was established for any person who either:

"knowingly assists or induces directly or indirectly a child or young person to escape from the person to whose care [she] is so committed",

or

⁴² Children Act 1908, Section 20(1)

⁴³ Children Act 1908, Section 131

⁴⁴ Children Act 1908, Section 22

“knowingly harbours, conceals, or prevents from returning to such person a child or young person who has so escaped or knowingly assists in so doing”.⁴⁵

52. The 1908 Act also included a broad provision on the power to search for or remove a child suspected by the court of being assaulted, ill-treated or neglected, or the victim of a relevant offence.⁴⁶

53. Part V of the 1908 Act dealt with juvenile offenders and contained a number of provisions on custody and detention of young people. The Act provided that it was the duty of every police authority to provide places of detention within their district:

“either by arranging with the occupiers of any premises either within or without their district for the use of those premises for the purpose, or by themselves establishing or joining premises for the purpose, or by themselves establishing or joining with another police authority in establishing such places; but nothing shall prevent the same place of detention being provided for two or more petty sessional divisions”.⁴⁷

54. Such places of detention encompassed “any institution other than prison, whether supported out of public funds or by voluntary contributions”. That institution “or any part thereof” could on agreement with the police authority be used as a place of detention.⁴⁸ The police authorities were required to keep a “register of places of detention provided by them”.⁴⁹ These places

⁴⁵ Children Act 1908, Section 23

⁴⁶ Children Act 1908, Section 24

⁴⁷ Children Act 1908, Section 108. Section 108 (3) further provided that

“before arranging for the use of any premises as aforesaid the police authority shall satisfy themselves of the fitness of the occupier thereof to have the custody and care of children or young persons committed to, or detained in, custody under this Part of the Act, and of the suitability of the accommodation provided by him”.

⁴⁸ Children Act 1908, Section 108(4)

⁴⁹ Children Act 1908, Section 108(5)

of detention could then be used for remand or committal to custody of children.⁵⁰

55. Provision was made for these places of detention to be inspected and for children and young persons detained there “being visited from time to time by persons appointed” in accordance with rules established by the Chief Secretary (after establishment of the State, the Minister for Education).

56. The Act provided that a child or young person in such a place “shall be deemed to be in legal custody”, and in the case of escape, he or she could be “apprehended without warrant and brought back to the place of detention in which he was detained”.⁵¹

57. The **Children Act 1989** further amended the Acts, including by establishing that:

“the expression “fit person” in section 38 of the Children Act, 1908, includes and shall be deemed always to have included a health board established under the Health Act 1970, and the functions of a health board shall include and be deemed always to have included the functions conferred on a fit person by the first-mentioned Act as amended by any subsequent Act”.⁵²

ii. Industrial and Reformatory Schools

58. Part IV of the 1908 Act dealt with Reformatory and Industrial Schools. In this Part of the Act, ‘child’ is defined to apply to a person during the whole

“Police authorities shall keep a register of places of detention provided by them for each petty sessional division, and the register shall contain a description of the premises, the names of the occupiers thereof, and the number of children or young persons who may be detained in custody in the several premises, and no child or young person shall be detained in custody in any place which is not so registered”

⁵⁰ Children Act 1908, Section 97

⁵¹ Children Act 1908, Section 109(2)

⁵² Section 1 of the 1989 Act, amending section 38 of the Children Act 1908

period he or she was committed to an Industrial School.⁵³ It sets out the requirements for certification of schools for “the reception of youthful offenders or children to be sent there in pursuance of this Part of the Act” and for inspection, at least annually, of those schools.⁵⁴

59. The grounds on which children could be committed to Industrial School were many and varied, but included a person under the age of 14:

- found begging or receiving alms;
- wandering and not having any home or settled place of abode or visible means of subsistence; or
- found wandering and having no parent or guardian; or alternatively having a parent or guardian “who does not exercise proper guardianship”;
- found destitute with both parents or parent (as case may be) in prison or ‘unfit to have the care of the child’ due to ‘criminal or drunken habits’;
- a daughter of a man convicted of sexual offences in respect of any of his daughters;
- in the company of ‘any reputed thief or any common or reputed prostitute’;
- residing in a house or part of a house used for the purposes of prostitution (except where the child’s mother living in the house exercises proper guardianship and due care to protect the child);
- found destitute and her parent or parents being unable to support her. Such children could only be sent to an Industrial School where the child’s parent(s) consented to the Order being made.⁵⁵

Other grounds for admission included:

- a child under the age of 12 charged with an offence punishable in the case of an adult by penal servitude;⁵⁶ or

⁵³ Children Act 1908, Section 44

⁵⁴ Children Act 1908, Sections 45 and 46

⁵⁵ Children Act 1908, Section 58(1)

⁵⁶ Children Act 1908, Section 58(2)

- a child of 12 or 13 years similarly charged with an offence where the court is satisfied that the child should not be sent to a Reformatory School and where “the character and antecedents of the child are such that [she] will not exercise an evil influence over the other children in a certified industrial school”.⁵⁷

60. The **Children Act 1941** (“the 1941 Act”) increased to 15 the age until which a person was defined to be a child in the context of Industrial or Reformatory Schools.⁵⁸ The age to which any person might bring a child before the Courts, with the possibility of commitment to an Industrial School, was also increased from 14 to 15, along with a number of amendments to the grounds on which such a child might be committed to an Industrial School.⁵⁹

61. It was also possible for a child to be committed to an industrial school on application by a parent or guardian who was “unable to control the child” and “desire[d] the child to be sent to an industrial school”.⁶⁰

62. The Act also provided for commitment of children between the age of 12 and 16 to Reformatory School if convicted of “an offence punishable, in the case of an adult, with penal servitude or imprisonment”.⁶¹ The Act included a fall-back provision that, where no Reformatory School was willing to receive a child in respect of whom an order had been made, it was possible for the Chief Secretary (after foundation of the State, the Minister for Justice) to order the child to be brought before the Courts for an order or to:

⁵⁷ Children Act 1908, Section 58(3)

⁵⁸ Section 6 of the 1941 Act, amending section 44 of the 1908 Act

⁵⁹ Section 10 of the 1941 Act, amending section 58 of the 1908 Act

⁶⁰ Children Act 1908, Section 58(4)

⁶¹ Children Act 1908, Section 57(1)

“pass such sentence as the court may determine, so however that the order or sentence shall be such as might have been originally made or passed in respect of the offence”.⁶²

63. The 1941 Act increased from 16 to 17 the maximum age in respect of commitment of children to Reformatory School.⁶³

64. The Act also contained general powers to commit a young person to the care of a “relative or other fit person”. Section 59 provided that any person could bring before the Courts a child of 14 or 15 years who would, if younger, have fallen within any of the categories which could lead to a child being committed to an Industrial School, and the Court could:

“if satisfied on inquiry of that fact and that it is expedient so to deal with [her], may ... make an order for [her] committal to the care of a relative or other fit person named by the court ...”.⁶⁴

In such cases where a child or young person was committed to the care of a relative or other fit person, the Court also had the power to place that young person under the supervision of a probation officer.⁶⁵

⁶² Children Act 1908, Section 57(2)

⁶³ Section 9 of the 1941 Act, amending section 57 of the 1908 Act

⁶⁴ It provided:

“Any person may bring before a petty sessional court any person apparently of the age of fourteen or fifteen years so circumstanced that if [she] were a child [she] would come within one or other of the descriptions mentioned in subsection one of the last foregoing section and the court, if satisfied on inquiry of that fact and that it is expedient so to deal with [her], may, in accordance with the provisions of Part II of this act, make an order for his committal to the care of a relative or other fit person named by the court and the provisions of that Part shall, so far as applicable, apply as if the order were an order under that Part”.

⁶⁵ Children Act 1908, Section 60:

“Where under the provisions of this part of the Act an order is made for the committal of a child or young person to the care of a relative or other fit person named by the court, the court may in addition to such order make an order under the Probation of Offenders Act 1907 that the child or young person be placed under the supervision of a probation officer ...”

- *Temporary detention pending transfer to a School*

65. Temporary detention of a child, until he or she may be sent to an Industrial or Reformatory School, was provided for. The 1908 Act provided that if a detention order was made but was not to take effect immediately; or that the child was unfit at the relevant time; or

“the school to which the youthful offender or child is to be sent cannot be ascertained until inquiry has been made, the court may make an order committing [her] either to custody in any place to which [she] might be committed on remand under Part V of this Act, or to the custody of a relative or other fit person to whose care [she] might be committed under Part II of this Act, and [she] shall be kept in that custody accordingly until [she] is sent to a certified school in pursuance of the detention order”.⁶⁶

- *Refusal to accept a child at an Industrial or Reformatory School*

66. The 1908 Act permitted the Manager of an Industrial or Reformatory School to decline to accept a child proposed to be sent to the School. (“The managers of a certified school may decline to receive any youthful offender or child proposed to be sent to them in pursuance of this Part of this Act”.) However if the Manager accepted the child, responsibilities in relation to teaching, training and provision of lodging and so on arose.⁶⁷

- *Leave of Absence:*

67. The **Children (Amendment) Act 1957** (“the 1957 Act”) permitted leave of absence from an Industrial or Reformatory School for a short period, on the

⁶⁶ Children Act 1908, Section 63

⁶⁷ Children Act 1908, Section 52:

“The managers of a certified school may decline to receive any youthful offender or child proposed to be sent to them in pursuance of this Part of this Act, but when they have once accepted any such offender or child they shall be deemed to have undertaken to teach, train, lodge, clothe and feed [her] during the whole period for which [she] is liable to be detained in the school, or until the withdrawal or resignation of the certificate for the school, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the offenders or children detained in the school, whichever may first happen”.

authority of the School Manager. Leave could be applied “at any time” during her detention and “for such period as the managers shall think fit or to attend a course of instruction at another school”. The child continued to be considered as detained and under the care of the School Manager while on leave of absence and the Manager could require the child’s return at any time.⁶⁸

- *Release on licence from Industrial or Reformatory School*

68. Section 67 of the 1908 Act provided that the Managers of an Industrial or Reformatory School could by licence “permit the offender or child to live with any trustworthy and respectable person named in the licence willing to receive and take charge of [her]”.

