Review of the Child Care Act 1991

Submission to the Department of Children and Youth Affairs

EPIC – Empowering People In Care

April 2018
1. Introduction

EPIC welcomes the opportunity to contribute to the review of the Child Care Act 1991. This review by the Department of Children and Youth Affairs of the Child Care Act 1991 is a significant and important undertaking in terms of legislative reform, and will determine to a greater or lesser extent, the lived experience of children and families that seek or require the support and protection of the state. EPIC hopes that this submission will contribute to the conversation taking place within the Department of Children and Youth affairs about children and young people who are in the care system or who have care experience. This submission is based on EPIC’s direct experience.

EPIC is the only independent organisation in Ireland which works with, and on behalf of, children and young people who are or have been in care. A core part of the work of EPIC is the provision of an individual advocacy and support service for children and young people in care and with care experience. The policy development undertaken by EPIC seeks to make positive change for children and young people in care and with care experience at a systemic level.¹

The State has acknowledged the need to place children’s rights at the heart of Government, through the creation of the senior cabinet position and a government department dedicated to children and youth. The addition of Article 42A on the rights of children, particularly in family and care proceedings, has been added to the Constitution of Ireland and there have been numerous changes to child and family law, but these reforms were overdue and came after the unearthing of a legacy of failures on the part of the State to protect and vindicate the rights of children in its care, and children whose care the State entrusted to other institutions. It is to be commended that the State is now undertaking the monumental task of reviewing the Child Care Act 1991. This legislative reform is essential and the opportunity to significantly impact the lives of children and families for the coming generation cannot be overestimated.

EPIC would like, through the review of the Childcare Act 1991, to see the State live up to its vision of Ireland being

“one of the best small countries in the world in which to grow up and raise a family, and where the rights of all children and young people are respected, protected and fulfilled; where their voices are heard and where they are supported to realise their maximum potential now and in the future”²

The principles of the United Nations Convention on the Rights of the Child (UNCRC – the Convention) must also be consistently embedded across everything that may impact on the lives of children in Ireland. The UNCRC was ratified by Ireland in 1992, but the Convention has not yet been incorporated into Irish law, and there is no legal obligation on public bodies to comply with the Convention in the carrying out of their functions. As a result, State compliance with the Convention has been uneven and inconsistent across the areas of law, policy and practice. The review of the Child Care Act 1991 is an opportunity to now embed these principles in Irish law. The State must adopt a holistic cross-

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¹ For more information see www.epiconline.ie
governmental approach to the review of the Child Care Act 1991 that is driven by and keeps the rights of the child at its core. In particular, special emphasis must be placed on four key articles or general principles, because they are basic to all the rights contained within the Convention.

- Article 2; all rights guaranteed by the Convention must be available to all without discrimination of any kind.
- Article 3; the best interests of the child must be a primary consideration in all actions concerning children.
- Article 6; every child has the right to life, survival and development.
- Article 12; the child’s view (the voice) must be considered and taken into account in all matters affecting him or her.

Others relevant principles of the UNCRC include:

- Article 5; parental guidance and the child’s evolving capacities.
- Article 9; separation from parents. Children shall only be separated from their parents by competent authorities, if it is in the child’s best interest. In any proceedings relating to the separation of children from their parents, all parties shall be able to participate in the proceedings and make their views known.
- Article 18; parental responsibilities. Parents/legal guardians have the primary responsibility for the upbringing and development of the child. The state shall give appropriate assistance to parents and guardians in the performance of their child rearing responsibilities.
- Article 20; protection of children without families. A child deprived of their family environment shall be entitled to special protection and assistance provided by the State.
- Article 25; review of care placement. A child who has been placed in care shall be entitled to periodic review of the treatment provided to the child.

The Department for Children and Youth Affairs must also take on board, amongst others, the European Convention on Human Rights, the Council of Europe’s Child Friendly Justice Principles and Children’s Rights and Social Services; and the EU Fundamental Rights Agencies Handbook on European Law relating to the Rights of the Child (2015), in particular chapter 6 on alternative care. Other policy and framework documents of particular note and which should inform the review of the Child Care Act 1991, include the National Children’s Strategy (2000), Brighter Outcomes Better Futures (2011), the National Policy Framework for Children and Young People (2014-2020), the National Consultation Policy (2015), and the National Youth Strategy (2015); as well as the 31st amendment of the Constitution (Article 42a), the Children and Family Relationships Act (2015), the Child and Family Agency Act (2013), the Child Care (Amendment) Act (2015), the Children First Act (2015), and the Amendment to the Adoption Act (2017). The UN Convention on the Rights of Persons with Disabilities (the UN CRPD) provides the framework to promote, protect and enshrine the rights of all people with disabilities and to promote equal rights in all areas of life. Ireland finally ratified the UNCRPD earlier this year, and the review of the Child Care Act must also take this into account.

The Child Care Act 1991 establishes a framework for child care proceedings that aims to provide for the care and protection of children, while also containing a variety of mechanisms aimed at safeguarding the

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3 Council of Europe; Guidelines of the Committee of Ministers of the Council of Europe Child Friendly Justice; 2010. Council of Europe; Children’s Rights and Social Services.
rights of parents while making allowances for the sensitivity of the issues involved and the vulnerability of the parties to proceedings. The Child Care Act 1991 gives the Child and Family Agency (CFA) the power to apply to the District Court for a range of child protection measures. Child protection orders have as their goal the protection of children at risk, while taking account of the need to safeguard the rights of parents as well. These rights include the right of parents to have, for example, the custody of their children and to determine their upbringing and education, as well as procedural rights deriving from principles of natural justice, which are protected under both the Constitution and the European Convention of Human Rights (ECHR). The Act states that the Child and Family Act (s3(2)(b)) and the District Court (s24) must regard the child’s welfare as the first and paramount consideration, but that in the implementation of these duties, the Child and Family Agency (CFA) must have regard to the rights and duties of parents, whether under the Constitution or otherwise, and to the principle that it is generally in the best interests of a child to be brought up in his/her own family (s3(2)). Therefore, the continued emphasis on early intervention and family supports is very welcome, but the balance between leaving a child with his/her family as against taking the child into care will never be a straightforward or simple decision. The review the Child Care Act 1991 is therefore a key opportunity in our evolving development and understanding of how we deal with child protection cases, and should form part of a wider holistic approach to safeguarding children and their families generally. The balance between the rights, best interests and welfare of children versus those of parents will remain a complicated one, and must be considered within the evolving understanding of the impact of neglect on the physical and emotional development of a child from birth or earlier.

Recommendations:

- The review of the Child Care Act 1991 cannot be rushed, and must involve consultation with all relevant stakeholders, from children to parents, as well as professionals working on the ground, to ensure that the balance is struck between the competing interests at stake.
- The review of the Child Care Act 1991 should take into consideration the UNCRC rights, and all other legislation and policy as mentioned above.
2. Constitutional Amendment

The relatively recent Constitutional Amendment to include a specific right for children (Article 42A) was monumental, though many have said that this amendment did not go far enough. The review of the Child Care Act 1991 is therefore another opportunity to build on the significant and accepted increasing recognition of the value of children within our society. Children have always had rights under the Constitution: they are granted some of the same rights as other individuals living in the State, such as the entitlement to acquire citizenship (Articles 2 and 9) and in appropriate circumstances, children are entitled to the Fundamental Rights set out in Articles 40 to 43 as well as certain unenumerated rights that are not listed in the Constitution but that have been read into it by the Courts. In addition to these rights, there are other constitutional rights specifically related to children: the right to free primary education (Article 42.4) and the ability of the State to intervene when parents fail their child (Article 42.5). The inclusion of the stand-alone Article 42A dedicated to children in the Constitution, both the rights it contains and the presence of the Article itself, sends a clear message that Ireland values children and wishes this to be reflected in our laws and court decisions. Article 42A gives explicit expression to the rights of children as individuals. The amendment brought about a significant rebalancing of the text of the Constitution with a more extensive reference to, and recognition of, children’s rights. This greater focus on children’s constitutional rights is now beginning to be reflected in more child-centred judicial decisions and legislation, and the review of the Child Care Act 1991 will hopefully continue to embed this fundamental shift in the way we address issues that impact on children’s lives.

The requirement under the constitutional amendment to give primary weight to the best interests of the child can only be achieved when children are given the possibility to express their views in matters that concern them and that those views are properly taken into account when decisions are made. Children are fully respected members of society who can bring insight and credible views to decisions on issues that impact their lives.

Recommendations:

- Continue to build on the progress made as a result of the insertion of the stand-alone article in the Constitution (42A) in 2012, and the definition laid out in Part V Section 31 of the Child and Family Relationships Act.
- Replace the welfare principle with the best interest of the rights of the child principle.
- Ensure that provision is made to hear the voice of the child in all care proceedings and due weight is given to their views in accordance with their age and maturity. This must be consistently implemented across the country.
3. Part II

Promotion and Welfare of Children

3.1 Supporting Children and Families

There are many things that have been improved in recent years in terms of supporting children and families, in particular early intervention and prevention. Early intervention and prevention offers children and families the best chance by enabling them to access the necessary supports to allow them to function as a family within their community. The current review of the Effective Prevention and Early Intervention Approaches by the Prevention and Early Intervention Unit is to be welcomed. The Prevention Partnership and Family Support (PPFS) Programme through an area based Meitheal approach is helping to address needs, as well as the Garda Divisional Protective Services Units which helps promote interaction and relationships with An Garda Siochana early on, as well as the Signs of Safety.

R. Buckley (2013) carried out a significant piece of empirical research in Ireland with 156 professionals from health, education, sport, youth and youth justice sectors as part of a doctoral study. Like Bunting et al. (2010), she found that when the physical manifestations of abuse are clear, practitioners tend to respond and report quickly, she found, however that responses to more complex matters such as neglect or emotional abuse were slower due to the ‘multiplicity of anticipated positive and negative outcomes including adverse consequences’. Other impediments cited in that study included a fear of getting it wrong, a fear of retaliation from parents and a lack of confidence in the child protection system compounded by a lack of feedback from social workers when reports were made. To overcome obstacles, Bunting et al. (2010) suggest training that is targeted at overcoming barriers by clarifying the limits of confidentiality and client relationships as well as highlighting the impact of neglect and abuse and the complexities of disclosure. They also suggest that education on the work of social services would enhance understanding.

Recommendations:

- Differential Response Model planning works well so long as the number of high risk referrals don’t result in lower risk referrals not receiving a timely assessment. This should be monitored.

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and reviewed regularly.

