

## **CHILDREN'S RIGHTS BEHIND BARS**

# **Human Rights of Children deprived of Liberty: Improving Monitoring Mechanisms National Report: Ireland**

**August 2014**

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## 1.0 – Introduction

### List of abbreviations

CAMHS	Child and Adolescent Mental Health Services
CFA	Child and Family Agency
CPT	European Committee for the Prevention of Torture
EPIC	Empowering Young People In Care
HIQA	Health Information and Quality Authority
IPRT	Irish Penal Reform Trust
NPM	National Preventative Mechanism
OCO	Ombudsman for Children's Office
OPCAT	Optional Protocol to the Convention Against Torture

### Partner and Researcher

This research was carried out by Louise Forde under the direction of Professor Ursula Kilkelly at the Child Law Clinic, Faculty of Law, University College Cork, in conjunction with the Irish Penal Reform Trust (IPRT). Focus groups with children in detention were carried out by Dr Angela O'Connell, researcher at the Child Law Clinic.

### Methodology

This report aims to provide a comprehensive picture of the legislative and policy landscape relating to the detention of children in Ireland, and the complaints and monitoring mechanisms available to them. The research was carried out in line with instructions provided by the DCI Project Co-ordinator and using questionnaires and templates provided by DCI.

Desk-based research was used to undertake a review of detention in Ireland, to gather all available information and statistics and to pull together the research and other information in the area.

One-to-one interviews with ten key stakeholders working with and on behalf of detained children in Ireland were carried out to supplement the secondary analysis. These included senior policy makers, those managing and working in detention centres, those responsible for inspection and complaints bodies and in the NGO community. This approach was used to document responses to the recommendations of the monitoring bodies and to identify obstacles both to the realisation of these recommendations and to the ratification of OPCAT. The number and identity of interviewees was finalised in consultation with IPRT and the DCI Project Co-ordinator. Ethical approval for this phase of the research was granted by the Social Research Ethics Committee of University College Cork.

Separate ethical approval was granted for two focus groups with young people detained within the Children Detention Schools, which was used to ensure that the research was informed by the views and experiences of young people in detention, to identify further elements of good practice and areas which needed improvement in complaints and monitoring practice.

### Limitations

Key limitations of the project include the short timeframe and the lack of up to date, comprehensive data on the experience of children in detention in Ireland.

## 1.1 – The International Framework

### **Ratified Conventions**

Ireland has signed and ratified the following international Conventions, relevant to the situation of children in detention:

- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was signed by Ireland on 28<sup>th</sup> September 1992 and ratified on the 11<sup>th</sup> April 2002;
- UN Convention on the Rights of the Child was signed by Ireland on 30<sup>th</sup> September 1990 and ratified on 28<sup>th</sup> September 1992;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was signed and ratified by Ireland on 14<sup>th</sup> March 1988
- European Social Charter (Revised) was signed and ratified by Ireland on 4<sup>th</sup> November 2000.

### **Conventions awaiting ratification**

Ireland has signed but not ratified the following UN Conventions:

- UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was signed by Ireland on the 2<sup>nd</sup> October 2007 but has not yet been ratified.

Ireland has not signed the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

### **Recommendations of international monitoring and inspections mechanisms and of treaty bodies**

The conditions in which children are detained in Ireland have been examined by the European Committee for the Prevention of Torture (CPT) and have also been reviewed by the UN Committee Against Torture.

#### European Committee for the Prevention of Torture

There have been two visits of the CPT to Ireland to examine the treatment of detained persons over the last ten years and they produced reports outlining their findings.<sup>1</sup> The CPT announced their intention to visit Ireland again during 2014.<sup>2</sup> During the course of their visits in 2006 and 2010, the CPT made a number of comments and recommendations relating to children in detention. While the CPT's visits were confined to certain prisons and psychiatric hospitals, they also visited St. Patrick's Institution, which until recently detained young males between the ages of 16 and 21. A list of the recommendations made in relation to detained children and St. Patrick's Institution are set out below:

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<sup>1</sup> Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006 (CPT/Inf(2007)40) (Strasbourg, 10 October 2007) available at <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.htm>; Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010 (CPT/Inf(2011)3) (Strasbourg, 10 February 2011) available at <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.htm>

<sup>2</sup> See further <http://www.cpt.coe.int/en/visits/2013-12-03-eng.htm>

2006:

