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Observations on the General Scheme of the Children (Amendment) Bill 2024

Submission to the Joint Committee on Justice, Home Affairs and Migration

ombudsman do leanaí for children

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Introduction

The Ombudsman for Children's Office (OCO) is an independent and statutory human rights body, which was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act, as amended, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age; and
- to examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

The OCO welcomes the invitation from the Joint Committee on Justice, Home Affairs and Migration to make a written submission on the General Scheme of the Children (Amendment) Bill 2024 ('the Bill'). The General Scheme proposes a series of amendments to the Children Act 2001 ('the 2001 Act' or 'the Principal Act').

The 'relevant person' provision, age of criminal responsibility, and Guiding Principles (Heads 3, 4, 5, 6, 7, & 8)

The OCO welcomes the general focus of the Bill, as laid out in Heads 3-8, which aims to resolve the issue of children and young people who 'age-out' of the child justice system during proceedings, allowing them to be prosecuted as adults. This issue is resolved by extending the jurisdiction of the Children Court (the District Court where it is handling cases involving children) to include 'relevant persons' who at the time of the alleged offence were under 18 (Heads 4-8). This new legal category of 'relevant person' extends protections for those who, before or during proceedings, have turned 18. This approach is consistent with the UN Committee on the Rights of the Child's general comment No. 24, which clearly states that:

> *Child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process*.[1]

The Children Court will also have jurisdiction over cases where children and 'relevant persons' have been charged with summary offences committed jointly with adults[2] (Head 6) or indictable offences (Head 7). This is consistent with the State's international human rights obligation to ensure "*a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence*",[3] and is therefore a welcome development in the legislation.

Head 3 ensures that for children under the age of 14, "*at time of alleged offence",* the Director of Public Prosecutions (DPP) must consent to any charges, other than remand in custody or on bail. This amendment to section 52 of the 2001 Act is an extension of the principle above, which places on the onus on the age at which the alleged offending behaviour is committed, rather than the age of the person when they are charged with an offence. The OCO agrees with the purpose of this change but would welcome further amendments to the Principal Act which explicitly raise the age of criminal responsibility for all offenses to 14 years.[4] Such a change would be consistent with the UN Committee on the Rights of the Child's general comment No. 24 which, in recognising the period of rapid brain

[1] UN Committee on the Rights of the Child (2019), General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 31.
[2] Compliant with para. 37 of the UN Committee on the Rights of the Child (2019), General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24
[3] UN Committee on the Rights of the Child (2019), General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 30
[4] The Irish Council for Civil Liberties note in their submission (para. 9) that Ireland is an outlier by European standards, with Iceland, Denmark, Norway, Czechia and Finland having an age of 15, and Italy and Spain an age of 14. The most common age of criminal responsibility globally is 14

development that occurs during adolescence, recommends that all State parties raise the minimum age of criminal responsibility to at least 14.[5] This was restated by the UN Committee on the Rights of the Child in their concluding observations on Ireland in 2023, where they expressed serious concern at the low age of criminal responsibility and recommended that it be raised to at least 14 years.[6]

In addition, the OCO would welcome, under a new Head, the inclusion of a 'Guiding Principles' section in the 2001 Act, to ensure that the relevant children's rights standards are considered and apply across the whole amended Act. Such a section would include as a priority, 'the best interests of the child', 'non-discrimination', 'the views of the child', and 'the right to survival and development' as the general principles of the UN Convention on the Rights of the Child (UNCRC).[7] Adequate consideration should also be given to the principles of child friendly justice, ensuring justice is accessible, age-appropriate, and adapted to and focused on the needs of the child. This should include a statutory obligation for lawyers to undertake child-friendly justice training, to ensuring a child's right to participate in and understand proceedings is respected, in accordance with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.[8] Where they may serve the best interest of the child, suitable alternatives to judicial proceedings, such a mediation, diversion, and restorative justice programmes, should be encouraged.[9]

In line with these 'Guiding Principles' and to ensure the effective implementation of children's rights in the justice system, the OCO also recommends placing the current court accompaniment service on a statutory footing. Children defendants are vulnerable due to their age, so without adequate protections there is a risk of violating their right to informed understanding and participation, and their right to a fair trial.[10] Currently, the court accompaniment service is governed by the Gardai Youth Diversion Programme, however, this Bill provides an opportunity to strengthen this vital safeguard by establishing a statutory obligation for the court to appoint an intermediary to all child defendants. Establishing this service as a right, rather than a discretionary service, will help prevent a children's rights violation arising from a lack of understanding or communication difficulties in the State's judicial system.

