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An Comhchoiste um Dhlí agus Ceart, Gnóthaí Baile agus Imirce

Tuarascáil maidir leis an nGrinnscrúdú Réamhreachtach ar Scéim Ghinearálta an Bhille um Chaomhnóireacht Naíon (Leasú), 2025

Meán Fómhair 2025

Joint Committee on Justice, Home Affairs and Migration

Report on Pre-Legislative Scrutiny of the General Scheme of the Guardianship of Infants (Amendment) Bill, 2025

September 2025

34/JC/03

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CATHAOIRLEACH'S FOREWORD

In May 2025, the Minister for Justice, Home Affairs and Migration, Mr Jim O'Callaghan TD, forwarded the General Scheme of the Guardianship of Infants (Amendment) Bill 2025 to the Joint Committee on Justice, Home Affairs and Migration in accordance with Standing Orders for the purpose of pre-legislative scrutiny.

In welcoming this legislation, the Committee acknowledges that it is important to have in place a process through which guardianship rights can be removed or suspended from those convicted of killing their partner or a parent of their child, while the best interests of any child or children bereaved by the loss of their parent are prioritised.

The Committee wishes to acknowledge those who have campaigned for legislative change in this area, particularly the family of Valerie French who was murdered by her husband in 2019. The contribution of Valerie's brother David French who addressed the Committee and took questions from members during the pre-legislative scrutiny process was crucial in informing our work.

In undertaking pre-legislative scrutiny, the Committee has sought to scrutinise the proposed legislation and provide recommendations on areas where it believes change or amendments are warranted. Among the areas identified for further examination within the General Scheme include the designation of Tusla as the sole entity that can submit an application to the Court to remove or suspend guardianship, whether guardianship should be suspended under such Court orders as opposed to removed, and allowing the discretion of the Court in certain cases to ensure they are handled in the best interests of the child.

The Committee has made a number of recommendations and a copy of this report and recommendations will be sent to the Minister for Justice, Home Affairs and Migration. I would like to express my appreciation to all the stakeholders for their contributions and to the Members of the Committee for their engagement on this subject.

Finally, I hope that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



Matt Carthy TD (SF) [Cathaoirleach]
July 2025

COMMITTEE MEMBERSHIP

Joint Committee on Justice, Home Affairs and Migration

Deputies



Matt Carthy TD (SF) [Cathaoirleach]



Tom Brabazon TD (FF)



Paula Butterly TD (FG) [Leaschathaoirleach]



Michael Cahill TD (FF)



Catherine Callaghan TD (FG)



Gary Gannon TD (SD)



Alan Kelly TD (LAB)



Pádraig O'Sullivan TD
(FF)



Mark Ward TD
(SF)

Senators



Robbie Gallagher
(FF)



Garrett Kelleher
(FG)



Michael McDowell
(IND)



Anne Rabbitte
(FF)



Lynn Ruane
(IND)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 7 May 2025.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 13 May 2025.
3. Deputy Paula Butterly elected as Leas-Chathaoirleach on 27 May 2025.

COMMITTEE RECOMMENDATIONS

During the course of the Pre-Legislative Scrutiny, a number of important points were raised, and based on the Committee's engagement with the witness and written submissions received, the following recommendations are proposed:

1. The Committee acknowledges that the child's best interests are paramount. Recognising the impact that custody and access rights can have on a child's overall wellbeing, the Committee recommends that decisions be guided by the voice of the child and their best interests. Further, it is recommended that Head 2 provides clarity as to how children's views will be ascertained, considered and given due weight.

2. The Committee recommends that the definition of a child under the General Scheme is amended so that it aligns with that of other legislative acts such as the Assisted Decision-Making (Capacity) Act 2015.

3. The Committee recommends that this legislation allows other parties, such as the child's relatives, or other public bodies with expertise in the area, to submit any application to the Court to remove or suspend guardianship following a conviction, and not restrict this role to Tusla.

4. The Committee recommends the establishment of a register of guardians to aid State bodies, such as Tusla, in their implementation of the proposed legislative changes.

