



**Department of Children, Equality, Disability, Integration and Youth**  
**Review of the Child Care Act 1991 - July 2020 Consultation Paper**

**Observations by the Ombudsman for Children's Office**  
**October 2020**

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## 1. Introduction

- 1.1. The Ombudsman for Children's Office (OCO) welcomes publication by the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) of a consultation paper in July 2020, which seeks the views of stakeholders on a range of proposals for amending the Child Care Act 1991 (1991 Act) that have emerged from the DCEDIY's work to date to review the 1991 Act.
- 1.2. The OCO is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002, as amended (2002 Act). The OCO has two overall statutory functions:
  - to promote the rights and welfare of children up to 18 years of age
  - to examine and investigate complaints made by or for children about the administrative actions of schools, hospitals and public bodies that have, or may have, adversely affected a child.
- 1.3. The OCO welcomes the opportunity to provide observations on proposals set out in the DCEDIY's consultation paper. We have prepared these observations pursuant to section 7(4) of the 2002 Act, which provides for the Ombudsman for Children to advise on any matter concerning the rights and welfare of children, including proposals for legislation.
- 1.4. As the DCEDIY is aware, the OCO's engagement with the review of the 1991 Act to date has included a detailed written submission, which we made in February 2018 in response to a previous public consultation relating to the review of the 1991 Act.<sup>1</sup> The observations set out below do not reiterate in detail the concerns and corresponding recommendations set out in this previous submission. In this regard, the OCO encourages the DCEDIY to consider our current observations in concert with our previous submission and to give further consideration to the recommendations set out in this previous submission in the context of its ongoing work to review the 1991 Act.
- 1.5. The OCO notes that the DCEDIY's consultation paper does not cover all sections of the 1991 Act and that the Department plans to engage with stakeholders on proposals relating to other areas in the coming months. Accordingly, the observations set out below focus on a number of proposals set out in the consultation paper on the understanding that there will be an opportunity to engage with proposals regarding other areas of the 1991 Act in due course.
- 1.6. The purpose of the OCO's current observations is to indicate which proposals we welcome and which proposals we have concerns about or believe require further consideration in the interests of ensuring that the revised 1991 Act will serve children well and uphold children's rights. In some instances, we note that the OCO is not in a position to offer a view in the absence of further information and clarification from the DCEDIY as to the meaning, purpose and anticipated impact of certain specific proposals.

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<sup>1</sup> Ombudsman for Children's Office, [Submission to the Review of the Child Care Act 1991](#) (2018).

- 1.7. While the OCO appreciates the very considerable work undertaken by the DCEDIY to date to review the 1991 Act and welcomes a number of the proposals set out in the consultation paper, we are concerned that some of the proposals do not have sufficient regard to children’s rights and/or that they lack ambition as regards providing robust legislative underpinning for an approach that puts children first. Of particular concern is an apparent reticence to fully mandate relevant agencies and services to work together in discharging their respective responsibilities to children under the 1991 Act.
- 1.8. As the DCEDIY is aware, the UN Committee on the Rights of the Child has identified legislation as a key measure to implement children’s rights.<sup>2</sup> As a catalyst for change that can drive behaviour, legislation can enable people to do things that they might not otherwise be empowered to do and it can require people to do things that they might not otherwise be minded to do. The review of the 1991 Act presents a very significant opportunity to legislate for a child-centred way of working in the interests of children who are amongst the most vulnerable in the State. It is vital that the DCEDIY prioritises the interests of children in its ongoing work to review the 1991 Act.