Remand centre places and anonymity (Heads 9 & 10)

Head 9 makes an amendment to section 88 of the 2001 Act, inserting as a subsection (2A) that "*the Court shall not remand a child to a remand centre unless it is satisfied that remand centre can accommodate the child*." This provision is designed to prevent a child being remanded in custody at a Garda station, or other facility where adults are also detained. Where there is no place available in Oberstown Children's Detention Campus ('Oberstown'), the child will be remanded on bail, except for instances where serious offences are alleged.[11] The OCO welcomes this amendment, as it brings the original legislation into closer alignment with Article 37 of the UNCRC which states that "*every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest*".[12]

The OCO also welcomes Head 10 which through amending section 93 of the Principal Act, extends anonymity provisions to include 'relevant persons', who at the time of the alleged offence was a child. This amendment will prevent the loss of anonymity for a person who turns 18 during proceedings, and is

[5] UN Committee on the Rights of the Child (2019), General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 22
[6] UN Committee on the Rights of the Child (2023), Concluding observations on the combined fifth and sixth periodic reports of Ireland, CRC/C/IRL/CO/5-6, para. 44 & 45(a)
[7] UNICEF (2019), Four principles of the Convention on the Rights of the Child
[8] Committee of Ministers of the Council of Europe (2010), Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, para. 39
[9] Committee of Ministers of the Council of Europe (2010), Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, para. 24
[10] OCO (2025), Child Centred Justice: Support for child defendants in the Irish court system, p. 4
[11] Under section 29 of the Criminal Procedure Act 1967
[12] UN Convention of the Rights of the Child (1989), art. 37(c)

therefore consistent with Article 40 of the UNCRC, which demands that the privacy of an accused child is "*fully respected at all stages of the proceedings*".[13] The extension of such provisions, to include 'relevant persons' aged-out during proceedings, is essential given children and young people's high capacity for rehabilitation. Additionally, this anonymity provision, by preventing potentially life-long reputational damage, abides by Article 16 of the UNCRC which protects children from unlawful interference with their privacy or reputation.[14]

Extension of community sanctions beyond 18 (Heads 12, 13, 14, 15, 16, & 17)

Heads 12-17 all deal with elements of the community sanctions programme. As it stands, section 138 of the Principal Act dictates that all community sanctions expire once the person attains the age of 18 and a half. The purpose of these amendments is to ensure certain community sanctions remain valid once a child turns 18. Amendments made under Head 12-14 allow for a probation order, a probation (training or activities programme) order, and a probation (intense supervision) order to remain in place once a child turns 18. The OCO is generally supportive of this proposed change to the original legislation, which aims to keep the response to an offending behaviour within the community. These amendments are consistent with international human rights standards on child-friendly justice, which dictate that detainment, and the deprivation of liberty should be used only as a measure of last resort, and that other sanctions such as supervision orders and community monitoring must be made available to the court.[15]

However, subsections 116(2A(c)), 124(9(b)), and 125(13(c)) state that "*the Court, on application of a probation officer, may vary the order if it appears to it that it would be in the interests of justice to do so*". The OCO is concerned by the level of discretion granted to the court and the probation officer here and would welcome greater clarity on this provision to ensure that children's rights are upheld and their best interest considered throughout. In addition, Head 14 by amending subsection 125(6) and 125(7) increases the maximum period for intense supervision orders from 180 days (~6 months) to 18 months for a summary conviction and 2 years for a conviction on indictment. Whilst the OCO understands the need to extend available length beyond the currently available 6 months, to ensure the viability of the order when the person attains the age of 18 and a half, no further justification for this significant change is offered in the explanatory note. The OCO would welcome greater clarity on the reason for this change, to ensure that, in accordance with Article 40(4) of the UNCRC,[16] suitable alternatives to a prolonged period of institutionalised care have been made available to the court.

Heads 15 and 16 address non-compliance with community sanctions, where a child has turned 18, the options available to the court will be to direct to person to comply with the order or to revoke the order and substitute for another community sanction. The OCO welcomes these amendments as they prioritise a community-based response to non-compliance and avoid opening a path to imprisonment in adult facilities. Head 17, provides for the remaining community sanctions, other than those referred to in subsection 139(2), to expire once the person reaches the age of 18. The OCO would welcome greater clarity on the justification for not extending the expiry of *all* community sanctions, which could offer the court greater choice when determining the most appropriate sanction, in the best interest of the child.

