EPIC Submission on the Child Care (Amendment) Bill 2025

February 2025

empowering people in care

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1. Introduction

EPIC welcomes the publication of the Bill and acknowledges the many positive amendments it contains. In particular, we welcome the establishment of a cross-government and inter-agency committee, as well as placing of a duty on relevant bodies to co-operate and to have regard to the best interests of the child. We also welcome the fact that the duty to co-operate extends beyond collaboration in the planning and delivery of services to children and their families, to include adults who are eligible for aftercare.

EPIC strongly welcomes the explicit focus on centring the best interests of the child and the voice of the child in any decision-making process about their care and in the provision of services. These progressive amendments lay the foundations for positive outcomes for children in care. However, we believe that there is further scope within this Bill to enhance the legislative infrastructure supporting our care system in Ireland.

2. Guiding Principles

EPIC welcomes the inclusion of guiding principles in section 10 of the Bill which will introduce a new section 11A into the 1991 Act. As stated above, EPIC particularly welcomes the explicit focus on centring the best interests of the child as a paramount consideration, and on ensuring that the voice of the child is central in any decision-making process about their care and in service provision. However, we believe the guiding principles could be strengthened.

The 2023 General Scheme contained significantly more extensive guiding principles. included a broad list of best interest factors beyond what is contained in section 24(2) of the Act. While it did not intend to amend this list of factors for the court to consider in a best interests determination, these broader factors were intended to apply to persons, professionals and organisations 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.

The 2023 General Scheme also included the following guiding principle on family support which is not in the current Bill:

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.

The guiding principles should also include a duty on relevant agencies to assess and support a child's significant relationships, as recommended in the report on pre-legislative scrutiny. EPIC advocates support many care-experience young people and who want to be involved in their younger siblings' lives. In many of these cases, these young people have been the only consistent birth family member in their sibling's life. Despite this, EPIC advocates find that the supportive nature of these relationships is often not sufficiently recognised and have seen many examples of care-experienced young people not being facilitated to attend child-in care reviews for their younger siblings or to have contact or access with siblings. There can also be resource constraints in facilitating sibling involvement. Including a duty to support significant relationships, particularly siblings, in the guiding principles, would give greater priority to these important relationships.

EPIC also supports the recommendation of the Ombudsman for Children's Office (OCO) that the other two general principles of the United Nations Convention on the Rights of the Child - the right to non-discrimination (Article 2) and the right to life, survival and development (Article 6) - should be integrated into the guiding principles to ensure a comprehensive child rights-based approach to decision making under the Act.

Recommendations: Guiding Principles

The guiding principles should include:

- A duty to support and encourage the effective functioning of families;
- The duty to support and promote the development, welfare and protection of children;
- A duty on relevant agencies to assess and support a child's significant relationships, particularly siblings;
- The right to non-discrimination (Article 2) and the right to life, survival and development (Article 6).

3. Section 3: The Function of Tusla

Section 3 of the Principal Act sets out the function of Tusla under the Act, which is to promote the welfare of children who are not receiving adequate care and protection. This section also sets out what Tusla shall do in the performance of that function.

Section 5 of the Bill amends section 3 of the Principal Act by the insertion of a new subsection (2A). This provides that the Child and Family Agency may, and shall at the request of the Minister, prepare and publish guidelines to provide practical guidance on the performance of its function under the Act and the exercise of its powers in respect of that function, as set out in section 3.

EPIC is disappointed that the original ambition signalled in the 2023 General Scheme - to reorient section 3 to place the focus on the duty to support and promote the development, welfare and protection of children - appears to have been lost. The only proposal in the new section 3 in this version of the Bill is that the Agency may prepare and publish guidelines to provide practical guidance on the performance of its function under the Act and the exercise of its powers in respect of that function, as set out in section 3.

