



Review of the Child Care Act 1991

Written Submission

Friday, 23rd February 2017

Introduction

Early Childhood Ireland (ECI) is the largest representative and support body for the early years sector in Ireland. We represent 3,800 members, including more than 3,200 Tusla registered childcare providers, who in turn support over 100,000 children and their families through preschool, afterschool and full day-care provision nationwide. Our work includes quality enhancement, publications, advocacy, training, business support and information for a sector that employs 25,000 people. The best interests of the children receiving early childhood education and care (ECEC) is of utmost importance to ECI and we work to ensure that all children are thriving in quality early years settings.

ECI welcomes the opportunity to feed into the review of the Child Care Act 1991. Our submission looks exclusively at Part VII and VIIA *Supervision of Pre-School Services*.

Part VII and VIIA Supervision of Pre-School Services

The Child Care Act 1991 is ostensibly child welfare and protection legislation relating to “the care of children, particularly children who have been assaulted, ill-treated, neglected, or sexually abused or who are at risk”.¹ There has been significant development in ECEC policy and practice since the Child Care Act 1991 was first debated in the late 1980s. At present, the sector finds itself in a period of particularly rapid change and expansion. The Childcare Support Bill 2017, which will provide the statutory basis for the Affordable Childcare Scheme (ACS), is currently before the Oireachtas. The ACS will be a new, national

¹ Explanatory Memorandum to the Child Care Bill 1988.

scheme of financial support towards the cost of childcare and is heralded by the Department of Children and Youth Affairs as “a major milestone on our collective journey to delivering accessible, sustainable, affordable, quality childcare to families in Ireland”.² Under the Childcare Support Bill 2017, only childcare service providers³ who are registered with Tusla will be eligible to participate in the ACS. As such, work is underway to develop new regulations on registration, quality assurance and oversight that will bring childminders and stand-alone school age services into the remit of the scheme. Amendments to Part VII and VIIA of the Child Care Act 1991 will be necessary to reflect new definitions of childminding and school age services, the scope of such services, and to include children up to the age of 15 years in line with the ACS. However, ECI sees this review as the ideal opportunity to in fact remove Part VII and VIIA from the Act and to create stand-alone legislation.

Recommendation

Given the development and expansion of ECEC over recent decades, ECI does not think that the supervision of pre-school services under Part VII and VIIA sits appropriately within the Child Care Act 1991 and recommends that stand-alone legislation be developed that comprehensively addresses pre-school and school age services in both centre and non-centre based settings.

Child Protection

The power to make regulations for securing the health, safety and welfare and promoting the development of children attending early years services is vested in the Minister for Children and Youth Affairs under section 58B of the Child Care Act 1991. However, ECI is very concerned about the legal lacuna which has emerged in the regulatory oversight of child protection policy in early years settings since the introduction of the Children First Act 2015 and the revised Child Care Act 1991 (Early Years Services) Regulations 2016.

² DCYA communication on 14th December 2017 accompanying publication of the Childcare Support Bill 2017.

³ “Childcare services provider” is defined under the Childcare Support Bill 2017 as “the provider of a pre-school service or school age service whose name is entered in the register of prescribed early years services established and maintained in accordance with section 58C of the Child Care Act 1991.

Under the previous Child Care Act 1991 (Early Years Services) Regulations 2006, early years services were explicitly required to have a child protection policy in place by regulation 9(2):

Within the framework of *Children First National Guidelines for the Protection and Welfare of Children*, clear written guidelines on identifying and reporting child abuse should be developed by the pre-school service.

Due to the enactment of the Children First Act 2015 and its provisions on child safeguarding, the revised Child Care Act 1991 (Early Years Services) Regulations 2016 are now silent on child protection. As such, the Tusla Early Years Inspectorate, whose purpose is to promote the quality, safety and appropriate care of children in early years services through robust inspection under the pre-school regulations,⁴ has no remit to request or inspect evidence of a service’s child protection policy.

