CORA Cork Open Research Archive
Cartlann Taighde Oscailte Chorcaí

Title	Child removal decision-making systems in Ireland: law, policy and practice
Authors	Burns, Kenneth;O'Mahony, Conor;Shore, Caroline;Parkes, Aisling
Publication date	2016-10-20
Original Citation	Burns, K., O'Mahony C., Shore, C. and Parkes, A. (2017) 'Child removal decision-making systems in Ireland: Law, policy and practice' in: Burns, K., Pösö, T. and Skivenes, M. (eds.) Child Welfare Removals by the State: A Cross-Country Analysis of Decision-Making Systems. New York : Oxford University Press, pp. 146-173. isbn: 9780190459567
Type of publication	Book chapter
Link to publisher's version	https://global.oup.com/academic/product/child-welfare-removals-by-the-state-9780190459567?q=burns%20kenneth&lang=en&cc=ie
Rights	© Oxford University Press 2017. This accepted manuscript version is reproduced by permission of Oxford University Press.
Download date	2026-11-07 13:03:59
Item downloaded from	https://hdl.handle.net/10468/4248



University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

CHAPTER 7

Child removal decision-making systems in Ireland: Law, policy and practice

Kenneth Burns, Conor O'Mahony, Caroline Shore and Aisling Parkes

Introduction

Interventions into the private domain of the family by the State, and the consequent restriction of the right to respect for private and family life, and the child's right to a family, are potentially a cause of significant tension. This is particularly so when the State seeks to place a child in alternative care, whether by consent or through some form of inquisitorial or adversarial decision-making process. Ireland[i] has a long history of alternative care for children through foster care. In Brehon law, which was a legal system in operation in Ireland for 700 years up until the seventeenth century, foster care was a regular practice. Shannon (2011) describes how children from all classes were fostered, and it was not just children who were abandoned or orphaned who were fostered. When this practice petered out in the eighteenth century, it was replaced by more repressive residential care systems. One such system, called the Industrial School system, was funded by the State but principally run by Catholic religious orders from the 1920s to the late 1960s. Some of the children who were abandoned, neglected or were 'troublesome', were often further abused and neglected by the largely religious staff in the Industrial School system who were charged with their care and protection, with survivor accounts detailing physical abuse, emotional abuse, sexual abuse, child labour and starvation (see, for example, Ryan 2009). The children sent to these institutions were placed there by the Courts, whereby,

> committal took place without the "inquiry" demanded by the law … proceedings were perfunctory, and the evidence provided by largely untrained staff from the Irish Society for the Prevention of Cruelty to Children was 'rarely questioned' (Arnold 2009 cited in Garrett 2013, pp. 28-29).

Such a situation could not be further divorced from the principles underpinning Article 8 of the ECHR which exhorts states to intervene in a proportionate manner and to ensure decisions are supported by 'relevant and sufficient reasons'. An entirely new regime was implemented following the enactment of the Child Care Act 1991, but little evidence was available regarding the operation of this system in practice until quite recently.

This chapter will examine Ireland's current approach to decision-making for the reception of children into alternative care. By alternative care we mean children who are in the care of the State, either under a court-granted care order, through voluntary care with the consent of a parent(s), or a child who has been removed by An Garda Síochána (police) in an emergency situation. The chapter's specific focus is on the *exact decision-making point* at which children come into the care of the State. The chapter will set out the legal and constitutional system that facilitates the removal of children from their families and examines thresholds for intervention. It will illustrate the dominance of an adult and family-centric model that has privileged parental rights and charts the nascent emergence of a children's rights ethos. The chapter also highlights the prevalence of voluntary care in Ireland and raises questions regarding the protection of children's and parents' rights in this administrative system. The chapter goes on to show how the heretofore opaque child care proceedings in the District Court are opening up towards greater transparency. While it acknowledges current reforms and positive developments, the chapter identifies and critically examines reforms, challenges and blind spots in Irish decision-making systems for the reception of children into State care. The chapter begins by briefly setting out the Irish child welfare and protection system before going on to present data on childhood and children in care in Ireland.

At various points in this chapter, references are made to the findings of an empirical research project undertaken by the authors examining professional perspectives on District Court child care proceedings in Ireland. This is the first inter-disciplinary qualitative project to be undertaken in Ireland on this topic. It examined three counties, involving a mixture of urban and rural areas, in which the views and experiences of judges, lawyers, social workers, barristers and guardians *ad litem* were analysed (see Parkes et al. 2015; O'Mahony, 2016a,b). Findings are included here to shed light on some important points that would otherwise remain opaque.

The Irish child welfare and protection system

The Irish child protection system is currently undergoing fundamental reform (for more comprehensive examinations of the historical development of child protection in Ireland, the following sources are recommended: Buckley and Burns 2015; Skehill 2004). At the end of January 2014, for the first time in the history of the State, Ireland created a dedicated agency to consolidate most (but not all) children's services. Children's advocates have long been critical of the peripheral location of children's services in a monolithic health service (Burns and Lynch 2012). The newly-established Child and Family Agency seeks to address previous criticisms of children's services which centred on a lack of emphasis on early intervention, prevention and family support, and high thresholds for interventions. The new Agency is seeking to underpin the new system with a differential response model that would divert welfare and lower risk cases away from statutory child protection services towards local, community, non-governmental agencies (see Tusla, Child and Family Agency 2013).

While this reorientation of child protection and welfare services is necessary and welcome, a critical interpretation highlights significant issues that may impact on the effectiveness of these changes. First, the community sector is not adequately resourced to take on this work, which is exacerbated by significant cuts to their funding due to the fiscal debt crisis. Second, the failure to bring together *all* children's services may not address previous failings of services and professionals to work together effectively for children. Third, the welfare state in Ireland, which is a residual, means-tested model based on subsidiarity, was further eroded during the economic crisis and retrenchment has impacted families through cuts in welfare payments, universal services, and increases in eligibility requirements (for example, access to medical cards) (see Considine and Dukelow 2013). Finally, the 'delegation' of welfare cases to the community may have negative consequences for social workers in child protection whose work may become dominated by tertiary level, high-risk, and high-stress child protection cases.

Ireland has significantly modernised its legislation and policies in the area of child protection over the last 20 years. Current developments in the child protection system are focused on: shifting towards a mandatory reporting approach and placing child protection guidelines on a statutory footing (Children First Act 2015), consolidating the standardisation of child protection processes and systems (Health Service Executive 2009a), a recently passed law to remove the defence of 'reasonable chastisement' which will effectively prohibit parents from slapping their children, pressure on policy makers to resource child and family welfare social

work teams to deal with very large waiting lists, and the implementation of Ireland's first overarching policy framework for children and young people from 2014-2020 (Department of Children and Youth Affairs 2014a). The publication of this new policy framework is timely as the Ombudsman for Children (2012) has previously argued that a children's rights ethos is not evident in children's services and Irish society. The recent amendment of the Irish Constitution to insert a new Article 42A dedicated to recognising the independent rights of children may be a catalyst for change in this regard.[ii]

Child care law and the Irish constitution

The legal framework for District Court child care proceedings in Ireland rests on Article 42A.2.1° of the Constitution. Article 41 of the Irish Constitution recognises the 'Family' (defined as the marital family) as 'the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law', and provides that '[t]he State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.' Article 42 builds on this by granting strong rights to parents with respect to the education of their children. However, Article 42A.2.1° qualifies these rights by stipulating:

> In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

This obligation of the State is discharged through the Child Care Act 1991, which makes it a proactive duty of the Child and Family Agency to identify and promote the welfare of children who are not receiving adequate care and protection. To this end, it gives the Child and Family Agency the power to apply to the District Court for a range of child protection measures, which are discussed in turn below.

While the primary aim of the Child Care Act 1991 is to protect children at risk, the constitutional framework requires that the Act must go to some length to take account of the rights of parents (O'Mahony *et al.* 2016a). Thus, while the Act stipulates that the Child and

Family Agency (s.3(2)(b)) and the District Court (s.24) must regard the child's welfare as the first and paramount consideration, it also stipulates that in the implementation of its duties, the Child and Family Agency must have regard to the rights and duties of parents, whether under the Constitution or otherwise, and to the principle that it is generally in the best interests of a child to be brought up in his own family (s.3(2)(b) and (c)). Although the latter obligation is not expressly placed on the District Court, the Supreme Court has held on numerous occasions that the statutory welfare principle must be interpreted and applied by the courts in light of a constitutional presumption that the child's welfare is to be found within the family under the care and protection of the child's parents.[iii] The circumstances that must be proven to rebut this presumption are extremely serious, and the Child Care Act 1991 reflects this by stipulating demanding standards of proof that must be met before orders may be made by the District Court.[iv] The statistical data examined in the next section highlights the high proportion of orders granted in care order applications, which raises interesting questions as to the extent to which these principles are emphasised in practice. However, as discussed in other chapters, the high proportion of care order applications that are granted by courts is not unique to Ireland.

