HEADS AND GENERAL SCHEME OF THE CHILD CARE (AMENDMENT) BILL 2023

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Head 1 Short title, collective citation and commencement

Provide along the following lines:

(1) This Bill may be cited as the Child Care (Amendment) Bill 2023.

(2) The Child Care Acts 1991 to 2022 and this Act, may be cited together as the Child Care Acts 1991 to 2023.

(3) This Act shall come into operation on such day, or days as the Minister for Children, Equality, Disability, Integration and Youth, may appoint by order, or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Explanatory Note:

This Head provides for the short title of the Bill and an updated collective citation for the Child Care Acts following enactment of the Bill.

It further provides that the Minister may make an order or orders in relation to the commencement of the provisions of the Bill.

Head 2 Interpretation

Provide along the following lines:

In this Bill-

‘Act of 2013’ means the Child and Family Agency Act 2013;

‘Act of 2015’ means the Children First Act 2015;

‘Agency’ means the Child and Family Agency;

‘Minister’ means the Minister for Children, Equality, Disability, Integration and Youth;

‘Principal Act’ means the Child Care Act 1991;

‘public body’ has the same meaning as it has in the Child and Family Agency Act 2013.

Explanatory note:

This Head is intended to set out the definition of key terms used in the General Scheme.

## Head 3		Amendment to section 2 of Principal Act

Provide along the following lines:

Section 2 of the Principal Act is amended by the deletion of the words “other than a person who is or has been married” from the definition of “child”, so that it will read as ‘“child” means a person under the age of 18 years’.

Explanatory note:

This Head amends the existing definition of “child” in the Principal Act. As persons under the age of 18 are no longer permitted to marry, it is intended to remove “other than a person who is or has been married” from the definition of a “child”.

The Department is concerned that the current wording may impede the ability of the Child and Family Agency to protect children in Ireland who have been subject to a forced, or underage, marriage abroad. It is the policy position of this Department that a child who has been subject to a forced or underage marriage is vulnerable and there should be no statutory impediment to Tusla providing the care, protection and support it deems appropriate to this cohort.

Head 4 Guiding principles

Provide along the following lines:

The Principal Act is amended by the insertion of the following section after section 2:

“Guiding principles

(1) A person, as defined under subhead [3], when performing a function under this Act, shall have regard to the following guiding principles:

(a) The best interests of the child are the paramount consideration;

(b) The Child and Family Agency, or an organisation with which the Agency has entered into an arrangement for the provision of services, should have regard to the benefits of providing family support services, or other activities to support and encourage the effective functioning of families, as soon as reasonably practicable;

(c) Unless the safety and welfare of the child is likely to be prejudicially affected, it is generally in the best interests of a child to be brought up in his or her own family, where appropriate;

(d) Where a child is capable of forming his or her own views, the child shall participate in the decision making process by being -

(i) consulted in relation to decisions about their care and protection,

(ii) advised that he or she is entitled to express their views in relation such decisions, and

(iii) facilitated in expressing any views that he or she wishes to make known;

(e) Due weight shall be given to such views as the child wishes to express, having regard to the age and maturity of the child;

(f) The parents of a child, or a person acting in *loco parentis,* shall be facilitated, where appropriate, and in so far as practicable, to participate in a decision making process concerning the care and protection of the child, and the person making the decision shall give due weight to any views that the parents *or* person acting *in loco parentis* wishes to express but shall not be bound by them;

(g) Decisions concerning the care and protection of the child, in so far as practicable, shall –

(i) support and promote the development, welfare and protection of children,

(ii) support and encourage the effective functioning of families,

(iii) be made expeditiously so as to avoid any unreasonable delay which may be contrary to the best interests of the child,

(iv) include consideration of-

(I) whether a care placement meets the needs of the child,

(II) the impact on the child of any decisions regarding a placement, and

(III) the benefits to that child of a stable care placement.

(h) Children should be provided with opportunities to participate in activities designed to promote their wellbeing, and if appropriate, a body under this Head should take such action as is reasonably practicable to assist children to –

(i) access such opportunities as it may provide;

(ii) make use of services, and access support, which it delivers, and

(iii) take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to children.

(2) In determining what is in the best interests of the child, a person referred to in subhead (1) shall have due regard to:

(a) the child’s age, maturity and any special characteristics of the child;

(b) the benefit to the child of having a meaningful relationship with his or her parents, siblings, and with any other relatives and persons who are involved in the child’s upbringing and, except where such contact is not in the child’s best interests, of having sufficient contact with them to maintain such relationships;

(c) the views of the child where he or she is capable of forming, and has chosen to express, such views;

(d) the physical, psychological and emotional needs of the child, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;

(e) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (b);

(f) the social, intellectual and educational needs of the child;

(g) the religious, spiritual, cultural and linguistic upbringing and needs of the child, and

(h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being.

(3) A person under subhead (1) includes:

(a) the Child and Family Agency, and

(b) a service provider, statutory body or public body with which the Agency has entered into an arrangement for the provision of child and family services.

(4) In this section

'household violence' has the same meaning as it has in section 31(7) of the Guardianship of Infants Act 1964.

'service provider' has the same meaning as it has in section 56(15) of the Child and Family Agency Act 2013.

Explanatory Note:

Following consultation with stakeholders, the Minister has agreed to recommendations that a 'Guiding Principles' section be inserted into the Act. These are intended to provide an explicit focus on centring the best interests of the child and the voice of the child in any decision making process or service provision made under the Principal Act.

The Child Care (Amendment) Act 2022 amended section 24 of the Principal Act by inserting a list of factors that must be taken into account by the court in child care proceedings where the court is making a determination on the best interests of the child. The General Scheme is not proposing to amend this list of factors for the court.

The broad list of best interest factors included in this Head is intended to apply to persons, professionals and organisations, and has been included in an effort to place an obligation on a wider cohort of persons to consider the best interests of the child and the voice of the child.

Head 5 Guidelines

Provide along the following lines:

The Principal Act is amended by the insertion of the following section after section 2:

"**Guidelines**

(1) The Minister may issue guidelines to the Agency for the purpose of providing practical guidance in respect of the implementation of the Principal Act, or under the Act of 2013.

(2) The Agency shall submit, when required by the Minister to do so, a report on the operation of specified sections of the Principal Act for the purpose of –

  (a) informing the development of guidance under subhead [1,] or

  (b) monitoring and assessing how guidance issued under subhead [1] is being implemented.

(3) A report under subhead [2] shall be made in such form, and within such period as specified in the requirement from the Minister.

(4) Guidelines issued under subhead [1] may include general guidance in relation to payments to any person by the Agency under this Act, or under the Act of 2013, or otherwise.

(5) The Minister shall publish guidelines under subhead [1] in such manner as he or she considers appropriate."

Explanatory Note:

The Department notes that since the enactment of the Principal Act there have been variations in the interpretation of its provisions between officials, the Agency and persons working in the broad area of child welfare and protection.

The purpose of **subhead [1]** is to allow the Department to prepare a guidance document, similar to *Children First: National Guidance for the Protection and Welfare of Children,* which supports the implementation of the Children First Act 2015, in an effort to facilitate a shared understanding of the provisions of the Principal Act. It is intended that the primary audience will be the Agency, but it may be of interest to persons working in the broad area of child welfare and protection.

Subheads [2] provides that the Minister may require the Agency to provide a report on the implementation of any particular section of the Act and such a report will be used for the purpose of informing the development of guidance that the Minister wishes to issue. This subhead also provides

that a report from the Agency may be requested by the Minister for the purpose of monitoring and assessing how any guidance which he or she has issued is being implemented.

Subhead [3] provides that a report will be provided within a timeframe and in a manner specified by the Minister.

Subhead [4] clarifies that guidance issued by the Minister may include guidance in relation to payments made by the Agency. It is intended that guidelines in this regard will refer to classes of cases, rather than to specific individuals or organisations.

Subhead [5] provides for the publication of such guidelines.

Head 6 Amendment of section 3 of Principal Act

Provide along the following lines:

The Principal Act is amended by the substitution of the following text for the text of the current section 3:

"Duty of Agency to support and promote the development, welfare and protection of children

(1) In the performance of its functions under this Act, and section 8 of the Act of 2013, the Agency shall —

(a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection;
(b) co-ordinate information from all relevant sources relating to children, including from relevant bodies under Head 10;
(c) have regard to the rights and duties of parents, whether under the Constitution or otherwise;
(d) in so far as is practicable, give due consideration, having regard to his or her age and understanding, to the wishes of the child, and
(e) have regard to the principle that it is generally in the best interests of a child to be brought up in his or her own family.

Explanatory Note:

This Head sets out the duty of the Agency to support and promote the development, welfare and protection of children. While section 3 of the Principal Act is currently used as the statutory basis for the Child and Family Agency to assess allegations of abuse, the Department is proposing to reorient this section and to locate amendments in relation to the authority of the Agency to receive and assess reports of harm in the Children First Act [see Head 44].

Head 7 Amendment to section 4 of Principal Act

Provide along the following lines:

Section 4 of the Principal Act is amended as follows:

(1) By the substitution of the following subsection for subsection (1):

"Where it appears to the Child and Family Agency that –

(a) a child requires care or protection that he or she is unlikely to receive unless he or she is taken into its care, and

(b) the Agency has a reasonable expectation that the parents of the child, or a person acting in *loco parentis,* will be able to resume care of the child within a reasonable period of time,

the Agency shall take the child into its care under this section."

(2) By the substitution of the following subsection for subsection (2):

"Where the Agency proposes to take a child into care under this section it shall-

(a) provide an information document to the child, the parents of the child or the person acting in *loco parentis* which sets out the proposed nature of the voluntary care arrangement and includes information in relation to –

(i) the purpose and proposed duration of the proposed voluntary care arrangement,

(ii) the obligations on the Agency to monitor and review such an arrangement, and

(iii) the procedure for withdrawing consent to such an arrangement, and

(b) obtain the explicit and informed consent of the parent having custody of the child or of any person acting *in loco parentis,* prior to taking the child into its care."

(3) By the insertion of the following subsection after subsection (3):

> "The Child and Family Agency shall review the operation of, and necessity for, a voluntary care arrangement at regular intervals which are no less often than every six months and on foot of such a review, the Agency shall assess whether the welfare of the child requires that -
>
> (a) the voluntary care arrangement should continue,
>
> (b) the child should be returned to his or her parents or the person acting in *loco parentis,* or
>
> (c) an application for an interim care order, a care order, or a supervision order in respect of the child pursuant to its obligations under section 16 of the Principal Act is required."

(4) By the insertion of the following subsection:

> "In circumstances where a parent, or a person acting *in loco parentis*, notifies the Agency of the withdrawal of their consent for a voluntary care arrangement made under this section, the Agency may maintain the child in its care for a period not exceeding 3 working days, from the receipt of such a notification."

(5) By the insertion of the following subsection:

> "A notification under subhead (4) shall be in such form as the Agency may specify."

(6) By the deletion of subsection (4).

(7) By the deletion of subsection (5).

Explanatory Note:

The proposed amendments to section 4 of the Principal Act are intended to clarify the operation of voluntary care arrangements.

Subhead [1] is intended to clarify that the Agency can use this section to bring a child into care where the child requires care and protection that he or she is unlikely to receive unless they are taken into the Agency's care, and, it is expected that the parents will be able to resume care of the child within a reasonable period of time. It is the policy position that voluntary care arrangements should be a temporary measure until family reunification can be achieved.

Subhead [2] requires the Agency to produce written information about the voluntary care arrangement. This information document is to be provided to the child, the parents of the child or the person acting in *loco parentis*, following which, the Agency must obtain the informed consent of the parent or person acting in *loco parentis* to the voluntary care arrangement.

A policy decision has been made not to include a time limit on the length of a voluntary care arrangement in order to provide sufficient flexibility to the Agency given the variety of circumstances in which the need for a voluntary care arrangement might arise. However, in acknowledgement of stakeholder concerns about the length of time that some children may drift in such an arrangement, **subhead [3]** places a requirement on the Agency to review the operation of a voluntary care arrangement. The purpose of this provision is to ensure social work contact with children in a voluntary care arrangement at regular intervals. During such a review, the Agency should be considering whether the arrangement should continue, whether the child should be returned to their parents or whether the threshold to apply for a care order or a supervision order, as per the Agency's obligations under section 16 of the Principal Act, have been reached.