69. There were some conditions on grant of such a licence, namely:

- if the child was below 14 years, release on licence was condition on her attending a named school as a day scholar;
- if the child had been in the Industrial or Reformatory School for less than 18 months, release on licence was subject to the consent of the Chief Secretary (after the foundation of the State, the Minister for Education). If the child had been in the Industrial or Reformatory School for a period over 18 months, consent was no longer necessary. It was, however, the case that the standard reporting requirements to the Department of Education would be required.

70. Licences could be revoked at any time, in which case the child was required to return to the relevant Industrial or Reformatory School. A child who ran away from the person with whom she was placed on licence was “liable to the same penalty as if [she] had escaped from the school itself”.

71. Two important amendments were made to this provision by the 1941 Act. First, the period within which school managers were required to secure the

⁶⁸ Section 6 of the Children (Amendment) Act 1957

consent of the Minister for Education for release on licence of a child from Industrial or Reformatory School was reduced from 18 months to 6 months.⁶⁹

72. It also provided that were a licence was revoked and the child failed to return to the school, “[s]he may be apprehended without warrant and brought back to the school”.⁷⁰ The 1941 Act also renamed licences as “supervision certificates”.⁷¹

73. The full provision, as amended by the 1941 Act, was as follows.

Children Act 1908, as amended by the Children Act 1941

Section 67 Placing out on licence

1. Where a youthful offender or child is detained in a certified school, the managers of the school may at any time, with the consent-

a. In the case of a child sent to an industrial school at the instance of the local education authority of that authority; and

b. In any other case of the Secretary of State;

or after the expiration of six months of the period of detention without any such consent, by licence permit the offender or child to live with any trustworthy and respectable person named in the licence willing to receive and take charge of [her]:

Provided that where the licence is granted in respect of a child under the age of fourteen years it shall be conditional on the child attending as a day scholar, in accordance with the byelaws in force in the place where [she] resides, some school named in the licence, being a certified efficient school within the meaning of the Elementary Education Act 1876.

⁶⁹ Section 13 of the 1941 Act, amending section 67 of the 1908 Act

⁷⁰ Section 13(c) of the 1941 Act, amending section 67(7) of the 1908 Act

⁷¹ Section 15 of the 1941 Act, amending sections 67 and 68 of the 1908 Act

2. Any licence so granted shall be in force until revoked or forfeited by the breach of any of the conditions on which it was granted.

3. The managers of the school may at any time by order in writing revoke any such licence, and order the offender or child to return to the school.

4. Any youthful offender or child escaping from the person with whom [she] is placed in pursuance of this section shall be liable to the same penalty as if [she] had escaped from the school itself.

5. The time during which a youthful offender or child is absent from a certified school in pursuance of a licence under this section shall be deemed to be part of the time of [her] detention in the school; provided that, where a youthful offender or child has failed to return to the school on the licence being forfeited or revoked, the time which elapses after [her] failure so to return shall be excluded in computing the time during which [she] is to be detained in the school.

6. Where a licence has been revoked or forfeited and the youthful offender or child refuses or fails to return to the school, a court of summary jurisdiction, if satisfied by information on both that there is reasonable ground for believing that [her] parent or guardian could produce the youthful offender or child, may issue a summons requiring the parent or guardian to attend at the court on such day as may be specified in the summons, and to produce the child, and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of Part of the Act, be liable on summary conviction to a fine not exceeding one pound.

7. Where a licence has been revoked or forfeited and the youthful offender or child refuses or fails to return to the school, [she] may be apprehended without warrant and brought back to the school.

- *Discharge*

74. The 1908 Act established a power for the Chief Secretary (after the foundation of the State, the Minister for Education) to discharge a child from Industrial or Reformatory School at any time, with or without conditions.⁷² If such a discharge was subject to conditions, it could be revoked and the child recalled to the School. In such a case:

“if [she] fails to do so [she] and any person who knowingly harbours or conceals [her] or prevents [her] from returning to school shall be liable to the same penalty as if the youthful offender or child had escaped from school”.⁷³

75. The 1941 Act also provided that a person who failed to return to an Industrial or Reformatory School following revocation of a conditional discharge could be apprehended without warrant and brought back to School.⁷⁴

76. A person authorised by a School Manager to bring a child to or from the School or “apprehending and bringing [her] back to the school in case of [her] escape or refusal to return” was granted “all the powers, protection and privileges of a constable”.⁷⁵

- *Supervision following release from Industrial or Reformatory School*

77. The provisions of the Children Act on supervision following release from Industrial or Reformatory School are of central importance. The implications of the relevant provision have, perhaps, not been fully appreciated to date.

⁷² Section 69 of the 1908 Act

⁷³ Section 69(1) of the 1908 Act

⁷⁴ Section 16(1) of the 1941 Act, amending section 69 of the 1908 Act

⁷⁵ Section 85 of the 1908 Act

78. In short, regardless of whether or not a child or young person was discharged conditionally or unconditionally, the 1908 Act provided that every child – after expiration of her detention either in an Industrial or Reformatory School – *remained under the supervision of the Manager of the School*. A child leaving Industrial School remained under supervision until he or she reached 18 years of age; while for a child leaving Reformatory School, the period of supervision lasted until he or she reached 19 years of age. The only exception to this rule was for a child committed to Industrial School only for the purpose of enforcing a school attendance order.

79. At any point during this period of supervision, the 1908 Act permitted the School Manager to recall the child or young person to the School and to detain her there for a period of up to 3 months.

80. The 1908 Act established three conditions for recall in this manner-

- “A person shall not be so recalled unless the managers are of opinion that the recall is necessary for [her] protection”;
- The Manager of a School recalling a person were required to send an “immediate notification of the recall of any person” to the Chief Inspector of Reformatory and Industrial Schools stating the reasons for recall; and
- The Manager was required to “place the person out as soon as possible, and at latest within three months after the recall”, again subject to notification “forthwith” to the Chief Inspector.⁷⁶

81. At any time after recall, the Manager had the power to place the person out on licence. Supervision of young people discharged from Industrial and Reformatory Schools ended only either at the ages set out above; or if the

⁷⁶ Section 68(3) of the 1908 Act

Chief Secretary (after the foundation of the State, the Minister for Education) ordered that a person should “cease to be under such supervision”.⁷⁷

82. The 1941 Act also amended the provisions relating to supervision of children after their final discharge from Industrial or Reformatory School. The Act provided for an increase of the period of supervision of children and young people discharged from Industrial and Reformatory School on the direction of the Minister for Education. The increased period was:

- by two years for persons discharged from Reformatory School (i.e. to conclude when she reached the age of 21)⁷⁸, and
- for three years for persons discharged from Industrial School (i.e. to conclude when she reached the age of 21).⁷⁹

83. The provision in full, as amended by the 1941 Act, was as follows.

Children Act 1908, as amended by the Children (Amendment) Act 1941
Section 68, Supervision of youthful offenders and children after the expiration of period of detention

1. Every youthful offender sent to a certified reformatory school shall, on the expiration of the period of [her] detention, if that period expires before [she] attains the age of nineteen years, remain up to the age of nineteen under the supervision of the managers of the school and, if the Minister for Education, after consultation with the managers, directs that it is necessary for the protection and welfare of the youthful offender that the period of [her] supervision should be extended for a specified period not exceeding two years, [she] shall, after attaining the age of nineteen,

⁷⁷ Section 68(5) of the 1908 Act

⁷⁸ Section 14(a) of the 1941 Act, amending section 68(1) of the 1908 Act

⁷⁹ Section 14(b) of the 1941 Act, amending section 68(2) of the 1908 Act

remain under the supervision of the managers for the period so specified

2. Every child sent to an industrial school shall, from the expiration of the period of [her] detention, remain up to the age of eighteen under the supervision of the managers of the school and, if the Minister for Education, after consultation with the managers, directs that it is necessary for the protection and welfare of the child that the period of [her] supervision should be extended for a period specified in such direction not exceeding three years, [she] shall, after attaining the age of eighteen, remain under the supervision of the managers for the period so specified; provided that this subsection shall not apply in any case where the child was ordered to be sent to an industrial school for the purpose only of enforcing an attendance order made in consequence of [her] parent, guardian or other person legally liable to maintain [her] neglecting to provide efficient elementary instruction for [her].
3. The managers shall grant to any person under their supervision a licence in the manner provided by this Part of this Act, and may revoke any such licence, and recall any such person to the school; and any person so recalled may be detained in the school for a period not exceeding three months, and may at any time be again placed out on licence; provided that-
 - a. A person shall not be so recalled unless the managers are of opinion that the recall is necessary for [her] protection; and
 - b. The managers shall send to the chief inspector of reformatory and industrial schools an immediate notification of the recall of any person, and shall state the reasons for [her] recall; and
 - c. They shall again place the person out as soon as possible, and at latest within three months after the recall, and shall forthwith notify the chief inspector that the person has been placed out.
4. A licence granted to a youthful offender or child before the expiration of [her] period of detention shall, if [she] is liable to be under supervision in accordance with this section, continue in force after the expiration of that

period, and may be revoked in manner provided by this Part of this Act.