- Mandatory reporting also risks deflecting attention away from lower risk referrals, due to a lack of resources, and this needs to be monitored and analysed going forward, as the practice becomes embedded.\(^5\)

- The development of Policy frameworks is welcome, so long as there are clear lines of accountability and inter departmental and inter agency co-operation, as promoted within Better Outcomes Brighter Future. The focus must be on services and monitored outputs, as well as the real impact or effect on the ground.

- Family supports must be consistent across the country and adequately supported. All families in need of supports must be equally and consistently supported, and the needs of the children and families met. There should be a standardised approach across the country. Positive pilots must be shared and rolled out nationally where appropriate.

- Adequately support and engage with the Voluntary sector providing supports.

- Seamless service provision between different Departments, and in particular between DCYA, the CFA, Health (HSE), Justice, Social Welfare and Education.

- National Standards for the provision of services to children and families should be developed and monitored.

- Social media and web applications (apps) should be used more to target children, young people and families, whilst ensuring the education and safety of young internet users.

- Childcare Advisory Committees provide a beneficial oversight and should be maintained. One individual should be considered to chair all Committees across the country for consistency and oversight.

- The State, in its entirety (with many Departments and systems) must fulfil its role as the corporate parent of each and every child in care; it is not the sole responsibility of the CFA.

### 3.2 Listening to the Voice of the Child

Listening to the voice of the child is at the core of EPIC’s work. EPIC would be very willing to assist the Department of Children and Youth Affairs in hearing from children and young people currently in care and with care experience in relation to the review of the Child Care Act 1991. EPIC is currently in the development stage of carrying out its own consultation with children and young people.

The recognition of the importance of listening to and hearing directly from children in all matters that affect them is increasingly accepted, in line with Article 12 of the UNCRC and Article 24 of the European Union Charter of Fundamental Rights. These articles recognise the rights of children to express their

\(^5\) Evidence from other jurisdictions indicates that the instigation of mandatory reporting has led to an increase in reporting rates (Ainsworth, 2002; Buckley, 2008) and provides reason for practitioners and managers to fear a similar impact in Ireland. It is anticipated that mandatory reporting will lead to an increase in reporting rates to child protection services which could divert even more attention and resources away from preventative services and more towards investigation. This will need to be monitored by the CFA.
views freely and to have such views taken into consideration on matters which concern them in accordance with their age and maturity. Article 13 of the Hague Convention on the Civil Aspects of International Child Abduction gives a discretion to a court to refuse to return a child to the place of his or her habitual residence if the child objects to being returned and if the child has reached an appropriate age and maturity to take this into account. Article 11(2) of Regulation 2201/2003 (the Brussels II A Regulation) provides that when applying Articles 12 and 13 of the Hague Convention, a child must be given an opportunity to be heard, unless this is inappropriate having regard to his or her age or degree of maturity. Interestingly, recent guidelines issued by the UK Court of Appeal for Judges hearing children in this context recommend that the role of the judge is to be the passive recipient of the child’s views.6

The voice of the child should be listened to at the beginning of any process. Children are able to provide valuable insight and articulate their views on matters affecting them. Children have a right to say what they think, have an opinion about decisions that affect them, and have their views taken into account. The role of the independent advocate supports this and the role should be formalised. Children must be involved in decision making, in line with the UNCRC, and as enshrined in the Constitution. Children should have more of a voice in their care arrangements and aftercare plans. This is a central tenet of the current Child Care Act 1991, but requires greater oversight than is currently provided. Nearly 60% of children in care are in care under voluntary arrangements, and can remain on such arrangements for many years.7 The fact that children in care under voluntary arrangements are not afforded a legal right to have their voice heard as part of the process could be seen as a derogation of responsibilities under the Child Care Act 1991 and the Constitution, and must be reviewed.8 More resources should be put into enabling and listening to all children, including the use of technology and creative solutions, in court processes. The voice of the child and their wishes must be balanced alongside independent assessments of the child’s best interest.

The importance and positive effect of direct advocacy support is evidenced through the work of EPIC. All children who require support should be encouraged to receive advocacy support. Policies around advocacy and supporting their access to participating fully in all decisions affecting them should be encouraged.

**Recommendations:**

- Ensure that a meaningful consultation with children in care in relation to the Child Care Act 1991

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8 Further discussed below in section 3.4 under Voluntary Care.
is carried out, at the earliest opportunity. Engage with EPIC in relation to this.

- The review of the Act must take on board the UNCRC, as outlined above, in particular, Article 12 (the child’s views).
- There should be equality for all children in care in terms of having their voice heard. Children in voluntary care do not have the same opportunities to be listened to. (see the section below on voluntary care for more information on this issue.)
- More direct engagement with children should be used, developed and promoted, and the use of Section 25 (making children party to the proceedings) should be more widely used.
- More resources should be put into enabling and listening to all children, including the use of technology and creatives solutions, in court processes and should be consistent across the country.
- All children who require support should receive independent Advocacy support, alongside their right to have a Guardian ad litem appointed for court proceedings.
- Development of Policies around advocacy and supporting children’s access, including those with disabilities, to participate fully in all decisions affecting them should be encouraged.
- All solicitors, barristers and judges should receive accredited training for working with and listening to children, in line with recommendations made by My Lawyer My Rights.  

### 3.3 Best Interest of the Child

The best interest of the child must be the guiding principle of the new Child Care Act. A number of factors are taken into consideration when determining the best interests of the child as outlined by Part 5 of the Guardianship of Infants Act, 1964, (as inserted by section 63 of the Children and Family Relationship Act, 2015). These factors include the benefit to the child of having a meaningful relationship with each of his or her parents, the views of the child concerned that are ascertainable, the physical, psychological and emotional needs of the child concerned, taking into consideration the child’s age and stage of development and the likely effect on him or her of any change of circumstances, the history of the child’s upbringing and care, any harm which the child has suffered, or is at risk of suffering and the willingness and ability of each of the child’s parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives. There is no standard definition of ‘best interests of the child’, the term generally refers to the determinations that are generally made in relation to a number of factors related to the child’s circumstances as well as those of the parents, with the child’s ultimate safety and well-being as the paramount concern. However, any court must take on board the State’s own vision in terms of the children of this State; notably Better Outcomes, Brighter Future; the national policy framework for children and young people.

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9 For more information see the UCC School of Law. My lawyer my rights is a project co financed by the European Commission. Similar work by Just for Kids Law (London) should also be explored.
**Recommendations:**

- The new Act must have the best interest of the child as its fundamental and guiding principal but must also be aware of the ever increasing recognition of the importance of the voice of the child within every decision that may affect the child’s life. All necessary supports must be in place in order for this to be possible.
- The review of the Act must take on board the UNCRC rights as outlined above, in particular Article 3; best interests. The Constitution promotes the best interest of the child and must be taken into consideration in any review of the Act.
- As mentioned, alternative and less adversarial approaches such as mediation must be considered, along with training of lawyers and Judges and a more child friendly system, to ensure that the best interest of the child, in terms of the processes, is also kept front and centre in any review of the Act.

### 3.4 Voluntary Care

Section 4 of the Child Care Act, 1991, allows the CFA to take a child into voluntary care, with the consent of the parent(s), where it is felt that the child’s care and protection requires it. Section 4(3)b, states that “it shall be the duty of the Board, (subject to the provisions of this section), to have regard to the wishes of a parent having custody of him or her, or any other person acting in *locus parentis* in the provision of such care.” It is worth noting the absence of the specific requirement to hear directly from the child in this instance\(^\text{10}\), an oversight that must be amended.

Voluntary care was originally envisaged as a measure to be used on a short term basis, for example when a parent is hospitalised or debilitated temporarily. Yet, the use of voluntary care as a means of safeguarding children is currently used far more exhaustively than was originally intended. The Child and Family Agency statistics indicate that almost 60% of children were placed in care by voluntary agreement, and the majority of these cases do not receive court scrutiny.\(^\text{11}\) The remaining one third of involuntary care order decisions are made in the District Court, a non-specialist, single judge court, in which child care proceedings are run in a largely adversarial manner. Judge Toll has expressed on many occasions his unsatisfaction with current voluntary care arrangements. It is interesting to reflect that Secure Care (despite its extreme nature due to the removal of liberty) is heard in the High Court, whereas removing a child from its family, indefinitely at birth, can be heard in the District Court. Any Review of the Child Care Act must hold this front and centre.

A co-operative arrangement can unfortunately create situations whereby children are left in voluntary care for extended periods of time despite the fact that the birth parents are not in a position to care for

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\(^{10}\) As discussed above in section 3.2 Listening to the voice of the child.

their child at home in the foreseeable future. The balance between safeguarding parental involvement and simultaneously creating stability and a second chance at a family life for the child is not properly balanced in its current format and must be reviewed. There is a potential Constitutional difficulty with the overuse of Voluntary care and the friction that exists between safeguarding a child and protecting the right to family life. Children in care require stability, certainty, and clarity. Voluntary care for many young people simply removes any of these possibilities. Kilkelly raised this concern over a decade ago, highlighting that alternative care should be temporary in nature.\textsuperscript{12}

It has been brought to the attention of EPIC, through its direct advocacy work with children and young people, that children in voluntary care are sometimes unsure about who makes decisions around their care; for example, in relation to medical issues or documents such as passports etc. Young people in voluntary care have highlighted to EPIC that asking their parent for permission regarding medical procedures or issues, or for a passport, can be upsetting for them, their parents and their foster parents. If a parent is in any way incapacitated, this can lead to delays, resulting in stress and anxiety for the child. Despite the extended rights given to foster parents for children in long term care, there should be greater clarity as well as a ‘common sense’ approach in decision making in relation to children in voluntary care generally. Birth parents should not be allowed to intervene in relation to certain day to day issues with regard to a child in voluntary care. Unfortunately, parents can sometimes use this power in a negative way, as a method of control or to exercise power over the child and foster parent. Parent’s general wishes in relation to their child’s care should be taken into consideration but the child’s best interests must come first in any decisions made, and birth parents should not be allowed obstruct the natural day to day experiences of a child’s life.

It is acknowledged by those working on the ground that parents who may be struggling to care for their children may often feel coerced into agreeing to have their child placed in care on a voluntary basis, because they are led to believe the outcomes may be worse if they are taken to court, and a full care order is sought. It has come to EPIC’s attention that many parents often do not fully understand the implications of voluntary care. Furthermore, parents are not entitled to legal aid as there are no legal proceedings taking place. When one considers that the majority of children in care are on voluntary care arrangements; the approach must be questioned. The Child Care Act 1991, in its current format, does not make sufficient allowances for the needs of particularly vulnerable parents who often find themselves the subject of child care cases. Voluntary care was originally designed for short term use, and some legal practitioners, as well as Judges have voiced their concerns with the use of Voluntary Care for extended periods of time. Similarly, some parents are afraid to ask for respite in case this leads to the suggestion that their child be placed in voluntary care.

