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FAMILY SUPPORT AGENCY ACT, 2001*

(2001 No. 54)

ARRANGEMENT OF SECTIONS

PRELIMINARY AND GENERAL

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* Annotations by Lucy-Ann Buckley, Lecturer in Law, National University of Ireland, Galway.

AN ACT TO ESTABLISH A BODY TO BE KNOWN AS THE FAMILY
SUPPORT AGENCY OR IN THE IRISH LANGUAGE AN GHNÍOMHAIREACHT
UM THACAÍOCHT TEAGHLAIGH, TO DEFINE ITS FUNCTIONS AND TO
PROVIDE FOR CONNECTED MATTERS.

INTRODUCTION AND GENERAL NOTE

Background to the Act

The Family Support Agency Act 2001 ('The Act') was enacted with the purpose of rationalising and enhancing the main family support programmes in Ireland. Prior to the passing of the Act, numerous support services, most of them in receipt of state funding, had become available for families and communities. These services ranged from mediation and counselling services to community support programmes. Many of the services arose organically, in the community development context, and were subsequently enhanced by legislative measures. The Commission on the Family emphasised the need for a greater balance of resources in dealing with the legal consequences of marital breakdown, and providing social supports for families in vulnerable situations (542 *Dáil Debates* Col. 17 (Second Stage); see further the Final Report of the Commission on the Family to the Minister for Social, Community and Family Affairs, *Strengthening Families for Life* (July 1998)). The Commission argued that family life merited support as '[t]he experience of family living is the single greatest influence on an individual's life'. As the Commission further commented, '[i]t is in the family context that a person's basic emotional needs for security, belongingness, support and intimacy are satisfied' (Interim Report of the Commission on the Family, *Strengthening Families for Life* (Dublin, 1996), p. 13).

The Commission's recommendations were subsequently implemented through the Government's 'Families First' policy, under which key programmes were expanded and funding substantially increased. The Springboard initiative of 1998 launched 15 family support projects, and in 1999 the Government also committed itself to establishing 100 Family and Community Centres throughout the country, in line with the report of the Commission on the Family. The National Development Plan 2000-2006 also contains a significant allocation of funds to childcare, youth services and community and family support services, all of which are directly or indirectly supportive of family life. Chapter 7 of the Guidelines for the Welfare and Protection of Children, issued by the Department of Health in 1999, devotes an entire chapter to family support services. The need for such services is also emphasised in the National Children's Strategy. The proliferation of services has been matched by significant increases in expenditure: in the four years from 1997, government funding for relevant programmes rose from £1.5 million to over £11 million.

A key reason for the adoption of the Act was the need to ensure that this funding was fairly and efficiently allocated, that duplication of services was avoided, and that the services available were properly streamlined. Given the proliferation in services, the lack of co-ordination between service providers became a major concern, due to the potential adverse effects on vulnerable families and communities. Thus, the Taoiseach commented in 1998: 'something is missing in the way we have approached the problem up to now... We need urgently much closer working relationships between statutory organisations... Agencies must take more account of the real needs and

experiences of end-users when designing and planning services' (cited in McKeown, *A Guide to What Works in Family Support Services for Vulnerable Families* (Dublin, 2000)). The need for enhanced co-ordination of services led to a number of initiatives, including the Strategic Management Initiative at national level, the promotion of partnerships at local level, and the Integrated Services Process (1988-2001), which piloted new models of integrated service delivery in a number of disadvantaged communities (McKeown (2000), p. 1). The Family Support Agency Act 2001 represents merely one aspect of enhanced service co-ordination, albeit a vital one in the family context.

The need for rationalisation, and indeed, statutory recognition, was particularly acute in the context of mediation. The Family Mediation Service is a state-funded facility, which operates a voluntary and free service outside of the judicial process. The service was established on a pilot basis in 1985, with the aim of promoting agreement on family issues and the resolution of disputes in a non-adversarial manner. The service first became available to the public in 1986, but until 1997 was available in two centres only, i.e. Limerick and Dublin. Since then, it has greatly expanded: by 2001, it was available in eleven locations, with a twelfth centre pending. There was also a very significant rise in the numbers availing of the services provided: 484 couples were assisted in 1997, and 1225 in 2000. However, until the passing of the 2001 Act, the service was without a statutory framework.

The lack of a statutory basis for mediation was surprising given the increasing recognition of the role of mediation over the last decade. In its White Paper, *Marital Breakdown: A Review and Proposed Changes* ((1992) (Pl. 9104), para. 9.18) the Government recognised the success of the mediation service, and the Commission on the Family recommended the introduction of preliminary information sessions for couples wishing to separate, before the commencement of legal proceedings (*Strengthening Families for Life* (1998), para 11.11). The sessions would, *inter alia*, outline the mediation process, as well as issues relating to separation and divorce, and the impact of separation and divorce on couples and children (*ibid.*, para. 11.12). Mediation was integrated into the legislative response to marital breakdown in the Family Law (Divorce) Act 1996. Sections 6(2)(b) and 7(2)(b) of the 1996 Act require solicitors to discuss the possibility of mediation with their clients before initiating proceedings, with a view to promoting agreement between the parties. The court may also adjourn cases to facilitate reconciliation, mediation and agreement in judicial separation and divorce cases (section 5(1)(b) of the Judicial Separation and Family Law Reform Act 1989, section 6(1)(b) of the Family Law Act 1995 and section 8(2) of the Family Law (Divorce) Act 1996). A solicitor must also discuss the possibility of using mediation with a client prior to instituting proceedings under the Guardianship of Infants Act 1964 (as amended by the Children Act 1997).

Mediation, however, is by no means the only issue addressed by the Act. Funding for marriage and relationships counselling had also increased very significantly immediately prior to the passing of the Act, rising from £900,000 in 1997 to £4.7 million in 2001. By the passing of the Act, over 400 voluntary and community groups were engaged in providing counselling of all kinds, and the case for rationalisation was clear. One of the objectives of the Act is the establishment of a strong network of accessible counselling services for families, as recommended by the Commission on

the Family. In addition, it was thought essential to promote professional standards and qualifications in this previously under-regulated sector.

Finally, the number of family and community resource centres had also risen immediately prior to the Act. Although only 10 such centres existed in 1997, this had risen to 70 (either operational or approved) by the passing of the Act, and it was intended to increase the total number to 100. The aim of the centres is to combat disadvantage by increasing the ability of families to deal with difficulties. They also aim to provide suitable community-based support networks and to promote and show local solidarity. Given the increase in the number of centres, the government felt that rationalisation and re-structuring was appropriate.

The Act operates by establishing a statutory body, the Family Support Agency, to bring together the main programmes designed to help prevent marital breakdown, to support family relationships (including parenting relationships), to provide local support networks for families and to help them to integrate and function within the community. The Agency will have three core areas of responsibility: the provision of a family mediation service, supporting and developing marriage and relationship counselling services provided by voluntary organisations in Ireland, and supporting local family and community resource centres. A fourth function will be to conduct and commission research into aspects of family life, needs and related issues, in order to increase the information available, and to advise the Minister on policy issues. The Agency's responsibilities are to be carried out in consultation with key stakeholders, and will be overseen by a Board with expertise in the relevant areas. The Agency will work with other bodies with shared interests, and will carry out its functions having regard to the government's social inclusion policies. In the words of the then Minister, Mr. Dermot Ahern, the aim of the Agency is 'to provide a comprehensive and coherent approach to the future development and delivery of essential supports for families, to promote continuity and stability in family life and to foster a supportive community for families at local level' (542 *Dáil Debates* Col. 1476 (Second Stage)). Noting that the Agency would work together with other public bodies with a shared interest in family matters, he added that the Agency would provide the comprehensive response that families need and would be a catalyst for a new relationship between the State, the community and the family in addressing the complex social problems that can arise (542 *Dáil Debates* Col. 1477 (Second Stage)). The Agency would also be a resource for voluntary and community groups generally, and for others involved in promoting family well-being (542 *Dáil Debates* Col. 1479 (Second Stage)).

