

Implementation Plan for Tusla Actions
arising from Dr. Shannon's audit
of the application of section 12 by An Garda Síochána

6.3.1 A cultural change must occur within the child protection system. Each and every person working within the system must take responsibility for his or her own role in promoting the welfare of children and in ensuring their protection.

- Implementation Action: The Strategic Liaison Committee, the forum for high level liaison between the Garda Síochána and the Child and Family Agency (Tusla), has been asked to implement this recommendation immediately and review progress after 12 months. This would include meetings at regional level between Tusla staff and their peers in the Garda Síochána to see how s. 12 is being implemented. The Department of Children and Youth Affairs has written to the Strategic Liaison Committee to progress this recommendation.

6.3.3 Where particular needs are identified by Tusla in dealing with a family, it must be ensured that supports or interventions that are put in place respond to those needs and are not merely generic or standardised response programmes.

- Implementation Action: The Department of Children and Youth Affairs has sought immediate confirmation from Tusla that the particular needs of each family and the child's circumstances are comprehensively assessed and that supports are provided to meet those needs.

6.3.5 Drug and alcohol abuse place an insurmountable burden on the State agencies and must be viewed as a key risk indicator in terms of child protection.

- Implementation Action: The Department of Children and Youth Affairs has sought immediate confirmation from Tusla that drug and alcohol abuse feature strongly in child protection assessments.

6.3.6 The Data Protection Acts, and the operationalisation of the Acts by State agencies, should be reviewed in an appropriate way to ensure no legislative roadblock impedes child protection services sharing information relating to vulnerable children and their families.

- Implementation Action: The Department of Children and Youth Affairs has requested that the Strategic Liaison Committee identify, as a matter of priority, where child protection services are being impeded in their work by data protection legislation, and that this be brought to the attention of the Department of Justice and Equality for any legislative amendment necessary.

6.3.7. *The implementation of the Children First Act 2015 (when fully commenced) should be reviewed from the perspective of An Garda Síochána and clear guidelines on how co-operation should work in practice between An Garda Síochána and other State agencies should be drafted.*

- Implementation Action: A newly revised protocol, reflecting the Children First legislation, is awaiting sign-off by the Garda Síochána. The Department of Children and Youth Affairs has written to the Strategic Liaison Committee to oversee the implementation of this recommendation.

6.3.13 Consideration should be given to having social workers assigned to specialist child protection units.

- Implementation Action: Tusla is in the process of assigning a social worker to the Garda National Child Protection Unit. Specialist child protection units are in the process of being established by the Garda Síochána. The Department of Children and Youth Affairs has requested that Tusla examine this recommendation and provide a report to the Minister within two weeks.

6.3.14 *From a child welfare perspective, any child who is the subject of section 12 of the Child Care Act 1991 should have a developmentally informed, culturally sensitive, comprehensive assessment that addresses his or her basic needs, his or her safety, barriers to effective parenting, the appropriate fit between the type of care needed and between caregiver and child. This assessment should also address the child's medical, educational, emotional and behavioural needs.*

- Implementation Action: The Department of Children and Youth Affairs has sought immediate confirmation from Tusla that this is being done. The Department has also written to the Departments of Health and Education in relation to the medical, educational and emotional needs of children subject to an emergency child protection action, requesting that all necessary action be taken to assist children in such circumstances.

The assessment should of necessity be sensitive to any emotional trauma the child may have experienced as a result of being removed under the section and address the effects of separation from his or her family and the effects of disrupted attachments. In particular if a child, as a result of the section being invoked, has been placed in a different geographical location away from community, school and peer supports, the assessment should address as a matter of priority, how to return the child to his or her natural environment as soon as is possible and practicable.

- Implementation Action: The Department of Children and Youth Affairs has sought immediate confirmation from Tusla that this is being done.

An awareness of the likely traumatic impact of the predisposing factors that exist in the child's life prior to the section being invoked, together with a sensitivity of the likely impact on children who are removed under section 12, should permeate all aspects of organisational functioning within AGS and Tusla.

- Implementation Action: The Department of Children and Youth Affairs has written to the Strategic Liaison Committee to seek immediate confirmation that the issue of impact and trauma, particularly in repeated section 12 cases, will be considered as a standing agenda item and to oversee the progress of any actions arising.

6.3.17 1. There is no evident basis for considering that the delegation or arrangement as between Tusla and a private entity would be unconstitutional. It is not a delegation of either the legislative, executive or judicial powers of the State. As such, everything will depend on whether statute enables it or not. Section 15 of the 1991 Act permits Tusla to enter into arrangements with other persons for the provision of accommodation for the purposes of Part III of that Act, which includes sections 12 and 13. There is authority that statutory powers can extend to what is necessary or incidental to their exercise, and as such this might include the provision of meals etc. Notwithstanding this, it does not appear that section 15 would be broad enough for present purposes to encompass the full extent of the section 12(4) function that might be involved (and it is unclear what the private providers' precise role and activities are in this regard). However, it is possible to argue that section 56 of the Child and Family Agency Act 2013 is in fact broad enough to enable Tusla to contract with a private not-for-profit provider with respect to emergency placements under section 12(4). That said, legislative clarity in this regard is desirable.

- Implementation Action: The policy and legal position is being examined, as a matter of priority, by the Department of Children and Youth Affairs in conjunction with Tusla and a report will be provided to the Minister.

2. There may be grounds for questioning the statement at paragraph 4 of the HSE letter that the placing of children in emergency situations with a private provider is not regarded as a fostering arrangement within the meaning of section 36(1)(b). Legislative clarity in this regard is desirable. Even if the Letter is correct in that respect, this does not mean that standards, safeguards etc. could not be provided for, or do not apply, in emergency situations, and indeed S.I. 260 of 1995 does appear to refer to emergency situations.

- Implementation Action: The policy and legal position is being examined, as a matter of priority, by the Department of Children and Youth Affairs in conjunction with Tusla and a report will be provided to the Minister.

3. The audit concludes that Tusla cannot, through delegation under section 56, absolve a private provider of compliance with the 1991 Act. Section 56(6) and section 56(13) of the 2013 Act provide ample scope for both Tusla and the Minister for Children to subject private providers to the provisions of S.I. 260 of 1995, although it is noted that the 1995 Regulations do not appear to be expressly referred to in the 2013 contract

between the HSE and the private provider. The 1995 Foster Care Regulations should be expressly referred to in any contract between Tusla and a private provider.

- Implementation Action: The policy and legal position is being examined, as a matter of priority, by the Department of Children and Youth Affairs in conjunction with Tusla and a report will be provided to the Minister.

4. The legal framework applying to emergency placements with private providers should be clarified to remove any ambiguity as to the standards to be applied in respect of such placements, particularly in cases where children have emotional and behavioural problems.

- Implementation Action: The policy and legal position is being examined, as a matter of priority, by the Department of Children and Youth Affairs in conjunction with Tusla and a report will be provided to the Minister.

5. A social work service that is directly accessible to children or families at risk outside of office hours should be developed as a matter of priority to ensure a comprehensive and unified child protection system.

- Implementation Action: The Department of Children and Youth Affairs has requested that Tusla examine, as a matter of priority, the level of demand for such a service and identify the most appropriate and child-friendly manner in which supports can be provided in the application of section 12.

The remaining recommendations in the report are for implementation by the Garda Síochána.