Review of the Child Care Act 1991
July 2020 Consultation Paper

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Context – The Child Care Act 1991

The Department of Children and Youth Affairs is currently reviewing the Child Care Act 1991. This is the primary piece of legislation regulating child care and child protection policy in Ireland. The 1991 Act is a wide ranging piece of legislation which, at its core, seeks to promote the welfare of children who may not be receiving adequate care and protection. The legislation covers the following main areas:

- Promotion of the welfare of children, including the relevant functions of the Child and Family Agency
- Protection of children in emergencies, including section 12 which governs the powers of An Garda Síochána to take a child to safety
- Care proceedings, including the different types of care orders which can be made by a court
- Children in need of special care or protection
- Private foster care
- Jurisdiction and procedure, including provisions for the appointment of a guardian ad litem for a child and the in camera rule
- Children in the care of the Child and Family Agency
- Supervision of preschool services and
- Children's residential centres.

Under the Act, the State, as a last resort and in the common good, may intervene to take the place of parents as provided for under Article 42A.2.1 of the Constitution, following the thirty-first amendment. Although the Act has undergone some amendment (such as to make provision for special care), many of its key provisions have been in force for over 25 years.

The Review

The purpose of the review is to:

- Identify what is working well within the legislation, including its impact on policy and practice;
- Address any identified gaps and new areas for development;
- Capture current legislative, policy and practice developments;
- Building on those steps, revise the original legislation.

Work to date

The Department has consulted extensively with stakeholders to collect their views on the legislation including through a call for written submissions and a number of consultation events. This included extensive engagement with Tusla on subjects covered by the 1991 Act.

In September 2017 the Department held an Open Policy Debate where the implementation of the current Act was discussed with reference to three key themes: supporting families and children, listening to the voice of children and inter-agency work. In 2018 the Department received a large number of submissions as part of a written consultation process. In their submissions stakeholders were invited to comment and make recommendations on the main

parts of the Act, as well as on any new parts that they wished to propose. Responses to this consultation are available here[1].

In 2018 the Department also sought the views of Tusla staff and management on what aspects of the legislation are working well and what needs improvement. Last year, following consultation with Tusla frontline staff on initial proposals, and a seminar on reforming child care proceedings with a selected group of stakeholders, there was a focussed stakeholder workshop on foster care, followed by regional events on the same topic. The Department is currently preparing for a separate consultation with children who have experienced interventions under the Act, however this had to be postponed in light of the current health crisis.

As part of the Review process the Department has also been represented on the informal working group convened by the Department of Justice and Equality on the development of Family Court reform and has provided input on the draft Heads of Bill. The Review itself and our feedback on Family Court reform has also been informed by research the Department commissioned on reforming child care proceedings that was completed in June 2019.

Current Consultation

Building on this research and consultation, the Department has concluded that the Child Care Act, 1991 continues to serve children well, and contains much that is worth retaining. However, Ireland has changed greatly in the quarter of a century since the Act's full commencement, and it is unsurprising that there are areas that require updating to reflect both these changes in society and our understanding of children's rights, and also to allow for positive practice developments to be enshrined in law where needed. The Department has identified a number of areas where improvements could be made to address gaps in the legislation, to bring it up to date with current best practice and to ensure that it reflects important changes such as a greater focus on children's rights and their best interests.

These proposals, and the thinking behind them, have been outlined in a number of separate papers below, with topics ranging from more abstract themes such as the incorporation of guiding principles into the Act, to more concrete topics such as proposed changes to care orders.

Please note that the current consultation does not cover all sections of the Act. The Department will continue to engage with stakeholders on proposals in other areas in the coming months.

You are **not** required to comment on **all** proposals. Contributions are welcomed on one or more areas of interest and expertise, or the entire paper as appropriate.

Please note that while wider policy and practice issues must of course be considered, the primary purpose of this consultation is to identify the appropriate legislative approach. This will allow us to update and revise the Child Care Act to ensure that we have legislation that both requires and enables any necessary future policy and practices to be put in place.

[1] https://www.gov.ie/en/publication/ee2a23-submissions-to-the-written-consultation-on-the-review-of-the-child-c/

Your Response

The Department is now inviting focussed comment on these proposals. Responses should be emailed to: ChildCareAct1991@dcya.gov.ie by Friday 11 September 2020**.** Any submissions received after this date may not be considered.

It would assist the Department if as an introduction to any response you would provide a short narrative (not exceeding 800 words) setting out the basis of your/your organisation's experience and interest in this area.

Responses to this consultation are subject to the provisions of the Freedom of Information Act 2014. Parties should also note that responses to the consultation may be published on the Department's website.

You may wish to consult the reference documents provided at the previous consultation. These are available at https://www.gov.ie/en/publication/97d109-review-of-the-child-care-act-1991/#consultation-process]

Proposals

NEW PART of Act

Guiding Principles

Current position

The Child Care Act 1991 currently does not contain explicit guiding principles; however, there are a number of quasi-principles, primarily in Section 3 and Section 24, with regard to the duties of Tusla and the court, respectively, towards children and their parents.

The Child Care Amendment [Guardian *ad litem*] Bill 2019 aims to revise Section 24 to introduce principles regarding the best interests and views of the child[2]. It presents a list of factors to be considered in relation to the best interests of the child and also prescribes the duty of the court to ascertain the views of children and give them due weight. However, several stakeholders have also called for the introduction of guiding principles with a view to making the legislation more child-centred and to bring it into line with the United Nation Convention on the Rights of the Child. Stakeholders have also recommended that parental participation and the importance of family support and early intervention are given a stronger basis in the Act.

Proposal

On the basis of the consultation and scoping review, the Department is proposing the introduction of a new section on principles which would provide guidance on the implementation of the Act in its entirety. It is worth noting that several contemporary pieces of Irish legislation have incorporated guiding principles and a dedicated section on principles has been included in a number of international examples of child care legislation.

The proposed section will contain a number of principles that will apply to the revised Act. Among these, the best interests of the child will have a central role and the best interests of the child will override any other principles in cases of possible conflict. The principle will contain a list of enumerated factors, similar to the Children and Family Relationships Act 2015[3], but excluding the last three factors more specific to private family law. Furthermore, it is proposed that additional factors be added to the list in line with consultation findings such as timely decision-making, stability of care and promoting the rights and development of the child. The section will also prescribe that the views of children should be ascertained and given due weight in accordance with their age and maturity in all decisions made under the Act.

It is further proposed that a new principle addressing the importance of parental participation will be introduced. This will provide the basis for relevant operational measures, many of which are underway, which aim to ensure adequate parental participation in decisions concerning the care and protection of children. It is also suggested that rather than stating that generally it is in the best interests of the child to be brought up in his/her own family, the emphasis is given to recognising families as the preferred way to safeguard the welfare of children unless this is prejudicial to the welfare of a child. Such an approach is intended to support proportionate intervention into families provided that this does not put the child at risk. It should also recognise diverse family configurations in contemporary Irish society and allow for the involvement of the wider family in ensuring the welfare of the child.

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[2] See https://www.oireachtas.ie/en/bills/bill/2019/66/ Note that this Bill has lapsed with the dissolution of the Dáil.

[3]See list at http://www.irishstatutebook.ie/eli/2015/act/9/section/63/enacted/en/html#sec63

Future position

The amended Child Care Act will contain explicit guiding principles. In all decisions under the Act the best interests of the child will be considered and their views will be ascertained and given due weight. Parental participation will be facilitated in all decisions concerning the care and protection of children as far as practicable and attempts will be made to safeguard the welfare of children within the family, including the wider family when appropriate. In cases of conflict between principles, the best interest will always be paramount.