5. The Secretary of State may at any time order that a person under supervision under this section shall cease to be under such supervision.
6. When a youthful offender or child is under the supervision of the manager of a certified school it shall not be lawful for [her] parent to exercise, as respects the youthful offender or child, his rights and powers as parent in such a manner as to interfere with the control of the manager over the youthful offender or child.
7. Where a licence granted to a person under the supervision of the manager of a certified school is revoked, such person may be apprehended without warrant and brought back to such school.

*iii. National Society for the Prevention of Cruelty to Children*⁸⁰

84. The role of the National Society for the Prevention of Cruelty to Children was reflected in a number of ways in the Children Act 1908. First, officers of such a society could be appointed by the Secretary of State to carry out inspections of “any institution for the reception of poor children or young persons supported wholly or partly by voluntary contributions...”.⁸¹ An officer appointed in this way was granted powers under the Act, namely the power to enter the institution. It was an offence for any person to obstruct him in the execution of his duties.⁸² The Act also provided that a board of

⁸⁰ The National Society for the Prevention of Cruelty to Children was re-named the Irish Society for the Prevention of Cruelty to Children in 1956.

⁸¹ Children Act 1908, Section 25

⁸² Children Act 1908, Section 25(2) in relation to Great Britain. [The section also provides for appointment of females to carry out these duties in respect of an institution housing only girls, if so desired by the managers of the institution; and for appointees where practicable to be of the same religious denomination of an institution carried on in accordance with those principles, again if so desired by the managers of the institution] and section 133 (26) in relation to Ireland.

guardians may, with the consent of the Local Government Board for Ireland, “contribute to the funds of any society or body corporate for the prevention of cruelty to children”.⁸³

85. The 1908 Act also provided that the expression ‘fit person’ in relation to the care of a child or young person “includes any society or body corporate established for the reception or protection of poor children or the prevention of cruelty to children”.⁸⁴

iv. School attendance

86. The **School Attendance Act 1926** made attendance at school mandatory for children between the ages of 6 and 14 by placing an obligation on:

“the parent of every child between the ages of 6 and 14 years, and of every other child to whom the Act is applied, is required, unless there is a reasonable excuse for not so doing, to cause the child to attend a national or other suitable school on every day on which such school is open for secular instruction...”.⁸⁵

In this context, ‘parent’ was defined broadly as any person having “legal custody of the child and includes the person with whom the child is living or in whose custody the child is”.⁸⁶

87. The Act sets out a finite list of excuses for non-attendance of a child at school, namely due to:

- illness;
- inaccessibility of a suitable school;
- a child of 12 years or over who is engaged in light agricultural work on [her] parent’s land for a specified (time-limited) period;

⁸³ Children Act 1908, Section 36

⁸⁴ Children Act 1908, Section 38

⁸⁵ School Attendance Act 1926, Section 3

⁸⁶ Id

- “that the child is receiving suitable elementary education in some manner other than by attending a national or other suitable school”; or
- that “the child has been prevented from attending school by some other sufficient cause”.⁸⁷

88. A three day period was provided within which the Act required the parent (defined as above) to “communicate in writing or in person to the principal teacher of the school the cause of the child’s absence”.⁸⁸ Failure to ensure the attendance of the child at school without reasonable excuse could lead to enforcement action.⁸⁹

89. The Act also empowered the Minister to raise the school leaving age to 16 at a later point⁹⁰; and to make Regulations prohibiting or restricting the employment of children and establishing offences for persons employing a child in contravention of those Regulations.⁹¹ The school leaving age was not raised until 1972, at which point it was increased to 15 years⁹², and subsequently to 16 years.⁹³

C. Legislation relating to health and health authorities, including funding provisions

Lunacy Acts 1821 and 1826

Dangerous Lunatics (Ireland) Act 1838

Local Government (Temporary Provisions) Act 1923

⁸⁷ School Attendance Act 1926, Section 4

⁸⁸ School Attendance Act 1926, Section 10

⁸⁹ School Attendance Act 1926, Section 11

⁹⁰ School Attendance Act 1926, Section 24

⁹¹ School Attendance Act 1926, Section 12

⁹² School Attendance Act 1926 (Extension of Application) Order 1972, S.I. No. 105/1972, Section 3 extended to “children who have attained the age of fourteen years and have not attained the age of fifteen years”.

⁹³ Education (Welfare) Act 2000, which came into effect in 2002, with the effect that from that time it became compulsory for children to remain at school until the age of 16 years, having completed 3 years at post-primary level.

Local Government (Temporary Provisions)(Amendment) Act 1924

Public Assistance Act 1937

Public Assistance Act 1939

Mental Treatment Act 1945

Health Act 1947

Health Act 1953

Health Act 1970

Child Care Act 1991

90. Although very different arrangements apply in the modern era, local government was, for many years, responsible for health and nascent social welfare functions.

91. Apart from (the pre-State) Poor Relief (Ireland) Acts 1838-1914, a number of Acts were passed at the beginning of the 20th century on issues which are relevant to what later became social welfare.⁹⁴ Further, in 1920 and prior to independence:

“the underground Dáil set up a local government department which assumed the functions of a central authority while the Local Government Board for Ireland was still active and, nominally at least, in control of affairs. ... After some hesitation, the majority of the local authorities recognised the control of the new department and broke with the Local Government Board”.⁹⁵

92. This section contains a sketch of provisions pertaining to health services, including in particular provisions for funding by the authorities of private or voluntary organisations.

⁹⁴ E.g. Old Age Pensions Act 1908, the National Insurance Act 1911, the School Meals Act 1914, the Blind Persons Act 1920

⁹⁵ Callanan and Keoghan, *Local Government in Ireland* at 29-30

i. Local Government (Temporary Provisions) Act 1923 and County Schemes thereunder

93. The **Local Government (Temporary Provisions) Act 1923** (“the 1923 Act”) was the first statutory provision for relief of the poor following establishment of the State, intended as “an interim measure ... to confirm the work already done by the Dáil in placing public assistance on a county basis”.⁹⁶

94. Accordingly the Act gave a statutory basis to the County Schemes adopted by County Councils for “the administration of the relief of the poor”⁹⁷, giving effect to those schemes⁹⁸, granting authority to local authorities who had not yet done so to adopt County Schemes⁹⁹ and empowering the Minister for Local Government and Health to take action in relation to local authorities which had not yet adopted such schemes. The common themes throughout, as set out in the preamble to the Act were:

- “(a) the abolition of the existing system under which the poor were relieved in workhouses established in each Poor Law Union;
- (b) the centralisation of the administration under one authority in each county;
- (c) the establishment in each county of central institutions in which the poor of the county can be relieved;
- (d) enabling all poor persons requiring relief to be relieved either in or out of the central institution as may be thought advisable”.¹⁰⁰

⁹⁶ Id at 31

⁹⁷ Local Government (Temporary Provisions) Act 1923, Section 1

⁹⁸ Local Government (Temporary Provisions) Act 1923, Section 2(1)

⁹⁹ Local Government (Temporary Provisions) Act 1923, Section 3(1). “The Council of any County in Saorstát Eireann to which no existing County Scheme relates may prepare a scheme in accordance with the provisions of this Act for the relief of the poor in that County, and may submit such scheme when prepared to the Minister”.

¹⁰⁰ Preamble to the Local Government (Temporary Provisions) Act 1923

95. There were some variances among the County Schemes adopted prior to enactment, but the Act contained a number of provisions to ensure a certain level of standardisation.