In EPIC's view, the wording of section 3 could be strengthened to align with Tusla's functions and with the Minister's stated objectives that the Bill would capture current legislative, practice and policy developments. The wording would be strengthened by referencing a duty to provide supports to children and families identified as needing care and protection, in line with the re-orientation of section 3 proposed in the General Scheme. This would place more of a focus on prevention and measures to support children and families. The proposed amendment of section 3 allows for Tusla to prepare and publish guidance with regard to their function. EPIC believes that it should be the role of the Department of Children Disability and Equality to prepare these guidelines, in consultation with Tusla, and working with the Implementation and Inter-Agency Committee. This would underpin the role and responsibility of the parent Department in driving policy and ensuring that all relevant Departments and State Agencies collaborate effectively. In this regard, the role of the Inter-agency Committee should be referenced in the amended section 3. The provision should also specify that the guidance must incorporate the guiding principles of the Act.

Recommendations on Revised Section 3

- The revised section 3 of the Bill should include the duty of the Agency to support and promote the development, welfare and protection of children. It should explicitly reference a duty to provide supports to children and families identified as needing care and protection.
- The revised section 3 of the Bill should specify that the Department of Children, Equality and Disability, rather than the Agency, should prepare and publish guidance with regard to the performance of the Agency of its function. This provision should also specify that the Implementation and Inter-Agency committee shall be consulted in the development of such guidance. The provision should also specify that the guidance will integrate the guiding principles of the Bill.

4. Section 5: Accommodation for Homeless Children

Section 7 replaces the entity of section 5 of the Principal Act (Accommodation for Homeless Children). The section refers to children who are estranged from, or otherwise out of, the family home. The provisions set out that Tulsa shall take steps to provide suitable accommodation, if the child is not being received into its care under the Act, and for as long as they remain a child. In providing accommodation under this section, Tusla is not taking the child into its care but will be required to make efforts to engage with the child and their family to support the child's return to the family, if return would be possible and in the child's best interests.

While Tusla is required to review accommodation provided to the child at regular intervals, the Bill allows for intervals of up to six months. These reviews are to consider whether the child can return to their family, whether an application for a care order should be made, or whether the child should continue to be provided with the accommodation in place. However, there is no duty on Tusla to provide other supports to the child beyond accommodation.

Section 5 has been problematic over the last few years with children in their late teens being looked after without technically being brought into care. There is no published, up-to-date policy on the use of section 5 and therefore the existing policy appears to be from 2012: *HSE National Policy and Procedure on the use of Section 5 of the Child Care Act 1991*, although this is no longer publicly available.

The prolonged use of section 5 is at odds with the original intention that it would operate on a short-term basis.[1] The lack of transparency around the use of section 5 is also of concern to EPIC. There is currently limited data and research around the use of section 5 and an up-to-date policy has not been forthcoming. There is also a lack of clarity around standards and inspections where children are accommodated under section 5, which is an issue of ongoing concern for EPIC.

There are no figures available on the use of section 5 and how long a child has been accommodated in this manner. Data in relation to the use of section 5, and the length of time the child is under this type of care, needs to be documented and scrutinised at senior level in Tusla on a regular basis and appropriate interventions made when necessary.[2] Data in relation to whether children accommodated under section 5 returned home should also be available, as well as data on children under section 5 moving into adult homelessness.

[1] Focus Ireland, *Submission to the DCYA Review of the Child Care Act 1991*. 2021. p.4.
[2] *Ibid*

The provision proposed to replace the current section 5 does not consider the needs of these children beyond whether there is a child protection concern within their family that meets the threshold for admission care. This is despite the other risks to the welfare of the child by virtue of being out of home. It is disappointing that proposed amendments to section 5, 25 years after this legislation was first introduced, are not in line with the best interests of the child principle and do not reflect the broader role of Tusla in protecting children.