A child made subject to a court application will receive independent supervision, their voice must be heard and their views taken into account, and a Guardian ad litem appointed. The child must also return to court at 16 ½ years, and the judge can then request details of aftercare plans and arrangements, as well as the name of the aftercare worker. None of these safeguards and supports

\textsuperscript{12} Kilkelly, U.; 2008, p335.
automatically exist for a child on a voluntary agreement unless matters are subject to court applications. Children in voluntary care do not have the same opportunities to have their voice heard.

Another important group of young people to consider within this section is unaccompanied minors (separated children). These children do not fit seamlessly into existing mainstream care arrangements and policies; primarily because of the disconnect between refugee legislation and child care legislation. Currently, the only legal provision linking unaccompanied minors to child care legislation in Ireland is Section 14 of the International Protection Act. There is no additional legislation which stipulates the nature of the care to be provided to unaccompanied minors. The International Protection Act does stipulate that the Child Care Act 1991 ‘shall apply’ to unaccompanied minors in Ireland, but unfortunately this group does experience a different level of care from identification through to ageing-out, despite considerable improvements. One of the main concerns here relates to Section 4 of the Child Care Act 1991 being used rather than a full care order being sought under Section 18. The use of Section 4 of the Child Care Act 1991 does not provide for a legal guardian or clear judicial oversight. It has been argued that when young people turn 18 their status as asylum seekers overrides their status as care leavers, as evidenced by the fact that they are accommodated in the ‘direct provision’ system upon turning 18 years. This needs to be reviewed in any revision of the Act. Children must be treated as children first and foremost, regardless of their immigration status. As a child in care, an unaccompanied minor should be afforded the same aftercare support as any other child in care, until such time as the unaccompanied minors immigration status has been determined. To have immigration law override rights afforded to children under the Child Care Act goes against the best interest principle. Furthermore, it has come to the attention of EPIC that the Irish National Immigration Service (INIS) will not currently recognise an immigration application by the Child and Family Agency on behalf of a child in care on a full care order, despite being its corporate parent. The Child Care Act 1991 must be amended to ensure that the Child and Family Agency is recognised by INIS as the corporate parent with responsibility for the child and must accept applications by the Agency on behalf of a child seeking to regularise their immigration status. The Child Care Act should also define ‘unaccompanied minors’.

**Recommendations:**

- Voluntary care, in its current format must be reviewed. The number of children placed in voluntary care, as well as the duration of voluntary care, must be examined.
- The Constitutional rights of the child, and the rights under the UNCRC of children, must be considered in relation to Voluntary Care.
- Voluntary Care arrangements should be time limited and receive regular independent review.

And see: Arnold / Kelly 2012; Arnold/Sarsfield Collins 2011; Arnold et al. 2015.
There must be greater clarity around thresholds for voluntary care vs full care orders being sought.

The Child and Family Agency should investigate if a full care order would be more appropriate after a period of time (for example, once a period of 12 months in voluntary care has elapsed.)

The granting of care orders in the District Court must be questioned; alongside their adversarial nature, lengthy delays, and costly process.

There is no court or independent scrutiny for voluntary care, and this lack of oversight must change. Time limits for children remaining in voluntary care must be established.

Despite the lack of court process for voluntary care applications, a provision for a Guardian ad litem to be appointed, where necessary, should be made.

The new Act should state the right of every child involved in care proceedings, or placed in voluntary care, to be able to access an independent Advocate.

Clarification is needed as to the issue of consent for children in voluntary care, and the day to day reality of decision making within a foster family.

There is lack of clarity in terms of what happens when conflict arises between the wishes of the parent, the Child and Family Agency, and the foster parents.

There has been a void of available data on children on voluntary care arrangements, and this must be rectified by the Child and Family Agency.

A family court is urgently needed to overcome the endemic inconsistencies, the lack of appropriately trained professionals, and the lack of a suitable environment, in our current system.

Unaccompanied minors should not be brought into care under section 4 of the Child Care Act, but rather, a full care order should be sought.

As a child in care, an unaccompanied minor should be afforded the same aftercare support as any other child in care, until such time as the unaccompanied minors immigration status has been determined. No unaccompanied minor should be moved from care to a direct provision centre whilst their immigration status is still pending.

The Child Care Act 1991 must be amended to ensure that the Child and Family Agency is recognised by INIS as the corporate parent with responsibility for the child and must accept applications by the Agency on behalf of a child seeking to regularise their immigration status.

‘Unaccompanied minor’ must be defined within the Child Care Act.

3.5 Homelessness – Section 5

Section 5 has been a contentious section of the 1991 Act. Its implementation placed a new duty on the CFA but did not include any preventative measures. One of the major issues in relation to the day to day operation of Section 5 is that it works in isolation from the rest of the Child Care Act 1991. A young person, who is deemed homeless and accommodated under Section 5, does not have the safeguards provided for in the rest of the Child Care Act. As a result, because the child is not technically ‘in care’ that child cannot avail of Section 45 of the Act (aftercare) as s/he will not meet the criteria. Article
3(2)(b)(i) states that the “Child and Family Agency shall-regard the welfare of the child as the first and paramount consideration” but should a child be admitted under section 5, the welfare of the child is not given paramount consideration, which goes against the spirit and philosophy of the Act. Furthermore, Section 8 of the Act states that “the Child and Family Agency......shall have regard to the needs of children who are not receiving adequate care and protection and in particular —(d) children who are homeless.” Many of the most vulnerable children in care are those admitted under Section 5 of the Act. It has been suggested that the distinction between Section 4 and Section 5 should perhaps not exist, and that the limbo of accommodation between the two sections is not good enough.\(^\text{14}\) Perhaps Section 47 should be extended to include children admitted under Section 5. The way in which Section 5 is being applied is not in the spirit of the 1991 Act, and certainly not with regard to the “welfare of the child as the first and paramount consideration”. Section 5 stands alone in the Act and needs to come under the umbrella of care and welfare instead of being purely about the physical accommodation of those who cannot live at home for various reasons. It has been used for older teenagers as a way of limiting their access to the care system and thus not being able to avail of aftercare and other services.

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**Case Studies:**

1. A sixteen year old boy came to EPIC looking for support after being placed in a centre for homeless young people. This boy had been physically assaulted by his father and was seen to have significant bruising to his face. After his mother made a call to social services, he was not taken in by the Children in Care team, but instead was directed to homeless services. The boy wished to be taken into care, as he was still in full time education and hoped to attend college. He was aware that continuing on with full time education would be very challenging if he was not taken in care, and if he was not able to access aftercare supports. Without the necessary supports of care and aftercare, this boys chances of successfully completing school and potentially attending college were hampered. This boy was taken in under Section 5 of the 1991 Child Care Act, and because of this, his future was put at risk through no fault of his own. He was not homeless, he was a child who had been abused in his home and needed the care and protection of the State. He did not get this.

2. A sixteen year old girl presented to EPIC after leaving home due to her mother’s alcohol addiction and abuse. She had moved in with her much older boyfriend who was prostituting her out to other men. EPIC reported this as a child protection issue, but they transferred it to homeless services as they contended it was not a welfare issue. EPIC and homeless services contact An Gardaí who arrested her boyfriend and took him into custody. As a result of this, the girl with the support of her Youthreach worker, and EPIC, moved in with her Aunt and returned to school. The inappropriate use of Section 5 in this case is apparent; the sixteen year old girl should have been taken into care for her own safety and welfare.

**NOTE:** The two case studies above illustrate how the 1991 Act is currently being misused and failing to protect and promote the best interests of the child.

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\(^{14}\) In a presentation given by Brian Barrington, BL; *Access to Justice: Review of the Child Care Act 1991*; 30.11.17.
Recommendations:

- In any new Act, the section on homeless children should examine measures to protect and prevent children and young people from becoming homeless, and should not be used as a substitute for child protection.
- Section 47 of the Child Care Act should be extended in any new Act to include children admitted under section 5.

3.6 Provision of Adoption Service

Where it is deemed suitable, and where there is no prospect of the child being reunited with their parents, adoption should be considered at an earlier stage for some children in long term foster care. For some children, it is the right option; a second chance of being a permanent part of a family. Though each case will have to be viewed on its merits, any review of the Child Care Act must include a section whereby the issue of adoption must be reviewed after a child has been in care for a number of years on a full care order, and where there is no prospect of being reunited with his/her birth parents. For example, the new Act should state that adoption must be considered by the Judge after the child has been on a full care order for a period of at least 3 years, and where there has been no significant improvement in the ability of the birth parents to adequately care for the child.

Recommendation:

- Adoption should be a consideration after a child has been on a full care order for a period of 3 years and where there is no prospect of the child being reunited with his/her parents.

3.7 Child Care Advisory Committee
Foster Care Committee functions are dictated by Standard 23 of the National Standards for Foster Care (2003), the Child Care (Placement of Children Regulations) 1995, and the Child Care (Placement of Children with Relatives Regulations) 1995, as well as by social work best practice principles. The Foster Care Committees play a crucial oversight role, and a number of EPIC staff members sit on these committees, contributing to the process. A good committee works when there is a cross representation of members from the CFA, independent agencies, medical, psychology, family support services, and aftercare services, amongst others. The Committees work is simplified and enhanced when they are presented with all the necessary information in advance of meetings, including well prepared and child friendly care plans that are age appropriate. Disruption reports, or serious incident reports, are reviewed by the Committee, but this is often challenging and time consuming when they are read out of context. A consistent chair for all Committees across the country might provide a useful point of consistency and oversight.

**Recommendation:**

- Childcare Advisory Committees provide a beneficial oversight and should be maintained.
- One individual should be considered to chair all Committees across the country for consistency and oversight.

### 3.8 Section 15 Provision of accommodation for purposes of *part III*

The Child Care Act 1991 requires the Child and Family Agency to provide or make arrangements with the registered proprietors of children’s residential centres or with other suitable persons for the provisions of suitable accommodation. There are currently approximately 6,250 children in care, the majority of whom are in foster care (93%, or which 29% are with relative foster care). All foster carers and residential staff should be well supported and should receive regular training. Cultural and religious training should be provided for residential staff and foster families who are caring for unaccompanied minors.

**Recommendations:**

- All foster carers and residential staff should be well supported and should receive regular training.
- Cultural and religious training should be provided for residential staff and foster families who are caring for unaccompanied minors.

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• Minimum qualifications and experience for staff working in private residential should be standardised.
• The use of non-specialist staff or providers for children in care should not be permitted, such as the use of Bluebird care or Home Instead.

