

Briefing Note: Joint Committee on the Constitutional Amendment on Children and Related Work of the Children's Rights Alliance

January 2010

The Joint Committee on the Constitutional Amendment on Children was established on 22 November 2007, in line with a commitment in the June 2007 Programme for Government to deepen consensus on the Twenty Eighth Amendment of the Constitution Bill 2007. The terms of reference for the Committee are to examine, and consider, the proposal for a constitutional amendment to strengthen children's rights contained in the Twenty-Eighth Amendment of the Constitution Bill 2007, and to make recommendations to the two houses of the Oireachtas.

The Committee was originally due to report its recommendations in a final report four months from the date of its establishment. However, this deadline was four times extended and the Committee is now due to present its final report on 29 January 2010. The Committee has issued two reports to date. The Committee has reportedly held 50 meetings, of these 15 were held in public. Transcripts of public hearings can be accessed at <http://debates.oireachtas.ie/CommitteeMenu.aspx?Dail=30&Cid=CC>

Committee Reports

To date the committee has published two interim reports.

First Interim Report – Vetting and Soft Information

The Committee published its First Interim Report on 11 September 2008. The Committee concluded that a constitutional amendment is not required to permit the Oireachtas to create a statutory scheme to regulate and control records of criminal convictions and information including 'soft' information. It recommended the establishment of a statutory scheme for the vetting of all persons involved in working in any capacity with children; and the requirement of all agencies working with or involved with children to ensure that all of those working under their aegis, either in a paid or voluntary capacity, are subject to vetting.

Second Interim Report – Absolute and/or Strict Liability Offences in relation to 'Statutory Rape'

The Committee published its Second Interim Report on 7 May 2009; the report focuses on the proposal in the 2007 Bill to provide for absolute and strict liability for sexual offences committed against or in connection with children. The Committee did not recommend amending the Constitution. The Committee instead recommended, among other things, the creation of a specific offence of child sexual abuse, raising the level an accused must reach in proving the existence of a mistake as to age in cases involving sexual offences against children, and that the burden of proof in such cases should fall on the accused.

Timeline

The Joint Committee was established on 22 November 2007 with an original timeframe of four months to report (March 2008). It received five extensions to this timescale.

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| - Original deadline | March 2008 | (4 months from time of its establishment) |
| - Second deadline | 9 April 2009 | (17 Months from time of its establishment) |
| - Third deadline | 16 October 2009 | (23 Months from time of its establishment) |
| - Fourth deadline | 16 December 2009 | (25 Months from time of its establishment) |
| - Fifth deadline | 29 January 2010 | (26 Months from time of its establishment) |
| - Sixth deadline | 26 February 2010 | (27 Months from time of its establishment) |

Terms of Reference

The terms of reference of the Joint Committee are to:

- (a) Examine the Twenty-Eighth Amendment of the Constitution Bill 2007; and
- (b) Consider the text set out in the Schedule to that Bill with regard to the following:–
- (i) the acknowledgement and affirmation of the natural and imprescriptible rights of all children;
 - (ii) the restatement and extension of the existing provision in relation to children and parents contained in Article 42.5 of the Constitution to include all children;
 - (iii) the provision of legal authority for the adoption of children who have been in care for a substantial period of time if it is in the best interests of those children;
 - (iv) the provision of legal authority so that all children may be eligible for voluntary adoption;
 - (v) the provision of legal authority so that the courts shall be enabled to secure the best interests of a child in any court proceedings relating to adoption, guardianship, custody or access of that child and to ensure that such interests are taken into account in all other court proceedings in relation to that child;
 - (vi) the provision of legal authority for the collection and exchange of information relating to the risk or actual occurrence of child sexual abuse;
[Committee recommended in its First Interim Report that this be addressed by legislation]
 - (vii) that no provision in the Constitution should invalidate any law providing for absolute or strict liability in respect of sexual offences against or in connection with children;
[Committee recommended in its Second Interim Report that this be addressed by legislation]
- (c) Make such recommendations, including recommendations in relation to amendments to the text in Schedule 1 of the Bill, as shall to the Committee seem appropriate.