Some children accommodated under section 5 have some of the highest needs of those "looked after" by the State.[3] Many may require residential aftercare provision to support their transition to independent living.[4] Despite this, children accommodation under section 5 do not have a legal entitlement to an aftercare service. While the HSE Section 5 Policy published in 2012 stated that they should receive "on-going support" on turning 18, this does not include any formal aftercare services such as an aftercare payment or allocation of an aftercare worker.

This provision to amend section 5 in the Bill does little to strengthen the current legal protections offered to a child who is homeless. It envisages that children will remain in homeless accommodation for longer than six months. At the very least, the Bill should restrict the use of section 5 to 17-year-olds; any child under 17 presenting as homeless should be brought into the care of the State once the child does not return home. Shorter, mandatory timeframes for review should also be introduced.

EPIC is one of a number of organisations who have raised concerns over many years about young people accommodated under section 5 ending up in adult homelessness once they turn 18. This issue has also been raised by the Ombudsman for Children. Children accommodated under section 5 should be assessed for aftercare where they do not return to their family by the age of 18, with aftercare provided on a needs basis. Aftercare assessment and provision for children accommodated under section 5 should be addressed in regulations under section 5A.

Regulations as to Accommodation for Homeless Children

Section 8 inserts a new section 5(A) into the Principal Act, which establishes a regulation making power for the Minister to set out regulations in relation to the accommodation to be provided to children who are estranged from, or otherwise out of, the family home, under the new section 5. Regulations may be made in respect of the conditions under which children may be accommodated

[3] Mayock,P., Parker S., and Murphy, A., *Young People, Homelessness and Housing Exclusion*, (Focus Ireland, 2014), p.191
[4] *Ibid*

and the requirements in relation to the accommodation. The amending provision states the regulations may make different provision for different circumstances or categories of children, and in respect of children of different ages or children with different levels of vulnerability or risk.

While it is positive that the Bill makes provision for regulations to be made concerning section 5 accommodation, the Bill is silent on inspection and does not bring such accommodation under the remit of the Health Information and Quality Authority (HIQA). It does not provide for a lower age threshold below which children cannot be accommodated under section 5. Although the section allows for different provision with regard to different ages and levels of vulnerability or both, vulnerability is an evolving concept; the circumstances of a child can evolve and change very quickly.

As recommended by the OCO, the regulations outlined in the proposed section 5(A)could be a mechanism to provide for safeguards and additional supports for children based on their needs, including robust needs assessment, placement planning, placement reviews and aftercare.

Another growing issue regarding the use of Section 5 is the increasing number of Separated Children Seeking Internation Protection (SCSIP) who are now being accommodated by Tulsa under this section of the Child Care Act 1991. At the end of 2024, of the 451 SCSIP, only 26% (118) were in the care of Tusla, while the majority 74% (333) were being provided with a service under section 5.[5] This points to a two-tier system where SCSIP are far more likely to be provided with services under section 5 than to be brought into the care of Tusla under a care order. One of the issues that this can they lead to is a lack of entitlement to a full aftercare service, leading to many difficulties for the young people involved.

EPIC has been provided with a copy of Tusla's recent Model of Care for Separated Children Seeking International Protection which seeks to provide equity of care to separated children. However, there is no legislative underpinning for this policy. Therefore, while this model of care indicates that separated children age 16 will receive an aftercare plan, even where accommodated under section 5, this is at odds with the legislation. Furthermore, it is of concern to EPIC that under the model of care, 17-year-olds will not have an aftercare plan, even where they have additional vulnerability. (See section on separated children below for further discussion on the model of care.)

EPIC is concerned that section 5A creates a broad delegated power in relation to the accommodation of vulnerable children, including separated children, without requiring any oversight from the Oireachtas and without going through the usual legislative process. Section 5 is not an appropriate

[5] Tusla, Annual Review on the Adequacy of Child Care and Family Support Services Available 2024. p. 23.

provision for this purpose and the Bill does not contain sufficient detail or safeguards in relation to the care and accommodation of children in these circumstances. Furthermore, the section allows for consultation with the Minister for Justice and other Government Ministers but not with the Implementation and Inter-Agency Committee.