## **2. New Part of Act – Guiding Principles**

- 2.1. The OCO welcomes and supports the proposal to include a new part and corresponding section in the 1991 Act focused on setting out guiding principles that will guide implementation of the revised 1991 Act in its entirety.
- 2.2. In this regard, the OCO welcomes the proposal to include the best interests of the child and respect for the views of the child as guiding principles. The OCO encourages the DCEDIY to have due regard to guidance issued by the UN Committee on the Rights of the Child on the relationship between and interaction of these two core children’s rights principles in the context of its work to further develop and refine these specific proposals.<sup>3</sup> Furthermore, the DCEDIY should ensure that provisions made with regard to these principles promote approaches to practice and decision-making under the 1991 Act, which recognise that upholding these children’s rights principles is vital to effective implementation of other children’s rights engaged under the Act.
- 2.3. As the DCEDIY is aware, the OCO proposed in our previous submission on the review of the 1991 Act that the incorporation of a new section on guiding principles in the revised Act should include the four general principles of the UNCRC. While the OCO notes that it is proposed to include the “*development of the child*” in a list of enumerated factors that need to be considered when determining what is in the best interests of the child, we are

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<sup>2</sup> UN Committee on the Rights of the Child, [General Comment No. 5 \(2003\), General Measures of Implementation of the Convention on the Rights of the Child](#).

<sup>3</sup> UN Committee on the Rights of the Child, [General Comment No. 12 \(2009\) on the right of the child to be heard \(2009\)](#) and [General Comment No. 13 \(2014\) on the right of the child to have his or her best interests taken as a primary consideration \(art.3, para.1\)](#).

concerned that the current proposals for a new section on guiding principles are otherwise silent on the matter of including a principle in respect of children’s right to non-discrimination (Article 2, UNCRC) and a principle with regard to children’s right to life, survival and development (Article 6, UNCRC). Noting that the recently expanded remit of the DCEDIY includes equality, we encourage the Department to incorporate these two additional core children’s rights principles, as appropriate, into this proposed new section of a revised 1991 Act.

- 2.4. It is not entirely clear from the information provided in the DCEDIY’s consultation paper why it is proposed to include parental participation as an additional principle in this proposed new section and, furthermore, how this principle might be applied in certain contexts that fall within the scope of the 1991 Act (for example, in the context of relevant court proceedings). However, the OCO is of the view that, if the proposal to include this principle is retained, the principle should be developed in such a way that it is clearly grounded in a child rights framework and formulated in terms of children’s rights. To this end, the OCO encourages the DCEDIY to examine and have due regard to relevant provisions of the UNCRC, including Article 5 and Article 9.<sup>4</sup>
- 2.5. The OCO notes that the DCEDIY is proposing to include timely decision-making in a list of enumerated factors that need to be considered when determining what is in the best interests of the child. We also note explicit references made to the importance of timely decision-making in the proposals set out in respect of interim care orders and care orders. While timeliness is neither a general principle of the UNCRC nor a general measure for implementing children’s rights under the UNCRC, timely decision-making is a key component of a child-centred approach to actions and decisions affecting children due to the negative impact that delay can have on children. Accordingly, the OCO encourages the DCEDIY to make appropriate provision in the revised Act - whether in the proposed new section on guiding principles or under all relevant sections of the revised Act – such that there is a requirement for all decisions and actions impacting on children to be prioritised and completed in the shortest time possible.

### **3. Part II - Promotion of Welfare of Children**

#### **Interagency coordination and collaboration**

- 3.1. For reasons set out in our initial submission to the review of the 1991 Act, the OCO is firmly of the view that the revised Act must include a robust statutory requirement as regards interagency coordination and collaboration. Accordingly, the OCO welcomes and supports the proposal that the revised 1991 Act will include a statutory duty concerning interagency coordination and collaboration. In this regard, we note the proposal that the Policing and Community Safety Bill will place a reciprocal obligation on other public service bodies to cooperate with An Garda Síochána. If such a statutory obligation can be put in place in this

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<sup>4</sup> United Nations, [UN Convention on the Rights of the Child](#) (1989).

area, an appropriate equivalent statutory obligation can be established under the revised 1991 Act.