A noteworthy feature of the Dáil and Seanad debates was the uncritical approach of speakers to the concepts of both community development and mediation. This may be contrasted with the more stringent approach taken in the academic literature. McKeown has commented: 'Notwithstanding the widespread support for community development and the large number of initiatives that have tried to implement it, there have been few, if any, rigorous evaluations of the impact of community development on supporting children or families' (McKeown (2000), p. 31). Although he does not contend that community development is an ineffective way of supporting families, he notes that the value of community development projects tends to be presumed, rather than proven, and that a proper evaluation may be able to clarify which approaches are most effective. The area of community development is particularly in need of rigorous

research and evaluation, and it may be that the Family Support Agency is the body that will fulfil this need.

Although individual deputies referred to the need to deal with the root causes of family and social difficulties (such as poverty), at no point was the value of mediation itself the subject of debate. Conneely states that the benefits of mediation may include the empowerment of the parties, through the achievement of their own solution; the reduction of confusion and clarification of ideas; the enhancement of communication and co-operation, particularly in the context of children; a reduction in conflict and hostility; a reduction of external or artificial intervention in an on-going relationship (Conneely, *Family Mediation in Ireland* (Aldershot, 2002) (hereafter '*Family Mediation in Ireland*'), p 22). She also notes the possibility that discussions may lead to reconciliation, thus strengthening and preserving the marriage (*ibid*, p 24). However, as she comments, many of these benefits 'appear to be incidental rather than aimed at from the outset' (*ibid*, p 22). The practice of mediation has been challenged, with criticisms being levelled at the power of the mediator to maintain impartiality, particularly in the context of a serious imbalance of power between the parties (for example, in situations involving domestic violence) (*ibid*, p 85). Feminist critics, in particular, have challenged the role of mediation in family dispute resolution, feeling that it is bad for women (*ibid.*, p 63) though this charge is rejected by Conneely (Conneely, 'Researching the Irish Family Mediation Service: Women in Mediation' [2002] 2 *IJFL* 10 at 15). Conneely's own empirical work found that '[t]he fears of feminists are realised to the extent that women remain poorer, of lower social class standing and, generally more vulnerable in economic terms than the men they meet in mediation' (*Family Mediation in Ireland*, p 219). Conneely considers that the greatest challenge to mediation comes from the allegation that 'it harms the greater good and undermines the rule of law' (*ibid.*, p 85). She continues:

'A failure to come to grips with the dynamic of mediation now may cost us greatly in the future: there may be a reopening of cases and a consequent burdening of the civil justice system as a result, where agreements have not operated successfully or have simply been unfair. More fundamentally, we may pay a greater price again for complacency if, in an attempt to lighten the load on the civil justice system now, we neglect to uphold the rule of law itself and watch the demise of family law from an area of pragmatism governed by principle to an area of pure compromise and bargaining' (*ibid*).

Empirical studies have established that mediation has little effect on the length of the divorce process, and that 'the long-term impact on interpersonal dynamics is at best only slight and diminishes with time' (*ibid*, p 159). There is also no evidence that the child-parent relationship improves due to the mediation process (*ibid.*). Conneely cites Kressel and Pruitt's contention that there is no compelling evidence indicating mediation is preferable to judicatory procedures (*ibid.*). Similarly, she found no compelling evidence 'that mediation is necessarily inferior to the adjudication process, that it has been rejected by clients, that agreements break down more rapidly or are not adhered to, that conflict and acrimony are increased or that women are harmed by the process' (*ibid.*). While mediation may serve men's interests over women's, women may still find the experience empowering (*ibid.*). Conneely notes that the most compelling criticism that may be levelled against mediation relates to domestic violence and criminal conduct, which is generally ignored in the mediation

process (*ibid.*), and concludes that mediation cannot be shown to be inevitably superior to other forms of dispute resolution (*ibid.*, p 160). Be this as it may, the tendency of those speaking on the Bill was very much to regard it as the most desirable method of resolving family disputes, and to view the existing (by no means faultless) system for judicial resolution as generally undesirable.

Although the Bill received broad cross-party support, it was not wholly uncontroversial. Three primary criticisms were made, in respect of both the substance of the Bill, and the procedures by which it was adopted. Most of these criticisms were made by or on behalf of the community development sector. The principal criticisms were in fact linked: concern as to the structure and functions of the new Agency was compounded by a perceived lack of consultation with relevant interest groups, and a lack of representation on the Board of the new Agency. A key concern was whether the Agency structure adequately reflected all of its constituent groups; in particular, it was apprehended that an Agency with such numerous and diverse functions would be unable to focus on all of those functions in equal measure, leading to the marginalisation of certain groups. As McKeown notes, 'community development addresses the contextual factors which impinge on, and often exacerbate, the problems of vulnerable families. As such, its focus of action is strengths and weaknesses within the community rather than within the family' (McKeown (2000), p 30). Given the heavy emphasis placed by the government on mediation and counselling services, the Family Resource Centre Forum, the national forum representing Family Resource Centres operating under the Community Development Support Programmes within the Department of Social, Community and Family Affairs, perhaps justly feared that the quite different ethos of its members, focusing on community development and the reduction of social inequality, would be lost.

The Family Resource Centre Forum (hereafter, 'the FRC Forum') felt that it had not been adequately consulted in relation to the drafting of the Bill, despite the emphasis in the Government White Paper, *Supporting Voluntary Activity* ((2000) (PN 8925), chapter 3) on the right of voluntary organisations to be consulted about policy in the design and delivery of services and programmes. To allay its fears, the FRC Forum sought the right to elect three members to the Board of the Agency, but this request was rejected by the Minister on the grounds that Board membership would be representative of all sectors, and that Board members should not be viewed as partisan. Further, should all constituent groups demand equal representation, the Board would become unwieldy and unworkable.

A final concern of the FRC Forum, expressed by a number of deputies in the Dáil debates, related to the emphasis in the Bill on the marital family (although it should be noted that neither 'family' nor 'family support' is defined in the Act). This was felt to be unduly restrictive, given the rise in the non-nuclear family. Despite these concerns, relatively few amendments were made to the Bill during its passage through the Dáil, and it was signed into law on 22 December 2001.

Citation

The Act may be cited as the Family Support Agency Act 2001.

Commencement

Section 2 of the Act enables the Minister to appoint an establishment day for the Family Support Agency. At the time of writing (January 2003), no such date has been appointed, but it is anticipated that one will be declared shortly.

Parliamentary Debates

The Family Support Agency Act 2001 was initiated in the Dáil, where it was introduced by the then Minister for Social, Community and Family Affairs, Mr. Dermot Ahern.

542 *Dáil Debates*, Cols 16-72 (Second Stage).

542 *Dáil Debates*, Cols 1462-1480 (Second Stage - resumed).

545 *Dáil Debates*, Cols 360-363 (Report Stage).

545 *Dáil Debates*, Cols 403-418 (Report Stage - resumed).

168 *Seanad Debates*, Cols 1383-1400 (Second Stage).

168 *Seanad Debates*, Cols 1669-1677 (Committee and Remaining Stages).

