

Tithe an Oireachtais

An Comhchoiste um an Leasú Bunreachta maidir le Leanaí

An Chéad Tuarascáil

Tuarascáil Eatramhach

An Bille um an Ochtú Leasú is Fiche ar an mBunrecht 2007

AIRTEAGAL 42(A).5.1^o - Togra chun údarás dlíthiúil a thabhairt chun faisnéis a bhailiú agus a mhalartú ar faisnéis í a bhaineann leis an bpríacal go gcuirfear leanaí i mbaol nó go ndéanfar dúshaothrú gnéasach nó mí-úsáid ghnéasach orthu, nó a bhaineann leis na nithe sin do tharlú

Meán Fómhair 2008

Houses of the Oireachtas

Joint Committee on the Constitutional Amendment on Children

First Report

Interim Report

Twenty-Eighth Amendment of the Constitution Bill 2007

ARTICLE 42(A).5.1^o - Proposal to give legal authority for the collection and exchange of information concerning the risk or the occurrence of endangerment, sexual exploitation or sexual abuse of children

September 2008

INDEX

Chairperson’s Foreword.....	2
Introduction.....	3
The Committee’s Recommendation.....	4
APPENDIX I.....	5
Orders of Reference of the Committee	
APPENDIX II.....	8
Membership of the Committee	



FOREWORD

The Joint Committee on the Constitutional Amendment on Children ('the Committee') was established by Dáil Éireann and Seanad Éireann on 22 November 2007 to consider and report to the Houses of the Oireachtas on the proposals set out in the *Twenty-Eighth Amendment of the Constitution Bill 2007* by 30 November 2008.

On behalf of the Committee, I am pleased to present this Interim Report to the Houses of the Oireachtas. The report specifically outlines the Committee's findings and recommendation on the proposal in the Bill to give legal authority for the collection and exchange of information concerning the risk or the occurrence of endangerment, sexual exploitation or sexual abuse of children.

The recommendation set out in the report is based on the unanimous consensus of the Committee. The Committee considers that this recommendation can be accepted and implemented promptly and will greatly strengthen Child Protection within the State.

The Committee is grateful to the many organisations and individuals that made valuable contributions to our work to date in the form of written and oral submissions. These submissions reflected a broad convergence of views on the matters under consideration in this report.

I wish to thank members of the Committee for their commitment and dedication to the important work that has been entrusted to us and for sharing their invaluable insights and perspectives throughout.

With the completion of this Interim Report, the Committee's work continues towards its finalisation by the specified reporting deadline.

.....
Mary O'Rourke T.D.
Chairperson
11 September 2008

**JOINT COMMITTEE ON THE
CONSTITUTIONAL AMENDMENT ON CHILDREN**

INTERIM REPORT TO THE HOUSES OF THE OIREACHTAS

ARTICLE 42(A).5.1^o - Proposal to give legal authority for the collection and exchange of information concerning the risk or the occurrence of endangerment, sexual exploitation or sexual abuse of children

INTRODUCTION

1. The Joint Committee on the Constitutional Amendment on Children ('the Committee') was established by orders of Dáil Éireann and Seanad Éireann on 22 November 2007 to consider and report to the Houses of the Oireachtas on the Twenty-Eighth Amendment of the Constitution Bill 2007 published by the Minister for Health and Children on 16 February 2007.
2. One of the matters which has been considered by the Committee was how best provision may be made by law for the collection and exchange of information relating to the endangerment, sexual exploitation or sexual abuse, or risk thereof, of children.
3. The Committee has conducted detailed consultations with a wide variety of organisations and individuals. The Committee has deliberated on the submissions which it has received.
4. The Committee accepts the legal advice which it has received from its own legal advisers and the views of the Attorney General as communicated to the Committee by the Minister for Children and Youth Affairs, Mr. Barry Andrews T.D. That advice conforms with the views expressed to the Committee in the vast majority of the submissions which have been received by it to the effect that a Constitutional Amendment is not required to permit the Oireachtas to enact legislation in relation to the creation of a statutory scheme to regulate and control the manner in which records of criminal convictions and information including 'soft' information concerning the risk or the occurrence of endangerment, sexual exploitation or sexual abuse of children can be stored and deployed by An Garda Síochána and other Statutory Agencies for the purpose of Child Protection.
5. The Committee has formed a unanimous view in relation to this matter.