- First, it defined County Schemes in such a way as to refer only to “so much of an existing scheme as relates to the relief of the poor and does not contravene any of the provisions of this Act”.¹⁰¹
- Second, it established that “any provision contained in any existing Scheme which ... contravenes any provision of this Act shall be and shall be deemed to have always been void and of no effect”.¹⁰²
- Third, the Act explicitly provided, at section 10, that:

“Any person in a County to which a County Scheme relates who is eligible for relief may, subject to any regulations made by the Minister in that behalf, be granted outdoor relief, notwithstanding anything in any enactment limiting the granting thereof to certain classes of persons...”.¹⁰³
- And fourth, the Act required the authorisation of the Minister for Local Government and Health for each County Scheme submitted. The Minister was empowered to confirm schemes without amendment, to confirm them with such amendments as he deemed necessary, or to “wholly reject” those schemes.¹⁰⁴ The Minister was also empowered to, by order, amend or modify any County Scheme from time to time “in any way he may deem necessary”.¹⁰⁵

¹⁰¹ Local Government (Temporary Provisions) Act 1923, Section 1

¹⁰² Local Government (Temporary Provisions) Act 1923, Section 2(5). [Section 2(6) contains a saver to the effect that this shall not “make illegal any act done before the passing of this Act which would have been legal if this Act had not been passed”]

¹⁰³ Local Government (Temporary Provisions) Act 1923, Section 10

¹⁰⁴ Local Government (Temporary Provisions) Act 1923, Section 4

¹⁰⁵ Local Government (Temporary Provisions) Act 1923, Section 5(1)

96. County Schemes which were prepared in advance of enactment were scheduled to the Act and related to Cavan, Clare, Galway, Kerry, Kildare, Kilkenny, Laois, Leitrim, Limerick County Borough, Limerick County, Longford, Mayo, Meath, Monaghan, Offaly, Roscommon, Sligo, Tirconail (Donegal), Waterford, Westmeath, Wexford and Wicklow.¹⁰⁶

97. As noted above, there was variety in the provisions of the various County Schemes, but in general:

“County Boards were appointed to administer relief ... the principal institutions under the new arrangement were normally the county home, which received the old and infirm and classes other than the sick that were formerly in the workhouse, and the county hospital”.¹⁰⁷

98. The Galway County Scheme was unique in that it contained explicit reference to the Magdalen Laundry operated by the Sisters of Mercy at Forster Street in Galway. That County Scheme provided at section 4 as follows:

“Unmarried Mothers are divided into two classes:—

- (a) First offenders, to be dealt with in the same institution as children
- (b) Old offenders to be sent to Magdalen Asylum.

Unmarried Mothers who come within Class (b) shall be offered an opportunity of relief and retrieval in the Magdalen Asylum, Galway, upon such terms and conditions as may be agreed on between the Executive Committee and the Sisters in Charge of the Magdalen Asylum. If necessary the Committee may make arrangements with other Institutions.

¹⁰⁶ Local Government (Temporary Provisions) Act 1923, Schedule 1

¹⁰⁷ Callanan and Keogan, *Local Government in Ireland*, supra at 31

Persons in Class (b) who refuse to enter such Institutions as may be selected shall not be allowed, under any circumstances to become chargeable to the public rates”.¹⁰⁸

99. This provision in the Galway County Scheme has been cited to the effect that a woman, having a second child outside marriage, would be barred from all public assistance or support, if she refused to enter a Magdalen Laundry. This is what the County Scheme suggests at face value – however, the provisions of the 1923 Act over-rode this clause and made it inoperable and of no legal effect from the outset. This point was discussed and explicitly confirmed during passage of the Bill through the Oireachtas.
100. At Committee stage in Seanad Éireann on 21 March 1923, Senator Costello moved an amendment which would have deleted from the Galway County Scheme the final three lines cited above, which on their face barred unmarried mothers from public assistance.¹⁰⁹ In response, the Minister for Local Government explicitly confirmed that the provision was “made inoperative” by the Act itself – by virtue of section 2(5) and section 10 (the contents of which were set out above, to the effect that any provision in county schemes contravening the Act shall be void and of no effect; and that any person eligible for relief may be granted that relief regardless of anything purporting to limit the grant of relief). The Minister also confirmed that amendment of many of the County Schemes would be undertaken given the “many faults” they contained. Senator Costello was satisfied with this confirmation that the clause was inoperative and accordingly withdrew her amendment. The full exchange is reproduced as follows.

¹⁰⁸ Section 4 of the Galway County Scheme, Schedule 1 to the 1923 Act

¹⁰⁹ Seanad Éireann, Committee Stage of the Local Government (Temporary Provisions) Bill 1923, 21 March 1923. Seanad Éireann Debate Vol. 1 No.15; at 547-549

Seanad Éireann**Extract from Debate at Committee Stage, Wednesday 21 March 1923
on the Local Government (Temporary Provisions) Bill 1923.¹¹⁰**

Mrs. Costello: I beg to move:—

“To add at the end of Sub-section (1) the words ‘provided that lines 26, 27, and 28 on page 17 of the Galway County Scheme in the First Schedule to this Act be omitted”.

The lines I wish to have omitted read:

“Persons in Class (*b*) [unmarried mothers] who refuse to enter such institutions [Magdalen Asylums or some other Homes] as may be selected shall not be allowed under any circumstances to become chargeable to the public rates.”

I do not know if the Minister will be able to make any alteration. I think, from something he said last week, he does not care to alter it. As An Cathaoirleach says, he has power under Section 5. In the Preamble of the Bill it is stated it is to enable poor persons requiring relief to be relieved, but it seems that an exception is to be made in the case of unmarried mothers, who, it is stated, are on no account to be chargeable to the rates if they will not go into a Magdalen Asylum.

I think that under no circumstances could a County Authority get rid of its responsibility to a person who is destitute and in need of help. Moreover, I know from personal observation that many of these unfortunate cases are women of weak intellect and in no way responsible. I know that the better way would have been to have appealed to the County Council, and I would have done so if I had time. Of course, the Committee which drew up these rules is now dissolved. I only wish to draw attention to the

¹¹⁰ Seanad Éireann, Committee Stage of the Local Government (Temporary Provisions) Bill 1923, 21 March 1923. Seanad Éireann Debate Vol. 1 No.15

matter, and if the Minister would ask the County Council, I think it could be met in that way.

Minister for Local Government (Mr. E. Blythe): The particular provision to which Senator Mrs. Costello objects in the County Galway Scheme is made inoperative by the Bill as it stands.

Sub-section 5 of Section 2 says:

“Any provision contained in any existing scheme which deals with any matter other than the relief of the poor, or which contravenes any provision of this Act, shall be, and shall be deemed to have always been, void and of no effect”.

Section 10 of the Bill says:

“Any person in a county to which a county scheme relates who is eligible for relief may, subject to any regulations made by the Minister in that behalf, be granted outdoor relief, notwithstanding anything in any enactment limiting the granting thereof to certain classes of persons, and this provision shall be deemed to have had effect in any such county from and after the date on which such county schemes came into operation”.

That means that the particular clause in the County Galway Scheme to which Senator Mrs. Costello refers is made inoperative by the Act.

Colonel Moore: Would it not be better to take out these lines if the Clause is inoperative and apparently illegal?

Mr. Blythe: There are many faults in the schemes, and they will have to be amended pretty generally by Order. I do not think there is any particular reason for amending that particular one here, and leaving all the others to be dealt with later.

Mrs. Costello: I agree with the Minister and withdraw the amendment.

An Cathaoirleach: I think Colonel Moore will himself see that it is better let these be governed by a general principle applicable to all cases rather than making special provisions for a particular case.

Amendment by leave withdrawn.

101. Accordingly, the provision in the Galway County Scheme which, if operational, would have barred public assistance to second-time unmarried mothers, was never of any legal effect.

102. More generally, the County Schemes were stated during Oireachtas debates to be “of a very tentative character and ... subject to revision”¹¹¹, some indicating “signs of very considerable thought; others are very crude both in inception and, as far as I can understand, in administration”.¹¹² He continued that:

“In view of their tentative character I think we would be wise to follow the example which was set in the Dáil, where I think there was not a single amendment made in any of these Schemes. I think the Dáil in that respect have shown a very good example. ... The bodies who are called upon to administer the Schemes were appointed under abnormal circumstances and can hardly be said to be really representative of public opinion in the country now. ... probably it might be wise not to attach too much importance to the present Schemes”.¹¹³

103. An Cathaoirleach expressed agreement, to the effect that criticism or amendment of the County Schemes might not be necessary:

¹¹¹ Senator Sir Hutcheson Poe

¹¹² Id

¹¹³ Id

“in view of the statements that have already been made by the Minister in charge of the Bill, namely, that these Schemes will all have to be reconsidered before the Bill finally becomes law. You will notice that in Section 5 ample power is given to the Minister by Order to alter County Schemes, assuming that on consideration he might think it desirable that any of them should be altered in any respect”.¹¹⁴

And as noted above, the Minister confirmed that many of the Schemes would have to be amended generally by Order.

104. By June 1923, County Schemes, including the Galway County Scheme, had been amended by Ministerial Order and the reference to the Magdalen Laundry and the suggestion of a bar on public assistance to unmarried mothers – even though of no legal effect - had been removed.¹¹⁵

ii. Public assistance – general

105. The **Local Government (Temporary Provisions)(Amendment) Act 1924** (“the 1924 Local Government Act”) amended the 1923 Act in a number of respects. Insofar as relevant to this Report, it provided that every County Scheme would “continue in operation so long as the [1923 Act] continues in force and no longer”.¹¹⁶

106. The **Public Assistance Act 1939** (“the 1939 Act”) made considerable procedural adjustments to the structures for delivery of assistance. Public assistance districts were identified throughout the State, with a public assistance authority in each such district.¹¹⁷ The Act provides for the make-up and membership of public assistance authorities- in general, members were required to be members of the relevant county council (or

¹¹⁴ Id

¹¹⁵ County Scheme Order, Galway No. 1, 1923 of 28 June 1923

¹¹⁶ Section 2, Local Government (Temporary Provisions)(Amendment) Act 1924

¹¹⁷ Public Assistance Act 1939, Sections 6 and 7

City Council in respect of Dublin) and were elected by those Councils.¹¹⁸ Boards of Public Assistance were established for each district¹¹⁹; and provision was made for subsidiary committees to be established by the authority for the exercise or performance of any of their powers, duties or functions, where appropriate.¹²⁰

107. The substantive provisions of the Act relating to public assistance encompassed medical, general and home (i.e. non-institutional) assistance.