Please provide your response to the above proposal

The proposal to introduce guiding principles into the act would be especially welcome in particular in circumstances where there is no uniformity in the application of the Act in District Courts throughout the country.

Best Interests of the Child

The proposal to place the best interests of the child as the paramount guiding principle that will override any other principles in cases of possible conflict is welcome as it would be in accordance with Article 3 of the UN Convention on the Rights of the Child which provides that:

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

It is also welcome that the list of enumerated factors similar to those in the Children and Family Relationships Act 2015 [4] will be introduced. This will provide much-needed guidance for the judiciary and will promote consistent application across the country. One of the critiques of the current definition of best interests in the Child Care Act is that without a list of enumerated factors it has been interpreted in a paternalistic manner. Bringing into law enumerated factors that a judge must consider, including that the voice of the child as one of these, will help to mitigate this. The enumerated factors in the Children and Family Relationships Act 2015 are in line with Article 3 of the UN Convention on the Rights of the Child.

Parental participation

A proposed new principle addressing the importance of parental participation is welcome. A greater emphasis on parental involvement can have the effect of reducing conflict between the parents and the Child and Family Agency. If parents are working well with and cooperating with the Child and Family Agency they are more likely to avail of the supports and services offered which would be in the best interest of the child.

Proportionate Intervention

The proposal to include the guiding principle of proportionate intervention in the Act is welcome. Children have a right to respect of private and family life and to the protection of the law against arbitrary or unlawful interference with his or her family.[5] Any interference with this right must be in

[4] Part V, s31

[5] Article 7Charter of Fundamental Rights of the European Union

accordance with the law, pursue the legitimate aim of protecting the child's best interests and cannot be achieved by less restrictive measures.[6] Adopting an approach of proportionate intervention would be welcome. Often care proceedings commence where a supervision order may have been more appropriate.[7] This can lead to the care proceedings being withdrawn and a supervision order being put in place several weeks or months later which means the child may have been unnecessarily removed from the home and has to undergo a transition process into foster care and then again back into the family home within a short period of time. A speedy decision-making process in deciding whether a supervision order would be appropriate would help in this scenario as a supervision order could be put in place at an earlier stage rather than waiting until there are grounds to place the child in care on an interim basis.

[6] Levin v Sweden, Application No. 35141/06, 15 March 2012 paras 57 and 69

[7] *See* Child Care Law Reporting Project *Care Order refused for young baby, Supervision Order granted instead* https://www.childlawproject.ie/care-order-refused-for-young-baby-supervision-order-granted-instead/ The Child and Family Agency sought a care order in circumstances where an expert psychiatrist witness recommended a supervision order would be more appropriate. The Court granted a supervision order for 12 months and *Supervision Order for child placed in care of father; dispute over whether custody or care issue should be decided first* where a care order was sought in circumstances where grounds were established against the mother but the Court granted the father custody with primary care and control and put a supervision order in place.

PART II Promotion of Welfare of Children

Interagency coordination and collaboration

Current position

Section 7 sets out that the Child and Family Agency shall establish Child Care Advisory Committees (CCACs). These committees may consult with voluntary bodies, report on child care and family support services, review the needs of children in their areas and advise the Agency on relevant matters. Under Section 8 Tusla is required to report annually on the adequacy of child care and family support services and to pay due consideration to the needs of children who are not receiving adequate care and protection. For the preparation of this report Tusla must consult with CCACs and other bodies that provide relevant services. However, while CCACs were established in line with the legislation, they have since been replaced with new structures and are no longer in operation.

At a national level the Children Acts Advisory Board (CAAB) was responsible for advising the Minister regarding the coordination of service delivery under the 1991 Act between 2007 and 2011. However CAAB was abolished in 2011 and its coordination functions were not replicated in a new structure. Recent years have seen the establishment of a number of relevant local and national inter-agency mechanisms (including co-ordination structures and protocols); however, it has not been set out explicitly what role they might play in supporting the implementation of the Act.

During the consultation process the need to provide for inter-agency co-ordination in the Act was the issue which was most frequently raised by stakeholders, including the Ombudsman for Children and the National Review Panel, which both identified it as a major problem in meeting the needs of vulnerable children under the Act in an integrated manner. Contributors referred to recent English and Scottish legislation which list bodies that need to collaborate for the purpose of promoting the welfare of children. In Northern Ireland children's authorities have recently been empowered to share resources under the Children Services Co-operation Act 2015. Notably, the recent review of safeguarding boards in England resulted in the allocation of a shared statutory responsibility to a strategic leadership group to improve inter-agency co-ordination. Their local representatives have to develop joint plans and report on delivering those.

Challenges

- Need to adopt more strategic approach to inter-agency co-ordination in promoting the welfare of children in the context of the 1991 Act.
- Previous co-ordination structures under the Act are now defunct.
- New structures have taken on relevant functions but do not have a formal link to the Act.
- It is difficult to achieve the joint planning and delivery of measures on a consistent basis without a clear legislative underpinning.

Proposed solutions

The Department is considering replacing Child Care Advisory Committees with Children and Young People Services Committees (CYPSCs[8]) in the legislation. There is a large degree of overlap in the functions of CYPSCs and the former CCACs. All the relevant services are represented on CYPSCs and they are strategically well-positioned to link together more specific co-ordination mechanisms (e.g. Child and Family Support Networks, Children First Tusla-AGS or Tusla-HSE structures). Other bodies

[8] See https://www.cypsc.ie/ for further information

are narrower in their scope, while re-establishing CCACs would result in the creation of yet another local structure. It is also proposed that a national strategic oversight group should also be incorporated in the legislation. The Department's preference would be to utilise an existing national structure such as the Children First Inter-departmental Group or a Better Outcomes, Brighter Futures structures on which all Departments and key agencies are represented, rather than to create a new national governance structure. Within this overall context, consideration is being given to including a statutory duty on all relevant services to work together in the planning and delivery of services which promote the welfare and well-being of vulnerable children under the Act. Details of what such a duty would entail and the list of relevant agencies and services involved would be most appropriately specified in Ministerial guidance rather than in the legislation itself.

Future position

CYPSCs will assess the needs of children in their local area on a regular basis to inform planning and co-ordination of services inclusive of both universal and targeted measures relevant to the 1991 Act. Utilising relevant sub-groups, they will liaise with specific delivery and co-ordination structures to monitor the local co-ordination and delivery of multi-agency support to vulnerable children. They will provide a report on their assessment to the national oversight body e.g. Children First IDG. The national body will also liaise with Departments and key agencies in collating information on relevant services. It will also provide a forum for discussing services that promote the welfare of vulnerable children under the Act and co-operation among them. The information and discussion will inform the report on the review of services under the revised Section 8 that will be published annually. Furthermore, Ministerial guidance will support the implementation of the statutory duty concerning inter-agency co-operation and the compilation of the Section 8 reports (e.g. list of priority groups). Further independent reviews of co-operation among relevant services may also be commissioned by the Minister.

Please provide your response to the above proposal.

Interagency coordination and collaboration is essential in protecting vulnerable children especially children who are in care or at risk of being placed in care. Principles should be established for how agencies can work together to support vulnerable children who are still residing with their families. This should go beyond a guiding principle and include a statutory provision to place an obligation on agencies to work together.

Using the CYPSCs to assess the needs of children in their local area on a regular basis to inform planning and co-ordination of services inclusive of both universal and targeted measures relevant to the 1991 Act is welcome. CYPSCs play a key role at both a national and local level in co-ordinating services and promoting interagency working. Ensuring adequate resources for the CYPCs will be key in the implementation of this proposal. Consideration could also be given to utilising the City and County Childcare Committees also.