Recommendations: Section 5

- The proposed section 5A should include provisions to ensure sufficient oversight and consultation in relation to the drafting of regulations, to include the Implementation and Inter-Agency Committee.
- The amended section 5 should place a duty of care on Tusla to assess supports the child may require, beyond accommodation, in consultation with the Implementation and Inter-Agency Committee.
- The amended section 5 should place a duty of care on Tusla to provide supports to the child other than accommodation.
- Reviews of placements should be independent and should take place every 6 weeks.
- Aftercare assessment and provision for children accommodated under section 5 should be addressed in regulations under section 5A, with aftercare provided on a needs basis.
- The amended section 5 should specify that any accommodation under section 5 will be subject to independent inspection and regulations under section 5A should address inspection standards.
- The amended section 5 should set a minimum age threshold of 16 for the accommodation of children under this section.
- The section should specify a maximum period under which children can be accommodated under section 5 before being taken into care.
- Regulations under section 5A should include safeguards and additional supports for children based on their needs, including robust needs assessment, placement planning, placement reviews and aftercare.

5. Voluntary Care

While EPIC welcomes the proposed amendments regarding voluntary care, these provisions could be further strengthened, particularly to enhance the voice and participation of children, to include independent review of voluntary care arrangements and to prevent these arrangements being left in place for extended periods of time without proper oversight.

EPIC acknowledges that voluntary care arrangements can provide a more collaborative and less adversarial approach. EPIC Advocates have seen that this can be of benefit in relation to care-experienced parents, who may need a period of support to build parental capacity with a view to caring for their child in the longer term. However, EPIC is concerned that the Bill does not contain an upper time limit for voluntary care agreements or any requirement that there must be court oversight of the agreement after a certain length of time. EPIC is of the view that voluntary care arrangements should have a maximum period 12 months, before judicial proceedings are automatically commenced to review the continuation of the arrangement.

Voluntary care agreements are concluded between the parents and Tusla with no independent oversight and safeguard to ensure that the placement and care plan are adequate to meet the child's needs. Of the 916 children admitted to care in 2024, 55% (505) were under the order of the court while the remaining 45% (411) were under a voluntary arrangement.[6]

Concerns in relation to the lack of oversight and reviews for voluntary care arrangements have been raised in Special Rapporteur on Child Protection Reports, including that voluntary care arrangements are less visible, particularly where resources are stretched.[7] This is something that EPIC has seen in our advocacy casework around the country, particularly in relation to voluntary care agreements, where children can be overlooked when it comes to allocation of social workers, care planning and aftercare planning.

The absence of a maximum duration for voluntary arrangements in either legislation or policy has led to inconsistent practices within different area and in some instances, the arrangement can continue for many years.[8] It is EPIC's experience that there is a lack of consistency around the country in relation to the use of voluntary care arrangements. This can lead to inequalities - for example, where children with complex needs in voluntary care arrangements may not get access to the supports they require, while a child who has a court appointed Guardian *ad Litem* has a professional to advocate for those resources in the context of a care order being sought with court oversight.

This inconsistency can be seen in the statistics that are available from Tusla regarding voluntary arrangements which show the variance of the use of court orders on a regional basis, as set out in the table below.

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[6] Tusla, *Annual Review on the Adequacy of Child Care and Family Support Services Available 2024*. p.82

[7] G. Shannon., *Eleventh report of the Special Rapporteur on Child Protection: A report submitted to the Oireachtas*. 2018. p.153.

[8] O'Mahony, Dr. C., *Annual Report of the Special Rapporteur on Child Protection 20*20. June 2020. p.67.