3.9 Guardianship

The Child and Family Relationships Act (2015) amended existing legislation to broaden the scope of people who can apply for Guardianship of Children. The 2015 Act recognises the realities of modern society and the modern family units and arrangements that exist today for raising a family, from blended families to single sex couples, and unmarried co-habiting couples etc. The new Child Care Act must reflect the divergent modern families that exist in Irish Society today, and take on board the range of individuals that can apply for and be recognised as a Guardian to a child. 16

Section 43A of the Child Care Act (1991) should be amended to mirror Section 6c of the Guardianship of Infants Act 1964 as inserted by Section 49 of the Children and Family Relationships Act 2015. Such a provision would allow a foster carer or relative carer with a child in their care for a continuous period of 12 months or more to apply, if deemed in the best interest of the child, for a court order to have specific and limited guardianship rights, subject to periodic reviews, without the withdrawal of support or involvement from the Child and Family Agency. This provision would help support foster carers and ensure children’s day to day lives are improved and simplified. For example, it would help address the circumstances of children who have been in voluntary care for a significant period, where there is no prospect of reunification, to be given security and a sense of permanency.

Recommendations:
• A wider definition of ‘Guardian’ must be adopted in any new Act, in line with the Child and Family Relationships Act 2015.
• The new Act must be aligned with the Child and Family Relationships Act 2015.
• The responsible Guardian shall be named in all Care Plans etc.
• Section 43A of the Child Care Act (1991) should be amended to mirror Section 6c of the Guardianship of Infants Act 1964 as inserted by Section 49 of the Children and Family Relationships Act 2015. This provision would allow for a foster carer or relative carer who has a child in their care for a continuous period of 12 months or more to apply, if in

16 The 2015 Act refers to seven categories of persons who can apply for and be recognized as having Guardianship of a child.
the best interest of the child, for a court order to have specific and limited guardianship rights, subject to periodic reviews, without the withdrawal of support or involvement from the Child and Family Agency. This provision will aim to support children in their day- to- day upbringing while in the care of the State. In particular it would address the circumstances of children who have been in voluntary care for a long period of time- where there is no prospect of reunification – to give a more secure foundation and a sense of permanency. The court could make an order dispensing with the consent of the guardian of the child, and override the need to have the consent of the Guardian, if it is satisfied that the consent is being unreasonably withheld and that it is in the best interest of the child to make such an order.

- Provide greater levels of autonomy around the issue of consent from birth parents for foster carers, in relation to the day to day parenting of children in voluntary care.
- The National Standards for Foster Care 1995 should be reviewed.

### 3.10 Access

Access is defined as all the arrangements around children having contact with their parents, relatives, siblings or other individuals. Foster families are crucial in the logistics of arranging access visits, and are often providing necessary support before and after each access visit. Access is essential to the rights and identity of every child in care, but is a complex and potentially fraught process.

**Recommendations:**

- Access plans should be made in the best interest of the child and take their views into account.
- Access plans must include regular reviews of access arrangements, and should be reviewed quarterly.
- Every access plan must be agreed and understood by the child, foster carer, and other relevant party, from the social worker to the parent etc.
- Access environments should be appropriate and child friendly.

### 3.11 Research

The Act states that the Minister may conduct research or assist others persons in conducting research into any matter connected with care and protection of children or the provision of child care and family
support services. EPIC very much hopes that the current feasibility study being carried out on the possibility of a longitudinal study on children in care will lead to the longitudinal research on children in care being carried out. The information garnered would prove invaluable in terms of policy planning and improving outcomes for children in care, leaving care and beyond. It is a very distinct gap in our knowledge of children in care and with care experience.

Recommendations:

- An in depth and detailed longitudinal study on children in care must be carried out.
- Organisations providing support to children in care and family support must be properly funded, their recommendations taken on board, and successful pilots should be shared.
4. Part III

Protection of Children in Emergencies

4.1 Power of An Garda Síochána to take a child to safety (Section 12)

The Child Care Act 1991 gives power to An Garda Síochána to remove a child to a safe place if there are reasonable grounds for believing there is an immediate and serious risk to the health or welfare of a child, and that there is not sufficient time for the application of an emergency care order. The powers granted to members of An Garda Síochána to remove children from parental care under section 12 of the Child Care Act are an essential tool in the broader child protection framework within the State.

EPIC fully endorses the recommendations as laid out in Geoffrey Shannon’s Report on Section 12 powers. The Shannon Audit on Section 12 found inadequacies in the operation of the Garda PULSE system, risking the operational and accountability functions of the PULSE system, and the audit also identified outstanding questions and ambiguities in relation to Garda practices in recording case narratives on the PULSE system. A reform of PULSE is underway and this is welcome, but the Garda Information Services Centre (GISC) must also be reformed, and Gardai must continue to be trained in dealing with and hearing directly from children. Appropriate data collection practices facilitate effective and reflective practice, enable appropriate transparency, and full accountability. Any Review of the Act must ensure that the practices of An Garda Síochána, in this area, are exemplary.

Any interviews carried out in relation to possible abuse of children should be carried out simultaneously by the Gardai and the Child and Family Agency to avoid the necessity of double interviews. All relevant data in relation to cases should be shared between relevant Agencies, Departments, and professionals.

Recommendations:

- Out of hours social work must be made available nationwide 7 days a week, 24 hours a day.
- Adopt Shannon’s Audit of the exercise by An Garda Síochána of the provisions of Section 12 of the Child Care Act 1991 in full.
- Any reform of PULSE and other systems and services within An Garda Síochána result in a dramatic shift in terms of practice, procedure and accountability, so that the system is above reproach.
- Any interviews carried out in relation to possible abuse of children should be carried out simultaneously by the Gardai and the Child and Family Agency.

Shannon, G.; Audit of the exercise by An Garda Síochána of the provisions of Section 12 of the Child Care Act 1991; 2016; Available at: https://www.drugsandalcohol.ie/27362/1/Audit%20of%20Section%2012%20Child%20Care%20Act%201991.pdf (accessed February 2018).
simultaneously by the Gardai and the Child and Family Agency to avoid the necessity of double interviews. All relevant data in relation to cases should be shared between relevant Agencies, Departments, and professionals. Planned specialist child support centres are welcomed.

4.2 Emergency Care order

An emergency care order will be made if a Judge considers that there is an immediate and serious risk to the health or welfare of a child requiring him/her to be placed in the care of the Child and Family Agency. The Child and Family Agency may either return the child to the parents/guardians or may apply to the District Court for an emergency care order. Even in an emergency care order situation, it should be compulsory to hear directly from the child, as soon as practicable.

Recommendation:

- Even in an emergency care order situation, it should be compulsory to hear directly from the child, as soon as practicable.

5. Part IV
**Care Proceedings**

**5.1 Care Proceedings**

The legal framework for District Court child care proceedings lies in Article 42A.2.1° of the Constitution, which obliges the state to “endeavour to supply the place of the parents” in “exceptional cases, where the parents ... fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected.” This constitutional obligation is implemented through the Child Care Act 1991, which places a positive duty on the Child and Family Agency to identify and promote the welfare of children who are not receiving adequate care and protection (s.3.1).

The Child Care Law Reporting Project under Dr. Carol Coulter, as well as work undertaken by Kenneth Burns and others in University College Cork, has been a great asset in providing much needed insight into the working and decision making process in some of the child care cases before our courts. They have helped catalogue the challenges facing the courts in relation to child care proceedings and have helped create an awareness of the inconsistencies around the country, the adversarial nature of such proceedings, and have highlighted the well known lack of appropriate child friendly physical space for such hearings.

Care proceedings are themselves only one part of the process whereby children are taken into care. There is a significant period of time before and after these proceedings, which involves much ‘pre-care order’ and ‘post-care order’ work. The revised legislation should include some mention of these crucial periods of time so that appropriate structures can be put in place to ensure a child involved in care proceedings can be adequately and appropriately supported before and after care proceedings with an independent advocate and/or guardian ad litem where necessary.

- **Voice of the Child and best interests of the child within Care proceedings:**

  The voice of the child and the best interests of the child is within this section is an omission that must be rectified. Any new Child Care Act should ensure that this is specifically highlighted. The criteria around the best interests principal used within the Child and Family Relationship Act (2015) should be adopted.

- **Emotional Abuse:**

  Emotional abuse is omitted as a criteria in section 17 under A, B, and C as per Children’s First definitions of abuse, and under section 19. Emotional abuse should be specifically named in any new Act.

- **Timeframes:**

  When investigations or any other matter relating to children is carried out, strict time frames should be adhered to. Delays, as experienced by children, seem significantly longer that they do to adults and this should be taken into account. Section 20 references ‘reasonable time frames’ but this should be viewed from the perspective of a child, not an adult. The impact of disruption and long timeframes is extremely problematic for children and can have a devastating impact on their education, social relationships etc.

- **Permanency orders:**
Permanency orders for children in care should be considered as an alternative option. Particular note should be taken of Thoburn’s model of permanence, which focuses on security, belonging, knowing the past and fitting in with the present; and suggests that this is an appropriate consideration for children who are in a long-term foster care placement and who have little chance of returning to their birth family. Where foster carers are entrusted with the care of a child into adulthood they should be treated more like adoptive parents, carefully assessed, and matched with the child, offered more parental autonomy, along with systems and supports, and with inspection and monitoring playing a secondary role. This would fall in line with recommendations elsewhere in this submission, in particular under Guardianship and supports for foster parents etc, and could go beyond the extended rights currently granted to foster carers who have been looking after children for longer than 5 years after a shorter period of time. For example, a permanency order could be granted after a child has been in foster care for a period of 12 months and would provide stability, security and independence to the child and foster family alike.

- Follow on placements; special care etc:

The new Act should include compulsory follow on placements, from step-down to supported accommodation, to ensure transitions are as successful as possible and that young people do not remain in special care or detention longer than is necessary.

A special care centre for young people with mental health issues, or particular therapeutic needs, should be established. Young people should not be forced to go out of State for treatment, or where it is unavoidable, it is for the shortest periods of time and intensive supports should be available on returning to the country. Step down supported accommodation for young people returning from out of state care is also necessary.

- Consistency:

Notwithstanding the detailed and burdensome thresholds that are set down in the Child Care Act for the making of child protection orders, the consistency with which they are applied is questionable. Though a certain amount of discretion is necessary to allow for the particular circumstances of a case, it is widely recognised that there remains unnecessary inconsistency between cases and judges.

The Child Care Law Reporting Project’s Second Interim Report, documented the regional variations that existed as to the orders sought, as well the evidence and thresholds applied by courts for the taking of children into care. Worryingly, such inconsistencies have consequences and the Report states that

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Schofield, G.; Beek, M.; Foster Carers Perspectives on Permanence; Adoption and Fostering; Vol 26 Number 2.
19 Child and Family Social Work; vol 23 issue 1; Burns, K.; O’Mahony, C.; Shore, C.; Parkes, A.; What social workers talk about when they talk about child care proceedings in the District Court in Ireland; July 2017; p6.
“quite severe abuse and neglect did not satisfy the court of the need for long-term Care Orders in certain courts.”