- *Allegations of ill-treatment in police custody:* the CPT recommended that “senior police officers remind their subordinates that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions”;<sup>3</sup>
- *The detention of adults and children together,* the CPT recommended that in the transition period before children were to be transferred to Children Detention Schools, “appropriate measures be taken to ensure adequate separation between children and young adults in St. Patrick’s Institution”;<sup>4</sup>
- *Inter-prisoner violence in St. Patrick’s Institution:* the CPT recommended action be taken to address inter-prisoner violence;<sup>5</sup>
- *Conditions in St. Patrick’s Institution:* the CPT noted the need for a “rolling programme of refurbishment” to improve material conditions;<sup>6</sup>
- *Activities in St. Patrick’s Institution:* the CPT recommended measures be taken to improve activities and rehabilitative services available for young offenders;<sup>7</sup>
- *Treatment of prisoners on protection in St. Patrick’s Institution and other adult prisons:* the CPT recommended that Irish authorities consider improving conditions for prisoners on protection, including “access to activities, educational courses and sport” as well as better healthcare, especially psychiatric treatment;<sup>8</sup>
- *Health and psychiatric care in St. Patrick’s Institution:* the CPT recommended that health and psychiatric services in the institution should be improved, including the recruitment of “one half-time general practitioner and one half-time specialist in child and adolescent psychiatry”;<sup>9</sup>
- *Psychological support following incidents of self-harm and attempted suicide:* the CPT recommended that prisoners who self-harmed or made suicide attempts “should be assessed by properly qualified health-care staff with a view to determining the cause of their actions.”<sup>10</sup>
- *Specific needs of detained children in St. Patrick’s Institution:* the CPT recommended that “a consistent and care-user oriented suicide prevention policy be developed.”<sup>11</sup>
- *Remit of the Ombudsman for Children:* the CPT considered that “the Children’s Ombudsman ... be permitted access to these institutions to meet with the children concerned and to raise any particular issues relating to their conditions of detention and treatment”.<sup>12</sup>

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<sup>3</sup> Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006 (CPT/Inf(2007)40) (Strasbourg, 10 October 2007) available at <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.htm> at para. 18

<sup>4</sup> *ibid.* at para. 28

<sup>5</sup> *ibid.* at para. 42

<sup>6</sup> *ibid.* at para. 52

<sup>7</sup> *ibid.* at para. 59

<sup>8</sup> *ibid.* at para. 64

<sup>9</sup> *ibid.* at para. 69

<sup>10</sup> *ibid.* at para. 83

<sup>11</sup> *ibid.* at para. 84

<sup>12</sup> *ibid.* at para. 100

## 2010

- *The detention of adults and children within St. Patrick's Institution:* the CPT recommended that juveniles be held in "appropriate detention centres for their age group."<sup>13</sup>
- *Training of staff in St. Patrick's Institution:* the CPT recommended that "a rigorous selection and training programme" should be in place for staff in St. Patrick's.<sup>14</sup>
- *Conditions in St. Patrick's Institution:* the CPT noted the "need for a rolling programme of refurbishment."<sup>15</sup>
- *Activities in St. Patrick's Institution:* the CPT recommended that "a full regime of activities (particularly as regards educational and vocational training) and other rehabilitative services" should be available for young offenders, and participation be actively encouraged.<sup>16</sup>
- *Prisoners on protection in St. Patrick's Institution:* the CPT recommended that "purposeful activities and proper support from the health-care service" be made available for prisoners on protection for more than a short period.<sup>17</sup>
- *Health care in St. Patrick's Institution and other adult prisons:* the CPT recommended that health-care services be improved in Irish prisons, including St. Patrick's and that the attendance of general practitioners increased.<sup>18</sup>

A number of key concerns about conditions in St. Patrick's institution were identified by the CPT in their reports following their visits to Ireland, summarised as follows:

- *Detention of children and adults together:* In light of the conclusion that St Patrick's Institution does not provide a suitable environment for the detention of juveniles, the CPT expressed concern that there was "no clear timetable" for the transfer of detained children to Children Detention Schools.
- *Staffing:* The CPT expressed concern about the suitability and selection of staff to work with juveniles and emphasised the need for staff to undertake a specific juvenile awareness training programme, with frequent follow-up courses.
- *Activities:* The CPT expressed concern about the insufficient level of engagement with educational and vocational activities.
- *Protection prisoners:* Particular concern was expressed about the regime in place for more vulnerable prisons, including those on protection.
- *Healthcare:* The CPT expressed concern about the inadequacy of the health care provision and identified a particular need for a psychiatrist specialising in child and adolescent mental health.
- *Ombudsman for Children:* The CPT recommended that the Ombudsman for Children have access to institutions where children were detained, and requested confirmation (in the interim) that such access would be accommodated.<sup>19</sup>

<sup>13</sup> Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010 (CPT/Inf(2011)3) (Strasbourg, 10 February 2011) available at <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.htm> at para. 26

<sup>14</sup> *ibid.* at para. 40

<sup>15</sup> *ibid.* at para. 47

<sup>16</sup> *ibid.* at para. 52

<sup>17</sup> *ibid.* at para. 57

<sup>18</sup> *ibid.* at para. 64

<sup>19</sup> CPT, *supra* n. 3 at para. 100

### UN Committee Against Torture

Ireland was reviewed by the UN Committee against Torture (CAT) in March 2011.<sup>20</sup> A couple of their recommendations were relevant to the situation of detained children in Ireland, and are set out below:

- *The detention of adults and children together in St. Patrick's Institution:* the Committee recommended that new national children detention facilities should be proceeded with without delay, and in the meantime, appropriate measures should be taken "to end the detention of children in St. Patrick's Institution and move them into appropriate facilities."<sup>21</sup>
- *The remit of the Ombudsman for Children:* the Committee recommended the remit of the Ombudsman for Children be extended to "mandate the power to investigate complaints of torture and ill-treatment held at St. Patrick's Institution."<sup>22</sup>