Children in Care Under Court Orders – Selected Regions

Region	Total Children in Care	Under Court Orders	Percentage
Kerry	174	174	100%
Cork	667	656	98%
Midwest	501	492	98%
Louth/Meath	418	331	79%
DSW/Kildare/West Wicklow	419	317	76%
Midlands	346	256	74%
Dublin North	424	287	68%

The absence of independent oversight of voluntary care arrangements strengthens the need to limit the duration of voluntary care agreements. The Child Law Project reported on a case where two children had been in voluntary care for ten years before an application for a full care order was brought.[9] HIQA has documented cases where voluntary care persisted for up to 10 years, and has raised concerns with Tusla that children were in voluntary care arrangements for significant periods of time without efforts to formalise the arrangement by securing a legal care order for a child, even where there were clear indications that they would not return to their parents.[10] EPIC Advocates have worked on cases where children have remained in voluntary care for many years, including where it is unlikely the child will be returning to their parent(s), and where an application for a care order has not been made.

A Study of Voluntary Care in Ireland published in 2020 recommended more detailed statistics should be compiled and published by Tusla so as to inform the review of the Child Care Act 1991, to include issues such as placement types; duration of stays in voluntary care; frequency of reviews; and outcomes.[11] This study also recommended a "maximum duration for individual voluntary care agreements."[12] Similar recommendations about having an upper limit on the period a child can remain in voluntary care were made by both previous Special Rapporteurs on Child Protection.[13]

[9] Child Law Project, Care orders for two children in voluntary care for 10 years. 2022, Vol. 2 No.25.
[10] Brennan et. al. *The rights of the child in voluntary care in Ireland: A call for reform in law, policy and practice.* Child and Youth Services Review. 125 (2021) 105989. p.4
[11] *Ibid*, p.10
[12] *Ibid*, p.9
[13] O'Mahony, Dr. C., *Annual Report of the Special Rapporteur on Child Protection 2020.* June 2020. p.67. G. Shannon., *Eleventh report of the Special Rapporteur on Child Protection: A report submitted to the Oireachtas.* 2018. p.153.

The issue of an upper time limit was discussed during pre-legislative scrutiny and EPIC understands that the Department wants to provide flexibility for Tusla where the circumstances are outside of the parent's control, such as in relation to serious health issues of the parent, but where the arrangement is inherently temporary and will be phased out as soon as possible to reunite the child with their family.

However, independent court oversight of the care arrangement, where all assessments could be reviewed regarding continuation of the care arrangement, would still retain the flexibility required for voluntary care arrangements to continue, if necessary. The OCO have suggested 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.

While the Bill will require Tusla to review voluntary care arrangements at regular intervals and at least once every six months, EPIC supports the recommendation of the OCO that provision should be made for the independent reviews of all voluntary care arrangements.[14]

The Special Rapporteur on Child Protection has recommended that children in voluntary care should have access to an independent advocate who would participate in reviews and that children who are too young to work with an advocate should have access to a guardian *ad litem* to represent the child's views and best interests in the review process.[15] This recommendation has also been made by the OCO[16] and is supported by EPIC.

At a minimum, the Bill should specify that set out how the child shall be facilitated to participate in decision making and have their views considered and given due weight in accordance with their age and maturity in the context of voluntary care arrangements, particularly in circumstances where the parent withdraws consent and a child is to return to their parent. EPIC also supports the recommendation of the OCO that the Bill should contain a provision to require that child friendly information on the voluntary care process be provided to children involved in voluntary care arrangements.

Recommendations – Voluntary Care:

- Provision should be made in the Bill for the independent review of all voluntary care arrangements.

