July 2025

Draft Child Care (Amendment) Bill 2025

Observations of the Ombudsman for Children's Office

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do leanaí
for children

Contents

Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). 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.

We have prepared these observations pursuant to Section 7(4) of the 2002 Act, which provides for the Ombudsman for Children to advise to a Minister of Government on any matter concerning the rights and welfare of children, including proposals for legislation.

We broadly welcome several of the proposals to amend the Child Care Act 1991 (1991 Act) including:

- the inclusion of a new section on guiding principles
- the inclusion of a new section outlining the responsibilities of relevant bodies
- the establishment of a Child Care Implementation and Inter-agency Committee
- provisions relating to the making of regulations as to accommodation for homeless children
- the inclusion of clear provisions relating to the sharing of information and personal data
- requirements for the Child and Family Agency (Tusla) to publish an annual service performance and activity report and a thematic report every three years.

However, we believe that some of these proposals, as well as others in the draft Bill, could be strengthened from a children's rights perspective. The main purpose of these observations is to highlight the proposals set out in the draft Bill that are of, and remain of, concern to the OCO and that we believe require further attention.

We hope that these observations may be of assistance to the Department of Children, Disability and Equality (DCDE) in its work in drafting the Bill. In this regard, we would also like to bring your attention to the previous submissions the OCO has made as part of the review of the Child Care Act 1991 (1991 Act), including our initial written submission on the review of the 1991 Act; our follow-up written submission in 2020; and our opening statement for, contributions to, and written submission to the Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth (Joint Committee) in 2023.

Guiding Principles

We welcome the inclusion of guiding principles in section 10 of the draft Bill which will introduce a new section 11A into the 1991 Act. However, we continue to believe that this section could be strengthened to ensure that the rights of children in care, or who may be taken into care, are more fully respected and protected.

Four rights in the United Nations Convention on the Rights of the Child (UNCRC) are considered vital to realising all other children's rights in the UNCRC. While the draft Bill includes requirements in relation to the best interests of the child (Article 3) and respect for the views of the child (Article 12), it is silent on the other two general principles, namely non-discrimination (Article 2) and life, survival and development (Article 6). Further attention needs to be given to the appropriate integration of these two core general principles into the guiding principles to ensure that the guiding principles provide for a sufficiently comprehensive child rights-based approach to decisions and actions that will be taken under the revised Act.

While we welcome the inclusion of the best interests principle in the guiding principles, we are concerned that the best interests of the child is only given primary rather than paramount consideration. Head 4 of the Heads and General Scheme of the Child Care (Amendment) Bill 2023 required that the best interests of the child be regarded as a paramount consideration. The inclusion of "primary consideration" in the draft Bill contrasts with Section 9 of the Child and Family Agency Act 2013 which provides that the best interests of the child should be treated as a paramount consideration and Article 42(A) of the Constitution of Ireland which provides that the best interests of the child shall be the paramount consideration when dealing with the adoption, guardianship or custody of, or access to, any child. From our discussions, we understand that this issue remains under discussion as the guiding principles will also apply to bodies other than Tusla. However, in order to protect the rights of this particularly vulnerable cohort of children, and to ensure that their constitutional rights are protected, we are of the view that the guiding principles should include provisions to require the best interests of the child to be regarded as a paramount consideration.

In our 2023 submission to the Joint Committee,[1] we encouraged further consideration to be given to integrating a right to independent advocacy as part of the guiding principles, with a view to ensuring that children can have access to an independent advocate in the context of decision-making relating to their care. We note that this has not been included in the Bill.

Recommendations

In order to ensure that children's rights are more fully considered, the guiding principles should:

[1] Ombudsman for Children's Office (2023), *General Scheme of the Child Care (Amendment) Bill 2023, Observations by the Ombudsman for Children's Office*, p. 2.

- ***include reference to children's rights to non-discrimination (Article 2) and life, survival and development (Article 6).***
- ***require the best interests of the child to be regarded as a paramount consideration.***
- ***include a right to independent advocacy.***

Voluntary Care

Voluntary care placement

The OCO broadly welcomes the proposed amendments to Section 4 of the Principal Act as contained in section 6 of the draft Bill as they relate to consent from a parent about a voluntary care arrangement. However, we note that our previous suggestions to strengthen provisions[2] relating to the provision of information and of advocacy and legal advice to children have not been included in the draft Bill and we remain of the view that these recommendations should be incorporated into the Bill.