[13] UN Convention of the Rights of the Child (1989), art. 40(2(b)(vii))
[14] UN Convention of the Rights of the Child (1989), art. 16(1)
[15] UN Committee on the Rights of the Child (2019), General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 19; UN Convention of the Rights of the Child (1989), art. 40(4)
[16] UN Convention of the Rights of the Child (1989), art. 40(4)

Suspened sentences for children, introduction of Deferred Sentence Supervision Orders, and detention and supervision orders (Heads 18, 19, 20, 21)

Heads 18-20 relate to the issue of suspended sentences for children. These amendments arise from a Law Reform Commission (LRC) recommendation that suspended sentences should not apply to children, as it doesn't give them an opportunity to deal with their offending behaviour. In a 2020 report the LRC argued that because detention is based primarily on welfare considerations,[17] "*if detention is in the child's best interests, it seems unjust and inappropriate to suspend or withhold that detention*."[18] This has been supported by the courts, who since 2017 have held the view that, whilst sentences of imprisonment can be suspended, there is no power to suspend a detention sentence.

Heads 18 and 19 therefore remove the option to defer a sentence of detention 'for any other reason' than where no place is available in a children detention school (see subsection 144(4)), and introduces an alternative to deferred detention, a Deferred Sentence Supervision Order (a 'DSSO', see section 144A). Under a DSSO, it is the *sentencing hearing* that is deferred rather than the sentence of detention itself. The sentencing hearing can be deferred for up to a year, during which time the child will be under the supervision of a probation officer. This period of supervision will come with certain conditions and requirements, that if complied with, will allow the court, at the resumed hearing, to discharge the child forthwith. However, the OCO is concerned that according to subsection 144A(10(4)), where a person's 18th birthday has passed prior the resumed hearing and expiry of the DSSO, the court will have the power to impose a sentence of imprisonment (which can be suspended in whole, or in part). This provision is at odds with the issue that the Bill seeks to address with Heads 4-10, and the principles of child friendly justice as outlined in the UNCRC,[19] the UN Committee on the Rights of Childre's general comment no.24,[20] and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.[21]

In their general comment no.24 the UN Committee on the Rights of the Child reminds States parties, that in the application of child justice systems "*the relevant age is the age at the time of the commission of the offence*"[22] A child then, who was under 18 at the time of the offence, but during the DSSO and prior to the resumed hearing, turns 18, can be formally charged, but must be subject to child justice procedures in full compliance with the UNCRC. The suggested amendments made under Heads 18 and 19, by subjecting these persons to a period of (adult) imprisonment, risks violating this principle. The risk of a rights violation, due to these amended provisions has been made even more pressing by recent report on Ireland from the Council of Europe Committee for the Prevention of Torture and Degrading Treatment (CPT). The report, published on 24th July 2025, found that chronic overcrowding in Irish prisons has led to a significant deterioration in living conditions and prisoner safety, which in CPT's view, may amount to inhuman and degrading treatment.[23] Allowing a person, who at time of the offence was 18, to become subject to these conditions, risks violating their right to be treated with dignity and respect, and is wholly inconsistent with amendments suggested under earlier Heads of the General Scheme.

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[17] As opposed to the imprisonment of adults which is primarily a punitive measure.
[18] Law Reform Commission (2020), Suspended Sentences (LRC 123-2020), p. 220
[19] UN Convention of the Rights of the Child (1989), art. 37 & 40
[20] UN Committee on the Rights of the Child (2019), General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24
[21] Committee of Ministers of the Council of Europe (2010), Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice
[22] UN Committee on the Rights of the Child (2019), General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 20
[23] European Committee for the Prevention of Torture and Degrading Treatment (2025), News 2025: Council of Europe anti-torture committee (CPT) publishes report on Ireland, highlighting serious concerns about prisons, 25th July.

The OCO therefore recommends that section 144A be amended such that, under a DSSO, the resumed hearing must take place before the child turns 18. If the decision is made to detain the child, this detainment should take place in a children's detention centre. In accordance with the UN Committee on the Rights of Childre's general comment no.24, where this child turns 18 during their period of detention, the "*continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility*." [24] By bringing the date of the resumed hearing forward, this amendment would avoid the risk of a child 'aging-out' during their DSSO and being subject to a period of adult imprisonment. Additionally, it also prevents opening a path for the 'aged-out' child to be *initially* detained in children's facilities, which would risk jeopardising compliance with the Article 37 of the UNCRC[25] and the Council of Europe Guidelines on child friendly justice[26] which states that children must be detained separately from adults.

