Rights in the Family Environment and Alternative Care
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

Chapter Grade:

B−

ISPCC @ISPCCChildline

ISPCC welcomes significant advance in provision of child protection services with announcement that ‘One House’ model will be implemented in Ireland in 2019.

30 Oct 2018
‘Guardian ad litem Service’ receives a ‘C+’ grade in Report Card 2019. This is the same grade as last year. Work continued in 2018 on the development of a new Child Care (Amendment) Bill to reform the current Guardian ad litem Service. It is expected to include provision for the new executive office under the Department of Children and Youth Affairs to house the GAL Service independently from Tusla, the Child and Family Agency. A new Bill is expected in 2019.

Every child has the right to have their views heard in any judicial proceedings that affect them. The views of the child should be given due weight in accordance with the age of the child and the child's maturity.515 The UN Convention on the Rights of the Child makes specific reference to the child being heard in court proceedings either directly or indirectly through a representative body,516 such as a Guardian ad litem (GAL).517 Under the Convention, the State is obliged to ensure that the child's best interests are a primary consideration in all actions and decisions that impact on the child,518 particularly when a decision is being made in proceedings to take a child into care.519

516 Ibid Art 12(2).
517 A Guardian ad litem is a person who facilitates the voice of the child to be heard in care proceedings before a court, and strives to ensure that the child’s views are taken into account when decisions are made by the court in respect of these applications. The Guardian ad litem also gives a professional view on what they believe is in the child’s best interests given all the circumstances.
519 UNCRC ‘General Comment No. 12 on the Right of the Child
The UN Committee on the Rights of the Child has set out requirements for the appropriate representation of the views of the child. A person who is being appointed as a child’s representative must have sufficient knowledge and understanding of the various aspects of the decision-making process, as well as experience of working with children. The representative must be aware that they represent the interests of the child exclusively and not the interests of other persons (parent(s); institutions or bodies – for example, residential home, administration or society). The Committee is clear that if a representative is used to hear the voice of the child ‘it is of utmost importance that the child’s views are transmitted correctly to the decision maker by the representative’.

In 2016, the UN Committee called on Ireland to take measures to ensure the effective implementation of legislation recognising the right of the child to be heard in relevant legal proceedings, particularly family law proceedings, including by establishing systems and/or procedures for social workers and Courts to comply with the principle. In Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People 2014-2020, the Government commits to creating mechanisms to provide children with the opportunity to be heard in judicial proceedings affecting them; this includes independent representatives, where appropriate.

Article 42A.4 of the Irish Constitution states that provision shall be made by law for the best interests of the child to be ‘the paramount consideration’ in child protection and care, adoption and family law proceedings, and for the views of the child to be ‘ascertained and given due weight’. This constitutional provision therefore refers to two types of proceedings: (1) public law proceedings – cases involving the State and families and (2) private law proceedings – cases between two private parties. The review of the GAL Service committed to in the Programme for Government relates to public law proceedings only.

The Children and Family Relationships Act 2015 gives effect to Article 42A.4 in certain to private law proceedings. The Act provides that the Court can ‘appoint an expert to determine and convey the child’s views’. The legislation requires that one or both of the parties must pay the fee of the expert appointed, as this will not be covered by the State. The Guardianship of Infants Act 1964 (Child’s Views Expert) Regulations came into operation on 1 January 2019. The regulations specify the necessary qualifications and experience for Child’s Views Experts as well as the fees and expenses that may be charged by such experts. The Regulations also define the minimum standards that a views expert must adhere to, this includes being

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526 Guardianship of Infants Act 1964, s 3(1)(a)-(lb), as inserted by Children and Family Relationships Act 2015, s 45.
527 Children and Family Relationships Act 2015, s 63 inserts Part V into the Guardianship of Infants Act 1964. This Part outlines the factors to consider in determining the best interests of the child and s 32(1)(b) provides for the appointment of an expert by the Court ‘to determine and convey the child’s views’. This provision was commenced in January 2016. Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order (SI No. 12/2016).
independent, facilitating the free expression of the views by the child and preparing an accurate report.\textsuperscript{529}

The fact that parents, not the State, will have to cover the fee of the child views expert in private law proceedings means that the availability of this service to children will be dependent on their parents being able to afford, or being willing, to pay for the service.\textsuperscript{530} A disparity will therefore remain between provision for hearing the views of children in private law proceedings and public law proceedings. The UN Committee on the Rights of the Child expressed its concern on this issue and has been clear that the approach proposed constitutes a breach of children’s rights. The State should cover the cost of this service.\textsuperscript{531} The reform of the GAL system now under consideration presents an opportunity to adopt a common approach in the mechanisms used to hear the voice of the child in both public and private law proceedings. Dialogue on the potential coordination of arrangements between the services is ongoing between the Department of Justice and Equality, the Department of Children and Youth Affairs, and the Courts Service.\textsuperscript{531}