As stated above, the draft Bill proposes to incorporate guiding principles into the 1991 Act which will include respect for the views of the child. As the draft Bill currently outlines requirements for Tusla in relation to obtaining consent from a parent or person acting in loco parentis when seeking to take a child into voluntary care, we suggest that consideration be given to clarifying how the guiding principles will ensure that the child's right to be heard, and for their views to be considered and given due weight in accordance with their age and maturity, are fully considered and respected the context of decision-making relating to voluntary care arrangements.

Head 7 of the General Scheme required Tusla to 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 on the purpose and proposed duration of the proposed voluntary care arrangement, the obligations on Tusla to monitor and review such an arrangement, and the procedure for withdrawing consent to such an arrangement. However, there is no such provision around the provision of information contained in the proposed amendments to section 4 in the draft Bill. While we note that section 29 of the draft Bill provides for amendments to the Child and Family Agency Act 2013 which will provide for the publication of information for parents and those acting in loco parentis, this does not apply to Part 2 of the 1991 Act. We are also concerned that this does not provide for the publication of age-appropriate child friendly information for children. A requirement to provide child-friendly information in section 4 of the

[2] Ombudsman for Children's Office (2020), *Department of Children, Equality, Disability, Integration and Youth Review of the Child Care Act 1991 - Consultation Paper Observations by the Ombudsman for Children's Office*, pp. 5-7 and Ombudsman for Children's Office (2023), *General Scheme of the Child Care (Amendment) Bill 2023: Observations by the Ombudsman for Children's Office*, pp. 3-4

revised Act would help ensure that children being placed in voluntary care arrangements are provided with information on this process.

Recommendations

- ***Appropriate provision should be made for access to independent advocacy and legal advice, including for children.***
- ***The process for ensuring that the child's views will be heard, considered and given due weight in line with their age and maturity in the context of decision-making relating to voluntary care arrangements should be clarified.***
- ***With regard to consent, we suggest that the word 'free' be added given that the cornerstone of consent is that it is freely given.***
- ***The draft Bill should contain a provision to require that child friendly information on the voluntary care process be provided to the children involved.***
- ***The proposed amendments to section 8 of the Child and Family Agency Act 2013 as contained in section 29 of the draft Bill should also provide for the provision of age-appropriate child friendly information.***

Time limits and reviews for voluntary care placements

As previously outlined,[3] a concern that we continue to have relates to the well-documented risk of drift in voluntary care placements. We welcome the provisions which require for a review of the arrangements for a child in voluntary care at regular intervals, and not less frequently than every 6 months, with a view to seeing if the voluntary care arrangement should continue, if the child should be returned to their parents or if a care order should be sought. While we have discussed this with the DCDE and note their rationale for not including a time limit on the use of a voluntary care arrangement as in many cases the circumstances involved are outside of the parent's control, we remain concerned that the absence of any provision for an overall time limit on the use of voluntary care arrangements does not mitigate the risk of drift.

We have previously proposed that a time limit of 12 months be placed on voluntary care arrangements on the basis that Tusla should be able to satisfy itself at the conclusion of a 12-month

[3] Ibid.

period of voluntary care whether or not it is appropriate to return a child to the care of their parent(s) or to place the child in the care of the State[4] and remain of the view that while there may be circumstances where it would serve the child's best interests to extend a voluntary care placement beyond 12 months, we do not believe that excluding a time limit on the use of voluntary care from the legislation is an ideal approach to accommodating such circumstances. We again suggest that an alternative approach could be to provide both for a time limit *and* for this time limit to be extended in exceptional circumstances where such an extension is in the best interests of the child. We note that a similar provision has been contained in section 14 of the Bill which places a maximum limit of 18 months on an Interim Care Order but allows for the application of a further care order after the 18 months if this is deemed necessary.