Subhead [4] provides that where consent is withdrawn, the Agency may continue to maintain the child in its care for a period not exceeding 3 working days from the receipt of such a notification. The purpose of this section is to provide a short timeframe in which the Agency may make an application to the court for an order under the Principal Act. **Subhead [5]** provides that the Agency must specify how the withdrawal of consent is to be communicated.

Subhead [6] provides for the text of the existing subsection (4) to be deleted. It is intended that this subsection would be relocated in section 16 of the Principal Act. As the policy intent is to move towards explicit and informed consent for a voluntary care arrangement, it would appear that children who are deserted or abandoned, or whose parents are missing can no longer be taken into care under this section.

Subhead [7] proposes to delete the existing subsection (5) as it may no longer be necessary.

Head 8 Amendment to section 5 of Principal Act

Provide along the following lines:

The Principal Act is amended by the substitution of the following text for the text of the current section 5:

"Support for children temporarily out of home

(1) Where it appears to the Child and Family Agency that there is no accommodation available to a child that he or she can reasonably occupy, the Agency shall enquire into the child's circumstances.

(2) If following an enquiry into the child's circumstances under subhead [1], the Agency is satisfied that there is no accommodation available to the child which he or she can reasonably occupy, unless the child is received into the care of the Agency under the provisions of this Act, and having due regard to the age and maturity of the child, the Agency shall take such steps as are reasonable to make available suitable temporary accommodation for that child while he or she remains a child.

(3) Where the Agency is supporting a child under this subhead, it shall engage with the child and the child's family in an effort to support the child's return to the place where they ordinarily reside.

(4) The Agency shall review the provision of temporary accommodation for a child under this section, at regular intervals which are no less often than every six months, and on foot of such a review the Agency shall assess whether to-

(a) continue with such an arrangement;

(b) return the child to his or her parents or the person acting in *loco parentis*;

(c) place the child in a voluntary care arrangement under section 4, or

(d) apply for an interim care order, a care order or a supervision order in respect of the child pursuant to its obligations under section 16 of the Principal Act.

(5) The Minister may make regulations in respect of the operation of this section and such regulations may-

(a) specify the minimum age at which it is appropriate for the Agency to apply the provisions of this section to a child;

(b) specify the maximum length of time a child may be placed in temporary accommodation, and

(c) make provision for such other matters as the Minister considers appropriate.

Explanatory Note:

The purpose of this section is to give Tusla the authority to provide short term support for young people through the provision of temporary accommodation. It is not intended that this section will place an obligation on the Agency to address family homelessness.

Subhead [1] requires the Agency to enquire into the circumstances of a child who appears not to have any accommodation.

Subhead [2] is intended to provide that following an enquiry into the child's circumstances, if the Agency is satisfied that there is no accommodation available to the child, it shall make available suitable temporary accommodation for that child, while he or she remains a child. A policy decision has been made not to specify a lower age limit in this section, in order to provide Tusla with some flexibility and in recognition that social work expertise is a factor in determining whether a placement under this section is appropriate, having regard to the age and maturity of the child.

Subhead [3] places an obligation on the Agency to work with the child and his or her family in an effort to effect family reunification.

Subhead [4] requires the Agency to review the provision of temporary accommodation to a child under this section on a regular basis, for the purpose of assessing whether the child's circumstances have changed. On foot of a review, the Agency will be required to take one of the actions specified in paragraphs (a) to (d). The inclusion of this review provision is intended to prevent children remaining in care under this section indefinitely.

Subhead [5] provides that the Minister may make regulations in relation to the operation of this provision, and these regulations may address the list of factors set out in paragraphs (a) to (c) of the subhead.

Head 9 Amendment to section 7 of Principal Act

Provide along the following lines:

The Principal Act is amended by the substitution of the following section for section 7:

"Children and Young People's Services Committees

(1) The Child and Family Agency may establish Children and Young People's Services Committees within a geographical area.

(2) A Children and Young People's Services Committee that was established on an administrative basis prior to the commencement of this section shall be deemed to have been established by the Agency in compliance with subhead (1) of this section.

(3) The functions of a Committee shall be to:

(a) support and facilitate co-ordination and collaboration between public bodies and other organisations in the planning and delivery of services to children and young people in the Committee's functional area;

(b) undertake an assessment of the needs of children and young people in the Committee's functional area at least every 3 years, which shall include consultation with children and young people;

(c) prepare, adopt and publish a plan (to be referred to as a "Children and Young People's Services Plan ") every 6 years which shall outline the programme of measures taken or proposed to be taken by organisations participating in the Committee, individually or jointly, to meet the needs of children and young people within the Committee's functional area;

(d) undertake a review of the Plan, at intervals of not more than 3 years after the Plan is published and, if the Committee considers it necessary after any such review—

(i) amend the Plan, or

(ii) prepare and adopt new elements of the Plan;

(e) co-ordinate, manage and oversee the implementation of specific children and young people's programmes where the Committee has agreed to do so on behalf of a public body, voluntary, business or community group, and to ensure

that any plans and strategies related to those programmes are implemented in accordance with the overall objectives of the Plan;

(f) not later than 31 March in each year, prepare, adopt and submit to the Agency a report in relation to the performance of its functions during the immediately preceding calendar year;

(g) provide information, other than the report prepared under subsection (c), in relation to the performance of its functions to the Agency, when requested to do so by the Agency.

(4) The membership of a Committee shall include one or more representatives from the following public bodies, or from a body under their remit:

(a) the Child and Family Agency;

(b) the local authority in whose administrative area the Committee is located;

(c) the Education and Training Board within the administrative area of the Committee;

(d) the Health Service Executive;

(e) the Garda Síochána;

(f) the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media;

(g) the Department of Education;

(h) the Department of Justice;

(i) the Department of Social Protection.

(5) At the discretion of the Committee, and subject to any guidance issued by the Minister under subhead [7] the membership of the Committee may also include representatives from:

(a) local community or voluntary bodies which provide services to children and young people within the area of the Committee.

(b) public bodies involved in the delivery of services to children and young people who are not listed in subhead (3) above.

(c) non-governmental organisations, community-based groups, youth organisations, cultural bodies, sporting bodies and social movements and networks.

(6) The co-ordinator of the Committee shall seek nominees to the Committee, from time to time, in accordance with subheads [4] and [5] and any guidelines issued by the Minister for that purpose.

(7) The Minister may issue guidelines relating to the performance by Committees of their functions under this Act, and, without prejudice to the generality of the foregoing, such guidelines may —

(a) address the resourcing and staffing of Committees by the Agency;

(b) address the operation of Committees and sub-committees;

(c) address the procedures that are to apply to the appointment of the Chairperson, Vice-Chairperson and ordinary members and their functions;

(d) address the format of Plans and annual reports prepared by Committees and their publication.

(8) In this subhead:

'children and young people' means persons under the age of 24;

'children and young people's programme' means any action, intervention, programme, scheme or any other support, financial or otherwise, which is concerned with promoting the interests of local children and young people;

'functional area of a Committee', in relation to a Committee, means the area to which the Committee relates."

Explanatory Note:

The purpose of this Head is to delete section 7 of the Child Care Act 1991, and to replace it with a new section. While the current text of the Principal Act provides that Child Care Advisory Committees may be established, it is understood that these Committees are in abeyance.

The Department has decided to place Children and Young People's Services Committees on a statutory footing. These are difference structures to the obsolete Child Care Advisory Committees. There are a number of Children and Young People's Services Committees already in existence, on an administrative basis.

Subhead [1] provides that the Child and Family Agency may establish further Children and Young People Services Committees. **Subhead [2]** is for the purpose of ensuring that existing Children and Young People's Services Committees, which were established on an administrative basis, are also placed on a statutory footing. **Subhead [3]** sets the functions of these Committees, and **subhead [4]** sets out a list of those organisations which must be represented on each Committee, and further provides that these organisations may be represented by a body under their remit.

Subhead [5] is intended to provide scope for representatives from other organisations to be members of a Committee. It is intended that this could apply to persons who are representative of children and young people's interests that are concerned with promoting the development of

aspects of those interests within that area and such representatives may include representatives of non-governmental organisations, community-based groups, youth organisations, cultural bodies, sporting bodies and social movements and networks.

Subhead [6] is intended to provide flexibility and to ensure that if there are local organisations whose work is particularly relevant to the work of the Committee, they can be asked to become members.

Subhead [7] provides that the Minister may issue guidelines in relation to the performance by the Committees of their functions and other matters.

Subhead [8] sets out the definition of some specific terms used within this Head.

Head 10 Duty of relevant bodies to cooperate

Provide along the following lines:

The Principal Act is amended by the insertion of the following section after section 7:

Duty of relevant bodies to cooperate

(1) For the purpose of this Head 'relevant body' means—

(a) the Child and Family Agency

(b) a Department of State,

(c) the Health Service Executive,

(d) the Garda Síochána,

(e) a recognised school within the meaning of the Education Act 1998,

(f) the National Council for Special Education,

(g) a children detention school within the meaning of the Children Act 2001,

(h) an early years services within the meaning of section 58A of the Principal Act,

(i) a Children and Young People's Services Committee established under Head [9],

(j) a Local Authority within the meaning of the Local Government Act 2001,

(k) a Local Community Development Committee established pursuant to section 49A of the Local Government Act 2001, and

(l) a Local Community Safety Partnership established pursuant to the Policing, Security and Community Safety Bill 2022.

(2) The Minister may by order designate a public body, or a body which is in receipt of public funding, whether created by or under any enactment or not, as a relevant body for the purposes of this section, where he or she is satisfied that –

(a) some or all of the functions of the body are relevant to the development, welfare and protection of a child, and

(b) it is desirable that the body would cooperate with other relevant bodies in the performance of their respective functions to improve the development, welfare and protection of children.

(3) A relevant body that-

   (a) has a statutory obligation to provide services to children or to an eligible adult within the meaning of section 45 of the Principal Act, or

   (b) is in receipt of public funding to provide services relating the development, welfare and protection of children

may cooperate with another relevant body for the purpose of promoting the development, welfare and protection of children, or eligible adults to whom this section applies, and such cooperation may include the sharing of relevant information.

(4) For the avoidance of doubt, any cooperation with the Agency, or with another relevant body, by a relevant body shall not remove or derogate from the responsibility of that relevant body the exercise or performance of its statutory powers and duties.

(5) A relevant body may make a request to another relevant body for information under this Head.

(6) On receipt of a request under subhead [6] a relevant body shall-

   (a) comply with a lawful request for information from another relevant body in respect of information sought which is of relevance to the functions of the requesting body and where it is for the purpose of safeguarding or promoting the development, welfare and protection of a child, or an eligible adult to whom this section relates, and

   (b) give the requesting body such information and assistance as it may reasonably require.

(7) The sharing of information under subheads [3], [5] and [6] includes the sharing of documents and information (including special categories of personal data within the meaning of the Data Protection Act 2018) in accordance with law and to the extent that is necessary and proportionate.

(8) Nothing in this section shall operate to require a relevant body to provide another relevant body with any information that the relevant body would be entitled to refuse to provide on the grounds of legal professional privilege.

(9) The Minister, following consultation with the Child and Family Agency, may issue guidelines for the purpose of providing practical guidance to relevant bodies in respect of interagency cooperation.

(10) The obligations on a relevant body under this section are in respect of:

   (a) children under the age of 18;

   (b) eligible adults in respect of whom there is an aftercare plan under section 45 of the Principal Act.

Explanatory note:

The purpose of this Head is to insert a new provision into the Principal Act which will require relevant bodies, as defined, to cooperate with both the Child and Family Agency and with each other. Relevant bodies have been identified on the basis that they have responsibility for matters relating to the development, welfare and protection of a child or the delivery of services for an eligible adult in respect of whom there is an aftercare plan under section 45 of the Principal Act.

The inclusion of this Head is intended to address longstanding concerns about the ability of organisations to share information with the Agency, and for the purpose of facilitating interagency cooperation.

Subhead [1] sets out those bodies which are intended to fall within the meaning of 'relevant body'.

Subhead [2] is included to provide flexibility in the event that the list of relevant bodies in subhead [1] needs to be augmented. It provides that the Minister may designate a public body or a body in receipt of public funding, as a relevant body, subject to the factors set out in paragraphs (a) and (b).