Acts Referred to

Civil Service Regulation Act, 1956	1956, No. 45
Companies Acts, 1963 to 2001	
European Parliament Elections Act, 1997	1997, No. 2
Freedom of Information Act, 1997	1997, No. 13
Local Government Act, 1941	1941, No. 23
Minimum Notice and Terms of Employment Acts, 1973 to 1991	
Organisation of Working Time Act, 1997	1997, No. 20
Redundancy Payments Acts, 1967 to 1991	
Terms of Employment (Information) Act, 1994	1994, No. 5
Unfair Dismissal Acts, 1977 to 1993	
Vocational Education Act, 1930	1930, No. 29
Worker Protection (Regular Part-Time Employees) Act, 1991	1991, No. 5

Be it enacted by the Oireachtas as follows:

Interpretation

1.-(1) In this Act-

"Agency" means Family Support Agency;

"civil servant" has the meaning assigned to it by the Civil Service Regulation Act, 1956;

"establishment day" means the day appointed under section 2 to be the establishment day for the purposes of this Act;

"functions" includes powers and duties, and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

"Minister" means Minister for Social, Community and Family Affairs;

"public authority" means-

- (a) a Minister of the Government,
- (b) a health board,
- (c) the Eastern Regional Health Authority, the Northern Area Health Board, the East Coast Area Health Board or the South-Western Area Health Board,
- (d) a local authority for the purposes of the Local Government Act, 1941,
- (e) a vocational education committee established under the Vocational Education Act, 1930,
- (f) a body (but not a company) established by or under statute;

"superannuation benefits" means pensions, gratuities and other allowances payable on resignation, retirement or death;

"voluntary body" means a person who is involved in-

- (a) the provision of social or family support services,
- (b) the promotion of community development, or
- (c) activities which are connected with or ancillary to the activities mentioned in paragraph (a) or (b),

otherwise than for profit, and which, in the opinion of the Agency, are similar or ancillary to any of the activities carried out by the Agency and consistent with the objectives of its functions.

(2) In this Act-

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and
- (c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

GENERAL NOTE

It is noteworthy that the definitions section of the Act contains no reference to the meaning of the word 'family', even though the entire purpose of the legislation is to ensure that support services and assistance are provided for families. This may of course reflect the modern understanding that a family may include any number of arrangements, yet this view sits ill with the constitutional view that the family is restricted to the marital family only. This issue received surprisingly little attention in the Dáil debates, although Deputy Ó Caoláin expressed the view that the Bill should explicitly recognise that the nuclear family is not the only type of family (542 *Dáil Debates* Col. 1468 (Second Stage)). Similarly, the Family Resource Centre Forum was concerned that the emphasis in literature on the Family Support Agency on the need to support marriage could lead to a lack of support for the non-traditional family unit (FRC Forum, *Position Paper on the Family Support Agency*, available at http://www.ballyboden-frc.com/frcnf/family%20support%20agency/FSA_6.htm).

There is also no definition of 'family mediation', as highlighted in the Law Society submission on mediation. The Law Society felt that the absence of such a definition 'dilutes the previous stated purpose of setting up a statutory agency dealing with family mediation', and that it should be specified that mediation is available to both married and unmarried couples, and for a variety of family issues (Law Society (authored by Shannon) submission to the Minister for Social, Community and Family Affairs, Mr. Dermot Ahern, 2 November 2001 (hereafter 'Law Society Submission'), at p. 1).

Finally, it should be noted that the Department of Social, Community and Family Affairs has been subdivided since the passing of the Act, and responsibility now rests with the Minister for Social and Family Affairs (SI No 310 of 2002).

Establishment day

2.-The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

GENERAL NOTE

Although no establishment date has been specified at the time of writing, the members of the inaugural Family Support Agency were announced by the then Minister for Social and Family Affairs, Dermot Ahern, in June 2002, and held their first meeting in Dublin on Wednesday 10 July. On 9 December 2002, the Social and Family Affairs Minister, Mary Coughlan, stated that the Family Support Agency would shortly be established formally and would take on its legal responsibilities early in 2003.

Establishment of Family Support Agency

3.-(1) There shall stand established, on the establishment day, a body to be known as the Family Support Agency or in the Irish language as An Ghníomhaireacht um Thacaíocht Teaghlaigh, in this Act referred to as the "Agency", to perform the functions conferred on it by or under this Act.

(2) The Agency shall be a body corporate with perpetual succession and an official seal and with power-

(a) to sue and be sued in its corporate name,

(b) with the consent of the Minister to acquire, hold and dispose of land or an interest in land, and

(c) to acquire, hold and dispose of any other property.

GENERAL NOTE

This section provides for the establishment of the Family Support Agency, and for the corporate rights and responsibilities of the Agency. No establishment day has yet been specified by the Minister.

Functions of Agency

4.-(1) The functions of the Agency shall be-

(a) to provide a family mediation service,

(b) to provide, where the Agency considers it necessary or expedient-

(i) family mediation through such other persons as it considers appropriate,

(ii) training in family mediation, either by itself or such other persons as it considers appropriate,

(c) to support, promote and develop the provision of marriage and relationship counselling and family support services,

(d) to promote and disseminate information about issues in relation to marriage and relationships education, family mediation, parenting and family responsibilities and related matters and in this regard to co-operate with other public authorities in providing information to assist persons in balancing their work and family responsibilities,

(e) to support, promote and develop the Family and Community Services Resource Centre Programme of the Minister,

(f) to undertake or commission research into matters related to its functions or such other matters as the Minister may request,

(g) to provide at the request of the Minister or on its own initiative advice, information and assistance to the Minister in relation to the development of any aspect of its functions,

(h) to provide, subject to the consent of the Minister, and in accordance with criteria established under section 7, financial assistance to voluntary bodies in respect of any matter related to the Agency's functions and for this purpose to administer-

(i) the scheme of the Minister known as the Scheme of Grants to Voluntary Organisations providing Marriage, Child and Bereavement Counselling Services,

(ii) the programme of the Minister known as the Family and Community Services Resource Centre Programme, and

(iii) such other schemes, grants and other facilities for financial assistance as may, from time to time, be authorised by the Minister after consultation with the Minister for Finance,

(i) to prepare strategic plans in accordance with section 9,

(j) to perform any additional functions assigned to the Agency under section 5.

(2) The Agency in performing the functions conferred on it by or under this Act shall have regard to-

(a) the need to assist in particular, persons involved in the process of separation or divorce to reach agreement where possible, especially in disputes involving children,

(b) the need for co-operation with other relevant public authorities and voluntary bodies,

(c) Government policy in particular social inclusion policy.

(3) The Agency shall have all such powers as are necessary for or incidental to the performance of its functions under this Act.

GENERAL NOTE

Section 4 is the key section of the Act, as it seeks to unite the core family support services under the aegis of the Family Support Agency. As outlined by the Minister in the Dáil debates, these key functions relate to mediation, counselling and community support services, with supplementary research and advisory functions. The section was the subject of considerable debate during the legislative process, with a number of significant amendments being proposed. Most of the proposed changes related to the concerns of the Family Resource Centres, discussed in the Introduction.

A particular point of concern to many deputies was the compulsory transfer of community support services to the Agency, given the fears expressed by the Family Resource Centre Forum ('the FRC Forum') in relation to the future of such services. The FRC Forum was particularly apprehensive that the distinctive ethos of the community support groups would be disregarded, and that their services would be downgraded, due to the emphasis on mediation and counselling services in the draft legislation. These fears were increased by an alleged lack of consultation in preparing the draft legislation. At the Report Stage in the Dáil, Deputy Broughan proposed that

section 4(1)(e) should be amended to allow the Family and Community Resource Centres to elect to transfer to the Family Support Agency at a time of their own choosing, in order to assuage the fears of the centres. He also proposed that it would be more appropriate to allow the centres to continue independently as part of the community development support project, under the Department of Social, Community and Family Affairs, while working closely with the Family Support Agency. Again, the aim of this proposed amendment was to allow the centres a level of comfort and flexibility, until it was seen how the Family Support Agency would develop. Both amendments were, however, rejected by the Minister on the grounds that it would not be appropriate to have centres functioning outside of the Agency. The Minister also felt that there was an inbuilt onus on the Family Support Agency in the legislation to continue working for social inclusion within the relevant communities. If the centres could remain outside of the Agency, the result could be a dissipation of the core services aimed at helping families within the locality. The proposed amendment was rejected.

