Opening Statement

Dr Louise Forde & Prof. Ursula Kilkelly

Re: Children (Amendment) Bill 2024

Thank you for this opportunity to attend today's meeting of the Joint Committee on Justice, Home Affairs and Migration, and to engage with you on the General Scheme of the Children (Amendment) Bill 2024. I am presenting this statement on behalf of myself and Prof. Ursula Kilkelly, following on from our joint written submission. Professor Kilkelly is a leading international scholar in children's rights and youth justice, a sought-after expert in youth justice implementation and a former chair of Oberstown Children Detention Campus. I am Senior Lecturer in Law at Brunel University of London, and a member of the Research Advisory Group for Oberstown Children Detention Campus, the Academic Liaison Network for the Youth Justice Board for England and Wales, and was previously a member of the Expert Steering Group on the Development of a new Youth Justice Strategy (2019-2020).

We believe that the General Scheme of the Children (Amendment) Bill 2024 represents an important opportunity to bring Ireland's framework for responding to children in conflict with the law further into line with our international obligations under the UN Convention on the Rights of the Child, and welcome the aim of the Bill to extend key provisions of the Children Act to those who were under 18 at the time of their alleged offence, but who reach 18 prior to the conclusion of legal proceedings.

As you are no doubt aware, the Children Act 2001 is generally acknowledged to have provided a largely progressive foundation for the Irish youth justice system, which has been . important in ensuring that key requirements of the international standards have a basis in Irish law. Nonetheless, there are still several areas where further progress is needed to bring Irish law fully into line with UNCRC requirements.

Under the UNCRC, the rights children are entitled to in the justice system are found in Articles 37 and 40, although children in conflict with the law are also entitled to enjoy all their Convention rights without discrimination (Article 2) as well as the right to have their best interests regarded as a primary consideration (Article 3), the right to have their views taken into account in all matters affecting them (Article 12) and to have their right to development respected (Article 6). Articles 37 and 40 set out further specific requirements, including the right to age- and developmentally-appropriate treatment throughout their contact with justice processes, to be supported to reintegrate and to assume constructive roles in their communities, and to ensure their procedural rights are upheld.

In 2023, the Committee on the Rights of the Child highlighted some key areas where further steps are needed to bring Ireland fully into line with international requirements. The Committee recommended that Ireland take steps to ensure that "children below the age of 18 are not prosecuted as adult offenders, without exception", that Ireland "raise the minimum age of criminal responsibility to at least 14 years of age", and "strengthen measures to provide community-based social reintegration services for children leaving the justice system", among others. Given Ireland's long standing commitment to the implementation of the UNCRC in this area – exemplified by the Children Act 2001, and reaffirmed by the *Youth Justice Strategy 2021-2027* – and its international reputation for its mainly progressive child justice system, the Children (Amendment) Bill 2024 provides an important opportunity to address some of these issues.

The General Scheme of the Bill represents an important step in extending key provisions of the Children Act to those who commit offences while under the age of 18, but who reach 18 prior to the conclusion of proceedings, thus responding to one of the key concerns highlighted by the Committee on the Rights of the Child. To date, non-application of the Children Act to children who "age out" of the youth justice system has been problematic as it resulted in situations where young people were sentenced as adults for offences committed as children. They also lost important privacy protections – essential to support their reintegration – and were denied the entitlement to benefit from other provisions under the Children Act. The steps taken by the General Scheme of the Children (Amendment) Bill 2024 are therefore extremely welcome.

There are, however, areas where amendment to the General Scheme of the Bill could help to further promote progressive, evidence-based and rights-compliant youth justice in Ireland. For instance, consideration should be given to including a general section within the legislation which makes it clear that the UNCRC's general principles apply to all decision-making under the Act, and to further strengthening measures that aim to protect the privacy of children who have committed offences. Consideration could also be given to updating and refining provisions relating to family conferencing, the application of fines, and other matters in order to bring them more fully into line with international standards and research. More broadly, extending the Children Act to young adults up to the age of 23 years should also be given careful consideration. A number of these issues were also raised by the Committee on the Rights of the Child in 2023, and several of these issues have already been highlighted as areas for development by the current *Youth Justice Strategy 2021-2027.* We have elaborated further on these issues within our written submission.

To conclude, the proposed amendments to ensure that all those who commit offences as children will be treated as children throughout their engagement with legal proceedings will go some way to addressing key recommendations made by the Committee on the Rights of the Child. It is also an extremely important step to recognise young people's developmental needs, to protect their rights, and to support reintegration. It will strengthen the compliance of Ireland's youth justice law with the UNCRC and our wider international obligations. There is also an important opportunity, however, to give further consideration to the other matters we have highlighted, in order to maximise the opportunity that Ireland now has to continue to advance the development of a progressive youth justice system, underpinned by respect for our international legal obligations and in line with international evidence.