5. The Committee wishes to highlight concerns raised regarding both a potential conflict of interest for Tusla in taking on responsibility under this legislation given its role in preserving the family and the capacity of Tusla, which is already overstretched, to take on these additional responsibilities.

6. The Committee recommends that consideration is given to establishing a specialist unit, within or involving Tusla, that would submit any application to the

Court to remove or suspend guardianship, following a conviction, and/or provide expertise to any related Court process.

7. The Committee recommends that consideration is given to inserting a provision in the General Scheme to explicitly exclude from the suspension of guardianship rights victims of domestic violence convicted of manslaughter when found to be acting in self-defence, or where there has been a history of domestic abuse towards the alleged perpetrator.

8. The Committee recommends that the bereaved family is made a notice party to any Court case on such matters.

9. The Committee recommends that consideration is given under Head 2 to ensure that the length of time it takes to charge and convict, the six months period imposed on Tusla and the time it takes until the application is determined do not hinder the recovery of the child, the child's best interests are at the heart of the decision, and that accommodations are made to ensure the child can access necessary social and therapeutic supports.

10. The Committee recommends that consideration be given to amend Head 2, section 6G to include timeframes for the processing of applications by the Court.

11. The Committee recommends that consideration is given under Head 2 to ensure that in the aftermath of a parent's death the child is not prevented from staying with other family members or accessing certain forms of support during the process of appointing a guardian.

12. The Committee recommends that a legal review is undertaken to examine the mechanisms available to Tusla under child welfare concerns and child protection obligation to determine if there is a legitimate basis to suspend guardianship once a parent/guardian is arrested and charged with the death of the other parent/guardian.

13. The Committee recommends that consideration is given to amending Head 2, Section 6G (7) to provide for the appointment of a guardian *ad litem* for a child where a parent has been charged with, but not yet tried for, the offences listed.

14. The Committee recommends that consideration is given to ensuring there is no conflict between Head 2, Section 6G of the General Scheme, and Section 6C of the Guardianship of Infants Act, 1964.

15. The Committee recommends that consideration is given to amending Head 2, Section 6G (1, 2) by stipulating 'guardian' throughout instead of 'guardian or parent', as this will encompass any parent who is a guardian.

16. The Committee recommends that consideration is given to amending Head 2, Section 6G to replace references to 'remove/removed/removing', which may be unconstitutional, with 'restrict/restricted/restricting', 'prohibit/prohibited/prohibiting' or 'suspend/suspended/suspending'.

17. The Committee recommends that consideration is given to appointing the Ombudsman for Children's Office as a more neutral child-centric statutory body which could fulfil the function of making the application for an order to remove or suspend guardianship in the Court following a conviction for murder or manslaughter.

18. The Committee recommends that child impact assessments are undertaken ahead of any application to the Court seeking an order to remove guardianship rights, and that this assessment should inform the decision of whether to make an application, that the court be required to consider this child impact assessment, and that this should be an additional procedure to be completed separate to the appointment of a guardian *ad litem*, and prior to an application under Head 2, Section 6G (10, 11).

19. The Committee recommends that consideration is given to including a provision which sets out a formal procedure for reviewing an order, which removes the

convicted guardian from office, with due regard given to the best interests and voice of the child in line with their evolving capacity.

20. The Committee recommends that consideration is given to whether there should be a provision through which the guardian whose rights are sought to be suspended should be made a party to the proceedings, and whether provision should be made for civil legal aid to be made available to the convicted guardian if they do not have the means to engage their own legal representation.

21. The Committee recommends that consideration is given to ensuring that all children, regardless of circumstance, are afforded the same access to a guardian *ad litem* in situations where guardianship may be altered.

22. The Committee recommends, given the similarities between the General Scheme and the Victims and Prisoners Act 2024 (England and Wales), that consideration is given to adopting a formal review process which can accommodate situations where a person is later acquitted.

23. The Committee recommends that consideration is given to adding to Head 2 an interim order, which would temporarily remove guardianship immediately upon conviction, until the full order application is resolved, or if no interim order is included, that consideration is given to including in Head 2, Section 6G (1) strict timeframes for processing of applications.