In relation to section 4(2)(c), a number of deputies proposed at the Report Stage that the onus on the Agency to have regard to social inclusion policy should be strengthened. Deputy Fitzgerald proposed an amendment that the Family Resource Centres would be supported and developed according to the principles of community development and social inclusion; again, the aim of this proposal was to ensure the peace of mind of the workers involved (545 *Dáil Debates* Col. 411 (Report Stage)). Similarly, Deputy Broughan wished to strengthen the reference to social inclusion by making it a *raison d'être* of the new agency, rather than something to be taken into account (545 *Dáil Debates* Col. 412 (Report Stage)). In response, the Minister stated that the Family Resource Centres would not be compelled to provide mediation and marriage counselling services, and that this would probably be impracticable in any event. Hence, the ethos of the centres would not be diluted. The Minister also contended that the legislation was sufficient to protect social inclusion concerns. The amendment was rejected by 73 votes to 65. A similar amendment in the Seanad, proposed by Senator Keogh, requiring the Agency to support and develop Family Resource Centres according to principles of community development, and to promote social inclusion, was withdrawn (168 *Seanad Debates* Col. 1669 (Committee and remaining Stages)).

In other amendments finalised at the Report Stage, section 4(1)(d) had the words 'and in this regard to co-operate with other public authorities in providing information to assist persons in balancing their work and family responsibilities' added to the duty of information dissemination. According to the Minister, Mr. Ahern (545 *Dáil Debates* Col. 360 (Report Stage)), this was designed to expand the informative function given to the Agency, and to strengthen the potential for research under section 4(1)(f). Section 4(1)(h) contains a number of technical amendments, made in the Select Committee; essentially these include two specific programmes (in sections 4(1)(h)(i) and (ii)) within the remit of the Agency.

A particular problem highlighted in the Dáil debates concerned the lack of qualified personnel available to assist in the mediation context. This difficulty had previously been noted by the Commission on the Family, which suggested that the lack of trained mediators, which led to lengthy waiting lists for the mediation service, could result in a considerable straining of resources. The Commission suggested that this problem

might be alleviated by the participation of fee-charging, private-sector mediators, but that it might not be possible for the service to remain universally free (Final Report of the Commission on the Family, *Strengthening Families for Life* (1998), p. 212-222, discussed in Conneely, *Family Mediation in Ireland* (2002), p. 15). A second, connected difficulty relates to the practice of mediation by persons with little or no training. Although the Family Mediation Service in Ireland has established requirements for different levels of membership, and the Mediators Institute of Ireland is seeking a third level accreditation system (see Conneely, p 40), the Law Reform Commission has expressed serious misgivings at the proliferation of unqualified mediators, and seeks further improvements and professionalisation (Law Reform Commission, *Report on Family Courts*, para 9.31), a recommendation echoed by the Denham Commission (see Martin, 'The Denham Commission Reports: A Critical Analysis' [1999] IJFL 18, at 22). It is noteworthy that section 4(1)(b)(i) of the 2001 Act confers a power on the Family Support Agency to provide family mediation through 'appropriate' third parties (thus permitting the use of private mediation practitioners if necessary. The wording of the section was criticised in the Seanad by Senator Keogh, who cited the Law Society view that Family Mediation Service standards and training should be an essential requirement (168 *Seanad Debates* Col. 1387-1388 (Second Stage). See also the Law Society Submission, *supra*, at p 1). A similar concern would apply to section 4(1)(b)(ii), which confers a training function on the Agency; again, this training may be provided by 'appropriate' third parties.

Finally, as noted in the Law Society submission to the Minister, the reference in section 4(2)(a) of the Act to the particular need to assist persons involved in the process of separation or divorce to reach agreement where possible, especially in disputes involving children, is narrower than under earlier legislation. Under previous statutory provisions (such as section 8(2) of the Family Law (Divorce) Act 1996, which gives the court power to adjourn a case to allow time for mediated agreement), no particular reference is made to children's issues. Instead, the 1996 Act refers to the possibility of a mediated agreement 'on some or all of the terms of the proposed divorce'. The Law Society expressed concern that section 4(2)(a) might act to limit the earlier provisions inappropriately, and noted that research suggested that mediation resulted in more positive outcomes in non-children's issues as well (Law Society Submission, *supra*, at p 1). While the previous statutory provisions continue to apply, unamended, it is certainly conceivable that any reduction in funding might lead to a prioritisation of resources, in line with section 4(2)(a), which might impact on the availability of mediation services in general.

Conferral of additional functions

5.-(1) The Minister may, with the consent of the Minister for Finance, by order-

(a) confer on the Agency such additional functions as the Minister considers appropriate in relation to family support, and

(b) make such provision as he or she considers necessary or expedient in relation to matters ancillary to or arising out of functions so conferred.

(2) The Minister may by order amend or revoke an order under this section (including an order under this subsection).

(3) Every order made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which the House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

GENERAL NOTE

This section provides that the Minister may confer additional powers and functions on the Agency, with the consent of the Minister for Finance, and may also make provision for ancillary matters arising out of any functions so conferred. Any ministerial order made under this section may be rejected by the Oireachtas within specified time limits.

Policy directives

6.-The Agency shall comply with any general policy directives which may, from time to time, be given to it by the Minister.

GENERAL NOTE

This section provides that the Agency shall comply with any policy directives given to it by the Minister, and may be read in conjunction with section 26 of the Act. That section prohibits the chief executive from expressing any opinion or raising any query as to the merits or objectives of any policy of the Government, or of any Minister of the Government, when reporting to a Dáil Committee on the expenditure of the Agency. Taken together, the sections make it clear that the Agency is to operate in line with Government policy, and is not independent in the exercise of its many functions under section 4 (and potentially section 5) of the Act.

Criteria, etc. and directives regarding assistance to voluntary bodies

7.-(1) The Agency, subject to the approval of the Minister-

(a) shall establish such criteria, terms and conditions for the provision of financial assistance under section 4(1)(h) as, having regard to its functions, it considers appropriate, and

(b) may establish different criteria, terms and conditions in relation to different classes of applicants and recipients.

(2) The Agency may-

(a) request any voluntary body applying for or receiving financial assistance under section 4(1)(h) to supply it with information in such form and at such time as it may require, and

(b) refuse or withhold assistance if satisfied that any information so requested is not supplied.

(3) The Agency shall comply with any directives concerning the administration of such schemes, grants and other facilities for financial assistance under section 4(1)(h) which may from time to time be given to it by the Minister with the concurrence of the Minister for Finance.

GENERAL NOTE

An amendment was proposed by Senator Keogh at the Seanad Committee Stage (168 *Seanad Debates* Col. 1671 (Committee and remaining Stages)) to the effect that the existing criteria for the operation of Family Resource Centres would not be altered by the Agency under sub-section (1) without the full, informed and prior consent of the centres concerned. Proposing the amendment, Senator Keogh stated that the addendum was intended to reassure the family resource centres that they would be informed and consulted. A similar amendment was previously proposed in the Dáil by Deputy Broughan (545 *Dáil Debates* Col. 417 (Report Stage)), but was withdrawn. In the Seanad, the amendment was rejected by the Minister, Mr. Ahern, on the grounds that it would be inappropriate to make the exercise of the Agency's function to set criteria for financial assistance subject to the consent or approval of an individual beneficiary or sector (168 *Seanad Debates* Col. 1672 (Committee and remaining Stages)). On the Minister's undertaking that there would be multi-annual funding for family resource centres and that community development projects would be core-funded by the Department of Social, Community and Family Affairs, the Amendment was, by leave, withdrawn.