While we welcome proposals for a regular review of voluntary care arrangements, we remain of the view that it is not appropriate for Tusla to review itself in these circumstances. In this regard, provision needs to be made for the independent review of voluntary care arrangements. We continue to hold the view that consideration should also be given to providing for children to have access to an independent advocate or a guardian *ad litem* to support their participation in the review process. As previously stated, and having regard to existing regulations for residential care and foster care placements, we suggest that consideration should also be given to providing for the review of a voluntary care arrangement sooner and more frequently, where an initial independent review would take place within two months of the arrangement first being put in place.[5]

Recommendations

- ***Voluntary care placements should be subject to a 12-month time limit.***
- ***Provision should be made for the independent review of voluntary care arrangements.***
- ***Children should be provided with access to an independent advocate or a guardian ad litem to support their participation in the review process.***

[4] Ibid.

[5] See S.I. No. 259/1995 - Child Care (Placement of Children in Residential Care) Regulations, 1995 at section 25 and S.I. No. 260/1995 - Child Care (Placement of Children in Foster Care) Regulations, 1995 at section 18.

Provision for Homeless Children

The OCO welcomes that the draft Bill provides for the regulation of accommodation for homeless children. This should happen as soon as possible so that these protections are afforded to children accommodated under this Section.

The draft Bill contains a requirement for Tusla to "enquire into the child's circumstances" and to engage with the child's family for the purposes of supporting the child to return. While there is to be a review of the provision of accommodation under this section at regular intervals, and at least every 6 months, which includes consideration of whether or not the child should be taken into care, it does not provide any timeline for when the first assessment of whether or not the child should be taken into care should take place. In the context of these particularly vulnerable children, 6 months is too long a timeframe for a review, and we are of the view that these should be held more frequently. We understand from our meeting with DCDE that Tusla can review at any point the decision to bring a child into care but we believe that the provision should be strengthened to ensure these reviews are sufficiently robust to prevent children ending up at risk.

The proposed section 5(1) as contained in section 7 of the draft Bill refers to "no accommodation available to him or her which he or she can reasonably occupy". While we understand from our meeting with the DCDE that this terminology mirrors that of existing housing legislation, it provides no indicative information about what constitutes *"suitable"* accommodation and could leave children in unsuitable or inappropriate accommodation. This section also refers to "suitable accommodation" being made available to a child who has no accommodation. There is again no information provided to outline what constitutes "suitable accommodation", and there are no provisions made for the independent inspection of such accommodation in the draft Bill itself. These definitions and provisions should be clearly outlined in the regulations proposed for section 5(A) of the revised Act as contained in section 8 of the draft Bill.

The draft Bill is silent on what specific care and welfare supports, other than accommodation, Tusla will be required to provide to homeless children. It is also silent on the matter of children in the care of the State who become homeless – for example, due to a breakdown in their care placement - and about the supports that will be provided to them while they are placed in temporary accommodation. As noted at the meeting, the regulations outlined in the proposed section 5(A) of the revised Act could be a mechanism to provide for additional supports for children based on their needs. Robust needs assessment, placement planning and placement reviews are essential for all children and that specific attention needs to be given to the safeguards put in place for this vulnerable cohort of children.

The draft Bill does not include a lower age limit for children to be accommodated under section 5. The explanatory note provided along with the General Scheme of this Bill stated that "a policy decision has been made not to specify a lower age limit" for children who may be accommodated by Tusla under a revised section 5 and this was reiterated at the meeting with the DCDE. While the Bill states that the proposed regulations may make different provision for different categories of children, including children of different ages, we are still of the view that given the vulnerability of children in these circumstances, a minimum age should be specified within the legislation itself.

The draft Bill also does not provide for a maximum length of time that a child may be placed in temporary accommodation. The proposed regulations contained in section 8 of the draft Bill also do not refer to time limits which means that a child could potentially be accommodated under section 5 for years.

Finally, we also note there is no provision for independent review of decisions made by Tusla under the proposed sections 5 and 5A.