Subhead [3] is included for the purpose of supporting interagency cooperation by clarifying that a relevant body may cooperate with another relevant body for the purpose of promoting the development, welfare and protection of children and that such cooperation may include the sharing of relevant information.

Subhead [4] provides that in circumstances where a relevant body is cooperating with the Agency, or another relevant body, this cooperation does not remove or derogate the responsibility of that relevant body to fulfil its own statutory obligations.

Subhead [5] provides that relevant bodies may request information from other relevant bodies.

Subhead [6] places an obligation on a relevant body to comply with a lawful request for information from another relevant body and give the requesting body such information and assistance as it may reasonably require.

Subhead [7] is included to clarify that the sharing of information may include the sharing of documents and information, which may include special categories of personal data, provided that requests for information are in accordance with law and are necessary and proportionate.

Subhead [8] provides that a relevant body may refuse a request for information on the grounds of legal professional privilege.

Subhead [9] provides that the Minister may, in consultation with the Child and Family Agency, issue guidelines for the purpose of providing practical guidance to relevant bodies in respect of interagency cooperation.

Subhead [10] clarifies that the obligations that this section places on a relevant body are in respect of children under 18 regardless of whether they are in the care of the Agency or not, and eligible adults aged 18 or over and who are in receipt of an aftercare plan.

Head 11 National Child Care Act Advisory Committee

Provide along the following lines:

The Principal Act is amended by the insertion of the following section after section 7 / Head [10]:

National Child Care Act Advisory Committee

(1) As soon as may be after the commencement of this section, the Minister for Children, Equality, Disability, Integration and Youth shall establish a group to be known as the National Child Care Act Advisory Committee, referred to in this subhead as the "National Advisory Committee".

(2) The Minister shall appoint a chairperson and deputy chairperson of the National Advisory Committee.

(3) The National Advisory Committee shall consist of the following ordinary members, each of whom shall be appointed by the Minister:

(a) an officer or officers of a Minister of the Government, nominated by the relevant Minister of the Government having charge of the Department of State concerned;

(b) a member of An Garda Síochána nominated by the Commissioner of An Garda Síochána;

(c) an employee or employees of the Child and Family Agency nominated by the Chief Executive Officer of the Agency;

(d) an employee or employees of the Health Service Executive nominated by the Director General of the Health Service Executive;

(e) such other persons as the Minister considers appropriate.

(4) The Minister, when appointing a member of the National Advisory Committee, shall specify such member's term of membership of the Committee.

(5) The Minister, in consultation with relevant Ministers, shall give a direction in writing to the National Advisory Committee that will set out its programme of work.

(6) A direction by the Minister under subhead [5] shall be given at intervals of not less than twelve months.

(7) A programme of work under subhead [5] shall identify the operation of a specific section or sections of the Principal Act for the National Advisory Committee to examine.

(8) The Minister may amend, revoke or issue an additional direction to the National Advisory Committee under this Head.

(9) The National Advisory Committee shall comply with a direction given to it under this Head.

(10) The National Advisory Committee shall have all such powers as are necessary or expedient for the performance of its functions.

(11) The functions of the National Advisory Committee shall be to:

(a) examine matters identified by the Minister in the annual direction,

(b) identify any issues in relation to the implementation of the relevant provision of the Principal Act, and

(c) make recommendations to the relevant Ministers which are to be set out in the annual report to be prepared under subhead 14.

(12) The Minister may make regulations concerning the operation and procedures of the National Advisory Committee and without prejudice to the generality of the foregoing regulations made under this section may-

(a) make provision for the procedures that are to apply to the appointment of the chairperson, deputy chairperson and ordinary members and their functions;

(b) specify the terms and conditions of office of the chairperson, deputy chairperson and ordinary members;

(c) prescribe the public service bodies from which representatives may be appointed to the National Advisory Committee;

(d) prescribe the experience, expertise or other criteria to apply in respect of persons who may be appointed to the National Advisory Committee;

(e) make provision in relation to the procedures to apply to the conduct of the business of the National Advisory Committee, and

(f) make provision in relation to the procedures to apply to subgroups of the National Advisory Committee, including in relation to the membership and terms of reference of such groups.

(13) The Ombudsman for Children shall review and advise on the recommendations to be prepared by the National Advisory Committee under subhead 11[c].

(14) The National Advisory Committee shall, not later than 4 months after the end of each calendar year, prepare and submit to the Minister a report on the performance of its functions during the preceding year or, in the case of the first such report, the performance of its functions since the date it was established up to and including 31 December of the preceding year.

(15) A report under subhead 14 shall be prepared in such form and contain such information as may be specified from time to time by the Minister.

(16) The Minister shall cause a copy of a report under subhead 14 to be laid before each House of the Oireachtas as soon as practicable after he or she receives it.

Explanatory note

The purpose of this Head is to establish a Committee which will examine the operation of various sections of the Principal Act. It is envisaged that it will have a problem-solving focus and that it will be comprised of senior officials who have the authority to make decisions and commitments which are intended to address any issues that the Committee has identified.

Subheads [1] to [4] provide that the Minister will establish a group to be known as the National Child Care Act Committee and that he or she will appoint the chairperson and deputy chairperson. They provide that the Minister will appoint the ordinary members and set out the organisations from which these members will be drawn. The Department has not specified the number of ordinary members which require to be appointed as it is intended to provide the Minister with some flexibility. It is also envisaged that the membership of this Committee may change depending on the particular issue identified in the annual programme of work.

Subheads [5] and [6] provide that the Minister, in consultation with other relevant Ministers, will give a direction to the Committee at intervals not less than 12 months, which will set out a programme of work. The Ministers with whom the Minister for CEDIY will consult have not been specified, as these may change depending on the issues to be addressed in each programme of work.

Subhead [7] provides that the programme of work shall specify which section of the Act that the Committee is to examine.

Subheads [8] to [10] provide that the Minister may amend, revoke or issue an additional direction to the Committee; that the Committee is obliged to comply with such a direction and, that it shall have all powers necessary or expedient for the performance of its functions.

Subhead [11] sets out the functions of the Committee and **subhead [12]** provides the Minister with a regulation making power.

Subhead [13] provides that the Ombudsman for Children shall review and advise on any recommendations made by the Committee. It is intended that the Ombudsman will undertake this review process prior to any recommendations being submitted to the Minister[s]. It is proposed that the operation of this subhead will be governed by way of a Memorandum of Understanding between the two organisations, and that such an MOU will have regard to the Ombudsman's existing statutory functions under the 2002 Act.

Subheads [14] to [16] relate to the annual report of the Committee.

Head 12 Amendment of section 8 of Principal Act

Provide along the following lines:

The text of section 8 of the Principal Act is to be deleted.

Explanatory note:

The purpose of this amendment is to delete section 8 of the Principal Act. It is intended that in parallel to this deletion, the Child and Family Agency Act 2013 will be amended to insert a new provision that is broadly similar to the current section 8.

The Department is of the view that a section 8 type report would be more appropriately located in the 2013 Act, as it aligns with the corporate governance requirements already provided for in Part 6 that Act.

The proposed amendments to Part 6 of the Child and Family Agency Act are included at Head 43.

Head 13 **Amendment of section 12 of Principal Act**

Provide along the following lines:

The Principal Act is amended in section 12 as follows.

(1) In section 12(3) by the deletion of the existing text and its substitution with the following:

> 'Where a child is removed by a member of the Garda Síochána in accordance with subsection (1), the member shall-
>
> (a) deliver up the child as soon as possible to the custody of the Child and Family Agency, or
>
> (b) consult with the Agency to determine whether the child is known to the Agency, and in such cases, the Agency may direct the member to deliver the child into the custody of a named person in the child's family.'

(2) In section 12(4) by-

> (a) the insertion of '(a), or a named person in accordance with subsection (3)(b)' after 'in accordance with subsection (3)', and
>
> (b) the insertion of 'or 2 working days, whichever is longer' after 'within 3 days' in each place where it occurs.

(3) By the insertion of the following subsection after subsection (4):

> 'In this section, working day means days other than Saturdays, Sundays or public holidays (within the meaning of the Organisation of Working Time Act 1997)."

(4) By the deletion of section 12(5).

Explanatory note:

Subhead [1] is intended to provide an additional option to Gardaí in circumstances where a Guard is using the provisions of this section to bring a child to safety. The amendment is intended to provide that (in addition to the option to deliver the child up to the custody of Tusla) the Gardaí can consult with the Agency, and following such consultation, and in cases where the child is known to the Agency, the Gardaí may bring the child to person named by the Agency. It is intended that if there is a named family member in the child's safety plan, the child could be brought to that person, rather than into emergency care, if the Agency is of the view that it is appropriate to do so.

The amendments in **Subhead [2]** are for the purpose of making reference to the amendment in subhead [1] and to address concerns that there is insufficient time under the current provisions of section 12(4) for Tusla to make an application for an emergency care order after the Gardaí have invoked section 12. The text of the amendment is to account for bank holidays and weekends.

Subhead [3] inserts a definition of ‘working day’.

Subhead [4] proposes to delete section 12(5) as it retention may no longer be necessary.

Head 14 Amendment of section 13 of Principal Act

Provide along the following lines:

(1) Section 13 of the Principal Act is amended by the insertion of the following subsection, after existing subsection (2).

> "Where the District Court is of the opinion that there is reasonable cause to believe that any of the circumstances referred to in section 13(1)(a) and (b) continue to exist, the duration of the emergency care order may be extended to a period not exceeding 15 days."

Explanatory note:

This Head provides that the court may extend the period of an emergency care order up to a maximum of 15 days. The rationale behind this proposal is that eight days may not give the Agency sufficient time to carry out an assessment of the child's circumstances, and that in a particularly complex situation, additional time may be required. The reference to 15 days is to cater to child care proceedings which, the Department understands, are scheduled for the same day of each week.

Head 15 Amendment of section 16 of Principal Act

Provide along the following lines:

Section 16 of the Principal Act is amended by-

(1) The insertion of ", an interim care order" after "care order" in each place that "care order" occurs in that section.

(2) Section 16 is further amended by the insertion of the following subsection:

> "Without prejudice to the provisions of Part II, IV and VI, where the Child and Family Agency takes a child into its care because it appears that he or she is lost, or that a parent having custody of the child is missing, or that the child has been deserted or abandoned, the Agency shall endeavour to reunite him or her with that parent where it appears that his or her welfare requires it."

Explanatory note:

Subhead [1] is included for the purpose of inserting reference to an interim care order into section 16 of the Principal Act.

Subhead [2] largely replicates the text of section 4(4) of the Principal Act, the difference being that the reference to 'best interests' has been removed and substituted with text that is intended to be aligned with the text of section 4(3) of the Principal Act. As the policy intent is to move towards informed parental consent to a voluntary care arrangement, it would appear that children in the circumstances described in section 4(4) will no longer be able to be brought into care under section (4). On this basis, the Department is proposing to remove this provision from section (4) and to relocate it in section 16.

Head 16 Provision of general information by Agency

Provide along the following lines:

The Principal Act is amended by the insertion of the following section after section 16:

(1) The Child and Family Agency shall prepare and publish general information in relation to its role and responsibilities with regard to child care proceedings under the Principal Act.

(2) Information under subhead [1] shall include general information in relation to-

   (a) the various types of orders which the Agency may apply for or which may be granted by the court under the Principal Act,

   (b) the responsibilities of the Agency towards children who have been placed in its care following the granting of an order,

   (c) the process the Agency will use to seek consent for an order, or for the extension of an order,

   (d) the process the Agency will use to review the operation of an order.

(3) When the Agency is making an application in respect of a child under this Act, it shall ensure that the parents of the child, or a person acting in *loco parentis*, is provided with a copy of the information referred to in subhead [1].

Explanatory note:

The purpose of this amendment is to place a requirement on the Agency to prepare general information in relation to its role and responsibilities with regard to child care proceedings under the Principal Act. The intended audience for such information is primarily parents or persons acting in *loco parentis*.

Head 17 Amendment to section 17 of Principal Act

Provide along the following lines:

Section 17 of the Principal Act is amended as follows:

(1) In section 17(1)(a) by the insertion of ‘or is under consideration by the Agency’ after ‘(whether or not an emergency care order is in force),’.

