

**DRAFT CHILDRENS FIRST BILL 2012**

**HEADS AND GENERAL SCHEME**

**PRELIMINARY OBSERVATIONS TO THE**

**JOINT COMMITTEE ON HEALTH AND CHILDREN**

**TEACHERS’ UNION OF IRELAND (TUI)**

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**Preliminary Observations to the Joint Committee on Health and Children**

**Teachers’ Union of Ireland (TUI)**

**(Please Note: Reference to schools in this document includes other education settings in which TUI members work e.g. Youthreach. Reference to principal teacher includes the manager or co-ordinator in such settings)**

**Introduction**

Findings from a number of research reports (government and non-government) over the past number of years highlight how Irish society has failed to adequately protect all children and young people and draw sharp attention to alarming issues of system capacity and credibility. Therefore, government effort to strengthen the legislative base in this area is long overdue and provides an opportunity to build confidence in the system as a whole and create a foundation for adequate structures and resourcing.

As an organisation that represents those in constant contact with and who have a duty of care to young people in post-primary schools and other education settings, TUI is well aware of the importance of clear and comprehensive guidance in respect of child welfare and protection. To this end, it has engaged extensively with the Department of Education and Skills (DES) and other education partners in the design of *Child Protection Procedures for Primary and Post-Primary Schools* which have been activated by the DES circular 0065/2011 and is available at [www.education.ie](http://www.education.ie). In addition, it has consistently highlighted the importance of relevant training, support and resources for schools to enable them meet their obligations to children and young people.

TUI welcomes the heightened focus on the rights, welfare and protection of children and is fully supportive of government effort to improve and expand legislative provision in this area. Such legislation must be fit-for-purpose, responsive and instil confidence among those affected, including those charged with responsibility for implementing and monitoring.

While supporting the broad principles espoused by the Draft Children First Bill and acknowledging the urgency of bringing adequate legislation forward as soon as is practicably possible, TUI has concerns about a number of the provisions under the Draft Heads of Bill. It therefore values the opportunity to address the Joint Committee on Health and Children and to observations at this stage. These are presented below under the following headings:

* **Policy Alignment, Definitions and Interpretation**
* **Aim and Principles**
* **Resources**
* **Organisations Comprehended**
* **Roles, Responsibilities and Duties**
* **Reporting**
* **Implementation by Government Departments**

**Policy Alignment, Definitions and Interpretation**

The forthcoming legislation is intended to underpin the *Children First: National Guidance for the Protection and Welfare of Children (2011)* and the Draft Bill emphasises integration and co-ordination across government departments and agencies. A close relationship with other policy contexts and documentation (e.g. Childcare Act and Regulations, Garda Vetting, Data Protection) is assumed and overlap in the suite of documentation, guidelines and legislation that will be relevant to child welfare and protection is inevitable. Alignment of policy and clarity of message is essential. Therefore, definitions and language used and references to general policies and functions of various agencies and organisations must provide coherence.

Discrepancies and inconsistencies are obvious, perhaps inevitably, at this early stage of designing the new legislation. Proofing is necessary to avoid confusion and lack of clarity which, unresolved, will be most unhelpful at implementation stage. Examples include:

* Emotional abuse is not included in the Heads but is included in the Children First Guidance document (2011) (Head 2). There is a risk that this omission will diminish attention to emotional abuse which would be regrettable. On the other hand TUI notes the complexity of emotional abuse and its identification and emphasises the need for appropriate support and training to guide those working with children and young people in this regard.
* Some terms are ambiguous e.g. ‘concern’ means information which would lead a person to suspect that a child is being abused. This is not very helpful and fails to provide the necessary clarity to those who may be reporting abuse (Head 2).
* Head 9 indicates that reports will be made in writing to the HSE. However, under the Children First Guidance reports can be made in writing, by phone or in person.
* Under the heads of bill a Designated Officer is to maintain all relevant records but the relationship with Data Protection requirements must be clarified (Head 9 and 18).
* There is a clear overlap in function and requirements under the Childcare Act and regulations, the Children First Guidance and associated agreed procedures, Garda Vetting, Data Protection and the forthcoming legislation. There are also numerous references to the role of a number of agencies and the policy documents and guidelines they may issue. This calls for clarity in respect of recording and reporting approaches and assignment of general functions to agencies, organisations or individuals. Duplication of administrative effort must be minimised where possible.
* There is explicit reference in a number of sections (e.g. Head 7) to titles of new guidelines and documents that have not yet been designed, much less agreed. This is inadvisable. At this stage and in base legislation references need to be kept general.
* TUI advises further clarification as to what ‘organisation’ refers to in the Draft Bill e.g. it is understood it includes schools under the direction of a board of management. However, in the case of schools under the management of a VEC does it refer to the VEC or the school or both? The importance of the clarity rests in how users will perceive and interpret their role and function.