Recommendations

- ***Reviews of placements should be independent and should take place sooner and more frequently than at six-month intervals, with the first review conducted within 2 months.***
- ***Definitions of "suitable accommodation" and "accommodation that he or she could reasonably occupy" should be clearly laid out in the proposed regulations outlined in section 5A.***
- ***The specific care and welfare supports, other than accommodation, that Tusla will be required to provide to homeless children should be clearly laid out in the proposed regulations outlined in section 5A.***
- ***Given the vulnerability of children in these circumstances, it is recommended to specify a minimum age limit for accommodation under section 5 within the draft Bill.***
- ***A maximum timeframe for the placement of children under section 5 should be included in the revised Act.***

Provision for Unaccompanied Children

The OCO remains concerned that the draft Bill remains silent on the care of unaccompanied children. The OCO had welcomed the DCDE's proposals in its 2020 consultation paper to define unaccompanied children in the 1991 Act and to provide clarity on the grounds for taking unaccompanied children into care and applying for residence permissions on their behalf.[6] The purpose of these proposals was to address the lack of specific provisions for unaccompanied children in the 1991 Act.[7] As previously expressed by the OCO, the current legislative proposals perpetuate this invisibility and do not offer any clarity on which sections of the revised Act are to apply to these children's particularly vulnerable situation. The entry of unaccompanied children into the care system is distinct from that of other children and requires a bespoke response, separate to that of the international protection framework.[8]

This issue is even more pressing as the OCO has significant concerns about the potential breaches of children's rights when Ireland implements the EU Migration Pact. We highlighted in our observations on

[6] Ombudsman for Children's Office (2020), *Department of Children, Equality, Disability, Integration and Youth Review of the Child Care Act 1991 -July 2020 Consultation Paper: Observations by the Ombudsman for Children's Office*, p. 7.
[7] Department of Children, Equality, Disability, Integration and Youth (2020), *Review of the Child Care Act 1991 July 2020 Consultation Paper*, p. 13.
[8] Ombudsman for Children's Office (2023), *General Scheme of the Child Care (Amendment) Bill 2023: Observations by the Ombudsman for Children's Office*, p. 8.

the General Scheme of the International Protection Bill 2025 that it does not provide significant safeguards for these children and indeed, as it is currently drafted, unaccompanied children who are applying for international protection are at greater risk of rights violations especially in relation to the risk of arrest and detention.[9] Nevertheless, we believe that the Pact and review of the 1991 Act give us the opportunity to review the national regulatory framework and give explicit recognition to the rights of unaccompanied children, including in the 1991 Act, as is required by EU law and the UNCRC.

Unaccompanied children have a right to special protection measures

We understand that the DCDE will not make specific provision for unaccompanied children because it wants to protect the equity of care principle, whereby unaccompanied children get exactly the same level of care and are taken into care under the same thresholds as Irish-resident children.[10] We also understand from our engagement with DCDE that they do not intend for the Bill to discriminate between children.

As the OCO has reiterated in previous submissions, unaccompanied children are recognised by the UN Committee on the Rights of the Child (the Committee) as being in a particularly vulnerable situation as these children find themselves outside their country of origin, under traumatic circumstances (e.g. fleeing war, persecution), having lost connection with their family, often on a long-term basis. In addition, the entry route into the care system is distinct from other children and requires a special legal framework to ensure that necessary safeguards are in place for children arriving unaccompanied into our immigration and child care systems.

When children are unaccompanied, they are entitled to special protection and assistance by the State in the form of alternative care and accommodation in accordance with Article 20 and 22 of the UNCRC and the UN Guidelines for the Alternative Care of Children. The right to non-discrimination under Article 2 of the UNCRC does not mean that all children must be treated identically.[11] Rather, it requires differentiation on the basis of children's different protection needs.[12] The State is obliged to identify children who require special measures in order to enjoy their rights on an equal basis with other children. Practically, this means that, where necessary, the government is obliged to to implement additional targeted measures. The Committee has stated that such measures include the enactment of legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realise this treatment.[13]

Current lack of provision

Currently, the only legal provision linking unaccompanied children to child care legislation in Ireland is section 14 of the International Protection Act 2015 (2015 Act). There is no additional legislation that stipulates the nature of the care to be provided to these children. Section 14(2) of the 2015 Act provides