Committee on the Constitutional Amendment on Children: Public Sessions

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| 6 December 2007 | Election of Chairman, Election of Vice Chairman, Business of Joint Committee |
| 23 January 2008 | Child Protection: Discussion with Special Rapporteurs on Child Protection |
| 6 February 2008 | Children Rights, including child protection: Discussion with Children's Rights Alliance |
| 13 February 2008 | Children Rights, including child protection: Discussion with Ombudsman for Children |
| 20 February 2008 | Soft information and vetting: Discussion with Garda Síochána |
| 5 March 2008 | Children Rights, including child protection: Discussion with Barnardos |
| 23 April 2008 | Vetting Procedures: Discussion with Access NI and PSNI |
| 4 June 2008 | Absolute and Strict Liability Submissions: Discussion |
| 23 July 2008 | Crisis Pregnancy Agency: Discussion |
| 9 September 2008 | Children Rights, including child protection: Discussion with National Youth Council of Ireland |
| 1 October 2008 | Absolute and Strict Liability: Discussion with Rape Crisis Network Ireland |
| 8 October 2008 | Children Rights, including child protection: Discussion with Children's Rights Alliance |
| 5 November 2008 | Absolute and Strict Liability: Discussion with Tom O'Malley |
| 28 January 2009 | Business of Joint Committee |
| 23 September 2009 | Children Rights, including child protection: Discussion with Barnardos, CARI, Dublin Rape Crisis Centre, ISPC, One in Four and Rape Crisis Network of Ireland |

Committee Membership*

The Joint Committee consists of 19 members: 13 members of Dáil Éireann, 4 members from Seanad Éireann and two ex officio members with an entitlement to vote – the Minister for Justice, Equality and Law Reform and the Minister for Children and Youth Affairs.

Dáil Éireann

- Mary O'Rourke Fianna Fáil, Chairperson of Joint Committee
- Thomas Byrne Fianna Fáil
- Margaret Conlon Fianna Fáil
- Tom Kitt Fianna Fáil
- Seán Ó Feargháil Fianna Fáil
- Michael Woods Fianna Fáil
- Paul Gogarty Green Party
- Michael Noonan Fine Gael, Vice-Chairperson of Joint Committee
- Alan Shatter Fine Gael, Front Bench Spokesperson on Children
- Olwyn Enright Fine Gael
- Dan Neville Fine Gael
- Brendan Howlin Labour Party, Leas Cheann Comhairle
- Caoimhghín Ó Caoláin Sinn Féin, Spokesperson on Health & Children

Seanad Éireann

- Maria Corrigan Fianna Fáil
- Geraldine Feeney Fianna Fáil
- Frances Fitzgerald Fine Gael
- Alex White Labour Party, Spokesperson on Children

Ex-Officio members

- Minister Dermot Ahern, Minister for Justice, Equality and Law Reform
- Minister Barry Andrews, Minister for Children and Youth Affairs

Changes to Membership

Since the Committee's establishment there have been seven substitutions in the representatives from the Fianna Fáil party for a variety of reasons, including new appointments to ministerial posts:

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| • Senator Maria Corrigan replaced | Senator Lisa McDonald | December 2007 |
| • Dara Calleary, TD replaced | Michael Mulcahy, TD | February 2008 |
| • Minister Dermot Ahern replaced | Minister Brian Lenihan | May 2008 |
| • Minister Barry Andrews replaced | Minister Brendan Smith | May 2008 |
| • Áine Brady, TD replaced | Peter Power, TD | May 2008 |
| • Margaret Conlon, TD replaced | Aine Brady, TD | June 2008 |
| • Tom Kitt, TD replaced | Dara Calleary, TD | July 2009 |

*Lists are alphabetical by political party and the by surname or seniority of representative. The list regarding changes to memberships is date ordered.

