

Child and Family Agency Act (Amendment) Bill

Transfer of Education Welfare functions

Regulatory Impact Analysis

Department of Children, Equality, Disability, Integration and Youth

Tusla Programme Development and Cross Government Framework Unit

June 2021

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Section 1: Summary

Department/Office:		Title of Legislation:
Department of Children, Equality, Disability, Integration and Youth (DCEDIY)		Child and Family Agency Amendment Bill 2021
Stage:		Date:
General Scheme drafted and approved by the Minister for Children, Equality, Disability, Integration and Youth and the Minister for Education.		June 2021
Related Publications:		
Child and Family Agency Amendment Bill 2021		
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Policy Objective: To provide the Minister for Education with appropriate powers under the Child and Family Agency Act in relation to the education welfare functions which are carried out by the Child and Family Agency (Tusla), and for which responsibility transferred to the Minister for Education under the Education Welfare (Transfer of Departmental Administration and Ministerial Functions) Order 2020 (S.I. 588 of 2020).		
Policy Options: <ol style="list-style-type: none"> 1. No amendment to legislation 2. Make amendments to the Child and Family Agency Act 2013. 		
Costs, Benefits and Impacts of Policy Options		
Option 1 – no amendment to legislation This option was not considered as legal advice indicated that as Tusla deals with operational matters relating to the transferred functions, statutory amendments of the Child and Family Agency Act 2013 are required as the relevant operational services are to remain within the Child and Family Agency and oversight will rest with the Minister for Education.		
Option 2 – Make amendments to the Child and Family Agency Act 2013 – Preferred Option		
Costs	Benefits	
None	Both Ministers would rely on the transfer of functions as outlined in Statutory Instrument No. 588	There may be an additional administrative burden for Tusla, the Child and Family

	of 2020 and would work between the Departments to oversee the functions for which they are respectively responsible.	Agency in receiving direction from two Ministers. The proposed amendments are designed to minimise this impact, in providing for a single Performance Framework, Corporate Plan, and Business Plan for the Agency.
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Section 2: Description of Policy Context and Objectives

2.1 Policy Context

Under the Education Welfare (Transfer of Departmental Administration and Ministerial Functions) Order 2020 ([S.I. 588 of 2020](#)) the functions vested in the Minister for Children, Equality, Disability, Integration and Youth:

- a) by or under the Education (Welfare) Act 2000 (no. 22 of 2000), other than section 12(6)(e), and
- b) in relation to the administration of –
 - (i) the Home School Liaison Scheme (HSCL) and,
 - (ii) the School Completion Programme (SCP),

were transferred to the Minister for Education with effect from 01 January 2021. This Transfer of Functions Order was made in line with a decision by the Taoiseach on 27 June 2020 in relation to the formation of the new Government.

As a consequence of [S.I. 588 of 2020](#), the Minister for Education is responsible to the Oireachtas for matter involving educational welfare under the Education (Welfare) Act, 2000, including responsibility for the non-statutory functions of the HSCL and SCP.

Tusla, the Child and Family Agency is responsible for the delivery of these services under the Child and Family Agency Act, 2013 (CFA Act) through the Tusla Education Support Services (TESS) and the Alternative Education and Registration Service (AEARS).

The CFA Act currently provides for the governance and oversight of Tusla solely by the Minister for Children, Equality, Disability, Integration and Youth in respect of all Tusla functions.

2.2 Policy Objectives

The policy objectives are:

- (i) To provide the Minister for Education with appropriate powers under the CFA Act in relation to educational welfare matters,
- (ii) To provide for the continued effective governance and oversight of Tusla by the Minister for Children, Equality, Disability, Integration and Youth in respect of all other matters
- (iii) To avoid an additional administrative burden for Tusla and for both the Ministers to continue to support Tusla's model of integrated service delivery, maintaining the links and synergies between TESS, AEARS and other key areas within Tusla, to

strengthen supports to vulnerable children in the context of their education and wider welfare and wellbeing.

Section 3: Options

3.1 No amendment to legislation

This option would not provide the Minister for Education with the appropriate statutory oversight in respect of educational welfare functions that continue to be exercised by Tusla. Legal advices confirm that this is not a feasible option. It is not considered further in terms of costs, benefits or impacts. It is worth clarifying, however, that the education welfare functions have continued and have effectively been under responsibility of the Minister for Education since 1 January 2021 in advance of the necessary amendments to primary legislation that are set out in the draft scheme.

3.2 Make amendments to the Child and Family Agency Act 2013.

This option is to make the appropriate amendments, as agreed with the Department of Education and in consultation with Tusla, to provide the Minister for Education with the appropriate powers to provide the policy guidance, direction and prioritisation parameters for Tusla in respect of educational welfare matters, for which Tusla will be accountable to the Minister for Education. This is the only feasible option identified to achieve the policy objective.

Section 4: Costs, Benefits and Impacts

4.1 Costs

There are no costs to the Exchequer associated with this legislative amendment.

4.2 Benefits

The legislative amendments proposed will achieve the policy objective.

4.3 Impacts

4.3.1 There may be some additional administrative burden on Tusla in receiving direction and guidance from, and being accountable to, two Ministers. Efforts have been made in drafting the proposed amendments to minimise such a burden, including the retention of a single Performance Framework, Corporate Plan and Business Plan.

4.3.2 No impacts have been identified in respect of:

- (a) national competitiveness including employment;
- (b) the socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities;
- (c) the environment;
- (d) any economic market
- (e) North-South, East-West relations;

(f) the rights of citizens or human rights

(g) a compliance burden on third parties

Section 5: Consultation

The Department of Education and Tusla have been consulted during the process of drafting the amendments to the Act. The proposed amendments are viewed as reasonable and proportionate.

Section 6: Enforcement and Compliance

There are no enforcement and compliance considerations with regard to these legislative amendments.

Section 7: Review

It is not envisaged that any review will be required following these legislative amendments.