[9] Ombudsman for Children's Office (2025), *Observations on the General Scheme of the International Protection Bill 2025: Submission to the Committee on Justice, Home Affairs and Migration*.
[10] Houses of the Oireachtas, Joint Committee on Children, Equality, Disability, Integration and Youth debate, General Scheme of the Child Care (Amendment) Bill 2023: Discussion, 9 May 2023.
[11] UN Committee on the Rights of the Child (2003), *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child. CRC/GC/2003/5*, para. 12.
[12] UN Committee on the Rights of the Child (2005), *General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, para. 18.
[13] Ibid., para. 64.

that the 1991 Act "shall apply" to unaccompanied children in Ireland, but given their invisibility in the Act, decision-making on which part of the 1991 Act to apply rests with Tusla.[14]

It is positive that unaccompanied children applying for international protection are visible in the EU Pact on Migration and Asylum legal framework and that, from as early as the screening stage, they are identified as individuals with vulnerabilities in need of special care and protection. It is positive to see that the General Scheme of the International Protection Bill 2025 includes provisions that set out the responsibilities of the State towards unaccompanied children seeking international protection. However, Ireland's National Implementation Plan for the Pact does not provide sufficient details on how unaccompanied children will be provided for. It only outlines that unaccompanied children who are clearly identified as children will be immediately referred to Tusla in line with current provisions under the 2015 Act. It also refers to "the potential to agree a new protocol with Tusla to deliver age assessments for unaccompanied children in a border procedure, along with family tracing capability." Similar to the 2015 Act, Head 141(7) of the General Scheme of the International Protection Bill 2025 provides that Tusla may provide child care services to an unaccompanied minor whether or not they are in the care of Tusla pursuant to a court order under the 1991 Act. The provision leaves considerable discretion to Tusla to determine how the 1991 Act shall apply to unaccompanied children and whether or not to apply the provisions of the 1991 Act to unaccompanied children who are not the subject of a care order.

Though the international protection framework has been the route through which unaccompanied children have been assisted to obtain a residence permission in Ireland, not all unaccompanied children may require international protection.[15] Relying solely on the international protection legislative framework as a means of responding to the needs of unaccompanied children makes assumptions about the immigration needs of such children and renders their status as children secondary to that of their motivation for migrating to Ireland. Making provision in the Bill for unaccompanied children, separate and in addition to the international protection legal framework, would ensure that unaccompanied children are treated as children first, while allowing for their broad immigration needs to be explored by Tusla, in line with each child's needs and best interests.

We also note that the Joint Committee recommended that the Bill should include specific provisions for protecting unaccompanied children.[16]

Recommendation

The Bill must make explicit provision in the revised Act for the rights and specific needs of unaccompanied children. The Bill should specify the sections of the 1991 Act that should be engaged as a basis for the provision of care to unaccompanied

[14] S. Groarke and S. Arnold (2018), *Approaches to unaccompanied minors following status determination in Ireland*; S. Arnold and M. Ní Raghallaigh (2017), Unaccompanied minors in Ireland: Current Law, Policy and Practice, *Social Work and Society International Online Journal.* Vol. 15, No. 1.
[15] S. Arnold (2020), *Pathways to Irish Citizenship: Separated, Stateless, Asylum Seeking and Undocumented Children*.
[16] Ibid.

children, having regard to the particular circumstances and best interests of each child concerned.

Inappropriate use of sections 4 and 5 of the 1991 Act in respect of unaccompanied children

The invisibility of unaccompanied children in Irish law has led to the use of certain sections of the 1991 Act that do not adequately respond to the unique circumstances of unaccompanied children. This includes sections 4 and 5 of the 1991 Act.

We welcome the amendments to section 4 of the 1991 Act as proposed in section 6 of the draft Bill, which would require Tusla to notify the parents of children and to obtain their consent before taking the child into voluntary care. This will preclude the inappropriate use of section 4 for many unaccompanied children who arrive alone and whose parents are not reachable.

However, we reiterate our concerns as previously expressed about the inappropriate use by Tusla of section 5 of the 1991 Act.[17] The amendments to section 5 as proposed in section 7 of the draft Bill do not cater to the needs of unaccompanied children. In particular, the requirement for Tusla to engage with the child's family to support the child's return to the family home does not reflect the fact that unaccompanied children arrive in Ireland alone, without contact with family or in circumstances where it may be unsafe to contact the child's family.