\textbf{Reform of the GAL Service:}

The current process of reforming the GAL service is welcome, though long overdue. Reform of legislation in this area has the potential to make a real impact and advance the fulfilment of the constitutional right of the child to have his or her voice heard in child care proceedings. The service has operated without regulation since the commencement of section 26 of the Child Care Act 1991, which provided for a child’s views to be heard through a GAL in child care proceedings.\textsuperscript{532} There are no professional standards or statutory guidance on the eligibility criteria, functions or payment structures for GALs.\textsuperscript{533} The role itself is not defined in legislation and the appointment of a GAL in proceedings is at the discretion of the judge, meaning that access to a GAL for children has been inconsistent, with significant disparity in appointment between court districts within the State.\textsuperscript{534} Currently, there are 76 GALs operating in the State: 32 working with Barnardos,\textsuperscript{535} 18 with the Independent Guardian Ad Litem Agency (TIGALA) and 26 GALs working as individuals or in a small group.\textsuperscript{536}

The General Scheme to reform the GAL service was published in January 2017 following a consultation by the Department of Children and Youth Affairs to review the existing service in autumn 2015.\textsuperscript{537} The General Scheme underwent pre-legislative scrutiny in 2017 by the Joint Oireachtas Committee on Children and Youth Affairs. Subsequently, an updated General Scheme of the Child Care (Amendment) Bill was published in February 2018.\textsuperscript{538} The next iteration of the Bill is expected to be published by the end of February 2019.\textsuperscript{539} The General Scheme goes some way towards translating provisions of the Council of Europe’s Guidelines on Child Friendly Justice into national law.\textsuperscript{540} This can be seen for example under Head 4 of the General Scheme which provides that the GAL ensure that the child is ‘informed of matters relevant to the proceedings having regard to the child’s age and maturity including an explanation of how the views of the child were considered’ and ‘that the child be informed of the outcome of proceedings in a language appropriate to their age and maturity’.\textsuperscript{541} These provisions clearly reflect provisions of the Guidelines relating to information and advice.\textsuperscript{542}

Statutory provision for the GAL to be appointed by the Court ‘of its own motion or on the application of any party’\textsuperscript{543} under the General Scheme is intended to

\begin{itemize}
\item \textsuperscript{529} Guardianship of Infant Act 1964 (Child’s Views Expert) Regulations 2018 (SI No 587 of 2018) s 5.
\item \textsuperscript{530} UNCRC ‘Concluding Observations: Ireland’ (2016) UN Doc CRC/C/IRL/CO/3-4 para 31(b), para 32 (b).
\item \textsuperscript{531} Communication received by the Children’s Rights Alliance from Barnardos, 2 January 2019.
\item \textsuperscript{532} Carol Coulter, Interim Report of the Child Care Law Reporting Project (CLRP 2013) 14.
\item \textsuperscript{533} Communication received by the Children’s Rights Alliance from Barnardos, 2 January 2019.
\item \textsuperscript{534} Department of Children and Youth Affairs, ‘Reform of Guardian ad Litem arrangements in child care proceedings’ <http://bit.ly/2j1T2b> accessed 15 December 2017.
\item \textsuperscript{535} General Scheme of the Child Care (Amendment) Bill 2018 <https://bit.ly/2swluYM > accessed 4 December 2018.
\item \textsuperscript{536} Department of Children and Youth Affairs, Communications, ‘Reform of Guardian ad Litem arrangements in child care proceedings’<http://bit.ly/2j1T2b> accessed 15 December 2017.
\item \textsuperscript{537} Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (Council of Europe Publishing 2010).
\item \textsuperscript{538} Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (Council of Europe Publishing 2010) para IV(A)(1).
\item \textsuperscript{539} General Scheme of the Child Care (Amendment) Bill 2018, s 42(1c) and (l).
\item \textsuperscript{540} Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (Council of Europe Publishing 2010) para IVA(I).
\item \textsuperscript{541} General Scheme of the Child Care (Amendment) Bill 2018, s 42(1c) and (l).
\item \textsuperscript{542} Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (Council of Europe Publishing 2010) para IVA(I).
\item \textsuperscript{543} General Scheme of the Child Care
\end{itemize}
see the appointment of GALs as ‘the norm’ and this is a significant step in the right direction for children. Other positive amendments in the 2018 General Scheme included clarification on who can act as a GAL, the circumstances when a GAL may be appointed, and the ability of a child who is made a party to the proceedings under section 25 of the Child Care Act 1991 to have both a GAL and legal representation. Statutory recognition of the role of the GAL in making applications for reports relating to the welfare of children under section 47 of the Child Care Act 1991 is also an important inclusion.

