

## **INTO Submission on Children First Bill 2012**

### **Introduction**

The INTO welcomes and thanks the Joint Oireachtas Committee on Health and Children for this invitation to discuss the Children First Bill 2012. In addition the INTO welcomes the publication of this Bill to strengthen the protection afforded to children by the state. Indeed INTO strongly supports any measures which strengthen the protections afforded to children and children's rights and specifically compliance with Children First. The Organisation has a strong and proud tradition in the protection of children as evidenced, for example, in our participation in and contribution to the working group which reviewed and published the Department of Education and Skills Child Protection Guidelines for Schools in 2011 – DES Circular 65/2011. These guidelines which are based on the revised *Children First: National Guidance for the Protection and Welfare of Children* (henceforth to be referred to as CF Guidelines), update the 2001 Department guidelines and provide a solid guidance for how schools deal with child protection issues. We also fully supported the development and implementation of the *Stay Safe* programme in schools since 1987. In addition teachers have participated in all available training and CPD in the area of child protection. In this regard the Primary Development Service for Teachers (PDST) has confirmed that over the last school year – 2011/'12 there were 44 full day child protection seminars for newly appointed Designated Liaison Persons (DLPs) and 36 information sessions for other DLPs on the new 2011 procedures. Approximately 2000 primary school DLPs and/or Deputy DLPs attended those sessions. In addition to that over 600 primary schools availed of in school support sessions on child protection offered by the Child Abuse Prevention Programme (CAPP) now operating under the PDST.

In relation to the matter of reporting, the 2001 guidelines for schools stated that it was “*incumbent*” on teachers and schools to adhere to them and this is precisely what occurred. The revised 2011 guidelines state that “*All Boards of Management are now required to formally adopt and implement these procedures....*”. This formal obligation is entirely consistent with the provisions of this new Children First 2012 Bill since the guidelines applicable to schools are tightly based on CF Guidelines. Thus, INTO members are well aware of their responsibilities and have been fulfilling those diligently.

Having set out our broad view, INTO has a number of specific concerns mainly about practical matters and specifically some significant contradictions between the proposals in the Bill and *Children First* itself, which has just been reviewed in 2011. In this regard Head 5 of the Bill places a statutory obligation on organizations and employees when reporting child abuse to “*have due regard to Children First....*” whilst at the same time other heads of the Bill, for example, heads 7 and 9 substantially differ and vary from the national CF Guidelines. We submit that this inherent contradiction in the Bill must be resolved before publication in the interests of children and the efficacy of the reporting structures overall. Our concerns in this regard include:

**Definitions** - The definitions of neglect, physical abuse and sexual abuse are inconsistent with those in the *Children First* guidelines. While the primary definition of neglect itself is broadly the same in both the CF Guidelines and the Bill, in the CF Guidelines harm is defined, at 2.2.2 in addition to the definition on neglect. Also at 2.2.3 there is a clarification on how neglect generally becomes apparent. Furthermore, at 2.2.4 it is stated that 'The threshold of significant harm is reached when the child's needs are neglected to the extent that his or her well-being and/or development are severely affected.' This is an important indicator for those who must decide to report or not to report concerns that they have.

The definition of physical abuse in the Bill varies substantially from that in the CF Guidelines. The definition in the Guidelines extends to 'potential physical harm from an interaction...' and also includes lack of interaction in the definition of physical abuse. However, it also incorporates the clause that the interaction or lack of interaction must be 'reasonably within the control of a parent or person in a position of responsibility, power or trust.' This clause is omitted from the definition in the Children First Bill. The CF Guidelines also state that 'There may be single or repeated incidents.' and adds to the definition by explicitly listing eleven potential forms of physical abuse. While the general guidance for recognition outlined in the Bill is helpful, the absence of detail from the definitions is not helpful in giving volunteers, Mandated Professionals and Designated Officers the knowledge and confidence to identify and report abuse.

There are similarly noteworthy discrepancies between the Bill and the guidelines in defining sexual abuse. In addition, emotional abuse has been excluded entirely from the definitions of abuse in the Bill. We are concerned that lack of clarity around the definition of abuse may make it difficult for schools and teachers to confidently identify and report abuse. Clarity in relation to definitions is essential in order to ensure consistency in relation to implementation across the spectrum....including across over 3,000 primary schools.