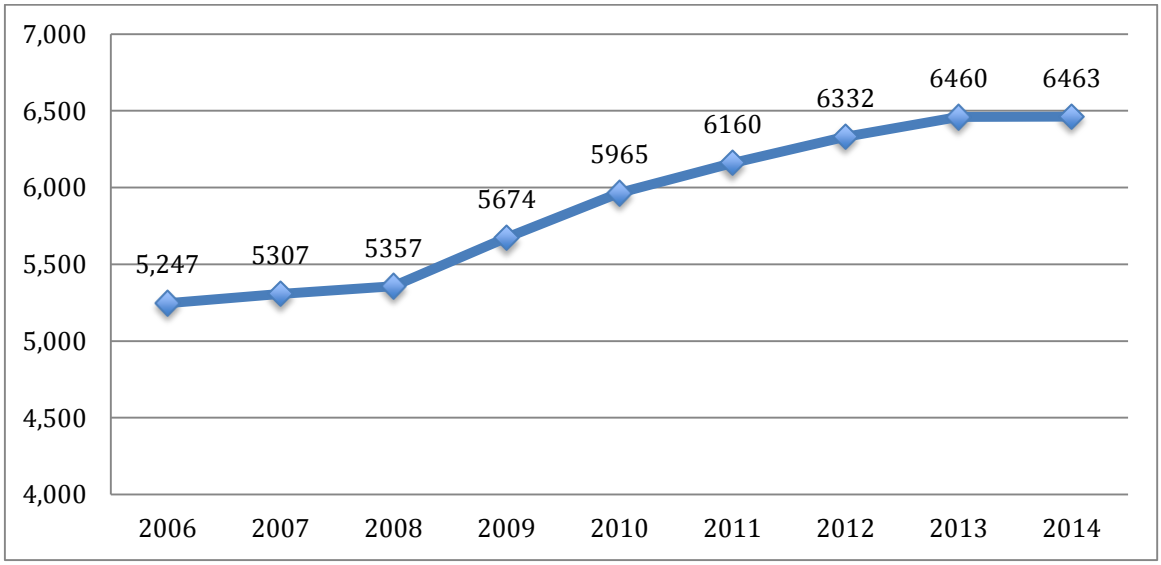
In addition to spelling out the importance of protecting the substantive rights of parents, the Act provides various safeguards for their procedural rights. For example, while the Act allows for an emergency care order to be made *ex parte* (should the judge be satisfied that the urgency of the matter requires it) (s.13(4)(c)), the duration of such an order is limited to a maximum of eight days; this period cannot be extended (s.13(2)). The eight day period is intended to allow the Child and Family Agency to carry out an investigation into the child's circumstances and its limited duration is clearly influenced by constitutional concerns relating both to the parents' substantive right to custody of their children[v] and the parents' procedural rights (specifically, the principle of *audi alterem partem* which requires that as a rule, both sides to a dispute be heard, particularly where serious consequences attach to any court order).[vi] If parents are to be properly heard and able to present their case, legal representation is key: our research indicates unanimous opinion among professionals that the provision of legal representation for parents is of the utmost importance in child care proceedings, and both judges and the Legal Aid Board go to great lengths to ensure that it is provided. However, the under-resourcing of the Legal Aid Board, coupled with late exchange of documents between the parties and the often chaotic nature of the lives of the parents involved, often results in representation being provided in less than ideal circumstances, with minimal opportunity for advance consultation and preparation (O'Mahony *et al.*, 2016a).

Pathways to alternative care for children and statistical data

Ireland has a total population of 4.59 million, of which 1.15 million are children under the age of 18 years (Central Statistics Office 2012). The population of children living in Ireland increased 13% between 2002 and 2011. Key child well-being indicators and an examination of the experience of childhood in Ireland are detailed in the annual *State of the Nation's Children* reports (see Department of Children and Youth Affairs 2013), *Growing Up in Ireland: National Longitudinal Study of Children* publications[vii] and UNICEF (2010, 2013, 2014) reports, and are not examined in this chapter. In compiling the following statistical data, the most recent available *full* dataset for child protection is for 2013; however, where newer data was available, the most up-to-date figure is included.

There has been a 137% increase in the numbers of referrals to the State of a child protection or child welfare issue from 18,438 in 2004 to 43,630 in 2014. In 2014, 43% of these referrals were for child protection (child sexual abuse, emotional abuse, neglect or non-accidental injury) and 57% of the referrals related to welfare cases (Tusla, Child and Family Agency 2015a). Figure 7.1 charts the 23% increase in the numbers of children in care at the end of each year between 2006 and 2014 and Table 7.1 highlights the numbers of children in care per 1,000 children of the under-18 population:

Figure 7.1: Total numbers of children in care at year end, 2006-2014



Sources: (Health Service Executive 2009b, 2013; Tusla, Child and Family Agency 2014a,b,c).

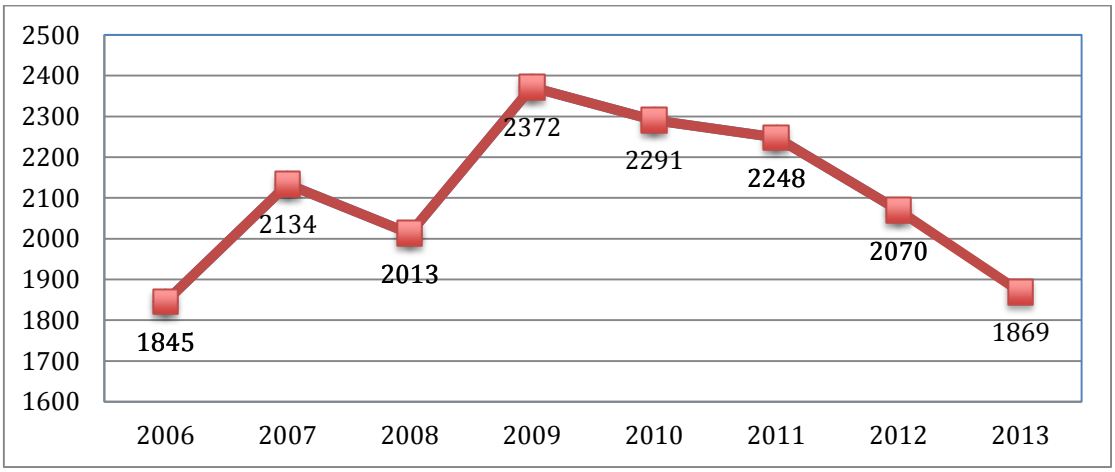
Table 7.1: Children in care per 1,000 at year end, 2008-2014

Year	Children in Care	Children per 1,000
2008	5,357	5.02 children per 1,000
2009	5,674	5.06 children per 1,000
2010	5,965	5.18 children per 1,000
2011	6,160	5.35 children per 1,000
2012	6,332	5.5 children per 1,000
2013	6,460	5.6 children per 1,000
2014	6,463	5.6 children per 1,000[viii]

Sources: (Health Service Executive 2009b, 2013; Tusla, Child and Family Agency 2014a,b,c).

64% of children in alternative care in Ireland live in general foster care, with a further 29% in kinship (relative) foster care. At the end of 2014, there were 6,463 children in the care of the State, which represents a rate of 5.6 children per 1,000 (Tusla, Child and Family Agency 2014c). Of the children in care at the end of December 2012, 34% were aged between 0-4, 18% between 5-8, 21% between 9-12 and 27% between 13-17 (Tusla, Child and Family Agency 2014b, p. 63). Overall, 73% of children in care are in the 0-12 age bracket, which is in contrast to the profile of some Nordic countries which tend to have more children in care in the 13-17 bracket (see Gilbert *et al.* 2011; see Chapters 2, 3 & 4). This is an interesting difference and may reflect a propensity in Nordic countries to intervene earlier and/or be a symptom of the limited availability of universal, family-based [in home] services in Ireland to maintain children at home. While the number of children in care is increasing, the number of admissions of children to care has been decreasing since a peak in 2009:

Figure 7.2: Admissions of children to care by year 2006-2013



Source: (Tusla, Child and Family Agency 2014b, p. 62; Tusla, Child and Family Agency 2015b, p. 47).