### Independence of the GAL Service:

The Alliance welcomes the proposed establishment of a new Executive Office in the Department of Children and Youth Affairs to manage the GAL service which is intended to move to the Family Law Courts in the longer-term. This ensures that the service is financially independent of Tusla, the Child and Family Agency, a body that is party to child care cases. This move reflects a recommendation in Report Card 2017 and the stated positions of the Ombudsman for Children and the Comptroller and Auditor General. The Department of Children and Youth Affairs has taken a number of steps to commence the development of the Executive in 2018 including the establishment of a project team and an internal steering committee.

The establishment of an Executive Office also presents an opportunity to make the GAL service responsible for both private and public law proceedings; this would ensure that the right of children to have their voices heard in court is equally enforced in both child care and family law proceedings. Budget 2019 provided an additional €127 million in funding for the Department of Children and Youth Affairs which will allow for the establishment of the Guardian ad Litem Executive Office. The underpinning legislation and the development of the service are taking place in parallel with a view to having the service operational at the earliest opportunity upon enactment of the legislation.

A consultation is to be held with children and young people who are or have been involved in child care proceedings to ensure that the views of young people are heard in the design of the new service. The consultation was being designed and children were being recruited to take part at the end of 2018.
Rights in the Family Environment and Alternative Care

Status of the GAL:

Head 4(1) of the General Scheme sets out the functions of a GAL as being two-fold: firstly to inform the court of the views expressed by the child and secondly to make recommendations to the court on what is in the child’s best interests. The Scheme sets out that the GAL will participate in proceedings as a witness and not as a party. Cross-examination can play an important role in legal proceedings because, for example, it allows a GAL, through a lawyer, to challenge a decision by Tusla in the best interests of the child. However, under the General Scheme, as a witness and not a party, the GAL will have reduced powers to cross-examine and may only do so in limited circumstances. Statutory recognition of the role of the GAL in making applications for reports relating to the welfare of children under section 47 of the Child Care Act 1991 is an important inclusion in the General Scheme. However, as a witness and not, the GAL will not have the legal standing to make oral or written submissions in relation to the evidence or legal issues arising in the case at the conclusion of the hearing. Often such submissions can be critical in convincing a judge to make a particular order in the interests of the child.

In addition to the above, there are a number of technical and procedural areas in which the status of the GAL as a non-party could potentially impact the rights of the child. These include the inability to appeal an order of the District Court, even where they deem it to be in the child’s best interests to do so or their inability to interject in order to object to, for example, hearsay evidence. Section 25 of the Child Care Act 1991 provides that the court may order a child to be joined as a party to a case where it is necessary and in the interests of the child and of justice to do so. While this section has been on the legislative books for many years, it is underused. Previously if the child was made a party under section 25, they would not be permitted to retain their GAL but this has been amended under the 2018 Scheme to allow the child to keep the GAL in such circumstances. This is a positive development. Consideration could be given to exploring how section 25 is being used in practice and its impact on children as part of the ongoing review of the Child Care Act 1991. The GAL can play an important role in educating children about their rights and highlighting the opportunity that section 25 provides for their direct participation in proceedings affecting them. However, greater exploration of how the views and wishes of children such as those with learning difficulties could be best ascertained and represented in proceedings, which have an impact on them is also necessary.

Appointment of a GAL:

The General Scheme provides that the court may appoint a GAL ‘of its own motion or on the application of any party’ if a Judge declines to appoint a GAL then they must provide reasons for their decision in open court, and must state how they intend to hear the views of the child.

Although it appears the intention behind the legislation is that it will be ‘the norm’ to appoint a GAL in Circuit Court and District Court child care proceedings, it is possible that by providing for judicial discretion within the draft legislation, regional disparities could continue. Between December 2012 and July 2015 GALs were appointed in only 53 per cent of cases attended by the Child Care Law Reporting Project with considerable variations in different locations across the country, ranging from a high of 79.8 per cent of children being appointed a GAL in Louth to a low of 13.3 per cent in Galway.