- **Schools as Organisations** - Schools play an important role in children's lives and therefore it is right and proper that they are included in the full scope of the Bill in accordance with Head 6 and INTO fully supports this. In respect of what is expected of schools we wish to put the following to you:
  - Head 7 – specifies considerable additional responsibilities which have not been either specified or required heretofore by CF Guidelines and it is not clear whether these are necessary and will assist further in the protection of children. For example, there are 3 documents mentioned, namely the *Keeping Children Safe Plan*, the *Safeguarding Guidance for Organizations* and the *Guidance for the Reporting of Abuse*. It is important that when they are published that these documents will either dovetail with or add to existing required practices in schools in relation to identifying potential abuse and making referrals. We are concerned that the requirements to establish and comply with these plans takes no account of the present system which obliges schools to have child protection policies pursuant to CF Guidelines and are also obliged to regularly report to the Board of Management. The same applies in relation to our concerns about the practicality of the proposed internal audit committee within the current structures in primary schools;

- INTO has significant concerns that the additional responsibilities and duties specified in the Bill are more appropriate to large organizations and are not consistent with the reality of how schools operate. As you are no doubt aware there are 3165 primary schools, 45.9%<sup>1</sup> of which have less than one hundred pupils. These schools are managed by boards of management who give their time on a voluntary basis and who possess varying levels of expertise. Also in 62%<sup>2</sup> of schools the day-to-day management is carried out by a teaching principal. The additional responsibilities on organisations set out in the Bill will place huge demands on school management, principals and teachers and we have significant concerns about capacity in this regard, particularly considering the current moratorium on appointments to Assistant Principal and Special Duties Posts. Accordingly we would recommend that Head 7 be altered to ensure that the objective of achieving effective reporting systems are consistent with *Children First* and with the practicalities affecting the daily operation of schools. It is incumbent on us all to ensure that the proposed changes to *Children First* really will make a difference and that any additional duties and responsibilities as may eventually be enacted, will in reality improve matters at local level.
- Head 9 - The proposed role of the Designated Officer substantially departs from and expands upon the role of the Designated Liaison Person in the *Children First* guidelines. We would have considerable concerns about this and do not believe that this proposed change is in the best interests of children. Consistent with *Children First*, DES Circular 65/'11 provides that "*It is not the responsibility of school personnel to assess or investigate or to make enquiries of parent/carers, and in some cases it could be counter-productive for them to do so...*". This approach, which was twice endorsed in the national guidelines *Children First*, is at variance to the proposal at Head 9 that the Designated Officer should "*assist.....and participate*" in the assessment of risk and in the investigation of allegations of abuse. It is our view that expanding a school's role to include investigation would jeopardise the unique position of trust which schools hold within a community. Also it has been consistently impressed upon us by the HSE, that assessment of risk and investigation require specialised expertise and training. Furthermore, assessment of risk and investigation necessitate the specific authority and power assigned to social workers to, for example, enter a family home, interview other personnel and parents. In all the circumstances we would ask that the contents of Head 9 be reviewed and re-drafted in the interests of all concerned.

Also we would query where the balance of responsibility would fall between the principal, as the Designated Officer, and the Board of Management as the Organisation.

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<sup>1</sup> Department of Education and Skills Statistical Report 2010/2011

<sup>2</sup> Department of Education and Skills Statistical Report 2010/2011

### **Statutory Reporting**

The designation of registered teachers as professionals statutorily charged with reporting child abuse (we assume not just Teaching Council members as set out in Schedule 1 of the Bill) is a notable new development. Under Head 20 such a person who fails to report, without reasonable cause, concerns or allegations of child abuse is guilty of an offence. The INTO fully supports placing reporting and investigation of child protection concerns and allegations on a statutory footing. However, we would call upon the Committee to clarify the circumstances in which sanctions in Head 20 would be apportioned. We strongly suggest that the proposed legislation would be consistent with the spirit of the Criminal Justice Act 2006, Section 176 whereby an offence is committed if:

‘A person, having authority or control over a child or abuser, who intentionally or recklessly endangers a child by –

- a) causing or permitting any child to be placed or left in a situation which creates a substantial risk to the child of being a victim of serious harm or sexual abuse, or
- b) failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation.’

### **Health Service Executive**

Head 12 sets out greatly expanded responsibilities for the HSE in the provision of advice and information and the promotion of best practice. Heads 13 and 14 deal with monitoring of organisations by the HSE. This is in addition to responsibilities outlined in relation to dealing with reports in accordance with section 3 of the Childcare Act 1991. We are concerned that this is inconsistent with Minister Frances Fitzgerald’s announcement on May 10<sup>th</sup> 2012 that a new standalone child and family support agency will take over responsibility for child protection and from the Health Service Executive early next year.

### **Unpublished Documents**

While we believe the as yet unpublished documents referred to in the *Children First Bill 2012*, namely *Guidance for the Reporting of Abuse* and *Safeguarding Guidance for Organisations*, could be very useful, we would insist upon them being practical and workable. Therefore, it would be important to ensure that INTO and all other relevant parties would have input into their development through a working group.

### **Resources, Support and Training**

In order to comprehensively adhere effectively to all elements of the *Children First Bill 2012* it is essential that whole staff training and support should be provided for every school in Ireland.

INTO, once again, would like to put on the record their absolute of our members to the protection of children.