



## **Submission by the Ombudsman for Children on the General Scheme of the Criminal Justice (Victims of Crime) Bill 2015**

### **1. Introduction**

Ireland is required to transpose into Irish law EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime by the 16 November 2015. In light of this, the Minister for Justice and Equality published the General Scheme of the Criminal Justice (Victims of Crime) Bill 2015 ('the General Scheme') on 14 July 2015.

The stated aims of the proposed legislation are:

- to strengthen the rights of victims of crime and their families with a view to placing victims and their needs at the heart of the justice process; *and*
- to ensure that rights to information, advice and other appropriate assistance will be met effectively and efficiently.

This submission has been prepared pursuant to Section 7(4) of the Ombudsman for Children Act 2002, which provides that the Ombudsman for Children may give advice to Ministers of Government on any matter relating to the rights and welfare of children, including the probable effect on children of the implementation of any proposals for legislation.

The Ombudsman for Children welcomes the General Scheme of the Criminal Justice (Victims of Crime) Bill 2015 and its stated aims in respect of the rights of victims and their families.

In accordance with the Ombudsman for Children's statutory mandate, this submission focuses on child victims of crime. Its purpose is to propose a number of ways in which the legislation could be enhanced to take fuller account of the rights and welfare of child victims of crime, in accordance with Ireland's human rights obligations in this regard. In addition to considering EU Directive 2012/29/EU, this Office has been guided in particular by the following international standards and guidance in preparing this submission:

- UN Convention on the Rights of the Child (1989);
- relevant General Comments of the UN Committee on the Rights of the Child, in particular General Comment No. 12, the right to be heard (2009); General Comment No. 13, the right to freedom from all forms of violence (2011); and General Comment No. 14, the right of the child to have his or her best interests taken as a primary consideration (2013);

- Recommendations (Rec 2006)<sup>8</sup> of the Committee of Ministers of the Council of Europe on assistance to crime victims (2006);
- Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010); *and*
- United Nations Office on Drugs and Crime, Justice in Matters involving Child Victims and Witnesses of Crime (2009).

## 2. Best Interests of the Child

In accordance with Ireland's international obligations, the State needs to ensure that the requirement to treat the child's best interests as a primary consideration in all actions concerning them is provided for in all relevant national laws. While welcoming the inclusion of the best interests principle in the preamble of the General Scheme, this Office notes that a preamble is not considered part of the legally binding text of a Bill, but rather forms part of the context in which the Bill is to be interpreted. The Office also welcomes the inclusion of the best interests principle in Head 17(2). However, this provision refers only to the special measures provided for in Heads 15 and 16. It does not apply to other sections relevant to child victims - for example, to Head 11, which relates to conduct of interviews and medical examinations. **The Criminal Justice (Victims of Crime) Bill 2015, once drafted, should ensure that the principle of treating the best interests of the child as a primary consideration in all actions concerning children is more fully integrated as a positive obligation in the Bill.**

## 3. Respect for Children's Views

Under relevant international standards, children have a right to be heard and to have due weight given to their views in all matters affecting them, including when a determination is being made about what is in their best interests. This Office welcomes Head 9, which provides for a victim personal statement. However, it is of the view that the General Scheme could be strengthened by making provision for any child who has the capacity to form a view and wishes to express his/her views to be afforded the opportunity to express his/her views freely and to have those views taken into account as appropriate during the criminal process. **The right of child victims to express their views freely as appropriate in the context of a criminal process affecting them and to have due weight given to their views, in accordance with their age and maturity, should be integrated appropriately as a positive obligation in the Bill.**

## 4. Information for Child Victims

This Office welcomes Heads 17(3) and 19(1). However, it notes that Head 4 does not include a provision in relation to information to be given to children and their parents regarding the specific rights children have with regard to the criminal process. Furthermore, Head 19 makes no reference to the manner in which information is to be provided to child victims. **Provision should be made**

that children and their parents must be informed of the rights children have with regard to the criminal process. The Bill should further provide that information furnished to child victims will be child-friendly, i.e. take appropriate account of children's ages and evolving capacities.

## 5. Training

The Office welcomes Head 20, which provides for training to be given by bodies listed in the Schedule of the General Scheme to their staff to increase their awareness of the needs of victims. This Office believes that it is important to ensure that all those who have contact with child victims in the course of their official duties have the necessary knowledge and skills to fulfil their roles in a child-sensitive and rights-respecting manner. **The Bill should provide that all persons who have professional duties towards and/or make decisions affecting child victims must receive, and continue to receive, appropriate training, including training on how to implement an approach that is consistent with and sensitive to the needs and rights of child victims.**

## 6. Special Measures for Child Victims

The Office welcomes the inclusion of special measures for child victims in Part 6 of the General Scheme. As EU Directive 2012/29/EU recognises, child victims are presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. In this regard, particular care must be taken to avoid subjecting children to further harm through the process of investigation. Furthermore, taking into account that the passing of time is not perceived in the same way by children and adults and that delays in or prolonged decision-making have particularly adverse effects on children, it is important to mitigate against any such delays.

In view of these and other factors that give rise to specific protection needs of child victims, the Office is of the view that, in accordance with EU Directive 2012/29/EU, it may be beneficial for the Bill to incorporate the right of child victims to have their dignity protected through being treated with care, sensitivity, fairness and respect throughout the criminal process. **Consideration should be given to strengthening the special measures for child victims, including by providing for:**

- **the appointment of a dedicated person whose role is to support the child throughout the criminal process (in light of Article 8 of the Directive);**
- **pre-trial preparation services for child victims (in light of Article 22 of the Directive); and**
- **child-friendly court proceedings (as envisaged in the Council of Europe's Guidelines on Child-Friendly Justice).**