Current Child Protection Arrangements

Child protection requirements for early years services are now governed by sections 10-13 of the Children First Act 2015. Under Schedule 1 of the Act, early years services are “relevant services”.⁵ As relevant services, early years providers are obliged to undertake an assessment of any risk or potential for harm to a child while availing of the service and to prepare a written statement (“child safeguarding statement”) of the policies and procedures in place to ensure, as far as practicable, that a child availing of the service is safe from harm.

In accordance with section 11 (5)(b)(ii), a provider shall, on request, furnish a copy of its child safeguarding statement to the Child and Family Agency (Tusla). Failure to furnish the statement upon request, and after notice of said failure has been given to the provider, will be deemed a non-compliance. The consequence of a non-compliance is for the service to be added to a Tusla register of non-compliance. ECI has been advised that the register of non-compliance is currently being developed by the National Manager for Quality Assurance at Tusla. The legislation allows for an entry onto the register to be removed where appropriate,

⁴ Tusla Early Years Inspectorate Annual Report 2016.

⁵ All early years services within the meaning of Part VIIA of the Child Care Act 1991 are relevant services for the purpose of the Children First Act 2015.

for example after the statement is furnished, and the register will be made available for inspection by members of the public at Tusla's principle office.

Regulatory Non-Compliance

By comparison, there are well-articulated procedures for managing and escalating non-compliances identified by Tusla in the course of an early years inspection under the Child Care Act 1991 (Early Years Services) Regulations 2016:



While most non-compliances are remedied at CAPA level, measures are in place to remove a service from the register of prescribed early years services and ultimately to prosecute a service for continued and serious non-compliance. ECI is concerned that the sanction for failing to comply with child protection requirements under the Children First Act 2015, namely inclusion on a register of non-compliance, is inadequate and disproportionate to the sanctions in place for regulatory non-compliance, i.e. the potential to be removed from the register and ultimately prosecution.

The importance of robust child protection policies and procedures in early years settings working with very young children cannot be understated. It is entirely inappropriate that the requirements for keeping children safe from abuse and neglect under primary legislation are subject to lesser scrutiny and lesser sanction than the policies and procedures governing health and safety under the regulations. ECI sees this as a matter of best practice, which the early years sector is committed to meeting, and the best interests of children availing of ECEC services. We believe that having a child safeguarding statement and accompanying policies and procedures in a childcare service should be:

- a condition of registration;
- specified in the Child Care Act 1991 (Early Years Services) Regulations 2016;
- subject to inspection by the Tusla Early Years Inspectorate;
- sanctionable under the existing procedures for managing and escalating regulatory non-compliances by early years services.

To this end, ECI has collaborated with Dr Fergus Ryan, senior lecturer in law at the Department of Law in Maynooth University, who lent us his expertise in a personal capacity. The following amendments to Part VIIA of the Child Care Act 1991, the Children First Act 2015 and the Child Care Act 1991 (Early Years Services) Regulations 2016, are offered as a proposed remedy to the legal lacuna outlined and to bring child protection back within the remit of the relevant regulatory and inspection regime.

ECI looks forward to hearing DCYA's views on the workability of the proposed amendments.

Insert new definition in Section 58A

“Child safeguarding statement” has the meaning assigned to it by section 11 of the Children First Act 2015;’

For the purpose of Part VIIA, this defines a child safeguarding statement by reference to the Children First Act 2015.

Insert in Section 58B (after subsection (2))

‘(2A) Without prejudice to the generality of subsection (1), regulations may require that persons who provide prescribed early years services comply with Part 2 (and, in particular, section 11) of the Children First Act 2015.’

This will allow regulations on early years services to include a requirement to have a child safeguarding statement.

Insert in Section 58D (after subsection (1))

‘(1A) A person shall not provide a prescribed early years service unless he or she has a child safeguarding statement relating to that service.’

This will effectively prevent a person from providing an early years service without a child safeguarding statement.

Insert in Section 58D (after subsection (9))

‘(9A) The Agency shall refuse to register an applicant and shall remove from the register a registered provider

(i) where the applicant fails, without reasonable excuse, to furnish to the Agency a child safeguarding statement in respect of the applicant for inspection by the Agency or

(ii) where the registered provider fails, without reasonable excuse, to provide a child safeguarding statement in respect of the registered provider for inspection by the Agency following registration of the registered provider in the Register of Non-Compliance established under s.13 of the Children First Act 2015.’

