

5. RIGHT TO PROTECTION FROM ABUSE AND NEGLECT

Chapter Grade

B

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Having an allocated social worker is one essential protective factor to help ensure that a child is safe, has a voice and is safeguarded from abuse. As we commemorate the centenary of 1916 where the Proclamation promised a State ‘cherishing all the children of the nation equally’, the Government must now commit to ensuring that every child at risk has a social worker, an action identified in the Ryan Report as far back as 2009.”

Jennifer Gargan, Director, EPIC

Right to Protection from Abuse and Neglect

Every child has the right to be protected from all forms of abuse, violence, punishment and neglect, whether physical or mental. The State has the responsibility to provide support for children who experience abuse and their carers, as well as mechanisms for prevention, reporting, investigation and treatment.

Summary of Article 19 of the UN Convention on the Rights of the Child



5.1

Child and Family Agency

GOVERNMENT COMMITMENT

The *Programme for Government* commits to fundamentally reform the delivery of child protection services by removing child welfare and protection from the HSE, and creating a dedicated Child Welfare and Protection Agency, reforming the model of service delivery and improving accountability to the Dáil.



Progress: Good

'Child and Family Agency' gets a 'B' in Report Card 2016. This grade is the same as last year's grade and is reflective of increased Government allocation to Tusla – the Child and Family Agency and initiatives to address waiting lists for referrals, and to improve information management and out of hours services.

Under the UN Convention on the Rights of the Child, the child has a right to protection from abuse and neglect (Article 19), protection from sexual and other forms of exploitation (Articles 34-36) and to rehabilitate care (Article 39).⁴⁵² A children's rights approach to child protection starts with prevention and builds a child's capacity to protect themselves and to understand their right to protection.⁴⁵³ Central to this approach is the right of a child to be cared for by his or her parents,⁴⁵⁴ and not to be separated from parents unless it is in the child's best interests.⁴⁵⁵

This is the final year of the Report Card series under the *Programme for Government 2011-2016*. The Government's objective in this area was to reform child welfare and protection services by removing these services from the Health Service Executive (HSE),

creating a dedicated Child Welfare and Protection Agency, reforming the model of service delivery and improving accountability to the Dáil. Significant progress has been made towards achieving each of these goals.

The Child and Family Agency was established in January 2014 under Child and Family Agency Act 2013. The establishment of the Agency fulfilled the *Programme for Government* commitment to remove child welfare and protection services from the HSE and create a dedicated new agency. Tusla – the Child and Family Agency brings together the HSE's Children and Family Services,⁴⁵⁶ the Family Support Agency, the National Educational Welfare Board, and services relating to pre-school inspections, psychology, and domestic, sexual and gender-based violence.⁴⁵⁷

The *Programme for Government* pledged to improve accountability for child protection services to the Dáil. Accountability is defined as the ability to make certain that those charged with protecting and fulfilling children's rights actually do what they are supposed to do, and if they do not or cannot, that children and their representatives have some

452 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Arts 19, 34-36 and 39.
 453 UNCRC 'General Comment No.13 on the right of the child to freedom from all forms of violence' UN Doc CRC/C/GC/13 para 1.3(e) and (g); UNCRC 'Concluding Observations Ireland,' (29 September 2006) UN Doc CRC/C/IRL/CO/2 para 37(c).
 454 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 7.
 455 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 9.
 456 These services comprise child welfare and protection services; foster and residential care and aftercare; and adoption services.
 457 For information see <http://www.tusla.ie/about>



IN THE NEWS

STAFF SHORTAGE AFFECTS QUALITY OF FOSTER CARE

Connacht Tribune, 31 October 2015

Foster care services in Galway and Roscommon are not adequately staffed, which is having a negative impact on vulnerable children, according to a new report.

HIQA (Health Information and Quality Authority), has highlighted the problem of understaffing of the two counties' foster care services following an inspection this summer.

HIQA pointed out that the unfilled posts in the service were impacting on the care received by children.

The report noted that staff were "appropriately skilled and qualified for their roles with varying levels of experience in fostering, child protection and in working with children in care."

But staff vacancies in social care and administration were impacting on children.

HIQA said: "The service was impacted by two vacancies on children in care teams and two vacancies on fostering teams. In addition, there were two unfilled posts of staff on long term leave in Roscommon. Inspectors found that across Galway and Roscommon there were 23 children without an allocated child in care social worker reported to be due to vacancies and long term leave.

Inspectors found that some children had a number of different social workers assigned to them and experienced periods of unallocation due to staff leave, and this impacted on a consistent service for children." [...]

Galway/Roscommon is one of 17 services areas served by Tusla, the Child and Family Agency. It is the fourth largest area in the country, and when combined with Mayo it ranked as one of the most deprived in the country. [...]

By Dara Bradley

recourse.⁴⁵⁸ Essential to an effective accountability process is the existence of remedies or sanctions, so that when duties are not fulfilled or standards are not met, something happens and citizens' claims are honoured.⁴⁵⁹

The Child and Family Agency Act 2013 provides for accountability measures, including the approval and input of the Minister for Children and Youth Affairs on the Agency's Corporate Plan, Performance Statements and budgetary expenditure.⁴⁶⁰ Tusla is governed by a Board and its Chief Executive is obliged on request to provide information to the Minister for Children and Youth Affairs and to attend Oireachtas Committee hearings.⁴⁶¹ During 2015, Tusla appeared before the Joint Oireachtas Committee on Health and Children on four occasions.⁴⁶² Part 9 of the 2013 Act provides for a complaints mechanism. In addition, the inspection role of HIQA against national standards, the complaints function of the Ombudsman for Children and the ratification of the Communications Procedure to the UN Convention on the Rights of the Child are critical independent monitoring and remedy mechanisms. In April 2015 in an indication of a new culture of openness, the Minister for Children and Youth Affairs, on his own violation, made public that Tusla had identified evidence of significant risks in how child protection referrals were managed in the Laois/Offaly area.⁴⁶³ The accountability framework in relation to Tusla's work and the monitoring and remedy bodies have greatly improved accountability in the area of child protection. Further areas that need attention include promoting awareness of complaints and remedy

bodies and collecting data on how child protection services are operating to vindicate children's rights.

