



An Roinn Leanaí, Comhionannais,
Míchumais, Lánpháirtíochta agus Óige
Department of Children, Equality,
Disability, Integration and Youth

Pre-Legislative Scrutiny of the Child Care (Amendment) Bill 2023

Opening Statement

Prepared by the Department of
Children, Equality, Disability, Integration and Youth
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Good afternoon Cathaoirleach, Committee members. [My name is Lara Hynes, and I am Acting Assistant Secretary of the Child Policy and Tusla Governance Division in DCEDIY.] I am joined here today in person by my colleague from the Early Years Division, Mr Toby Wolfe who has responsibility for the areas of the scheme as they relate to early years provision. I am also joined on line by my colleagues Gill Barwise and Marie Kennedy.

I thank the Committee and its Cathaoirleach, Deputy Funchion, for providing the Department with the opportunity to brief you on the General Scheme of the Child Care (Amendment) Bill 2023. I welcome the Committee's engagement and interest in this matter.

The Child Care Act 1991 was a transformative piece of legislation, helping to promote the protection of children. It deals with some of the most important issues that children in our society can face, and the powers contained within it can, and do, change children's lives for the better.

Despite having served children well since 1991, it is widely acknowledged that the child protection and welfare landscape in Ireland has changed greatly since the Act's full commencement. In Better Outcomes Brighter Futures – The National Policy Framework for Children and Young People 2014-2020, the government of the day committed to 'review and reform as necessary, the Child Care Act 1991.'

The proposals being brought forward in this General Scheme have been informed by significant engagement and consultation with stakeholders to collect their views on the legislation. This Scheme builds on the positive elements of the Act, making the Act more child-centred, and taking account of the many societal and legislative changes since 1991, including the establishment of the Child and Family Agency, Children First legislation and the children's referendum.

It also seeks to enhance the enforcement powers of the Tusla Early Years Inspectorate to enable it to address instances of serious regulatory non-compliance and to ensure parents have access to information in relation to the quality of services. In doing so, the intention is not to increase enforcement action but instead streamline it and address some of the limitations of the current legislation, making it more effective and so improve overall compliance within the sector.

Some of the most significant areas of change proposed are as follows:

- The introduction of a **guiding principles** section to the Act, with the best interests of the child as the overriding principle.
- Provision for the preparation of a **guidance document** by the Department, in an effort to facilitate a shared understanding of the provisions of the Child Care Act.

This will be similar to Children First: National Guidance for the Protection and

Welfare of Children, which supports the implementation of the Children First Act 2015.

- Changes to **Section 3**, which currently underpins Tusla's statutory duty to protect children following an allegation of harm. We are proposing to reorient this section towards the duty of Tusla to support and promote the development, welfare and protection of children, which largely reflects the original intent of this section. Related amendments are proposed to the Children First Act 2015. The General Scheme inserts a new section to this Act which is intended to clarify the authority of Tusla to receive and assess reports of harm. These proposals will be augmented by forthcoming recommendations from an Interdepartmental Group chaired by Department of Justice undertaking a review of vetting arrangements and legislation, and any changes to the National Vetting Bureau Act 2012 that arise from that review.
- Proposals to enshrine **interagency cooperation** in law. These are intended to provide a framework for greater and more consistent cooperation from other State Agencies to allow them and Tusla, to fulfil their mandate. The introduction of a **duty to cooperate** between relevant bodies, such as Tusla, government departments, the Health Service Executive (HSE) and An Garda Síochána (AGS) will include the sharing of information between relevant bodies and Tusla, and with each other, in accordance with the law and as necessary and proportionate. This is intended to address longstanding concerns about the

ability of organisations to share information with Tusla, and to promote interagency cooperation.

- The **voice of the child** is to be strengthened both in court proceedings and in decisions taken outside the court setting by introducing a guiding principle that children should be able to participate in the decision-making process, and by modifying section 25 to facilitate more children being made party to proceedings. This builds on related amendments introduced in The Child Care (Amendment) Act 2022.

- **Local and national coordination:** The General Scheme proposes placing Children and Young People Services Committees (CYPSC) on a statutory footing in order to recognise and enhance their local coordination role. A dedicated national oversight group is to be established, which will have representatives from relevant government departments, An Garda Síochána, Tusla, HSE and others as appropriate. A role for the Ombudsman for Children in relation to reviewing the Committee's recommendations is also provided for.

- The General Scheme proposes some changes to **court orders** that can be made in respect of children:
 - The changes to **supervision orders** are intended to, for example, ensure that a child under a supervision order can be visited in a variety of settings

by their social worker, with or without the presence of a parent, and that the social worker can consult with other relevant people in the child's life.

- Changes to **interim care orders** are intended to reduce repeated court appearances by permitting the court to extend an interim care order up to 90 days in specific circumstances. To address drift, Tusla will have new obligations to report on its progress in relation to the application for a full care order.

- **Voluntary Care:** The General Scheme clarifies that this is intended to be used in circumstances where the parents will be able to resume care of the child within a reasonable period of time. Tusla must produce a written document about the arrangement and obtain explicit consent from the parent/guardian for such an arrangement. It also places a requirement on Tusla to review the operation of a voluntary care arrangement at least every six months.

- Amendments to **Part VIIA** will allow Tusla Early Years Inspectorate to:
 - immediately close unregistered services,
 - temporarily suspend registered services where there are concerns about significant risk to children,
 - share information on enforcement action with parents,
 - Assess the suitability of a person to be a registered provider of a service (through the introduction of a "fit person" regulation).

- The Scheme also provides for the removal of the exemptions relating to childminders to facilitate the future extension of regulation to all paid, non-relative childminders.

Our engagement with stakeholders has been very positive and very useful. Where they have raised concerns that we believe can be addressed in legislation, we have tried to do that, whether by introducing enabling provisions, such as those for interagency cooperation, or by amending existing provisions, such as those related to different care orders, to ensure that they remain as useful and fit-for-purpose as possible. However, we are conscious that there may be issues raised by stakeholders that are not addressed here. In many cases, legislation is not the right approach, and where needed we can explore whether operational or policy changes are a more appropriate response. We also continue to work with the Department of Justice on the Family Court Reform, which will greatly improve the experience of family courts for both parents and children.

Once again, I thank members for the opportunity to brief the Joint Committee today. I am happy to address any questions that the Committee may have or to provide any clarifications that may be required.