Charges by Agency

8.-(1) The Agency, with the consent of the Minister, may make such charges, as it considers necessary and appropriate in consideration of-

(a) the provision by it of services (other than a service consisting of the provision of advice to the Minister), and

(b) the carrying on by it of any activities.

(2) The Agency may recover as a simple contract debt in any court of competent jurisdiction from any other person by whom it is payable any amount due and owing under subsection (1).

GENERAL NOTE

This section allows the Agency, with the consent of the Minister, to make charges for the provision of services or the carrying on by it of activities. This would include, for example, a charge for the provision of mediation and counselling services under section 4 of the Act. The sole exemption to the power to charge is the provision of advice to the Minister; this presumably permits the Agency to charge the Minister for the provision of information and assistance, since these are listed separately in section 4(1)(g) of the Act.

Strategic plans

9.-(1) As soon as may be, but not later than 6 months after the establishment day, and thereafter not later than 6 months after each period of 3 years that falls after the establishment day, the Agency shall prepare and submit to the Minister, for approval with or without amendment by the Minister, a strategic plan as referred to in subsection (2).

(2) A strategic plan shall-

(a) comprise the key objectives, outputs and related strategies, including the use of resources, of the Agency,

(b) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister, and

(c) have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Agency.

(3) The Minister shall, as soon as practicable, after a strategic plan under this section has been approved, cause a copy of the plan to be laid before each House of the Oireachtas.

GENERAL NOTE

At the Committee Stage in the Seanad (168 *Seanad Debates* Col. 1673 (Committee and remaining Stages)), the period of 6 months for the drafting of a strategic plan was queried by Senator Keogh, and it was suggested that it would be more realistic to allow 12 months for the preparation of such a plan. The Minister stated that this could mean that the Agency would have to operate without a plan for its entire first year, and that this delay was too long (168 *Seanad Debates* Col. 1673 (Committee and remaining Stages)). The proposed amendment was withdrawn.

An additional amendment, also proposed by Senator Keogh, would have required the strategic plan to be prepared in consultation with Family Resource Centres and other voluntary and community organisations falling within the remit of the work of the Agency (168 *Seanad Debates* Col. 1674 (Committee and remaining Stages)). A similar amendment had been proposed in the Dáil by Deputy Fitzgerald (545 *Dáil Debates* Col. 417 (Report Stage)). Once again, the stated aim of the proposed amendment was reassurance of the community development sector. The amendment was not put to a vote in the Dáil, due to lack of time, and was withdrawn in the Seanad on the Minister's statement that it would be normal practice for all stakeholders to be consulted (168 *Seanad Debates* Col. 1674 (Committee and remaining Stages)).

Membership of Agency and terms of office of members

10.-(1) The Agency shall, subject to subsection (2), consist of 12 members, who shall be appointed by the Minister and who shall, subject to this section, hold and vacate office as the Minister may determine.

(2) Until the first appointment to the Agency of a person consequent to an election having been held to which subsection (5)(c) relates, the Agency shall consist of 11 members.

(3) The Minister shall designate one member of the Agency as chairperson.

(4) The Minister, when appointing a member (other than the chairperson) of the Agency, shall fix such member's period of membership which shall not exceed 3 years.

(5) The ordinary members of the Agency shall include-

(a) one officer of the Minister,

(b) persons, who, in the opinion of the Minister, have a special interest or expertise in matters relating to the functions of the Agency or matters related thereto,

(c) one member of the staff of the Agency who shall be elected by secret ballot of the staff of the Agency in such manner as the Agency, with the agreement of the Minister, may determine, and may also include not more than 3 persons, each being an officer of any other Minister of the Government who, in the opinion of the Minister, has at that time direct concern with or responsibility for activities relevant to the functions of the Agency.

(6) There may be paid to members of the Agency, out of monies at the disposal of the Agency, such remuneration (if any) and allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, may determine.

(7) A member of the Agency may resign from the Agency by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon receipt of the letter by the Minister, whichever is the later.

(8) A member of the Agency may at any time be removed from membership of the Agency by the Minister if, in the Minister's opinion, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the Agency of its functions.

(9) A member of the Agency shall cease to be and shall be disqualified from being a member of the Agency where such member-

(a) is adjudicated bankrupt,

(b) makes a composition or arrangement with creditors,

(c) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment, or

(d) is disqualified or restricted from being a director of any company (within the meaning of the Companies Acts, 1963 to 2001).

(10) If a member of the Agency dies, resigns, retires, becomes disqualified or is removed from office, the Minister may appoint a person to be a member of the Agency to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Agency who occasioned the casual vacancy.

(11) A person appointed to be a member of the Agency under subsection (10) shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy he or she is appointed to fill and shall be eligible for re-appointment as a member of the Agency.

(12) A member of the Agency whose period of membership expires by the effluxion of time shall be eligible for re-appointment as a member of the Agency.

(13) The Minister shall, in so far as is practicable and having regard to relevant experience, ensure an equitable balance between men and women in the composition of the Agency.

GENERAL NOTE

The composition of the Family Support Agency was the subject of some debate in both Houses of the Oireachtas. Much of this debate was influenced by the concerns of the Family Resource Centres and community development groups, outlined in the Introduction, as to the ethos of the Agency. As it stands, the Act allows for a total of 12 members, including a chairperson, to be appointed by the Minister. Of the ordinary members, one is to be an officer of the Minister, others are to be persons with appropriate expertise in the area, and one is to be a staff member of the Agency (the sole member not selected by the Minister, but elected by secret ballot of the staff). The members may also include up to three officers of any other Minister who is directly concerned with activities carried out by the Agency. The only other restriction on the Minister's power of appointment is the requirement to ensure an equitable gender balance of members, so far as is practicable and having regard to relevant experience.

The primary concern in the debates was the lack of specific representation for community development groups. The Family Resource Centre Forum ('FRC Forum'), in its position paper on the Family Support Agency (*supra*), requested that three representatives should be elected from the Forum onto the Agency, to ensure participation and democratic representation for community development groups and ensure that the distinctive ethos of those groups was preserved and respected by the new Agency. The concerns of the FRC Forum were articulated in the Dáil by a number of deputies, who were concerned that all stakeholders should be adequately represented (see, for example, the comments of Deputy Broughan, 542 *Dáil Debates* Cols. 31 and 37 (Second Stage)). The request for three designated representatives for the FRC Forum was put by Deputy Ó Caoláin (542 *Dáil Debates* Col. 1469. (Second Stage)) and also by Senator Keogh, who put a specific amendment forward (168 *Seanad Debates* Col. 1675 (Committee and remaining Stages)). The suggestion was, however, vetoed by the Minister, Deputy Ahern, who considered that the Board was sufficiently representative, and noted that in a sector of such diversity, it would not be possible to guarantee representation for every group. He also expressed the view that

specific representation for any individual group could lead to a belief by members of the Agency that they were there only to represent their own sectors, which would be undesirable and could lead to partisan divisions (168 *Seanad Debates* Col. 1676 (Committee and remaining Stages)). The proposed amendment was therefore withdrawn.