**Aim and Principles**

Teachers and principal teachers work in the best interests of and seek to ensure the well-being of children and young people. They recognise their duty of care as central. They are committed to working in a professional and ethical manner in managing their day-to-day relationship with their students. Moreover, they are guided by the Code of Professional Conduct adopted and issued by the Teaching Council. In this regard, TUI broadly embraces the aim and principles espoused in the Draft Bill. However, it considers that the child and young person could be more holistically and centrally positioned in future legislation e.g. while the current bill focuses on protection and welfare there could be a more explicit acknowledgement of the broader interests of children and young people and the importance of their voice being heard, including a representative voice where appropriate.

TUI is committed to strong and comprehensive legislation to protect children and young people. Nevertheless it has some reservations about mandatory reporting and the proposed penalties for non-reporting (see section below on reporting).

**Resources**

TUI has consistently highlighted the need for adequate resources to enable schools and teachers deliver on their responsibilities with regard to child welfare and protection. In this regard it draws attention to the *Education for Persons with Special Education Needs (EPSEN) Act, 2004*. This sought to ensure adequate provision for those with special educational needs with a particular focus on inclusion in mainstream schools and classes. However, following budget decisions since 2008 it is clear resourcing for full implementation is not available. Therefore, some of the commitments stated and implied in Act are unachievable and merit review. Further iterations of the Children First Bill must be guided by a realistic, and measured approach to what can be resourced in the current context and short-term future.

All teachers, including principal teachers must have access to both appropriate professional development to enhance their knowledge and expertise and to external support as necessary. This will enable them direct their attention, depending on role, in a timely and effective manner to supporting young people whom they believe to be suffering abuse or consider being at risk of abuse.

All schools have lost a number of teaching and middle management posts since 2008 resulting in considerable difficulty in meeting their day-to-day responsibilities and significantly diminished capacity to undertake any new or additional work. The union is concerned that the provisions of the Draft Bill will place teachers and principal teachers in an invidious position especially with regard to organising policy development and training, reporting requirements and approaches, investigations, compliance and the potential for a criminal offence (Heads 7, 9, 10, 11 and 20).

TUI has particular concerns about the expanded and more demanding role of the Designated Officer which will, in most cases, fall to the principal or deputy principal teacher. An internal TUI survey (2012) indicated that these managers have seen their workload increase very significantly since 2008 (between 10 and 15 hours a week in most cases) as they struggle to compensate for the reduced teacher numbers and middle management posts. In addition, TUI members report that the withdrawal of the ex-quota allocation for the provision of guidance and counselling, which is due for implementation from September 2012, will have a further severe impact on how schools operate and provide essential support to students.

Head 4 addresses the issue of expenses but confines itself to expenses incurred by the Minister in the administration of the Bill. This may be normal practice but forthcoming legislation should acknowledge that the administration and implementation of any new legislation will place significant, if varying demands, on all those who will be involved in implementation. TUI believes there should be formal and explicit provision made for implementation resources across the range of organisations comprehended by the Draft Bill to enable them deliver on their responsibilities to the children and young people under their care and supervision and to their staff.

**Organisations Comprehended**

* ***Organisations and people comprehended***

Protection of all children and young people must be central, irrespective of setting, and the inclusion of a wide range of organisations in the Draft Bill is welcome and supported. However, TUI shares concern with others that the Bill appears to exclude a range of out-of- school contexts and the majority of child minders (Head 6). In an effort to ensure that the best interests of all children and young people are served by any new legislation, it advises further consideration of this issue.

**Roles, Responsibilities and Duties**

TUI accepts that many of the duties and roles addressed in the Draft Bill are already understood and comprehended under *Children First Guidance* and specific guidelines such as the *Child Protection Procedures for Primary and Post-Primary Schools (DES).* Notwithstanding, a number of issues arise.