Among the concerns that we have with section 5 is that children are not entitled to an allocated social worker. This contrasts significantly with children taken into the care of Tusla under a care order who are entitled to an allocated social worker that, under section 18(3)(a) of the 1991 Act, has "the like control over the child as if it were his parent". It is not clear to us if the use of section 5 of the 1991 Act to accommodate unaccompanied children would meet the definition and standards required of a representative appointed to an unaccompanied child applying for international protection under Article 27 of EU Directive 2024/1346 (Reception Conditions Directive) and Article 23 of EU Regulation 2024/1348 (Asylum Procedures Regulation).

Another concern that we have with the use of section 5 is the lack of an entitlement to aftercare for unaccompanied children accommodated by Tusla under section 5. It is the OCO's view that every unaccompanied child should have access to aftercare on account of being an unaccompanied child, regardless of their age or their care and immigration status. We note Tusla's previous statements that there is a need for the right to aftercare services for unaccompanied children,[18] and the Joint Committee recommendation that unaccompanied children's status as care leavers should override their status as international protection applicants for the purposes of eligibility for aftercare.[19] We would welcome amendments to legislation in line with this.

[17] Ombudsman for Children's Office (2023), *General Scheme of the Child Care (Amendment) Bill 2023: Observations by the Ombudsman for Children's Office*, pp. 8-9; Ombudsman for Children's Office (2025), *Observations on the General Scheme of the International Protection Bill 2025: Submission to the Committee on Justice, Home Affairs and Migration*, pp. 13-14.
[18] Houses of the Oireachtas, Joint Committee on Children, Equality, Disability, Integration and Youth debate, Challenges Facing Refugee and Migrant Children in Ireland: Discussion, 27 June 2023.
[19] Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth (2023), *Report on pre-legislative scrutiny of the General Scheme of a Child Care (Amendment) Bill 2023*, p. 82.

Recommendation

The OCO does not believe that sections 4 and 5 of the 1991 Act in their current form should be used in respect of any unaccompanied child, regardless of their age.

Independent guardianship model for unaccompanied children

The OCO has for many years recommended that the State establish an independent guardianship model for unaccompanied children.[20]

The Committee has highlighted the need for States to appoint a competent guardian, that is independent of agencies whose interests may conflict with the child's, to ensure the respect for the best interests of unaccompanied children, prior to referral to asylum or other immigration procedures.[21]

We note that there are provisions made in the General Scheme of the International Protection Bill 2025 for the appointment of representatives to unaccompanied children applying for international protection. However, we believe that there is a need for provision to be made in Irish child care law, separate and in addition to the international protection framework, that requires the appointment of an independent guardian to each unaccompanied child, regardless of their immigration status. A guardianship model should be developed in line with international best practice guidance, including that of the EU Fundamental Rights Agency, Separated Children in Europe Programme and Council of Europe.[22]

Recommendation

The Bill should make provision for the appointment of an appropriately trained, independent guardian to each unaccompanied child. The role of an independent guardian should be to support the child to have their needs and best interests met, including as regards education, health and immigration, whether that is through

[20] Ombudsman for Children's Office (2009), *Separated children living in Ireland: A report by the Ombudsman for Children's Office*; Ombudsman for Children's Office (2008*), Advice of the Ombudsman for Children on the Immigration, Residence and Protection Bill 2008*, p. 5; Ombudsman for Children's Office (2015), *Initial Observations of the Ombudsman for Children on the General Scheme of the International Protection Bill 2015*, p. 6; Ombudsman for Children's Office (2025), *EU Pact on Migration and Asylum - Ireland's National Implementation Plan: Submission to the Department of Justice, Home Affairs and Migration*; Ombudsman for Children's Office (2025), *Observations on the General Scheme of the International Protection Bill 2025: Submission to the Committee on Justice, Home Affairs and Migration*.

[21] UN Committee on the Rights of the Child (2005), *General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, paras. 20 and 33.