108. A general duty on the authorities to provide public assistance to eligible persons was established by section 19 of the 1939 Act.¹²¹ General assistance related to “the necessaries of life, other than medical assistance”.¹²² The general rules for eligibility for general assistance were that:

“a poor person who is unable to provide by [her] own industry or other lawful means the necessaries of life ... for [herself] or any persons whom he is liable under this Act to maintain”.¹²³

The general eligibility for medical assistance, similarly, was:

“a poor person who is unable to provide by [her] own industry or other lawful means the medical, surgical or dental treatment, or medicines, or

¹¹⁸ Public Assistance Act 1939, Section 9

¹¹⁹ Public Assistance Act 1939, Section 10

¹²⁰ Public Assistance Act 1939, Section 11

¹²¹ Public Assistance Act 1939, Section 19:

“Subject to the provisions of this Act, it shall be the duty of every public assistance authority to give, in accordance with this Act, to every person in their public assistance district who is eligible for public assistance such public assistance as shall appear to them to be necessary or proper in each particular case and to make, in accordance with this Act, due provision for that purpose”.

¹²² Public Assistance Act 1939, Section 3

¹²³ Public Assistance Act 1939, Section 18(1)

medical, surgical or dental appliances necessary for [herself] or any persons whom [she] is liable under this Act to maintain”.¹²⁴

109. Provision of assistance to eligible persons was not without condition. First, the person receiving assistance could be required to work as a condition of assistance:

“A public assistance authority may, as a condition of the granting of general assistance to a person, require such person, either before or after or during receipt of such general assistance, to perform such work as such authority shall consider suitable to the sex, age, strength, and capacity of such person and shall direct such person so to perform”.¹²⁵

110. Criminal offences were established for various acts of “inmates” of the publicly operated district institutions coming under the Act, whether by contravention of regulations, misbehaviour, insubordination” and so on.¹²⁶ Criminal offences and penalties were also laid down for a person assisting or inducing a child under the age of 16 years maintained by a public assistance authority “to leave ... the place where it is so maintained” without consent; or to “harbour or conceal” a child who has left such a place without consent.¹²⁷

111. Second, a duty to repay the public assistance authority “according to their ... abilities” applied both to a person assisted and, if he or she could not do so, to “every person liable to maintain him”.¹²⁸ A general duty to

¹²⁴ Public Assistance Act 1939, Section 18(2)

¹²⁵ Public Assistance Act 1939, Section 25(1)

¹²⁶ Public Assistance Act 1939, Section 69

¹²⁷ Public Assistance Act 1939, Section 82

¹²⁸ Public Assistance Act 1939, Section 28:

“Where public assistance has been given by a public assistance authority (in this section referred to as the said authority) to any person (in this section referred to as the assisted person) the following provisions shall apply and have effect, that is to say:

(a) it shall be the duty of the assisted person or, on his default, whether complete or partial, of every person liable to maintain him, to repay to the said authority

contribute to the costs of general assistance (i.e. non-institutional relief) was also established.¹²⁹

112. Assistance other than institutional relief was also continued under the Act: Public assistance authorities were required to grant so-called “home assistance” to eligible persons within their District who were not granted assistance in an institution.¹³⁰

113. Finally, the Act provided for the vesting in public assistance authorities of parental authority (“all rights and powers of the parents”) in relation to orphaned or deserted children under the age of 16 who were being maintained by the authorities.¹³¹ Parental authority for a child maintained by a public assistance authority could also be transferred to that authority by resolution of the authority in a number of other circumstances also.¹³² A

according to their respective abilities the cost of the public assistance so given to the assisted person”.

¹²⁹ Public Assistance Act 1939, Section 29

¹³⁰ Public Assistance Act 1939, Section 39

“(1) Every public assistance authority shall grant, in accordance with regulations made by the Minister under this Act, home assistance to every person in the public assistance district of such authority who is eligible for general assistance and is not granted assistance in an institution.

(2) The Minister may by order make regulations governing the granting of home assistance and, in particular, regulating the nature of home assistance either generally or in respect of any particular class of person, and prescribing the times and places at which and the conditions subject to which home assistance may be granted”.

¹³¹ Public Assistance Act 1939, Section 44. The Act drew a distinction in that regard between children born to married parents – in which case the requirement was for both parents to have died or deserted the child; and children born to an unmarried mother, where the requirement was only for the death or desertion of the child by its mother. Similarly, although a deserted “legitimate child” could be reclaimed and maintained by either parent, the relevant provision in relation to a deserted “illegitimate child” provided that the authorities were not authorised to detain the child “if its mother claims it for the purpose of maintaining it”.

¹³² Public Assistance Act 1939, Section 45. Circumstances included e.g. where the Authority was of the opinion that the child’s parent was “by reason of mental deficiency or vicious habits or mode of life, unfit to have the control of such child”; or where the child’s parent was imprisoned or detained under the Inebriates Act 1898 and therefore “unable to perform his parental duties”.

transfer of parental authority in this way could be rescinded or terminated.¹³³

114. The **Health Act 1953** (“the 1953 Act”) replaced the provisions of the Public Assistance Act 1939 insofar as concerns medical and institutional assistance.¹³⁴ The test for eligibility for “institutional assistance”, that is, eligibility for entry to institutions maintained by the health authority, was under the Act based primarily on yearly means.¹³⁵

115. Broader provision was made for institutional assistance by way of “shelter and maintenance in county homes” of a person “who is unable to provide shelter and maintenance for [herself] or [her] dependants”.¹³⁶ Similar to the position under the Public Assistance Acts, the Minister was authorised to direct that a particular class of persons could not be maintained in a county home or similar institution. Offences were also established in relation to a person maintained in a county home or similar institution “who behaves in a disorderly manner ... or causes unreasonable disturbance to other persons maintained in such home or institution or to persons employed therein”.¹³⁷

116. The Health Act 1953 authorised health authorities to provide for children (defined as a person less than 16 years) eligible for institutional assistance and being maintained by that authority in a number of ways – either by boarding out, sending to a certified school, or, for a child of between 14 and 16 years of age, “by arranging for [her] employment or by placing [her] in

¹³³ Public Assistance Act 1939, Section 45(3)(a), (b) and (c)

¹³⁴ Health Act 1953, Section 69

“69. —The Public Assistance Act 1939, shall cease to have effect as respects the provision of-

(a) medical assistance as defined therein, and

(b) general assistance as defined therein given by way of admission to an institution, and the said Act shall be construed accordingly”.

¹³⁵ Health Act 1953, Section 15

¹³⁶ Health Act 1953, Section 54

¹³⁷ Health Act 1953, Section 54

any suitable trade, calling or business".¹³⁸ In the latter case, the authority was authorised to pay:

“such fee or sum as may be requisite for that purpose and may support or contribute to the support of the child during any period (including, with the consent of the Minister, a period after attaining the age of sixteen years) during which [she] is engaged in learning the trade, calling, or business”.¹³⁹

117. Powers to remove the child from the custody of the person “with whom [she] was so boarded out, employed or placed in a trade, calling or business” were also provided for.¹⁴⁰

118. A person not eligible for so-called “institutional services” provided by the authorities could avail of them only on a charged-basis and where there was capacity not required at that time for persons eligible for relief.¹⁴¹ The Act did, however, allow persons eligible for institutional services to, instead of accepting those services, “arrange for the like services being made available” for themselves or their child in an approved hospital, nursing home or maternity home.¹⁴²

119. Specific provision was made for “rehabilitation and maintenance of disabled persons”, including training “for employment suitable to their condition of health” and “the making of arrangements with employers for placing disabled persons in suitable employment”, with provision for payment of maintenance allowances to those persons in certain cases.¹⁴³

¹³⁸ Health Act 1953, Section 55

¹³⁹ Health Act 1953, Section 55(5)

¹⁴⁰ Health Act 1953, Section 56

¹⁴¹ Health Act 1953, Section 26

¹⁴² Health Act 1953, Section 25. The Health Act 1954 amended the provisions of the 1953 Act on the choice of patients in respect of institutional services.