- 3.2. The DCEDIY's consultation paper does not set out in detail what the proposed statutory duty might entail. It will be important to ensure that provisions made in this regard under the revised 1991 Act:
  - provide for and support shared understanding of the concepts of interagency 'coordination' and 'collaboration' among relevant agencies and services
  - set out in sufficiently clear, if overarching, terms what the nature, purpose and scope of this statutory duty will be so as to provide a robust foundation in primary legislation for the detailed information that it is proposed will be set out in Ministerial guidance.
- 3.3. As the DCEDIY is aware, the OCO recommended in our initial submission to the review of the 1991 Act that a statutory duty with regard to interagency coordination and collaboration could usefully entail placing a statutory obligation on relevant agencies with responsibilities for children and families under the 1991 Act (e.g. health services, local authorities, housing authorities, education services, and criminal justice agencies) to cooperate with the Child and Family Agency (Tusla) in the exercise of its duties under the revised Act. A statutory duty of this kind could be a logical starting point and has the potential to strengthen Tusla's position and authority in discharging its responsibilities to children and families under the revised Act.
- 3.4. With regard to the proposed Ministerial guidance, it is not entirely clear from the consultation paper whether or not relevant agencies and services will be required to follow the guidance. For the purposes of ensuring that the proposed statutory duty with regard to interagency coordination and collaboration is effective, the OCO is of the view that the proposed guidance should be statutory and that relevant agencies and services should be required to implement it. Accordingly, the OCO encourages the DCEDIY to make appropriate provision in the revised 1991 Act that offers legislative clarity and certainty that relevant agencies and services will be required to adhere to the guidance.
- 3.5. In relation to structures, the OCO appreciates that the DCEDIY's preference is to utilise existing structures to facilitate and oversee the implementation of interagency coordination and collaboration. However, as regards the proposals for Children and Young People Services Committees (CYPSCs), the OCO is concerned about the extent to which CYPSCs have the authority, capacity and resources to fulfil the responsibilities proposed for them. If the DCEDIY decides to pursue this approach, it will be important to pinpoint and implement the legislative and resource measures required to equip all CYPSCs with the mandate and resources to implement their proposed responsibilities appropriately, effectively and to a consistently high standard. In terms of a national oversight mechanism, in the absence of further detail, the OCO is not entirely persuaded that either the Children First Inter-Departmental Group or a Better Outcomes, Brighter Futures structure is a sufficiently appropriate fit to act as the national oversight and governance structure. Arguably, the gravity, complexity and scope of matters falling under the 1991 Act merit a dedicated national oversight and governance mechanism and the OCO remains of the view that a Child Care Act Advisory Group should be established as a national oversight mechanism.

### **Early intervention and family support**

- 3.6. The OCO welcomes the proposal to strengthen the visibility and provide a more robust legislative basis for early intervention measures.
- 3.7. As the DCEDIY is aware, in our initial submission to the review of the 1991 Act, the OCO expressed concern that the 1991 Act is currently framed in such a way that care of the child by his/her parents is separate from care of the child by the State, with voluntary care operating in something of a grey area in this regard. The OCO suggests that the proposal to strengthen the legislative basis for early intervention provides an opportunity to give appropriate statutory recognition to the idea that parental care and State care are not necessarily mutually exclusive and that the State is capable of acting as a ‘parallel parent’ for children and families who need ongoing support. As noted in our previous submission, it is important to ensure that the overall approach, including as regards early intervention and family support, does not give rise to inadvertent delays and, as such, to a situation where a child might be taken into care too late and at a time when significant problems have developed and the chances of a stable placement are greatly reduced. The OCO encourages the DCEDIY to give further consideration to this matter in the context of developing its current proposals.
- 3.8. The OCO notes that the DCEDIY is considering making a new provision, framed in terms of promoting the “*well-being*” of children, to underpin the provision of early intervention measures. As the DCEDIY is aware, the term ‘well-being’, including in respect of children, already exists in primary legislation – for example, in the Children Act 2001, the Guardianship of Infants Act 1964 (as amended by the Children and Family Relationships Act 2015), the Child Care (Amendment) Act 2015, and the Children’s Health Act 2018. However, while there is precedent for its use, concerns have been raised about whether the concept of ‘well-being’ can be used effectively in law.<sup>5</sup> Since it appears that the concept of ‘well-being’ may be central to the proposed new provisions in respect of early intervention, the OCO encourages the DCEDIY to give further attention to the viability of its use in the interests of ensuring that provisions made offer sufficient legislative clarity. Furthermore, given that the terms “*development*” and “*welfare*” are already used in the 1991 Act, the DCEDIY might usefully consider how the terms ‘well-being’, ‘welfare’ and ‘development’ would relate to and interact with one another under the revised Act in a manner that upholds legislative coherence.