555 General Scheme of the Child Care (Amendment) Bill 2018, Head 5.
556 ibid Head 4(3)(d) reads as follows: ‘(d) cross-examine only in the following circumstances: (i) where the Guardian ad litem intends to give evidence on a particular matter which may conflict or contradict the evidence being given by a party or witness, s/he shall put such evidence to the witness or party by way of cross-examination; and (ii) where a party or a witness to the proceedings gives evidence that impugns the conduct, reputation or good name of the Guardian ad litem, the Guardian ad litem shall be permitted to cross-examine the party or witness.’
557 ibid Head 15.
558 Child Care Act 1991, s 25(1) provides: ‘If in any proceedings under Part IV or VI the child to whom the proceedings relate is not already a party, the court may, where it is satisfied having regard to the age, understanding and wishes of the child and the circumstances of the case that it is necessary in the interests of the child and in the interests of justice to do so, order that the child be joined as a party to, or shall have such of the rights of a party as may be specified by the court in, either the entirety of the proceedings or such issues in the proceedings as the court may direct. The making of any such order shall not require the intervention of a next friend in respect of the child.’
559 General Scheme of the Child Care (Amendment) Bill 2018 Head 7(12).
561 ibid 7(2).
562 ibid Head 7(4).
563 ibid Explanatory Note, 27.
564 Carol Coulter, Final Report (Child Care Law Reporting Project 2015) 80.
Meaningful consultation with children and young people on the reform of the Guardian ad litem service and having their voice heard in court proceedings is recommended.

The outcome of the consultation should inform the development of the service.

Consider whether the new draft legislation on the reform of the Guardian ad litem service resolves the issue of giving effect to the constitutional right of all children to be heard and to ensure that every child is provided with an opportunity to directly participate and/or be represented.

In order to give effect to the constitutional right of the child to be heard, the legislation should ensure the child’s right to be heard along with their rights to fair procedures and redress by providing that every child is represented by an effective advocate in child care proceedings. Ensure that no child is limited in their participation in proceedings compared to other children due to their age or vulnerability so that they do not have lesser rights than a child who is joined to the proceedings in their own right.

Consideration could be given to a joint approach in public and private law proceedings to hearing the views of the child.

The extension of the remit of the new Executive Office under which the reformed Guardian ad litem service will operate, to support the voice of the child in all types of cases, public and private is suggested.
4.2 Child Protection

Government Commitment

A Programme for a Partnership

Government commits to:

Implement Child Safeguarding Statements as part of Children First legislation.

Progress: Good

Enforce robust and efficient vetting procedures for all positions involving substantial access to children.

Progress: Steady

Ensure robust protections are in place to fully protect children while online and propose updated legislation to effectively deal with sexual offences including stronger sanctions aimed at protecting children from online sexual abuse.

Progress: Steady

‘Child Protection’ receives a ‘B’ grade in Report Card 2019, the same as last year’s grade. A unit to monitor compliance with Child Safeguarding Statements was established and there was improved processing of vetting applications. In a welcome move, the Government’s Action Plan for Online Safety was published. For the first time, it brings government departments together on the issue of online safety, however, it relies on self-regulation of industry which could lead to inconsistent application of standards and inadequate remedies for non-compliance.

Every child has the right to be protected from abuse, including sexual abuse and exploitation. States must take ‘appropriate legislative, administrative’ and other measures to protect children from abuse while in the care of parents, guardians or ‘any other person who has the care of the child’. In 2016, the UN Committee on the Rights of the Child welcomed the enactment of the Children First Act 2015. The Committee recommended that Tusla, the Child and Family Agency, be adequately resourced to enable it to respond to child protection referrals and to address the needs of children at risk in a timely manner.

565 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 19 which places an obligation on state parties 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, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’.

566 Ibid Art 19 (1).

addition, it recommended that long-term programmes for addressing the root causes of violence and abuse be implemented. On protection from online abuse, the UN Committee has recommended that States ‘should address the risks posed by digital media and [information and communication technologies] to the safety of children, including online harassment, sexual exploitation of children, access to violent and sexual content, grooming and self-generated sexual content’ by adopting ‘holistic strategies’. The UN Committee has also highlighted States’ obligations to guarantee the protection of children’s privacy rights in relation to information and communication technology (ICT), as well as their obligation to ‘develop effective safeguards against abuse without unduly restricting the full enjoyment of their rights’.

Children Safeguarding Statements:

**A Programme for a Partnership Government** commits to implementing Child Safeguarding Statements as part of Children First legislation. **Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People 2014-2020** commits to giving effect to the **Children First: National Guidance for the Protection and Welfare of Children** in full, including legislating for elements of the guidance, actioning sectoral plans, associated training and ensuring vetting requirements are met. The Children First Act 2015, which has been fully commenced, provides that each service failing under its remit must publish a Child Safeguarding Statement setting out the organisation’s procedures to manage and reduce risk for children availing of its services. The Safeguarding Statement should also include a written risk assessment and specify risk management processes. Procedures to manage allegations against staff and to provide child protection information, as well as instruction and training for staff and volunteers to enable them identify harmful incidents, must also be included. In March 2018, Tusla established a new Child Safeguarding Compliance Unit to monitor compliance of Statements provided voluntarily by providers referred to it by a regulatory authority or by means of unsolicited information. To date just 23 per cent of Statements were fully compliant and all organisations that were found to be non- or partially compliant are now compliant. Establishment of the Unit and its guidance and supportive model having led to full compliance to date is a step in the right direction. The Unit is a permanent structure yet to date it only has funding for two temporary appointments for a pilot phase.