Early intervention and family support

Current position

The Child Care Act 1991 (the 1991 Act) states that the Child and Family Agency (Tusla) shall provide family support and child care services and maintain premises for that purpose. The 1991 Act does not differentiate between the various levels of support (early intervention or child protection focused) required for vulnerable children. The Child and Family Agency Act 2013 (the CFA Act) is more specific in that it states that Tusla is responsible for *encouraging and supporting the effective functioning of families where such service may involve preventative family support services*, domestic, sexual or gender-based violence services and those related to the psychological welfare of children and their families. In addition, the 2013 Act also transferred the functions of the Family Support Agency and the Educational Welfare Board to Tusla.[9]

Since the adoption of the 1991 Act major developments have taken place leading to a broader range of family and parenting services being made available while Tusla has also embarked on major reforms through the Prevention, Partnership and Family Support Programme. The programme has established Meitheal, the national practice model for multi-agency early intervention and commenced the process of standardising the commissioning of family support services. Tusla also recently combined the educational welfare and two school support services into the new Tusla Educational Support Service. Furthermore, as outlined in the First 5- Whole Government Strategy for Babies, Children and Young People – the Government has begun to develop a National Parenting Model.

Recent reforms to child protection legislation in a number of countries have adopted a diversified approach where early intervention measures are distinguished from child protection interventions to reflect new service models. A number of contributors to the consultation favoured a similar approach in Ireland, with a separate legislative provision for early intervention measures.

Challenges

- Need to provide family support measures on a more consistent basis, with more frequent involvement of statutory partners in multi-agency responses, and offer more targeted support to high-risk groups such as ethnic minorities and people with disabilities.
- Unlike in many other countries, early intervention has a weak legislative basis in the 1991 Act, which is oriented towards children with higher level of risks.

Proposed solutions

It is proposed to remove the statement in S3 of the 1991 Act that Tusla shall provide family support services, since the Child and Family Agency Act 2013 includes a similar, more detailed provision. Instead, a new provision which is framed more broadly in terms of promoting the well-being of children is proposed to underpin the provision of early intervention measures. Setting out specific interventions is not advisable given that this may create unnecessary constraints. Ministerial guidance on early intervention would be better suited to provide an indicative list of interventions and priority groups. The local co-ordinating body, outlined in the previous section, will have responsibility for co-ordinating arrangements to promote the well-being of children in the local area. Further requirements concerning cooperation among organisations may be supported via emerging national policy or set out by the Minister in statutory guidance or protocols.

[9] Section 71 and 72, Child and Family Agency Act 2013.

Future position

Early intervention measures will be used consistently to prevent an escalation in the needs of vulnerable children. Tusla and its partner organisations will collaborate consistently in promoting the well-being of children through co-ordination, and where necessary, the joint delivery of measures. Statutory guidance and national policy will provide further details on the types of measures utilised and details around how collaboration should take place and will also assist in setting out a structure for regular reports.

Please provide your response to the above proposal.

Early intervention and family support is essential to help children in need of protection both within the family and children in voluntary care or in care on an interim basis. A new provision promoting the well-being of children is welcomed and while setting out specific interventions may create constraints and hinder supports being offered on a needs or case by case basis, detailed guidelines on early intervention would be essential in ensuring that families across the country have access to the relevant and necessary services. It is essential that for supports to be effective they are offered to the family in a speedy manner. If a family has to wait to avail of the recommended services, this could result in an escalation of the situation and require a more serious intervention for the family.

Where a child is in care on an interim basis, section 18 hearings[10] are often postponed for months or even years as parents are either awaiting or completing support services offered to them. Where a parent is awaiting such as assessment, and the threshold for an interim care order continues to be met, the Court has no option but to extend the interim court order approximately once a month for an extended period of time as the assessment is usually required before a hearing for a care order under section 18 can be held. As a result of the delay the child is left without any certainty or stability. The order placing them in care on an interim basis is usually for one month and while the interim care order is usually extended pending the assessment, this is not guaranteed and the child has no security that they will remain in their current placement or be suddenly returned to the care of their parents. Consideration could be given to the introduction of an assessment order whereby a court can make an order extending a care order while a parent is undergoing a particular assessment which might take some months rather than extending the order on a short interim basis, This would streamline the process and result in less court appearances for all parties while the results of an assessment are awaited. If it is estimated that an assessment will take five months to complete, an assessment order can be made placing the child in care for that period rather than all the parties attending Court on a monthly basis where the order is further extended to facilitate that assessment.

Consistently applying early intervention measures to prevent an escalation of needs in vulnerable children is undoubtedly in the best interests of the chid and an express provision stating this would help to ensure that these services are offered speedily and act as a safe guard for vulnerable children.

[10] Hearings on whether a care order is required under section 18 of the Child Care Act, 1991.

Voluntary Care Agreements

Current position

Voluntary care agreements can be reached between Tusla and the parents of a child under section 4 of the Act. This section allows Tusla to receive a child into care with the agreement of the parents or where a child has been abandoned or orphaned. Instances where a child may be taken into care with parental consent might include serious illness, sudden bereavement or other family crises. In such instances, Tusla must have regard to the wishes of the parents in the provision of care.

Challenges

- Purpose of voluntary care agreements unclear and may allow child to "drift" within system
- Power imbalance between parents and State in the making of an agreement
- Court hearing required to move from voluntary care to a care order with parent's consent
- No parental rights transferred to Tusla under a voluntary care agreement
- No Data Protection clarity around information sharing between professional services

Proposed solutions

- Limit voluntary care agreements to a maximum of 12 months. After this period (which aligns with the care planning reviews) Tusla can (i) reunite child with family, (ii) apply to court for care order or (iii) enter into a new voluntary care agreement with renewed consent and planning and a record of why renewed voluntary care was the most appropriate option for the child. Annual reporting obligation also placed on Tusla to provide details of the number of children in care under a voluntary agreement; the duration of such care; the number of annual assessments completed and the associated outcomes (at (i), (ii) and (iii) above).
- Introduce 3 (working) day standstill period before and after the voluntary care agreement. Tusla to also provide written details to parents, prior to the agreement taking effect, setting out the reason the child needs to be in care; the changes needed for reunification; the supports available; and the parental rights transferring to Tusla if any.
- Allow care order to be made ex parte, from voluntary care, where the court is satisfied that the relevant threshold is met and there is acceptable consent from the parents so that parents can avoid the court system if they wish and consent to care out of court.
- Allow for day-to-day parental rights to transfer to Tusla under a voluntary care agreement (subject to appropriate proportionality) to include school trips, GP appointments etc.
- Allow for the explicit sharing of information on the child and the parents of the child, e.g. from wider health services, educational professionals etc.

Future position[11]

Voluntary care agreements can be reached between Tusla and the parents of a child under section 4 of the Act. This section allows Tusla to receive a child into care with the agreement of the parents or where a child has been abandoned or orphaned. Instances where a child may be taken into care with the parental consent might include serious illness, sudden bereavement or other family crises. In such instances Tusla must have regard to the wishes of the parents in the provision of care. *Agreements are limited to 12 months when Tusla assess the situation and either return the child; apply for a care order; or enter into a new agreement. Tusla publish annual details of the number of children in voluntary care; the duration of the care; the number of annual assessments that have taken place and their outcome. Agreements come into force 3 days after parent's consent and are withdrawn 3 working days following the removal of consent. Tusla provide written details to the parents prior to the agreement taking effect setting out the reason the child needs to be in care; the changes needed for reunification; the supports available; and the parental rights transferring to*

[11] Note: changes from current position are marked in *italics*.