In its Corporate Plan, Tusla identifies the social problem it is trying to solve as 'a lack of long-term, evidence-informed planning and insufficient resources leads to disjointed services and inadequate supports for children and families.'⁴⁶⁵ It sets out a pathway to address this problem, including a short term (1-3 year) output that 'Tusla's child protection processes and systems are responding to children at risk in a timely manner'.⁴⁶⁶ To achieve this, Tusla identified reform activities for 2015, including to improve information systems and introduce a Child Protection Notification System and a National Out of Hours Emergency Service.⁴⁶⁷

Under Budget 2016, the Department of Children and Youth Affairs was allocated an additional €38 million for Tusla, bringing its annual allocation to €676 million for 2016.⁴⁶⁸ The additional funding will address shortcomings, such as the number of children and families awaiting services; improve special care facilities; and support the roll out of services such as the National Child Care Information System; and develop an ICT system to support frontline work and data management.⁴⁶⁹ This additional allocation is very welcome given the centrality of these issues for ensuring quality services for children and families.

In line with a recommendation from the UN Committee on the Rights of the Child, a key indicator of success for Tusla is whether all reported cases of suspected abuse and neglect are adequately investigated in a timely manner.⁴⁷⁰ In January 2015, of

the child protection cases 'open' to social work teams across the country, 7,787 cases had not been allocated a social worker, including 2,235 cases deemed 'high priority'.⁴⁷¹ By December 2015, progress has been made to reduce these figures to 5,585 unallocated cases, of which 1,087 are high priority.⁴⁷²

In response to unallocated child protection referrals identified in Laois/Offaly,⁴⁷³ the Minister for Children and Youth Affairs requested Tusla to put in place a rapid improvement response (consisting of resources and senior management oversight).⁴⁷⁴ This immediate response model was used to address the findings of HIQA reports in Louth/Meath⁴⁷⁵ and Dublin North⁴⁷⁶ and will be utilised if needed in the future.⁴⁷⁷ In addition, the Minister commissioned a national audit to determine the number of unallocated cases.⁴⁷⁸ It identified approximately 5,900 assessed triaged cases awaiting assignment to an allocated social worker.⁴⁷⁹ An action plan was developed to address the backlog of cases,⁴⁸⁰ and €6.1 million secured to recruit 201 whole-time equivalent additional social workers and support personnel staff in the first year of this two-year plan.⁴⁸¹ These measures are welcome as the backlog of cases must be addressed as a matter of priority.

Another important indicator of whether Tusla is adequately staffed is the number of children in care who do not have an allocated social worker – in November 2015, the figure was 7 per cent of children in care.⁴⁸² It is vital that this gap is closed and measures

taken to improve the consistency of assigned social workers to allow for the building of a relationship with the child.⁴⁸³

On 1 October 2015, the national interim Child Protection Notification System (CPNS) went live: it is a secure database containing a national record of all children who have reached the threshold of being at ongoing risk of significant harm and for whom there is an ongoing child protection concern.⁴⁸⁴ Specific professionals can record details of their work with, and request information on, a child. It is now available to external services such as GPs and An Garda Síochána. The CPNS is a welcome and essential tool.

In November 2015, Tusla commenced an Emergency Out-of-Hours Social Work Service (EOHS) which co-operates with and supports An Garda Síochána in relation to the removal of a child from his or her family under Section 12 of the Child Care Act 1991 and separated children seeking asylum.⁴⁸⁵ Through the service, the Gardai can contact a social worker by phone or arrange access to a local on-call social worker. The EOHS is to be welcomed as it strengthens inter-agency co-operation and creates a single national service.⁴⁸⁶ However, despite a recommendation from the UN,⁴⁸⁷ there continues to be no social work service that is directly accessible to children or families at risk outside of office hours: support must be sought through An Garda Síochána.

458 UNICEF, 'Rights in Principle and Accountable in Practice: Child Rights and Social Accountability in the Post-2015 World, Background Paper' (2014) < http://www.unicef.org/policyanalysis/rights/files/Accountabilities_Meeting_Background_Paper_final.pdf > accessed 29 January 2016, 1.

459 *ibid.*

460 The Children and Family Relationships Act 2013, Part 6.

461 *ibid.*, Part 2, 3 and 4. In addition, since 2015 CORU can hear complaints regarding professional practice by social workers.

462 The hearings took place on May 7, July 17, October 22 and December 10 2015.

463 Department of Children and Youth Affairs, 'Press statement by Dr. James Reilly TD, Minister for Children and Youth Affairs, regarding child protection issues in the Laois/Offaly area brought to his attention by Tusla – the Child and Family Agency' (30 April 2015) <<http://www.justice.ie/en/JELR/Pages/PR15000487>> accessed 29 January 2016.

464 See for example, Geoffrey Shannon and Norah Gibbons, *Report of the Independent Child Death Review Group*, (Government Publications 2012) 401-414; and Helen Buckley et al, *Service Users' Perceptions of the Irish Child Protection System*, (Stationery Office 2008) 5.

465 Tusla – Child and Family Agency, Corporate Plan 2015-2017 (Tusla – Child and Family Agency 2014) 5.

466 *ibid.*

467 Tusla – Child and Family Agency, 'Business Plan 2015' <http://www.tusla.ie/uploads/content/Business_Plan_2015.pdf> accessed 29 January 2016, 42.