24. The Committee recommends that Head 2 is amended to clarify that an appeal does not result in a stay in any order to remove or suspend guardianship.

25. The Committee recommends that consideration is given to ensuring appropriate child centred assessments and mechanisms for temporary suspension of Guardianship are also considered and applied when appropriate to minimise harm to children, during the lengthy period pending a trial.

26. The Committee recommends that consideration is given to including a provision in Head 2, Section 6G (6) to the effect that any termination of the order removing guardianship will be contingent on successful completion of an effective rehabilitation programme as well as in the child's best interest and the completion of an updated child impact assessment.

27. The Committee recommends when determining whether the parent who perpetrated the violence should exercise custody, guardianship or access rights, a customised expert assessment is undertaken. The assessment should account for individual family circumstances, the child's wishes and best interests as well as risk elements such as the presence of coercive control.

28. The Committee recommends that consideration is given to including a provision under which a guardian *ad litem* would be empowered to convey the views of the child and inform the child on recommendations and outcome of proceedings.

29. The Committee recommends that the legislation be drafted in such a manner, to take account of the evolving nature of society, to avoid any potential conflict between Article 41 and any proposal to remove guardianship.

30. The Committee recommends that the revocation of guardianship should never be used as a form of punishment, and that a rights-based approach taking into account the views of the child, should recognise the rights of the child, including the right to family life.

CHAPTER 1 - Introduction

This is the report on pre-legislative scrutiny of the Guardianship of Infants (Amendment) Bill 2025, which was approved by the Government on 31 March 2025 and seeks to amend the Guardianship of Infants Act 1964.

The proposed legislation meets the commitment in the Programme for Government to "examine proposals to remove guardianship rights from those convicted of killing their partners or a parent of their child".[1] It is part of the ongoing work to implement appropriate recommendations from the Study on Familicide and Domestic and Family Violence Death Reviews.

Purpose of the Bill

The General Scheme intends to prevent vulnerable children from further trauma, to provide clarity for surviving family members, and to prevent perpetrators from maintaining control over these children's lives. The proposed legislation also allows for an application to court within six months of the conviction of a parent or guardian of a child for murder or manslaughter of another parent or guardian of the child. On this application the court will make an order removing or confirming the convicted parent or guardian. The proposed legislation will not be retrospective.

Procedural basis for scrutiny

Pre-legislative consideration was conducted in accordance with Standing Order 181, which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

[1] Minister Jim O'Callaghan secures Cabinet approval of the General Scheme of the Guardianship of Infants (Amendment) Bill 2025

Engagement with stakeholders

The Joint Committee on Justice invited submissions from stakeholders on the Guardianship of Infants (Amendment) Bill 2025.

On 1 July 2025, the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of public engagements with Stakeholders

Organisation/ Individual	Representative	Capacity	Date of appearance
Individual	Mr David French	**Witness**	**1 July 2025**
Department of Justice, Home Affairs and Migration	Ms Lisa Doherty, Principal Officer	**Advisor**	**1 July 2025**
	Mr Chris Quattrociocchi, Assistant Principal	**Advisor**	

The primary focus of this meeting was to allow for an engagement between the Members and the stakeholder to discuss the General Scheme.

This report summarises the engagement and the key points considered by the Committee when drafting the recommendations set out in this report.

A link to the full transcript of the engagement can be found here.

CHAPTER 2 - Summary of Written Submissions

This note summarises the key issues raised in the submissions received in relation to Head 2 of the General Scheme, proposing a new section 6G.

The Committee received submissions from the following stakeholders:

- Dr Carol Coulter
- Dr Brian Tobin
- Ombudsman for Children's Office
- Mr David French
- Mental Health Commission
- Irish Penal Reform Trust
- Barnardos
- Tusla
- Women’s Aid

1. Concerns with the full removal of guardianship rights, including the constitutionality of same

- The issue most commonly raised by stakeholders in their submissions on the General Scheme of this Bill was the intention to remove guardianship rights from a parent and/or guardian.

- Stakeholders were concerned with the constitutional implications of removing guardianship status from persons, especially in the case of mothers and married parents whose status of guardian is protected in the constitution.