[22] Council of Europe (2019), *Effective guardianship for unaccompanied and separated children in the context of migration: Recommendation CM/Rec(2019)11 of the Committee of Ministers and Explanatory Memorandum*; Defence for children International (2019), *Separated Children in Europe Programme Statement of Good Practice 5th revised edition*; European Union Agency for Fundamental Rights (2022), *Guardianship Systems for Unaccompanied Children In The European Union - Developments Since 2014*.

an application for international protection or for another residence permission appropriate to the child's circumstances.

Age assessments

In relation to age assessments, we welcome section 20 of the draft Bill that requires a presumption of minority when there is a doubt regarding a child's age. However, as outlined in our submission on the General Scheme of the International Protection Bill 2025, we raised concerns about the presumption of adulthood in several parts of that General Scheme. This brings Ireland out of step with the European and international human rights standards that Ireland has signed up to and that the Department's National Implementation Plan commits to upholding, including:

- Children's right to have their best interests taken as a primary consideration, to preserve their identity, to respect for their views, and to special protection as a refugee or asylum-seeker under Articles 3, 8, 12 and 22 of the UNCRC;
- The Committee's General Comment No. 6 on the treatment of unaccompanied and separated children;
- The Committee's General Comment No. 23 on State obligations regarding the rights of children in the context of migration;
- The Committee's concluding observations following its review of Ireland in 2023;
- The Committee's jurisprudence setting out safeguards that must be part of age assessment procedures;[23]
- Children's right to respect for their private life under Article 8 of the ECHR and judgments of the European Court of Human Rights on age assessment;[24]
- The recommendation on human rights principles and guidelines on age assessment in the context of migration adopted by the Council of Europe Committee of Ministers;
- The European Asylum Support Office guidance on age assessment;
- Directive 2011/36/EU (EU Anti-Trafficking Directive);
- Council of Europe Convention on Action against Trafficking in Human Beings.

The OCO is concerned that the General Scheme of the International Protection Bill 2025 is currently silent on the matter of age assessments (the Head is absent in General Scheme), which precludes public scrutiny of the proposed age assessment process, a process that has raised considerable human rights concerns in the past. As outlined in our submission on the General Scheme, adequate time must be given to examine draft provisions on age assessment as part of its pre-legislative scrutiny. Such provisions should not be introduced at a later stage of the legislative process but rather early and ongoing engagement with the DCDE must form part of this process.

[23] See for example: Committee on the Rights of the Child (2019), Communication No. 11/2017 (NBF v Spain), CRC/C/79/D/11/2017; Committee on the Rights of the Child (2019), Communication No. 16/2017 (AL v Spain), CRC/C/81/D/16/2017; Committee on the Rights of the Child (2023), Communication No. 130/2020 (SEMA v France), CRC/C/92/D/130/2020; Committee on the Rights of the Child (2024), Communication No. 80/2019 (AM v Switzerland), CRC/C/96/D/80/2019.

[24] Darboe and Camara v Italy, no. 5797/17; AC v France, no. 15457/20; FB v Belgium, no. 47836/21.

Recommendation

The DCDE must engage with the Department of Justice, Migration and Home Affairs to ensure that the age assessment process and the legal framework underpinning it are informed by international and European children's right standards and that a presumption of minority is consistently applied throughout all statutory provisions.

Other areas of concern

In the OCO's engagement with the Joint Committee in 2023,[25] we raised a number of other areas of concern that we believed could be addressed through inclusion in the General Scheme.

Recommendations

We remain of the view that consideration be given by the DCDE to:

- ***prohibiting the placement of children in unregulated accommodation and establishing 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.***
- ***requiring that alternative care placements are in proximity to children's former homes and schools, facilitate joint placement of siblings, and are suitable for the additional needs that children may have.***
- ***expressly requiring Tusla to have a system in place to identify and support teenagers at risk of being sexually or criminally exploited.***

[25] Ombudsman for Children's Office (2023), *Opening Statement by the Ombudsman for Children's Office to the Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth*, Joint Committee on Children, Equality, Disability, Integration and Youth debate - *General Scheme of the Child Care (Amendment) Bill 2023: Discussion*, 9 May 2023 and Ombudsman for Children's Office (2023), *General Scheme of the Child Care (Amendment) Bill 2023, Observations by the Ombudsman for Children's Office*.