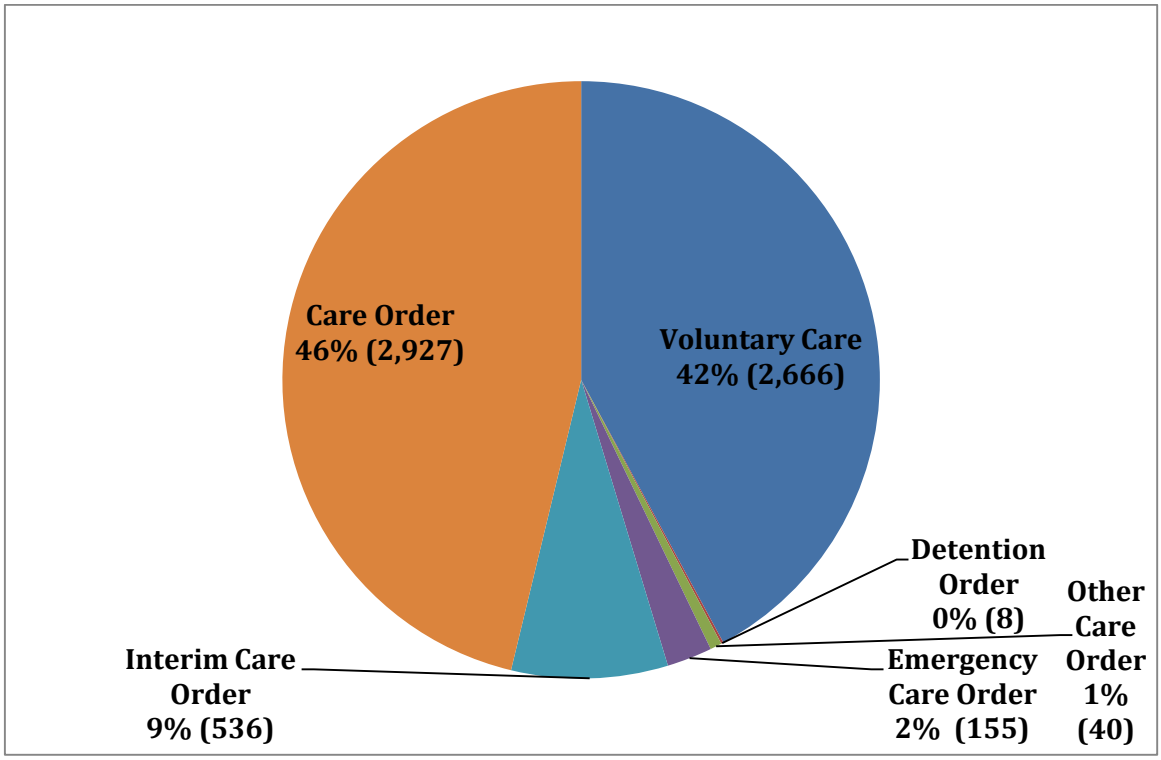
In Figure 7.2 we can see a marked decrease of 21% in admissions between 2009 and 2013, despite the aforementioned significant increase in the number of new referrals during this period. It is unclear why the admissions to care are dropping in a climate of increased reports, whereby one might expect admissions to care to increase commensurately. Possible explanations for this situation are that: a) entry thresholds for assessment and alternative care services are rising due to resource constraints; b) a larger number of children and families are awaiting assessment, c) the high figure in 2009 may have been the system's response to the publication of child abuse inquiries around this period, and/or d) that thresholds for children's entry into state care are becoming higher. It is difficult to gather data on the complete costs of children in care (direct, indirect, capital, staff, therapeutic, education, mental health, Courts Service costs and so forth); however, data is available on some of the court costs for child care cases and rates for alternative care placements. In 2012, the Department of Children and Youth Affairs paid out €31.1 million in legal fees for child care court cases, from which €13.1 million was paid to Health Service Executive (now the Child and Family Agency) solicitor contracts, €2.8 million on counsel fees and €10.8 million on guardian Ad Litem costs (Kelly 2013). O'Brien and Ahonen (2015) reported that direct legal costs incurred by the Child and Family Agency in one region in Ireland for care order applications through the District Court are a minimum of €21,500, which excludes additional costs for a guardian *ad litem*, counsel fees, guardian *ad litem* legal fees, assessment fees, care placements costs and so on. The allowance paid to foster carers is €352 a week per child (€18,304 a year) which covers the basic costs of caring for a child. The Child and Family Agency pay some private foster care companies €1,200

a week per child. Private residential care can cost between €5,000 and €7,000 a week, depending on staffing and additional services such as in-house education and it has been reported that some private placements can cost up to €14,000 a week (O'Brien and Ahonen 2015). It is estimated that State-run residential care can cost between €5,000 and €12,000 a week per child, depending on the staff to young-person ratios, the provision of in-house education and associated therapeutic services.

A care order in Ireland means a court order under sections 13, 17 and 18 of the Child Care Act 1991 that places a child into State care with the Child and Family Agency. However, a care order is only one of three mechanisms and pathways through which a child can be placed in alternative care: in an emergency situation through An Garda Síochána (police), through a voluntary process agreed between a parent(s) and the Child and Family Agency, and through an application to the District Court for a care order by the Child and Family Agency. There is an additional mechanism, not addressed in this chapter, whereby the Child and Family Agency can apply to the High Court for a detention order to place a child or young person in a Special Care (secure) unit, if that child is found by the court to pose a serious risk to his/herself or others. There were 14 children resident in Special Care Units in Ireland in September 2015 (Tusla, Child and Family Agency 2015c). An amendment to the Child Care Act in 2011 codifies the power of the High Court to grant special care orders to detain children in rare circumstances; however, these provisions have yet to be brought into effect, and in the meantime, the High Court deals with the cases as part of its inherent jurisdiction.

Of the 1,896 admissions of children to the care of the State in 2013, 64% were voluntary admissions by parents under s.4 of the Child Care Act 1991, 13% involved emergency court orders under s.13, 15% were by interim care orders under s.17, 5% were by care orders under s.18 and 2% under 'other care order' (Tusla**,** Child and Family Agency 2015b, p. 45). Figure 7.3 provides a breakdown of the complete population of children in State care at the end of December 2012 (data unavailable for 2013), by care status:

Figure 7.3: Care status of children in care at the end of December 2012



Source: (Tusla, Child and Family Agency 2014b, p. 55).

While 62% of *admissions* to care in 2012 were voluntary admissions, Figure 7.3 shows that only 4 in 10 children in care at year-end were in care on a voluntary admission. The primary reasons for admission to care between 2008 and 2013 are presented in Table 7.2, although some caution should be exercised when interpreting these statistics as the reasons for admission to care are often multi-factorial. The category of 'child welfare concern' is a 'catchall' category that includes issues such as parents unable to cope, parental abuse of substances, behavioural issues and so forth:

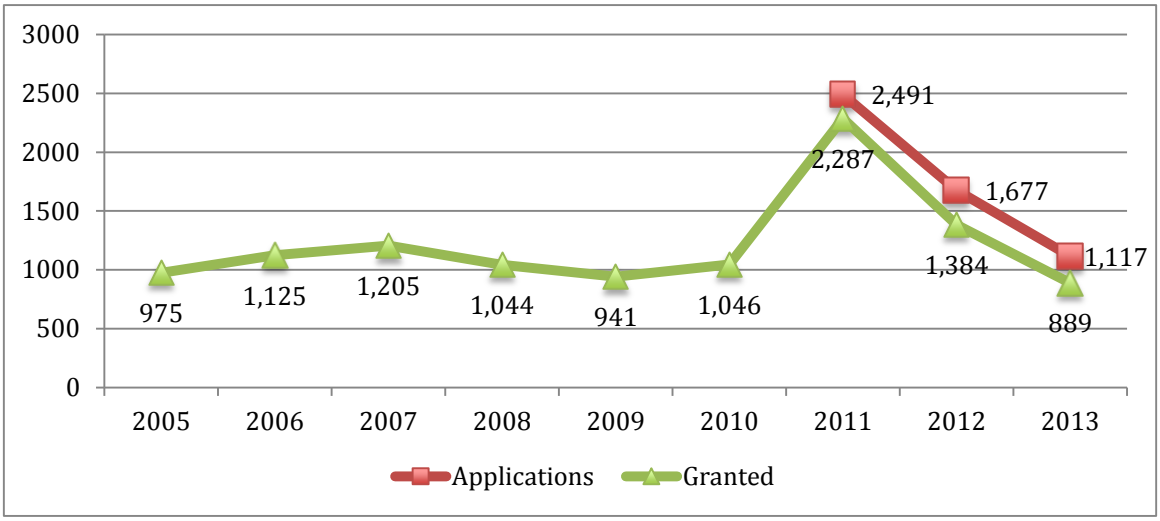
Table 7.2: Primary reason for admission to care 2010-2013

Primary reason for admission to care	**2010**	**2011**	**2012**	**2013**
Physical abuse	**160**	**169**	**173**	**121**
Emotional abuse	**66**	**87**	**154**	**100**
Sexual abuse	**63**	**33**	**35**	**48**
Neglect	**398**	**483**	**593**	**608**
Child welfare concern	**1,604**	**1,446**	**1,115**	**1,019**
Totals	**2,291**	**2,218**	**2,070**	**1,896**

Sources: (Health Service Executive 2013; Tusla, Child and Family Agency 2014b, 2015b).