The OCO also believes that additional accommodations should be made for young people between 18 and 24 years of age, to reflect this cohort's greater capacity for rehabilitation. Research has shown that the brain and personal maturity levels continue to develop well into the mid-twenties, with the frontal lobe (a part of the brain responsible for impulse control and decision-making) often the last area of the brain to mature.[27] Whilst this cohort of young people are at a greater risk of harm because of their ongoing cognitive development, they are also more amenable to rehabilitation and significantly more adaptive than older adult offenders.[28] As a result of the prevailing research, the OCO would like to echo calls made by the Irish Penal Reform Trust to extend the principles and sanctions of the youth justice system to apply to young people up to the age of 24. Where the decision is made to detain a young person between the ages of 18-24, due consideration should be given to the establishment of a separate facility.

Head 20 provides for situation, where there is a finding of guilt during a period of deferment or a DSSO. This provision allows the court to make an order, before the expiration of the specified deferment period. Head 21, meanwhile, makes an amendment to ensure that the supervision period of a detention and supervision order can remain in effect once a child turns 18. Through a proposed amendment to section 151 of the 2001 Act, the requirement that half of the period is spent in detention and half in supervision, will be removed. The court will also have the power to amend (or extend) the conditions of the supervision portion of the order. The OCO recommends the development and implementation of guidelines to ensure the best interest of the child, and reintegration into their community, are paramount considerations in any decision made by the court.

Additionally, the OCO would welcome the introduction of a new provision in the 2001 Act which outlines the right to appropriate and *integrated* aftercare support following release from detention for all children and young people. Strengthening these post-detention supports was flagged as an area for legislative reform in the Department of Justice's Youth Justice Strategy 2021-2027,[29] and could have a transformative impact on the child or young person's reintegration into their community. The OCO would also like to stress the importance of effective interagency cooperation here and recommends that during pre-legislative scrutiny due consideration is given to section 118 of the Policing, Security and Community Safety Act 2024, which sets out the duties of public service bodies with regards cooperation for community safety. The OCO recommends establishing, in the revised legislation, a robust statutory duty for all agencies involved in post-detention support to coordinate and collaborate in the best interest of the child or young person.

[24] UN Committee on the Rights of the Child (2019), General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 93
[25] UN Convention of the Rights of the Child (1989), art. 37(c)
[26] Committee of Ministers of the Council of Europe (2010), Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, para. 20
[27] Irish Penal Reform Trust (2015), Turnaround Youth: Young Adults (18-24) in the Criminal Justice System, p. 15
[28] Irish Penal Reform Trust (2015), Turnaround Youth: Young Adults (18-24) in the Criminal Justice System, p. 25
[29] Department of Justice (2021), Youth Justice Strategy 2021-2027, p. 36

Powers of the court in relation to 'relevant persons' and administrative amendments (Heads 22, 23, 24, 25, 26, 27, 28, & 29)

Heads 22-26 relate to the insertion of a new Part 9A, which deals with the powers of the court in relation to the new category of 'relevant persons'. The new Part focuses on extending the protection of the child justice system to children who were under 18 at the time of the offence but have turned 18 during proceedings. As such, the OCO is supportive of this proposed change to the original legislation, which bring Irish judicial proceedings into closer alignment with the principles of child-friendly justice. Head 22 is a standard provision that introduces the Part and defines the term 'relevant person' as it will be used throughout. Head 23, inserts section 156D, which states that "*Any penalty imposed on a relevant person for an offence should cause as little interference as possible with the relevant person's legitimate activities and pursuits, […] and promote the development of the relevant person*". The section also emphasises that imprisonment should be imposed only as a measure of last resort, that the court may take into consideration the age and level of maturity at time of the offence, and that any penalty imposed should be no greater than that imposed for an adult who has committed the same offence. The OCO welcomes the general purpose of these amendments but expresses concern over the absence of a direct reference to the 'best interest' principle, one of the four general principles of the UNCRC.[30] During earlier engagements with the Department there was reference to 'the best interests of the child' being considered as 'paramount' under this Head. Its removal in the General Scheme is a point of concern for the OCO.