**Vetting:**

*A Programme for a Partnership Government* commits to enforcing robust and efficient vetting procedures for all positions involving substantial access to children. **Better Outcomes, Brighter Futures** commits to ‘ensuring vetting requirements are met’. The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016 were commenced, almost in full, on 29 April 2016. The Act provides for the mandatory vetting of those who work or volunteer with children and vulnerable people, where ‘a necessary and regular part of work’ consists mainly of the person having access to, or contact with, children. In 2018, the

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569 Ibid.
572 Schedule 1 of the Act sets out the types of organisations which are deemed to be carrying out ‘Relevant Services’ for the purposes of the Act; these are organisations which have employees or volunteers for whom ‘a necessary and regular part of their work’ consists mainly in ‘having access to or contact with’ children.
573 Children First Act 2015, ss 10–11.
574 Ibid. If, upon, request, a relevant organisation fails to supply its Safeguarding Statement to Tusla, the Child and Family Agency, it can be issued with a notice of non-compliance, see s 12, 13.
575 Minister for Children and Youth Affairs, Dr Katherine Zappone TD, Written Answers, Child Protection, 25 September 2018, [38432/18].
576 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 9 January 2019.
577 The Minister for Children and Youth Affairs has stated that Tusla aims to support organisations in meeting their statutory obligations, resorting only to the non-compliance register when a service is unwilling to cooperate. Minister for Children and Youth Affairs, Dr Katherine Zappone TD, Written Answers, Child Protection, 25 September 2018, [38432/18].
578 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 9 January 2019.
580 The Act was commenced by Statutory Instrument 214/16, apart from section 20 which relates to re-vetting. A number of amendments were made by the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.
581 Under s 2 of the Act, vulnerable persons are people other than children who suffer from a mental disorder, an intellectual disability, a physical impairment or significant disability. Schedule 1 of the legislation lists ‘relevant persons’ who require vetting if
There is no facility or provision for the National Vetting Bureau to seek information from police authorities abroad when a vetting applicant has spent time living outside Ireland. The Special Rapporteur on Child Protection has suggested that protocols or administrative arrangements with police authorities in foreign jurisdictions could address the issue; another avenue, he suggests, could be the inclusion of a provision for the exchange of information in forthcoming legislation to implement the EU Framework Decision on the exchange of criminal records information.

Online Protection:

Better Outcomes, Brighter Futures commits to support efforts to limit children’s exposure to age-inappropriate material on the internet. It also commits to support all efforts to combat child sexual abuse, exploitation and trafficking, including through support for an online filtering system in relation to blocking online child abuse material.

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582 Communication received by the Children’s Rights Alliance from the National Vetting Bureau, 5 December 2017.
584 ibid.
585 However, Childminding Ireland does require its members to be Garda vetted.
589 ibid Commitment 3.13.
A third of children reported rarely or having never spoken to a parent or guardian about online safety.\textsuperscript{590} The level of confidence of parents in monitoring and protecting their child’s online activity depends on the child’s age.\textsuperscript{591} Parents of older children (nine to twelve and thirteen to seventeen year olds) felt less confident that they can protect their children online than the parents of under-fives and five to eight year olds.\textsuperscript{592} Research commissioned by ISPCC and the Vodafone Foundation found that 73 per cent of parents did not think the Government were doing enough to keep children safe online and 78 per cent felt that the industry were not doing enough.\textsuperscript{593}

The enactment of the landmark Criminal Law (Sexual Offences) Act 2017 in February 2017 has closed some significant legislative gaps and loopholes in respect of online sexual offences against children. For example, the Act creates a new offence relating to viewing online child sexual abuse material and, in order to address issues such as grooming and solicitation online, an offence of sexual exploitation using ICT. A number of key sections of the Act relevant to children were commenced in March 2017, including Part 2 relating to the sexual exploitation of children.\textsuperscript{594}

The Data Protection Act 2018 was enacted to comply with the EU General Data Protection Regulation which came into force on 25 May 2018. The Act sets the age of digital consent at 16 meaning that children under the age of 16 must have the consent of their parent or guardian in order to access certain online services.\textsuperscript{595}

In July, shortly after the publication of the Action Plan, the Council of Europe published \textit{Guidelines to respect, protect and fulfil the rights of the child in the digital environment}.\textsuperscript{596} They provide a pathway for States to ensure that the rights of children are protected online. Key provisions in the guidelines recommend that States should require relevant stakeholders to

\begin{itemize}
  \item state the range of measures they have taken to comply with their obligations, and
  \item publicise any effect that the guidelines have on their policies and practices.
\end{itemize}

592 \textit{ibid.} Approximately 26 per cent of parents of children in the older age groups feel confident that they can protect their children online.
implement privacy by design and privacy by default measures taking into account the best interests of the child. It is also recommended that incentives are provided to implement safety by design in addition to privacy by design and privacy by default as guiding principles for products and services addresses to or used by children. Legislating for these principles would ensure that children are protected from the planning stages of technology development.