Tusla, if any, such as permission for school trips and GP appointments. Sharing of relevant information on the child and the parents between Tusla and health and education professionals is allowed. Care orders can be made ex parte, from a voluntary care agreement, where the court is satisfied that the relevant threshold is met and there is acceptable consent from the parents who choose the out of court option to consent to care.

Please provide your response to the above proposal.

Children are placed in voluntary care with the consent of their parents usually by way of a written consent agreement. It is welcome that proposal provides that this document should be clear and concise and also indicate that the parent has a right to withdraw his or her consent at any time. Provision for a "cool off period" of three days would be problematic insofar as the parent can, in any event withdraw consent after the expiry of this period and this provision would therefore be misleading for the parent.[12] Safeguards need to be put in place to ensure that parental consent is always free and fully informed.

The disparity in services between children in care under a care order and children in voluntary care arrangements should also be considered. Legislative provision should be made ensuring children in voluntary care arrangements have the same access to services as children under care orders. Failing to do so undermines the proposed principles of early and proportionate intervention and inter-agency collaboration. Placing a child in voluntary care is often done in the early stages of intervention. If the child does not have access to necessary services while in voluntary care (for example therapeutic services) this can be detrimental to the welfare of that child who would have access to that service if they were in care under a care order.

In addressing the disparity between children in care under a care order and children in voluntary care, consideration should also be given to ensuring that child in care reviews take place for children in voluntary care. Where a child in care meeting is delayed for a child that is in care under a care order there is some judicial oversight and accountability. There is no such oversight for review meetings for children in voluntary care and if these meetings are delayed there is a risk that the satiation will drift.

It is welcomed that the issue of the duration of a voluntary care arrangement is being addressed. Allowing lengthy voluntary care arrangements may not be in the best interest of the child and can allow the situation to 'drift', the child may be aware that his or her future is uncertain and that the possibility exists of consent being withdrawn and the arrangement coming to a sudden end. The proposal to limit the agreement to 12 months is welcomed but without a maximum period of renewal, an agreement could be renewed indefinitely. Consideration should be given to limiting the number of times a voluntary care agreement can be renewed.

While the proposal to allow a transition from a voluntary care agreement to a care order to be made on an *ex parte* basis with consent from the parents would allow a parent to avoid attending court if they do not want to, this would be somewhat unworkable in practice. If the parents are consenting to the care order they would also likely be consenting to a voluntary care agreement therefore the reasons for transitioning from voluntary care agreement to care order would need to be specified. Where the parents are consenting to the transition they are aware that the application is being

[12] Section 4(2) Child Care Act, 1991 pvovides that the Child and Family Agency cannot maintain a child in voluntary care where a parent having custody or any person acting in loco parentis of that child wishes to resume care.

made. If they are aware of and consenting to the application being made and in contact with the Child and Family Agency, they should have the option to attend Court or to have a legal representative attend on their behalf. Excluding the parents from the application, even if on consent is contrary to the principle of promoting parental participation outlined in the earlier proposals on guiding principles. If the parents do consent and the application is made on an *ex parte* basis and they are not required to attend court they may not be entitled to legal aid and cannot avail of legal advice before providing that consent. Applications which are made *ex parte* are also more open to challenge by way of judicial review which can ultimately delay proceedings which would not be in the best interest of the child.

Consideration should also be given to introducing independent oversight of the voluntary care system. This would help to prevent children "drifting" within the voluntary care system, address the issue of child in care review meetings taking place promptly and could also address the issue of disparity in services between children in care under a care order and children in voluntary care. Another gap in the current proposals is the absence of access for parents to legal information or advice before entering into a voluntary care agreement. Consideration should be given to providing parents of children in voluntary care or about to be placed in voluntary care with legal aid to obtain advice.

Unaccompanied children seeking asylum and taken into care

Current position

Unaccompanied children seeking asylum and taken into care have no specific provisions contained in the Child Care Act 1991 governing their pathway into care, rather their place in the care system is based on the interaction of Department of Justice and Equality Legislation (the International Protection Act 2015) and the Child Care Act 1991. Under the "equity of care" principle, operationalised some years ago, 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. Voluntary care agreements (section 4) and care orders (section 18) are the mechanisms by which unaccompanied children seeking asylum are taken into State care.

Challenges

- No definition in the Act of unaccompanied children seeking asylum and taken into care.
- No reference to unaccompanied children seeking asylum within the Act as grounds, of itself, for taking a child into care – rather it is based on the interplay between Justice and Child Welfare legislation.
- No clarity in relation to application for residency status for unaccompanied children seeking asylum.

Proposed solutions

- Define unaccompanied children seeking asylum as those unaccompanied children without a right to reside in Ireland.
- Amend sections 4 (voluntary care), 17 (interim care order) and 18 (full care order) to provide that any presentation of an unaccompanied child seeking asylum is of itself grounds for being taken into State care and can be made ex-parte.
- Introduce a statutory requirement for Tusla to provide national guidance in relation to the application for residency status for unaccompanied children seeking asylum.

Future position[13]

Unaccompanied children seeking asylum and taken into care *are specifically mentioned in sections 4 (voluntary care), 17 (interim care order) and 18 (full care order). Their presentation as an unaccompanied child seeking asylum is of itself grounds for being taken into State care e.g. for a care order the grounds for being taken into care are now:*

> (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or
> (b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or
> (c) the child's health, development or welfare is likely to be avoidably impaired or neglected, *or*
> *(d) the child is an unaccompanied child seeking asylum, defined as an unaccompanied child without a right to reside in Ireland, and orders in relation to these children can be made ex-parte*

Tusla publish national guidance in relation to the application for residency status for unaccompanied children seeking asylum and taken into care.

[13] Note: changes from current position are marked in *italics*.

Please provide your response to the above proposal.

The proposal to include a specific provision for unaccompanied minors taken into care is welcomed as unaccompanied minors are particularly vulnerable. Defining unaccompanied children seeking asylum as those unaccompanied children without a right to reside in Ireland is however insufficient. Insofar as it addresses their immigration status, if the child has not applied for asylum or alternative permission to remain this is an accurate description, however if a child has applied for international protection they are entitled to remain in the state pending determination of that application. While the definition addresses the child's immigration status it does not define what it means to be "unaccompanied" which could result in a minor who is unaccompanied by a parent or guardian being excluded from the definition if they are accompanied by an adult, even if that adult is an unsuitable carer. The definition of unaccompanied minor should also be broadened to include suspected victim of trafficking, abandoned or orphaned child, child with no parent or legal guardian residing in the state and no person in loco parentis willing to provide care.

The proposal to require Tusla to provide national guidance in relation to residency application for unaccompanied children does not go far enough. Consideration should also be given to placing a duty on the Child and Family Agency to consult with the child and seek legal advice on matters of residency, international protection, family reunification or naturalisation on behalf of the child.

Accommodation for homeless children

Current position
The powers in relation to the provision of accommodation for homeless children are contained in section 5 of the Act. This section places a duty on Tusla, where it appears that a child is homeless, to enquire into the child's circumstances and, if satisfied that there is no accommodation for them to occupy and unless taken into State care, to make accommodation available for the child in question. Usually, such scenarios would see children coming to the attention of An Garda Síochána, or presenting in the absence of parents, with no viable accommodation options, on foot of some form of family dispute. This power is held to refer to children who are homeless outside the family and is not to be confused with the obligations of local authorities in relation to homelessness.

Challenges

- Risk that a small number of vulnerable teenagers could be accommodated with the bare minimum of care and protection (shelter, a key worker) without the additional care planning, long-term planning, oversight, aftercare and other supports which children taken into care receive.
- The title of section 5 – "Accommodation for homeless children" implies a role in homelessness which is not accurate. Tusla's interventions in this space revolve, in the main, around temporary accommodation while family difficulties are managed.

