

**Guidance to staff on the implementation
of sections 43A & 43B
Child Care (Amendment) Act 2007**



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1. Introduction

Foster Carers/Relative Carers have the opportunity to apply for greater autonomy in decisions relating to children in care resulting from two provisions, sections 43A and 43B, which have been inserted in the Child Care Act 1991.

The onus is on Foster Carers/Relative Carers to make application themselves, either directly to the court or by a solicitor acting on their behalf.

While the object of the Act is to 'normalise' the situation for foster children in long term care in relation to routine decisions, it is not intended to replace the statutory role of the Child and Family Agency.

2. Purpose

The purpose of this document is to provide clear guidance and procedures for social work staff in supporting foster carers to apply for enhanced rights.

3. Legislation

Sections 43A and 43B have been inserted into the Child Care Act 1991 to legislate for the provision of enhanced rights.

The provisions of sections 43A and 43B (following successful application by Foster Carers/Relative Carers) will give them authority in the following areas:

- consent to medical treatment, including medical assessments etc.
- applying for passports
- making decisions in respect of children in their care as if they had like control of the natural parents for the purposes of safeguarding and promoting the child's health, development or welfare, but subject to the legislation and regulations in force, for example, day-to-day issues relating to a child's care such as permission to go on school tours and attend concerts etc.

4. Procedure

4.1 Limitations

The court will only consider applications:

- If a child has been in the care of the applicant Foster Carers/Relative Carers for a continuous period of five years
- If the Child and Family Agency has consented in advance to the application
- If the child is in voluntary care, that the Child and Family Agency has obtained the consent of the parents, or if the child is subject to a court order the Child and Family Agency has notified the parents
- If the parents cannot be found or if the court, having regard to the child's welfare so directs, the requirement for consent or to be notified does not apply.

In deciding whether to grant an order, the court will determine:

- (a) if the granting of such an order is in the child's best interests
- (b) the conditions it should attach to the order.

4.2 Communication with Foster Carers / Relative Carers

When a foster carer expresses an interest in applying for these enhanced rights social workers must provide them with all the relevant information they require to support them in making an informed application.

4.3 Procedure to be followed

When Foster Carers/Relative Carers indicate that they intend to apply for an order under the Act, the social worker, in conjunction with their Team Leader / Principal Social Worker should:

- Confirm if the child has been placed with the carers for a period of 5 continuous years
- Advise the foster carers to write to the relevant Principal Social Worker advising of their intention to make an application
- The Principal Social Worker should acknowledge their application in writing and outline the actions to be taken by the Child and Family Agency
- The social worker must consult with the child/young person to hear his/her view giving due regard to his/her age and maturity
- The social worker must seek consent from the birth parents or provide them with notification depending on the care status of the child/ young person. Every effort should be made to contact birth parents, but if they are not traceable the court may be asked to dispense with notification
- Assess if it is in the child's best interest for the Child and Family Agency to support the application
- Confirm that the Child and Family Agency is giving consent to the application and confirm the child has been in the continuous care of the named foster carer and of the Child and Family Agency for a period of 5 years. Any disruption of the placement during that period shall be disregarded unless the total number of days exceeds 30 days. **This does not include planned and agreed respite care for the child**
- Convene a Special Child in Care Review unless a statutory review is due to be held within the next 3 months
- Present a report to the Review based on the following:
 - An assessment outlining why the granting of an order would be in the child's interests
 - The child/young person's view having been consulted with due regard to his/her age and maturity
 - If relevant, why dispensing with parental consent /notification is appropriate
 - The conditions required by the Child and Family Agency to be attached to the order

- The relevant Link Social Worker will contact the foster carer or relative foster carer to give them the Notice of Application for an Order under Section 43A of the Child Care Amendment Act
- The consent of the Child and Family Agency should be attached to the Notice of application
- The foster carers or relative carers should contact the Court Clerk in the District Court that is situated where the child resides
- A hearing date will be set and the foster carer or relative carer should attend the court with the child's social worker
- Identify in the report any conditions that should be attached to the granting of an order