Data on the numbers of care orders made by the District Court is quite limited in official statistical publications. Figure 7.4 and Table 7.3 provides an overview of the available Courts Service data for these orders between 2005 and 2013. When interpreting this data, the reader should bear in mind that 'the number of applications does not necessarily reflect the number of children in respect of whom orders are made, as several orders may be made in respect of an individual child' (Courts Service 2013, p. 26):

Figure 7.4: Full care orders applications vs. granted 2005-2013



Sources: (Courts Service 2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007; Child Care Law Reporting Project 2014a).

Figure 7.4 charts the mostly steady rate of full care order applications between 2005 and 2013. The large spike in the numbers of care orders granted in 2011 and 2012 appears to be an anomaly and is not commented upon in the Courts Service statistics, nor is it corroborated in the Health Service Executive data and therefore should be treated as an outlier or artefact of a change in processes or recording during these two years. It is surprising, given that there was more than a doubling in the rate of referrals to the Health Service Executive/Child and Family Agency during this period, that the numbers of full care order applications were actually *fewer* in 2013 than in 2005. It was not possible due to the absence of data on care order applications for these years to comment on trends regarding care order applications versus orders granted, but a limited analysis was possible for 2011-2013:

Table 7.3: Analysis of Courts Orders by Care Type 2008 – 2013

Type of order	**2013**	**2012**	**2011**	**2010**	**2009**	**2008**
Care order applications	1,117	1,677	*2,491*	*Unavailable*	*Unavailable*	*Unavailable*
Care orders made	**889** *(80% granted)*	**1,384** *(83% granted)*	**2,287** *(92% granted)*	**1,046**	**941**	**1,044**
Interim care order applications*	6,023	5,773	*4,365*	*Unavailable*	*Unavailable*	*Unavailable*
Interim care orders made*	**4,993** *(83% granted)*	**4,862** *(84% granted)*	**4,138** *(95% granted)*	***Unavailable***	***Unavailable***	***Unavailable***
Emergency care order applications	520	519	*Unavailable*	*Unavailable*	*Unavailable*	*Unavailable*
Emergency care orders made	**414** *(80% granted)*	**424** *(82% granted)*	***Unavailable***	***Unavailable***	***Unavailable***	***Unavailable***
***** includes extensions of interim care orders						

Sources: (Courts Service 2014, 2013, 2012, 2011, 2010, 2009; Child Care Law Reporting Project 2014a).

Of particular note in Table 7.3 is the high rate of care orders granted. A closer examination of the orders applied for and granted by each District Court area (see Child Care Law Reporting Project 2014a; Coulter 2014, Coulter et al. 2015) highlights inconsistencies between District Court areas, with orders being much more likely to be granted in some areas than in others. In some District Court areas, judges granted 100% of orders applied for, and it is not uncommon for over 95% of applications to be granted. Social workers in our research suggested that such high rates of orders granted reflected the high levels of preparation before an order is applied for and an acute awareness of the very high threshold in the Constitution and the Child Care Act 1991 for the removal of a child, as a result of which only the most serious cases are brought to the attention of the District Court (O'Mahony *et al*., 2016a). However, contrary to the design

of the Child Care Act 1991, it is arguable that the system may sometimes be weighted against parents, for two reasons. Firstly, the high rate of care orders granted may reflect a practice on behalf of some judges to err on the side of caution, for fear of making a decision to leave a child at home where their welfare may continue to be at risk. Secondly, an assumption may develop on the part of some judges that the Child and Family Agency only applies for orders where there are very strong grounds for doing so. A judge interviewed in our research raised both of these points (O'Mahony *et al.* 2016a). However, Ireland is not unique in granting a high proportion of applications for care orders; other countries in this volume (see, for example, Finland and Norway) also recorded a high percentage of orders granted (see also Coulter et al. 2015).

Subsequent sections in this chapter describe how the relevant provisions of the Child Care Act 1991 are utilised where there is a serious risk to the health or welfare of a child. The next section describes Ireland's social work-led, voluntary care system which is the most utilised pathway for children to come into State care.

Voluntary care

Section 4 of the Child Care Act 1991 permits the Child and Family Agency to care for the child until the parent(s) or any such person wishes to resume care of the child. As noted above, in 2013, two-thirds (64%) of admissions to care were voluntary admissions by parents under s.4 of the Child Care Act 1991. To initiate voluntary care, a parent or guardian must sign a voluntary reception into care form with a social worker indicating a clear start and end date for the care placement. A parent can place their child in voluntary care anytime from the day the child is born up until their eighteenth birthday. Children received into care under s.4 are not brought to the attention of the Court, nor are they under the supervision of the District Court, as voluntary care does not require a care order from the Court. Parents have a right to cancel their consent for voluntary care at any time; however, if there is an on-going risk and the child needs to remain in State care for his/her continued protection, the Child and Family Agency would apply to the District Court for an interim care order. Unlike in Norway, Finland and England, children have no right to consent to voluntary care, irrespective of their age (see Chapters 2, 3 and 8).

Due to a lack of empirical research in this area, it is not possible to say why such a high proportion of the children received into care in Ireland are placed via the voluntary care route. Given the highly charged nature of the reception of a child into care, it would be interesting to

know whether parents 'choose' to sign voluntary consent to avoid court and preserve a modicum of control. To what extent voluntary care is initiated by parents, who may, for example, require short-term care while they undertake an addiction treatment programme, or is initiated by the Child and Family Agency, is also unknown. There is no data published on how long a parent typically agrees to voluntary care and whether voluntary care is more likely to be utilised in particular circumstances. It is also unclear as to what extent parents make an informed, 'voluntary' choice without recourse to an independent advocate or solicitor. Whether voluntary care is a more likely option for a child's *first* entry into care and whether subsequent entries to care are more likely to be through court orders is another unknown. Nevertheless, a recent study of care patterns in two areas in Ireland over ten years (O'Leary and Christie 2014), found that the use of voluntary care had reduced from 67% to 43% for *first-time* admissions to care in the period from 2008 to 2012 with a corresponding rise in the use of care orders from 33% to 57%.

Consultations with child protection social workers in three practice locations in the preparation of this chapter suggested that practice in some teams is moving towards a diminution in the usage of voluntary care in favour of seeking care orders through the District Court. These participants also advised that where a child comes into care voluntarily and where care is likely to extend beyond the short-term, social workers would then seek a care order in the District Court to 'stabilise' the placement. They also confirmed that not all children in long-term care have been brought to the attention of the District Court and some remain in long-term care by voluntary consent, some until their eighteenth birthday. However, national statistics do not evidence this claimed reduction in the use of voluntary care, with the percentage of children admitted to care on a voluntary basis virtually unchanged at 62-64% between 2011 and 2013 (Health Service Executive 2013; Tusla, Child and Family Agency 2014b, 2015b).

Protection of children in emergencies

Under Section 12 of the Child Care Act 1991, in exceptional circumstances, An Garda Síochána (police) are empowered to enter the family home or any place without a warrant to remove a child to safety. The very high standard for intervention is where:

a. 'there is an immediate and serious risk to the health or welfare of a child, and
b. it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by a health board [Child and Family Agency] under section 13'.