¹⁴³ Health Act 1953, Section 50

iii. Reform of the health services

120. Major reform of the arrangement of health services occurred in 1947, with removal of the health function from the former Department of Local Government and Health and establishment of a new self-standing Department of Health. The position is summarised by Callanan and Keogan as follows:

“By the cumulative effect of a series of statutes, the county council became by 1942 the public assistance authority for the county and the sanitary authority for the rural area of the county. It was then dealing with health services in three capacities: as public assistance authority, as sanitary authority and simply as county council. In urban districts the urban councils were also administering some health services”.¹⁴⁴

121. The responsibilities of local authorities in relation to public assistance and public health were, however, progressively reduced from that period, with the establishment of the Departments of Health and Social Welfare in 1947 and, ultimately, the Health Boards in 1970.

122. The **Health Act 1947** (“the 1947 Act”) made County Councils and County Borough Corporations “health authorities for their respective areas”.¹⁴⁵ It provided that a health authority could, with the consent of the Minister for Health, “provide and maintain any institution which they consider necessary...”.¹⁴⁶ Health authorities were also authorised, either instead of or in addition to such institutions, to:

“make and carry out an agreement with the person having the management of an institution of the same kind for the use of that institution”,

¹⁴⁴ Callanan and Keogan, *Local Government in Ireland Inside Out*, at 37

¹⁴⁵ *Id*

¹⁴⁶ Health Act 1947, Section 10 (including hospital, sanatorium, maternity home, convalescent home, preventorium, laboratory, clinic, health centre, first-aid station, dispensary or any similar institution, as set out in section 2 of the Act)

either by a particular person or a class of persons.¹⁴⁷

123. The **Health Act 1970** (“the 1970 Act”) established regional health boards for the administration of health services in the State.¹⁴⁸ Membership of the boards consisted of persons appointed by the relevant local authorities, appointed by election by registered medical practitioners and appointed by the Minister for Health.¹⁴⁹ The 8 regional health boards established were responsible for performing the health functions conferred by the Act and any other functions performed, before 1970, by local authorities under the Health Acts, Mental Treatment Acts, Part 1 of the Children Act 1908, as amended, and a number of other Acts not directly relevant to this Report¹⁵⁰, “and so removing all local health administration from the local government system as from 1 April 1971”.¹⁵¹

iv. Provision of institutional assistance in non-state facilities and funding for such facilities (including extern institutions)

124. A series of Acts made provision both for ‘institutional assistance’ in non-State facilities, and also for funding by the health authorities to non-state organisations or so-called “extern institutions”. These provisions were as follows.

¹⁴⁷ Health Act 1947, Section 12

“12(1) – A health authority, in lieu of or in addition to themselves providing an institution of a particular kind, may, with the consent of the Minister, make and carry out an agreement with the person having the management of an institution of the same kind for the use of that institution:—

(a) by a particular inhabitant of the functional area of the health authority, or

(b) by all inhabitants of that area, or

(c) by such of those inhabitants as belong to a particular class

(2) An agreement which was in force immediately before the commencement of this section and which could be made upon such commencement under this section shall be deemed, upon and after such commencement, to be an agreement made under this section and shall have effect accordingly”.

¹⁴⁸ Health Act 1970, Section 4

¹⁴⁹ Id

¹⁵⁰ Health Act 1970, Section 6

¹⁵¹ Callanan and Keogan, *Local Government in Ireland*, supra at 37

125. The **Public Assistance Act 1937** (“the 1937 Act”) provided for State assistance to societies providing poverty relief and retrospectively validated assistance provided prior to its enactment.¹⁵² It provided that where a public assistance authority was satisfied that a society for relieving poor persons (“a body of persons, incorporated or unincorporated, which has as its object or one of its objects the giving of relief to poor persons”¹⁵³) was providing or intended to provide assistance by way of food and lodging in an institution, the authorities were authorised, on consent of the Minister, to provide financial or other assistance to that society.
126. Assistance could be provided either by direct financial contribution or by other means of indirect support.¹⁵⁴
127. The **Public Assistance Act 1939** provided for contributions to societies for prevention of cruelty to children; and societies for relieving the poor.¹⁵⁵ It repealed section 2 of the 1937 Act and replaced it with a very similar provision permitting public assistance authorities to contribute to societies providing relief to the poor.¹⁵⁶

¹⁵² Section 3 of the 1937 Act provided that retrospective approval of assistance provided within the 10 years prior to passing of the Act was subject to certification by the Minister within a period of 6 months of enactment. Section 3 of the 1937 Act.

¹⁵³ Public Assistance Act 1937, Section 1

¹⁵⁴ Such as provision of fuel, light, food, water or other commodities for use by the society; by permitting the use of premises belonging to the authority; or by providing other premises for the society’s use. Public Assistance Act 1937, Section 2.

“Whenever a public assistance authority is satisfied that a society for relieving poor persons affords or proposes to afford relief to poor persons by providing food and lodging for such persons in premises under the control of such society in the functional area of such public assistance authority and that such society by so doing renders or will render useful aid in the administration of the relief of the poor in such functional area, such public assistance authority may, with the consent of the Minister and subject to such limitations and conditions as he shall impose, give assistance to such society in any one or more of the following ways ...”

¹⁵⁵ Public Assistance Act 1939, Section 21(1)

¹⁵⁶ Public Assistance Act 1939, Section 21(2):

“Whenever a public assistance authority is satisfied that a society for relieving poor persons affords or proposes to afford relief to poor persons by providing food and lodging for such

128. Access to public (district) institutions was to be limited only to those classes of persons prescribed by the Minister.¹⁵⁷ However the costs of maintenance of a person in an institution other than those operated by the public authorities, namely, institutions operated by non-state organisations, were permitted to be paid by the authorities. The Act provided that, subject to the consent of the Minister:

“a public assistance authority may, if they so think proper, make provision for the assistance in a home, hospital, or other institution not provided or maintained by such authority of persons, or particular classes of persons, eligible for public assistance, and where a public assistance authority makes such provision, such authority may defray the expenses of the conveyance of the persons for whose assistance such provision is made to and from such institution and the expenses of their maintenance, treatment, instruction, or training therein”.¹⁵⁸

129. An enabling power was also included to permit the Minister to direct that if a particular class of persons was to receive assistance either in a district institution or one of the institutions covered by section 35, that class of

persons in premises under the control of such society in the functional area of such public assistance authority and that such society by so doing renders or will render useful aid in the administration of public assistance in such functional area, such public assistance authority may, with the consent of the Minister and subject to such limitations and conditions as he shall impose, give assistance to such society in any one or more of the following ways, that is to say:

(a) by contributing to the expenses incurred by such society in affording relief to poor persons in the manner aforesaid, or

(b) by supplying to such society fuel, light, food, water, or other commodity for use by such society in so affording relief to poor persons, or

(c) by permitting the use by such society, for the purpose of so affording relief to poor persons, of premises in the occupation of such public assistance authority and, where requisite, executing alterations and repairs to and supplying furniture and fittings for such premises in order to make them suitable for use for such purpose, or

(d) by providing premises (with all requisite furniture and fittings) for use by such society for the purpose of so affording relief to poor persons”.

¹⁵⁷ Public Assistance Act 1939, Section 33

¹⁵⁸ Public Assistance Act 1939, Section 35

persons would not be entitled to assistance in any other public assistance institution.¹⁵⁹

130. Section 10 of the **Health Act 1953** similarly authorised a health authority, with the consent of the Minister, to make arrangements for institutional care of a person or class of persons in an institution not managed by the health authority itself.

131. The Act also provided for payments for services provided by those external institutions; and for arrangements in force prior to enactment of the 1953 Act to be deemed as arrangements under section 10 of the Act. Insofar as relevant, the Act provided that:

“(1) A health authority may, with the consent of the Minister, make and carry out an arrangement for the giving of institutional services to any person or to persons of any class, being a person or persons who is or are entitled to receive institutional services from such authority otherwise than under section 26 of this Act, in an institution not managed by such authority or another health authority.

(2) Payments shall be made by the health authority for institutional services provided pursuant to an arrangement under subsection (1) of this section and the payments shall be in accordance with such scale as may be approved of or directed by the Minister”.¹⁶⁰

¹⁵⁹ Public Assistance Act 1939, Section 36

“Where a district institution provided by a public assistance authority is available for the assistance of a particular class of persons or provision has been made by a public assistance authority with the consent of the Minister for the assistance of a particular class of persons in a home, hospital or other institution not provided or maintained by such authority, the Minister may, by order, direct that such particular class of persons shall not be assisted by such public assistance authority in any institution except (as the case may be) such district institution or such home, hospital or other institution, and thereupon it shall not be lawful for such public assistance authority to assist (except in cases of urgent necessity) any person of such particular class in contravention of such order”.

¹⁶⁰ Health Act 1953, Section 10(1) and (2)

132. Section 65 of the 1953 Act also provided for financial assistance by a health authority to any entity which provided (or proposed to provide) a service similar or ancillary to a service provided by the health authority. These payments were effectively intended for any organisation providing services and effectively acting as a surrogate for the State. The section, an equivalent to which is still in force, provided in full as follows:

“65 (1) – A health authority may, with the approval of the Minister, give assistance in any one or more of the following ways to any body which provides or proposes to provide a service similar or ancillary to a service which the health authority may provide:

(a) by contributing to the expenses incurred by the body,

(b) by supplying to the body fuel, light, food, water or other commodity

(c) by permitting the use by the body of premises maintained by the health authority and, where requisite, executing alterations and repairs to and supplying furniture and fittings for such premises

(d) by providing premises (with all requisite furniture and fittings) for use by the body.