### **Voluntary care agreements**

- 3.9. The OCO welcomes the attention being given by the DCEDIY to providing greater legislative clarity with regard to voluntary care arrangements. However, while the consultation paper summarises a range of circumstances in which voluntary care may be used, it does not stipulate an overall purpose for voluntary care. Given the recognised need to provide greater legislative clarity in relation to voluntary care, and allowing that identifying circumstances in which voluntary care may be used is not the same as defining the purpose of its use, the OCO encourages the DCEDIY to include a provision in the revised 1991 Act focused on defining the

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<sup>5</sup> See [Dáil Éireann Debate, 31 January 2019](#) regarding Second Stage discussion of the Equality (Miscellaneous Provisions) (No. 2) Bill 2017.

purpose of voluntary care, having due regard to other types of care arrangement provided for under the 1991 Act.

- 3.10. Voluntary care is intended to be a temporary measure where the overall goal is to enable a child to return to the care of his/her parents, unless such a return is contrary to the child's best interests. Accordingly, the OCO suggests that it may be worthwhile for the DCEDIY to assess how the proposed provisions in respect of voluntary care interact with a) relevant provisions regarding family support and b) the proposed principle of parental participation. Furthermore, the OCO encourages the DCEDIY to consider how appropriate provision might be made to clarify what supports will be available to the child, the child's parent(s) and the child's caregiver(s) in the context of voluntary care.
- 3.11. The OCO recognises that voluntary care has a place and that there are circumstances where its use is merited for a short, time-limited period. However, the circumstances in which voluntary care may be used need to be limited and clearly identified in the interests of supporting appropriate, consistent decision-making in this regard. It is not entirely clear from the consultation paper whether the DCEDIY is considering providing greater legislative clarity by prescribing the limited circumstances in which voluntary care may be used. Furthermore, having regard to section 4(4) of the 1991 Act and circumstances referenced by the DCEDIY in its consultation paper, it is unclear how voluntary care rather than placement in the care of the State under a care order could be deemed appropriate or feasible in circumstances where a child has been abandoned or orphaned.
- 3.12. The proposals outlined in the consultation paper in relation voluntary care make several references to parental agreement and consent. Taking into account the proposal to create a new section focused on guiding principles and the corresponding proposal to include respect for the views of the child among these guiding principles, the OCO suggests that the DCEDIY might usefully consider whether it is necessary or desirable to make explicit provision with regard to the child's right to be heard in the context of decision-making relating to voluntary care arrangements. In this regard, it is unclear from the current proposals as set out in the consultation paper how the views of the child may be ascertained, recorded and considered in circumstances where there are no judicial proceedings.
- 3.13. In light of evidence from the OCO's complaints work, which demonstrates that children can be in voluntary care arrangements for years, we welcome the proposal to place a time limit on voluntary care arrangements. However, it is not clear in what circumstances it could be deemed either necessary or advisable to allow for a child's time in voluntary care to be extended beyond a period of 12 months through a new voluntary care agreement. It appears to the OCO that Tusla should be able to satisfy itself at the conclusion of a 12-month period of voluntary care whether or not it is appropriate to return a child to the care of his/her parent(s) or to place the child in the care of the State.
- 3.14. As noted at 3.7 above, the OCO highlighted the idea of parallel parenting in our initial submission to the review of the 1991 Act. Given the proposal to include the principle of parental participation among the guiding principles to be set out under a new section in a new



