



CHURCH of IRELAND GENERAL SYNOD
CHURCH in SOCIETY COMMITTEE
Legislation & Politics Sub-Committee (RI)

**Submission to the Joint Committee on the Constitutional Amendment on
Children**

Introduction

The Church in Society Committee of the General Synod of the Church of Ireland seeks to identify, contribute to, challenge and develop areas of living today where the mission of the Church can be active and the love of God shared. It does so by seeking an informed understanding of the societies in which we live and aims as much to listen as to speak and to be informative and practical in the fruit of its work. The sub-groups of the Church in Society Committee are authorized to issue statements and reports in their own names. The following submission has been produced by the Legislation and Political (RI) sub-group and will be presented to the Church of Ireland General Synod.

This document has been submitted at this point to meet the deadline as set out by the Joint Committee on the Constitutional Amendment on Children. However, as this is an ongoing discussion, both within and without the Church, we would consider this an interim response and we would like to reserve the right to contribute further on this issue at a later date. The passage or non-passage of the European Union Reform Treaty, for example, would have a critical bearing on the opinion of the Sub-Committee as to whether the Constitutional amendment on children is adequate. Additionally, the Sub-Committee would welcome the opportunity of consultation on any proposed legislation that might emerge on foot of a ratified amendment as it is in the detail that the concerns of the Church come into sharpest focus.

The European Dimension

There is still much confusion as to whether the proposed referenda on the European Union Reform Treaty and the proposed amendment on children are to be held separately or concurrently. Clarification on this matter would be welcomed by the Sub-Committee as the Treaty is relevant to the debate on the rights of the child. The Charter of Fundamental Rights of the European Union, which the Treaty will afford “the same legal value as the Treaties”¹, includes the following rights for children:

¹ Article 1.8, *Draft Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community*.

Article 24 of the Charter

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Many of the aspirations expressed in previous submissions by the Church of Ireland and this Sub-Committee, as they relate to the rights of the child, would be met in the Republic of Ireland by the implementation of this Article. However, without its implementation the draft amendment to *Bunreacht na hÉireann* would be insufficient in our view on several counts. Obviously, the success or failure of the Reform Treaty will determine our opinion on the adequacy of the Constitutional amendment; indeed a question arises as to whether a final and full judgement on the Constitutional amendment is possible at all without knowing first the fate of that same Treaty.

Welcome Components of the Proposed Draft

The Sub-Committee welcomes section 5.1° of the proposed draft, which will allow for the formulating of laws permitting the collection and sharing of “soft intelligence” for the purpose of child protection. There is a weakness in the current vetting process in that it relates to convictions and not to those areas where there may be a reasonable suspicion that someone is inappropriate to work with children. We are aware that the sharing of soft intelligence may seem unfair as it allows for a decision without the due process of a trial and conviction, but we feel that such considerations must be balanced by the reality that it may actually deter individuals who might otherwise be tempted to commit an offence against a child.

Similarly, the Sub-Committee welcomes the section 5.2° of the proposed draft, which will allow for legislation permitting the reintroduction of absolute or strict liability for offences “committed against or in connection with a child under 18 years of age.” While this gives the Oireachtas wide-ranging scope to legislate for the protection of children, both from older predators and from themselves, the Sub-Committee appreciates that such broad terms are necessary for such issues and the Constitution is not the place to delineate the details further on this matter. However, any legislation emerging on foot of such an amendment will have to be considered most carefully as it is an immensely important and delicate balancing act. The Sub-Committee would like to express in the strongest terms its opinion that further consultation should be provided for on any legislation re-drawing the terms of the Criminal Law (Sexual Offences) Act 2006.

Points of Concern in the Proposed Draft

Section 4 of the proposed draft raises several issues of concern for the Sub-Committee. While efforts to give the best interests of a child their due weight of consideration in determining action in relation to that child is welcome, the limited scope of this section- it only applies to court proceedings- raises some questions over the adequacy of this reform. Similarly, we are concerned that the implied reforms provided for in this section will only be applied if legislation requires it, and under the terms of the proposed draft the Oireachtas will be under no obligation to pass such legislation. Given that legislative reform is still pending on the Constitutional amendment of 1979 on Seanad Éireann, the Sub-Committee believes that a more instructive choice of wording would be desirable. Towards this end, it is our view that the Constitutional amendment on children should oblige the legislature to prioritise, as a primary consideration, the best interests of a child in actions relating to that child. As referred to above, this aspiration might be realised through the European Union Reform Treaty. However, in the absence of surety on this issue the Sub-Committee cannot consider section 4 of the proposed amendment to be adequate, either in the scope of its prescription or in the force of its instruction.

Finally, the Sub-Committee has detected some variation in the rate of consensus that exists on certain parts of this amendment. We would not be adverse to suggestions that section 5.2^o be decoupled from the rest of the amendment so that a referendum to provide for the re-instatement of absolute or strict liability for offences committed against or in connection to a child could be held alongside the European Union Reform Treaty, leaving more contentious parts of the amendment to be further deliberated upon with a later polling date for the final draft of the remainder of the proposed amendment.