The Draft Bill proposes that organisations will be required to prepare, update and implement a *Keeping Children Safe Plan* (Head 6, 7 and 9) based on guidance documents from government agencies and departments. This reflects inconsistency with the language and titles used in the DES document for schools.  In addition, the tasks and work involved appear to be more onerous and demanding, both legally and administratively. As noted earlier consistency of message and interpretation is vital. Furthermore, resource needs must be acknowledged and provided for; otherwise system capacity will continue to fail children and young people.

* ***Designated Officer***

TUI notes with concern the emergence of the role of Designated Officer (who may delegate responsibility to another) as opposed to Designate Liaison Person (Head 9).Thedescription of their role implies a significantly higher level of work and responsibility than in the past. In particular, TUI highlights the proposed role in:

* + assisting employees or volunteers make and provide a written report
  + overseeing implementation of organisation policies (recruitment, vetting, training) and safeguarding measures as per guidance from the HSE and DCYA
  + developing protocols for reporting
  + co-operating with the HSE (attendance at meetings, participating in investigations, providing information)
  + appointing internal auditors to conduct an annual audit.

Reference to co-operation with other Designated Officers is unclear and, therefore, also of concern.

The expanded function and role and, therefore, responsibility of those acting as Designated Officer will inevitability fall to the principal or deputy principal teacher as they hold the staff supervisory role in schools. In addition, sanctions will apply where the Designated Officer fails to comply with safeguarding or reporting obligations and could lead to a criminal charge (see note below under reporting). The tasks associated with their function and role may be fully merited and necessary to protect children and young people but they are undoubtedly more onerous. Therefore, they will add to an already very demanding list of responsibilities for senior management and other staff in schools. Members of Boards of Management who are primarily volunteers will also be affected.

TUI representing over 15,000 teachers and lecturers respects the rights of children and young people and seeks always to vindicate those rights. However, those acting in the role of Designated Officer and others involved in implementation will not be able to deliver on their function and responsibilities without adequate resources and ready access to a sufficient level of external support. This is especially an issue given the consequences of budget decisions since 2008 including the reduction in teacher numbers, the decimation of middle management structures, the withdrawal of ex-quota provision for guidance and counselling and the contraction of the Professional Development Support for Teachers (PDST) which will inevitably be charged with the function of supporting schools and teachers in this area.

* ***Role of HSE***

The HSE is to provide information and promote public awareness in regard to child welfare and protection. It is reasonable, appropriate and necessary that one agency should have core responsibility for ensuring that the public is adequately informed. However, TUI emphasises that care must be taken to avoid the emergence of unrealistic expectations of organisations or individuals. It is also proposed that the HSE will develop guidelines and publish best practise guidance (Head 6 and 12). While supporting the need for strong guidance and agreed guidelines (as noted earlier) TUI considers that these should ensure a coherent approach. To that end it believes they must be developed in partnership with the organisations comprehended by the Draft Bill and representatives bodies, such as teacher unions.

Under their duty of care function it is envisaged that the HSE will have the power to examine organisations, establish compliance, identify breaches in implementing legislation and take action in this regard (Head 12 and 13).  In most cases this will not result in major issues. However, arising from a HSE inspection some schools or other education setting may be required to set out an improvement plan. TUI notes that such requirements may put staff under considerable pressure in given the time and expertise involved. Furthermore, there is a risk that HSE staff time will be diverted, leading to delays in addressing individual cases. This further accentuates the need for the forthcoming legislation to make explicit reference to resource requirements across agencies and organisations.

TUI welcomes the proposal that the HSE will have to appoint a person or persons (Head 13) to manage the administration of HSE child protections obligations and put in place a system to facilitate reporting and to deal with reports. Deficits in this area in the past led to unhelpful delays in responses and lack of timely ‘and in some cases any’ feedback to those making reports. To instil confidence in and commitment to a new system this must be avoided into the future.

* ***National Guidance/Guidelines***

Comprehensive national guidance underpinned by clear, coherent messages is essential for effective implementation by organisations and individuals. Reference to the development of generic guidelines and guidance by a number of Departments and agencies under Heads 9 and 15 (e.g. HSE, DCYA) is noted. However, there must be consistency of message and interpretation and clarity of relationship between policies and guidelines developed by others e.g. the DES procedures for schools referred to earlier. Any new legislation should make this very explicit. Otherwise confusion will prevail making it difficult for practitioners to support children and young people. As already stated, TUI believes that teacher organisations and other stakeholders should be involved in designing the general and sectoral specific guidance and/or guidelines.