Proposed solutions

- Introduce a statutory requirement for Tusla to provide national guidance in relation to the use of section 5, including but not limited to, minimum appropriate age for intervention, time limits for use, circumstances in which it may be used etc.
- Change section title to "Support for children temporarily out of home."

Future position[14]
The powers in relation to the provision of *support for children temporarily out of home* are contained in section 5 of the Act. This section places a duty on Tusla, where it appears that a child is homeless, to enquire into the child's circumstances and, if satisfied that there is no accommodation for them to occupy and unless taken into State care, to make accommodation available for the child in question. Usually, such scenarios would see children being picked up by An Garda Síochána, or presenting in the absence of parents, with no viable accommodation options, on foot of some form of family dispute. This is not to be confused with the obligations of local authorities in relation to homelessness. *Tusla publish national guidance in relation to the use of section 5, including minimum appropriate age for intervention, time limits for use, circumstances in which it may be used etc.*

[14] Note: changes from current position are marked in *italics*.

Please provide your response to the above proposal.

Addressing child homelessness should be given urgent priority. The introduction of a statutory requirement for Tusla to provide national guidance in relation to the use of section 5, including the minimum appropriate age for intervention, time limits for use and circumstances in which it may be used is welcomed. However, the proposal for national guidance is not sufficient. Consideration should also be given to introducing a statutory requirement for TUSLA to provide suitable accommodation for homeless children without parents or not in the care of their parents under this provision. Legislation should also address the issue of when it is appropriate to place a homeless child in care under section 5 rather than seeking a care order through the courts, especially where there has been a disclosure of abuse.

PART III Protection of Children in Emergencies

Emergency Care Orders

Current position

Emergency care orders are provided for in section 13 of the Act. Under this section, a District Court may make an Emergency Care Order – on the application of Tusla – to take a child into the care of the State on an emergency basis for up to 8 days while Tusla investigates the family circumstances. The court must be satisfied that there is reasonable cause to believe that there is an immediate and serious risk to the health or welfare of the child or there is likely to be such a risk if the child is removed from the place where he or she is for the time being. It might be noted that this section interacts closely with section 12 – which provides An Garda Síochána with the power to remove a child, where in immediate danger or risk, and place in the custody of Tusla. Where section 12 is invoked, Tusla has 3 days to make an application to the court (if deemed appropriate) to keep the child in State care.

Challenges

- Not enough time to make application for Emergency Care Order post the invocation of section 12 by An Garda Síochána.
- Emergency Care Order durations not sufficient to allow for appropriate assessments to take place.
- Child, the subject of an Emergency Care Order, is not present at the address specified on the warrant.

Proposed solutions

- Amend Section 12 to allow Tusla to apply for an Emergency Care Order within "3 days or 2 working days, whichever is the longer" to account for weekends and bank holidays.
- Allow for an Emergency Care Order to be extended to 14 days (from 8) at the discretion of the court.
- Allow child care related warrants to specify that a child can be removed from any place where they are "reasonably believed to be located."

Future position[15]

Emergency care orders are provided for in section 13 of the Act. Under this section, a District Court may make an Emergency Care Order – on the application of Tusla – to take a child into the care of the State on an emergency basis for up to 8 days *or up to 14 days at the discretion of the court* while Tusla investigates the family circumstances. The court must be satisfied that there is reasonable cause to believe that there is an immediate and serious risk to the health or welfare of the child or there is likely to be such a risk if the child is removed from the place where he or she is for the time being. It might be noted that this section interacts closely with section 12 – which provides An Garda Síochána with the power to remove a child, where in immediate danger or risk, and place in the custody of Tusla. Where section 12 is invoked, Tusla has 3 days *or 2 working days, whichever is the longer,* to make an application to the court (if deemed appropriate) to keep the child in State care. *Child care related warrants can specify that a child can be removed from any place where they are "reasonably believed to be located."*

[15] Note: changes from current position are marked in *italics*.

Please provide your response to the above proposal.

The proposed amendments to section 12 address the time constraints faced in respect of emergency care orders. Emergency care orders are often sought on an ex parte basis due to the timelines involved. For example where a child is taken into care by An Garda Síochana under section 12 of the Act, the child is then brought to the attention of the Child and Family Agency who must either make an application for a care order to the District Court or return the child to his or her parents within three days. Applications made within this time period can be done on an *ex parte* basis as it may not always be possible to locate or notify the parents of the application within this timeframe. If the times are extended, consideration ought to be given to placing the parents on notice of the applications.

Clarity should also be provided on why it is being proposed that the time limit be extended to facilitate bank holidays and weekends given that the court can hear the application on an urgent basis out of court hours.

The challenge outlined above whereby Emergency Care Order durations are sufficient to allow for appropriate assessments to take place could be met by the use of an assessment order. The Child and Family Agency may require a certain amount of time to assess the situation and decide whether it is appropriate to apply for a care order. If an assessment order is used, placing the child in care until this assessment is complete, this order could be made for a longer period instead of extending the time of an emergency care order.

PART IV Care proceedings

Interim Care Orders

Current position

Interim care orders are granted under section 17 of the Act. These orders are granted for a period of 29 days (or for longer periods where the parents of the child who is the subject of the order consent). Interim care orders allow for a child to be taken into State care, pending a judgement being made on a care order, in circumstances where there is reasonable cause to believe that the grounds exist for the making of a care order. In addition, the interim care order is deemed necessary for the protection of the child and places the child in care pending the determination of a full care order hearing.

Challenges

- The 29-day duration of the interim care order results in the parties reappearing in court on a regular basis to seek renewals, creating uncertainty for the child and placing significant strain on social work and court resources.
- Child on an interim care order may "drift" within system
- An interim care order is dependent on the lodgement of an application for a care order
- Perception that an interim care order should not be granted before voluntary care agreements and supervision orders are explored
- No parental rights transferred to Tusla under an interim care order
- No Data Protection clarity around information sharing between professional services
- Decisions in relation to the care of a child not made in a suitable time period

Proposed solutions

- Interim care order extensions for a maximum of 3 months, after initial 29 day interim order.
- Annual reporting obligations to be placed on Tusla to include number of children in care on interim care orders; the length of time in interim care; the number who have moved from interim care orders and to where (i.e. care orders or return to family)
- Allow interim care orders where a care order application is under consideration but an application has not or is not about to be made. This ensures active case management of the situation but does not require a care order application to be applied for prematurely if further work on the case shows that it is not in the child's best interest.
- Interim care orders can be granted without voluntary care or supervision orders being explored if previous work with the family such as child protection plans and care plans show that an interim care order is warranted and proportional given the interventions already tried.
- Allow for day-to-day parental rights to transfer to Tusla under an interim care order (subject to appropriate proportionality) to include school trips, GP appointments etc.
- Allow the sharing of relevant child and parent information between professional services
- As a guiding principle final decisions should be taken as quickly as circumstances allow.

Future position[16]

Interim care orders are granted under section 17 of the Act. These orders are granted for a*n initial* period of 29 days *with 3 month extensions* (or for longer periods where the parents of the child who is the subject of the order consent) *with the guiding principle that final decisions should be made as quickly as circumstances allow. They can be made without Supervision Orders or Voluntary Care Agreements previously being in place and can be used to* allow for a child to be taken into State care,

[16] Note: changes from current position are marked in *italics*.

pending a judgement being made on a care order *or where a care order application is under consideration*, in circumstances where there is reasonable cause to believe that the grounds exist for the making of a care order and the interim care order is deemed necessary for the protection of the child. *Tusla publish annual data on the numbers of children in interim care; the duration of the interim care; the numbers that have moved out of interim care and where they have gone (e.g. into care or home). Day-to day parental rights can transfer to Tusla such as permission for school trips and GP appointments. Sharing of relevant information on the child and the parents between Tusla and health and education professionals is allowed.*

Please provide your response to the above proposal.