Discretion and judgement are automatically going to be part of any one-person court system, but wide variation and discrepancy in case outcomes should not be considered acceptable. “A system that seeks to protect the welfare of children while also respecting the rights of parents and the principle that a child is best cared for by his or her own family should strive to avoid a situation where similar circumstances give rise to different results.”22 Training for Judges, case conferencing, and case reviews, must all form part of the new Act.

Judges are under tremendous pressure and are often trying to get through a huge volume of cases. As a result, they are often forced to deal with care proceedings in a perfunctory manner. Furthermore, it has been suggested that a defensive practice is adopted when it comes to child protection cases, because no judge wants to potentially send a child back to a situation where he or she might be abused or neglected. It may also be presumed that the Child and Family Agency, with what is assumed to be a rigorous filtering process, would only make an application where it has strong grounds for doing so.23

The adversarial nature of the court system in Ireland does not sit well within the context of care proceedings. All parents love their children, and the difficulty in having a child removed from the care of its parents, regardless of the circumstances, is traumatic. The adversarial nature of the court system does not help this process.

**Recommendations:**

- Appropriate structures should be put in place to ensure a child involved in care proceedings can be adequately and appropriately supported before and after proceedings.
- Emotional abuse should be specifically named within equivalent sections 17 and 19, in line with Children’s First definitions of abuse.
- ‘Reasonable time frames’ should be viewed from the perspective of a child, not an adult.
- Permanency orders for children in care should be considered as an alternative route to achieving stability, security and independence.
- Compulsory follow on placements should be made available, from step down to supported accommodation, as well as any additional support necessary, to ensure transitions are successful.
- Regional variations around the country, in terms of the orders sought as well as the evidence and thresholds applied by courts, should be assessed and action taken to ensure consistency across the country. Consistency across the country in terms of judgments must be achieved.

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22 Child and Family Social Work; vol 23 issue 1; Burns, K.; O’Mahony, C.; Shore, C.; Parkes, A.; *What social workers talk about when they talk about child care proceedings in the District Court in Ireland*; July 2017; p6.

23 Ibid, p.9.
Data on this should be collated and analysed.

- The lack of physically suitable children’s courts throughout the country has long been cited as problematic and must be addressed; this may not be a focus of the review of the Act, but cannot be disregarded.
- Judges have a very high case load and should be allowed more time to hear child care proceedings. Perhaps, panels of judges (including lay persons and professionals) could be used to reduce the decision-making responsibilities and ease the pressure on Judges, as used in Switzerland, Sweden, Norway and Finland.
- Ways of lessening the effects of the adversarial nature of our court systems should be examined and alternative dispute resolutions assessed, such as mediation.
- Panels of judges should be considered in care proceedings, to help ease the burden and ensure greater consistency.
- There should be a statutory duty to ensure joint working and information sharing, for example; any Gardai interviews should be disclosed into care proceedings.

5.2 Supervision order

Legal powers for supervision orders should be more clearly set out in any new legislation. For example, should the order only apply to visiting the child or could it be extended to include viewing the child’s living conditions, and requiring the child and parents to therapeutic supports and services.

Recommendation:

- Legal powers for supervision orders should be more clearly set out.

6. Part IVA

Children in Need of Special Care and Protection
6.1 **Special Care order**

Special Care is for a short-term, and is meant to offer a stabilising and safe care placement in a secure therapeutic environment, and aims to enable a child to return to a less secure placement as soon as possible. Children taken into care under special care orders or interim special care orders are placed in special care units. The Child and Family Agency may provide and maintain special care units or make arrangements with voluntary/private bodies to provide and operate them. The balance between public versus private arrangements should be investigated. The high cost and the high staff turnover in some private residential centres, including secure care, should be examined, to ensure children are at all times receiving the best level of consistent care and support available. The number of young people leaving residential care with a criminal record should be examined, and an analysis into whether or not the necessary supports are in place to address challenging behavior. Provisions to protect vulnerable children around the area of secure care must be part of the new Act, and the Special Care Standards Review is welcome. The provision of step down accommodation should be part of any special care order or detention order, and greater investment needs to be made in terms of supported accommodation including more creative options.

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**Recommendations:**

- The balance between public private arrangements should be investigated. The high cost and the high staff turnover in some private residential centres, including secure care, should be examined, to ensure children are at all times receiving the best level of care and support available. A staff turnover and a cost benefit analysis should be undertaken.
- An analysis into whether or not necessary supports are in place to address challenging behavior and to examine the number of young people leaving care with a criminal record.
- Provisions to protect vulnerable children around the area of secure care must be part of the new Act.
- Step down or supported accommodation must be part of any special care order or detention order.
- Greater investment and creativity needs to be made in developing supported accommodation.

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7. **Part V**

**Jurisdiction and Procedure**
7.1 Welfare of child to be paramount

7.1.1 Welfare

The current Act makes reference to the welfare of the child being the first and paramount consideration, and yet there is no definition of what constitutes the ‘welfare’ of the child. The Child and Family Relationships Act (2015) and the Adoption (Amendment) Act 2017 clearly define a list of factors and criteria for consideration for best interests, and these should be all aligned.

The issue of thresholds, and the disparity between levels, lacks clarity and consistency around the country. The Child Care Advisory Committees go some way towards ensuring a level of oversight at the early stages, but there must be a systematic annual review of child care proceedings to ensure consistency and oversight.

7.1.2 Section 24(b)

Hearing and listening to a child is a skill that should be taught to all those involved in care proceedings to ensure consistency. The quality of practice in terms of listening to children is at worst discretionary and at best patchy; the ability of children to actively participate in a process that is life changing for the child should not be dependent on the Judge in question, but rather any new Act should explicitly stipulate that any Judges hearing the views of a child should be qualified to do so. Compulsory training should be necessary for all lawyers and judges involved in cases involving children. As an interim step, the Act should, at a minimum, list examples of ways a Judge must hear the views of the child, both directly and indirectly and that this must be a compulsory part of any care proceedings. Judges, guardian ad litem, advocates, social workers, or any other professional involved in care proceedings must be trained in active listening skills and best practice approaches, and this should be recognised as a necessary compulsory and worthwhile specialist skill. Regular evaluation as to the approaches used and their outcomes should be considered, training should be compulsory and accreditation for all lawyers dealing with children developed. In this way, upskilling is continuous and best practices are adopted, maintained and respected, thereby achieving a level of consistency across the country, as well as creating a model of best practice internationally.

There is a general deficit in primary legislation with regard to participation and a commitment to listening to children. The National Strategy on Children and Young People’s Participation in Decision Making (2015), as well as the Child and Family Agency’s Child and Youth Participation Toolkit (2016) are welcome developments that need to be embedded with legislation promoting active, and meaningful participation.

Children should be encouraged to have their views heard at all stages of care proceedings not just in court. Involving children throughout proceedings will ensure a better understanding and acceptance by children. Where appropriate, children should have the ability to consent to care orders, given their age and maturity. Different age appropriate methodologies should be promoted.

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24 Coulter, C.; Child Care Law Reporting Project; Final Report; 2015.
In order to create a positive environment where a child will feel comfortable expressing his/her views the setting must be child friendly. To this end a specialist children’s court, with regional family courts, should be established as soon as possible.

All children taken into care voluntarily or involved in care proceedings should have a trusted adult supporting them and have access to an independent advocate, to support them before, during and after care proceedings.

Birth parents should be taught and supported to focus on the best interests of their child, so that court proceedings can strive to be less adversarial in nature. Legally binding mediation as a possible alternative should be considered, and advocacy supports should be provided for parents as well as for children.

Recommendations:

- Any reform of Article 24 must directly reflect Article 42 of the Constitution.
- There must be a systematic annual review of child care proceedings to ensure consistency and oversight. Data must be collated.
- The general deficit in primary legislation with regard to participation and a commitment to listening to children must be amended in any new Act.
- All child involved in any type of care arrangement (not just those children involved in court proceedings) must have a trusted adult supporting them, as well as an independent advocate supporting them before, during and after care arrangements are finalised.
- If parents were supported to be able to better understand proceedings and their outcomes and to focus on the best interests of their child, this might go some way towards reducing the adversarial nature of court proceedings.
- Training in active/reflective listening for all professionals working directly with children should be mandatory. Compulsory training and accreditation for all lawyers working with children must be established.
- Children should be made party to proceedings as opposed to mere witnesses.

7.2 Court System:

Effective access to justice and decision making for children requires measures that promote participation by children in the decision and law making processes, ensure appropriate representation for children in those processes, provide for the communication of information in an age appropriate
manner and ensure that the professionals dealing with children within the justice system receive appropriate training.25

The EU Agenda on the Rights of the Child adopted in 2011 recognised the promotion of child friendly justice and the use of the Council of Europe Guidelines on Child Friendly Justice as EU priorities in the field of the rights of the child. The Guidelines provide that children should have access to free legal aid under the same or more lenient conditions than adults. They also provide that in cases where there are conflicting interests between parents and children, the competent authority should appoint either a Guardian ad litem or another independent representative to represent the views and interests of the child; an independent Advocate could fulfill this roll.

The adversarial nature of our court system does not promote cooperation between parties in the court process. There should be a greater attempt to promote better understanding of the court process and its adversarial nature to parents and children who are involved in court cases. Social workers have expressed significant reservations about the predominantly adversarial model that currently operates in Irish child care proceedings and about the level of respect and autonomy that social workers are afforded within the system.26

Inconsistencies currently exist in decision making by Judges. Some Judges are better at ensuring the voice of the child is heard within care proceedings than others. Carol Coulter has mentioned 70% of children and young people involved in care proceedings in Dublin were appointed a Guardian ad litem, but when this statistic was examined by contrast in Cork, 76% of children were not appointed a Guardian ad litem.27 Judges should be required to undergo regular training in terms of promoting a child friendly court system.

The development of a specialist children and family court is long overdue. The inappropriate settings, the long delays, the lack of expertise etc of our current courts to hear child protection cases has been well documented. The new Child Care Act should stipulate that child protection cases and relevant care planning cases be heard in a specialist children’s court. The Government could develop guidelines for hearing the voice of the child within care proceedings could be developed. Legally binding mediation as a less adversarial approach should be promoted as an alternative to court.