[14] Submission of the Ombudsman for Children's Office on the Draft Child Care (Amendment) Bill 2025 (January 2026)
[15] O'Mahony, Dr. C., *Annual Report of the Special Rapporteur on Child Protection 2020.* June 2020, p.85 and 87.
[16]

- A maximum period of one year for voluntary care arrangements should be included in the Bill before judicial proceedings are automatically commenced to review the continuation of the arrangement.
- Provision should be made for this time limit to be extended in exceptional circumstances, where such an extension is in the best interests of the child.
- Provision should be made in the Bill for children under voluntary care arrangements to have access to an independent advocate for reviews, with a Guardian *ad Litem* appointed for children who are too young to work with an advocate.
- At a minimum, the amended section 4 of the Bill should specify that the child shall be facilitated to participate in decision making and have their views considered and given due weight in accordance with their age and maturity in the context of voluntary care arrangements, particularly in circumstances where the parent withdraws consent and a child is to return to their parent.
- Provision should be made in the Bill to require child friendly information on the voluntary care process be provided to children involved in voluntary care arrangements.

Significant Issues Not Currently Addressed by Bill

6. Independent Advocacy

This Bill is the ideal opportunity to create a right for children in care to have access to an independent advocate, should they wish to do so. This right should also extend to children accommodation under section 5. Much of the work undertaken by EPIC Advocates alongside children and young people revolves around access to services, and co-operation and communication between Government agencies. Empowering children and young people to access an independent advocate where difficulties arise would further strengthen the focus on multi-agency collaboration in this Bill and enhance the impact and implementation of these provisions.

Children in care and care-experienced young people often have to navigate a complex array of systems, processes, and professionals that many adults would find difficult to manage. At EPIC, we believe that all children and young people with care-experience should have the right to independent advocacy, as this fulfils a crucial role in enabling them to communicate their wishes and feelings and play an active role in decision-making regarding key aspects of their lives.[17]

[17] See further: EPIC, *Amplifying Voices: Enshrining the Right to Independent Advocacy* (2023)

Children in care with whom EPIC works often report feeling powerless, unclear about what is happening in their circumstances, and excluded from decisions fundamental to their wellbeing. An advocate can bring clarity and understanding, ensuring the child remains everyone's focus throughout their care, helping to uphold child-centred practice. In practical terms, the nature of an advocate's role can vary - from providing basic information and supporting a child or young person to know and understand their rights, to practical support, such as working with other professionals to ensure the best outcomes for the child, or a higher level of engagement, where an advocate attends a care review or court proceedings with a child or young person.

EPIC welcomes an explicit focus on centring the best interests of the child and the voice of the child in any decision-making process about their care and in service provision in the Bill. It is also very welcome that the role of the Guardian *ad Litem* (GAL) in ensuring that the views of the child are heard and ascertained in child-care proceedings is being established on a statutory basis with the Child Care (Amendment) Act 2022, as well as the establishment of the national standardised Guardian *ad Litem* service. However, the Bill could be strengthened by including a right to advocacy to children in care for decision making processes outside of court proceedings.

The UNCRC is explicit in stating that the child's right to be heard should be facilitated not only in judicial settings but in all matters affecting the child, including in administrative proceedings. It is therefore EPIC's position that the views of the child must be sought and considered when key decisions beyond a care order and related proceedings are made. Many of the critical decisions in relation to the care of a child, such as child in care reviews, care planning and aftercare assessments, happen after a care order has been made. It is also notable that children who are in voluntary care arrangements, which do not go before a court, do not have a GAL appointed.

The OCO has recommended the integration of a right to independent advocacy as part of the guiding principles in the Bill, with a view to ensuring that children can have access to an independent advocate in the context of decision-making relating to their care. The OCO makes a specific recommendation about the need for the independent review of voluntary care arrangements and the need for children having access to an independent advocate to support their participation in such a review process.[18] As noted above, the previous Special Rapporteur for Child Protection Dr. Conor O'Mahony, also recommended that children in voluntary care should have access to an advocate who would participate in reviews.[19]

[18] *Ibid*
[19] O'Mahony, Dr. C., *Annual Report of the Special Rapporteur on Child Protection 2020*. June 2020, p.85 and 87

Recommendations - Independent Advocacy

- The Bill should make provision for access to independent advocacy for children in care, with detailed provisions to be set out in regulations.
- At a minimum, children in voluntary care arrangements should have access to an advocate.