Upon taking a child into care, An Garda Síochána shall as soon as possible deliver the child to the Child and Family Agency who have three days to decide whether to return the child back to their parents or apply to the District Court for an emergency care order (section 13, see below). An Garda Síochána is the only State agency that has the power to remove a child without a care order. Shannon (2011) notes that where s.12 applies, children should only be in the custody of the Gardaí for the shortest possible period, so as to avoid the child gaining the misconception that they have done something wrong. This section of the Act is only intended to be used in exceptional circumstances, whereby in normal circumstances, the Child and Family Agency would work with parents to receive children into care by voluntary consent or through the District Court under a care order (s.13, s.17 or s.18 – see below). However, it is significant to note that the Child and Family Agency in the final quarter of 2015 launched, for the first time ever in Ireland, a national emergency out-of-hours social work service and it will be interesting to see how this new service will influence the use of s.12 by An Garda Síochána.

There are no published statistics by An Garda Síochána or the Child and Family Agency on the numbers of children placed in care under s.12, but the Child and Family Agency provided the chapter authors with an unpublished report on this area (Tusla, Child and Family Agency 2014d). There were 365 s.12 interventions notified by An Garda Síochána to the Child and Family Agency in 2012 and 402 in 2013. However, this data may not provide a full and accurate picture; the report authors qualified their findings due to issues regarding the completeness of the dataset provided by some areas, as this type of data was not always routinely recorded. The primary reasons stated for An Garda Síochána to invoke s.12 over this two-year period were 'neglect' (44%) and 'welfare' (15%). Once the three-day period had elapsed after a s.12 removal, two-thirds of children were admitted to care and one-third 'were returned home without further intervention/order' (p. 5). When a child is removed under s.12, and when the child is not returned to the parent(s), the Child and Family Agency 'shall … make an application for an emergency care order at the next sitting of the District Court' (s.12(4)).

Child care proceedings in the District Court

Child care proceedings in Ireland are heard in the District Court, which is a court of limited and local jurisdiction. In the 23 District Courts, judges hear a mixture of family law (domestic violence, child care, maintenance, custody and access), licensing, civil and criminal cases. Ireland does not have a dedicated family court system (O'Mahony *et al*., 2016b). This means

that, except for the Dublin Metropolitan District, judges hearing child care cases in these District Courts are not fully dedicated, 'specialist' judges. However, in some urban areas with a high volume of cases, particular judges have developed considerable expertise in child care cases. Some District Courts have dedicated family law rooms within the court building that are less like formal courts, but other courts hear child care cases in the regular courtroom. Child care hearings are held *in camera,* whereby only the key participants to a case are permitted to be present. However, there are some limited exceptions now permitted by law to allow journalists (s.5 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013) and researchers (s.3 of the Child Care (Amendment) Act 2007) to attend these proceedings, leading to greater transparency.

Child care cases in the District Court are heard by a single judge. Judges appointed to the District Court who hear child care cases may not have had previous child care and family law practice experience. Child care cases are brought by the State through the Child and Family Agency child protection and welfare social work teams. State-funded Legal Aid Board solicitors normally represent parents, but parents are occasionally represented by private solicitors. Findings on who the witnesses are in child care cases found that 49.5% of all witnesses are social workers, 37.4% are solicitors updating the courts on a case, 2.3% are psychiatrists/counsellors, 1.6% are Gardaí, 0.6% are teachers, 0.5% are public health nurses, 0.2% are doctors, and 7.9% are 'others' (Coulter et al. 2015). There is little evidence in these courts of a culture of routinely employing independent specialist witnesses as happens in some other countries, nor does the judge have an expert and/or lay citizen(s) on the bench like in Sweden, Norway and Northern Ireland. Research by our team has found that *direct* participation (e.g. attending proceedings) by children and young people in these proceedings is infrequent (Parkes et al. 2015). Participants in our research provided a range of reasons for this, including: inappropriate court facilities, inconsistent judicial skills and training, the frequently adversarial nature of the proceedings, and the legal and constitutional frameworks, under which judges are not obliged to hear directly from children. Indirect participation by children and young people is more likely, and takes the form of the voice of the child being represented by the social worker in their court report and by their parents, or in some cases through a guardian *ad litem.* In a small number of cases – mostly involving older children, and even then only in certain areas – an independent solicitor for the child may be appointed. The appointment of guardians and solicitors to children who are subject to care proceedings is a matter of discretion for the court, and a wide variety of practices exist across the country (see Daly 2010). For example, areas such as Dublin are more likely to appoint a guardian *ad litem* to a child than other areas

(Coulter 2013a). In the sample of cases examined by the Child Care Law Reporting Project, guardians *ad litem* were appointed to children in 53% of cases (Coulter et al. 2015).

The Supreme Court in *Southern Health Board vs. CH* ruled that child care proceedings are 'in essence an *inquiry* as to what is best to be done for the child',[ix] whereby proceedings should have a more inquisitorial format that other proceedings. Qualitative research undertaken by our team with professional participants in these proceedings suggests that notwithstanding this ruling, proceedings are, in fact, run in a predominantly adversarial format (Burns *et al.* 2013; O'Mahony 2016b). Social workers were more likely to perceive the proceedings as unnecessarily adversarial. Solicitors were largely of the view that an adversarial approach was appropriate to protect the rights of parents and to ensure that evidence is rigorously tested as parents could be denied the right to the custody of their child. Judges were more nuanced in their views and more likely to describe the system as a hybrid form that was neither purely inquisitorial nor purely adversarial. Parties can appeal the outcome of a case to the Circuit Court, or the judge (on his or her own motion or if requested by a party) can refer a point of law to the High Court (Nestor 2007).

The District Court hears applications by the Child and Family Agency under the Child Care Act 1991 to have a child placed in care under an emergency care order (s.13), an interim care order (s.17) or a [full] care order (s.18). The following sections are intended as a summary overview of these orders and powers. For more comprehensive examinations of the Child Care Acts and associated case law, the following texts are recommended (Kilkelly 2008; Nestor 2007; Shannon 2011).

Emergency care order

Section 13 of the Act allows for the Child and Family Agency to apply to the District Court to remove a child from his or her parents where 'there is reasonable cause to believe that-

a. there is an immediate and serious risk to the health or welfare of a child which necessitates his being placed in the care of a health board [Child and Family Agency], or
b. there is likely to be such risk if the child is removed from the place where he is for the time being'.

An emergency care order can be granted for up to eight days, and if necessary, the Court can grant this order on an *ex parte* basis, i.e. without the parent(s) being present or being notified. The court may also upon the granting of an emergency care order issue a warrant to a member

of An Garda Síochána to 'enter (if need be by force) any house or other place specified in the warrant to deliver the child into the custody of the health board [Child and Family Agency]'. In 2013, 13% of admissions to care (246 out of 1,896) were through an emergency court order (Tusla, Child and Family Agency 2015b). The limited timeframe for this order is an attempt to ensure that parents' constitutional rights are protected; however, in practice, a social work assessment of the child's welfare would normally take longer than eight days, which means that if the Agency is not satisfied that the child can return home safely it would then apply to the District Court for an interim care order to allow further time to complete the assessment.

Interim care order

The Child and Family Agency can apply to the District Court for an interim care order (ICO) under section 17 of the Child Care Act 1991. ICOs can be granted for a period not exceeding 29 days. However, a judge can extend this period on the application of a party where there are on-going concerns and the 'grounds for the making of an interim care order continue to exist with respect to the child' (s.17(2)). The period can also be extended with the consent of the Child and Family Agency and the parent(s). Unlike the emergency care order which can be made on an *ex parte* basis, the Child and Family Agency must give parents notice of the intended application. The intention of this order is to allow the State through the Child and Family Agency time to undertake their assessment and to determine whether the child can return home or whether an application should be made for a [full] care order to keep the child in care. An application for an ICO may also be made by the Child and Family Agency when it is felt that the child could be 'removed from voluntary care [see below] in circumstances where this would not be in the interests of the child' (Shannon 2011, p. 23). The grounds that the judge needs to be satisfied of before granting the ICO are,

> (a) 'the child has been or is being assaulted, ill-treated, neglected or sexually abused, or
>
> (b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or
>
> (c) the child's health, development or welfare is likely to be avoidably impaired or neglected,

and that it is necessary for the protection of the child's health or welfare that he be placed or maintained in the care of the Child and Family Agency pending the determination of the application for the care order' (s. 17(1)). In practice, some ICOs may not be renewed and a

child returns home to the care of his/her parent, whereas if the State feels that the child needs to stay in care for the medium to long-term, it then applies to the court for a full care order.