The Act should state that any parent who has a child taken into care must be provided with a certain amount of therapeutic support to deal with the trauma of having their child taken into care, regardless of the reasons behind why the child is taken into care. A parent who is supported to try and accept the court decisions regarding their child will be beneficial to all parties in the case. This might ensure that children in Voluntary care, for example, may have less negative interventions by birth parents than may otherwise be the case.

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26 Child and Family Social Work; vol 23 issue 1; Burns, K.; O’Mahony, C.; Shore, C.; Parkes, A.; What social workers talk about when they talk about child care proceedings in the District Court in Ireland; July 2017; p 113-121.

27 In a presentation given by Carol Coulter; Access to Justice: Review of the Child Care Act 1991; 30.11.17
There is a need for greater cooperation between parties earlier in the court process, for example in relation to the sharing of information. Any court decisions should be explained in an appropriate manner to children and parents alike, and must take into account their age, understanding, literacy and developmental ability. If necessary diagrams and other means (videos) should be utilised.

**Recommendations:**

- There needs to be a greater attempt to promote better understanding of the court process and its adversarial nature to parents and children alike.
- Social workers should be afforded greater autonomy and respect within the system.
- Training of Judges, and oversight of decision making processes, would go a long way towards reducing the current level of inconsistent decision making that currently exists in relation to child care proceedings.
- Dedicated children and family law courts must be available; nationally. The new Child Care Act should stipulate that child protection cases and relevant care planning cases be heard in a specialist children’s court.
- Guidelines for hearing the voice of the child within care proceedings should be developed. It should be born in mind that children are required to participate in criminal law proceedings from the age of 12 onwards as this is the age of criminal responsibility, and their entitlement to participate in child care proceedings should similarly be respected, whilst recognising that children well below this age are able to express themselves and have their views directly taken into consideration within any care proceeding.
- Legally binding mediation, as a less adversarial approach, should be promoted as an alternative to court.
- Any parent who has a child taken into care should be provided with a certain amount of therapeutic support to deal with the trauma of having their child taken into care.
- Greater cooperation between parties at an earlier stage in the court process, for example in relation to the sharing of information, would be helpful.
- Any court decisions should be explained in an appropriate manner to children and parents alike.
- The Child as party to proceedings as opposed to witness to proceedings.

### 7.3 Section 26 Appointment of a Guardian *ad litem*

There is currently reform under way in relation to the Guardian *ad litem* arrangements, and this is being looked at separately by the Department for Children and Youth Affairs. EPIC is not commenting on these
developments within this submission, as requested by the Department, but will comment separately on the relevant Bill.

7.4 Section 29 Hearing and Proceedings

7.4.1 In Camera Rule

Due to the sensitive nature of child care proceedings and the extreme vulnerability of the parties involved, such proceedings are held in camera so as to protect the privacy of the parties involved under section 29.1. However, it is also an offence to publish or broadcast any material which may lead to members of the public being able to identify the children who are the subjects of child care proceedings (s31). With the widespread use of social media as a basic communication tool, particularly by young people, section 31 of the Child Care Act 1991 is causing more and more difficulty for many young people in care in relation to their identity. Furthermore, there seems to be a lack of understanding and over reliance on this section as a means of limiting young people’s ability to have pictures of themselves taken and used, even when they are not identified as being in care. Section 31 in its current form is outdated and does not cover the scope of social media as used on a daily basis by young people, through WhatsApp, Viber, Twitter, Snapchat, Facebook, Instagram, YouTube etc. The need to protect the identity of young people needs to be balanced against their right to have a voice, to be able to express themselves, to be heard, and to be listened to, to identify themselves and to express their identity in the same way as young people who are not in care, under article 12 and 13 of the United Nations Convention on the Rights of the Child. Young people should be supported to make informed decisions about where they wish to share information about themselves etc online or through the media.

Recommendations:

- The in camera rule must be reviewed to take account of advances in social media and the need for young people in care to be able to develop and express their identity.
- The limitations placed on young people in care having their photograph taken, despite not being identified as a child in care, goes beyond the intended scope of the rule.
- Young people should be entitled to clarity about the limitations placed on them by the in camera rule.
- There should be clear and simple rules, and a ‘go to’ person within the Child and Family Agency who is able to make judgement calls on certain cases.
- The need to protect the identity of young people needs to be balanced against their right to have a voice, to be able to express themselves, to be heard, and to be listened to, under article 12 and 13 of the United Nations Convention on the Rights of the Child.
- Young people in care should be supported to make informed decisions about whether they wish to share information about themselves online or through the media.
**Case Studies:**

1. A young child in care had their face covered over when their class photo was put up on the school website. The intention here was to prevent the child being identified, but instead it served to exclude and differentiate the child, create a stigma for the child, and if anything, draw greater attention to the child in question. The in camera rule was cited as justification for the action.

2. A young person known to EPIC excludes herself annually from her class picture due to the in camera rule, despite being on a full care order for most of her life.

3. A group of young people in care were involved in some excellent participation work with other young people from Foroige for the Child and Family Agency. The young people from Foroige were able to have their involvement publicised and celebrated through pictures and on social media, but the young people from care were not. The in camera rule was cited as the reason. The young people from care felt devalued, stigmatised and invisible.

4. A 16 ½ year old boy had been making a lot of YouTube video’s about his life, interests and what he was doing. In one video he revealed his name and said that he was a child in foster care. Almost immediately, his social worker contacted him and said he had broken the in camera rule and because of that, she would have to go to court to see what action would have to be taken in relation to his videos. Naturally he was distraught, not only because he was told by his social worker that he wouldn’t be allowed to make any more videos, but also because he was told he had broken the law. The video itself was very positive towards Tusla and indeed foster care generally, and the boy in question even stated that foster care was the best thing that had happened to him. By bringing him to court, it put extra stain on him and it also caused irreparable damage to the relationship with his social worker, from which it never fully recovered. The Judge in this case was in fact very sympathetic to the young person’s situation and not only allowed him to continue making videos, but also supported him in doing so, so long as any new videos were overseen by a solicitor before being put up on social media.
8  Part VI

Children in Care of the Child and Family Agency

8.1 Section 47 Reviews

Section 47 of the Child Care Act 1991 is an invaluable section which gives the court jurisdiction to give directions and make orders on any question affecting the welfare of the child. It is commonly used to provide children in care access to further services, assessments and medical treatment. Applications are generally brought by a Guardian ad litem, or a parent, but Foster Carers, and other professionals, should be supported to make more applications under section 47.

Recommendation:

- Foster Carers, and other professionals, should be supported and encouraged to make more applications under section 47.

8.2 Foster Care

8.2.1. Placement Breakdown

Placement breakdowns are sometimes inevitable, but in order to learn from such breakdowns there needs to be greater oversight on the number of placement breakdowns, the reasons for the breakdowns, and what could be learnt from such breakdowns. It is imperative that data be collected and analysed as a matter of priority.

Placement breakdowns should also be investigated; in EPIC’s experience some breakdowns can be avoided. Lack of training for foster parents and poor understanding and management of behavioural challenges presented by the foster child can lead to damaged relationships and in foster families this can sometimes result in placement breakdown. More consistency needs to occur when matching the needs of the child with the strengths and abilities of the foster carers. Adequate supports must also be provided to children and foster families to ensure that stability in placements are maintained as much as possible.

Many foster families have lifelong relationships with the children that they foster often even after the children leave their home, but some placements unfortunately breakdown. EPIC believes there should
be built in support mechanisms to prevent breakdowns from occurring wherever possible, and that where it does, young people are supported through this difficult transition.

8.2.2. Specialist Carers

EPIC is aware that the Child and Family Agency run targeted recruitment drives for specialist carers. Similarly, training for foster carers does occur, but it is EPIC’s opinion that more of this training should be of a compulsory nature, particularly in relation to specialist training. The requirement for regular training should be incorporated into legislation.

8.2.3. Younger children in residential care

EPIC has become aware of an increasing number of younger children under the age of 12 years being placed in residential care, despite a clear practice by the Child and Family Agency not to place young children in residential care. In line with the Child and Family Agency policy, an age restriction should be placed within legislation preventing the use of residential care for very young children. Alternative creative solutions (short term intensive pop up homes) and increased supports and incentives for specialist foster carers must be provided to keep younger children out of residential care. Where specialist therapeutic intervention is needed this should be provided in a foster home environment not a residential centre. We need to be creating more family like environments for troubled children with specialist behavior support programmes.

8.2.4. Greater supports for birth parents

Parents of children growing up in foster care are a largely neglected group in policy, practice and research, although these parents are often vulnerable adults who experience a profound loss and threat to their identity. Parents’ involvement through contact is also likely to have an impact on a child’s stability and security in the foster family or residential centre. Birth parents should receive greater support in dealing with the trauma of having their child taken into care, as well as learning coping mechanisms to help them to focus their attention on what is in the best interests of their child. Any new Child Care Act should include a requirement to assist parents in accessing supports when their child is placed in care and training on supporting their child while in care.

8.2.5. Foster Care Reviews

A HIQA inspection report of Dublin South Central (MON-001835) found that foster care reviews were not taking place as required and this presented a significant risk. Regular reviews of foster carers to assess their continuing capacity to provide high quality care and to assist with the identification of gaps in the service were not occurring. Reviews were not occurring following serious incidents, complaints, allegations or indeed placement breakdowns, and information on such incidents was not routinely notified to the foster care committee. This type of finding is unacceptable, and reviews should occur sooner and more regularly, to ensure that the child is being well looked after and that any difficulties are
addressed before they escalate. Legislative safeguards in relation to this should be included in the new Child Care Act.

**8.2.6. Consistency in quality across the country**

All children and their foster families should be treated equally in terms of the minimum level of supports that they receive, unfortunately this does not always occur with some areas and people receiving a better level of support than others. Where children require additional support or interventions the foster families should be supported in providing these. EPIC recommends that the new Child Care Act stipulate that the CFA is adequately funded to ensure they are able to meet the requirements of children, families, and staff.

**8.2.7. Complaints Management/ Information**

All young people should know that they are entitled to make a complaint in relation their care, and the process through which they can make a complaint. The Department of Children and Youth Affairs developed an excellent resource known as TACTIC (Teenagers And Children Talking In Care) packs, which should be distributed to every child in care. These packs are a tremendous resource for children in care, be it residential or foster care. Any new legislation should safeguard consultation and participation work with children and young people in care, such as the development of the FOR A (set up around the country by EPIC with the support of the CFA) so that we continue to hear directly from children in care.