(2) A health authority may, with the approval of the Minister, contribute to the funds of any society for the prevention of cruelty to children”.¹⁶¹

133. It may be noted that the Child Care Act 1991 includes a similar provision, whereby:

“a Health Board may, subject to any general directions given by the Minister and on such terms and conditions as it thinks fit, assist a voluntary body or any other person who provides or proposes to provide a child care or family support service similar or ancillary to a service which the health board may provide under this Act

(a) by periodic contribution to funds of the body or person;

(b) by a grant;

¹⁶¹ Health Act 1953, Section 65

(c) by a contribution in kind (whether by way of materials or labour or any other kind of service)".¹⁶²

v. *Psychiatric institutions*

134. A brief sketch of the historic laws relating to psychiatric treatment and hospitals is also relevant to the Report. Prior details the nineteenth century basis of what were then referred to as lunacy laws, noting that admission to the new district asylums was:

“fairly straightforward and simple. People were admitted for being of ‘unsound mind’ as defined in the **Lunacy Acts of 1821** (1&2 Geo. 4 c.33) and **1826** (7 Geo. 4 c.14). An application was made to the asylum manager by the person’s next of kin, who confirmed the poverty of the patient and gave an undertaking to remove him from the asylum when requested. This application was accompanied by a medical certificate of insanity”.¹⁶³

135. As demand increased:

“a new law, known as the **Dangerous Lunatics (Ireland) Act 1838** (1 Vic. C.27), allowed the direct committal to prison of people designated as dangerous lunatics. These people were then legally transferred to a district asylum, without any further recourse to a local magistrate, whenever a place became available”.¹⁶⁴

136. The means by which dangerous lunatics were admitted to psychiatric hospitals was amended again almost 30 years later in **1867**:

“Under section 10 of this Act, anyone who appeared to be suffering from ‘derangement of mind’ which might ‘lead to him committing a

¹⁶² Child Care Act 1991, Section 10

¹⁶³ Prior, *Mental Health Law on the Island of Ireland 1800-2010*, in Prior (ed) *Asylums, Mental Health Care and the Irish 1800-2010*)

¹⁶⁴ *Id* at 319

crime' could be committed directly to an asylum by two justices of the peace".¹⁶⁵

137. The author Prior records that by the end of the 19th century, the majority of admissions to district asylums were "on the ground of dangerousness rather than unsoundness of mind"¹⁶⁶, and details the practical advantages to families using this means of admission to psychiatric treatment, namely that the police were responsible for transport of the person; the psychiatric asylum was obliged to accept and admit a person deemed dangerous; and the family was not responsible for the costs of maintenance of a person admitted as a dangerous lunatic.¹⁶⁷

138. The **Local Government Act 1925** altered the terminology from "lunatic asylums" to "mental hospital" but did not otherwise make amendments to the regime. The laws underpinning psychiatric treatment were not substantively altered thereafter until enactment of the **Mental Treatment Act 1945** ("the 1945 Act"). The 1945 Act abolished the role of the judiciary in admissions, and established the general duties of 'mental hospital authorities' to provide treatment and services.¹⁶⁸ For the first time, the persons concerned were identified as "patients" rather than "inmates". Patients could be either voluntary¹⁶⁹, or persons detained either temporarily or indefinitely.¹⁷⁰ A temporary patient was defined as a person suffering from mental illness, unfit due to her mental state for treatment as a voluntary patient and who was "believed to require, for [her] recovery, not more than six months suitable treatment", or an addict who was believed to require at least 6 months preventive and curative treatment.¹⁷¹

¹⁶⁵ Id at 320, citing the Lunacy (Ireland) Act 1867, 30 & 31 Vic. C.118

¹⁶⁶ Id at 320

¹⁶⁷ Id at 321

¹⁶⁸ Mental Treatment Act 1945, Section 19

¹⁶⁹ Part XV of the 1945 Act

¹⁷⁰ Part XVI of the 1945 Act

¹⁷¹ Section 3 of the 1945 Act

139. Mental hospital authorities were empowered to “make and carry out an arrangement for the maintenance, in a special institution, of any class of their chargeable patients”, which could include:

“any home, hospital, or other institution not maintained by the mental hospital authority making the relevant arrangement for maintenance and suitable for the treatment of the persons for whom such arrangement is made”.¹⁷²

¹⁷² Section 101 of the 1945 Act

D. Legislation relating to employment and factories

Truck Acts 1831, 1887, 1896

Factory and Workshop Acts 1901-1920

Conditions of Employment Act 1936

Factories Act 1955

140. The **Truck Act 1831** (“the 1831 Act”) as originally adopted applied to Great Britain only, however, its provisions were later extended to Ireland. The Act applied to only specified trades and occupations.¹⁷³ The essential purpose of the Act was to prohibit the payment in those trades of wages “in goods or otherwise than in the current coin of the realm”. In all contracts for hire in those specified trades and occupations, wages were required to be “made payable in the current Coin of this Realm only” and any contract providing otherwise was “illegal, null and void”.¹⁷⁴

141. The **Truck Amendment Act 1887** extended the 1831 Act to Ireland.¹⁷⁵ It contained a number of amendments of substance, but also established an enforcement mechanism - enforcement of the Acts would fall to the inspectors of factories and inspectors of mines, and granted appropriate powers to them for that purpose.¹⁷⁶ The **Truck Amendment Act 1896**

¹⁷³ Article XIX of the Truck Act 1831, concerning artificers, workmen, labourers and other persons employed in trades and occupations “... in or about the making or manufacturing of any ... other articles or hardwares made of iron or steel or of iron and steel combined, or of any plated articles of cutlery or of any goods or wares made of brass, tin, lead, pewter, or other metal, or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dying, printing or otherwise preparing of any kinds of woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufactures whatsoever ... or in or about the making or preparing of bone, thread, silk, or cotton lace or of lace made of any mixed materials”.

¹⁷⁴ Article I of the Truck Act 1831

¹⁷⁵ Section 18 of the 1887 Act

¹⁷⁶ Section 13(2) of the 1887 Act:

“It shall be the duty of the inspectors of factories and the inspectors of mines to enforce the provisions of the principal Act and this Act within their districts so far as respects factories, workshops and mines inspected by them respectively, and such inspectors shall for this purpose have the same powers and authorities as they respectively have for the purpose of

(“the 1896 Act”) expanded the role of inspectors to “the case of a laundry ... in like manner as it applies in the case of a factory”.¹⁷⁷

142. There is, at **Common Law**, “...a duty on an occupier of a factory ‘to take reasonable care of his workmen’. In order to comply with this common law duty, there is a four-fold obligation on an occupier, namely to:

- select proper and competent workmen
- furnish them with adequate materials and proper plant and machinery
- provide a safe system of working, and
- provide a place of work and safe mean of access thereto...¹⁷⁸”.

This common law duty was elaborated over the years by a series of statutory provisions, as follows.

143. The first broad legislative provision for factories of the 20th century was the **Factory and Workshop Act 1901**, which did not include institutional laundries within its scope. Nonetheless and as set out in more detail in Chapter 12, a voluntary scheme of inspections was put in place by the authorities, under which 9 of the 10 Magdalen Laundries within the scope of this Report voluntarily submitted to inspections.

144. The **Factory and Workshop Act 1907** expanded the scope of the 1901 Act to include laundries which carried on by way of trade or for the purpose of gain, as well as those laundries carried on “incidentally to the purposes of

enforcing the provisions of any Acts relating to factories, workshops or mines, and all expenses incurred by them under this section shall be defrayed out of moneys provided by Parliament”.

¹⁷⁷ Section 10 of the 1896 Act:

“Sub-section two of section thirteen of the Truck Amendment Act 1887 (which relates to the duty of inspectors) shall apply in the case of a laundry, and in the case of any place where work is given out by the occupier of a factory or workshop, or by a contractor, or sub-contractor, in like manner as it applies in the case of a factory”.

¹⁷⁸ Extract from a Paper on the Law of Safety in Ireland prepared by Ercus Stewart, SC, and copied to the Barrington Commission.

any public institution”.¹⁷⁹ Compliance with the legislation and the possibility of inspections thus became mandatory and not just voluntary for institutional laundries, including the Magdalen Laundries, from that point onwards.

145. Two classes of institution were provided for under the 1907 Act, as follows:

- Premises being part of private charitable institutions (section 5);
and
- Premises “subject to inspection by or under the authority of any Government Department” (section 6).

146. Inspections of section 6 institutions took place by way of “arrangements” with the relevant Departments. In respect of section 5 institutions, a provision of the Act permitted them to submit a scheme for regulation of hours of employment, intervals for meals, and so on to the Secretary of State for approval. No such scheme could be approved unless it resulted in a situation no less favourable than the provisions of the 1901 Act. If so approved, such a scheme was required to be laid before the Houses of Parliament. The extent to which this process was used in practice is set out in Chapter 12.