A Private Members’ Bill on the establishment of an Office of the Digital Safety Commissioner came before the Dáil at Committee stage in February 2018. Establishing an office of a digital safety commissioner would provide the framework to coordinate all activities related to children’s rights and digital media and ICTs and lead on the implementation of key provisions of the Council of Europe guidelines on children in the digital environment. A digital safety commissioner should be granted the legal powers to regulate the sector to provide better protection to children online and ensure that children/young people and their parents are adequately educated in digital media and safety techniques.

In July, the Department of An Taoiseach published an Action Plan for Online Safety. The plan covers an 18 month period to the end of 2019 and sets out actions for six government departments: Children and Youth Affairs; Education and Skills; Communications, Climate Action and Environment; Justice and Equality; Health and Business, Enterprise and Innovation.

In October, a National Advisory Council was established to provide advice to Government on online safety policy issues. The publication of the Action Plan is a welcome development in particular given that it is to be overseen at the political level by a Cabinet Committee chaired by the Taoiseach with a cross-departmental Sponsors Group to drive implementation. The Council of Europe’s guidelines should be considered by the Cabinet Committee, the Advisory Council and the Government to determine how they can be implemented as part of the Action Plan and in all future policy development in this area. The Plan includes positive actions such as a commitment to consult with children and young people and to legislate to create new criminal offences where gaps exist. However, the reliance on a voluntary code of conduct and on self-regulation of the industry has been criticised by child protection organisations such as the ISPCC. Self-regulation could result in inconsistent standards being applied across industry. Sanctions can help when industry fails in its compliance with the standards and adequate remedies are not available to those impacted.

In 2018, the Garda Youth Diversion Programme reported the number of children referred to the programme for possession of child abuse material almost trebled from 21 in 2016 to 59 in 2017. This showed the need not only for educating children about the law in this area but also for legislation which addresses the behaviour [of children being in possession of child abuse material] rather than children being referred for the offence of possession/distribution of child pornography.
Child Protection
Immediate Actions for 2019

Consider introducing measures to ensure that the Garda Vetting Bureau can access relevant information on time spent abroad.
The use of protocols or administrative arrangements with police authorities in foreign jurisdictions could address the issue as suggested by the Special Rapporteur on Child Protection.

Implement the Action Plan for Online Safety in full.
Given that the Action Plan for Online Safety is just 18 months in duration, it is important that the focus to implement it is maintained and that a plan is developed for the Government’s approach to online safety at the end of 2019.

Consider the Council of Europe Guidelines on the rights of the child in the digital environment in current and future policy making in this area and introduce legislation for the introduction of safety by design, privacy by design and privacy by default mechanisms by industry.
The Council of Europe’s Guidelines on the rights of the child in the digital environment provide a pathway for the protection of the rights of the child online. They should be considered by the Cabinet Committee that oversee the Action Plan for Online Safety, the National Advisory Council for Online Safety and the Government to determine how they can be implemented as part of the Action Plan and in all future policy development in this area. Specifically the principles of safety by design, privacy by design and privacy by default should be legislated for to require industry to embed the protection for child in the development of new technology.

Work towards the establishment of an office of a digital safety commissioner.
Establishing the role of a digital safety commissioner would provide a necessary framework to coordinate all activities related to children’s rights, digital media and ICTs.
‘Child Victims’ receives a ‘B-’ grade in Report Card 2019. This reflects an increase on last year’s ‘C+’ grade because of the enactment of the Domestic Violence Act 2018 and the commencement of the outstanding provisions of the Criminal Justice (Victims of Crime) Act 2017. Though there are clear areas where investment is required, there has been some increased funding for services and a commitment to pilot the One House model in Galway, which will see all service and supports for child victims of sexual abuse under one roof with the aim of reducing trauma for victims.

The State has a duty to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of ‘any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment’.607 Such recovery and reintegration should take place in an environment that ‘fosters the health, self-respect and dignity of the child’. 608 Ireland continues to be the only European Union (EU) Member State that has not ratified the Second Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.609 The Protocol requires States to adopt appropriate measures to protect the rights and interests of child victims at all stages.

