

## Annex 3

### Screening Regulatory Impact Assessment

#### 1.

##### **(i) Description of policy context**

In October 2004, Government endorsed proposals from the Minister for Justice, Equality and Law Reform to examine the scope for rationalising and restructuring the delivery of the State's services in the area of youth justice, in accordance with the new legal basis provided in the Children Act 2001 (Government decision S29802).

An internal project team in the Department of Justice, Equality and Law Reform conducted the examination and produced a report which was submitted to the Cabinet Subcommittee on Social Inclusion in June 2005. The report set out a number of recommendations including the establishment on a non-statutory basis of a new Youth Justice Service, as an executive office of the Department, which would bring together responsibility for all policy and services for young offenders

##### **(ii) Statement of Objectives**

The primary objective of the proposed regulations is to realign the State structures in place in respect of the detention of children. A number of additional proposals are intended to improve protections for children who become involved in the criminal justice system and to address other youth justice matters.

These proposals include replacing the age of criminal responsibility with a statutory provision under which children below 12 years of age cannot be charged with offences and providing for the introduction of ASBOs for those under 18.

##### **(iii) Options Examined**

Three options were examined:

- (1) Maintain the status quo
- (2) Establish a non-statutory coordinating body and introduce new legislation to provide for the transfer of key responsibilities to a single Department.
- (3) Establish a new body with statutory responsibility for all youth justice matters and provide for the necessary legislative changes.

#### 2. Evaluation of options

##### **(i) Cost implications**

Option 1 - Maintaining the status quo

There are no cost implications for this option.

#### Option 2 - Non-statutory body and regulations to realign functions

In this option, the principal effect of regulations would be the realignment of existing responsibilities. Most of the required legislative amendments concern the transfer of detention schools to the Minister for Justice, Equality and Law Reform and the integration of 16 and 17 year old children into this structure. N.B. There would be no resulting cost implications.

Prosecutions of children under the age of 14 exclusively by the DPP, changes to the options available to the courts and sentencing provisions should each have few or no cost implications as the number of children involved is low and the changes not very significant. In 2004, 1,593 children appeared before the Dublin Children's Court (which hears the majority of cases against children) and fewer than 50 of these were under the age of 14. Only 222 children were sentenced to a custodial sanction.

Changes to the inspection provisions will allow an existing body, the Social Services Inspectorate, to conduct inspections. Providing for an existing body to carry out this job, rather than appointing a new body/ inspector, is likely to be a more cost effective option.

It is proposed to amend provisions of the Children Act 2001 relating to the age of criminal responsibility. The age of criminal responsibility is currently 7 years of age. However, the Children Act 2001 provides for an increase in the age to 12. This provision has not yet been commenced as it is considered that in some instances a Garda intervention for children aged 10 and 11 who engage in behaviour that but for their age would constitute offences would be desirable.

The proposed amendments abolish the common law rule concerning the age of criminal responsibility and replace it with a statutory provision under which children below 12 years of age cannot be charged with offences. The most serious offences will be exempted and 10 and 11 year olds may be prosecuted for murder, manslaughter, rape and aggravated sexual assault. The amendments also provide for 10 and 11 year olds to be admitted to the Garda Diversion Programme.

Cost implications for these changes should be negligible. At present children aged 10 and 11 go into the Diversion Programme and they will continue to do so under the new arrangements. The number of children aged between 7 and 10 in the Diversion Programme in 2004 was just 263. These children, under the new arrangements, will be taken home to their parents, or where care and protection issues arise they will be referred to the Health Service Executive. The child's care and social service needs would remain the same whether or not the child receives a Garda intervention in respect of his/ her offending behaviour, therefore no additional cost implications arise.

### Option 3 - Establish a statutory Youth Justice Agency and resulting legislation

This option would establish a new Youth Justice Service on a statutory basis. The same legislative requirements as in option 2 would also apply here. In addition, new legislation would be required to establish the agency and set down its functions in law. This new legislation would also need to transfer other functions which currently reside in the Department of Justice, Equality and Law Reform into the new Agency.

The cost implications would depend on the details of staff and resources transferred to the new organisation. All existing youth justice related functions, including detention and probation would transfer to the new organisation. While the relevant staff and resources would also transfer, additional staff would be required, for example in probation where regional staff cover both adult and youth clients. The agency would need to provide a national service, so would require a regional presence. There would also be set up costs for the new body.

In summary, this option involves the establishment of a new state body and would give rise to additional costs.

#### **(ii) Benefits**

##### Option 1 - Maintain the status quo

No benefits accrue from this option.

##### Option 2 - Non-statutory body and regulations to realign functions

The transfer of responsibility for the detention schools from the Department of Education and Science to the Department of Justice, Equality and Law Reform will reduce the number of Departments involved and facilitate the establishment, on a non-statutory basis, of a Youth Justice Service which will be well placed to provide the leadership and coordination needed in the sector. It is anticipated that this Service will ultimately result in a more flexible system which will better deliver services to children in trouble. The additional provisions provided for in these proposals are designed to improve protections for children who become involved in the criminal justice system and can only be achieved through legislative changes.

##### Option 3 - Establish a statutory Youth Justice Agency and resulting legislation

This option should result in similar leadership and coordination benefits as option 2 above. In addition, the Agency would be supported in its objectives by its statutory status, giving it a stronger position in its interactions with other organisations. However, this independence would make it more difficult to react to changing situations in youth justice in the future and inevitably result in duplication of services currently provided by existing bodies such as An Garda Síochána, Probation and Welfare Service and the Courts, among others.

- (iii) Verification that there will not be disproportionately negative impacts on:**
  - (a) national competitiveness**
  - (b) the socially excluded or vulnerable groups**
  - (c) the environment****and that the regulations do not**
  - (d) involve a significant policy change in an economic market**
  - (e) impinge disproportionately on the rights of the citizen**
  - (f) impose a disproportionate compliance burden on third parties**

None of the options considered will have disproportionately negative impacts on any of the above.

**(iv) Summary of costs, benefits and impacts of each option identified in 1 identifying preferred option.**

The key objective of the proposed regulations is to realign State structures in the area of youth justice to bring together responsibilities in a single Department. Both options 2 and 3 will meet this objective. As option 2, which proposes to create a single responsible Service on a non-statutory basis, achieves the objective with the greatest benefits and fewest regulatory and cost implications, it is the recommended option.

**3. Consultation**

Consultation was carried out in the context of the youth justice project team review. Consultations took place with all departments and statutory bodies with an interest in youth justice matters. In addition, a wide range of non-statutory, voluntary and community organisations were consulted and a public consultation process, advertised in the national newspapers, was undertaken. The views of children were also sought during the process.

**4. Enforcement and compliance**

There are no significant enforcement or compliance costs as legislation refers primarily to changes to state structures which can be achieved with minimal cost and imposes no compliance requirements on other organisations or members of the public.

**5. Review**

Performance indicators could include:

- (i) A national youth justice policy is in place within twelve months of the establishment of a Youth Justice Service.**
- (ii) All state agencies delivering services to offending children coordinate their services through the Youth Justice Service.**
- (iii) The detention provisions of the Children Act 2001 are commenced.**

**6. Conclusion**

Option 2 - the establishment of a non-statutory Youth Justice Service and the regulatory changes required to effect the associated transfer of responsibilities is recommended as the most appropriate method at this time in which to achieve the objectives. Given the low level of cost implications a full regulatory impact assessment is not considered necessary in this case.