- One stakeholder believes that the General Scheme appears to conflate the concepts of legal parentage and guardianship. In relation to the proposal in Head 2, 6G (1) and (2) of the General Scheme that a 'guardian or parent' convicted of certain offences can 'be removed from office', the stakeholder's submission highlighted that if a parent who is not a guardian is convicted of any of these offences then there is no office to remove them from.

- Another stakeholder believes that full removal of guardianship rights may limit in some ways the full application of the best interests principle and respect for the views of the child.

- Several stakeholders believe that the suspension of guardianship would be more appropriate than the 'removal' of guardianship, and would avoid any constitutional issues with the former. Indeed, one stakeholder highlighted that the language of Head 2, 6G (6)(a), that the removal of guardianship may 'specify the period for which it shall remain in effect', is not consistent with the concept of removal, but rather with the suspension or restriction of guardianship.

- Several stakeholders pointed to the usage of a Prohibited Steps Order in the United Kingdom, which prohibits a parent from taking any action(s) in meeting their parental responsibility for a child without the consent of the court2, and could be a useful alternative to the removal of guardianship as set out in the General Scheme.

[2] Children Act 1989

2. Importance of the views and best interests of the child, and ascertaining same

- All submissions believed that any amending legislation should take into account the views and best interests of the child, and indeed the recognition of the importance of the best interests of the child as referenced in Head 2, 6G (3)(b) and (9)(a) of the General Scheme was welcomed.

- Head 2, 6G (9)(d) of the General Scheme proposes for the Court to 'have regard to… the views of the child, to the extent possible given his or her age and understanding'. One stakeholder believes that sufficient clarity should be provided in the legislation as to how children's views will be both ascertained, considered and given due weight in these circumstances, and that the current methods for ascertaining the views of the child are strengthened.

- Another stakeholder pointed to situations where the views of the child can be based on incorrect information and that this has to be taken into account.

- One stakeholder believes that in situations where the proposed amending legislation may apply, that an assessment of the best interests of the child should be carried out on a case-by-case basis as soon as possible. The submission raised concerns that no provision is set out in the Bill for a best interests assessment to be made by Tusla ahead of an application under Head 2, 6(G).

- One stakeholder welcomed that the General Scheme considers, when making a determination on the removal of guardianship rights, the damage caused to the child's welfare as a result of the violence inflicted on the child's other parent or guardian and the extent to which that damage would be aggravated by permitting the person concerned to remain as guardian of the child. However, another submission questioned how the 'damage caused to the child's welfare', as stated in Head 2, 6(G) (9)(b, c) will be assessed.

- Stakeholders also raised the following points relating to the best interest of the child:
    - That the privacy of the child is important and needs to be protected, and
    - That the right to contact a child should not supersede the welfare of the child.

3. Potential issues with any review processes

- Several stakeholders considered the General Scheme's provisions regarding any reviews of a Court order made under the proposed Head 2, 6G (4).

- One stakeholder pointed to the 'periodic review' stated in proposed Head 2, 6G (6)(b), and commented that there is no clarity on how such a review would operate or how an application for review might be brought. The submission stated that the lack of clarity on a review mechanism, and the lack of formal assessment of the child's needs and views leaves significant gaps both in the protection of the rights of children in these circumstances and could be subject to legal challenge if the guardian's right to fair procedures are deemed inadequate.

- Another stakeholder compared the General Scheme to the Victims and Prisoners Act 2024, which relates to the jurisdictions of England and Wales. The submission pointed to the 2024 Act, whereby the relevant local authority must make an application to the court to review the Prohibited Steps Order where a parent is acquitted on appeal of the murder or manslaughter of the other parent. The stakeholder stated that there appears to be no obligation on Tusla to apply to the court for any review of a Court order made under the proposed Head 2, 6G (4) in identical circumstances, which should be reconsidered.

- Another submission recommended that any restoration of Guardianship as a result of any periodic review should be contingent on successful completion of an effective rehabilitation programme, and be in the child's best interest.