**Reporting**

* ***Criteria***

The criteria set out under Head 16 make provision for reporting to HSE or Gardaí as soon as possible. They do not include provision for those against whom an allegation or complaint of abuse is made to be advised or informed. In the interest of justice and in order to ensure fair and due process TUI considers that a person should have a legal entitlement to be informed of a complaint against them. Provision for this should be enshrined in the forthcoming legislation.  This would be in keeping with existing practice as set out in current guidelines.

* ***Who will make reports?***

The Draft Bill (Heads 10 and 11) gives strong direction on the onus of employees and volunteers in a range of contexts in respect of reporting. However, there may need to be some revision to include certain categories of staff e.g. contract staff with the State Examinations Commission who will be in schools for a limited period of time but are not volunteers or employees of the school. This could also give rise to a possible gap in the reporting systems and relationships set out in the Draft Bill. TUI also question the rationale for or validity of referring to staff with a FETAC Level 7 award (Schedule 1) as this is not the uniform qualification of all those working in the early education and childcare sector.

* ***Mandatory reporting***

Mandatory reporting by Designated Officers, employees and volunteers (Heads 9, 10, 11) is envisaged. This is a significant new direction. Head 20 states it will be an offence not to report with labour legislation and significant penalties being applied as relevant e.g.

* On summary conviction, a class A fine and/or imprisonment up to 12 months
* On conviction on indictment, a fine and/or imprisonment up to 5 years.

TUI notes that some jurisdictions where mandatory reporting and penalties apply have expressed concerns about the high proportion of cases reported that later emerge as ‘invalid’. Fear of committing a criminal offence could drive up the number of reports e.g. individuals may make reports although they are not convinced of the existence of, or risk of, abuse. This could be problematic. A resultant high number of reports could deflect limited staff time and expertise from individual cases that require immediate and urgent attention. ‘Invalid’ or false reports also have enormous potential to cause significant levels of distress to the individuals involved and considerable damage to professionals such as teachers.

In extreme circumstances the application of penalties for non-reporting may be justified but in many cases it may prove too harsh for the circumstances and context. TUI believes that the language used should ensure that non-reporting will only be pursued and deemed an offence in situations where a person has clearly and wilfully not reported a situation of abuse or where they have been demonstrably negligent in the discharge of their duties.  In this regard, TUI advises that reasonable excuse needs further clarification and explication?

The Draft Bill indicates that the while the HSE will provide guidance and advise service this cannot be used as a defence not to report (Head 12). TUI notes again that provision for adequate training and resources need to be enshrined in the legislation to enable schools deliver on their functions in a competent, effective manner.

* ***Reports made by Department of Education and Skills to the HSE***

TUI is aware that DES personnel on receipt of a complaint, in accordance with their internal guidelines, make a report immediately to the HSE. No deliberative judgement is exercised or further information sought resulting, in some instances, in spurious complaints being the subject of a report to the HSE. Unfortunately there is no mechanism for the report with the HSE to be expunged or the teacher’s good name upheld, even where the allegation is shown to be false, inaccurate or mischievous. This is a source of considerable distress and anxiety to the teachers affected. While TUI accepts that this not the focus of this Draft Bill it advises consideration be given to including some mechanism that makes it mandatory for people to make reports in the first instance to the Designated Officer in the local organisation/school (except where the compliant is against the Designated Officer).

**Implementation by Government Departments**

TUI endorses the intention to seek details from government departments of implementation (Head 19). A well-planned approach is critical from a number of perspectives – the system, organisations and their staff (management, employees, and volunteers) and, most importantly, children and young people. Shared information and co-operation is essential to promote a co-ordinated and integrated approach and service. In this regard, TUI is disappointed that the section primarily focuses on the collection of statistical information and records and advises that it be more comprehensive in nature with due reference to and commitment to resourcing.

***In summary:***

* TUI welcomes government effort to improve and expand the legislative framework in respect of child welfare and protection
* It advises greater attention to ensuring consistency of language, definitions and coherence of policy across all the relevant policy documents, legislation and guidelines
* It is concerned about the expanded nature of functions, roles and responsibilities for teachers, principal teachers and others in the school/education centre community and emphasises the need for comprehensive support at a number of levels to include training and guidance and access to an appropriate level of external support.
* TUI is concerned and extremely disappointed that there is little formal recognition of the resources necessary to support implementation and believes it will not be possible to serve the best interest of all children and young people if schools are not enabled to re-build and develop capacity that has been significantly diminished in the wake of budget cuts since 2008.

End.