part of the Act as well as the increased focus being given to family support (including through early intervention), the OCO encourages the DCEDIY to consider whether parallel parenting may be suitable in certain circumstances where voluntary care is proposed and, as such, whether appropriate legislative provision should be made in this regard. As the DCEDIY is aware from our 2018 submission, the OCO is of the view that it is vital that the State adopts a confident stance as regards the capacity of the care system to achieve positive outcomes for children. Taking this stance involves dispensing with the idea that the care system can only ever be a poor second to the quality of care provided by any birth family. As such, it entails departing from a self-fulfilling prophecy where a lack of confidence in the care system to generate positive outcomes leads to its poor use, and its poor use is associated with poor outcomes that reinforce this lack of confidence. It is important to keep in mind that the care system can and does create stable, nurturing environments for many children and that there are circumstances where the use of care earlier can be more effective and produce better outcomes for children and families.

### **Unaccompanied children seeking asylum and taken into care**

- 3.15. The OCO welcomes and supports the proposal that the revised 1991 Act will strengthen the visibility of and provision for unaccompanied children seeking asylum.
- 3.16. In relation to the specific sections where it is proposed to make explicit reference to unaccompanied children seeking asylum, it is unclear in what circumstances it may serve the best interests of an unaccompanied child seeking asylum to place the child in voluntary care or under an interim care order rather than under a care order.
- 3.17. The OCO notes that it is proposed to introduce a statutory requirement for Tusla to provide national guidance in relation to the application for residency status for unaccompanied children seeking asylum. It is unclear, however, what status this guidance will have. Furthermore, in light of the proposal to establish a statutory duty in respect of interagency coordination and collaboration and given that Tusla is likely to require the agreement of and cooperation from relevant agencies (in particular the Department of Justice and the Irish Naturalisation and Immigration Service) in order to implement the guidance effectively, it appears to the OCO that it would be prudent to provide for an interagency approach such that Tusla and the other relevant agencies work together to develop this guidance.<sup>6</sup> In addition, the OCO expects that the DCEDIY will give serious consideration to a relevant recommendation made by the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, namely that *“Social workers assigned to unaccompanied minors should be legally obliged to seek prior legal advice on a protection application as soon as possible after the minor becomes the responsibility of Tusla, and before completing and lodging the application”*.<sup>7</sup>

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<sup>6</sup> See Arnold, S., [Pathways to Irish Citizenship for Separated, Stateless, Asylum Seeking and Undocumented Children](#) (2020), in particular section 6 and 9.1.

<sup>7</sup> [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (2020), p.74.

3.18. The DCEDIY's consultation paper makes reference to the "equity of care" principle, under which an unaccompanied child seeking asylum and taken into care is afforded the same standard and quality of care as would be provided to any other child in the care system. As the DCEDIY is aware, the OCO has previously expressed concerns about difficulties faced by separated children seeking asylum who transition from Tusla's care into the Direct Provision system when they reach 18 years. In this regard, the OCO notes that the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process has recommended that "*aged-out*" minors "*should remain under the responsibility of Tusla, retaining their supports, until their applications for asylum have reached a conclusion*".<sup>8</sup> The OCO expects that the DCEDIY will give serious consideration to this recommendation and how the proposals in respect of unaccompanied children seeking asylum set out in the consultation paper may need to be developed and adjusted to take account of the recommendation.