4. Welfare of the child before and after a parent is convicted, and the timeliness of any removal of guardianship orders

- Several stakeholders focused on the timeliness of the General Scheme's provisions regarding the impact on children while a Court case is ongoing, or before a Court order is brought.

- One stakeholder believed that provision should be made for the interim suspension or limitation of the guardianship rights of a person charged with the listed offences, but not yet convicted. The stakeholder pointed to situations where the alleged perpetrator is charged with murder, manslaughter, attempted murder or a serious offence causing incapacitation, but the case has not yet resulted in conviction. The submission commented that such situations could influence the lives of children already traumatised by the person's actions or any evidence the children might give in a court, and at the very least, the children are at risk of being re-traumatised by contact. The stakeholder goes on to suggest that consideration be given to the appointment of a guardian *ad litem* for a child whose guardian has been charged with the killing or infliction of serious injury on the other guardian, at the point where they are charged.

- Another stakeholder recommended that an interim order is added to the General Scheme, which would temporarily remove guardianship immediately upon conviction, until the full order application is resolved, and that if no interim order is included, to include in Head 2, 6G (1) strict timeframes for the processing of applications.

- The stakeholder relayed further concerns that an appeal against any conviction could stay the application to remove guardianship, and that an appeal against the removal of Guardianship order could stay the order.
- The submission underlines the stakeholder's belief that the time in which a child who has lost a parent due to intimate partner homicide remains under the Guardianship of the parent who committed the homicide needs to be minimised to give the child the best chance of recovery and healing.

- Another stakeholder welcomed that the new law will apply retrospectively as set out in Head 2, 6G (16), and stated that consideration be given to the timeframe to ensure all children in need of protection prior to enactment are included.

- However, another submission pointed to the fact that the retrospective nature of the amending legislation could potentially apply pressure to an already overstretched system. Indeed, Tusla itself stated in its submission that the General Scheme has resource implications, particularly in the context of an unknown number of previous cases which all will be required to be assessed within 6 months of commencement, and that is not clear how it will be notified of these retrospective cases or what the potential number of cases that will require consideration.

5. Situations in which a perpetrator was acting in self-defence

- Several submissions considered situations in which a perpetrator was acting in self-defence.

- One stakeholder stated it was supportive of provisions that would exempt those acting in self-defence but believe that the application of the best interests principle as set out in the General Scheme of this Bill, and in section 31 of the Guardianship of Infants Act 1964, as inserted by the Children and Family Relationships Act 2015, will provide for such cases.

- Another stakeholder stated that the expectation should be that in the vast majority of cases the guardianship should be removed/suspended, and that it can not envisage a circumstance where a murder charge should not result in suspension/removal of guardianship. However, the sole exception to this, according to the submission may be when a manslaughter verdict is given in the context of self-defence after domestic abuse.

- An additional stakeholder recognised that circumstances, such as manslaughter where factors of self-defence in the context of a history of domestic abuse towards the alleged perpetrator, may be a factor. The stakeholder's submission highlights the importance of an appropriate risk assessment which is child centred and screens for coercive control, when considering suspension of guardianship, and where automatic and permanent removal of guardianship may not be appropriate.

6. Additional Points

In addition to the above key issues, some stakeholders indicated specific interest in certain areas, as follows:

Issues with the expanded definition of a child as set out in Head 2, section 6G (19)

The Mental Health Commission (MHC) indicated a specific interest in the expanded definition of a child as set out in proposed 6G (19), in its submission on the General Scheme.

Head 2, 6G (19)(c) states that a child shall include a person who 'by reason of physical or mental incapacity it is not reasonably possible for the person to maintain himself or herself fully'.

The MHC stated that it has concerns in relation to the definition of child, which include the following reasons –

- Section 2 of the Guardianship of Infants Act 1964 defines a child as "a person who has not attained full age'. The General Scheme seeks to extend the definition to a person of any age (over 18) by reference to their ability to look after themselves.

- There is no definition provided on a person's reasonable ability 'to maintain himself or herself'.

- There is no clear rationale provided for the proposed definition of a child.