(2) In section 17(1)(b) by the substitution of the following text for the existing text:

> (b) there is reasonable cause to believe that any of the circumstances mentioned at paragraph (a), (b) or (c) of section 18(1) exists or has existed with respect to the child and that it is necessary for the protection of the child’s health or welfare that he or she be placed or maintained in the care of the Agency pending-
>
> > (i) the conclusion of the Agency’s consideration of whether to apply for a care order, or
> >
> > (ii) the determination of the application for the care order,
>
> the court may make an order to be known and in this Act referred to as an “interim care order”.

(3) In section 17(2) (b) by substituting ‘which shall not exceed 12 months.’ for ‘exceeding twenty-nine days, and an extension or extensions of any such period may be granted (with the consent, where an extension is to exceed twenty-nine days, of the persons specified in paragraph (b)) on the application of any of the parties if the justice is satisfied that grounds for the making of an interim care order continue to exist with respect to the child.’

(4) By the insertion of the following subsections after subsection [2]:

“2A Following an application from any of the parties for a renewal of the interim care order, and where the Court is satisfied that -

> (a) an application under section 18 for a care order in respect of the child has been or is about to be made or is under consideration by the Agency, and
>
> (b) grounds for the making of an interim care order continue to exist with respect to the child,

the court may grant an extension for a period not exceeding twenty-nine days, or where the Child and Family Agency and the parent having custody of the child or person acting *in loco parentis* consent, for a period which shall not exceed 12 months.

2B Notwithstanding subsection (2A), where the court is satisfied that –

(a) an application under section 18 for a care order in respect of the child has been or is about to be made or is under consideration by the Agency, and

(b) grounds for the making of an interim care order continue to exist with respect to the child,

it may, upon its own motion or upon the application of the Agency, grant an extension of up to 90 days if any assessment into the welfare of the child has commenced or is due to commence, and the court is satisfied that it would be unreasonable to expect such an assessment to be concluded within twenty-nine days.

2C For the purposes of subsection [2B], an assessment includes:

(a) an assessment by the Child and Family Agency on whether a child who is the subject of an interim care order has been harmed, is being harmed, or is at risk of being harmed;

(b) a report that is being prepared on any question affecting the welfare of the child;

(c) a report that is being prepared by the guardian *ad litem* appointed for the child;

(d) a report that is being procured under section 27 or section 35F(2) of this Act.

2D Where a child has been under an interim care order for a period which exceeds twelve months, and the Agency or any of the parties to the proceedings makes an application for a renewal of the interim care order, the Agency shall be required to furnish to the court a report that informs the court of the progress made in relation to the application for a care order under section 18, and the court shall have regard to this report before deciding whether to grant such an application.”

(5) By the insertion of the following subsection after subsection [4]

“Where, on an application for an interim care order, or an extension thereof, the court is satisfied that-

(a) it is not necessary or appropriate that such an interim care order or an extension to an interim care order be made, and

(b) it is desirable that the child be visited periodically by or on behalf of the Child and Family Agency

the court may, on its own motion, make a supervision order under section 19."

Explanatory note:

Subhead [1] inserts text for the purpose of providing that an interim care order may be granted where the Agency is in the process of considering whether it would be appropriate to apply for a care order for the child.

Subhead [2] amends subsection 1(b) as it would appear that this subsection should reflect the amendments proposed to subsection 1(a), that is, that the Agency may seek an interim care order while the decision whether to apply for a full care order is under consideration.

Subhead [3] amends section 17(2) for the purpose of providing that an interim care order may be granted, with consent, for a period which shall not exceed 12 months.

Subhead [4] proposes to insert a number of subsections after subsection 2 which relate to applications for the renewal or extension to an interim care order. It includes a provision to permit the court to extend an interim care order up to 90 days where an assessment into the welfare of the child has commenced, or is about to commence, and it would be unreasonable for such an assessment to be concluded in 29 days. It also provides that where a child has been under an interim care order for over a year and an application is made for the renewal of the order, the Agency will be required to report on its progress in relation to the application for a care order under section 18.

Subhead [5] provides that following an application for an interim care order or an extension to a care order, the court may, on its own motion, make a supervision order subject to the criteria set out.

Head 18 Amendment to section 18 of Principal Act

Provide along the following lines:

Section 18 of the Principal Act is amended as follows:

(1) By the substitution of the following text for the text of subsection (1)(a):

> "the child has been, is being, or is likely to be assaulted, ill-treated, neglected or sexually abused, or".

(2) By the substitution of the following text for subsection (2)

> "A care order shall commit the child to the care of the Child and Family Agency for so long as he or she remains a child or for such shorter period as the court may determine, on its own motion, or on the application of the Agency."

(3) By the insertion of the following subsection after subsection 2:

> "(2)(A) Where the court has made a care order in respect of a child that is due to expire before that child has reached the age of 18, it may, of its own motion or on the application of any person, extend the operation of that order if the court is satisfied that grounds for the making of a care order continue to exist with respect to the child."

(4) By the insertion of the following subsection after subsection 2:

> "(2)(B) Where the court has granted a care order, or an extension to a care order, for a different period than that applied for by the Child and Family Agency, the court shall set out the reasons for this decision in writing."

(5) By the insertion of ', and section 8 of the Child and Family Agency Act 2013' after '(subject to the provisions of this Act' in subsection 3(b).

Explanatory note:

Subhead [1] amends section 18(1)(a) for the purpose of providing that the court being satisfied that a child is likely to be assaulted, ill-treated, neglected or sexually abused is a ground for the care order.

Subhead [2] provides that the court can make a care order which lasts until the child has reached the age of 18, or it may make a care order for a shorter period of time either upon its own motion, or on the application of the Child and Family Agency.

Subhead [3] provides that where a shorter care order is due to expire before the child is 18, the court may of its own motion or on the application of any person, extend the order if the court is satisfied that grounds for the making of a care order continue to exist.

Subhead [4] provides that the court will be required to set out the reasons for its decision in writing when it decides to grants a care order or an extension to a care order for a different period to the period which was applied for.

Subhead [5] inserts a reference to section 8 of the Act of 2013.

Head 19 Amendment of section 19 of Principal Act

Provide along the following lines:

Section 19 of the Principal Act is amended as follows:

(1) By the substitution of the following text for the text of section 19(1):

'Where the court is satisfied that—

(i) there are reasonable grounds for believing that—

(a) the child has been, is being, or is likely to be, assaulted, ill-treated, neglected or sexually abused, or

(b) the child's health, development or welfare has been, is being, or is likely to be avoidably impaired or neglected,

(ii) the child requires care or protection which he or she is unlikely to receive unless the court makes an order under this section, and

(iii) it is desirable that the child be visited periodically by or on behalf of the Child and Family Agency,

it may of its own motion or on the application of the Child and Family Agency, make an order (in this Act referred to as a "*supervision order*") in respect of the child.'

(2) By the insertion of the following subsection:

'For the avoidance of doubt and subject to subsection (1), following an application from the Agency, the court may make a supervision order on the expiration of-

(i) an emergency care order made under section 13,

(ii) an interim care order made under section 17,

(iii) a care order made under section 18.'

(3) By the substitution of the following text for the text of section 19(2):

'A supervision order shall authorise the Child and Family Agency, on such periodic occasions as the Agency may consider necessary, to:

(a) visit the child at the place where he or she is residing, his or her school, or in a health care setting or another place in order to satisfy itself as to the health, development and welfare of the child;

(b) ascertain the views of the child without the presence of any parent or person acting in *loco parentis*;

(c) consult with any person whom it reasonably believes may be in a position to assist the Agency and,

(d) give any necessary advice or make recommendations as to the care of the child to the child's parents or to a person acting in *loco parentis.*'

(4) By the substitution of the following text for the text of section (4)

'Where a court makes a supervision order in respect of a child, it may, on the application of the Child and Family Agency, either at the time of the making of the order or at any time during the currency of the order, give such directions as it sees fit as to the care of the child, which may require the parents of the child or a person acting *in loco parentis* to:

(a) cause the child to attend for medical or psychiatric examination, treatment or assessment at a hospital, clinic or other place specified by the court;

(b) ensure the child is adequately cared for on a day to day basis, which may include directions in relation to the provision of adequate food, warmth, clothing, hygiene and supervision;

(c) cause the child to attend a recognised school on each school day subject to section 17(2) of the Education Welfare Act 2000;

(d) carry out such further actions, as the court may direct, where it is satisfied having regard to the circumstances of the child that it is necessary and in the best interests of the child to do so.'

(5) By the insertion of the following subsection:

'Where the Agency is visiting a child in respect of whom a supervision order has been made, it shall consider during the course of such a visit –

(a) whether it is necessary to apply to the court for an interim care order, a care order, or a supervision order in respect of the child pursuant to its obligations under section 16 of the Principal Act, or

(b) whether it would be appropriate to make an application to the court for the supervision order to be discharged.'

Explanatory Note:

Subhead [1] replaces the text of the existing section 19(1) and sets out the grounds for the making of a supervision order.

Subhead [2] is intended to clarify that a supervision order may be made on the expiry of the orders listed.

Subhead [3] provides that following the making of a supervision order, the Agency has the authority to meet the child in a variety of settings, and that they may do so without the presence of the parent or person acting *in loco parentis*. The Agency may also consult with any person whom it reasonably believes may be in a position to assist it, and it may give advice or make recommendations as to the care of the child to the child's parents or to a person acting *in loco parentis*.

Subhead [4] provides that the court may give directions in relation to the matters listed in paragraphs (a) to (d).

Subhead [5] places an obligation on the Agency to consider, during the lifetime of a supervision order, whether the threshold for another type of order has been reached or whether it would be appropriate to apply to have the order discharged.

Head 20 Amendment to section 20 of Principal Act

Provide along the following lines:

Section 20 of the Principal Act is amended as follows:

(1) By the insertion of the following subsection after subsection 1:

1A 'Where the court makes a direction under subsection (1) it shall -

(a) give the reason for such a direction in writing, and

(b) specify the documents relating to the proceedings which are to be provided to the Child and Family Agency.'

(2) By the deletion of section 20 (5).

Explanatory note:

Section 20 of the Principal Act provides that a court hearing proceedings listed in paragraphs (a) to (d) may adjourn such proceedings and direct the Agency to undertake an investigation of the circumstances of the child who is the subject of the proceedings.

Subhead [1] proposes to insert a subsection to require the court to provide a rationale in relation to a request to investigate a child's circumstances and to ensure that the Agency is provided with all the relevant documentation to undertake this task. This amendment is necessary as in some cases, the Agency has not had any prior engagement with this cohort of children, and it has not been clear to the Agency why the court is requiring an investigation into a child's circumstances.

Subhead [2] proposes to delete section 20(5) as its retention may no longer be necessary.

Head 21 Amendment of Section 25 of Principal Act

Provide along the following lines:

Section 25(1) of the Principal Act is amended as follows:

(a) by the insertion of ‘that it is in the best interests of the child to do so’ after ‘where it is satisfied’

(b) by deleting ‘wishes’ and substituting ‘views’

(c) by deleting ‘and the circumstances of the case that it is necessary in the interests of the child and in the interests of justice to do so’.

Explanatory note

The intent behind the proposed amendments to section 25(1) is to lower the threshold by which a child may be made a party to proceedings. By providing that the court may join a child as a party to the proceedings where it is satisfied that it is in the best interests of the child to do so, (while having regard to the age, understanding and views of the child) it is intended to facilitate more children be joined as parties.

Related to this Head, the Child Care (Amendment) Act 2022, when fully commenced, will repeal section 26 of the Principal Act. Currently, under section 26(4), the order appointing a guardian *ad litem* for a child ceases to have effect once a child becomes a party to the proceedings. This will no longer be the case when the Child Care (Amendment) Act 2022 is fully commenced. The Child Care (Amendment) Act 2022 further provides, in section 35H(4), which is also uncommenced, that the court shall determine when the order appointing the guardian *ad litem* ceases to have effect.

Head 22 Assistance to court

Provide along the following lines:

The Principal Act is amended by the insertion of the following section, after section 28:

"28A Assistance to court

(1) Where in any proceedings before a court under this Act in relation to the care and protection of a child, including proceedings before the High Court under Part IVA in relation to special care, it appears to the Court that-

  (a) the Health Service Executive, or

  (b) a relevant body under Head 10

may be of assistance to it in dealing with the case, the Court may request the Executive or the relevant body to be represented in the proceedings.

(2) A request under subhead (1) shall be made at least one week before the date of the resumption of the proceedings concerned.