#### **Accommodation for homeless children**

3.19. The OCO notes that the DCEDIY is proposing to change the title of Section 5 of the 1991 Act to "Support for children temporarily out of home". As the DCEDIY is aware, some young people who leave home have no intention of returning home and they will not return home. As such, they are not 'temporarily out of home'. The OCO is of the view that the proposed new title for Section 5 needs to be amended to take appropriate account of this reality. Equally, it is important that provisions made under this section are anchored in an acknowledgement of this reality.

3.20. The proposal to use the term "*support*" rather than "*accommodation*" is welcome in so far as it acknowledges that the needs of children who present as, or who are identified by the authorities as being, homeless on their own encompass more than accommodation and therefore require a more multi-faceted response. However, it is unclear from the proposals set out in the consultation paper whether or not the DCEDIY is considering making statutory provision under a revised Section 5 in respect of the types of supports that Tusla and other relevant agencies must provide to children who are homeless, having appropriate regard to the different needs and circumstances of these children. The OCO encourages the DCEDIY to give serious consideration to making such provision, allowing that details about the types of supports could be set out in the proposed national guidance.

3.21. The OCO notes that the DCEDIY is proposing to introduce a statutory requirement for Tusla to provide national guidance in relation to the use of Section 5. It is unclear, however, what status this guidance will have and whether all relevant agencies and services will be required to adhere to the guidance. Moreover, given the proposed statutory duty in respect of interagency coordination and collaboration and that implementation of the proposed national guidance is likely to require the cooperation of and input from other agencies and services, the OCO suggests that statutory provision should be made for an interagency approach to the preparation of this guidance. In addition, while the OCO appreciates that the terms used in

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<sup>8</sup> Ibid.

the consultation paper may not be the terms proposed for inclusion in the revised Act, we note that the proposed statutory requirement is for Tusla to “provide” and “publish” national guidance. The OCO would be very concerned if provision for such a statutory requirement was not accompanied by an attendant statutory requirement for Tusla and other relevant agencies and services to implement the proposed guidance.

- 3.22. The proposals outlined in respect of Section 5 retain a focus on children who present as homeless on their own or who are identified by the authorities as such. In light of the proposal to establish a statutory duty regarding interagency coordination and collaboration as well as the roles that the DCEDIY and Tusla have in relation to supporting homeless families with children, the OCO suggests that the DCEDIY could usefully consider either expanding Section 5 or introducing a new section in order to make appropriate statutory provision in the revised 1991 Act as regards support for children in families who are homeless.

## **4. Part IV - Care Proceedings**

### **Interim care orders**

- 4.1. Among the proposals set out in respect of interim care orders is a proposal to provide that day-to-day parental rights “can” transfer to Tusla under an interim care order, subject to appropriate proportionality and to include decisions on matters such as permission for school trips and GP appointments. Given that it is proposed to allow for interim care order extensions for a maximum of three months, after an initial 29 day interim order, the OCO encourages the DCEDIY to consider providing that day-to-day parental rights *will* transfer to Tusla under an interim care order.

### **Care orders**

- 4.2. The OCO notes the DCEDIY’s proposal to allow for shorter care orders via a provision that a care order will remain in force until the child attains the age of 18 “*or a shorter proportional time applied for by Tusla (or for such shorter period as the court may determine and provide a written judgement for)*”. While such provision may allow for greater flexibility, this proposal does raise a question about the extent to which it is possible to anticipate at the outset how long a care order should be for. In this regard, the OCO suggests that the DCEDIY might consider an alternative approach, whereby Tusla can apply for a care order that will remain in force until the child is 18 years of age on the basis that it can apply if and when appropriate for the order to be discharged or varied where the child’s circumstances have changed such that the child can return to the care of his/her parent(s).
- 4.3. With regard to parental rights for foster parents, the OCO would welcome additional clarification from the DCEDIY about the rationale behind and proposed scope of the proposal that foster parents will be able to apply for extended parental rights after six months rather than after 5 years.