Heads 24-26, address fines imposed on 'relevant persons' by inserting new sections 156E, 156F, and 156G. Together, these amendments make it such that the maximum fine possible for a 'relevant person' is half what the District Court could impose on an adult, that the court must consider the 'relevant persons' present and future means, and that defaulting on fines for 'relevant persons' shall not lead to an order of imprisonment. The OCO welcomes these developments in the legislation, which offer greater protections to 'relevant persons' who at the time of their offence was a child.

Heads 27-29 make a number of administrative amendments. Head 27, makes amendments to section 167 of the Principal Act related to the Board of Management (BOM) for Oberstown. In addition to the proposed amendments under Head 27 the OCO would welcome, an amendment to section 174, which grants the Health Information and Quality Authority (HIQA) the authority to set the rules for children's detention schools in consultation with the BOM. The OCO would also welcome a role for the Minister for Children, Disability, and Equality in setting of rules, to ensure that children's issues are considered throughout. The OCO also recommends a new section in the 2001 Act, which requires the BOM of children detention schools to provide statutory notification to HIQA of any accidents or adverse events that occur in the facility. This is already a requirement for certain 'designated centres',[31] including children's special care units, and centres for people with disabilities.[32] Extending these statutory notification requirements to include children detention schools would function as an important safeguard for children in these facilities. Whilst accidents occurring is not always indicative of poor care, implementing statutory notification requirements for Oberstown, would provide greater opportunities for learning, and reduce the risk of systemic children's rights violations.

Head 28 contains a number of proposed repeals to the Principal Act. This involves the repeal of provisions that criminalised parents,[33] and a provision that mandated the public announcement of decisions made by the Children Court. The OCO welcomes these repeals which bring the original legislation into closer alignment with international best practise and protect the privacy of children

[30] OCO (2025), Children's Rights in Brief No. 2 – The Best Interests of the Child

[31] As defined by the Health Act (2007)

[32] HIQA (2025), Guidance on managing notifiable events in designated centres: Guidance for registered providers and persons in charge, May, v.2.1, pp. 3-5.

[33] Head 11 is a consequence of this repeal and beyond the OCO's remit, therefore it is not discussed in our submission.

involved in judicial proceedings by reducing the risk of identification. Head 29, makes an amendment the Bail Act 1997, to ensure 'relevant persons' are protected from imprisonment if they fail to pay their recognisance, in line with section 156G of the amended 2001 Act (Head 26 of the General Scheme). This provision is welcomed by the OCO as it protects 'relevant persons' from imprisonment for the non-payment of a financial sanction.

Recommendations

- ***Head 3 – Amend section 52 of the Principal Act to raise the age of criminal responsibility to at least 14 years for all offences.***
- ***New Head (A) – Introduce a 'Guiding Principles' section to the Principal Act, to ensure the relevant children's rights standards, and the principles of child-friendly justice, are considered throughout.***
- ***New Head (B) – Amend the Principal Act such that the court accompaniment service for children defendants is placed on a statutory footing.***
- ***Heads 12-14 – Amend sections 116, 124, and 125 of the Principal Act to provide a statutory limitation to the courts ability to vary the length of community sanctions, once a child turns 18.***
- ***Head 14 – Offer a rationale for the amended section 14, which increases the maximum period of an intense supervision order from 6 months to 2 years.***
- ***Head 17 – Amend section 138 of the Principal Act to extend the expiry of all community sanctions, where a child turns 18 during the life of the order.***
- ***Head 19 – Amend the proposed section 144A so that, under a Deferred Sentence Supervision Order, the resumed hearing must take place before the child turns 18.***
- ***New Head (C) – Extend the principles and sanctions of the youth justice system, that focus on rehabilitation, to apply to young people up to 24 years. Consider the establishment of separate facilities for the detention of young people between 18-24 years.***

- ***Head 21 – Implement guidelines to inform any potential extensions or amendments to detention and supervision orders, ensuring reintegration into the community is a paramount consideration.***

- ***New Head (D) – Introduce a provision to the Principal Act which outlines the right to appropriate and integrated aftercare support following release from a children detention centre. Establish a robust statutory duty for all agencies to collaborate.***

- ***Head 23 – Amend the proposed section 156D, making explicit reference to 'best interest' principle in relation to 'relevant persons'.***

- ***New Head (E) – Amend section 174 of the Principal Act to grant the Health Information and Quality Authority the power to set the rules for children detention schools in consultation with the Board of Management.***

- ***New Head (F) – Insert a new section into the Principal Act which imposes Health Information and Quality Authority statutory notification requirements for children detention schools as 'designated centres'.***