468 Department of Children and Youth Affairs, 'Minister Reilly announces significant budget increase for Tusla' (13 October 2015) < <http://dcya.gov.ie/viewdoc.asp?DocID=3628>> accessed 29 January 2016.

469 Tusla – Child and Family Agency, 'Statement on 2016 Budget Allocation' (15 October 2015) <<http://www.tusla.ie/news/tusla-statement-on-2016-budget-allocation/>> accessed 27 January 2016.

470 UNCRC 'Concluding Observations Ireland,' (29 September 2006) UN Doc CRC/C/IRL/CO/2 para 37(b).

471 Tusla – Child and Family Agency, 'Monthly Management Data Activity Report January 2015' <http://www.tusla.ie/uploads/content/Final_Version_Tusla_Management_Data_Report_January_2015_v1.pdf> accessed 19 February 2016, 13.

472 Dáil Debate 10 December 2015, vol 606, col 1690.

473 Department of Children and Youth Affairs, 'Press statement by Dr. James Reilly TD, Minister for Children and Youth Affairs, regarding child protection issues in the Laois/Offaly area brought to his attention by Tusla – the Child and Family Agency' (30 April 2015) <<http://www.justice.ie/en/JELR/Pages/PR15000487>> accessed 29 January 2016.

474 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 27 January 2016.

475 HIQA, *Child protection and welfare – monitoring inspection report on child protection and welfare services under the National Standards for the Protection and Welfare of Children, and Section 8(1)(c) of the Health Act 2007: Louth/Meath* (HIQA, 2015).

476 HIQA, *Child protection and welfare – monitoring inspection report on child protection and welfare services under the National Standards for the Protection and Welfare of Children, and Section 8(1)(c) of the Health Act 2007: North Dublin* (HIQA, 2015).

477 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 27 January 2016.

478 UNCRC, 'Replies of Ireland to the List of Issues' (2015) UN Doc CRC/C/IRL/Q/3-4/Add.1 para 47.

479 *ibid.*

480 UNCRC, 'Replies of Ireland to the List of Issues' (2015) UN Doc CRC/C/IRL/Q/3-4/Add.1 para 47.

481 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 27 January 2016.

482 Tusla – Child and Family Agency, 'Monthly Management Data Activity Report November 2015' <http://www.tusla.ie/uploads/content/Tusla_Management_Data_Report_November1.0.pdf> accessed 19 February 2016, 1.

483 See for example, Geoffrey Shannon and Norah Gibbons, *Report of the Independent Child Death Review Group* (Government Publications 2012) 405.

484 Communication received by the Children's Rights Alliance from Department of Children and Youth Affairs, 27 January 2016.

485 The Gardai have specific powers under section 8.5 of the Refugee Act 1996.

486 It replaces two services: the Crisis Intervention Service which operated in Dublin, Wicklow and Kildare providing an out-of-hours emergency social work service to any child in a crisis situation; and the Emergency Place of Safety Service which provided a service to children in the rest of the country who require an emergency care placement.

487 UNCRC 'Concluding Observations Ireland,' (29 September 2006) UN Doc CRC/C/IRL/CO/2 para 29 (b).

Child and Family Agency

Immediate Action for 2016



CONTINUE TO INVEST IN CHILD PROTECTION SOCIAL WORK SERVICES TO ENSURE THEY ARE ADEQUATELY EQUIPPED TO FULFIL THE STATE'S STATUTORY AND HUMAN RIGHTS OBLIGATIONS TO CHILDREN.

Ensure adequate resourcing of the Child and Family Agency to enable it to assess child protection referrals in a timely, appropriate and consistent manner, assign each case a social worker and ensure the caseload allows the social worker to build a relationship with the child, including those in the care system. In addition to the planned Alternative Care Strategy, a national child abuse prevention strategy is needed to ensure steps are taken to prevent and intervene early to reduce the incidences of child abuse and neglect.

5.2

Ryan Report Implementation Plan**GOVERNMENT COMMITMENT**

The *Programme for Government 2011-2016* commits to implementing the recommendations of the Ryan Report including putting the Children First Guidelines on a statutory footing and legislating for the use of "soft information".



Progress: Some

'Ryan Report Implementation Plan' receives a 'B' in Report Card 2016. This is an increase on last year's 'B-' grade to reflect the enactment of the Children First Act 2015 and the removal of the defence of reasonable chastisement. The grade is only a small increase due to the failure to commence the National Vetting Bureau Act 2012.

The UN Convention on the Rights of the Child provides that a child has the right to protection from abuse and neglect (article 19), including from sexual and other forms of exploitation (articles 34 to 36). It further provides for the right to rehabilitative care (article 39) and specific protections for children in the care system such as the child's right not to be separated from his or her parents and protection for children without families (article 9 and 20), the review of care placements (article 25) and the best interests of the child in adoption cases (article 21). Article 19 obliges States to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'. To ensure that children are adequately protected, the UN Committee on the Rights of the Child recommends that States establish a government focal point to coordinate child protection strategies and services.⁴⁸⁸

This is the final year of the Report Card series under the *Programme for Government 2011-2016*. The Government's objective in this area was to implement the recommendations of the Ryan Report including putting the *Children First Guidelines* on a statutory footing and legislating for the use of "soft information". Progress has been made towards achieving these objectives – the recommendations of the Ryan Report have been progressed; the Children First Act was enacted in 2015, putting elements of the *Children First Guidelines* on a statutory footing; and the National Vetting Bureau (Children and Vulnerable Persons) Act was enacted in 2012, legislating for the use of 'soft information'. However, for these reforms to have a positive impact on the lives of children the two statutes needed to be commenced in full.