This will effectively prevent a service from being registered unless it has a child safeguarding statement.

Replace Section 58G with the following:

‘(1) It shall be the duty of every person providing an early years service to take all reasonable measures to safeguard the health, safety and welfare of children attending the service and to comply with regulations made by the Minister under this Part.

(2) Without prejudice to the generality of subsection (1), it shall be the duty of every person providing an early years service to have a child safeguarding statement relating to that service.’

This will require an early years service to have a child safeguarding statement.

Insert in Section 58J (after subsection (3))

‘(3B) An authorised person who enters any premises in accordance with subsection (1), (1A) or (2) may make request that any person in charge of such premises (including a person in charge of such premises temporarily or for the time being) furnish to the authorised person a child safeguarding statement in respect of the relevant service.’

This will allow an inspector of an early years service to require that a child safeguarding statement be furnished during an inspection.

Proposed amendments to the Children First Act 2015

Replace Section 11(5) with the following:

“(5) A provider of a relevant service shall furnish a copy of the provider’s child safeguarding statement—

(a) to members of staff of the provider, and

(b) on request—

(i) to a parent or guardian, as the case may be, of a child availing of the relevant services,

(ii) to the Agency,

(iii) to an authorised officer appointed under section 23S of the Child Care Act 1991 or who is carrying out an inspection under section 23T of the Child Care Act 1991

(iv) to a person appointed under section 23K(7)(f), section 54 or section 58I of the Child Care Act 1991 or who is authorised to carry out an inspection under section 55, section 58J, section 63(2)(g), or section 69 of the Child Care Act 1991, or

(v) to members of the public.”

This allows an inspector appointed under the Child Care Act 1991 to request a copy of the child safeguarding statement.

In Section 12(1), after ‘section 11(5)(b)(ii)’, insert the following

‘by an authorised officer under section 11(5)(b)(iii) or by a person under section 11(5)(b)(iv)’

This allows the Agency to issue a non-compliance notice under section 12 where a person fails to furnish a child safeguarding statement to an officer or person inspecting a premises under the Child Care Act 1991.

Insert new subsection 12(10)

‘(10) (a) Where any person (hereinafter ‘authorised person’) is authorised to carry out an inspection of any premises or service under the Child Care Act 1991 that is a relevant service under this Act [the Children First Act 2015], the authorised person may, as part of that inspection, request that the person or persons in charge of that premises furnish a child safeguarding statement pertaining to that premises or service.

(b) Where, pursuant to a request under paragraph (a), the person or persons in charge of the relevant premises or service fail (without reasonable excuse) to furnish a copy of the child safeguarding statement, the authorised person may make and report a finding of non-compliance with section 11 of this Act as part of the inspection.

(c) Where a person makes a finding of non-compliance under paragraph (b), that person shall give notice in writing of such a finding to the Agency at the earliest reasonable opportunity.

(d) In this subsection, ‘person or persons in charge’ includes the manager of the premises or service, the provider of the service and any person who is responsible, at the time of the inspection, for the management of the premises or service or both.’

This empowers an inspector to ask for a child safeguarding statement as part of an inspection under the Child Care Act 1991.

Insert new definition in Regulation 2

“Child safeguarding statement” has the meaning assigned to it by section 11 of the Children First Act 2015;’

Insert in Regulation 6(5)

‘(aa) a child safeguarding statement in respect of the relevant service’

Insert new Regulation 23A

‘23A. Without prejudice to the generality of Regulation 23, a registered provider shall ensure that the service is in compliance with Part 2 of the Children Act 2015.’

Insert in Schedule 3, Information to be enclosed with application form:

Insert directly under ‘Copy of Safety Statement’:

‘Copy of Child Safeguarding Statement’

Insert in Schedule 5(1)

‘(aa) child safeguarding statement’

Insert in Schedule 5(2)

“Child safeguarding statement” has the meaning assigned to it by section 11 of the Children First Act 2015;’

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