Explanatory note:

This Head has been included as the Department has accepted a recommendation from stakeholders that the court should have the ability to specifically invite the Health Service Executive to attend proceedings in order to discuss the provision of services for the child who either is in care or is about to be taken into care. Stakeholders have noted that there is a similar provision in section 76B of the Children Act 2001 where the Agency may be requested to be represented in the proceedings where it appears to the court that the Agency may be of assistance to it in dealing with the case.

The Department has extended this proposal to include bodies to whom the duty to cooperate in Head 10 applies.

It is intended that this section could be utilised, for example, in cases where a child who is the subject of child care proceedings has complex health needs in relation to a physical or mental illness or disability.

Head 23 Admissibility of hearsay evidence

Placeholder

The Department’s current intention is to bring a separate Head to Government for approval in relation to this issue. It is understood that section 23 of the Children Act 1997 provides for the admissibility of hearsay evidence in civil proceedings concerning the welfare of a child. However, the Department acknowledges commentary and recommendations from stakeholders in relation to including a presumption in favour of the admissibility of statements made by children, subject to safeguards, in this Bill. This matter is under active consideration. While this Head is being developed separately, and will be brought to Government for approval, it is the Department’s intention that it will be included in this Bill.

Head 24 Amendment of section 32 of Principal Act

Provide along the following lines:

Section 32 of the Principal Act is amended by the substitution of the following text for the current text of section 32:

> "In any application for an order under Part III, IV or VI, the court, or for a special care order or an interim special care order under Part IVA (as amended by the Child Care (Amendment) Act 2011), the High Court, unless the contrary is proved, shall presume that the person to whom the application relates is a child."

Explanatory note:

The purpose of this amendment is to provide for an explicit presumption of childhood in applications under the relevant section of the Principal Act.

In a letter of formal notice to the Department of Justice, the EU Commission contended that by not providing for an explicit presumption of childhood to victims who require care and support measures outside of the context of a criminal trial, Ireland has failed to fulfil its obligations under Article 18(3) of Directive 2011/93.

The obligation imposed by Art.18(3) of the Directive is on Member States *"to ensure"* that a person is presumed to be a child in certain circumstances. While the wording of section 32 of the Principal Act implies that a court may presume that a relevant person is a child until the contrary is proven, it is not required to do so.

Given that in other legislation, for example section 256 of the Children Act 2001, the State has deemed it necessary to make such a presumption explicit, it would appear that the surest way of addressing the Commission's concerns is to amend section 32 to make the presumption of child status explicit.

Head 25 Amendment of section 43A of Principal Act

Provide along the following lines:

Section 43A of the Principal Act is amended as follows:

(1) In subsection (1) by the deletion of “under section 4 or”.

(2) In subsection (2)(a) by the substitution of “not less than three years” for “not less than five years.”

(3) In subsection (2) by the deletion of (2)(d)(i), that is *“if the child is in its care under section 4, obtained the consent to the granting of the order of a parent having custody of the child at the relevant time or of a person (other than the foster parent or relative) acting in loco parentis to the child, or”*.

(4) In subsection (13) by the deletion of “(a) in relation to a child in care under section 4, immediately before the children was taken into care under that section, and”.

Explanatory note:

The purpose of the proposed amendments in **subheads [1], [3] and [4]** are to remove each reference to section 4 of the Principal Act from section 43A. It is the Department’s understanding that section 43A applies to a child in the care of the Agency under section 4 or section 18 of the Principal Act. The Department is of the view that, if a child is in voluntary care under section 4, giving a foster carer like control over the child as if they were its parent under section 43A(5), does not align with the role of the Agency under section 4(3)(b), which is to have regard to the wishes of the parent when a child is under a voluntary care arrangement.

The Department is of the view that this section should only apply where a child is under a full care order. This policy position is intended to align with the intent behind the amendments to section 4, which provide that (i) voluntary care orders should be kept under review by the Agency, and (ii) should only be long term in exceptional circumstances.

In addition, **subhead [2]** proposes to reduce the amount of time which a foster carer is required to have been taking care of the child, before an application for enhanced rights in respect of the child, may be made to the court**.**

Head 26 Amendment of section 43B of Principal Act

Provide along the following lines:

Section 43B of the Principal Act is amended by the deletion of subsection 2(a).

Explanatory note:

If the amendments to section 43A are made, then it would appear that, for consistency, the deletion of section 43B(2)(a) is required.

Head 27 Amendment of section 47 of Principal Act

Provide along the following lines:

Section 47 of the Principal Act is amended by the insertion of the following subsection:

> "In deciding whether or not to give directions or make an order under subsection (1) the court shall have regard to the wishes of the parties before the court, where ascertainable, but shall not be bound by the said wishes."

Explanatory Note:

The proposed amendment is intended to align the language of this section with the provisions of section 27(2).

Head 28 Amendment to Section 58A of Principal Act

Provide along the following lines:

The Principal Act is amended in section 58A as follows.

(1) By the insertion of a definition of a childminding service as follows:

'"childminding service" means an early years service, which may include an overnight early years service, offered by a person who single-handedly takes care of children, which may include the person's own children, in the person's home for a total of more than 2 hours per day, except where the exemption provided in section 58L of the Act apply;'

(2) By the insertion of a definition of a combined pre-school and school age service as follows:

'"combined pre-school and school age service" means a service that includes both a pre-school and a school-age service operated from the same premises and by the same registered provider;'

(3) By the substitution of the following text for the text of the current definition of an early years service:

'"early years service" means a service providing —

(a) a pre-school service,

(b) a school age service; or

(c) a combined pre-school and school age service;'

(4) By the insertion of a definition for premises as follows:

'"premises" means the building, or part thereof, buildings, and / or any outside space, from which a prescribed early years service operates;'

Explanatory note:

Subhead [1] provides a specific definition of a childminding service in recognition of the extension of regulation to paid, non-relative childminders through the removal of the exemption under 58L and that the provisions of Part VIIA will apply to childminders.

Subheads [2] and **[3]** provide for the inclusion of a specific definition for a 'combined pre-school and school age service' i.e. a single service that caters for both pre-school and school age children. The absence of a definition of a combined service in the legislation has led to a situation where the Agency must deal with different parts of the service separately e.g. a service may be registered on the Early Years register for its pre-school service and the School Age register for its school age service; enforcement action taken by the Agency against the pre-school element of a service, including removal from the register, may not necessarily be taken against the school age element of the service.

A definition of premises is inserted through **Subhead [4]** to ensure that the term, where used, includes any prescribed service that operates wholly outdoors and that it also includes the outdoor spaces of services that operate from a building or buildings.

Head 29 Amendment to Section 58B of Principal Act

Provide along the following lines:

The Principal Act is amended in section 58B as follows:

(1) By the substitution of the following subsection for subsection (1):

> "The Minister shall, after consultation with the Minister for Education and the Minister for Housing, Local Government and Heritage, make regulations for the purpose of securing the health, safety and welfare and promoting the development of children attending early years services."

(2) In subsection (2)(e) by the deletion of 'and'.

(3) By the substitution of the following subsection for subsection (2)(f):

> "prescribe any additional particulars and details required in relation to the register, and".

(4) By the insertion of the following subsection (2)(g) after the existing subsection (2)(f):

> "(g) prescribe for the assessment by the Agency of the suitability of a person to be a registered provider of, and each other person who will participate in the management of, an early years service."

(5) By the insertion of the following subsection (4) after the existing subsection (3):

> "(4) Regulations under this Act may contain any transitional and other supplementary and incidental provisions that appear to the Minister to be necessary or expedient for the purposes of the regulations."

Explanatory Note:

Subhead [1] is amended to reflect transfer of functions in relation to the Minister for Education and the Minister for Housing, Local Government and Heritage.

Subheads [2], [3] and **[4]** include a new provision for the making of 'fit person' regulations by the Minister. Under the current legislation, a registered provider must submit a vetting disclosure to Tusla in order to be registered and previous convictions are the sole consideration available to Tusla in determining whether a person is a fit or competent person to operate an ELC or SAC service. Tusla has advised that it cannot refuse a registration even if there is a history of serious ongoing non-compliance with a registered provider. There have also been cases in which Tusla reports that it has received applications from persons it deems unsuitable but it had no grounds to refuse the applications. Additional criteria for Tusla to assess the suitability of a person to become a registered provider, or of any person involved in the management of a service (particularly the 'person in charge' as defined in the Child Care Act 1991 (Early Years Services) Regulations 2016), would allow it to make a more comprehensive assessment on the applicant and bring its powers into line with other social care regulators e.g. HIQA in relation to regulation of designated centres for older people.

Subhead [5] provides for the making of regulations with transitional arrangement built into them. This will allow, in particular, for the phased introduction of childminder specific regulations and for a transitional period within which childminders may register with the Agency.

Head 30 Amendment to Section 58C of Principal Act

Provide along the following lines:

The Principal Act is amended in section 58C as follows:

(1) By the substitution of the following subsection for subsection (1):

> “The Agency shall establish and maintain a register to be known as the register of prescribed early years services (the ‘ register ’), which shall be a single register comprising prescribed pre-school services, school-age services, and combined pre-school and school-age services.”

Explanatory Note:

The section is amended to clarify that the ‘register’ should be a single register for all early years services. The Agency argues that, as currently drafted, the legislation requires two separate registers (one for pre-school services and one for school age services). This has led to a situation where combined early years services providing both pre-school and school age services from the same premises and operated by the same registered provider have their pre-school and school age services included in two separate registers.

The inclusion of a definition of a ‘combined service’ through an amendment to 58A also seeks to remedy this issue of interpretation.

Head 31 Amendment to Section 58D of Principal Act

Provide along the following lines:

The Principal Act is amended in section 58D as follows:

(1) By the insertion of the following new subsections (6A) and (6B) after the existing subsection (6):

“(6A) The Agency may suspend the registration of a registered provider where it has reason to believe that the continued provision of the service poses grave and / or immediate risk to the health, safety and wellbeing of children in the service.

(6B) Where the Agency has reason to believe that the registered provider is continuing to operate the service while his or her registration is suspended, it may apply to the District Court under [Head 36] for a closure order.”

(2) By the insertion of the following subsection (8B) after the existing subsection (8A):

“(8B) Where an immediate action order or an improvement order is issued by the Court under Section (58J), and the registered provider fails to comply with such order, the Agency may take such non-compliance into account in any decision to suspend a registration, attach a condition to a registration, refuse a registration, or remove a registered provider from the register.”

(3) In subsection (9) by the deletion of ‘shall’ and its substitution with ‘may’.

(4) In subsection (9)(b) by the deletion of ‘or’ at the end of the subsection.

(5) In subsection (9)(c) by the deletion of ‘.’ at the end of the subsection and its substitution with ‘,’.

(6) In subsection (9) by the insertion of the following new subsections (9)(d) and (9)(e) after the existing subsection (9)(c):

“(d) who does not meet the suitability criteria to be a registered provider as prescribed in regulation, or

(e) where any person involved in the management of the prescribed service does not meet the suitability criteria as prescribed in regulation."

(7) By the insertion of the following new subsection (10A) after the existing subsection (10):

"(10A) Where a registered provider fails, in accordance with subsection (10), to make an application in accordance with subsection (2), the Agency may remove the registered provider from the register following the expiry of the period of registration concerned."

(8) By the insertion of the following new subsection (11A) after the existing subsection (11):

"(11A) A notification under subsection (11) in relation to subsection (10A) shall be issued by the Agency within 5 working days following the final day for submission of an application under subsection (2)."

(9) By the substitution of the following subsection for subsection (13):

"(13) A person who has been notified of a proposal under subsection (11) may, within 21 days of the receipt of the notification, make representations in writing to the Agency and the Agency shall —

(a) before deciding the matter, take into consideration any representations duly made to it by that person, and

(b) notify the person in writing of its decision as soon as possible and no later than 21 days following the receipt of any representations made to it and of the reasons for it."

(10) By the insertion of the following new subsections (13A), (13B), (13C), (13D) and (13E) after the existing subsection (13):

"(13A) Where the Agency attaches a condition to the registration of a registered provider or removes a registered provider from the register in accordance with subsection (8), (8A), (9) or (10A), the Agency shall publish a notice advising the public of

the registration condition or removal from the register.

(13B) A notice published in accordance with subsection (13A) shall be published at the same time as a notification under subsection (13)(b) is issued.

