

June 2025

General Scheme of the Guardianship of Infants (Amendment) Bill 2025

Submission to the Committee on Justice, Home Affairs
and Migration



ombudsman
do leanaí
for children

Contents

Introduction	2
Application of the best interest principle	2
Respect for the views of the child	3
Removal versus suspension of guardianship rights	3
Retrospective application of the law	4

Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory 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.

We welcome the invitation from the Joint Committee on Justice, Home Affairs and Migration to make a written submission on the [Guardianship of Infants \(Amendment\) Bill 2025](#).

The OCO is supportive of the General Scheme's purpose and aim. The anomaly whereby a parent convicted of killing the other parent retains guardianship of their child or children, is a significant children's rights and welfare issue. In recent years, families have been in contact with our office who have been affected by this loophole and spoke about the further trauma it caused children at a devastating moment in their lives. Closing this loophole is essential for protecting some of the most vulnerable child victims and will safeguard against the risk of further manipulation and control. It highlights the vulnerabilities of children in situations of domestic abuse and spotlights the need to protect them from violent parents.

In this brief submission we provide a number of observations from a children's rights perspective.

Application of the best interest principle

The recognition of the importance of the best interests of the child as referenced in section 6G (3)(b) and section 6G(9)(a) is welcome.

The UN Committee on the Rights of the Child (the Committee) underlines that, in weighing the various elements, it is important to bear in mind that the purpose of assessing and determining the child's best interests is to ensure the child's enjoyment of their rights under the United Nations Convention on the Rights of the Child (UNCRC), and the child's holistic development.¹

It is acknowledged that different elements in a best interests assessment may conflict with each other when considering a specific case. In cases where this new law will apply, protecting the child from the risk of abuse or further trauma may be in conflict with preserving a child's relationship with their parent, especially if that is the child's preference. In such situations, the Committee advises that elements need to be weighed against each other to find a solution that is in the best interests of the child or children concerned.² We welcome the inclusion of the following considerations when making a determination on the removal of guardianship rights:

- a) the best interests of the child in accordance with section 3 with regard to the factors and circumstances as set out in section 31 [of this Act],
- b) the damage caused to the child's welfare as a result of the violence inflicted on the child's other parent or guardian,
- c) the extent to which that damage would be aggravated by permitting the person concerned to remain as guardian of the child,

¹ UN Committee on the Rights of the Child (2013), General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14.

² UN Committee on the Rights of the Child (2013), General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14.

- d) the views of the child, to the extent possible given his or her age and understanding,
- e) the number of persons, if any, who are guardians of the child concerned, and the degree to which those persons are involved in the upbringing of the child, and
- f) the availability and suitability of any other person who would be appointed by the Court as guardian of the child.

We note that the [Victim and Prisoners Act 2024](#) in England and Wales explicitly excludes from the suspension of guardianship rights for those convicted of manslaughter or other charges by victims of domestic violence when taken in self-defence. The OCO are supportive of provisions that would exempt those acting in self-defence but believe that the application of the best interests principle as set out here and in section 31 of the Act will provide for such cases.

Respect for the views of the child

The OCO welcomes section 6G(9)(d) and the inclusion of the need to consider the views of the child when making a decision. In their 2023 Concluding Observations on Ireland, the Committee recommended that Ireland “Ensure the right of all children to express their views and to have them taken into account in all decisions affecting them, including in the courts and in all forms of family law proceedings, and that they are given adequate support to engage an expert to present their views at no cost to them or their family.”³ The Council of Europe Child Friendly Justice Guidelines also emphasise the importance of hearing the voice of the child in matters which affect them, giving due weight to their views and bearing in mind their maturity and any communication difficulties they may have.⁴

It is important that sufficient clarity is 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. The OCO welcomes the work currently being undertaken by the Department of Justice to implement the actions under the Family Justice Strategy related to the voice of the child and the establishment of a voice of the child working group. It is important that this work is progressed, and adequate resources are provided to uphold children’s right to be heard. The OCO recommends that adequate resources are provided to ensure the right of a child to be heard is as contained in the Bill is given full effect.

Removal versus suspension of guardianship rights

The OCO notes that the amendment to remove rather than suspend guardianship rights of convicted killers may be unconstitutional in respect of married parents.⁵ As well as potential constitutional issues, 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 as outlined above. The [Victim and Prisoners Act 2024](#) in England and Wales opts for suspension of parental rights through what is known as a prohibited step order. A prohibited step order would not remove the guardianship status from the convicted parent but does not allow them to exercise their responsibilities as set down in section 6G(8). The OCO recommends that the Bill is assessed to ensure clarity and certainty in regard to the constitutionality of the provisions set out in the General Scheme and the full application of the best interests principle and respect for the views of the child.

³ 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. 18.

⁴ Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), 17.

⁵ Irish Legal News (2025) ‘Warning over constitutionality of Valerie’s law plan’, <https://www.irishlegal.com/articles/warning-over-constitutionality-of-valeries-law-plan>

Retrospective application of the law

The OCO welcomes that the new law will apply retrospectively as set out in section 6G(16) which states that *‘The provisions of this Section apply to a murder, manslaughter, serious offence, or suspected killing referred to in subsection (1) or (2) where such occurred prior to the commencement of this Act, and the Child and Family Agency shall act accordingly within 6 months of such commencement.*

Consideration should be given to the timeframe to ensure all children in need of protection prior to enactment are included.