In the event, the members of the inaugural Family Support Agency, appointed by the Minister in June 2002, included two Family Resource Centre members (Ms Clare Cashman and Mr Dick Hickey), as well as two members from the counselling sector (Ms Sinead Hanly and Dr Colm O'Connor), a remedial teacher and psychotherapist (Ms Brid Rocks), a legal expert (Ms Muriel Walls) and a mediator (Mr Brendan Murphy), as well as the government and staff representatives. Mr. Michael O'Kennedy, a Senior Counsel and former Government Minister and EU Commissioner, was appointed as Chairperson. Announcing the appointments, Minister Ahern said he had selected people with expertise and experience in the fields of Family and Community Services, Counselling, Family Mediation, Research and Family Law, as he recognised that the Family Support Agency would develop a cohesive response to families in need of services.

Chairperson of Agency

11.-(1) The term of office of the chairperson of the Agency shall be 3 years.

(2) Where the chairperson of the Agency ceases to hold such office, he or she shall also cease to be a member of the Agency.

(3) Where the chairperson of the Agency ceases to be a member of the Agency he or she shall also thereupon cease to be chairperson of the Agency.

(4) The chairperson of the Agency may resign his or her office as chairperson by letter addressed to the Minister and the resignation shall take effect from the date specified therein or on receipt of the letter by the Minister, whichever is the later.

(5) The chairperson of the Agency shall, unless he or she sooner dies or otherwise ceases to be chairperson by virtue of subsection (2) or (3), hold office until the expiration of his or her period of membership of the Agency and if he or she is re-appointed as a member of the Agency, he or she shall be eligible to be designated as chairperson of the Agency.

GENERAL NOTE

This section deals with the term of office of the chairperson of the Agency (nominated by the Minister under section 10(3) of the Act). The section also provides for the resignation and reappointment of the chairperson. Mr. Michael O'Kennedy, a Senior Counsel and former Government Minister and EU Commissioner, was appointed as the inaugural Chairperson of the Agency in June 2002.

Meetings of Agency

12.-(1) The Agency shall hold such and so many meetings as may be necessary for the performance of its functions, but shall hold at least one meeting in each quarter of a year.

(2) The Minister, in consultation with the chairperson of the Agency, shall fix the time of the first meeting of the Agency.

(3) The quorum for a meeting of the Agency shall be 5.

(4) The chairperson of the Agency shall chair any meetings of the Agency, except in the case that the chairperson is not present or such office is vacant in which case the members who are present shall choose one of their number to chair the meeting.

(5) At a meeting of the Agency, each member of the Agency present, including the chairperson, shall have a vote and any question on which a vote is required in order to establish the Agency's view on the matter shall be determined by a majority of votes of the members of the Agency present when the vote is called and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second and casting vote.

(6) Subject to subsection (3), the Agency may act notwithstanding one or more vacancies in its membership.

(7) Subject to this Act, the Agency shall regulate, by standing orders or otherwise, the procedure and business of the Agency, or of any committee established under section 13(1).

GENERAL NOTE

This section deals with meetings and proceedings of the Agency, and requires that at least one meeting be held in each quarter of the year. Subject to a quorum of 5 members being present, the Agency is empowered to act, notwithstanding any vacancies in its membership. Although the Agency has not yet been formally established at the time of writing, the first meeting of the board was held in Dublin on 10 July 2002, even though a number of members had not yet been nominated.

Committees of the Agency

13.-(1) The Agency may establish committees to assist and advise it in relation to the performance of any of its functions and may determine the terms of reference and regulate the procedure of any such committee.

(2) A committee established under this section may include persons who are not members of the Agency.

(3) A member of a committee established under this section may be removed at any time by the Agency.

- (4) The Agency may at any time dissolve a committee established under this section.
- (5) The Agency may appoint a person to be chairperson of a committee established under this section.
- (6) There may be paid out of the income of the Agency to members of a committee established under this section such allowances for expenses incurred by them as the Agency may, with the consent of the Minister and the Minister for Finance, determine.

GENERAL NOTE

This section enables the Agency to establish committees to assist and advise it in the performance of any of its functions, and specifies that any committee so established may include persons who are not members of the Agency. Note that the members of a committee established under this section will be bound by the duty of confidentiality laid down in section 21 of the Act, where the Agency designates information as confidential.

Chief executive of Agency

14.-(1) There shall be a chief executive officer of the Agency who shall be known and is referred to in this Act as the "chief executive".

(2) The chief executive shall carry on and manage, and control generally, the administration and business of the Agency and perform such other functions (if any) as may be determined by the Agency.

(3) The chief executive shall be appointed by the Agency and may be removed from office, where he or she fails to perform his or her functions satisfactorily, by the Agency, with the consent of the Minister.

(4) The chief executive may make proposals to the Agency on any matter relating to the activities of the Agency.

(5) The chief executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Agency with the consent of the Minister given with the approval of the Minister for Finance.

(6) The chief executive shall not hold any other office or position without the consent of the Agency.

(7) The chief executive shall not be a member of the Agency, but he or she may, in accordance with procedures established by the Agency, attend meetings of the Agency and shall be entitled to speak to and advise such meetings.

GENERAL NOTE

This section provides for the appointment of a chief executive of the Agency to manage the administration and business of the Agency. Although the chief executive shall not be a member of the Agency, he or she may attend meetings of the Agency, in accordance with established procedures. The chief executive shall be appointed by the Agency, and may be removed by the Agency with the consent of the Minister. It would seem from the phrasing of the section that the Minister's consent is not required for the appointment of the chief executive.

Staff of Agency

15.-(1) The Agency may appoint such, and such number of, persons to be members of the staff of the Agency, as it may determine with the consent of the Minister and the Minister for Finance.

(2) Members of staff of the Agency shall hold their employment on such terms and conditions, including those relating to remuneration, grading and allowances for expenses as the Agency, with the approval of the Minister given with the consent of the Minister for Finance, may determine from time to time.

(3) The chief executive may from time to time assign such duties as he or she considers appropriate to each member of staff and each member of staff shall carry out the duties so assigned.

(4) In making a determination under subsection (2), the Agency shall act in accordance with the directions of the Minister and shall have regard to any arrangements in operation for conciliation and arbitration for persons affected by the determination.

GENERAL NOTE

This section provides for the appointment by the Agency of members of staff of the Agency. Such appointments are subject to the consent of the Minister and of the Minister for Finance, but not of the chief executive. However, the chief executive may assign duties to the staff members appointed. The section also requires the Agency to have regard to any arrangements for conciliation and arbitration that are in place, when determining the terms and conditions of employment (including remuneration) of the staff.

Transfer of staff of Minister to Agency

16.-(1) Every person who immediately before the establishment day was an officer of the Minister and who is designated by the Minister for the purpose of this section shall, on that day, be transferred to and become a member of the staff of the Agency.

(2) Except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person who is transferred in accordance with subsection (1) to the staff of the Agency shall not, while in the service of the Agency, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (including those relating to terms of office) than the scale of pay to which he or she was entitled and the terms and conditions of service (including

those relating to terms of office) to which he or she was subject immediately before his or her transfer.

(3) In relation to persons transferred in accordance with subsection (1) to the staff of the Agency, previous service in the civil service shall be reckonable for the purposes of, but subject to any exceptions or exclusions in-

(a) the Redundancy Payments Acts, 1967 to 1991,

(b) the Minimum Notice and Terms of Employment Acts, 1973 to 1991,

(c) the Unfair Dismissals Acts, 1977 to 1993,

(d) the Terms of Employment (Information) Act, 1994,

(e) the Organisation of Working Time Act, 1997, and

(f) the Worker Protection (Regular Part-Time Employees) Act, 1991.

(4) In this section "recognised trade union or staff association" means the trade unions and staff associations recognised by the Minister for the purpose of negotiations which are concerned with the transfer of staff to the Agency as well as remuneration, conditions of employment or working conditions of staff.