The UN Convention on the Rights of the Child provides that a child has the right to protection from abuse and neglect (article 19), including from sexual and other forms of exploitation (articles 34 to 36).

488 UNCRC, 'General Comment No.13 on the Right of the Child to Freedom from All Forms of Violence (2011) UN Doc CRC/C/GC/13 para 42.

Ryan Report Implementation Plan: The Ryan Report Implementation Plan was published in July 2009 to respond to the recommendations contained in the Report of the Commission to Inquire into Child Abuse (Ryan Report).⁴⁸⁹ The Implementation Plan identified key weaknesses in the child protection system and provided a roadmap for reform. The Fourth and Final Progress Report of the Monitoring Group for the Ryan Report Implementation Plan was published in March 2015.⁴⁹⁰ The work of the Monitoring Group is now complete. The final report notes that of the 99 actions of the Implementation Plan, 94 are either 'complete' or 'ongoing', as by their nature they are not once off actions so continue to be implemented on an ongoing basis⁴⁹¹ and are being progressed under other fora, including the Children First Interdepartmental Implementation Group and the Tusla Business Plan.⁴⁹² There were also five actions under the Implementation Plan which were deemed to be 'incomplete' at the end of December 2014.⁴⁹³ The Minister for Children and Youth Affairs has committed to follow up on these actions and report back to Government until their completion.⁴⁹⁴

Three of the five 'incomplete' actions fall under Tusla's remit – to establish a longitudinal study on outcomes for children who leave care (Action 65); develop a professionally managed national archive as a central repository for the records of all children in care (Action 75); and secure the records created in non-statutory agencies in the national archive

(Action 76). These actions were not implemented due to resource restraints. In 2014, the Minister for Children and Youth Affairs requested Tusla to develop a business case with costings to complete these recommendations.⁴⁹⁵ Each of these actions has been incorporated into Tusla's 2016 Business Plan.⁴⁹⁶

The fourth 'incomplete' action relates to the construction of a memorial to the survivors of institutional abuse (Action 1). This original proposal faced planning difficulties⁴⁹⁷ and will not go ahead, but the Department of Education and Skills is pursuing an alternative.⁴⁹⁸ The final 'incomplete' action related to the Courts Service conducting research into best practice in other jurisdictions on the management of children and family services (Action 96). This research has not been undertaken by the Court Service. However, the work of the Child Care Law Reporting Project is adding to our knowledge in this area.⁴⁹⁹

Children First: A 2008 national review of compliance with Children First⁵⁰⁰ and 2010 investigation by the Ombudsman for Children⁵⁰¹ found that the *Children First Guidelines* were being applied in an *ad hoc* manner across the country leading to incidences of non-reporting of child abuse concerns. These findings highlighted the inadequacy of a voluntary set of guidelines.⁵⁰²

In line with recommendations of the Ryan Report Implementation Plan⁵⁰³ and the UN Committee,⁵⁰⁴

Based on international experience, following the commencement of the legislation it is anticipated that the number of child protection and welfare referrals will initially rise and then level out. Hence measures must be in place to ensure the availability of sufficient social workers to access referrals and respond to them in an effective and timely manner.

the Children First Bill was published in April 2014 and enacted in November 2015 to place elements of the *Children First Guidance* on a statutory footing. The legislation places a legal duty on organisations providing specified services for children to carry out a risk assessment and prepare an organisation-specific Child Safeguarding Statement.⁵⁰⁵ It requires 'mandated persons' to report child protection concerns which meet a defined threshold.⁵⁰⁶ Although the Bill is welcome, the sanctions for those who fail to comply with its provisions are weak. The only sanction introduced under the Bill is the establishment of a non-compliance register to 'name and shame' organisations which do not have a child safeguarding statement.⁵⁰⁷ The Bill provides no new sanction to address a breach of its provisions by a mandated individual. A failure by a mandated person to report a child protection concern will therefore need to be addressed through existing employment legislation or a sanction by a professional body.

Based on international experience, following the commencement of the legislation it is anticipated that the number of child protection and welfare referrals will initially rise and then level out. Hence measures must be in place to ensure the availability of sufficient social workers to access referrals and respond to them in an effective and timely manner.

Ireland's failure to explicitly prohibit corporal punishment in the home has been criticised by international bodies.⁵⁰⁸ Corporal punishment continues to be a feature in the lives of children in Ireland with research finding that 43 per cent of mothers reported using corporal punishment.⁵⁰⁹ In a very welcome development, provision was made under Section 28 of the Children First Act 2015 to abolish the common law defence of reasonable chastisement⁵¹⁰ for parents and others in the home, including certain childminders.⁵¹¹ This provision was commenced from 11 December 2015.⁵¹² It sends a powerful message to society that hitting children is wrong. However, to change behaviour towards disciplining children more work needs to be done to promote positive, non-violent alternative forms of discipline.

Vetting: Three years on from the enactment in December 2012, the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 has yet to be commenced. The Act places the National Vetting Bureau on a statutory footing and permits the Bureau to collect and exchange 'relevant' or 'soft' non-criminal information that indicates that there is a reason to believe that a person may harm or attempt to cause harm to children or vulnerable adults.⁵¹³ The protracted delay in commencing the Act is deeply disappointing. This means that the vetting of staff working with children and vulnerable adults is confined to 'hard' information relating to criminal