While interim care orders (ICOs) can result in a child "drifting" in the system this can also be due to the duration of the entire process and not necessarily the number of times the parties appear in court in between.

Where ICOs are extended for longer than 29 days with the consent of the parents this too can cause the child to "drift" insofar as where the parties are not in Court on a regular basis, often little progress is achieved during that period to work towards family reunification. Where the parties are in court on a more regular basis that creates more of a focus in terms of timelines. However, extending the order for 3 months would provide more certainty for the child. Where a care order is being extended for longer than 29 days to facilitate an assessment on a parent or child consideration could be given to the introduction of a new order, an assessment order, to facilitate this. An assessment order would be a new type of order available to the court to place a child in care pending the outcome of an assessment, such as a parenting capacity assessment, for a particular duration as is necessary. If a child were to be maintained in care under an assessment order rather than continually renewing an interim care order pending the same assessment, this would cut down on court appearances for all parties. Consideration should also be given to placing a statutory obligation on the Child and Family Agency to provide a detailed plan to the Court on what work is being done, which professionals have been engaged and a detailed timeline on how long it is going to take before an assessment order is made.

Care Orders

Current position
Care orders are granted under section 18 of the Act where the court is satisfied that a child has been or is being assaulted, ill-treated, neglected or sexually abused or where the child's health development or welfare had been, is being or is likely to be avoidable impaired or neglected and that the child requires care and protection which he or she is unlikely to receive unless placed in the care of Tusla. Under a care order Tusla has like control over the child as if it were the parent and shall do whatever is reasonable to promote the child's welfare. A care order remains in force until the child attains the age of 18 (or for such shorted period as the court may determine) unless it is successfully challenged by the parents or discharged by the court because of changed circumstances.

Challenges
- Tusla can only apply for a care order until the child is 18 and not for a shorter period.
- No written reasons provided when Court grants a shorter care order than applied for.
- Certain actions (e.g. repeat non-attendance of any party) can obstruct holding a care order hearing.
- Applications for section 22 hearings to vary or discharge a care order or supervision order, or any condition or direction attached to the order, can be made without presenting evidence that the circumstances that warranted the order, condition or direction have changed.
- Extended parental rights for foster carers only granted after a minimum of 5 years.
- Perception that a care order should not be granted before voluntary care agreements, supervision orders and interim care orders are explored.
- No Data Protection clarity around information sharing between professional services.
- Decisions in relation to the care of a child not made in a suitable time period.

Proposed solutions
- Allow Tusla to apply for short care orders where proportional to the need.
- Court to provide written reasons when a shorter care order granted than applied for.
- Allow court to hold hearings ex-parte where circumstances warrant it.
- Allow "leave to apply" hearings for any section 22 application to confirm new evidence.
- Allow for foster parents to apply for extended rights under s. 43A of the Act after 6 months in line with the transfer to the foster parent of the children's allowance.
- Care orders can be granted without voluntary care, supervision orders or interim care orders being explored if previous work with the family such as child protection plans and care plans show that a care order is warranted and proportional given the interventions already tried.
- Allow the sharing of relevant child and parent information between professional services.
- As a guiding principle final decisions should be taken as quickly as circumstances allow.

Future position[17]
Care orders are granted under section 18 of the Act where the court is satisfied that a child has been or is being assaulted, ill-treated, neglected or sexually abused or where the child's health development or welfare had been, is being or is likely to be avoidable impaired or neglected and that the child requires care and protection which he or she is unlikely to receive unless placed in the care of Tusla *with the guiding principle that final decisions should be made as quickly as circumstances allow. They can be made without Supervision Orders, Voluntary Care Agreements or Interim Care Orders previously being in place and can be made ex-parte at the courts discretion.* Under a care order Tusla has like control over the child as if it were the parent and shall do whatever is reasonable to promote the child's welfare. *Parental rights can be applied for by a foster parent*

[17] Note: changes from current position are marked in *italics*.

after 6 months. A care order remains 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*) unless it is successfully challenged by the parents or discharged by the court because of changed circumstances *identified initially through a Section 22 leave to apply hearing. Sharing of relevant information on the child and the parents between Tusla and health and education professionals is allowed.*

Please provide your response to the above proposal.

Allowing the Child and Family Agency to apply for a shorter order where necessary is a more proportionate response than applying for an order until the child is 18. It is a welcome approach that the Court would be obligated to provide written reasons where a shorter care order is granted than applied for, however this does not go far enough. Consideration should also be given to placing an obligation on the Child and Family Agency, following the granting of all care orders, to inform the parent or guardian in writing of the reasons the order has been made, that they have a right to seek to discharge the order and of the changes that would be required for reunification to take place.

Further clarity is required on the proposal to allow the court to hold hearings on an ex-parte basis where the circumstances warrant it as a parent's perceived failure to engage in the proceedings could be a result of a delay in securing legal aid.

Supervision Orders

Current position
Supervision orders are provided for in section 19. The grounds for granting a supervision order are the same as those for an interim care order (but a lower threshold to that of a full care order). A supervision order authorises Tusla to have a child visited at home to ensure that the child is being cared for properly. The court also has the power to direct the parents to bring the child to a day care centre, hospital etc. Supervision orders can remain in force for up to 12 months.

Challenges
- Purpose of supervision orders unclear and may allow child to "drift" within system
- Orders cannot direct parents to comply with child centred actions such as bringing the child to school on time
- Breaches of supervision orders are not addressed
- Limited powers for social workers to assess the home and talk directly with the child
- No Data Protection clarity around information sharing between professional services

Proposed solutions
- Written document for the family to provide details of the purpose of the order and the plans and supports available for the child and the family. Supervision Orders to be limited to 12 months with the possibility of a single 3 month extension where independent assessment shows improvement in parenting capacity and the extension serves the child's best interest
- Order to provide for parental direction in relation to child centred actions – e.g. child is be brought to school on time, child is not to be looked after by adult under the influence of alcohol etc.
- Breaches to be reported to court in all instances
- Provide that supervision orders will allow for an inspection of the house the child is living in, the ability to talk to the child on their own, to visit the child outside of the home (e.g. in school) and to consult with the wider family network
- Allow for the explicit sharing of information on the child and the parents of the child, e.g. from wider health services, educational professionals etc.

Future position[18]
Supervision orders are provided for in section 19. The grounds for granting a supervision order are the same as those for an interim care order (but a lower threshold to that of a full care order). *The order is accompanied by a written document that provides details of the purpose of the order and the plans and supports to be provided to reach the specified goal. It includes provision for the sharing of information on the child and the parents of the child, e.g. from wider health services, educational professionals etc*. A supervision order authorises Tusla to have a child visited at home to ensure that the child is being cared for properly *and allows for an inspection of the house the child is living in, the ability to talk to the child on their own, to visit the child outside of the home (e.g. in school) and to consult with the wider family network*. The court also has the power to direct the parents to bring the child to a day care centre, hospital etc*. and additionally to abide by child centred actions e.g. child to be brought to school on time; not to be looked after by an adult under the influence of alcohol etc.* Supervision orders can remain in force for *only one* 12 month *period, however, an extension of one 3 month period is allowed if the specified goal has not yet been reached but an independent assessment has shown improvement in parenting capacity and the extension is in the child's best interest. All breaches of supervision orders are reported by Tusla to the Court.*

[18] Note: changes from current position are marked in *italics*.