THE COMMITTEE'S RECOMMENDATION

1. The Committee recommends to the Houses of the Oireachtas that the Government should as a matter of priority prepare and publish legislation to be brought before the Houses of the Oireachtas to establish a statutory scheme:
 - (a) for the vetting of all persons involved in working in any capacity with children;
 - (b) for the statutory regulation of the manner in which information in relation to records of criminal prosecutions, criminal convictions and 'soft' information may be collated, exchanged and deployed by An Garda Síochána or other Statutory Agencies for the purpose of ensuring the highest standards of child protection within the State; and
 - (c) to require that all agencies, organisations, bodies, clubs, educational and childcare establishments and groups working with or involved with children ensure that all of those working under their aegis either in a paid or voluntary capacity with children are subject to vetting.
2. The Committee recommends that the proposed legislation should have due regard for the protection of the constitutional rights of any persons who may be affected by this proposed law reform.
3. The Committee recommends that the Government direct that the relevant legislation be prepared for early consideration by the Houses of the Oireachtas in the parliamentary session commencing 24 September 2008 and ending prior to Christmas 2008.

APPENDIX I

Orders of Reference

Dáil Éireann on 22 November 2007 ordered:

“(1) That a Select Committee consisting of thirteen members of Dail Éireann be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on the Constitutional Amendment on Children to:

(a) examine the Twenty-Eighth Amendment of the Constitution Bill 2007; and

(b) consider the text set out in the Schedule to that Bill with regard to the following:–

(i) the acknowledgement and affirmation of the natural and imprescriptible rights of all children;

(ii) the restatement and extension of the existing provision in relation to children and parents contained in Article 42.5 of the Constitution to include all children;

(iii) the provision of legal authority for the adoption of children who have been in care for a substantial period of time if it is in the best interests of those children;

(iv) the provision of legal authority so that all children may be eligible for voluntary adoption;

(v) the provision of legal authority so that the courts shall be enabled to secure the best interests of a child in any court proceedings relating to adoption, guardianship, custody or access of that child and to ensure that such interests are taken into account in all other court proceedings in relation to that child;

(vi) the provision of legal authority for the collection and exchange of information relating to the risk or actual occurrence of child sexual abuse;

(vii) that no provision in the Constitution should invalidate any law providing for absolute or strict liability in respect of sexual offences against or in connection with children;

(c) make such recommendations, including recommendations in relation to amendments to the text in Schedule 1 of the Bill, as shall to the Committee seem appropriate.

- (2) The Committee shall report back to each House with recommendations in a final report four months from the date of establishment.¹
- (3) The Minister for Justice, Equality and Law Reform and the Minister of State at the Departments of Health and Children, Education and Science and Justice, Equality and Law Reform, with special responsibility for Children, shall be *ex officio* members of the Committee and shall be entitled to vote.
- (4) The quorum of the Joint Committee shall be four, of whom at least one shall be a Member of Dáil Éireann and one a Member of Seanad Éireann.
- (5) The Joint Committee shall have the powers defined in Standing Orders 83(1) to (8) inclusive and 93(2).
- (6) The Chairperson of the Joint Committee shall be a Member of Dáil Éireann.”

