

Opening Statement to the Joint Committee on Children, Equality, Disability, Integration and Youth on the topic of Pre-Legislative Scrutiny of the General Scheme of the Child Care (Amendment) Bill 2023 - Marissa Ryan, CEO of EPIC, Empowering People in Care (16th May 2023)

Good afternoon. We would like to thank the Cathaoirleach, committee staff and esteemed members of the Joint Committee on Children, Equality, Disability, Integration and Youth for the invitation to contribute to your pre-legislative scrutiny of the General Scheme of the Child Care (Amendment) Bill 2023.

EPIC is an independent children's rights organisation which works with and for, children in state care, and young care leavers. A central part of EPIC's work is the provision of an independent, human rights advocacy service to this cohort. The policy development undertaken by EPIC seeks to create positive change in the care system at a systemic level, using the evidence base from our advocacy service caseload. All of EPIC's work is grounded in the UN Convention of the Rights of the Child (UNCRC), particularly Article 12, which provides for the child's right to be heard and to participate in decision-making, including through a representative or an appropriate body.

EPIC acknowledges the progress made by the Oireachtas to date in enhancing the rights of children and young people in care or with care experience.

EPIC believes that the General Scheme of the Child Care (Amendment) Bill 2023 offers the Oireachtas a real opportunity to ensure that the lives and wellbeing of children in its care are prioritised, and to ensure that provisions are made for these children to transition to adulthood in a manner where they are supported to thrive and achieve the best possible outcomes.

The most notable amendment being proposed by the General Scheme are the 'Guiding Principles' in Head 4, which provide an explicit focus on the best interests of the child, and which centre the voice of the child in decision-making processes and service provision, thus upholding Ireland's obligations under Article 12 of the UNCRC and Article 42A of Bunreacht na hÉireann.

In EPIC's experience, successful care journeys are contingent on the child's views being sought and considered, where efforts are made to gain a clear picture of their wishes, thoughts, and feelings and when children and young people in care are viewed with agency and as rights-holders.

While in the care system, children and young people are often expected to contend with a complex array of systems and processes, as well as to engage with a range of professionals and state agencies that most adults would find difficult to navigate. Therefore, their ability to ensure their wishes and feelings are heard, understood, and taken seriously by agencies can be impeded.

The provision of independent advocacy is intended to empower children and young people to express their views in a way where they are supported. Since 1999, EPIC's National Advocacy Service has worked with children when their care is at a critical juncture, and where an Advocate can often bring clarity and understanding of the child's perspective, ensuring the child remains the focus and contributing to child-centred practice.

While not currently enshrined in Irish law, we believe that children have a right to independent advocacy while in state care. This is not only recognised in the UNCRC but also recommended by state inquiries (such as the Report of the Commission to Inquire into Child Abuse (also known as the Ryan Report)). Other countries have implemented this right in national law, for example, the United Kingdom enshrined the right to Independent Advocacy for Children in Care in 1989.

Independent advocacy services already exist in Ireland and have proven beneficial for other marginalised groups. For example, independent advocacy for adults with disabilities was established by the Citizens Information Act 2007 and is carried out by the National Advocacy Service for People with Disabilities (NAS).

Given that the General Scheme of the Child Care (Amendment) Bill 2023 has vindicated the rights of a child to be heard in matters affecting them, EPIC believe that access to independent advocacy meaningfully upholds this right and should be enshrined in law.

In support of strengthening a rights-based, child-centred protection and welfare system, that recognises the separate and complementary roles and safeguards provided for by Social Workers, Guardians ad Litem and Advocates, we believe that the nature of individual care orders should not impact on a child's rights while in care.

This is why we welcome elements of the proposals by the Department to address critical issues in sections relating to voluntary care, supports for children temporarily out of home, and the efforts to address critical gaps in the cooperation of state bodies in meeting their duty of care. However, we believe there is still significant room to strengthen these provisions.

Regarding voluntary care [Head 7], we welcome moves to assess the continuance of a voluntary arrangement and the underlining of voluntary care as a temporary arrangement. We do recommend, however, that a maximum period is inserted which would automatically trigger a judicial review of the arrangement to consider the options outlined in subhead [3].

Regarding supports for children temporarily out of home [Head 8], while these proposals reflect a departure from the current model EPIC have observed instances where the current section 5 has been used when a child has required welfare and care protections beyond their immediate need of accommodation. This has resulted in their needs not being met. It is our view that section 5 appears to act in isolation from the rest of the Act to a point where children under this section are not deemed to 'in care' and do not have the welfare and protection they may require. The section must be strengthened further to resolve this.

Regarding the duty to cooperate provisions [Head 10], we have long upheld that when the state is acting in loco parentis, there is a duty of care across relevant Department and state agencies. However, we observe that DCEDIY and the Child and Family Agency are too often left with responsibility for all matters relating to children in care and young care leavers, including those that should be addressed by bodies that have the capacity and statutory obligation to do so. The impact of this being that children in care and young people leaving care are sometimes left without entitlements critical to their development, welfare and protection. This is sadly all too common in areas such as health, access to CAMHS and housing and homelessness. The negative outcomes for children and young people which transpire from breakdowns in interagency collaboration are well documented. The new legislation must seek to resolve this, or children will continue to be failed by a lack of guidance and the clear, unambiguous delegation of duty that is required to meet their needs.

We are disappointed to see that certain critical provisions for young people have not been brought into the General Scheme, including Aftercare Eligibility Criteria (section 45), a dedicated section to support Unaccompanied Minors, and a much-needed update to the In Camera Rule (section 31). During the session last week, the Department did indicate a willingness to address key issues relating to Aftercare Eligibility and Unaccompanied Minors in their contribution and we believe that a commitment to report on such matters can be legislated to acknowledge these much-needed reforms and to ensure they are conducted in a timely fashion.

In conclusion, we look forward to discussing these proposals and how they may be improved further, and we have also circulated a submission on the same to Committee members to aid your ongoing deliberations.

We thank the Committee for the opportunity to contribute and look forward to answering your questions.