GENERAL NOTE

This section provides for the transfer of designated staff from the Department of Social and Family Affairs (previously the Department of Social, Community and Family Affairs) to the Agency. Under the section, transferred staff shall not receive a lesser pay scale or be made subject to less beneficial terms and conditions than they were previously entitled to. It also stipulates that service in the civil service shall be reckonable for the purpose of specified employment legislation. Both of these provisions would presumably be covered under the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations 1980 (S.I. 306/1980), as amended, in any event.

Superannuation

17.-(1) As soon as may be after its establishment, the Agency shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such of its staff (including the chief executive) as the Agency shall think fit.

(2) A scheme under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

(3) The Agency may, with the approval of the Minister and the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.

(4) Any scheme submitted by the Agency under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Agency in accordance with its terms.

(5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(6) No superannuation benefit shall be granted by the Agency nor shall any other arrangements be entered into by the Agency for the provision of such a benefit to or in respect of a member of the staff of the Agency or the chief executive of the Agency otherwise than in accordance with a scheme under this section or with the consent of the Minister for Finance.

(7) Any scheme under this section, including an amendment of a scheme, shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(8) A scheme or schemes under subsection (1) in so far as it concerns a person who immediately before his or her transfer under section 16 to a position on the staff of the Agency was an established or unestablished civil servant, shall grant superannuation benefits upon and subject to terms and conditions that are not less favourable than the terms and conditions that applied to that person immediately before their transfer to the Agency in relation to the grant of such benefits.

(9) In applying subsection (8), superannuation benefits that would have been granted to or in respect of a person during the period between his or her transfer under section 16 to a position on the staff of the Agency and the coming into operation of a scheme under this section had he or she continued to be employed as an established or unestablished civil servant, shall be granted and paid to or in respect of that person by the Agency in accordance with the scheme and of such enactments in relation to superannuation as applied to the person immediately before his or her transfer to a position on the staff of the Agency and, for that purpose, his or her pensionable service with the Agency shall be aggregated with his or her previous pensionable service.

GENERAL NOTE

Section 17 requires the Agency to provide for the granting of superannuation benefits to its staff, including the chief executive, as it sees fit. 'Superannuation benefits' are defined in section 1(1) as meaning 'pensions, gratuities and other allowances payable on resignation, retirement or death'. Any scheme devised by the Agency is subject to

the approval of both the Minister and the Minister for Finance, and must also be laid before each house of the Oireachtas. The section also provides that where a member of staff was, immediately prior to being transferred to the Agency, an established or unestablished civil servant, he or she must not receive less favourable superannuation benefits than previously entitled to. This is important as pension entitlements are excluded under regulation 4(2) of the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations 1980 (S.I. 306/1980), as amended.

Membership of either House of Oireachtas or European Parliament

18.-(1) Where a person who is the chief executive or a member of the staff of the Agency is-

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or as a representative in the European Parliament,
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to that Parliament to fill a vacancy,
- (d) he or she shall thereupon stand seconded from employment by the Agency and shall not be paid by, or be entitled to receive from, the Agency any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected as the case may be, and ending when such person ceases to be a member of either such House or a representative in that Parliament.

(2) Without prejudice to the generality of subsection (1), that subsection shall be construed as prohibiting, inter alia, the reckoning of a period mentioned in that subsection as service with the Agency for the purposes of any superannuation benefits.

GENERAL NOTE

This section contains standard provisions applicable where the chief executive or a staff member of the Agency becomes a member of either House of the Oireachtas or of the European Parliament.

Disclosure by members of Agency of certain interests

19.-(1) Where any matter falls to be considered at a meeting of the Agency then, any member of the Agency present at the meeting who otherwise than in his or her capacity as a member has a pecuniary or other beneficial interest in the matter, shall-

- (a) at the meeting disclose to the Agency the fact of such interest and the nature thereof,

(b) neither influence nor seek to influence a decision to be made in relation to the matter,

(c) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,

(d) take no part in any deliberation of the Agency relating to the matter, and

(e) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the Agency a question arises as to whether or not a course of conduct, if pursued by a member of the Agency, would constitute a failure by him or her to comply with the requirements of subsection (1), the question may be determined by the chairperson of the Agency, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a member of the Agency has failed to comply with a requirement of subsection (1), the Minister may if he or she thinks fit, remove that member from office or take such other action as he or she considers appropriate and, in case a person is removed from office pursuant to this subsection, he or she shall thenceforth be disqualified from membership of the Agency.

(5) For the purposes of this section and section 20, a person shall not be regarded as having an interest in any matter by reason only of an interest of that person, or of any company in which he or she has an interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or voting on, any question relating to the matter, or in performing any function in relation to that matter.

GENERAL NOTE

This section requires members of the Agency to disclose any pecuniary or other beneficial interest in any matter being considered by the Agency, and to refrain from participating in or seeking to influence the decision being made in respect of that issue. Utterly remote or insignificant interests are excluded, where these could not reasonably be regarded as being likely to influence a person's decision or conduct. The section also provides for penalties, including removal from office, where a member fails to comply with the designated procedures.

Disclosure by members of staff of certain interests

20.-(1) Where the chief executive or a member of the staff of the Agency or a consultant or adviser to the Agency has an interest, otherwise than in his or her capacity as chief executive or member of staff or consultant or adviser, as the case

may be, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the Agency is a party, that person shall-

- (a) disclose to the Agency his or her interest and the nature thereof,
 - (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Agency or members of the staff of the Agency in relation thereto, and
 - (c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement.
- (2) Subsection (1) does not apply to contracts or proposed contracts of employment of members of the staff of the Agency.
- (3) Where a person to whom subsection (1) applies fails to comply with a requirement of this section, the Agency shall decide the appropriate action (including removal from office or termination of contract) to be taken.

GENERAL NOTE

This section specifies disclosure duties equivalent to those in section 19 in respect of the chief executive and other staff members of the Agency. Penalties for breach include removal from office or termination of employment.

Disclosure of information

- 21.-(1) Save as otherwise provided by law, a person shall not, without the consent of the Agency, disclose confidential information obtained by him or her while performing, or as a result of having performed, duties as a member of the Agency, a member of staff of the Agency, (including the chief executive), a member of a committee established under section 13 or a consultant or adviser to the Agency.
- (2) A person who contravenes subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 (£2,362.69).
- (3) Nothing in subsection (1) shall prohibit the disclosure of information by means of a report made-
- (a) to the Agency, or
 - (b) by or on behalf of the Agency to the Minister.
- (4) In this section "confidential information" includes information that is expressed by the Agency to be confidential either as regards particular information or as regards information of a particular class or description.
- (5) The Third Schedule to the Freedom of Information Act, 1997, is amended by the insertion in Part I at the end thereof:

(a) in column (2) of "Family Support Agency Act, 2001", and

(b) in column (3) of "Section 21".

GENERAL NOTE

Section 21 prohibits the disclosure of confidential information, obtained while performing or as a result of performing duties as a member of the Agency, or a member of staff of the Agency (including the chief executive), or a member of a committee established under section 13 of the Act, or a consultant or adviser to the Agency. What counts as 'confidential information' is open to the Agency to specify, and it is not clear what type of information might be so covered. Possibilities might include details of funding decisions and policy directives. In its submission to the Minister, the Law Society had argued that a section should be inserted in the Act to ensure the confidentiality and inadmissibility of communications between the parties to mediation and a third party (e.g. a mediator) (Law Society (authored by Shannon), submission to the Minister for Social, Community and Family Affairs, 2 November 2001, p. 2). No such provision is included in the Act, and it is unlikely that section 21 would include such communications, as mediators would not be 'members of staff' of the Agency.

Gifts

22.-(1) The Agency may accept gifts of money, land and any other property upon such trusts, terms and conditions (if any) as may be specified by the donor.