Seanad Éireann on 22 November 2007 ordered:

“(1) That a Select Committee consisting of four members of Seanad Éireann be joined with a Select Committee to be appointed by Dáil Éireann to form the Joint Committee on the Constitutional Amendment on Children to:

- (a) examine the Twenty-Eighth Amendment of the Constitution Bill 2007; and
- (b) consider the text set out in the Schedule to that Bill with regard to the following:–
 - (i) the acknowledgement and affirmation of the natural and imprescriptible rights of all children;
 - (ii) the restatement and extension of the existing provision in relation to children and parents contained in Article 42.5 of the Constitution to include all children;
 - (iii) the provision of legal authority for the adoption of children who have been in care for a substantial period of time if it is in the best interests of those children;
 - (iv) the provision of legal authority so that all children may be eligible for voluntary adoption;
 - (v) the provision of legal authority so that the courts shall be enabled to secure the best interests of a child in any court proceedings relating to adoption, guardianship, custody or access of that child and to ensure that such interests are taken

¹ This reporting deadline was extended to 30 November 2008 by order of Dáil Éireann on 13 March 2008.

into account in all other court proceedings in relation to that child;

- (vi) the provision of legal authority for the collection and exchange of information relating to the risk or actual occurrence of child sexual abuse;
- (vii) that no provision in the Constitution should invalidate any law providing for absolute or strict liability in respect of sexual offences against or in connection with children;

(c) make such recommendations, including recommendations in relation to amendments to the text in Schedule 1 of the Bill, as shall to the Committee seem appropriate.

- (2) The Committee shall report back to each House with recommendations in a final report four months from the date of establishment.²
- (3) The Minister for Justice, Equality and Law Reform and the Minister of State at the Departments of Health and Children, Education and Science and Justice, Equality and Law Reform, with special responsibility for Children, shall be *ex officio* members of the Committee and shall be entitled to vote.
- (4) The quorum of the Joint Committee shall be four, of whom at least one shall be a Member of Dáil Éireann and one a Member of Seanad Éireann.
- (5) The Joint Committee shall have the powers defined in Standing Orders 70(1) to (8) inclusive and 86(2).
- (6) The Chairperson of the Joint Committee shall be a Member of Dáil Éireann.”

² This reporting deadline was extended to 30 November 2008 by order of Seanad Éireann on 13 March 2008.

APPENDIX II

JOINT COMMITTEE ON THE CONSTITUTIONAL AMENDMENT ON CHILDREN

MEMBERSHIP

Deputies

Áine Brady (FF)
Thomas Byrne (FF)
Dara Calleary (FF)
Olwyn Enright (FG)
Paul Gogarty (Green Party)
Brendan Howlin (LAB) (*Leas-Cheann Comhairle*)
Dan Neville (FG)
Michael Noonan (FG) (*Vice-Chairperson*)
Caoimhghín Ó Caoláin (SF)
Seán Ó Fearghaíl (FF)
Mary O'Rourke (FF) (*Chairperson*)
Alan Shatter (FG)
Michael Woods (FF)

Senators

Maria Corrigan (FF)
Geraldine Feeney (FF)
Frances Fitzgerald (FG)
Alex White (LAB)

Ministers

Dermot Ahern T.D., Minister for Justice, Equality and Law Reform (*ex officio*)
Barry Andrews T.D., Minister of State for Children and Youth Affairs (*ex officio*)

**JOINT COMMITTEE ON THE
CONSTITUTIONAL AMENDMENT ON CHILDREN**

Deputies



Áine Brady (FF)



Thomas Byrne (FF)



Dara Calleary (FF)



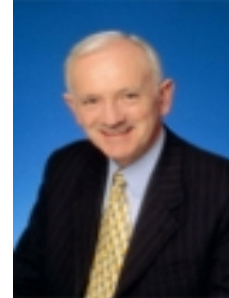
Olwyn Enright (FG)



Paul Gogarty (GP)



Brendan Howlin (LAB)



Dan Neville (FG)



Michael Noonan (FG)



Caoimhghín Ó Caoláin (SF)



Seán Ó Fearghail (FF)



Mary O'Rourke (FF)



Alan Shatter (FG)



Michael Woods (FF)

**JOINT COMMITTEE ON THE
CONSTITUTIONAL AMENDMENT ON CHILDREN**

Senators



Maria Corrigan (FF) Geraldine Feeney (FF) Frances Fitzgerald (FG) Alex White (LAB)

Ministers



Dermot Ahern T.D.

Minister for Justice,
Equality and Law
Reform (*ex officio*)

Barry Andrews T.D.

Minister of State for
Children and Youth
Affairs (*ex officio*)