

**Review of the Child Care Act 1991**

**Submission to the**

**Department of Children and Youth Affairs**

**July 2020**

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**Introduction**

Founded in 1976, Treoir is the national federation of services for unmarried parents and their children. Treoir, in partnership with its member agencies, promotes the rights and best interests of unmarried parents and their children through its National Specialist Information Service and by advocating for their rights.

**Treoir works to achieve this aim by**:

* providing a National Specialist Information Service to unmarried parents, their extended families and those working with them through answering queries, information website, publications and outreach workshops;
* co-ordinating the Teen Parents Support Programme;
* promoting change at every level to achieve constitutional and legal equality
* for unmarried parents, and to improve services and attitudes to unmarried parents;
* promoting/undertaking research to better understand the situation of

unmarried parents and their children in Ireland;

* collaborating with other agencies to promote our aim through the federation of Treoir and agencies outside of it.

Treoir recognises the diversity of family life in Ireland and that all families, including unmarried families, have the same rights to respect, care, support and protection. In addition, Treoir supports and promotes the rights of all children as outlined in the United Nations Convention on the Rights of the Child.

Every year Treoir’s National Specialist Information Service responds to thousands of calls, a significant number of which are from lone parents, unmarried fathers, extended family and professionals. The recommendations in this submission are based on the experience of those contacting Treoir’s National Specialist Information Service.

**Part 1**

**Guiding Principles**

Treoir welcomes the introduction of guiding principles on the implementation of the Act with a view to making the legislation more child-centred and to bring it into line with the United Nation Convention on the Rights of the Child. We note the rights of the child will take precedence, and that parental participation and an emphasis on family support and early intervention will all have a stronger footing in the Act.

With regard to parental participation it is well documented that parents with low levels of formal education, an intellectual/physical disability, or those who are disadvantaged have a higher likelihood of their children ending up in care. In light of this, Treoir is recommending that the following be included in the Guiding Principles section:

* The Act is framed and implemented in accordance with the state’s obligations under the UN Convention on the Rights of Persons with a Disability.
* That the power imbalance between such parents and state agencies is recognised and the right to legal aid and advocacy support is enshrined in legislation and properly resourced.
* The Guiding Principles should include a defined role for advocates, and a requirement that Tusla social workers and all key stakeholders cooperate with advocates as part of child care proceedings.

**PART II Promotion of Welfare of Children**

**Interagency** coordination **and collaboration**

**Early Intervention and Family Support**

Currently there is no official publically available data on the efforts and or measures that may/or may not have been taken to support children and families prior to proceedings coming to court. Neither is there data on what happens when a child goes into care or if they remain at home under a supervision order.

Part 11 of the Act must state explicitly that the Child and Family Agency are obliged to make every effort including supports and preventative measures to support the family and the child to remain together and to promote the least possible state intervention.

**Voluntary Care Agreements**

A major concern about voluntary care is that the agreements between Tusla/CFA and parents may not always be “voluntary”. There is no publicly available data or academic research on voluntary care. We note the proposed changes to address this information gap. However it is imperative that data is also available on the profile of such children in care, their future journey in the care system, including the proportion who subsequently become the subject of court care proceedings or the reasons they enter care. For example, we do not know the ages of children entering care, how long they remain in care, and if they maintain contact with their family members.

Thus as noted above it is of the upmost importance that the Act is amended to mandate the collection and release of comprehensive, publically available data, regarding voluntary care. To rectify this, Part II of the Child Care Act 1991 should introduce a section that makes compulsory the appropriate provision of information about voluntary care, as well as timely access to free specialist legal advice, that takes into account the vulnerabilities of the recipient parent(s)/guardian(s) and that are independent from the Child and Family Agency.

Part II of the Child Care Act 1991 must also provide for the independent supervision of voluntary care arrangements in order to ensure that it is truly a temporary arrangement during which child and family supports are provided and real efforts at family reunification are made. Possible oversight models could include a reformed court process; a quasi-judicial body similar to the Adoption Authority of Ireland; or an independent administrative system.

**PART III**

Section 3 of the Child Care Act 1991 to explicitly provide that, where a child is in care, the Child and Family Agency shall make every reasonable effort to support the parent(s)/guardian(s) to facilitate reunification. This is in line with section 24 (1) (a) of the Adoption (Amendment) Act 2017, which amends section 54 (1) of the 2010 Act.

**PART IV Care proceedings & PART IVB Private Foster Care**

We welcome the provision stating that the best interests of the child is the paramount consideration in relation to any matter, application or proceedings under the Child Care Act 1991 in line with Article 42A.4.1° of the Irish Constitution which protects children rights. The best interests of the child principle should extend not just to proceedings but also to voluntary care arrangements as well as regulations governing foster care. The provision could include a non-exhaustive list of the factors or circumstances that the Court, relevant agencies, bodies and/or authorities shall have regard to when determining the best interest of the child in the context of child care proceedings. These factors will enable them to focus on various aspects of the

child’s present and future wellbeing when determining his/her best interests in the context of child welfare and protection.

**PART V Jurisdiction and Procedure**

**Jurisdiction – operation of the courts and hearing of proceedings**

We welcome the reference to the establishment of specialist family court to deal with child protection cases. Judges should be given comprehensive training in relation to issues that are particular to child welfare and development. The Child and Family Agency needs to invest resources to train staff in the law surrounding State intervention in child welfare and protection.

**Voice of the child**

We welcome the proposed alignment of Section 24 of the Child Care Act 1991 with Article 42A of the Irish Constitution. It is of the upmost importance that provision is made in the legislation to ensure the voice of the child is independently heard, not just in the context of proceedings, but also in child protection measures that are not subject to the supervision of the courts such as voluntary care arrangements.

**Further Comments**

Section 4 of the Child Care Act 1991 must be aligned with guardianship rules under current Irish law in order to make clear and specific provision regarding who is entitled to consent to the placement of a child in voluntary care. This alignment should extend to all relevant parts of the Child Care Act 1991. It is critical that professional specialised training is provided.

Without a Central Register of Guardianship Agreements the Children and Family Agency may be at risk of breaching their statutory duty to identify and consult all the legal guardians of a child. A Central Register for Statutory Declarations for Joint Guardianship should be initiated and hosted either by the Department of Justice and Equality or the Department of Social Protection.

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