Care order

When the Child and Family Agency and relevant professionals and agencies conclude their assessment and if it is determined that a child's welfare requires that s/he needs to stay in care on a medium to long-term basis, the Child and Family Agency can apply to the District Court for a care order under section 18 of the Child Care Act 1991. Only the Child and Family Agency can bring an application for a care order. In any democracy, applying to remove a child from his/her parents is of the utmost seriousness and should only be pursued as a measure of last resort. The threshold in the Irish Constitution for the removal of a child from his/her birth family is that of exceptional circumstances. A District Court judge may make a care order, for any length of time up to the child's eighteenth birthday if they are satisfied that:

> (a) 'the child has been or is being assaulted, ill-treated, neglected or sexually abused, or
>
> (b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or
>
> (c) the child's health, development or welfare is likely to be avoidably impaired or neglected,

and that the child requires care or protection which he is unlikely to receive unless the court makes an order under this section, the court may make an order (in this Act referred to as a "care order") in respect of the child' (s.18).

In the sample of care order cases observed by the Child Care Law Reporting project in the District Court, the respondents (parent or parents) consented to the order in 37% of cases. Their sample reported,

> '81.7% of cases taking less than an hour, and a further 11.6 per cent taking less than three hours. More than 96 per cent are over in a day or less. The remaining four per cent are those complex and contested cases than can take several days' (Coulter et al. 2015, p. 14).

Irish social policy clearly states that the removal of a child into State care is not a termination of the relationship between a child and his/her parent(s) and family; reunification of the child and the birth family must be a constant consideration, and appropriate contact with

family must be maintained (Department of Children and Youth Affairs 2011). This is in line with the jurisprudence of the European Court of Human Rights as well as the UN Convention on the Rights of the Child 1989, to which Ireland is a party, and has been confirmed by the Irish courts as a principle of law as well as policy.[x] The 'release' of children in long-term care for adoption is a rare event[xi] (see below on recent changes to the Constitution in respect of children in care for longer than three years, irrespective of the parents' marital status). This family-centric policy places a positive onus on the Child and Family Agency to continuously consider the option of reunification. However, from a child's point of view, this may inhibit permanence planning and lead to 'drift' for some children in care.

Challenges, reforms and blind spots

The on-going significant use of voluntary care nationally raises questions vis-à-vis the extent to which parents' rights are safeguarded, and may suggest concerns regarding the transparency and accountability of this system. While all professionals accept that independent legal advice is absolutely essential for parents who are defending applications for child protection orders before the courts, there is no requirement of such advice being provided before parents consent to a voluntary care placement. No safeguards are in place to ensure that parents know what they are consenting to or that they are not pressured into consenting. This potentially raises concerns regarding the procedural rights of parents, as protected by the Irish Constitution and the ECHR. We are not suggesting impropriety in the usage by the Child and Family Agency of this section of the Act; however, it is an area of practice and legislation that requires further research and critical examination.

The establishment of the Child and Family Agency is a key systemic reform that should lead to significant positive changes in child protection in Ireland. In addition to this, it is proposed to establish a specialist family court system. While the precise shape of this proposed reform is unclear at present, we have argued elsewhere that the weight of opinion and available evidence clearly demonstrates the need for child care proceedings to be dealt with by specialist judges in dedicated facilities (O'Mahony *et al*., 2016b). A number of steps have been taken to improve the transparency of child care proceedings, including the establishment of the Child Care Law Reporting Project, which since 2013 has conducted research into child care proceedings using a case observation methodology backed up by the use of quantitative data. Case histories were published online, and a series of reports were published based on these

histories and statistics with a view to identifying trends and problems and making recommendations (Coulter 2013a, 2014; Coulter et al. 2015). Finally, legislation was passed to allow representatives of the media to attend family law proceedings in certain circumstances.[xii] In the immediate aftermath of this change coming into effect in January 2014, newspapers regularly published reports on child care cases; this early enthusiasm has somewhat diminished, but reports continue to appear most weeks in the *Irish Times*. Over time, it is to be hoped that the Child Care Law Reporting Project, research studies, media access and the publication of a greater number of judgments in child care cases on the Courts service website (see Courts Service 2006-2014) will result in greater transparency in child care proceedings in Ireland; but these reforms will have a limited impact until a critical mass of information becomes available.

The highest-profile legal reform was the approval by the Irish electorate in November 2012 of the insertion of a new provision on children's rights – Article 42A – into the Irish Constitution. The main impact this will have on child protection proceedings will be to make it mandatory that the views of any child who is capable of forming them shall be ascertained and given due weight according to the age and maturity of the child. This will be a positive move away from the current position whereby it is discretionary for the court to ascertain the views of the child. The precise mechanism through which this will occur is not specified, and the Special Rapporteur on Child Protection has recommended that a variety of mechanisms should be provided for, including the appointment of a guardian *ad litem* and the meeting of the child by the judge in chambers (Shannon 2013). The other significant reform included in the amendment is to allow for the children of married parents (see note xi below) to be placed for adoption with the consent of the parents (previously impossible due to the description of the rights of the marital family as "inalienable"), and to make it easier for such children to be placed for adoption without the consent of their parents. The previous regime under the Adoption Acts 1988 and 2010 made this virtually impossible, with the effect that many children remained in the twilight zone of long-term foster care up to their eighteenth birthday. It is proposed that the amendment will allow for an adoption placement after a period of thirty-six months of parental abandonment, where the best interests of the child so require and the child has been in the care of the potential adoptive parents for at least eighteen months. Finally, the amendment makes a broad guarantee that the State will protect and vindicate the rights of the child, and slightly re-phrases the provision authorising State intervention in the family to protect children, but it is unclear at present whether these amendments will have any real effect on law and practice.

Inconsistency continues to be a problem in the child care proceedings system (see Coulter 2014; Coulter et al. 2015; O'Mahony *et al.* 2016a,b). In granting a care order, the District Court confers the Child and Family Agency (acting on behalf of the State) with the powers of the parent to make decisions regarding the type of care, travel, education, medical treatment and the issuing of passports, for the child. Even when a judge is satisfied that the grounds for a care order are met, he/she may not grant the order for the length of time requested by the Child and Family Agency. Accounts from social workers and solicitors around the country indicate that judicial practices vary considerably in respect of both the readiness of judges to grant orders and the length of time for which orders are granted, and there appears to be reluctance amongst some judges to grant care orders in respect of children until their eighteenth birthday. Some judges, of their own volition, have taken on a role of reviewing care orders in order to receive updates from the Child and Family Agency on the child's progress and care plan, and to review whether a child can return home. These reviews are in addition to the statutory child care reviews examining children's care plans undertaken internally by the Child and Family Agency with family, professionals and carers. There is no basis in the Child Care Acts for judge-led reviews of care orders; while the Act delegates to the Minister the power to make regulations governing reviews (s.42), the relevant regulations (Statutory Instruments 259 and 260 of 1995) currently provide only for internal reviews by the Child and Family Agency and make no reference to court-led reviews. Our research indicates that where judges impose such reviews, they do so via a condition being attached to the care order that the court at a set point in the future reviews the order, which is not expressly provided for in the Act. Such reviews are taking up an increasing amount of social workers' and courts' workloads and time; however, these independent reviews bolster accountability and can contribute to safeguarding the rights of parents and children. Social workers in our qualitative study reported that these extra court reviews impacted time-wise on their availability to work with children and families in the community, but at the same time, most professionals were positive about the effect of these reviews on individual cases.

Finally, two high-profile cases have raised questions regarding the use of s.12 by An Garda Síochána in cases involving children from the Roma community. The subsequent inquiry by the Ombudsman for Children (2014) into the removal of these children from their families using s.12 was critical of Garda practice. It highlighted the inappropriate use of the families' ethnicity in decision-making leading to the removals. The Ombudsman and the Special Rapporteur on Child Protection (Shannon 2014) have both recommended the development and publication of guidelines regarding how An Garda Síochána exercise their powers under s.12.

Furthermore, whether s.12 is used in a manner unintended by the Act due to the unavailability of a national out-of-hours social work service, is unclear and overall, this is an area which requires greater transparency and further research.

Conclusion

This chapter explored child care proceedings legislation and practice in Ireland and charted the emerging shift in culture towards transparency, specialisation and the recognition of children's rights. At the same time, the system is endeavouring to preserve the traditional emphasis on protecting the rights of parents and the family unit and the privacy of the individuals involved. All of this is occurring in a context where increasing demands are being placed on the system from all angles – most obviously through the number of children and families who are coming into contact with it, but also through the need to respond to legislative and structural reforms and various critical reports – in a harsh economic climate where resources are in short supply.