7. Separated Children/Unaccompanied Minors

EPIC is concerned that there are no specific proposals to cater for the often-complex needs of separated children and that the Bill will underpin the current approach of accommodating the majority of separated children arriving in Ireland under section 5. Specific legislative provisions are required to bring greater clarity to the admission of unaccompanied and separated children into the care of Tusla.[20]

While EPIC acknowledges that Tusla have significantly increased capacity recently to address the challenges that have arisen with increased numbers of separated children, EPIC remains concerned about the over-reliance on section 5 and the adequacy of the level of care and protection provided to separated children. Section 5 does not provide the same statutory safeguards that usually apply to children in care and allows for more relaxed rules in terms of how separated children are accommodated and the requirements in relation to staff qualifications. There are also implications for entitlements to aftercare services and supports. Separated chilren are not "temporarily out of home" and the current legal and policy framework does not cater for the often-complex needs separated children.

Tusla have developed a model of care for separated children seeking international protection that seeks to provide equity of care to separated children. However, there is no statutory basis or legislative safeguards in place for the operation of this policy approach.

Under the model of care, those referred aged 16 and 17, with an additional vulnerability, will be cared for where possible in a family placement or in a registered children centre of six children. Those referred aged 16 and 17 who do not present with additional vulnerability will be accommodated in a registered children's centre of 12-15 children. EPIC is concerned that under Tusla's new Model of Care, those aged 16 and 17 will not have a care plan and allocated social worker unless they have been identified as having an "additional vulnerability." There is a lack of

[20] See further research commissioned by EPIC, published in October 2025: Ní Raghallaigh, M., Kelleher, J., and Tedam, P., *"Be Strong – There's so many problems waiting": The Experiences of Separated Children Seeking International Protection in Ireland*.

clarity on what is considered an "additional vulnerability" and how this is assessed on an on-going basis

Over the past two years, EPIC has seen a significant increase in separated children seeking international protection contacting EPIC for advocacy and support, with a further increase in those turning 18. The majority of the issues relate to the uncertainty about their situation when leaving care, the lack of supports available during this time and the difficulty with either finding accommodation or having to move to an IPAS Centre.

The Tulsa model of care sets out that any young person who is not eligible for aftercare will be supported to move to appropriate accommodation as determined by the international protection status. As outlined in the policy document, this means that young people awaiting a determination of their status will transfer, without delay, to IPAS. The policy specifically states that young people who have status to remain in Ireland will transfer "to their own sourced accommodation or homeless services" and that Tusla's Separated Children's Team will support them to access temporary accommodation within 2 weeks of turning 18.

EPIC is concerned that there is often a complete drop-off in supports available to separated children once they turn 18. Many young people lack support from their social worker and may not have been allocated an aftercare worker. As a result, they often feel entirely on their own and face considerable difficulties navigating systems, particularly regarding their legal status. Many struggle to find accommodation, with some accessing emergency housing without an aftercare worker despite qualifying for aftercare. Others may be offered accommodation but lack additional supports, or remain in temporary housing far from their existing communities while waiting for family reunification applications to be processed.

The Department has stated during debates on the General Scheme of this Bill that the reason for the absence of specific provision for unaccompanied children is to protect the equity of care principle. The OCO has advised that the application of children's right to non-discrimination under Article 2 of the UNCRC does not mean identical treatment but rather requires States to actively identify individual children and groups of children who may require special measure to recognise and realise their rights.[21] The UN Committee on the Rights of the Child has highlighted that the principle of non-discrimination may require differentiation on the basis of the different protection needs of unaccompanied children. According to the Committee, such measures include the enactment of

[21] *Submission of the Ombudsman for Children's Office on the Draft Child Care (Amendment) Bill 2025* (January 2026), p.8

legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realise this treatment.[22]

Recommendations - Separated Children:

- The Bill should include dedicated provisions in relation to the care of separated children, to include their rights and specific needs.

