



Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth

Opening Statement by the Ombudsman for Children's Office

Tuesday, 9 May 2023

Introduction

The Ombudsman for Children's Office would like to thank the Joint Committee on Children, Equality, Disability, Integration and Youth (Committee) for the invitation to appear today to discuss the General Scheme of the Child Care (Amendment) Bill 2023 (2023 General Scheme). The Ombudsman for Children, Dr Niall Muldoon, sends his apologies that he is unable to attend this meeting due to a pre-existing work commitment.

As members of the Committee are aware, the Ombudsman for Children's Office (OCO) is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002. Under the 2002 Act, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age; and
- to examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

General Scheme of the Child Care (Amendment) Bill 2023

As Committee members know, the former Department of Children and Youth Affairs (DCYA) initiated a review of the Child Care Act 1991 (1991 Act) in 2017, in accordance with a commitment made in Better Outcomes, Brighter Futures – The National Policy Framework for Children and Young People 2014-2020. The OCO has engaged with the review process at different stages. We participated in an Open Policy Debate that the DCYA held in September 2017. We made a [written submission](#) in February 2018 to an initial consultation that the DCYA undertook. We also made a follow-up [written submission](#) to a consultation that the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) conducted in 2020, which invited views on preliminary proposals to amend the 1991 Act.

The OCO welcomes publication of the 2023 General Scheme on 19 April 2023. Having undertaken an initial review of the General Scheme, we would like to offer brief observations on a number of the proposals set out in it.

Firstly, we welcome several proposals detailed in the 2023 General Scheme. While in need of further refinement, among the proposals that we regard as broadly positive are:

- the proposal under Head 4 to include a new section on guiding principles and the DCEDIY's stated intention that the best interests of the child and the voice of the child will be at the centre of any decision-making process or service provision under the revised 1991 Act;
- the proposal under Head 9 to place Children and Young People's Services Committees on a statutory footing;
- the proposal under Head 11 to establish a National Child Care Act Advisory Committee to examine the operation of sections of the revised 1991 Act;
- the proposals under Heads 28 to 39 concerning the regulation, registration and inspection of early years and child minding services; *and*
- the proposals under Head 43 regarding the Child and Family Agency's (Tusla) reporting obligations.

As Committee members may have noted, the proposals under Head 11 relating to the establishment and work of a new National Child Care Act Advisory Committee include a provision at subhead 13 that "[t]he Ombudsman for Children shall review and advise on the recommendations to be prepared by the National Advisory Committee under subhead 11(c)". The DCEDIY and the OCO discussed the DCEDIY's proposal to establish a new statutory duty for the Ombudsman for Children at a meeting on 27 February 2023. In this regard, the Ombudsman for Children has indicated to the Department that, while he is open in principle to this proposed new statutory duty, his support for it is contingent on a number of matters being further discussed and agreed.

There are also proposals under the 2023 General Scheme that we have significant concerns about and that we would encourage the Committee to give particular attention to during the pre-legislative scrutiny process. These are:

- the proposals under Head 7 in relation to voluntary care;
- the proposals under Head 8 regarding children who are 'temporarily out of home';
- the proposals under Head 10 concerning the duty of relevant bodies to cooperate; *and*
- the proposals under Head 44 as regards Tusla's duty to receive and assess reports concerning alleged harm or risk of harm to a child, including the proposal to place the Child Abuse Substantiation Procedure (CASP) on a statutory footing.

While it is beyond the scope of this opening statement to outline our concerns about these proposals, we would be happy to do so during today's discussion of the 2023 General Scheme.

We note that some proposals set out in the DCEDIY's 2020 consultation paper have not carried over into the 2023 General Scheme. Of particular concern in this regard is that the DCEDIY has not followed through on its proposal that the revised 1991 Act would strengthen the visibility of and provision for unaccompanied children seeking asylum and taken into care.

Through our engagement with the DCEDIY, the OCO's understanding is that the 2023 General Scheme sets out proposals for legislative changes to the 1991 Act that the DCEDIY is in a position to bring forward at this stage and that additional amendments to the 1991 Act, and to other related legislation, will be proposed at a later stage in the context of a process to consolidate the 1991 Act.

We believe that it is important for the DCEDIY to provide timelines for when they intend to address matters that have not been included in the 2023 General Scheme.

Finally, we would like to take the opportunity presented by the Committee's pre-legislative scrutiny of the 2023 General Scheme to suggest that consideration could usefully be given to mobilising the 2023 General Scheme:

- to prohibit the placement of children in unregulated accommodation and to establish a statutory duty for Tusla to ensure that there are sufficient appropriate placements within each administrative area, including for children in need of emergency accommodation;
- to require that alternative care placements are in proximity to children's former homes and schools, facilitate the joint placement of siblings, and are suitable for additional needs that children may have;
- to expressly require Tusla to have a system in place to identify and support teenagers at risk of being sexually or criminally exploited; *and*
- to clarify Tusla's role in relation to children in informal kinship care and in private foster care arrangements.

Conclusion

In our written submission to the DCYA in February 2018, the OCO welcomed the review of the 1991 Act as a vital opportunity for the State to affirm its commitment and give appropriate legislative underpinning to its obligations to respect, protect and fulfil the rights of children affected by the 1991 Act's provisions. In this regard, we encouraged the Department to mobilise the review to put in place a robust legislative framework that sets a high bar for the State. As noted, the OCO broadly welcomes several proposals set out in the 2023 General Scheme. Overall, however, the General Scheme appears to us to be lacking in sufficient vision and ambition.

Similarly, while we understand that there is a new protocol in place in relation to the timeframe for Oireachtas Committees to undertake pre-legislative scrutiny of legislative proposals, we are disappointed that this Committee has not been given more time to conduct its pre-legislative scrutiny of the 2023 General Scheme. It is over five years since the review of the 1991 Act started and, given the significance of this legislation for children and families affected by it, we believe the Committee should have been afforded more time to complete detailed scrutiny of the proposals.

Thank you again for your invitation to meet you today. My colleagues, Nuala Ward and Ciara Gill, and I are happy to take questions.