(2) The Agency shall not accept a gift if the trusts, terms and conditions attached by the donor to its acceptance are not consistent with the functions of the Agency.

(3) The Agency shall not solicit gifts or donations.

GENERAL NOTE

This is a standard section detailing the circumstances in which the Agency may accept gifts and donations.

Advances by Minister to Agency

23.-The Minister may from time to time with the consent of the Minister for Finance, advance to the Agency out of monies provided by the Oireachtas, such sums as the Minister may determine for the purposes of expenditure by the Agency in the performance of its functions.

GENERAL NOTE

This section permits the Minister to advance money to the Agency, out of funds provided by the Oireachtas, for the performance of the Agency's functions.

Borrowing by Agency

24.-The Agency may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the Agency or otherwise) including money in a currency other than the currency of the State, subject to the consent of the Minister and the Minister for Finance and to such conditions as they may determine.

GENERAL NOTE

Section 24 enables the Agency to borrow money (including by secured loans) for the purposes of current or capital expenditure. Any such borrowings are subject to the consent of both the Minister and the Minister for Finance, both of whom may also specify conditions in relation to such borrowings.

Accounts and audits

25.-(1) The chief executive, following the agreement of the Agency, shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister and shall furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the discharge by the Agency of its functions over a period of years, as required.

(2) The chief executive, under the direction of the Agency, shall cause to be kept, on a continuous basis proper books or other records of account of all income and expenditure of the Agency, and of the sources of such income and the subject matter of such expenditure, and of the property, assets and liabilities of the Agency and shall keep and shall account to the Agency for all such special accounts as the Minister or the Agency, with the consent of the Minister, may from time to time direct should be kept.

(3) (a) The Agency, the chief executive and any relevant member of the staff of the Agency shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Agency in respect of any financial year or other period and shall facilitate any such examination, and the Agency shall pay such fee therefor as may be fixed by the Minister.

(b) In this subsection "relevant member of the staff of the Agency" means a member of the staff of the Agency in respect of whom there has been duly assigned duties which relate to the books or other records of account referred to in paragraph (a).

(4) The accounts of the Agency for each financial year shall be prepared, in such a form and manner as may be specified by the Minister, by the chief executive and approved by the Agency as soon as practicable but not later than 3 months after the end of the financial year to which they relate for submission to the Comptroller and Auditor General for audit.

(5) Immediately after the audit referred to in subsection (4), a copy of the accounts referred to in that subsection and a copy of the report of the Comptroller and Auditor General on the accounts shall be presented to the members of the Agency and to the

Minister and the Minister shall cause copies thereof to be laid before each House of the Oireachtas.

(6) The financial year of the Agency shall be the period of 12 months ending on 31 December in any year, and for the purposes of this section and section 27 the period commencing on the establishment day and ending on the following 31 December is deemed to be a financial year.

GENERAL NOTE

This section contains standard provisions relating to accounts and audits, and specifies the financial year of the Agency.

Accountability of chief executive

26.-(1) The chief executive shall, whenever he or she is required to do so by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and the reports of the Comptroller and Auditor General, give evidence to that Committee on all matters pertaining to the expenditure of the Agency.

(2) In the performance of his or her duties under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

GENERAL NOTE

The prohibition on criticism of Government policy, contained in subsection 2 of this section, reflects the origins of the Family Support Agency, as it takes over the administration and allocation of Government funding. It might be thought that an Agency that could not comment on the appropriateness or degree of success of public policy in its own area, was effectively prevented from achieving its full potential. However, since the prohibition is apparently limited to reports of the chief executive of the Agency to Dáil committees, it may be less restrictive than it appears.

Reports and information to Minister

27.-(1) As soon as may be after the end of the financial year of the Agency in which the establishment day falls and of each subsequent financial year of the Agency, but not later than 6 months thereafter, the Agency shall present a report (in this section referred to as the "annual report") to the Minister, in such form as the Minister may approve, of its activities during that year and the Minister shall cause a copy of the annual report to be laid before each House of the Oireachtas.

(2) Each annual report shall include information in such form and regarding such matters as the Minister may direct.

(3) The Agency may, from time to time, make such other reports to the Minister with respect to its functions as it thinks fit.

(4) In addition to information provided by the Agency in its annual report, and in reports made pursuant to subsection (3), the Agency shall supply to the Minister such information as the Minister may from time to time require regarding the performance of its functions.

GENERAL NOTE

This section requires the Agency to present an annual report to the Minister, and also provides for such annual reports to be laid before the Houses of the Oireachtas. The section also empowers the Agency to make such other reports to the Minister as it thinks fit, and requires the Agency to supply information on its activities to the Minister, at the Minister's request.

Consultants and advisers

28.-The Agency, with the consent of the Minister may from time to time engage such consultants or advisers as it may consider necessary for the performance of its functions, and any fees due to a consultant or adviser engaged under this section shall be paid by the Agency out of monies at its disposal.

GENERAL NOTE

This section enables the Agency to engage consultants and advisers to assist it in the performance of its functions. Note that such advisers are bound by the duty of confidentiality imposed by section 21, where the Agency designates information as confidential.

Seal of Agency

29.-(1) The Agency shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal of the Agency shall be authenticated by the signature of-

(a) the chairperson of the Agency, or another member of the Agency authorised by it to act in that behalf, or

(b) the chief executive or a member of the staff of the Agency authorised by the Agency to act in that behalf.

GENERAL NOTE

This section contains standard provisions relating to the seal of the Agency.

Transfer of certain rights and liabilities

30.-(1) The Minister may, as he or she thinks fit, under his or her seal transfer or assign on a specified day or days to the Agency-

(a) such specified part of the property enjoyed by the Minister in relation to the functions of the Agency and rights in relation to such property so transferred or assigned, and

(b) such specified class of liabilities incurred by the Minister that have not been discharged prior to such transfer or assignment,

(c) and, accordingly, without further conveyance, transfer or assignment-

(i) the said property, real and personal, shall, on that day, vest in the Agency for all the estate, term or interest for which, immediately before the day concerned, it was so vested in the Minister, but subject to all trusts and equities affecting the property and capable of being performed,

(ii) the said rights shall, as and from the day concerned, be enjoyed by the Agency, and

(iii) the said liabilities shall, as and from the day concerned, be the liabilities of the Agency.

(2) All property and rights relating thereto transferred or assigned to the Agency under subsection (1) that on the day concerned, were so standing in the name of the Minister shall, upon the request of the Agency, be transferred into the name of the Agency.

(3) Where before the establishment day the Minister has entered into any contract or arrangement with any person in respect of the Family and Community Services Resource Centre Programme, which is in force immediately before that day, the Minister may, as he or she sees fit, under his or her seal, transfer or assign his or her rights or liabilities arising under such contract or arrangement to the Agency.

(4) Every right and liability transferred by subsection (3) to the Agency may, on or after the establishment day, be sued on, recovered or enforced by or against the Agency in its own name.

GENERAL NOTE

Section 30 empowers the Minister to transfer or assign property, and rights and liabilities in relation to property, to the Agency. Certain contractual rights and liabilities may also be transferred. All rights and liabilities transferred under this section may be enforced by or against the Agency, from the establishment day.

As stated in the Note to Section 2 of the Act, no establishment date has been specified at the time of writing, although the members of the inaugural Family Support Agency have been appointed. It is anticipated that the Agency will take on its legal responsibilities in early 2003.

Expenses

31.-The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas.

Short title

32.-This Act may be cited as the Family Support Agency Act, 2001.

[DISCLAIMER]

This is the author's final version of this article;
the published version may include some minor amendments.

The final, published version is available here:

Buckley, L. A. (2001). *The Family Support Agency Act 2001*.
Irish Current Law Statutes Annotated.