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608 Ibid.
of the criminal justice process, including measures recognising their vulnerability, and the adaptation of procedures to recognise their needs.610 Child victims must be informed of their rights and role within proceedings, and they should be provided with information regarding the timing and progress of proceedings.611 Unnecessary processing delays in their cases should be avoided.612 The UN Convention also provides that the best interests of the child shall be a primary consideration in the treatment of child victims by the criminal justice system.613

Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People 2014–2020 commits to providing ‘effective and timely protection and support services, including therapeutic services for victims of abuse and crime’.614 It commits to reforming domestic violence legislation, including providing greater protection for victims, and to a legal and policy framework for child victims of trafficking and measures for their identification.615 In 2016, the UN Committee on the Rights of the Child recommended that the State provide redress and rehabilitation to victims of domestic violence.616

Criminal Justice (Victims of Crime) Act 2017:

The Criminal Justice (Victims of Crime) Act 2017 was signed into law in November 2017.617 The legislation seeks to transpose an EU Directive on the rights of victims of crime into Irish law. The Directive focuses on strengthening ‘the rights of victims and their family members to information, support and protection, and victims’ procedural rights in criminal proceedings’.618 The Directive also requires that officials coming into contact with victims have appropriate training and it seeks to ‘encourage cooperation between Member States and coordination of national services of their actions on victims’ rights’.619 The Criminal Justice (Victims of Crime) Act 2017 is victim-centred in its approach and requires the specific characteristics of the victim to be considered and the views of the victim to be heard. The Act provides for a range of rights for victims including the right to receive information relating to their case and to the criminal justice process in simple and accessible language.620 The Act also provides for a wide definition of the types of offences for which victim impact statements will be heard.621 Supports under the Act could have been strengthened, for example, in relation to the provision of information to parents (who are not accused of wrongdoing) of child victims.622

Following the passing of the 2017 Act, Irish law is broadly in compliance with the Second Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.623 However, the Protocol is yet to be ratified, and this should happen without further delay.624

Victim Support Services:

A key provision of the EU Directive requires Member States to make available ‘confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings’.625 Ireland has an obligation to ‘take all appropriate measures’ to promote the recovery of child victims.626 The UN Committee on the Rights of the Child has outlined the supports that child victims may need, including medical

610 ibid Art 8(1) (a).
611 ibid Art 8(1)(b).
612 ibid Art 8(1)(g).
613 ibid Art 8(3).
615 ibid Commitments 3.13, 3.14 and 3.15.
617 Most provisions of the Act commenced on 27 November 2017, with remaining sections commenced on 30 May 2018.
619 Ibid
621 ibid s 31.
624 The Department of Children and Youth Affairs has stated that a document that demonstrates Ireland’s compliance with the protocol and which illustrates that there is no need for further measures to be put in place is to be submitted to the Attorney General in early 2019 to lay the groundwork for ratification. Department of Children and Youth Affairs, ‘Ireland joining international stand against sale of children, child pornography and child prostitution, Minister Zappone says all legal requirements now in place’ (DCYA 2 January 2019).
During her visit to Ireland in May 2018, the UN Special Rapporteur on the Sale and Sexual Exploitation of Children, Maud de Boer-Buquicchio was critical of the absence in Ireland of a dedicated national strategy to prevent or respond to sexual violence against children.\(^628\) In addition, she highlighted a lack of national data on reported incidents of child abuse required for policy development and the need for more care services.\(^629\)

The 24/7 Child Sexual Abuse Reporting Line launched by An Garda Síochána in 2017 received a total of 71 calls in 2018. In 2018 the Victims of Crime Office provided €1.712 million in funding for voluntary sector organisations to support victims of crime.\(^630\) This includes provision to expand the CARI accompaniment service which supports and provides advocacy to children and their families where there are prosecution proceedings.\(^631\) In addition, €23.8 million was allocated to Tusla in 2018 to support domestic and sexual violence sector organisations, a 17 per cent increase on the amount allocated in 2015. Cosc, the National Office of the Prevention of Domestic, Sexual and Gender-based Violence received €2.684 million and was allocated €2.884 million in Budget 2019.\(^632\)

The availability of assessment and treatment services for children and young people under the age of 14 is limited, with significant geographic variances in provision. For children in this age category, there are two independent sexual abuse assessment and therapy units, both in Dublin,\(^633\) one 24 hour state medical forensic service located in Galway providing forensic examinations and two specialist therapy services provided by CARI in Limerick and Dublin.\(^634\)

Children have to travel long distances to receive treatments and this can ‘compound the harm’ and increase the risk of forensic evidence of crimes against children being compromised.\(^635\) Where services do exist, child victims face significant delays in accessing counselling support – for example, CARI had a waiting list of 88 children from January to December 2018. For survivors aged 14 years and older, there are effectively seven sexual assault treatment units across the country providing specialist care\(^636\) and victims also have access to a range of specialist voluntary and statutory therapy services.\(^637\) However, the UN Special Rapporteur also noted that specialised and local counselling services are not guaranteed to child victims of sexual violence\(^638\) and medium to long term tailored specialised therapeutic services and supports for older children aged 12-18 years of age are required.