The Principal Social Worker signs the Authorisation on behalf of the Child and Family Agency.¹

4.4 Conditions of Consent

Consent from the Child and Family Agency is conditional on the following basis:

- Foster Carers /Relative Carers must not undertake any act, or make any decision which contravenes a child's current care plan without the agreement of the Child and Family Agency
- Foster Carers/Relative Carers must not make any significant change in care arrangements without the agreement of the Child and Family Agency
- Foster Carers/Relative Carers must notify the child's social worker in advance or as soon as possible afterwards, of the following:

Any significant activities not outlined in the child's current care plan. The care plan identifies specific needs relating to children in care including health, education, access and contact. If there is a change to any of these agreed needs the social worker must be notified by the foster carer. A guiding rule of thumb for this can be defined as anything that any parent whose child in is the care of another person would want to know about the safety and welfare of their child.
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Immunisations

Elective / emergency medical treatments

Travel outside the jurisdiction

Issue of a passport or the provision of passport facilities

Other events as identified by the Child and Family Agency as being in the interests of the child
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¹ Consent documentation

4.5 Ceasing of Order

Orders granted under section 43A cease when the child returns home, is removed from the care of the foster carer/ relative carer or when the child reaches 18 years.

4.6 Child in Care Reviews

Applications under Section 43A and B should be discussed at the child in care review preceding the child becoming eligible for an application to be made under this Act to ascertain

- Whether the carers wish to make an application under the legislation following the fifth anniversary of the child's placement with them
- The child/young person's view having been consulted with due regard to his/her age and stage of development
- If the review considers that it is in the child's best interest to initiate the process outlined above.

4.7 Legal Advice

These are applications that should be made without the requirement for legal representation. However if the carer wishes to engage a solicitor those who are eligible for Legal Aid should apply for this service and for all other carers please advise them, that due to the fact that this is their application, they will have to discharge any costs arising from the engagement of a Solicitor. The Principal Social Worker supporting the application can seek legal advice from Tusla Legal at legalthelpdesk@tusla.ie

In exceptional circumstances, the Area Manager can use their discretion and agree to discharge the costs of the carer's solicitor. However any agreed cost by the Area Manager must be met within the area budget and not exceed €500.

Appendix 1

Authorisation of Agency Consent for Order

Authorisation of Child and Family Agency Consent for Order UNDER SECTION 43A OF THE CHILD CARE (AMENDMENT) ACT, 2007

Application for the Child and Family Agency Consent in advance to granting of an order

1. Details of Child

<i>Surname</i>	<i>First Name(s)</i>	<i>Gender</i>	<i>Date of Birth</i>

2. Details of Foster Carers/ Relative Carers

<i>Surname</i>	<i>First Name</i>	<i>Address</i>

3. Details of Parents/Guardians

<i>Surname</i>	<i>First Name</i>	<i>Status</i>	<i>Address</i>

4. Delegated Officer's Statement

Having considered all of the available information, I am satisfied that in relation to the child named in part 1, the Child and Family Agency has consented in advance to the granting of the order under Section 43A of the Child Care (Amendment) Act 2007

- The child has been in the care of the foster carers/ relative carers for a period of not less than five years
- The granting of an order is in the child's best interest
- A Statutory Child in Care Review has taken place to recommend this action
- Parent(s) have been notified or consented as required:
Surname, First Name(s) Gender, Date of Birth, Status, Address
- The child/young person has been consulted to hear his/her view with due regard to his/her age and maturity

The Child and Family Agency requests the Court to impose the following conditions on the Order requiring the foster carers to notify Tusla of the following events:

1. Any immunisations or elective / emergency medical treatments
2. Any travel outside the jurisdiction
3. Any significant change in the Care arrangements
4. Any issue of a passport or the provision of passport facilities
5. Any significant activities not outlined in the child's care plan
6. Any other event as identified by Tusla as being in the interest of the particular child

Signed: _____

Print Name: _____

Child and Family Agency Delegated Officer

Title: _____

Date: _____