**8.2.8. Sibling access**

Where possible siblings who are placed in foster care are placed together, but this is not always possible, especially when there are many siblings. A good level of access for siblings is considered to be one visit per month, perhaps for a few hours at a time. In EPIC’s opinion, this is not nearly enough time on which to build strong sibling relationships. Siblings should be placed, as a matter of course, within a maximum radius in order to maximize the opportunity for regular sibling contact; this is of particular significance in rural foster care placements. Financial considerations should not be a limiting factor in maximising sibling contact. This contact is invaluable and must be given greater focus, with particular attention given to the quality of sibling contact, how the contact is facilitated and whether it has been tailored to meet the specific needs of the siblings at a given point in time. Safeguards and data collecting requirements around sibling access should be included in any new Child Care Act.

**8.2.9. Improved co-ordination of CFA services, HSE disability services and CAMHS**

EPIC has had experience of several cases where situations were allowed to reach a crisis level before funding was found by the HSE disability services to provide full-time disability support for young adults leaving care. It is very welcome that the Child and Family Agency and the Health Service Executive have agreed a Joint Protocol for Interagency Collaboration between the Health Service Executive and the
Child and Family Agency to Promote the Best Interests of Children and Families. The Child Protection and Welfare Strategy clarifies and sets out the respective roles, duties and legal requirements of the Health Service Executive and the Child and Family Agency in relation to children and vulnerable adults with a disability or mental health issue. This should help to address many of the co-ordination difficulties and interagency working between the Child and Family Agency and the Health Service Executive. The Strategy is a central part of Tusla’s on-going programme of transformation and includes the national approach to practice, the Signs of Safety. EPIC recommends that safeguards in terms of obligatory interagency cooperation be included in any new legislation, and should include a regular review of how the protocol is working alongside the involvement of partner organisations from the community and voluntary sector.

8.2.10. Flexibility within the system

Provisions should always allow for exceptions and flexibility if it is deemed in the best interest of the child. This should also apply in terms of flexibility, for example, in the assessment of relatives being approved as foster carers.

8.2.12 Recruitment of foster carers

There is an increasing concern in the sector about the failure to recruit foster carers, resulting in some children being forced to be accommodated outside of their area. A Health Information Quality Report late last year (2017) found, for example, that the Midlands experienced a significant shortage of foster carers, with 57 children housed outside of their area. This is a worrying development. Where a child is placed outside of their area, special additional safeguards should be in place, such as additional supports to maintain relationships and contact. This should be underpinned in any new legislation. Their need to be more nation wide recruitment drives of foster prents.

8.2.13 Day to day consent issues for foster carers

The issue of consent from birth parents for foster children to participate in everyday events can be problematic for foster parents. Day to day events, such as going on school outings, going abroad on holiday, celebrating birthdays or getting a haircut etc should just be part of the fabric of parenting for children in long-term foster care, without the necessity to continually continue to seek permission or consent from birth parents. The safety and wellbeing of a child in foster care is of the utmost importance, but a balance must be struck with the need for safety, family life, and allowing a foster child to integrate and assimilate into the family.

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Recommendations:

- Data must be improved and made available, in particular data on placement breakdowns. This data should be used to provide positive interventions with the aim of reducing placement breakdown.
- Some foster care placements unfortunately break down. EPIC believes there should be built in support mechanisms to try to reduce breakdown in foster placements, and that where it does happen, young people should receive additional supports to assist them through this difficult experience.
- The requirement for regular training and other supports to ensure we retain and incentivise specialist foster carers should be incorporated into legislation.
- An age restriction should be placed within legislation preventing the use of residential care for young children. Residential care is not appropriate for young children, and though it is current policy not to place under 12’s in residential care there are currently a significant number of children under the age of 12 who are in residential care. Alternative creative solutions must be found.
- Any updated legislation should include a requirement to assist parents in accessing supports when their child is placed in care.
- In line with HIQA recommendations, regular foster care reviews must occur, and should be underpinned by legislation.
- Any new legislation should safeguard consultation and participation work with children and young people in care, such as the development of the FOR A (set up around the country by EPIC with the support of the CFA) so that we continue to hear directly from children in care.
- Safeguards around minimum requirements in terms of number, duration, and quality of sibling access should be included in the updated legislation.
- Safeguards and minimum requirements for obligatory interagency cooperation should be included in the updated legislation.
- Provisions should always allow for exceptions and flexibility if it is deemed in the best interest of the child.
- Where a child is placed outside of their community special additional safeguards should be put in place, such as additional supports to maintain relationships and contact, and this should be underpinned in the updated legislation.
- The issue of consent for long term foster carers needs to be examined.

8.3 Foster Care and Residential Care to 21 years and maintaining relationships
Long term stable foster care placements can provide children in care with a much-desired chance of a happy home environment. Adequate funding should be provided to enable young people in care to stay on with their foster families up to the age of 21, where mutually agreed, regardless of whether the young person is in full time education, employment, or training. This should also apply for young people in residential care, in both private and Child and Family Agency operated houses.

Children in care and who have left care, should be supported to maintain contact indefinitely with their former foster care families and residential care staff, where it is deemed beneficial to the young person. Relationships are the ‘golden thread’ running through a child’s life and this should not be broken at 18 (or 21) years. These relationships can be multiple and diverse, but good relationships help to build a trust and help children create a sense of belonging and identity. All children need a sense of belonging and identity and damage can occur to children when relationships are broken.30

“In a world of shifting family relationships in which children increasingly grow up with a wide range of connections that are seen as normal we need to take stock of why our approach to children in care is different. Why do we persist in breaking children’s old relationships when we introduce them to future carers, despite knowing that so many children who do not happen to be in care manage to negotiate complex family relationships as they grow up.”31

Should a young person not be in full time education, but their foster carer is willing to continue to accommodate them, suitable arrangements should be agreed by the Child and Family Agency and relevant departments to ensure the young person is not forced to leave their foster care placement and risk presenting as homeless.

Recommendations:

- Adequate funding should be provided to enable young people in care to stay on with their foster families up to the age of 23, where mutually agreeable, regardless of whether the young person is in full time education, employment, or training. This should also apply for young people in residential care, in both private and Child and Family Agency operated houses.
- Children in care, or who have left care, should be supported to maintain contact

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indefinitely with their former foster care families and residential care staff.

8.4 Relative (kinship) care

Relative care can be hugely beneficial for children in care, particularly if adequate supports are put in place to assist the placement. Standards for foster approval for relative care should be made less rigorous, as long as the welfare of the child is not at risk.

**Recommendation:**

- The benefits of relative care must outweigh some of the stringent foster care criteria, so long as the wellbeing and best interests of the child are not jeopardised.

8.5 Leaving and Aftercare support

Despite improvements to the provision of Aftercare to young people preparing to leave care and leaving care, any new Act must include the provision of aftercare services on a legislative footing. Every aftercare plan should be enforceable, and measurable. Aftercare supports must be extended beyond the age of 21 and 23 years, and should ensure that young people are independent and able to be self-sufficient by the time they leave care.

**8.5.1. Supported Accommodation**

Creative solutions to accommodation for children leaving care must be embraced in the new Act. An example of this is in relation to supported accommodation for young people leaving care. Supported accommodation could take many different guises and could even include boarding school options coupled with weekend foster family placements for some older children in the care system, for example.

**8.5.2. Aftercare**

The recent amendments to aftercare are welcome, but the fact remains that providing an aftercare plan is a hollow statement if it is not supported by adequate support and funding. The provision of access to aftercare supports throughout the country remains inconsistent. Any new legislation must strengthen this provision. Young people who move areas because of education should be allowed to transfer aftercare workers.

8.5.3. Mentoring
Mentoring for all children in care should be provided where necessary. This could be peer led (young people who have left care and are functioning independently), as well as volunteers (Big brother Big sister type programmes) and promotion within industry to support young people in care to access work experience and job placement opportunities by providing employers with positive incentives, for example.

**Recommendations:**

- The provision of an aftercare plan, and importantly the implementation of such plans, must be enshrined in legislation.
- Aftercare provision should be based purely around the needs of the child and not be dependent on resources. Having an escape clause within legislation (subject to finances) does not serve the best interests of children. New legislation should clarify the right of all children in care not only to have an aftercare plan, but to have that plan implemented and its implementation subject to review.
- Appropriate life skills should be assessed and measured, and additional necessary supports put in place as required.
- Young people should be assigned a new Aftercare worker if they move areas, to ensure that their Aftercare worker is as knowledgeable as possible about their local area.
- Mentoring, work experience and job placements for children in care should be positively supported. The use of positive discrimination to this end should be considered.
- A full needs assessment of every young person moving from alternative care to independent living must be undertaken.
- A longitudinal study of young people leaving care should be carried out up to the age of 30.
9 Additional Suggestions and New Parts

9.1 Alternative arrangements – Friendship families

Friendship families are families who provide additional supports to foster families. It is a little bit like a child in foster care going over to an ‘aunts’ for a dinner, or an overnight, and is a form of respite. The friendship family is aligned only to the child in question, and the foster family can use the friendship family when additional support or brief respite (or space) is needed by either the child or the foster family. This is particularly useful for a child who may be going through a turbulent time, and may help to diffuse a difficult situation. These types of arrangements were available in the past in Ireland, until foster care regulations meant that all friendship families had to be approved foster carers as well, and it fell by the way side. It would be beneficial if the Department for Children and Youth Affairs would look into alternative arrangements such as friendship families, or other informal supports for children in care such as mentoring akin to ‘Big Brother Big Sister’ programmes.

Recommendations:

- The Department for Children and Youth Affairs should examine alternative arrangements, such as friendship families or ‘Big Brother Big Sister’ programmes.

9.2 Treatment of minorities – equality

9.2.1 Disability

The decision to keep the involvement of the Health Service Executive separate to the Child Care Act 1991 during its drafting has had detrimental consequences to the disability and health needs of children, and the ability of different Departments to work cooperatively. This must be rectified in any new Act.

9.2.2. Children from Ethnic minorities

The specific needs and supports of children from ethnic minorities and their families must be considered in any new Act, and the limited number of ethnic minority families available to foster must be examined. A lack of cultural understanding has led to cases being taken by the CFA when perhaps alternative interventions might have been effective. Cultural sensitivity training should be rolled out for all those involved in family supports, care proceedings, the judiciary, social workers and foster families.
Due to a lack of provision in the Child Care Act 1991, and current immigration legislation and administrative policies, difficulties can arise for unaccompanied minors in care when applying for passports or consenting to medical treatment. This must be updated.

**Recommendations:**

- The specific needs and supports of children from ethnic minorities and their families must be considered in any new Act.
- The limited number of ethnic minority families available to foster must be examined.
- Cultural sensitivity training must be rolled out for all those involved in family supports, care proceedings, the judiciary, social workers and foster families.
- Update the Act and immigration legislation and relevant administrative policies in relation to the unique situations that may need to be resolved for unaccompanied minors in care.