A specific strategy could be put in place for the prevention of sexual violence against children and for the provision of comprehensive services for those who have been victims of such violence. This strategy could include a plan for the development of specialist services to assess and treat child victims of sexual violence either independently of, or within, the services for over 14s, with staffing by trained professionals who are able to respond to the particular needs of child victims. In this context, the joint announcement by the Minister for Children and Youth Affairs, Dr Katherine Zappone TD, the Minister for Justice and Equality, Charlie Flanagan TD and the Minister for Health, Simon Harris TD of their intention to pilot a ‘One House’ centre for children who have been sexually abused in early 2019 is very welcome.\(^639\) This was a recommendation in

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627 UNCRC, ‘General Comment General comment No. 13 on the right of the child to freedom from all forms of violence’ (2011) UN Doc CRC/C/GC13 para 52.
629 ibid.
630 Communication received by the Children’s Rights Alliance from the Department of Justice and Equality, 20 December 2018.
631 Communication received by the Children’s Rights Alliance from CARI, 7 December 2017.
632 Communication received by the Children’s Rights Alliance from the Department of Justice and Equality, 20 December 2018.
633 St Clare’s Unit at Temple Street University Hospital and St Louise’s Unit, Our Lady’s Children’s Hospital Crumlin.
636 These are: Cork SATU; Donegal SATU; Dublin SATU, Galway SATU, Mullingar SATU; Mid-West SATU; Waterford SATU. Adult Sexual Assault Treatment Units and most Rape Crisis Centres nationwide see child victims over the age of 14.
637 These include the Rape Crisis Network and the Dublin Rape Crisis Centre, which can offer only a limited service to 16 and 17 year olds.
639 Joint Statement by the Minister for Children and Youth Affairs, Dr Katherine Zappone TD, the Minister for Justice and Equality, Charlie Flanagan TD and the Minister for Health, Simon Harris TD, ‘One House’ model to ease trauma for children who have been sexually abused, Ministers announce pilot project

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Report Card 2017\textsuperscript{640} It will see a multi-disciplinary team of Gardaí, social workers, health professionals and lawyers working together in one location in Galway, to carry out interviews and assessments where there are concerns that a child has been sexually abused.\textsuperscript{641}

\textbf{Domestic Violence Act 2018:}

The Domestic Violence Act 2018 was enacted in April 2018. It includes specific provisions relating to children, such as protection from cross-examination by the applicant or respondent in the course of an application for a domestic violence order.\textsuperscript{642} Most welcome is the fact that, taking account of the age and maturity of a child, a judge may ascertain their views when an order is sought on their behalf, or may appoint an expert to do so\textsuperscript{643} and that the Act repeals legislative provisions which allow children to marry.\textsuperscript{644} However, as highlighted by the Special Rapporteur on Child Protection, the Act does not provide for child-specific services for children who experience domestic violence such as counselling, nor does it make provision to allow children to make court applications in their own right without relying on their parents to do so.\textsuperscript{645} The Act was commenced in full on 1 January 2019.\textsuperscript{646}

\begin{footnotesize}
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\item \textsuperscript{640} To view Report Card 2017, visit <https://www.childrensrights.ie/content/report-card-2017> accessed 4 December 2018.
\item \textsuperscript{641} Department of Children and Youth Affairs, ''One House' model to ease trauma for children who have been sexually abused. Ministers announce pilot project for Galway' <https://www.dcy.gov.ie/docs/EN/Press-Releases-copy-dcya-gov-ie-2018/81/4997.htm> accessed 26 November 2018.
\item \textsuperscript{642} Domestic Violence Act 2018, s 16.
\item \textsuperscript{643} ibid s 27.
\item \textsuperscript{644} ibid s 49.
\item \textsuperscript{645} Professor Geoffrey Shannon, Eleventh Report of the Special Rapporteur on Child Protection, (DCYA 2018) 265-266.
\item \textsuperscript{646} Communication received by the Children’s Rights Alliance from the Department of Justice and Equality, 20 December 2018.
\end{itemize}
\end{footnotesize}
Child Victims of Crime
Immediate Actions for 2019


We welcome the Government’s intention to ratify the Optional Protocol in 2019 and would encourage them to prioritise this to ensure it happens.

Develop a dedicated strategy for the prevention of sexual violence against children and for the provision of treatment services for children who have been victims of such violence.

A dedicated strategy could be put in place to prevent and respond to sexual violence against children. Such a strategy could include a plan for the development of specialist assessment and treatment services for children and young people who experience sexual violence. Medium to long-term planning for tailored services for older children and a plan to eliminate waiting lists for long-term specialist counselling for child victims of sexual violence would be a valuable part of a strategy.