(13C) A notification under subsection (13)(b) relating to a decision by the Agency to remove a registered provider from the register, shall include notice of a date on which the registered provider must cease operation of the prescribed service.

(13D) Where the Agency attaches a condition to the registration of a registered provider or removes a registered provider from the register in accordance with subsection (8), (8A), (9), or (10A), the registered provider shall bring the decision of the Agency to the attention of all of those affected, including parents and guardians of children who attend the service and staff employed in the service.

(13E) Where the registered provider fails, under subsection 13D, to notify all of those affected by the attachment of a condition or a removal from the register, the Agency may request, and the registered provider shall provide, the contact details of parents or guardians who use the service and the Agency may make contact with those individuals in order to advise them of the action taken by the Agency and the reasons for it."

(11) By the insertion of the following new subsections (15), (16), (17), (18), (19), (20) and (21) after the existing subsection (14):

"(15) A suspension under subsection (6A) will apply for a period of no more than six weeks from the date of notification of the suspension at which point the Agency shall reinstate the registered provider to the register or, if the concerns of the Agency regarding the provision of the service have not been addressed to the satisfaction of the Agency, extend the period of suspension for a further period not exceeding six weeks.

(16) Where a suspension under subsection (6A) is extended for a second six week period, following the expiry of the second six week period the Agency shall reinstate the

registered provider to the register or remove the service from the register in line with subsections (11), (12) and (13).

(17) In the event of a removal of a registered provider from the register under subsection (16), the suspension of the registration shall continue until the removal process under subsections (11), (12) and (13) is complete.

(18) A registered provider who has had their registration suspended under subsection (6A) may appeal the decision to the District Court under section 58F.

(19) Where the Agency suspends the registration of a registered provider or extends the suspension of a registered provider, the Agency shall publish a notice advising the public of the suspension or the extension of the suspension from the register.

(20) Where the Agency suspends the registration of a registered provider or extends the suspension of a registered provider, the registered provider shall bring the decision of the Agency to the attention of all of those affected, including parents and guardians of children who attend the service and staff employed in the service.

(21) Where the registered provider fails, under subsection (19), to notify all of those affected, of a suspension from the register, the Agency may request, and the registered provider shall provide, the contact details of parents or guardians who use the service and the Agency may make contact with those individuals in order to advise them of the action taken by the Agency and the reasons for it.

(22) Nothing in this Part shall prevent a registered provider voluntarily arranging a transfer of undertakings to a new service provider, and that service provider applying to the Agency for registration on the basis of continuity of service."

Explanatory Note:

Subhead [1] provides for the suspension of a registered provider from the register where the Agency has significant concerns about the provision of an early years service and the potential for harm to children attending. This new measure is being introduced to allow the Agency to take swift action where it has a significant concern so that the concern can be addressed without exposing the children to further risk and that the service could return to operation once the risk is addressed. It also provides for the application by the Agency for a closure order for the service through the courts, where the Agency has reason to believe that the service continues to operate while suspended.

Subhead [2] provides that the Agency may take compliance with improvement orders and immediate action notices into account when making a decision to suspend, remove or attach a condition to a registration. This is to ensure that there is a link between such orders and other enforcement actions.

Subhead [3] changes the existing provision from a mandatory to a discretionary provision. In effect, it means that the Agency may refuse to register or remove a provider from the register under the circumstances listed. Making this a discretionary power will provide the Agency with more flexibility to apply less stringent measures in order to bring services back into compliance, where appropriate. It also removes the apparent incongruity between 58D (9)(a) and 58K(2).

Subheads [4], [5] and [6] provide for the refusal of registration to any person that does not meet the suitability requirements or 'fit person' test which requirements will be set out in regulation. This will allow the Agency to refuse registration to an applicant or remove a provider from the register where it considers the person is not a suitable or 'fit person'. The provision also extends to assessment of the suitability of any person involved in the management of the service.

Subhead [7] provides for the removal of a registered provider from the register at the expiration of their period of registration, in circumstances where the registered provider fails to submit an application for renewal of registration. This provision is included to address a perceived gap in the current legislation where there is no formal process of removing a registered provider from the register if their period of registration expires without being renewed. In such circumstances, the registered provider will be afforded the right to make representations to the Agency or appeal the decision through the Courts in line with the existing process for removals.

Subhead [8] is included to ensure that, a notification from the Agency to a registered provider to advise them that the Agency proposes to remove them from the register at the expiry of their registration period will issue immediately following the deadline for making an application to renew their registration. This will ensure that the registered provider will have sufficient time to make any representations or to appeal to the Court, in line with the provisions of subsections (12) and (13).

The proposed alternative text in **Subhead [9]** seeks to provide clarity on timelines. Specifically, it provides that the Agency may communicate its decision regarding the registration status of the service immediately following its consideration of any representations received and once the prescribed period for submitting representations has expired.

Subhead [10] provides for the insertion of a number of new subsections relating to provision of information to parents / guardians and the public in relation to enforcement action taken against a service. These proposed changes respond to concerns raised about the inability of the Agency to share information with parents / guardians who use the service or prospective service users where the Agency has significant concerns about the quality of the service provision. The revised provisions

will allow the Agency to publish notices in relation to removals from the register or attachment of conditions to registration. It also requires the registered provider to share this information with affected parties i.e. parents / guardians and staff of the service. It also provides that the Agency may obtain the contact details of parents / guardians who use the service and contact them directly in instances where the registered provider has failed in their duty to inform them. Finally, the subsection provides for a date of cessation of operations to be set out in a notice to the provider, where applicable.

Subhead [11] provides for the insertion of a number of new subsections relating to the suspension of a registered provider from the register. These subsections set out the timeframes for the suspension, the right of the registered provider to appeal the suspension, a provision for the publication of a notice regarding the suspension by the Agency and the requirement that the registered provider notify all of those affected (i.e. parents / guardians and staff) of the suspension. As with subsection (16), it provides that the Agency may obtain the contact details of parents / guardians who use the service and contact them directly in instances where the registered provider has failed in their duty to inform them.

Finally, the proposed new subsection (22) allows for a situation where a registered provider may voluntarily put in place interim management arrangements for the continuation of the service while their registration is suspended or following their removal from the register. This will involve the transfer of the registration to another provider (either on a temporary or a permanent basis) through the change in circumstances process set out in Regulations and will require the Agency to be satisfied that the issues that led to the suspension or removal from the register, will not persist under the new registered provider.

Head 32 **Transitional Arrangements for Registration of Childminders**

Provide along the following lines:

The Principal Act is amended by the insertion of the following section after section 58D:

“Transitional Arrangements for Registration of Childminders

(1) A transitional period of three years will apply to the registration of persons providing a childminding service, as defined under Section 58A, from the date of introduction of childminder specific regulations under Section 58B.

(2) During the transitional period referred to under Subsection (1), a person who operates a childminding service or intends to operate a childminding service, may make an application to the Agency in line with Section 58D.

(3) Following the conclusion of the transitional period, a person providing a childminding service, as defined under Section 58A, must be registered with the Agency in order to provide the prescribed service.

(4) The operation of a childminding service without registration, where the service was exempted from this Part prior to the amendment of this Part by the Child Care Amendment Act 2023, shall not be deemed to be an offence under this Part until the conclusion of the transitional period under subsection (1).

(5) A person who was registered with the Agency to provide a prescribed early years service which operated as a childminding service, before the amendment of this Part by the Child Care Amendment Act 2023, and who wishes to continue to operate a childminding service, may do so in line with the regulations on the basis of which the person was registered with the Agency at that time.

(6) Subsection (5) shall apply until the expiry of the transitional period; however, a person to whom subsection (5) applies may make an application to the Agency to register as a childminding service as set out in subsection (2).”

Explanatory Note:

This new section allows for a transitional period for registration of childminders under new childminder specific regulations. The phased approach to registration and regulation is in line with the policy approach set out in the National Action Plan for Childminding (NAPC). It means that while registration under the childminder specific regulations will open at the commencement of those regulations, childminders will not be required to register immediately but may do so over the period

of transition. A transitional period of three years is proposed as this aligns with the timelines for regulation in the NAPC.

It provides that it shall not be an offence to operate a childminding service without registration during the transitional period, if that service was previously exempted under 58L. This ensures that childminders may avail of the benefits of a transitional period and make the relevant preparations for registration while continuing to operate their service without fear of prosecution.

It acknowledges that there are a small number of childminders already registered under the current legislation, which is primarily aimed at centre based services. Those services are registered under either the Child Care Act 1991 (Early Years Services) Regulations 2016 (as a pre-school childminding service) or the Child Care Act 1991 (Early Years Services) (Registration of School Age Services) Regulations 2018 (as a school age childminding service). It is intended that those services be permitted to continue under their existing registration arrangements during the transitional period but that they may apply to register under the childminder specific regulations as and when they are ready to do so. This is important as some services may need to make changes to the operation of their service in order to meet the requirements set out in the new childminder specific regulations (e.g. lower numbers of children in the service).

Following the expiry of the transitional arrangements, such services will need to have either transferred to the new arrangements for childminders or, if they wish to remain registered under their existing arrangements, will operate and be classified as a single person operator of an early years service and not as a childminder.

The primary difference between a single person operator and a childminder is that a childminder provides a home for home setting for the children they care for with the children being given relatively free access to all or most parts of the home and as part of a family setting. The single person operator may also run their service from their home but there is usually controlled access to the spaces from which the service is run (i.e. other family members cannot freely access the space/s during the hours of service provision). Such single person operated services constitute a type of centre based provision. Different adult : child ratios, space requirements and other requirements will apply to both. The distinction will be made clear with the introduction of childminder specific regulations.

Head 33 Amendment to Section 58E of Principal Act

Provide along the following lines:

Section 58E of the Principal Act is repealed.

Explanatory Note:

All relevant early years services to which this section applied have been transferred to the Register and the initial three year period of registration has expired. There is no longer any distinction in law, as regards registration, between services that were previously notified to the HSE and those that registered for the first time under the Tusla EYI system.

Head 34 Amendment to Section 58F of Principal Act

Provide along the following lines:

Section 58F of the Principal Act is amended as follows:

(1) In subsection (1)(b) by the deletion of 'or' at the end of the subsection.

(2) In subsection (1)(c) by the deletion of '.' at the end of the subsection and its substitution with ',or'.

(3) In subsection (1) by the insertion of the following new subsection (1)(d) after the existing subsection (1)(c).

"(d) suspend the registration of a registered provider."

(4) By the insertion of the following new subsection (2A) after the existing subsection (2).

"(2A) The bringing of an appeal under subsection (1) in relation to a removal or suspension from the register shall not have the effect of preventing the removal or suspension until the appeal is disposed of, but the appellant may apply to the court to have a stay put on the removal or suspension until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that a stay be put on the removal or suspension of registration until the appeal is disposed of."

Explanatory Note:

Subheads [1], [2], and [3] provide for the inclusion of suspension of registration as grounds for appeal to the District Court. While Section 58D has been expanded to include removal from the register due to failure on the part of the registered provider to renew their registration at the end of the registration period, a specific provision for failed renewals is not included here as it is deemed to be already included under subsection (1)(b).

Subhead [4] clarifies the position regarding the registration status of a registered provider that submits an appeal to the District Court. The Agency has advised that the absence of a specific provision in relation to this has been problematic in the handling of removals. The new provision (2A) seeks to clarify that the submission of an appeal will not result in an automatic stay on the removal or suspension from the register but it provides the option for the Court to consider a request for a stay pending the hearing of the appeal.

Head 35 Amendment to Section 58J of Principal Act

Provide along the following lines:

Section 58J of the Principal Act is amended as follows:

(1) By the insertion of the following new subsection (2A) after the existing subsection (2):

"(2A) A warrant issued under subsection (2) may allow for:

(a) The authorised person to whom the warrant is issued to enter and inspect the premises on more than one occasion over a specified period, where such multiple entries are required in order to assess whether a service is operating without registration and to gather sufficient evidence to prove that this is the case.
(b) The seizure of evidence by the authorised person, including paper records, photographs, video recordings.
(c) The interviewing of any person on the premises who the Agency has reason to believe may be involved in the operation of a service on the premises for the purposes of ascertaining whether an early years service is operating without registration."