489 The Report of the Commission to Inquire into Child Abuse (the Ryan Report) was published in May 2009, revealing horrific wrongdoings perpetrated against children living in institutions during the period 1936 to 2000.
 490 Ryan Report Monitoring Group, 'Ryan Report Implementation Plan, Fourth Progress Report' (December 2014) <<http://www.dcy.gov.ie/documents/publications/20150324RyanRepFourthProgressDec2014.pdf>> accessed 29 January 2016.
 491 *ibid* 19.
 492 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 27 January 2016.
 493 *ibid* Part 2.
 494 Orla Ryan, 'Some Ryan Report recommendations yet to be implemented due to lack of resources' (*TheJournal.ie* 28 December 2015) <<http://www.thejournal.ie/ryan-report-recommendations-2482780-Dec2015/>> accessed 29 January 2016.
 495 Ryan Report Monitoring Group, 'Ryan Report Implementation Plan, Fourth Progress Report' (December 2014) <<http://www.dcy.gov.ie/documents/publications/20150324RyanRepFourthProgressDec2014.pdf>> accessed 29 January 2016, 6.
 496 Tusla – Child and Family Agency, *Business Plan 2016* (Tusla – Child and Family Agency 2016) 57.
 497 Ryan Report Monitoring Group, 'Ryan Report Implementation Plan, Fourth Progress Report' (December 2014) <<http://www.dcy.gov.ie/documents/publications/20150324RyanRepFourthProgressDec2014.pdf>> accessed 29 January 2016, 6.
 498 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 27 January 2016.
 499 For more information visit Child Care Law Reporting Project <<http://www.childlawproject.ie/>> accessed 29 January 2016.
 500 Office of the Minister for Children and Youth Affairs, *National Review of Compliance with Children First: National Guidelines for the Protection and Welfare of Children* (The Stationery Office 2008).
 501 Ombudsman for Children, *A Report Based on an Investigation into the Implementation of Children First: National Guidelines for the Protection and Welfare of Children* (Ombudsman for Children's Office 2010).
 502 See also Geoffrey Shannon, *Third Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, (Department of Children and Youth Affairs 2009); Helen Buckley et al, *Service Users' Perceptions of the Irish Child Protection System*, (The Stationery Office 2008).
 503 Office of the Minister for Children and Youth Affairs, *Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan*, (Department of Health and Children 2009) Action 85.
 504 UNCRC, 'Concluding Observations: Ireland' (2006) UN Doc CRC/C/IRL/CO/2 para 37(a).

505 Children First Act 2015, Part 2.
 506 *Ibid* Part 3. Schedule 2 of the Children First Act 2015 specifies the classes of persons who are deemed to be mandated persons. They include social workers, teachers and certain health professionals including doctors and nurses.
 507 Children's Rights Alliance, 'Saving Childhood Group welcomes the publication of the Children First Bill 2014 and highlights areas of concern' (14 April 2014) <<http://www.childrensrights.ie/resources/saving-childhood-group-welcomes>> accessed 29 January 2016.
 508 UNCRC, 'Concluding Observations: Ireland' (2006) UN Doc CRC/C/IRL/CO/2 para 40; UNCAT, 'Concluding Observations: Ireland' (2011) UN Doc CAT/C/IRL/CO/1 para 24; UNHRC, 'Concluding Observations: Ireland' (2014) UN Doc CCPR/C/IRL/CO/4 para 14; Council of Europe, *Resolution CM/ResChS(2015)9, Association for the Protection of All Children (APPROACH) Ltd v. Ireland*, Complaint No. 93/2013, 17 June 2015, <<https://wcd.coe.int/ViewDoc.jsp?id=2336121&Site=COE&BackColorIntranet=EDB021&BackColorLogged=F5D383>> accessed 29 January 2016.
 509 32 per cent said they did so 'rarely' and 11 per cent 'now and again'. J. Williams et al., *Growing up in Ireland, National Longitudinal Study of Children*, The Lives of 9-year-olds (Stationery Office 2009) 45.
 510 The defence dates back to the case of *R. v Hopley* [1860] 2 F & F 202.
 511 This provision was added to the Children First Bill during its passage through Seanad Éireann. The amendment was co-sponsored by the Minister for Children and Youth Affairs, Dr James Reilly TD, and independent Senator, Jillian van Turnhout.
 512 Department of Children and Youth Affairs, "End corporal punishment" as removal of defence takes effect" (10 December 2015) <<http://www.dcy.gov.ie/viewdoc.asp?DocID=3669>> accessed 29 January 2016.
 513 National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

convictions. Concern exists that the weak level of vetting in Ireland is placing children at risk and may attract people who wish to commit offences against children or vulnerable adults from jurisdictions that operate a more robust vetting system.⁵¹⁴

The commencement of the 2012 Act was put on hold in light of a legal development.⁵¹⁵ It was felt the legislation needed to be amended in relation to the inclusion of convictions for old, minor offences, to protect against a breach of Article 8 of the European Convention on Human Rights (right to respect for private and family life).⁵¹⁶ This concern has been addressed through the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, which was passed into law in February 2016. Under the 2016 Act, certain convictions may become 'spent' after a period of seven years to remove barriers to employment, education, housing and insurance for people who have moved on from past offending behaviour. Section 21 of the 2016 Act amends the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 to clarify that certain offences do not need to be disclosed in a vetting application – minor offences where over 7 years has passed since the conviction in the District Court and the sentence imposed or order made was complied with. The Act excludes all offences relating to physical violence or assault, sexual offences, domestic violence, child cruelty and endangerment, trafficking and pornography.

514 Paul Hosford, 'Is Ireland becoming a "safe haven" for sex offenders?' (*TheJournal.ie* 12 February 2015) <<http://www.thejournal.ie/sex-offenders-loophole-1934369-Feb2015/>> accessed 29 January 2016.

515 Elements of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 relating to the disclosure of convictions require amendment before it can be commenced following a Court judgment, *UK Court of Appeal (T and others v Chief Constable of Greater Manchester, 2013)*.

516 Minister for Justice and Equality, Alan Shatter TD, Dáil Debates, Written Answers, Garda Vetting of Personnel, 13 February 2014.