- The definition is not aligned with other legislation (see Appendix) where a child is defined as a person under the age of 18 (and who is not married) to include the definition of child in the current Mental Health Acts, the Mental Health Bill as published in July 2024 and the Assisted Decision-Making (Capacity) Act 2015 (as amended) (the 2015 Act).

- The reference to mental or physical capacity does not align with recent legislation. The MHC does not believe that the reference to "mental and physical capacity" is appropriate and should simply refer to capacity.

- The guiding principles of section 8 of the 2015 Act, including the presumption of capacity for adults and the requirement to give effect as far as practicable to past and present will and preferences, as opposed to 'best interests' should also be considered. The principles relating to capacity in the 2015 Act are being adopted in the Mental Health Bill.

Absence of a central registry for guardians

Tusla, in its submission on the General Scheme, pointed to the absence of a central registry for guardians, and stated that it will be challenging for the Agency to independently verify who is already a guardian.

Situations where a close relative is not empowered to take the child into care

Dr Coulter, in her submission on the General Scheme, highlighted situations where there is a close relative willing and able to care for the children, the grounds may not exist under the Child Care Act 1991 to take the children into care.

Dr Coulter also pointed to an apparent inconsistency between section 6C of the 1964 Act and Head 2, 6G. Dr Coulter stated that Head 2, 6G (7) provides for the appointment of a guardian for the child, who is either a relative or a person otherwise deemed suitable, without any further qualification; however, section 6C of the 1964 Act, and its subsection (b)(i), stipulates that a putative guardian must have provided for a child's day-to-day care for a continuous period of more than a year.

Mr French spoke in his submission on the General Scheme about the fact that in most cases, the victim's family would not be involved in the day-to-day upbringing of the child prior to the killing of a parent, and therefore would not be guardians. This would be the case if existing section 6C (b)(i) of the 1964 Act applies.

CHAPTER 3 - Summary of Evidence

In the course of the public hearing, a number of important points were raised.

A summary of the main areas discussed in evidence to the Committee follows.

1. Tusla's responsibility under the proposed legislation (Head 2)

- During the public hearing with the witness, Members discussed the suitability of Tusla as the sole entity, designated under the General Scheme, to apply to the Court for an order to remove guardianship. The witness argued that if the child is in care and Tusla is acting for them, then it has a role; however, the agency should not be involved unnecessarily when the children are not already in care, and that another guardian, the children's relatives, the children through a guardian *ad litem* or the Courts Service should be allowed to take the initiative and apply for the order.

- Responding to a scenario posed by Members where the child has no other guardian, the witness believed that following a criminal verdict, a relative of the person who has been killed should be able to go to the Court to attempt to get the guardianship of the convicted suspended.

- The witness told the Committee that the child should not be forgotten or shielded from the process, that there is a need to look at the best interests of the child.

- Members felt that based on the evidence it heard, there may be a concern around placing a statutory onus on a single agency to apply to the Court to remove or suspend guardianship where the agency has not been engaged in this type of role before.

- When Members queried this aspect, or the possibility of automatic suspension of guardianship rights as an alternative, the Department stated that Tusla is considered to be the best placed agency to make an application from a neutral perspective.

2. Independent unit to assist Tusla (Head 2)

- During the public hearing, Members discussed the witness' recommendation that an independent unit be established, within Tusla, that submits the application to the court to remove or suspend guardianship.

- When Members asked the witness to outline why they submitted that an independent unit was needed, the witness highlighted that currently, a social worker is assigned and does not have involvement with a murder trial or a post-homicide situation, that they may be susceptible to the defence's submissions, and will not know how impacted the victim's family is. The witness pointed out that in these cases, where it is domestic homicide, the perpetrator is typically manipulative. The witness believed that a specialist unit would have experience of what happens throughout the process and would know the dynamics involved in these cases.

- Members raised the example of Barnahus, and queried whether a similar model could be adopted for these cases, whereby the unit or organisation could be staffed with experts and also have the necessary legal expertise.

- The witness expressed their belief that expertise is very important, as is prior experience, and while they agreed that some kind of specialist unit is needed, the witness stated that such a unit could be consulted for expertise by the Court, rather than being required to undertake the administrative work of submitting the request to the Court to remove or suspend guardianship.