(2) By the insertion of the following new subsections (3B), (3C), (3D), (3E), (3F) and (3G) after the existing subsection (3A):

"(3B) An authorised person who enters any premises in accordance with subsection (1) and following an examination of the premises under subsection (3), is of the opinion that immediate action is required by the registered provider in order to address any issue which poses an immediate risk of harm to a child or children attending the service, may issue an immediate action notice.

(3C) A notice under (3B) shall set out:

(a) The specific action required to be taken in order to remedy the concern, and
(b) The timeline for meeting the requirements of the notice.

(3D) An authorised person who enters any premises in accordance with subsection (1) and following an examination of the premises under subsection (3), is of the opinion that action is required by the registered provider to make improvements to the service in order to address any issue of significant concern which may, over time, result in harm to or the risk of harm to a child or children attending the service, may issue an improvement notice.

(3E) A notice under (3D) shall set out:

(a) The specific action required to be taken in order to remedy the concern, and
(b) The timeline for meeting the requirements of the notice.

(3F) Where a registered provider fails to comply with a notice issued under (3B) or (3D) to the satisfaction of the authorised person or within the timeframe set out in the notice, the Agency may apply to the District Court for an order directing the registered provider to comply with the notice.

(3G) The Agency may publish a notice under (3B) or (3D) or an order under (3F), or direct the registered provider to bring a notice under (3B) or (3D) or an order under (3F) to the attention of affected persons, including parents or guardians of children who attend the service and staff employed in the service."

Explanatory Note:

Subhead [1] provides that a warrant issued under the previous subsection may be used for multiple entries of the premises and for the gathering of evidence to support the Agency in making an assessment as to whether an early years service is operating without registration. Under the current legislation, warrants are usually single-use to enter and inspect, there is no requirement for the person in charge to co-operate, and Tusla has no power to remove copies of records. The proposed new provisions will enhance the Agency's ability to gather evidence to build a case for prosecution and / or to seek a closure order through the Courts.

Subhead [2] provides for the issuing of immediate action notices and improvement notices by an authorised person during or following inspection of a service. The Agency already issues immediate action notices in cases where it identifies a significant issue during inspection which requires immediate remedy in order to remove any potential risk to a child or children attending the service (e.g. the absence of evidence of Garda vetting on file for a staff member). Placing this enforcement measure on a legislative basis strengthens the Agency's ability to enforce it.

Similarly, the provision for improvement notices where a significant risk or potential risk to children is identified at inspection, will allow the Agency to direct a service to take action where improvement is required to some aspect of the service provision or the premises in which the service is provided. Unlike immediate action notices, an improvement notice requires the service to address an issue of concern which, if left unaddressed, would lead to a risk to children. Such notices would not require immediate action but would be time bound.

This subhead also provides for the issuing of immediate action orders and improvement orders by the Courts in instances where the registered provider does not comply with the notice. Setting out the enforcement path in primary legislation, in a transparent way, will provide Tusla with the appropriate tools to address concerns in a more efficient manner.

Subhead (2) also allows the Agency to publish notices and orders and to direct the registered provider to bring notices and orders to the attention of those affected (e.g. parents or guardians and staff) where the Agency thinks it necessary. This allows the Agency some discretion to decide which notices are of sufficient concern to warrant being brought to the attention of the public or affected persons.

Head 36 Unregistered Services

Provide along the following lines:

The Principal Act is amended by the insertion of the following section after section 58J:

"Unregistered services

(1) Where the Agency has reason to believe that a prescribed early years service is operating without registration, it may apply to the District Court for a closure order to be served on the person operating the service.

(2) In conjunction with an application under subsection (1), the Agency may apply to the District Court for an order compelling the person operating a service without registration to provide the contact details of all parents or guardians using the service so that the Agency may communicate directly with those parents or guardians to advise them of the closure order and the reasons for it.

(3) In consideration of an application for a closure order under subsections (1) and (2), the Court shall consider the best interests of the children attending the service and the inability of the Agency to assess the health, safety and welfare of the children attending the service or the promotion by the service of the children's development in the absence of appropriate registration of the service.

(4) Where granted, such closure order may be served immediately on the person operating the service.

(5) Where a closure order is served on a person operating a service without registration, a notice advising the public of the closure order shall be published by the Agency."

Explanatory Note:

This new section is intended to rectify a current gap in the legislation whereby the Agency has no power to order an unregistered service to close. The additional provisions included in this new section will allow the Agency to seek a Court Order for the closure of an unregistered service and to compel the owner to provide it with the contact details of parents or guardians using the service. It also provides for the publication of a notice regarding the closure order and for the Agency to contact parents or guardians directly.

A provision has also been included to require the Courts, in consideration of the application for the Court Order, to take into account the best interests of the children attending the service. This provision is explicitly included as the Agency has noted that, based on experience to date in legal cases, greater weight tends to be given to the right to the provider to earn a living. The proposed provision is intended to act as a counterbalance to this.

Head 37 Disclosure of Information for Certain Purposes

Provide along the following lines

The Principal Act is amended by the insertion of the following section after Head 36:

"Disclosure of information for certain purposes

(1) The Agency may arrange for prescribed information held by it in relation to persons registered under this Part to be made available for the purpose of -

(a) providing information to parents or guardians or the general public on the quality of a prescribed service, or

(b) assisting parents or guardians in choosing an early years service.

(2) The information may be made available in such manner and to such persons as the Agency considers appropriate."

Explanatory Note:

This new section is inserted to provide a general provision in relation to the disclosure of information regarding the quality of a service or any enforcement action taken against a service to parents / guardians or the public. It is intended that this would include materials such as inspection reports (which are already published but without a legal basis), the proposed immediate action notices / orders and improvement notices / orders under Head 35, and notices or decisions regarding attachment of a condition of registration or a removal from the register.

Head 38 Amendment to Section 58K of Principal Act

Provide along the following lines:

Section 58K of the Principal Act is amended as follows:

(1) Subsection (1)(b) is amended by the deletion of ‘or’ at the end of the subsection.

(2) Subsection (1)(c) is amended by the insertion of ‘or’ at the end of the sentence.

(3) By the insertion of the following new subsection (1)(d) the existing subsection (1)(c).

“(d) refuses to comply with section 58D subsections (13E) or (21),”

Explanatory Note:

The amendments to Section 58K make it an offence for a registered provider to refuse to provide the Agency with the contact details of parents or guardians whose children attend the services, where the registered provider has already failed in its duty to advise parents and guardians of a removal from the register or suspension from the register.

Head 39 Amendment to Section 58L of Principal Act

Provide along the following lines:

Section 58L of the Principal Act is amended as follows:

(1) Subsections (b) and (c) are repealed.

Explanatory Note:

The exemptions relating to the childminders who are minding non-relative children, for pay, in the childminder's home are removed in line with National Action Plan for Childminding 2021-2028. This will facilitate the expansion of regulations to include all paid, non-relative care in the childminders home and will allow the Minister to introduce childminder specific regulations.

AMENDMENTS TO OTHER ACTS

Head 40 Amendment of Schedule 1 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012

Provide along the following lines:

Schedule 1 Part 1 (‘Relevant Work or Activities Relating to Children’) is amended as follows:

(1) By the substitution of the following subsection for subsection (1)(a):

“(a) an establishment which provides early years services within the meaning of Part VIIA of the Child Care Act 1991,”

(2) By the insertion of the following new subsections (16) and (17) after the existing subsection (15):

“(16) The provision of a childminding service as defined in Part VIIA of the Child Care Act 1991.

(17) Being an adult who is normally resident in a premises from which a childminding service, as defined in Part VIIA of the Child Care Act 1991, is operated.”

Explanatory Note

Subhead [1] is expanded to include all ‘early years’ services including both pre-school services and school age services.

Subhead [2] includes provision for the vetting of childminders and other adults in the childminder’s household. This will be an important element of the assessment of a person’s suitability to act as a childminder for the purposes of registration with Tusla under the Child Care Act 1991. A similar process is already in place in relation to foster carers, where the applicant and any member of their household over the age of 16 is Garda vetted as part of the process of assessing their application.

The National Action Plan for Childminding (NAPC) commits to extending regulation to all paid, non-relative, childminders. The NAPC also commits to developing childminder specific regulations, including requirements for Tusla registered childminders to be Garda vetted and for any adult living in the childminder’s home also to be vetted. The proposal reflects the significance of the risk where household members of a childminder are not Garda vetted. Other people living in the childminder’s home have regular access to the children who are cared for by the childminder, and may also be involved in the children’s care on a daily basis.

Head 41 Amendment of section 7 of the Child Care (Amendment) Act 2022

Provide along the following lines:

Section 35D(3), as yet uncommenced, of the Principal Act, as inserted by Section 7 of the Child Care (Amendment) Act 2022, is amended by the insertion of the following paragraph after 35D(3)(d):

> "whether, in circumstances where the child has been joined as a party to the proceedings, the court has appointed a solicitor to represent the child under section 25(2)."

Explanatory note:

The Child Care (Amendment) Act 2022, which provides for the reform of the system of guardian *ad litem* appointments, was enacted in July 2022, and is being commenced on a phased basis.

Section 35D of the Act, which is not yet commenced, sets out the circumstances in which legal advice and legal representation will be made available to a guardian *ad litem* appointed for a child in proceedings under the 1991 Act. Section 35(D)(3) sets out a list of factors which the Minister must have regard to when determining whether to arrange for the provision of legal representation to a guardian *ad litem*.

This Head proposes to insert an additional factor for the Minister to consider into subsection (3), and that is whether the court has appointed a solicitor to a child who has been made a party to the proceedings.

The Department is concerned that child care proceedings have become adversarial in nature, and is of the view that if legal representation has been appointed for a child, then separate legal representation for the guardian *ad litem* may not be necessary.

Head 42 Amendment to section 47 of the Child and Family Agency Act

Provide along the following lines:

Section 47 of the Child and Family Agency Act 2013 is amended as follows:

(1) In section 47 by the insertion of the following subsection after subsection (6):

“Notwithstanding the provisions of Head 5 of the Child Care (Amendment) Bill 2023 neither the Minister nor the Minister for Education shall give a direction under this Act as respects—

(a) any function of the Agency relating to the provision of care or protection or family support services to any particular person,

(b) any function of the Agency relating to a decision concerning—

(i) whether or not a particular person is eligible for a particular service (including the payment of a grant or allowance), or

(ii) the extent to which and the manner in which a person is eligible for any such service,

(c) any function of the Agency that has been specified in an enactment to be a function of the chief executive officer relating to functions referred to in paragraphs (a) and (b).”

Explanatory Note:

The Department is aware that the legislation governing the HSE and its relationship with the Department of Health contains a specific provision, which prevents the Minister for Health giving directions in individual cases. It is understood that this restriction on giving directions in relation to particular persons is provided for in section 10B of the Health Act 2004 (as inserted by section 6 of Health Service Executive (Governance) Act 2013).

In contrast, the provisions relating to the relationship between the Agency and the Ministers for Children and Education are less restricted, with section 47 of the Child and Family Agency Act 2013 providing for directions of the Minister, in fairly general terms.

While section 47(5) of the Act of 2013 provides that “*a direction given by the Minister under subsection (1) shall not interfere with the exercise of professional judgment in a particular case in the performance by the Agency of its functions,*” the Department is of the view that section 47 of the Act of 2013 should be amended as per **subhead [2]** to clarify that directions from the Minister for Children or the Minister for Education to the Agency cannot relate to individual cases.

Head 43 Amendment of Part 6 of Child and Family Agency Act 2013

Provide along the following lines:

The Child and Family Agency Act is amended by the insertion of the following section in Part 6:

"Annual Service Performance and Activity Report and Three Year Thematic Report

(1) Not later than 30th June in each year, the Agency shall submit to the Minister a statistical report, to be referred to as the Annual Service Performance and Activity Report, in relation to the services which it has delivered pursuant to its functions under section 8 of the Child and Family Agency Act 2013, the Child Care Act 1991 or under any other enactment during the immediately preceding calendar year.

(2) A report under subhead [1] may include:

(a) data collected in previous years as the Agency considers appropriate;

(b) data in relation to a service provided on behalf of the Agency under section 56 or section 57 of the Act of 2013.

(3) When preparing a report under subhead [1], the Agency shall include data in relation to –

(a) the operation and delivery of services which support and promote the development, welfare and protection of children;

(b) the operation and delivery of services which support and encourage the effective functioning of families;

(c) the operation of the Agency's statutory functions under the Child Care Act 1991, and

(d) any other particulars that the Minister may require.