The Alliance has long been advocating for constitutional reform to strengthen children's rights. Listed below are key activities since the announcement in November 2006 of the Government's intention to hold a Referendum:

Key Submissions / Position Papers

- From Rhetoric to Rights: Second Shadow Report to the United Nations Committee on the Rights of the Child (March 2006) <http://www.childrensrights.ie/files/ShadowRepRhetorictoRights2006.pdf>
- The Constitution and Children: A Position Paper on the Proposed Referendum on Children's Rights (January 2007) <http://www.childrensrights.ie/pubs/CRAConstitution.pdf>
- The Constitution and Children: A Position Paper on the Proposed Referendum on Children's Rights - Summary (January 2007) <http://www.childrensrights.ie/files/CRAConstitutionSummary.pdf>
- Note on the Best Interests Principle in Private Law Proceedings (February 2007) http://www.childrensrights.ie/files/30-BestInterestsPrinciplePrivateLaw0207_6.pdf
- Note on the Legal Doctrine of Proportionality (February 2007) <http://www.childrensrights.ie/files/23-NoteonDoctrineofProportionality0307.pdf>
- Briefing Note on the Twenty-eighth Amendment to the Constitution Bill Prepared for the Information and Consultation Meeting of Member Organisations (12 March 2007)
- The Twenty Eighth Amendment of the Constitution, Submission to the Joint Committee on the Constitutional Amendment on Children (January 2008) <http://www.childrensrights.ie/files/SubJTCommConstAmendmentChild310108.pdf>
- Constitution Submission Concise Guide - Alliance Submission to the Joint Committee on the Constitutional Amendment on Children (May 2008) <http://www.childrensrights.ie/files/SubJTCommChildrenConciseGuide0508.pdf>
- Open letter to Taoiseach: Children's Organisations Call for Action on Constitutional Amendment, (January 2009) <http://www.childrensrights.ie/index.php?q=knowledgebase/irish-constitution/children%E2%80%99s-organisations-call-action-constitutional-amendment-open->
- Letter to the Joint Committee on the Constitutional Amendment on Children (30 September 2009) <http://www.childrensrights.ie/files/LtrJointCommitteeConstAmend300909.pdf>
- Briefing Note: Joint Committee on the Constitutional Amendment on Children and Related Work of the Children's Rights Alliance (6 October 2009) <http://www.childrensrights.ie/files/Briefing%20NoteJtCommConstAmendtRelatedWorkAlliance081009.pdf>
- Alliance Booklet: The Irish Constitution and Strengthening Children's Rights (October 2009) <http://www.childrensrights.ie/files/BookletStrengtheningChildrensRights.pdf>
- Information Note on Global Constitutional Provisions for Children (October 2009) <http://www.childrensrights.ie/files/GlobalConstitutionalProvisionsChildren081009.pdf>

Oral Presentations to the Joint Committee

- Presentation to the Joint Committee on the Constitutional Amendment on Children, 6 February 2008: <http://www.childrensrights.ie/files/PresJtCommConstAmendChildren060208.pdf>
- Presentation to the Joint Committee on the Constitutional Amendment on Children, 8 October 2008: <http://www.childrensrights.ie/files/PresJtCommConstAmendChildren081008.pdf>

The Alliance has issued a number of press releases highlighting, either directly or indirectly, the need for a constitutional amendment: <http://www.childrensrights.ie/index.php?q=resources/press-materials> In addition, the Alliance's advocacy in this area has extended to all aspects of our work and includes speeches, letters to the editor of newspapers (national and local), newsletter articles, podcasts and a website poll.

The following **Alliance member organisations have made submissions to the Joint Committee**: Amnesty International; Association of Secondary Teachers Ireland; Barnardos; Children in Hospital Ireland; Dublin Rape Crisis Centre; Focus Ireland; International Adoption Association; IPPA, the Early Childhood Organisation; Irish Association of Social Workers; Irish Congress of Trade Unions; Irish Council for Civil Liberties; Irish National Teachers Organisation; Irish Youth Foundation; Irish Society for the Prevention of Cruelty to Children (ISPCC); National Parents Council (Primary); National Youth Council of Ireland; One Family; One in Four; The CARI Foundation; Treoir; and Youth Work Ireland (National Youth Federation).