Ryan Report Implementation Plan

Immediate Actions for 2016



COMMENCE THE CHILDREN FIRST ACT 2015 AND PROVIDE FUNDS TO PROMOTE COMPLIANCE.

It is critical that the Children First Act 2015 is commenced as soon as possible to vindicate the child's right to protection from abuse under Article 19 of the UN Convention on the Rights of the Child. Investment in education, training, support and adequate social work services will be needed to support compliance with the Act. An independent review of the operation of Children First legislation should be undertaken two years after its commencement. Additional public education on positive, non-violent forms of discipline should be provided for parents/carers.

COMMENCE THE NATIONAL VETTING BUREAU ACT 2012 AND CRIMINAL JUSTICE (SPENT CONVICTIONS AND CERTAIN DISCLOSURES) ACT 2016.

Commence the National Vetting Bureau Act (Children and Vulnerable Persons) 2012 and Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 as a matter of urgency. Provide support and training to relevant organisations and professionals to enable them to comply fully with their statutory duties under the National Vetting Bureau Act 2012.

5.3

Children in Detention**GOVERNMENT COMMITMENT**

The *Programme for Government 2011-2016* commits to ending the practice of sending children to St. Patrick's Institution.



Progress: Good

'Children in Detention' receives a 'B+' grade in Report Card 2016, an increase from the 'B-' grade awarded last year. This is reflective of the progress made towards ending the practice of sending children to St. Patrick's Institution, an adult prison. Key achievements in 2015 include ending the detention of 16 year olds children (detained on remand) in St. Patrick's Institution and the enactment of the Children (Amendment) Act 2015 which will prohibit the detention of a child in adult prisons.

This is the final year of the Report Card series under the *Programme for Government 2011-2016*. The Government's objective in this area was to end the practice of sending children to St. Patrick's Institution. Significant progress has been made to meet this commitment, with the Children Detention Schools now responsible for the detention of all categories of children with the exception of boys aged 17 years who are serving a sentence – this group is currently accommodated in Wheatfield Place of Detention.

Article 37 of the UN Convention on the Rights of the Child provides that children shall be deprived of their liberty only as a measure of last resort and for the shortest appropriate time; that they be treated in a matter that takes into account the needs of a person of his or her age, including that he or she be separated from adults unless in the child's best interests; and that the child maintain contact with

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family and have prompt access to legal and other appropriate assistance.

Article 10(2)(b) of the International Covenant on Civil and Political Rights provides that '[a]ccused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication'. On ratifying this Covenant, Ireland lodged a reservation to Article 10 noting that although it accepts the principles referred to in Article 10(2)(b) and implements them as far as practically possible it 'reserves the right to regard full implementation of these principles as objectives to be achieved progressively'.⁵¹⁷

The practice in Ireland of detaining boys⁵¹⁸ in adult prisons has been widely criticised as a glaring human rights violation by a number of international and domestic bodies, including the UN Committee on the Rights of the Child,⁵¹⁹ the UN Human Rights

Committee,⁵²⁰ the UN Committee Against Torture,⁵²¹ the Council of Europe Commissioner for Human Rights,⁵²² the Council of Europe Committee for the Prevention of Torture⁵²³ and the Ombudsman for Children.⁵²⁴ The adult prison most often used for the detention of children has been St Patrick's Institution.⁵²⁵ It was described as the most violent prison in Ireland, responsible for one third of all assaults in the prison system, and the Inspector of Prisons concluded that there is a culture in St. Patrick's which results in 'the human rights of some prisoners (children and young adults) being either ignored or violated'.⁵²⁶ The Inspector's report includes cases of children on 23 hour lock up (isolation) for their own protection from other detainees. He noted that in one case, 'the bed clothes were dirty, the toilet was blocked and he had no running water'.⁵²⁷

In 2012, the Government committed to end the practice of detaining children in adult prisons and to develop a National Children Detention Facility for the detention of all those under 18 years,⁵²⁸ as originally provided for in the Children Act 2001. Progress towards these goals has been made through changes to detention practice, capital investment and legislative reform. Since 2013, €56 million has been invested in the development of the National Children Detention Facility on the Oberstown campus at Lusk, County Dublin, which is nearing completion.⁵²⁹ The new Facility comprises the existing three Children Detention Schools⁵³⁰ and additional accommodation to cater for 16 and 17

years old boys who previously were accommodated in the adult prison system.

On foot of incremental changes, children are no longer routinely detained in St Patrick's Institution. Since 2012, the responsibility for 16 year old boys (on remand and those serving a sentence) was transferred to the Children Detention Schools. Since March 2015, 17 years old boys on remand (i.e. children awaiting trial for criminal offences who have been denied bail) are also detained in Children Detention Schools.⁵³¹ The transfer of responsibility for 17 year olds on remand from St Patrick's Institution to Oberstown is particularly welcome as the Inspector of Prisons had expressed grave concern about the continued detention of a small number of boys in that prison describing it as 'at times, tantamount to holding them in isolation and it is certainly inhumane'.⁵³²

In 2012, the Government committed to end the practice of detaining children in adult prisons and to develop a National Children Detention Facility for the detention of all those under 18 years, as originally provided for in the Children Act 2001.

520 UNHRC, 'Concluding Observations: Ireland' (2014) UN Doc CCRPR/C/IRL/CO/4 para 15.

521 UNCAT, 'Concluding Observations: Ireland' (2011) UN Doc CAT/C/IRL/CO/1 para 22.

522 Council of Europe, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Ireland from 1 to 2 June 2011* (Council of Europe 2011) paras 35-36.