147. Various other amendments and Orders were made in the area of employment and factories in the years prior to the establishment of the State, including the Welfare of Workers Employed in Laundries Order 1920 (“the Laundries Welfare Order”), which included provisions on protective clothing for such workers, washing facilities, and facilities “for sitting” for female workers so as to provide them with “opportunities for resting which may occur in the course of their employment”.¹⁸⁰

148. As a consequence of these developments, at the time of the establishment of the State there existed in the Factory and Workshop Acts 1901-1920 a

¹⁷⁹ Factory and Workshop Act 1907, Section 1

¹⁸⁰ Welfare of Workers Employed in Laundries Order 1920, SR & O 1920/654

body of legislation governing basic standards of safety, hygiene, hours of work and holidays in laundries, including institutional laundries. These Acts continued to govern these areas after the establishment of the State and until enactment of the Factories Act 1955.

149. Prior to that general reform in relation to factories, the **Conditions of Employment Act 1936** (“the 1936 Act”) was enacted. The 1936 Act provided, insofar as is relevant, that:

“Where industrial work in any industrial undertaking is done wholly or partly by persons who do not receive any salary or wages in respect of their work, the person carrying on such industrial undertaking shall for the purposes of this Act be deemed to be the employer of such persons doing such industrial work, and such persons shall for the purposes of this Act be deemed to be workers in the employment of such person”.¹⁸¹

150. It also provided -

“(1) The provisions of this Act, except in so far as they relate to the payment of workers, shall apply in relation to industrial work done in any institution as if the persons doing such industrial work were workers employed to do such industrial work by the persons having control of such institution unless such industrial work is done for the purpose only of supplying the needs and requirements of such institution.

(2) For the purpose of this section the word "institution" means an institution carried on for charitable or reformatory purposes, other than a prison, a borstal institute, a mental home, or a county home”.¹⁸²

151. The effect of these provisions together would have been that, for certain purposes of the 1936 Act, persons in an institution “carried on for charitable or reformatory purposes” which carried on work for the wider public – for

¹⁸¹ Conditions of Employment Act 1936, Section 61

¹⁸² Conditions of Employment Act 1936, Section 62

example laundry services for the public, rather than solely for the institution itself - would be deemed for certain purposes (hours of work, certain safety provisions and so on) to be workers in employment of the relevant institution.

152. By contrast, it was confirmed during passage of the the Holiday (Employees) Act 1939 that that Act included “persons employed in connection with an institution”, but excluded “inmates” of institutions.¹⁸³

153. The **Factories Act 1955** (“the 1955 Act”) amended and consolidated earlier laws relating to workplaces, including the pre-independence Factory and Workshop Acts 1901-1920. The 1955 Act established standards in relation to:

- *health*, in relation to issues including cleanliness, overcrowding, temperature, ventilation, lighting, floor drainage¹⁸⁴;
- *safety*, including in relation to steam boilers and steam receivers and containers and fire safety¹⁸⁵, and
- *welfare* including water, washing facilities and so on¹⁸⁶.

154. In terms of its scope as relevant to this Report, the 1955 Act provided at section 84 as follows:

“(1) Where, in any premises forming part of an institution carried on for charitable or reformatory purposes, any manual labour is exercised in or incidental to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of articles not intended for the use of the institution, but the premises do not constitute a factory, then, nevertheless, the provisions of this Act shall, subject as hereinafter in this section provided, apply to those premises.

¹⁸³ Dail Eireann, Committee Stage, Holidays (Employees) Bill 1938, Wednesday 9 November 1938.

¹⁸⁴ Factories Act 1955, Part II

¹⁸⁵ Factories Act 1955, Part III, in particular sections 40, 41, 45 et seq

¹⁸⁶ Factories Act 1955, Part IV

(2) This Act shall not, except in so far as the Minister may by order direct, apply to any premises which do not constitute a factory if the premises are subject to inspection by or under the authority of any Minister of State”.¹⁸⁷

155. The effect of Section 84(2) was that a reformatory or charitable institution, which contained laundry facilities providing services to the public, would fall within the scope of the 1955 Act unless the premises were “subject to inspection by or under the authority of any Minister of State”. Chapter 12 confirms the application of this Act to the Magdalen Laundries and details their inspections under the Acts.

156. In terms of substantive content, the 1955 Act set out procedures for notification and investigation of accidents and industrial diseases¹⁸⁸, as well as general administration and enforcement of the Act by inspectors.¹⁸⁹ A range of offences were also established.¹⁹⁰

157. Particular rules were included in respect of young persons - certificates of fitness were required prior to employment of young persons¹⁹¹ (defined as more than 14 years and less than 18 years of age¹⁹²). Any such person was required, within 10 working days of commencing employment, to be examined by the certifying doctor and be certified to be “fit for that employment”.¹⁹³ Subsequent examination and certification was required on a 12-monthly basis, while that person remained in the employment and was still under the age of 18.¹⁹⁴

¹⁸⁷ Factories Act 1955, Section 84

¹⁸⁸ Factories Act 1955, Part VI

¹⁸⁹ Factories Act 1955, Part X

¹⁹⁰ Factories Act 1955, Part XI

¹⁹¹ Factories Act 1955, Section 80 (Part VII)

¹⁹² Factories Act 1955, Section 2

¹⁹³ Factories Act 1955, Section 80

¹⁹⁴ Id

158. Administrative arrangements were also provided for by the Act, including the keeping of a general register¹⁹⁵ and periodical returns to the Minister.¹⁹⁶

The Act also empowered the Factories Inspectors:

- to enter, inspect and examine relevant premises;
- to take a member of An Garda Síochána “if he has reasonable cause to apprehend any serious obstruction in the execution of his duty”;
- to require the production of the registers, certificates and so on kept under the Act; and so on.¹⁹⁷

159. The Act also made certain basic provisions in relation to fire. Section 45 of the Act provided that:

“The occupier of a factory to which this section applies shall have in force a certificate under this section (subsequently referred to in this section as a certificate) given by the sanitary authority certifying that the factory is provided with such means of escape in case of fire for the persons employed therein as may reasonably be required in the circumstances of the case”.¹⁹⁸

Offences were established for contraventions of this section.¹⁹⁹

160. The Act also placed an inspection duty on sanitary authorities and established the nature of the certificates to be issued in appropriate cases. Insofar as relevant, the Act provided as follows:

“(3) – It shall be the duty of the sanitary authority to examine a factory to which this section applies and

¹⁹⁵ Factories Act 1955, Section 122

¹⁹⁶ Factories Act 1955, Section 124

¹⁹⁷ Factories Act 1955, Section 94

¹⁹⁸ Factories Act 1955, Section 45

¹⁹⁹ Factories Act 1955, Section 45(2)

(a) if satisfied that the factory is provided with such means of escape in case of fire for the persons employed in the factory as may reasonably be required in the circumstances of the case, to give a certificate in respect of the factory, or

(b) if not so satisfied, to refuse to give a certificate in respect of the factory.

(4) A certificate shall specify precisely and in detail the means of escape provided in the factory and shall contain particulars as to the maximum number of persons employed or proposed to be employed in the factory as a whole and, if the sanitary authority think fit, in any specified part thereof, and as to any explosive or highly inflammable material stored or used and as to any other matters taken into account in granting the certificate.

(5) A certificate shall be attached by the occupier of the factory to the general register and a copy of it shall be sent by the sanitary authority to the Minister.

(6) All means of escape specified in a certificate shall be properly maintained and kept free from obstruction”.²⁰⁰

161. A more general provision also established that the doors of a factory:

“or any room therein in which the person is, and any doors which afford a means of exit for persons employed in the factory from any building or from any enclosure in which the factory is situated, shall not be locked or fastened in such manner that they cannot be easily and immediately opened from the inside”.²⁰¹

162. Particular provision was also made regarding the working conditions in laundries, to the effect that:

²⁰⁰ Factories Act 1955, Section 45

²⁰¹ Factories Act 1955, Section 47

- (a) effective steps shall be taken by means of a fan or otherwise to regulate the temperature in every ironing room, and to carry away the steam in every washhouse,
- (b) all stoves for heating irons shall be so separated from any ironing room or ironing table as to protect the workers from the heat thereof,
- (c) no gas iron emitting any noxious fumes shall be used.²⁰²

163. A requirement to notify the Minister in writing of accidents was required where that accident resulted in a death or “disables any such person for more than 3 days”²⁰³, as well as particular requirements for inquests of persons killed in any such accident²⁰⁴. The Minister was further conferred with power to direct a “formal investigation” into any accident occurring in a factory.²⁰⁵

164. Subsequent legislation relating to health and safety at work was enacted – including the **Safety in Industry Act 1980** (which included premises captured by section 84 of the 1955 Act), and in time, the provisions of the 1955 Act in relation to institutions were repealed by the **Safety, Health and Welfare at Work Act 1989** (itself in turn repealed although after the period of relevance to this Report). It can be noted that the 1989 Act provided the first comprehensive code of occupational health and safety law which applied to employers and employees in every workplace in the State, together with a system of enforcement.

165. The application of these and other Regulations to the Magdalen Laundries are detailed in Chapter 12.

²⁰² Factories Act 1955, Section 66

²⁰³ Factories Act 1955, Section 74

²⁰⁴ Factories Act 1955, Section 77

²⁰⁵ Factories Act 1955, Section 78