8. Aftercare Eligibility Criteria (Section 45)

EPIC is disappointed to see that there have been no provisions relating to the eligibility criteria for aftercare in Bill. While we appreciate that this may in part be due to the current review by Tusla of their National Aftercare Policy for Alternative Care, the policies of Tusla, as a state agency, will always be aligned to the provisions of the 1991 Act and therefore, current difficulties within the existing laws cannot be overcome by the policies of a state agency.

It is EPIC's view that the criteria that states a young person must have spent more than 12 months in care between the ages of 13 and 18 does not reflect the complexity of many children's circumstances. In EPIC's experience, children who enter care at the age of 17 often face heightened vulnerability and precarious circumstances, particularly where they have been known to child protection or welfare services previously. Additionally, a significant proportion of unaccompanied minors are over 17 on arrival. This means that many unaccompanied minors fall into ineligibility based on having spent less than 12 months in care.

EPIC believes that the time spent in the care system is not an appropriate metric for measuring the support a young person may need when leaving care. Duration in the care system should be part of a wider consideration. Currently, a statutory assessment of need can only be conducted on those who are eligible for aftercare services and therefore review of the criteria is timely and necessary. The Report on Pre-Legislative Scrutiny on the General Scheme of the Child Care (Amendment) Bill 2023 recommended that the statutory eligibility criteria for aftercare should be widened to allow flexibility for consideration of individual circumstances and the impact of these on a young person's need for aftercare.[23]

Section 45 of the Child Care Act 1991 stipulates that a person may be eligible up until the age of 21 or this may be extended up to 23 years of age if their education/training course is not completed by

[22] UN Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, para. 18.
[23] Joint Committee on Children, Equality, Disability, Integration and Youth, *Report on pre-legislative scrutiny of the General Scheme of a Child Care (Amendment) Bill 2023*, p.76

their 21st birthday. It is welcome that there is acknowledgment for the need for flexibility regarding supporting a young person beyond the age of 21. However, it is EPIC's view that the requirement that a young person be in education is built upon an unhelpful presumption that education is equally accessible amongst all of those with care-experience. Aftercare services should aim to be responsive, inclusive, and relevant to each young person's circumstances. While education should be incentivised, it should not dictate eligibility for an aftercare service, and there are other means to support access and retention in further and higher education and training. The Report on Pre-Legislative Scrutiny on the General Scheme of the Child Care (Amendment) Bill 2023 recommended that discrimination in the allocation of aftercare services based on progression in further and higher education should be removed.

EPIC have consistently held that aftercare supports are extended to 26 years of age based on an assessment of need. The 2024 Eurostat statistics found that the average age for young people to leave their parental home in the EU was 26.42 years, while in Ireland it was 26.8 years of age. This is further cause to reassess the upper limit for aftercare provision given care-experienced young people are made independent at 18 and often lack family and community supports including in relation to housing.

The Ombudsperson for Children has also recommended that eligibility criteria should be expanded to include young people beyond the age of 24 where appropriate, regardless of whether the young person is in full-time education.[24] The Report on Pre-Legislative Scrutiny on the General Scheme of the Child Care (Amendment) Bill 2023 recommended that aftercare supports are extended to 26 years of age based on an assessment of need.

Recommendations- Aftercare:

- Eligibility criteria under section 45 should be expanded to include young people beyond the age of 24 where appropriate, regardless of whether the young person is in full-time education.
- The criteria for 12 months in care to meet eligibility for aftercare should be removed, with aftercare provided on a needs basis having regard to the individual circumstances of the young person.

[24] Ombudsman for Children's Office, *Submission to Tusla on the Review of the National Leaving and Aftercare Policy 2011*, November 2016, p.6.