Please provide your response to the above proposal.

The proposals to provide a written document to families providing details of the purpose of the order, to provide for parental direction, and the reporting of breaches to court is a welcome approach.

Further consideration should be given to the extent of the use of supervision orders as a means of early and proportionate intervention. We hear from our members that supervision orders are being underused and consideration should also be given to placing a statutory requirement on the Child and Family Agency to consider a supervision order before applying for a care order. Further and wider use of supervision orders where appropriate, would be in line with the proposed principles of early intervention and proportionate intervention.

PART IVB Private Foster Care

Private Foster Care

Current position

The provisions in relation to Private Foster Care are contained in Part IVB of the Child Care Act 1991. Not to be confused with the provision of foster care by (mainly private/for profit) independent service providers, this Part of the Act governs any arrangement whereby a child is placed in the full-time care of a person who is not a parent/guardian. This Part details: that Tusla be notified by those parties availing of such arrangements (where appropriate and not exempted), the information to be submitted, the duty to the child in such instances, the inspections that Tusla may carry out in relation to such placements, proceedings initiated by Tusla, restrictions on such placements and offences.

Challenge

- This section predates Children First legislation. It was a mechanism of bringing to Tusla's attention children who may be in need of care and protection. As Children First has introduced mandated reporting the need for Part IVB has been removed.

Proposed solution

- Remove part IVB from the Act.

Please provide your response to the above proposal

Removing unnecessary and outdated provisions of the Act would be welcome.

PART V Jurisdiction and Procedure

Jurisdiction – operation of the courts and hearing of proceedings

Current position

Child care cases are currently heard in the general court system: District Courts hold jurisdiction in the first instance, with the exception of special care cases which are heard by the High Court, and appeals which are made to the Circuit Court. An application is made to the District Court where the child resides or where the child is currently staying. The District Court is required to hear and determine these proceedings at a different place or time from ordinary sittings of the Court. Proceedings should be heard otherwise than in public and as informally as possible; specific exceptions exist in relation to specific groups subject to certain safeguards. The Act prohibits publishing or broadcasting matters that are likely to identify a child who is the subject of care proceedings. The Act also enables the court to procure an expert report of its own motion. The details of case management are covered in District Court orders and, in Dublin, by the current Practice Direction by the Dublin Metropolitan District.

Challenges

- Lack of specialisation and judicial variance
- Insufficient case preparation and case management
- Under-resourcing of District Courts and related delays in concluding cases
- Mixing child care cases with other types of hearings
- Lack of flexibility in relation to local jurisdiction
- Adversarial proceedings
- Limited oversight regarding expert reports and appointment of expert witnesses

Proposed solutions

The key recommendation emerging from consultations is the need to establish a specialised Family court. Of relevance, therefore, is the fact, that the Department of Justice has prepared a General Scheme to establish a Family Court Division which will have specialised judges, its own rules of court and the option of issuing Practice Directions and creating a nationwide case management system. In addition, provisions concerning local jurisdiction will also be updated so that any court that the child has connection with can exercise jurisdiction. As a result, when a child is moved to a new location, cases can continue be heard at the same local court if that is deemed in his/her best interests.

In consideration of the need to streamline hearings and enhance the inquisitorial aspect of proceedings, it is proposed to put in place enabling provisions to facilitate active case management and the introduction of alternative dispute resolution mechanisms (ADR) in child care cases where appropriate. Consideration will also given to placing a statutory requirement on parties to hold pre-court meetings to identify issues at dispute, and providing the respondent with an opportunity to prepare a written reply to the application of an order. While ADR processes may not be suitable for deciding whether harm has reached the required threshold to take a child into care, they could be used for determining “ancillary questions” such as access to services, placement, or access to parents and family members, a mechanism which may also include supporting engagement between parents and Tusla. It is also proposed that the procurement of expert reports should be guided by a

list of factors in S27 similar to private family law[19] and that standards required of experts are set out in a Practice Direction while the early appointment of single joint experts is facilitated by the new case management system.

In addition, amending the current in-camera rule to facilitate research and consultation with children has been recommended. (Note that an amendment has already been proposed to the Child Care (Amendment) Bill 2019 to authorise the attendance of officials to assist in monitoring of the implementation of the Act, subject to necessary safeguards.) It is also proposed that social media be included in the definition of "publish" and that proportionate sanctions are outlined under Section 31.

Future position
The establishment of a dedicated Family Court Division will help to address the current difficulties in the court system around specialisation, judicial variance and resources. Child care cases will be heard separately, with specialised judges presiding over cases. The reform will also provide the opportunity to introduce concurrent jurisdiction between District and Circuit level courts so that complex cases can be transferred to the latter in a similar manner to neighbouring jurisdictions. New enabling provisions in combination with a detailed Practice Direction concerning case management (including the time frame) will facilitate effective case preparation and management and the use of ADR processes where appropriate. A nationwide case management system and ancillary services will support the implementation of those measures. The court will have enhanced oversight over the procurement of expert reports, and the appointment of expert witnesses (e.g. standards required) will be regulated through a Practice Direction combined with the future development of panels of experts.

Please provide your response to the above proposal

The Children's Rights Alliance supports the establishment of a dedicated Family Court Division.

In Ireland, most child and family law cases are heard by generalist judges in the general courts system. However, specialised family or children's court systems are commonplace across Europe and in other common law jurisdictions where there are specially designed court facilities and the judiciary and lawyers have specialised training.[20] We have also seen Judges in other jurisdictions adopt child-friendly methods to communicate more effectively with children and young people. For example in the UK we have seen Justice Peter Jackson write a letter directly to a 14 year old by explaining his decision in a custody case.[21] and also in a separate case write a judgment using emojis to explain his decision to the children concerned in a custody case.[22]

[19] See S32(3) of the Guardianship of Infants Act 1964 as inserted by S63 of the Children and Family Relationship Act 2015 http://www.irishstatutebook.ie/eli/2015/act/9/enacted/en/print#sec63

[20] Prof. G Shannon, *Eleventh Report of the Special Rapporteur on Child Protection*, (DCYA 2018) 7.

[21] M. Fouzder, 'Dear Sam': Judge writes to 14-year-old to explain custody ruling', Law Society Gazette <https://www.lawgazette.co.uk/law/dear-sam-judge-writes-to-14-year-old-to-explain-custody-ruling/5062255.article> accessed 17 February 2019.

[22] J Bingham, 'Smile: High Court judge uses emoji in official ruling' Telegraph < https://www.telegraph.co.uk/news/2016/09/14/smile-high-court-judge-uses-emoji-in.-official-ruling/> accessed 17 February 2019.

We recommend that in introducing any family law reform, specialised training is provided for all professionals working in the family law courts reflecting child friendly justice principles and how to communicate with children and young people.

In tandem with the structural reform, reform of the courts buildings used for child and family law matters needs to be addressed. The family law courts have not been designed with the presence of children and families in mind. Families are often at loggerheads and the physical environment does not provide them the necessary space and privacy to deal with very personal and sensitive matters. Judges are making decisions in courts around the country about intimate family issues often in the same room as they are dealing with other matters such as criminal law.[23]

The Council of Europe's *Guidelines on Child-Friendly Justice* provide that States should ensure that proceedings involving children are dealt with in 'non-intimidating and child-sensitive settings'.[24] The Guidelines recommend that interviewing and waiting rooms for children 'in a child-friendly environment' be provided in court settings.[25] They also suggest that children should be familiarised with the Court setting, the layout and the roles and identities of officials ahead of attending proceedings and that Court sessions involving children should be adapted to the child's pace and attention span with planned regular breaks and hearings that are limited in duration.[26]

We recommend that in reforming the family law system a priority should be making available suitable accommodation for children and young people in the Courts. A key aspect of this will be the development of the dedicated children and family courts in Hammond Lane in Dublin. In developing and designing the new family courts, all stakeholders should be consulted including legal professionals, families and those who work to support them. Children and young people should also be consulted for their views as was done with the development of the children's court in Smithfield.