From a legal and policy perspective, the Irish child protection system is broadly moving in the right direction, although room for improvement still remains. The Minister for Children and Youth Affairs (Reilly, 2015) has initiated a review of the Child Care Act 1991 that will take place in 2016 with a view to modernising the Act; this will hopefully address some of the issues raised in this chapter. This review of the Act follows recommendations made by the Special Rapporteur concerning the modernisation of the law relating to child protection removals and related child protection matters (Shannon, 2014). A detailed study of practices and trends in the area of voluntary care is overdue, and the manner in which the system responds to emergency situations (including both the s.12 procedure and the establishment of an out-of-hours social work service) needs to be addressed in a coherent manner. However, if the constitutional amendment on children's rights is fully implemented, genuinely specialist family courts are established as promised, and media access, research studies, published judgements and the Child Care Law Reporting Project contribute to a more transparent and consistent system, very significant progress could be made in a relatively short period of time. But none of this will prove to be effective unless the necessary resources are provided to deliver on the potential of these reform measures. In particular, a specialist family court system must be more than an organisational arrangement with a building of its own. Facilities must be purpose-designed and staff (including judges and lawyers) must be provided with specialist training in dealing with children at risk. Potentially, things could be far better in 2025 than they were in 2015; only time will tell by how much.

Acknowledgements

The authors would like to acknowledge the support and participation of staff in the Child and Family Agency, Courts Service, Legal Aid Boards, and Barnardos, as well as of a number of individual solicitors and barristers. We would also like to thank Donna O'Leary, Alastair Christie and the Child and Family Agency for providing us with access to unpublished statistical data. The authors would also like to acknowledge the financial support received from the College of Arts, Celtic Studies and Social Science, the Head of Law Strategic Fund, and the Strategic Research Fund at University College Cork for their research on District Court child care proceedings in Ireland. For more details see:

http://www.ucc.ie/en/appsoc/resconf/res/childcareproceedingsinthedistrictcourt/.

References

Buckley, H. and Burns, K. 2015. 'Child welfare and protection in Ireland: Déjà vu all over again' in Christie, A., Featherstone, B., Quin, S. and Walsh, T. (eds.) *Social Work in Ireland: Continuities and Changes.* Basingstoke: Palgrave Macmillan.

Burns, K., O'Mahony, C., Shore, C. and Parkes, A. 2013. 'Fit for Purpose? Professional Perspectives on District Court Child Care Proceedings. *13th ISPCAN European Regional Conference on Child Abuse and Neglect*, Dublin, 15th-18th September 2013.

Burns, K. and Lynch, D. 2012. 'Politics, democracy and protecting children' in Lynch, D. and Burns, K. *Children's Rights and Child Protection: Critical Times, Critical Issues in Ireland.* Manchester: Manchester University Press.

Central Statistics Office. 2012. *This is Ireland. Highlights from Census 2011, Part 1.* Dublin: Stationery Office.

Child Care Law Reporting Project. 2014a. *Courts Service Child Care Statistics.* Retrieved March 25, 2014 from http://www.childlawproject.ie/statistics/.

Child Care Law Reporting Project. 2014b. *Case Histories 2014, Volume 1.* Retrieved April 1, 2014 from http://www.childlawproject.ie/publications/.

Child Care Law Reporting Project. 2013. *Case Histories 2013, Volumes 1-4.* Retrieved April 1, 2014 from http://www.childlawproject.ie/archive/.

Considine, M. and Dukelow, F. 2013. 'Ireland's economic crises in recent historical perspective: From resilience to retrenchment in the Irish welfare state? in Jónsson, G. and Stefánsson, K. *Retrenchment or Renewal? Welfare States in Times of Economic Crisis*. Helsinki: Norwel Studies in Historical Welfare State Research 6.

Coulter, C., Colfer, L., Healy, K., MacMahon, M. 2015. *Final Report. Child Care Law Reporting Project.* Retrieved November 30th, 2015 from http://www.childlawproject.ie/interim-reports/.

Coulter, C. 2014. *Second Interim Report. Child Care Law Reporting Project.* Retrieved November 30th, 2014 from http://www.childlawproject.ie/interim-reports/

Coulter, C. 2013a. *First Interim Report. Child Care Law Reporting Project.* Retrieved March 25, 2014 from http://www.childlawproject.ie/interim-reports/.

Coulter, C. 2013b. 'Family law should not exist in a cocoon isolated from general legal principles' *The Irish Times*, 8 August.

Courts Service. 2008-2014. *Judgements (District Court).* Retrieved April 1, 2014 from http://www.courts.ie/Judgments.nsf/FrmJudgmentsByCourtAll?OpenForm&Start=1&Count=35&Expand=5&Seq=1.

Courts Service. 2009-2014 *Courts Service Annual Reports 2008, 2009, 2010, 2011, 2012 and 2013*. Retrieved March 25, 2014 from http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/5D12A39F06827AD080256DA60033FE87?opendocument&l=en.

Daly, A. 2010. *Limited Guidance. The Provision of Guardian ad Litem Services in Ireland.* Irish Journal of Family Law. 13(1).

Department of Children and Youth Affairs. 2014a. *Better Outcomes, Brighter Future: The National Policy Framework for Children and Young People, 2014-2020.* Dublin: Government Publications.

Department of Children and Youth Affairs. 2014b. *Residential Care.* Retrieved September 27th 2014 from http://www.dcya.gov.ie/viewdoc.asp?fn=/documents/Children_In_Care/ChildreninCareResidentialCarePage.htm.

Department of Children and Youth Affairs. 2013. *State of the Nation's Children.* Dublin: Government Publications.

Department of Children and Youth Affairs. 2011. Children First*: National Guidance for the Protection and Welfare of Children.* Dublin: Stationery Office.

Garrett, P.M. 2013. 'Beyond the community of persons to be accorded 'respect'? Messages from the past for social work in the Republic of Ireland, in Carey, M. and Green, L. (eds.). *Practical Social Work Ethics: Complex Dilemmas Within Applied Social Care.* Farnham: Ashgate.

Gilbert, N., Parton, N. and Skivenes, M. (eds.) 2001. *Child Protection Systems: International Trends and Orientations.* New York: Oxford University Press.

Health Service Executive. 2013. *Review of Adequacy for HSE Children and Family Services 2011.* Retrieved April 29, 2014 from http://www.tusla.ie/publications/review-of-adequacy-reports.

Health Service Executive. 2009a. *HSE Child Welfare and Protection Social Work Departments Business Processes. Report of the NCCIS Business Process Standardisation Project October 2009.* Dublin: Health Service Executive.

Health Service Executive. 2009b. *Review of Adequacy of Services for Children and Families 2008.* Retrieved April 29, 2014 from http://www.tusla.ie/publications/review-of-adequacy-reports.

Kelly, F. 2013. 'Social workers to get training to act instead of solicitors'. *The Irish Times.* Retrieved May 18, 2014 from: http://www.irishtimes.com/news/politics/social-workers-get-training-to-act-instead-of-solicitors-1.1638799.

Kilkelly, U. 2008. *Children's Rights in Ireland: Law, Practice and Policy*. Sussex: Tottel Publishing.

Nestor, J. 2007. *An Introduction to Irish Family Law (Third Edition)*. Dublin: Gill and MacMillan.

O'Brien, V. and Ahonen, H. 2015. *Pathways and Outcomes: A Study of 335 Referrals to the Family Welfare Conference (FWC) Service in Dublin 2011-2013*, Dublin, Tusla, Child and Family Agency.

O'Leary, D., and Christie, A. 2014. 'Pathways In Care: Knowledge Production through Dialogue with Social Workers', *4th European Conference for Social Work Research,* April 2014, Free University of Bozen-Bolzano, Italy.

Ombudsman for Children. 2014. *Emily Logan submits Special inquiry Report to Justice Minister*. Retrieved May 29th 2014 from: http://specialinquiry.ie/news-item-one/ and http://www.oco.ie/2014/04/emily-logan-submits-special-inquiry-report-to-justice-minister/ .

Ombudsman for Children. 2012. *Ombudsman for Children Annual Report 2011*. Dublin: Ombudsman for Children's Office.