## **Supervision orders**

- 4.4. The DCEDIY is proposing that all breaches of supervision orders will be reported by Tusla to the court. The OCO would welcome clarification from the DCEDIY about the overall purpose of this proposed provision and suggests that, in the interests of legislative clarity, the DCEDIY might usefully consider incorporating the purpose into the proposed provision, if made, in the revised Act.
- 4.5. The OCO notes the proposal to provide that supervision orders will allow for Tusla to do a number of things, including *“the ability to talk to the child on their own”*. The OCO is cognisant that the language used in the DCEDIY’s consultation paper may not reflect the actual wording that it is proposed to use in the revised Act itself. However, taking into account children’s right to be heard and the proposal to include respect for the views of the child among the guiding principles that will guide implementation of the revised Act in its entirety, the OCO suggests that the wording used needs to be stronger than the term *“ability”*.

## **5. Part IVB - Private Foster Care**

### **Private foster care**

- 5.1. Allowing for the gravity of circumstances that may give rise to a child living in a private foster care arrangement, it is important that the proposed removal of Part IVB does not create a lacuna in terms of appropriate State oversight of such arrangements. The OCO would welcome clarification from the DCEDIY about how mandated reporting, as provided for under the Children First Act 2015, serves to ensure that Tusla is informed of private foster arrangements and that appropriate oversight is provided.

## **6. Part V - Jurisdiction and Procedure**

### **Voice of the child**

- 6.1. As the DCEDIY notes, the proposals set out with regard to the voice of the child in this section of the consultation paper are situated in the context of wider reforms, including legislative reforms proposed under the Child Care (Amendment) Bill 2019 and the General Scheme of the Family Courts Bill published in September 2020. As such, the extent to which the specific proposals outlined in the consultation paper may contribute to the realisation of children’s right to be heard in care proceedings affecting them is contingent on related reform proposals being progressed and on these related proposals providing for a child-centred, rights-based approach to implementing children’s right to be heard.
- 6.2. In our initial submission to the review of the 1991 Act, the OCO recommended that explicit statutory provision should be made for the right of children and their parent(s)/guardian(s) to receive timely, accessible and comprehensive information about actions and decisions taken under the 1991 Act, which affect them. Accordingly, while more limited in scope, the OCO welcomes the proposal to make explicit statutory provision for children to be informed of the options they have to express their views in care proceedings. Given that exercising their right

to be heard is a choice for children, it is vitally important that children are provided with the information they need to make an informed choice, including information about the options available to them to express their views. That said, it is unclear from the information provided in the DCEDIY's consultation paper to what extent children will be able to influence decision-making about the option used to enable them to express their views should they wish to do so.

6.3. In the absence of further information, the OCO is not in a position to offer a view on other proposals referenced in this section of the consultation paper. In this regard, we would welcome further clarification from the DCEDIY about the proposals to:

- lower the existing threshold for a child to be made a party to proceedings
- introduce a presumption in favour of the admissibility of hearsay evidence, where the judge will retain discretion as to the weight attached to such evidence
- separate ancillary issues from threshold issues during proceedings.

## **7. Part VI - Children in the Care of the Child and Family Agency**

### **Corporate parenting**

7.1. It is of very considerable concern to the OCO that the DCEDIY is not proposing to legislate for corporate parenting in the context of the current review of the 1991 Act. The consultation paper provides no information about the specific barriers that are giving rise to the proposal to postpone incorporation of corporate parenting into the legislation. Furthermore, as regards the reference to Scotland, it is unclear why the DCEDIY is not seeking to harness the learning arising from others' experience to accelerate the inclusion of corporate parenting in legislation. In addition, it is concerning that the consultation paper provides no timeline for the introduction of corporate parenting and no proposals for the development and implementation of an action plan to enable the "*cultural shift*" referenced. The OCO strongly encourages the DCEDIY to revisit this matter in the context of its ongoing work to review the 1991 Act and to engage in a constructive dialogue with relevant stakeholders to examine how corporate parenting might be legislated for appropriately through the current review.