3. Court discretion (Head 2)

- Another aspect of the General Scheme that was raised by Members is the discretion of the Court. In reply, the witness believed that court discretion is important to allow for cases such as manslaughter following domestic abuse to be handled in the best interests of the child; however, that the Court will suspend or remove guardianship in the vast majority of manslaughter and murder cases.

- Members put forward the possibility of splitting the charges of murder and manslaughter, and asked the witness' view on an automatic suspension of guardianship that could be put in place on conviction of murder where evidence has been given of aggravating factors, such as sexual or domestic violence.

- The witness outlined their concern at inserting complexity into any legislation by drawing lines between manslaughter and murder, and believed that the discretion of the Court could be relied upon to make those distinctions.

4. Notice parties to hearings (Head 2)

- The witness highlighted the study published by the Government titled 'A Study on Familicide & Domestic and Family Violence Death Reviews'[3], respondents of which recommended that the victim's family be made notice parties to the court cases in this area, but stated that it may be outside the General Scheme.

- The witness outlined that judges can make interested parties such as the victim's family to be notice parties on their own application, though it is to be expected that the accused will oppose this and in these cases, it is important that the wishes of the accused to exclude others are not facilitated by State bodies such as Tusla.

- When Members questioned whether the convicted killer should have representation in Family Court hearings, the witness stated that the killer should have representation and the ability to make representations in the interests of justice, due to the fact that their guardianship rights may be taken away.

[3] study-on-familicide-domestic-and-family-violence-death-reviews.pdf

5. Additional points discussed during the public hearing

Possibility of suspending guardianship prior to conviction (Head 2)

The witness stated that the suspension of guardianship has to be triggered by a guilty verdict, and that much can be done through policy and principles rather than burdening legislation with complexity and risking unconstitutionality. The witness believed that until there is a verdict, they do not feel there is a right to do anything.

Best placement of bereaved child (Head 2)

The witness pointed to research showing that the best placement of a bereaved child in such cases is with the victim's family, followed by neutral foster care, and that the worst case is with the family of the convicted. However, the witness stated that it is possible that the killer's family is also helpful. The witness highlighted that where the child ends up or who is their guardian could be sorted out much better if the convicted killer was not in the room at Court hearings and creating problems.

Ensuring Court processes are free from interference (Head 2)

The witness informed the Committee that the process from where the verdict of murder or manslaughter is given, to when the request to remove or suspend guardianship is submitted to the Family Court, must be guaranteed and immune from interference, and that there should be no way it can be circumvented.

APPENDICES

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 102, 103 and 104 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

102.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

*(*a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(*b*) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(*c*) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 134(1); and

(*d*) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department, or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

103. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(*a*) legislation, policy, governance, expenditure and administration of—
(i) a Government Department, and
(ii) State bodies within the responsibility of such Department, and

(*b*) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(*a*) for the accountability of the relevant Minister or Minister of State, and
(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or
(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: Provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,
(b) Estimates for Public Services, or
(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 142, including the compliance of such acts with the principle of subsidiarity,
(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
(c) non-legislative documents published by any EU institution in relation to EU policy matters, or

(d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

(i) members of the European Parliament elected from constituencies in Ireland,
(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
(iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

(*a*) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
(*b*) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 139 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

Powers of Committees.

104. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and
(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(*a*) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory instrument, or
(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil, and

(*b*) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or
(*b*) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of relevant meetings of the Council of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 204;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(*a*) State body within the responsibility of a Government Department or

(*b*) non-State body which is partly funded by the State,

shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil; and

(10) power to—

(*a*) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 130(5)(*a*).

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS

Attached are links to submissions received by the Committee from the following stakeholders:

- Dr Carol Coulter
- Dr Brian Tobin
- Ombudsman for Children's Office
- Mr David French
- Mental Health Commission
- Irish Penal Reform Trust
- Barnardos
- Tusla
- Women's Aid

[Submissions are available in the online version of the Committee's Report, which will be accessible at https://www.oireachtas.ie/en/committees/34/justice-home-affairs-and-migration/].

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