O'Mahony, C., Burns, K., Parkes, A. and Shore, C. 2016a. 'Representation and participation in child care proceedings: what about the voice of the parents?'. *Journal of Social Welfare and Family Law*, Vol. 2 *(In Press).*

O'Mahony, C., Burns, K., Parkes, A. and Shore, C. 2016b. 'Child Care Proceedings in Non-Specialist Courts: The Experience in Ireland'. *International Journal of Law Policy and The Family*, Vol. 2 *(In Press).*

O'Mahony, C., Shore, C., Burns, K. and Parkes, A. 2012. 'Child Care Proceedings in the District Court: What do we Really Know?'. *Irish Journal of Family Law.* 15(2): 1-14.

Parkes, A., Shore, C., O'Mahony, C. and Burns, K. 2015. 'The right of the child to be heard? Professional experiences of child care proceedings in the Irish District Court'. *Child and Family Law Quarterly*, 27 (4): 423-444.

Reilly, J. (2015) 'Official Opening', *International Conference: Child Protection and the Law*, Law Society of Ireland, Blackhall Place, Dublin, 13th April.

Ryan, S. 2009. *Commission to Inquire into Child Abuse Report (Volumes I - V).* Dublin: Stationery Office.

Shannon, G. 2014. *Seventh Report of the Special Rapporteur on Child Protection. A Report Submitted to the Oireachtas.* Dublin: Department of Children and Youth Affairs.

Shannon, G. 2013. *Sixth Report of the Special Rapporteur on Child Protection. A Report Submitted to the Oireachtas.* Dublin: Department of Children and Youth Affairs.

Shannon, G. 2011. *Child Care Law.* Dublin: Thomson Reuters.

Skehill, C. 2004. *History of the Present of Child Protection and Welfare Social Work in Ireland.* New York: Edwin Mellen Press.

Tusla, Child and Family Agency. 2015a. *Quarterly Management Data Activity Report – Quarter 1 2015*. Retrieved December 29th, 2015 from http://www.tusla.ie/data-figures.

Tusla, Child and Family Agency. 2015b. *Review of Adequacy in Respect of Child Care and Family Support Services Provided by the Health Service Executive 2013*. Dublin: Tusla, Child and Family Agency.

Tusla, Child and Family Agency. 2015c. *Monthly National Performance Activity – September 2015*. Retrieved January 2, 2016 from http://www.tusla.ie/data-figures.

Tusla, Child and Family Agency. 2014a. *Monthly National Performance Activity - January 2014*. Retrieved April 29, 2014 from http://www.tusla.ie/data-figures.

Tusla, Child and Family Agency. 2014b. *Review of Adequacy for HSE Children and Family Services 2012*. Dublin: Tusla, Child and Family Agency.

Tusla, Child and Family Agency. 2014c. *Monthly National Performance Activity - December 2014*. Retrieved May 2, 2015 from http://www.tusla.ie/data-figures.

Tusla, Child and Family Agency. 2014d. *Report on the Number of Interventions Notified under Section 12 of the Child Care Act 1991 for the Years 2012 and 2013 (Unpublished report).* Dublin: Tusla, Child and Family Agency.

Tusla, Child and Family Agency. 2013. *Suite of Policy and Guidance Documents for the Child and Family Agency.* Retrieved May 1, 2014 from: http://www.childandfamilyresearch.ie/publications/policy-practice.

UNICEF. 2010. *Innocenti Report Card 9: The Children Left Behind*. Retrieved September 1st, 2014 from: http://www.unicef-irc.org/files/documents/d-3796-The-Children-Left-Behind-.pdf.

UNICEF. 2013. *Innocenti Report Card 11: Child well-being in rich countries – a comparative review,* Retrieved September 1st, 2014 from: http://www.unicef.org.uk/Images/Campaigns/FINAL_RC11-ENG-LORES-fnl2.pdf.

UNICEF. 2014. *Innocenti Report Card 12: Children of the Recession: The Impact of the Economic Crisis on Child Well-Being in Rich Countries,* Retrieved November 4th, 2014 from: http://www.unicef-irc.org/publications/series/16

Legislation. Statutory Instruments and Case Law

Adoption Acts 1998, 2010.

Child Care (Amendment Act) 2013.

Child Care (Amendment Act) 2011.

Child Care (Amendment Act) 2007.

Children Act 2001.

Child Care Act 1991.

Children First Act 2015.

S.I. No. 259/1995 – Child Care (Placement of Children in Residential Care) Regulations, 1995.

S.I. No. 260/1995 – Child Care (Placement of Children in Foster Care) Regulations, 1995.

Southern Health Board v CH [1996] 1 IR 21

[i] Ireland refers to the 26 counties of the Republic of Ireland; the legal and child protection systems in Northern Ireland (which is part of the United Kingdom) are not addressed.

[ii] See Thirty-First Amendment to the Constitution (Children) Act 2015.

[iii] See, e.g., *Re JH (an infant)* [1985] IR 375; *North Western Health Board* v. *HW* [2001] 3 IR 622; and *N* v. *Health Services Executive* [2006] 4 IR 374, as discussed in U. Kilkelly and C. O'Mahony, 'The Proposed Children's Rights Amendment: Running to Stand Still?' (2007) 10(2) *Irish Journal of Family Law* 19.

[iv] In *North Western Health Board* v. *HW* [2001] 3 IR 622, the majority judges all referred to circumstances approximating to an immediate threat to the child's life; an immediate threat of serious injury; or an immediate threat to the child's capacity to function as a human person. The thresholds set in sections 13, 17, 18 and 19 of the Child Care Act 1991 for the granting of the various child protection orders are phrased somewhat differently, referring to children being assaulted, ill-treated, neglected or sexually abused, and children whose health, development or welfare has been, is being or is likely to be avoidably impaired or neglected.

[v] In *State (DC)* v. *Midland Health Board* (High Court, unreported, 31 July 1986), Keane J held that a statutory provision which allowed for the removal of a child from the custody of his parents for longer than was necessary to carry out an assessment of his welfare would constitute a breach of his parents' constitutional rights.

[vi] See, e.g., *Keating* v. *Crowley* [2003] 1 ILRM 88, where a provision allowing for an interim barring order to be granted *ex parte* without any time limit on its effect was declared unconstitutional as a disproportionate interference with the principle of *audi alterem partem*. The Court specifically referred to the eight day time limit in provisions of the Child Care Act 1991 dealing with emergency and interim care orders as a model of how *ex parte* applications can adequately balance constitutional rights.

[vii] All of the *Growing up in Ireland: National Longitudinal Study of Children* reports are available on this website: http://www.growingup.ie

[viii] For 2010-2014 data, the rate was derived from the end of year figure divided by the 2011 child population census data. For the 2008-2009 date, the rate was derived from the end of year figure divided by the child population estimate in the *State of the Nations Children* report 2008.

[ix] *Southern Health Board* v. *CH* [1996] 1 IR 219, at 237 (emphasis in original). The Court justified this position on the grounds that the child's welfare is the first and paramount consideration for the court, and takes priority over any right of that the parents wish to assert through the adversarial process. This approach manifests itself

in a variety of ways, including, for example, relaxed rules of evidence that allow for the admission of hearsay evidence at the discretion of the court (*ibid* at 239). See also *Health Services Executive* v. *OA* [2013] IEHC 172 at [63] to [64], where the High Court echoed this aspiration, but added the caveat that while the notion that there are no winners and losers is appropriate for professional participants, it 'asks a degree of detachment that is very unlikely to be shared by a parent. The procedure is, as a matter of fact, adversarial.'

[x] *Health Service Executive (Southern Area)* v. *SS (a minor)* [2007] IEHC 189 at [94] to [95].

[xi] Irish law, until the implementation of the constitutional amendment on children in 2015, treated children of married and unmarried parents differently in various ways. One such difference is that children of married parents cannot be voluntarily placed for adoption, and the threshold for placing them for adoption without the parents' consent in cases of abandonment is extraordinarily high (see Adoption Act 1988). In practice, however, few Irish children in care have been placed for adoption irrespective of parental marital status. The constitutional amendment on children will introduce reforms on these issues, permitting voluntary placement for adoption of all children and reducing the threshold for involuntary adoption.

[xii] Courts and Civil Law (Miscellaneous Provisions) Act 2013, section 8. This provision gives the Court the discretion to decide whether to exclude the media from a particular case having regard to a range of competing considerations, including the desirability of promoting public confidence in the administration of justice, the best interests of a child who is the subject of proceedings, the views of such a child or of any party to the proceedings (including witnesses), and the likely impact on the child or on parties to the proceedings of the presence of the media at the proceedings.