**9.3 Data**

Information sharing between Departments and agencies must be strengthened in any new Act. Any data protection issues which prevent data sharing must be removed. National data has improved in the last few years since the establishment of the Child and Family Agency but this must continue to be strengthened so that any decision making can be grounded in facts and figures. The importance of local data must equally not be overlooked, as this would ensure that successful local projects could be replicated elsewhere and local planning could be better supported.

The educational outcomes for children in care, for instance, must be tracked and compared to children in the general population to ensure that discrepancies in terms of performance can be tracked and interventions put in place. The quality of third level courses entered and completed by young people with care history must be assessed compared to young people in the general population. Proper supports, from additional third level access courses with positive discrimination for young people with care history could therefore be justified. This would help ensure that young people with care experience are appropriately supported to develop into happy active members of society.

EPIC is aware of the progress currently being made in relation to the long overdue recommendation of the Ryan Report to track young people leaving care. If this type of tracking was a legislative obligation it would ensure better action plans and more appropriate supports for young people in care and aftercare in the longer term.

Any interviews carried out in relation to possible abuse of children should be carried out simultaneously by the Gardai and the Child and Family Agency to avoid the necessity of double interviews. All relevant data in relation to cases should be shared between relevant Agencies, Departments, and professionals.
**Recommendations:**

- Information sharing between Departments and agencies must be strengthened in any new Act.
- Any data protection issues which prevent data sharing must be reviewed.

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**9.4 Education**

Children in care tend to face more challenges to fulfilling their potential due to their personal and familial circumstances compared to children in the general population. Disruption within the home environment, disruption caused by having to move schools, limited attention from carers towards the child’s progress at school, and teachers’ limited awareness of the personal circumstances of such children are all factors that contribute to underachievement. The situation may be further complicated if these children have special educational needs or diagnosed behavioural difficulties. School can be an enjoyable successful experience for many children in care. However, for some children in care, particularly those from especially difficult backgrounds, the situation can be very different. Schools can help provide much-needed sources of stability that may be lacking in the lives of some children in care who have experienced disruptions in their natural family and/or care backgrounds. In order to bring this about, schools and social work/care services, and the overall education and care systems, along with other departments need to share responsibility regarding the challenges that can arise for children in care, and work together to overcome these. For example, a child in care who has experienced significant disruption to their schooling may be struggling in their education and potentially causing disruption and difficulty within a classroom setting. The child may not meet the strict criteria for a Special Needs Assistant, but Tusla and the Department of Education could co-ordinate funding of a care assistance for the child in question, thereby ensuring better outcomes for the child and for the rest of the class, as well as overall better re-integration into the school system.

**9.5 Advocacy**

The provision of advocacy to all children in care who may require it, should be enshrined in legislation. An advocacy service that is specifically for children, and accordingly accessible and child-friendly would

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32 Darmody, M.; McMahon, L.; Banks, J.; Economic and Social Research Institute and Gilligan, R.; Trinity Research Centre; *Children in Care in Ireland: an explanatory study*. Available at: [https://www.esri.ie/pubs/BKMNEXT235.pdf](https://www.esri.ie/pubs/BKMNEXT235.pdf) (accessed 03/18).
go a long way to supporting the reform of the Guardian ad litem system, and court supports generally, ensuring that children involved in care proceedings or those under voluntary care agreements are appropriately supported and listened to.

Advocacy support should also be available to parents whose children are involved in care proceedings. This would assist in ensuring a better understanding of the process, decisions and outcomes of care proceedings, and would hopefully mean greater acceptance and compliance, with less animosity on the part of birth parents. The early evidence available on the use of advocates to assist parents in participating in proceedings in Ireland is encouraging and more extensive evidence from England demonstrates the potential for advocates to have an extremely positive impact, especially where the parents involved may have learning difficulties. Parents who received advocacy support in the UK believed that they were treated with more respect by child protection professionals when their advocate was with them. They reported being able to understand the child protection process and have their voice heard. The parents also praised their advocates for the emotional support they provided them and the way in which they were able to challenge child protection professionals’ practice because of their advocates’ experience in child protection. The development of specific advocacy services supporting parents, especially those with capacity issues, should be supported.

Advocacy supports must also be made more readily available to children in care with a disability. Specialist skills and a significant amount of time is required to deal with some of these cases.

**Recommendations:**

- All children involved in any care arrangements should be informed about the existence of EPIC, and its advocacy service.
- The promotion of Advocacy for young people in care should be explicitly mentioned in any updated Child Care Act.
- Advocacy support should also be available to parents whose children are involved in care proceedings, particularly for those with capacity issues.
- Advocacy support should be more readily available for children in care with a disability.
- All children in care, regardless of type of care or ability, should have a right to independent advocacy and this should be enshrined in legislation.

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34 British Journal of learning disabilities; Volume36, Issue2, June 2008; Tarleton, B.; *Specialist advocacy services for parents with learning disabilities involved in child protection proceedings*; p134-139.
9.6 Whole of Government approach – Interagency co-operation and promoting best practice

A legislative basis should be provided to ensure that inter-departmental cooperation and inter-agency cooperation is obligatory. At the time of the drafting of the Child Care Act 1991 it was decided to keep any involvement of the Health Service Executive separate. This was a detrimental decision in terms of the necessity for different branches of Government to work together in order to promote the welfare and best interests of many children, for example children and young people with disabilities. Any Act that impacts on children must include all relevant Departments, from health to justice, social welfare, and education. There is a collective responsibility for child welfare within these departments. There must be a change of mindset in terms of child protection being the sole responsibility of the Child and Family Agency. Collective responsibility would drive better interagency collaboration and ensure better outcomes for children. Many issues facing children require a collective holistic response with inter-departmental support and joined up thinking, for example in the area of dual diagnosis where there continues to be isolated treatments (for example mental health and alcohol addiction).

The establishment of an Inter-Departmental Committee on Children’s Rights, similar to the one established for Human Rights would promote accountability and consistency across Government Departments in terms of Children’s Rights. Child and human rights proofing legislation should be standard practice.

Organisations in the public and charity sector who are achieving positive results in the area of children’s rights should be adequately funded and supported by the State, and this could be promoted in legislation through the development and promotion of good practice. Successful pilots and notable practice should be duplicated. The new Child Care Act must promote the positive developments in the Meitheal National Practice Model.

Recommendations:

- Interdepartmental cooperation and collective responsibility must be on a legislative basis. Better interdepartmental communication, and joined up thinking is necessary. This could be legislated for, rather than relying on interpersonal relationships.
- The involvement of health services must be integrated into any new Act.
- An Inter-Departmental Committee on Children’s Rights should be established.
- Child and human rights proofing legislation should be standard practice.
- Successful organisations in the public and charity sector should be supported and good practice promoted and duplicated.
- The positive developments in the Meitheal National Practice Model must be promoted.
9.7 Consultation with young people:

The overview of *Better Outcomes, Brighter Future: The National Policy Framework for Children and Young People, 2014-2020* clearly states that Ireland will:

- Have a culture that listens to and involves children and young people.
- Have a culture that respects, protects and fulfils the rights of children and young people will be evident and the diversity of children’s experiences, abilities, identities and cultures will be respected.
- Ensure that the views of children and young people will be sought and will influence decisions about their own lives and wellbeing, service delivery and policy priorities.
- Will actively seek the contribution and engagement of young people as part of its democratic process.

The consultation process with children and young people in relation to the review of the Child Care Act 1991 must occur sooner rather than later to ensure that it is embedded as part of the process and not left as an afterthought, or a tokenistic gesture. EPIC is more than willing to help facilitate this consultation with young people in care or with care experience.

**Recommendation:**

- Consult with young people in care about the review of the Child Care Act 1991 at the earliest opportunity

9.8 Health

The concluding observations on the combined third and fourth periodic reports of Ireland by the United Nations Committee on the Rights of the Child in 2016 specifically mentioned the inadequate coordination between the State party bodies responsible for child protection, mental health and disabilities resulting in fragmented or inadequate care being provided for children in need of such services. The concluding observations also highlighted the lack of comprehensive legislation on children’s consent to and refusal of medical treatment, particularly in mental health services. The observations also state that the out-of-hours social work emergency service is insufficient and that there are insufficient accessible counselling services for children who are affected by abuse. Despite recent improvements, all of the above points continue to warrant attention during the review of the Child Care Act.

Any child who is involved in care proceedings or care arrangements has experienced varying levels of trauma due to misfortune, neglect or abuse. As a result, every child should be provided with
appropriate mental health supports in order to overcome the difficulties they have encountered in their lives, enshrining the right to mental health supports would go a long way to ensuring that children are able to receive the best possible supports available, in a timely manner.

**Recommendations**

- All children who are taken into care should be provided with appropriate mental health assessments and supports to ensure they are able to overcome the trauma they have experienced.
- The State should undertake measures to ensure that children in alternative care who have disabilities or mental health needs have their needs addressed in an integrated and comprehensive manner; to this effect, the State party should establish appropriate coordination mechanisms to ensure effective interagency cooperation between the State party’s Child and Family Agency and relevant departments of its Health Service Executive.
- The Review of the Child Care Act could be used to explicitly and comprehensively provide for children’s consent to and refusal of medical treatment, and ensure that this legislation should be in line with the objectives of the Convention and encompass clear recognition of children’s evolving capacities.
- Measures to improve the capacity and quality of mental health services for children and adolescents is required; in doing so, the State party should prioritise strengthening the capacity of its mental health services for in-patient treatment, out-of-hours facilities, and facilities for treating eating disorders. Such basic treatments could be stipulated in any reformed Child Care Act.
- Child victims of sexual abuse are an extremely vulnerable group, yet they do not always have access to the necessary supports, or to access supports in a timely manner. The issue of children being interviewed multiple times by different professionals like the Gardaí and social workers has been highlighted. Children are not being spared the re-traumatisation that comes with being repeatedly made to disclose their story to different people. EPIC notes that the Minister for Children and Youth Affairs, Dr. Katherine Zappone TD and the Special Rapporteur on Child Protection, Prof. Geoffrey Shannon have been exploring models in other jurisdictions that use multidisciplinary teams and we call for the introduction of specialist services for child victims as soon as possible.
- In the light of its general comment No. 4 (2003) on adolescent health and development, the UN Committee on the Rights of the Child recommended that the State party further strengthen its measures on the prevention of suicide, which should take into account the specific needs of children and adolescents, and ensure the allocation of adequate human, technical and financial resources for its effective implementation. The State should ensure sufficient 24-hour refuge accommodation for persons affected by domestic violence and their children and provide...
redress and rehabilitation to the victims. The review of the Child Care Act could ensure specific safeguards are legislated for.

- Mental health advocacy is available to adults, but not children; this should be rectified.