523 Council of Europe (2010) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* (Council of Europe 2010) 17.

524 Ombudsman for Children's Office, 'Children's Ombudsman calls on the next Government to expedite closure of St. Patrick's Institution as a place of detention for children' (9 February 2011) < <http://www.oco.ie/2011/02/childrens-ombudsman-calls-on-the-next-government-to-expedite-closure-of-st-patricks-institution-as-place-of-detention-for-children/> > accessed 29 January 2016.

525 St. Patrick's Institution is a closed, medium security detention centre for males up to the age of 21 years, located on the Mountjoy Prison complex in Dublin.

526 Judge M Reilly, *Report on an Inspection of St. Patrick's Institution by the Inspector of Prisons* (Office of the Inspector of Prisons 2012) 58.

527 *ibid* 54.

528 Department of Children and Youth Affairs, 'Minister Fitzgerald to End Detention of 16 and 17 Year Olds in St. Patrick's Institution' (2 April 2012) < <http://www.dcy.gov.ie/viewdoc.asp?DocID=1842> > accessed 29 January 2016.

529 Budget 2015 provided the final instalment of a €56.4 million investment over three years in the national facility. An additional €19 million was allocated to complete the national facility and a further €1.8 million to cover the costs of additional staff and costs associated with the new, larger facility. Department of Children and Youth Affairs, 'Budget 2015, Speech by Dr James Reilly T.D. Minister for Children and Youth Affairs (15 October 2014)' < <http://www.dcy.gov.ie/viewdoc.asp?DocID=3332> > accessed 29 January 2016.

530 The three existing Children Detention Schools are Oberstown Boys School, Trinity House School and Oberstown Girls School. The schools currently operate under the same board of management but not under a single director.

531 For legal reasons children on remand cannot be detained in Wheatfield Place of Detention so the practice remained in St Patrick's Institution up until March 2015.

532 Judge M. Reilly, *Overview of Mountjoy Prison Campus with particular emphasis on the Separation Unit* (Office of the Inspector of Prisons 2014) para 2.11.

517 United Nations Office of the High Commissioner for Human rights, 'Ratification of 18 International Human Rights Treaties' < <http://indicators.ohchr.org/> > accessed 18 February 2016.

518 Girls under 18 years in custody have been detained on the Oberstown campus since 2007.

519 UNCRC, 'Concluding Observations: Ireland' (2006) UN Doc CRC/C/IRL/CO/2 para 68-69.

Since December 2013, all 17 year olds serving custodial sentences are detained in Wheatfield Place of Detention, an adult prison rather than St Patrick's Institution. For example on 22 January 2016, thirteen 17 year olds were detained in Wheatfield.⁵³³ This is intended to be an interim measure until the completion of the new facility in Oberstown.⁵³⁴ A minimum of two additional units at the Oberstown campus are needed to allow for the transfer of responsibility for this category of 17 year old boys. To open these units, additional residential social care worker grade staff is needed.⁵³⁵ Recruitment for these posts by the Irish Youth Justice Service is ongoing, and is expected to be completed by the end of Q1 2016.⁵³⁶

2015 saw the publication and enactment of two important pieces of legislation. In May 2015, the Minister for Children and Youth Affairs, James Reilly TD, published the Children (Amendment) Act 2015, which was enacted in July 2015.⁵³⁷ The Act provides for the amalgamation of the Children Detention Schools into a single facility and for the repeal of all legislative provisions that allow for detention of children in Irish Prison Service facilities. The Act was partially commenced on 1 December 2015.⁵³⁸ The remaining provisions will be commenced once the staffing complement in the Oberstown facility has been achieved to enable Oberstown to receive sentenced persons aged 17.⁵³⁹

On foot of an Inspector of Prisons report published in July 2013 which found 'very disturbing incidents of non-compliance with best practice and breaches of the fundamental rights of prisoners',⁵⁴⁰ the Government announced its intention to close St Patrick's Institution. The General Scheme of the Prisons Bill was published in April 2015 and enacted in December 2015.⁵⁴¹ It provides for the complete

closure of St. Patrick's Institution by repealing statutory provisions that enable courts to detain offenders under the age of 21 in St Patrick's Institution and by deleting references to St Patrick's Institution from the statute book.⁵⁴² The provisions of the Prisons Act 2015 cannot be commenced until the Oberstown campus is ready to receive all sentenced persons under the age of 18 years and the relevant provisions of the Children (Amendment) Act 2015 are commenced.

It is vital that the recruitment is finalised and the Children (Amendment) Act 2015 and Prison Act 2015 are commenced as a matter of priority to end the detention of children in Wheatfield Place of Detention and the continued use of St. Patrick's Institution to detain a child on remand while awaiting places in Oberstown. For example, Prison Services figures show that during 2015, a 16 year old was in custody at

2015 saw the publication and enactment of two important pieces of legislation. In May 2015, the Minister for Children and Youth Affairs, James Reilly TD, published the Children (Amendment) Act 2015, which was enacted in July 2015. The Act provides for the amalgamation of the Children Detention Schools into a single facility and for the repeal of all legislative provisions that allow for detention of children in Irish Prison Service facilities.