Voice of the child

Current situation

The Child Care Act 1991 provides for two explicit methods of ascertaining a child's views in child care proceedings: making the child a party, or appointing a guardian *ad litem* (GAL). In addition, the Act places a general obligation on the Court to give due consideration to the wishes of the child. Children are very rarely made a party to proceedings. It is currently not possible to retain a GAL if a child is made a party but the Child Care Amendment [GAL] Bill 2019 will change that.

Children may also speak to the judge, either in his/her chamber or in the courtroom or they can write to him/her. This is not specified under the Child Care Act but comes under the general provision of S24. Research suggest that this happens more often than party status for children but it is less common than the appointment of GALs. Again, there are great differences among judges as to whether they speak to the child and how much value they place on that option. A child may also give evidence but this is usually considered undesirable in child care proceedings. Instead, evidence given

[23] Prof. G Shannon, *Eleventh Report of the Special Rapporteur on Child Protection*, (DCYA 2018) 72.

[24] Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 29.

[25] ibid.

[26] ibid

by a child to another person (hearsay) may be considered by the court. This is regulated by the Children Act 1997.

Contributors to the consultation were in favour of introducing training and guidance for judges as well as lawyers regarding how to facilitate children expressing their views and setting out requirements in terms of specialist training. It was also suggested that children should be informed of their options as it is currently not provided that they must be made aware of the different possibilities they have to convey their views and wishes.

Challenges

- Children may not be aware of their options for participation.
- Courtrooms often unsuitable for children
- Children are rarely made a party to proceedings
- Inconsistent practice regarding judicial interviewing of children
- Cumbersome process of assessing the admissibility of hearsay evidence from the child, (e.g. via foster carer).

Proposed solutions

As noted above, the Department is proposing that guiding principles be included in the Act. One of these proposed principles is that the views of the child should always be ascertained in respect of decisions that concern them. Added to that, the Department is considering making it more explicit in the Act that the child should be made aware of the options they have to express their views in care proceedings. Under S25 a child or young person can only be made a party if the judge considers it "necessary in the interests of justice". Consideration is being given to lowering this threshold. This, together with the planned removal of the prohibition on child parties having a GAL, would facilitate making children a party whenever it is deemed appropriate by the court. Lastly, it is proposed that a presumption in favour of the admissibility of hearsay evidence be introduced, with the judge retaining discretion as to the weight attached to it.

Future position

Children will be made aware of their options to give their views in care proceedings. The future Family Court reform will support the creation of child and family friendly venues and increased use of videolink and online technology. Allowing a child to retain their GAL when becoming a party to proceedings will have removed an important barrier to making a child a party (S25). Training of and guidelines in combination with specialist judges and panels of lawyers will facilitate the greater use of S25 and judicial interviews. The potential to separate ancillary issues from threshold issues during proceedings may also lead to an increase in the number of children being made a party to the proceedings as this may facilitate their increased engagement and participation in respect of issues such as care planning and access. Hearsay evidence will be admitted without having to conduct separate hearings, with the judge determining how much weight he/she attaches to it.

Please provide your response to the above proposal.

Please note that legislation in relation to GALs is being progressed separately under the Child Care Amendment Bill 2019, and we are therefore not inviting comment on GALs at this time.

Every child has the right to have his or her views heard in any judicial proceedings that affect him or her. The views of the child should be given due weight in accordance with the age of the child and

the child's maturity. [27]The UN Convention on the Rights of the Child makes specific reference to the child being heard in court proceedings either directly or, indirectly, through a representative body[28] such as a Guardian ad Litem (GAL). The proposal to broaden the definition of when section 25 can be used is welcome as is the proposal to introduce guidelines and training for a specialist panel of judges and lawyers.

While the child has the right to be heard in judicial proceedings, the same right is not afforded to children in voluntary care where there are no proceedings in being. Consideration should be given as to how their can have their voices heard in these matters and in tandem with this consideration should also be given to introducing an obligation to inform children of their rights in these situations.

PART VI Children in the Care of Child and Family Agency

Corporate Parenting

Current position
There is no provision for Corporate Parenting in the Child Care Act 1991

Challenge

- Successful child protection and positive outcomes needs the collaboration and input from all state organisations involved with the child and family.

Proposed solution

- The good collaborative structures and relationships under Better Outcomes Brighter Futures will be used to embed the concept of corporate parenting in Ireland before it is introduced in legislation. In Scotland, the corporate parenting approach to children in care was developed over many years *before* being enshrined in legislation, in 2014. This, it seems, allowed a cultural shift and the development of a collaborative mindset, which paved the way for the copper-fastening of the concept, and the reality of a more cooperative approach to children in care, in legislation. The Scottish example is instructive. It suggests that legislation is most effective when it builds upon shared public values which have been carefully cultivated over time. On this basis, it is not proposed to legislate, at this time, for the introduction of a "corporate parenting" approach in Ireland.
- Interagency collaboration is one of the biggest challenges to securing good outcomes for children in care. It is envisaged that the interagency coordination proposals outlined at pages 7-8 will help to lay the groundwork for any future corporate parenting approach.

Future position[29]
There is no provision for Corporate Parenting in the Child Care Act 1991 *however, the Better Outcomes Brighter Futures structure will be utilised to introduce the concept in Ireland*.
[See also Interagency coordination proposal]

Please provide your response to the above proposal.

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[27] UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 12
[28] ibid at Article 12(2)
[29] Note: changes from current position are marked in *italics*.

Consideration should be given to introducing legislation on corporate parenting. Legislating for corporate parenting would be in the best interests of children and young people and failing to do so is a missed opportunity. Implementing corporate parenting rather than using the Better Outcomes Brighter Figures structure to introduce the concept would strengthen the principle of interagency collaboration as corporate parenting ensures that a shared approach is taken by all State agencies to children in care in providing the same kind of care that a good parent would provide. The introduction of corporate parenting into legislation would recognise the responsibilities of a wide array of stake holders to support and prioritise children in care. The Children and Young People (Scotland) Act, 2014 introduced the concept of "corporate parenting" to legislation and contains important factors, relevant in an Irish context including the provision of a lead professional and a single "child's plan" for children requiring extra support. [30] Consideration should be given to implementing a similar approach in Ireland.

[30] See Getting it right for every child approach, http://www.girfecna.co.uk/corporate-parenting for further details.

Further Comments

As mentioned above, this consultation does not cover every issue currently under review. The Department is currently progressing research and stakeholder consultation on a number of separate sections of the Act.

You may have further issues that you wish to address, such as:

- New sections to be added to the Child Care Act
- Suggestions for future proofing the legislation
- Proposals on other sections of the Act that you have not yet had the opportunity to comment on.

If you would like to add any further comment, please do so below.

The Children's Rights Alliance recommends that further consideration be given to the following:

The role of the judge

Consideration should be given to allowing the Court to make supervision orders interim and care orders on its own motion where no order is being sought by the Child and Family Agency or where the court considers that the threshold has not been met for a care order but has been met for a supervision order.

Children leaving detention

All young people leaving detention who are in the care system should be entitled to an aftercare plan to ensure they receive supports upon release. Aftercare services are available to children who have been in the care and should also be made available to children who have spent time in the care of the State in detention, regardless of length of time in detention.