(4) In addition to a report under subhead [1], not later than 30th June in every third year, the Agency shall submit to the Minister a thematic analysis of data trends, (a 'Thematic Report') which will focus on a topic of interest, particular service or other function of the Agency.

(5) The theme of a report under subhead [4] will be decided by the Minister following consultation with the Agency.

(6) In order to inform the preparation of a report under subhead [1] or [4], the Child and Family Agency may seek information from-

(a) a person providing services on behalf of the Agency under section 56 or section 57 of the Act of 2013, or

(b) a relevant body under Head [10][1] of the Child Care (Amendment) Bill 2023

and the Agency shall have regard to such information furnished by those bodies in the preparation of the report.

(7) The Minister may make regulations in relation to the operation of this section, and without prejudice to the generality of the foregoing such regulations may:

(a) specify the types of data which are to be included in the Annual Service Performance and Activity Report, which may include-

(i) activity data,

(ii) performance data,

(iii) inputs, which may include data in relation to financial resources and human resources, and

(iv) outputs, for example data relating to the number of children in care;

(b) specify the issues to be analysed in the thematic report, which may include -

(i) the outcomes for children who receive services from the Agency,

(ii) the extent to which the resources of the Agency have been used efficiently

(iii) the effectiveness of services provided to children by the Agency.

(8) The Minister shall consult with the Agency before making any Regulations under subhead [7].

(9) The Minister shall publish any Regulations made under subhead [7] in-

(a) *Iris Oifigiuil,* and

(b) on the Internet.

(10) The Agency shall submit a report prepared under this section to the Minister, and within 30 days of receiving such a report, the Minister shall -

(a) approve the report, or

(b) issue directions regarding amendments to the report.

(11) The Minister shall, within 21 days of approving a report prepared under this section, cause copies of it to be laid before each House of the Oireachtas.

(12) The Agency shall publish both the Annual Service and Activity Performance Report and the Thematic Report-

(a) on the Internet, or

(b) in such other manner as the Minister may specify,

as soon as practicable after copies of the report are laid before the Houses of the Oireachtas.

(13) The Child and Family Agency shall submit a copy of any report prepared under this section to the National Child Care Act Advisory Committee to be established under Head 11 of the Child Care (Amendment) Bill 2023.

(14) A report prepared under this section, which has been approved by the Minister, may be subsequently amended by the Agency in circumstances where new data becomes available to the Agency and the published figures require to be updated.

(15) If the Agency amends a report under subhead [14] it shall

(a) notify the Minister of such an amendment and provide him or her with an updated version of the report, and

(b) publish the updated report on the Internet.

Explanatory note

The purpose of this Head is to amend the Child and Family Agency Act 2013 for the purpose of inserting a requirement for the Agency to produce a statistical report on an annual basis and a thematic report every 3 years. It is intended that the provisions in this Head will replace the current obligations on the Agency in relation to a "Review of Services" under section 8 of the Child Care Act 1991.

Subhead [1] provides that the Agency shall submit an annual statistical report, to be known as the Annual Service Performance and Activity Report, in relation to the services which it delivers pursuant to its functions under section 8 of the Act of 2013, the Child Care Act 1991 or under any other enactment.

Subhead [2] is intended to provide that while the statistical report will primarily relate to services which were provided in the preceding calendar year, the Agency may refer to data from other years, if it considers appropriate. This subhead also clarifies that the Agency may include data in the report that relate to services provided on its behalf.

Subhead [3] sets out the types of data which are to be included in the Annual Service Performance and Activity Report.

Subhead [4] provides that in addition to the report under subhead [1], every three years the Agency will prepare a thematic analysis of data trends, which will focus on a topic of interest, particular service or other function of the Agency.

Subhead [5] provides that the Minister will, following consultation with the Agency, inform the Agency of the theme to be considered in a report prepared under subsection [4]. It is envisaged that a decision regarding the theme of this report will be informed by the Annual Service Performance and Activity Report, and in particular any data trends which have emerged in those reports which would benefit from analysis and discussion.

Subhead [6] is intended to clarify that the Agency may seek information from the sources specified when preparing a report under subheads [1] or [4] and that the Agency will have regard to the information provided on foot of such a request.

Subhead [7] provides the Minister with a Regulation making power which is intended to enable the Minister to (i) specify the types of data to be collected and included in the Annual Service Performance and Activity Report and (ii) specify the issues to be analysed in the thematic report.

Subheads [8] and **[9]** provide that the Minister must consult with the Agency before making Regulations under this section, and that any such Regulations shall be published in the manner specified. As this section will give the Child and Family Agency the authority to seek information from a wide variety of bodies in the context of preparing a report under this section, the Department is of the view that Regulations should be published and readily available.

Subhead [10] provides the Agency shall submit a report under this section to the Minister, which the Minister must either approve, or issue directions relating to amendments within 30 days.

Subheads [11] and **[12]** provide that a report prepared under this section shall be laid before each House of the Oireachtas and that they shall be published on the internet, or in such other manner as the Minister may specify.

Subhead [13] provides that the Agency shall submit a copy of any report prepared under this section to the National Child Care Act Advisory Committee which is to be established under this Bill [Head 11]. It is not intended that this Committee will have a role in reviewing or approving a report from the Agency prepared under this section, but the Department does wish to ensure that that Committee is provided with a copy as the data and analysis contained therein is a resource which may inform the Committee's work.

Subhead [14] is intended to give the Agency the ability to amend a report prepared under this section in circumstances where new data becomes available and, in the interests of providing accurate information to the Minister and the public, the published figures require to be updated.

Subhead [15] provides that where the Agency has updated a report under subhead [14] it must notify the Minister and publish the updated version.

Head 44 Amendment of Children First Act 2015

Provide along the following lines:

The Children First Act 2015 is amended by the insertion of the following section:

"Authority of Child and Family Agency to assess reports"

(1) The Agency shall receive and assess reports from persons, other than mandated persons, who have a reasonable concern that a child has been harmed, is being harmed or is at risk of being harmed.

(2) For the purposes of performing its functions under this Part, the Agency shall have the same powers as it has under the Child Care Act 1991 or any other enactment in respect of children who are not receiving adequate care and protection.

(3) In circumstances where, following receipt of a report under subhead (1) the Agency reasonably believes that there is an immediate and serious risk of harm to a child, it shall take whatever action it deems necessary to protect the child, which may include the disclosure to another person of such information as is necessary and proportionate to protect the child.

(4) Subject to the provisions of this Act and the Child Care Act 1991, the procedures for assessing a report under subhead (1) or sharing information under subhead (3) shall be such as the Agency considers appropriate, and the Agency shall issue guidelines in this regard.

(5) Any guidelines that have been issued by the Agency before the commencement of this section that deal with the matters outlined in subhead (4) and that are in force immediately before that commencement, shall, on such commencement, be deemed to be guidelines issued under subhead (4).

(6) Where, following a preliminary enquiry of a report of harm under subhead (1), the Agency-

(a) believes that an offence under Schedule 1 of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 has been committed against a child, or

(b) has a *bona fide* concern under section 19(1) of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012,

the Agency shall notify the Garda Síochána or Vetting Bureau as soon as practicable in writing of that belief and shall state the reasons for it.

(7) Notwithstanding the generality of subhead 1 where, in the course of exercising its powers under the Child Care Act 1991, the Agency-

(a) believes that an offence under Schedule 1 of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 has been committed against a child, or

(b) has a *bona fide* concern under section 19(1) of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012,

the Agency shall notify the Garda Síochána or Vetting Bureau as soon as practicable in writing of that belief and shall state the reasons for it.

(8) Where the Agency receives a report, under section 14 or otherwise, that indicates that an offence under Schedule 1 of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 was committed against a person when that person was a child, the Agency shall refer the report to the Garda Síochána as soon as practicable.

(9) In circumstances where the Agency has made a report under subhead (8), and where following an investigation the Garda Síochána has subsequently advised that the person against whom the allegation has been made poses a risk of harm to a child, the Agency shall take such steps as it considers requisite to protect the child from harm.

Explanatory Note:

This Head is intended to provide an express legal basis for the Agency to receive and assess report from non-mandated persons and members of the public. Mandated persons have not been referenced here as the Department is of the view that the power to receive (and by necessary implication, to assess) reports from mandated persons is already contained in s.16 of the 2015 Act.

Rather than setting out detailed procedures for the assessment and follow up of reports of harm, this Head requires the Agency to determine what procedures are appropriate with regard to the assessment and management of allegations of harm, and to issue guidelines in that regard. It is intended therefore, that the effect of these provisions will be to place current practice, as set out in Tusla's Child Abuse Substantiation Procedure [CASP] on a statutory footing. It is intended that this approach will allow Tusla to retain the flexibility to adjust its procedures in line with the jurisprudence of the courts.

Head 45 Amendment of section 14 of Children First Act 2015

Provide along the following lines:

Section 14 of the Children First Act 2015 is amended by the insertion of the following subhead:

> "Where a mandated person in the course of his or her employment or profession under section (7), section 15(d) or section (15)(e) of Schedule 2 of the Act of 2015, receives a disclosure from a person that they were harmed as a child, and the mandated person is satisfied that –
>
> (a) the person who is alleged to have caused the harm is deceased or incapacitated or cannot be identified,
>
> (b) the person who has disclosed that they were harmed as a child has made known his or her view that the matter should not be reported to the Agency (provided he or she is capable of forming a view on the matter), and
>
> (c) in the interests of protecting the health and well-being of the person who has disclosed that they were harmed as a child, the matter should not reported to the Agency as soon as is practicable,
>
> the mandated person shall make a mandated report within six months of receiving the disclosure, and shall inform the person making the allegation of harm of this requirement.

Explanatory Note:

This Head has been included in order to address stakeholder concerns that the requirement to report a disclosure of harm under section 14(1)(a) may discourage some adults from accessing counselling services.

As the best interests of the child are the paramount consideration, the Department is of the view that it would not be appropriate to legislate for a blanket exemption to mandated reporting for persons providing counselling services. However, recognising the concerns that have been expressed, the purpose of this subhead is to provide that a disclosure of retrospective abuse from an adult which has been made to specified mandated persons may be reported to the Agency within six months, subject to a number of conditions. It is envisaged that under this revised arrangement, the specified mandated persons would have a longer time period in which to support the adult making the retrospective allegation prior to making a mandated report.

Section 7 of Schedule 2 of the Children First Act refers to a "psychologist who practises as such and who is eligible for registration in the register (if any) of members of that profession". Section 15(d) refers to an addiction counsellor employed by a body funded, wholly or partly, out of moneys provided by the Oireachtas. Section (15)(e) refers to a person employed as a "psychotherapist or a person providing counselling who is registered with one of the voluntary professional bodies".

Head 46 Amendment of Schedule 2 of the Children First Act 2015

Provide along the following lines:

Schedule 2 ('Mandated Persons') of the Children First Act 2015 is amended as follows:

(1) by the substitution of the following subsection for subsection (15)(j):

> "child care staff member employed in an early years service within the meaning of Part VIIA of the Child Care Act 1991."

(2) by the substitution of the following subsection for subsection (18):

> "A person carrying on an early years service within the meaning of Part VIIA of the Child Care Act 1991.".

Explanatory Note:

Pre-school staff and registered providers of pre-school services are mandated persons under the Children First Act 2015. The Department understands that persons employed in a service that provides a mix of care to pre-school children and school age children are mandated under section 15(j) of Schedule 2. Registered providers of such services are also mandated persons under Paragraph 18 of Schedule 2.

However, the definition pre-school service under Part VIIA of the Principal Act limits its application to services that cater for pre-school children. Employees in, or registered providers of, a service which provides care exclusively to school age children do not appear to be encompassed by this definition.

While registered providers of school age services and their employees may already report concerns of harm to the Agency under *Children First: National Guidance of for the Welfare and Protection of Children*, the Department wishes to ensure that such persons are mandated persons under the Children First Act 2015.

School Age Child Care staff and registered providers have regular contact with children, and have similar responsibilities to staff and registered providers of pre-school services. It is important and appropriate that they are also mandated persons under the Children First Act. As the term 'early years' service, as defined in the Child Care Act 1991, encompasses all types of early years service (including pre-school and school age services), it would be more appropriate to include that definition here.