St Patrick's Institution on 16 October,⁵⁴³ 19 October,⁵⁴⁴ 20 October,⁵⁴⁵ 26 October,⁵⁴⁶ 27 October,⁵⁴⁷ 18 December⁵⁴⁸ and 21 December 2015.⁵⁴⁹

Since 2012, the Government has taken steps to remove children from St. Patrick's Institution and to close the prison. From 2012 to late 2015, these changes have resulted in 428 cases of boys being detained in Oberstown rather than in an adult prison.⁵⁵⁰ The Department of Children and Youth Affairs has stated that it is 'now a matter of when, and not if, there will be a final end to the practice of detaining children in adult prison facilities'.⁵⁵¹

533 Irish Prison Service, 'Prisoner Population on Friday 22 January 2016' <http://www.irishprisons.ie/images/dailynumbers/22_january_2016.pdf> accessed 29 January 2016.
 534 Minister for Children and Youth Affairs, Dr. James Reilly TD, Dáil Debates, Child Detention Centres, 24 February 2015 [7693/15].
 535 Department of Children and Youth Affairs, 'Information Note: Progress on Oberstown' (10 December 2015).
 536 Four recruitment phases have been arranged to date since mid-2014, three external and one internal. Two further recruitment processes for care staff commenced on 19 November 2015 and 23 December 2015.
 537 Department of Children and Youth Affairs, 'Legislation enacted in 2015' <<http://www.dcy.gov.ie/viewdoc.asp?fn=%2Fdocuments%2Flegislation%2Flegislation.htm>> accessed 29 January 2016.
 538 The Order provides for the commencement of sections 1, 2, 4 other than paragraph (d), 5, 6 (insofar as it relates to s88A, 7, 11 to 15, 17, 20 to 25 and 31 of the Children (Amendment) Act 2015 with effect from 1 December 2015. Children (Amendment) Act 2015 (Commencement) Order 2015, Statutory Instrument 539 of 2015.
 539 Department of Children and Youth Affairs, 'Information Note: Progress on Oberstown' (10 December 2015).
 540 Inspector of Prisons, Annual Report 2012 (Inspector of Prisons 2013) 23. See also Ombudsman for Children, *Young People in St. Patrick's Institution, A Report by the Ombudsman for Children's Office* (Ombudsman for Children's Office 2011).
 541 Department of Justice and Equality, 'Minister Fitzgerald welcomes the passage of the Prisons Bill through the Oireachtas' (16 December 2015) <<http://www.justice.ie/en/JELR/Pages/PR15000648>> accessed 18 February 2016.
 542 Department of Justice and Equality, 'Minister Fitzgerald publishes General Scheme of the Prisons Bill' (2 April 2015) <<http://www.justice.ie/en/JELR/Pages/PR15000103>> accessed 18 February 2016.

543 Irish Prison Service, 'Prisoner Population on Friday 16 October 2015' <http://www.irishprisons.ie/images/dailynumbers/16_october_2015.pdf> accessed 18 February 2016.
 544 Irish Prison Service, 'Prisoner Population on Monday 19 October 2015' <http://www.irishprisons.ie/images/dailynumbers/19_october_2015.pdf> accessed 18 February 2016.
 545 Irish Prison Service, 'Prisoner Population on Tuesday 20 October 2015' <http://www.irishprisons.ie/images/dailynumbers/20_october_2015.pdf> accessed 18 February 2016.
 546 Irish Prison Service, 'Prisoner Population on Monday 26 October 2015' <http://www.irishprisons.ie/images/dailynumbers/26_october_2015.pdf> accessed 18 February 2016.
 547 Irish Prison Service, 'Prisoner Population on Tuesday 27 October 2015' <http://www.irishprisons.ie/images/dailynumbers/27_october_2015.pdf> accessed 18 February 2016.
 548 Irish Prison Service, 'Prisoner Population on Friday 18 December 2015' <http://www.irishprisons.ie/images/dailynumbers/18_december_2015.pdf> accessed 18 February 2016.
 549 *ibid.* See also Adam Cullen, 'Teen boy held in St.Patrick's' *The Irish Independent* (Dublin, 29 October 2015).
 550 89 boys were detained in Oberstown rather than in an adult prison in 2012, 109 in 2013, 119 in 2014, and 111 in 2015 (up to 10 December 2015).
 551 Department of Justice and Equality, 'Prisons Bill 2015 Dáil Éireann Second Stage Speech by Minister of State Ann Phelan on behalf of the Minister for Justice and Equality Frances Fitzgerald TD' (14 December 2015) <http://www.justice.ie/en/JELR/Pages/SP15000643>> accessed 29 January 2016.

Children in Detention

Immediate Actions for 2016



SUPPORT THE OPENING OF ADDITIONAL UNITS IN THE NATIONAL CHILDREN DETENTION FACILITY TO ACCOMMODATE 17 YEAR OLDS SERVING A CUSTODIAL SENTENCE.

Provide all necessary supports, including staffing recruitment, to facilitate the opening of additional units in the National Children Detention Facility to allow for the transfer of responsibility for 17 year olds serving a custodial sentence, currently detained in Wheatfield Place of Detention.

FULLY COMMENCE THE CHILDREN (AMENDMENT) ACT 2015 AND THE PRISONS ACT 2015.

Fully commence the Children (Amendment) Act 2015 and the Prisons Act 2015 at the earliest opportunity to ensure that no child under 18 years is detained in an adult prison.

WITHDRAW THE RESERVATION TO ARTICLE 10(2)(B) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

Once the transfer of responsibility for 17 year old males to the Oberstown campus has been completed, the Government should withdraw the reservation to Article 10(2)(b) of the International Covenant on Civil and Political Rights.

6. RIGHT TO EQUALITY AND NON-DISCRIMINATION

Chapter Grade

D+

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The Children and Family Relationships Act (2015) for the first time recognises and gives legal status to the broad range of families in Ireland of the 21st century. This important Act has brought much needed security to thousands of children in Ireland and is a very welcome reform to Irish family law. Children from all family types can now enjoy the security and care of a legal relationship with their parents that heretofore was not possible”

Sandra Irwin-Gowran, Director of Education Policy, GLEN - Gay and Lesbian Equality Network

Right to Equality and Non-Discrimination

Every child has the right to equal treatment, without discrimination of any kind, irrespective of the race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child or the child's parents or guardian.

Summary of Article 2 of the UN Convention on the Rights of the Child