The key concerns of the CAT are summarised as follows:

- Grave concern was expressed about the detention of 16- and 17-year-old males in St. Patrick's Institution, a prison which was not a care facility specifically designed for children. Particular concern was expressed that the Government had not finalised the decision to proceed with the construction of the new National Detention facility on Oberstown Campus in Lusk.<sup>23</sup>
- Deep concern was also expressed by the Committee in relation to the fact that the Ombudsman for Children had no mandate to investigate St. Patrick's Institution, meaning that children there had no access to a complaints mechanism.<sup>24</sup>

### Complaint mechanisms available to minors under these Conventions

Ireland has made a declaration under article 22 of the UN Convention Against Torture recognising the competence of CAT to receive and consider communications from or on behalf of individuals who claim that they are victims of a breach of their rights under the Convention Against Torture by the State. This provides a general complaints mechanism by which a minor who is detained may complain, or someone else may complain to the Committee Against Torture on their behalf.

Under Article 34 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), it is possible for a child, or for an adult on behalf of a child, to bring a complaint of a breach of their rights by the State under the ECHR before the European Court of Human Rights, provided that all domestic remedies available have been exhausted. The ECHR Act 2003 gives the ECHR further effect in Irish law.

Although Ireland ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints, it has not yet made a declaration which would enable national NGOs to make such a collective complaint. This Additional Protocol only provides for a collective complaints mechanism, rather than an individual complaints system.

Ireland has neither signed nor ratified the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure, which would provide a mechanism by

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<sup>20</sup> UN Committee Against Torture, forty-sixth session, 9 May-3 June 2011, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture – Ireland*, (CAT/C/IRL/CO/1) (17<sup>th</sup> June 2011) available at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.IRL.CO.1.pdf>

<sup>21</sup> *ibid.* at para. 22

<sup>22</sup> *ibid.* at para. 23

<sup>23</sup> *ibid.* at para. 22

<sup>24</sup> *ibid.* at para. 23

which the Committee on the Rights of the Child could consider individual complaints. Therefore, no complaints mechanism is available to detained children in Ireland under this instrument.

## 1.2 The National Framework

In Ireland, children may be deprived of their liberty in a number of different circumstances, and detention of children takes a variety of forms. Children may be detained as a result of committing a criminal offence, as a result of behaviour which poses a substantial risk of harm to his/her own life, health, safety, development or welfare, or as a result of a mental disorder which requires treatment that the child is unlikely to obtain unless he or she is involuntarily detained. Migrant children in Ireland are accommodated along with their families in a system known as “direct provision” while awaiting decisions on their asylum applications. While the system of direct provision has been criticised, it is not a place of detention. Therefore there is no legal provision for the detention of children for immigration-related issues in Ireland, and no place of detention in Ireland where migrant children are detained.

Currently, the Health Information and Quality Authority (HIQA) has responsibility for visiting, inspecting and monitoring compliance with national standards in places of detention for both children detained in Children Detention Schools as a result of a criminal conviction and for children detained within Special Care Units. The Mental Health Commission has responsibility for the inspection of approved centres where children may be involuntarily detained as a result of a mental disorder. A brief overview of the law and policy in relation to the detention of children in Ireland is set out below.

### Legal and regulatory framework for the detention of children

#### Detention of Children in the Juvenile Justice system

The primary legislation governing the youth justice system in Ireland is the Children Act 2001<sup>25</sup> as amended.<sup>26</sup> This sets out the legal framework for detaining children who commit a criminal offence. A child aged 12 or over can be charged with a criminal offence.<sup>27</sup>

#### Arrest and Detention of Children in Garda Stations

Part 6 of the Children Act 2001 regulates the treatment of child suspects when in Garda custody. Under the Children Act 2001, provision is made under s.55 relating to the treatment of children in Garda custody who are suspected of committing a criminal offence. It requires that in investigating offences, Gardaí act with “due respect for the personal rights of the children and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any of them who may be under a physical or mental disability, while complying with the obligation to prevent escapes from custody and continuing to act with diligence and determination in the investigation of crime and the protection and vindication of the personal rights of other persons.” In addition, s.56 provides that any child detained in a Garda station will be separated as far as possible from any adults

<sup>25</sup> Children Act, 2001 (No. 24 of 2001)

<sup>26</sup> By the Criminal Justice Act 2006 (No. 26 of 2006), the Child Care Amendment Act 2007 (No. 26 of 2007) and the Child Care Amendment Act 2011 (No. 19 of 2011)

<sup>27</sup> Section 52 of the Children Act, 2001 (No 24 of 2001) as amended by s. 129 of the Criminal Justice Act, 2006 (No. 26 of 2006). In an exception to this rule, children aged 10 or 11 may be charged with certain serious offences, including murder, manslaughter, rape and aggravated sexual assault.

detained there, and should not be kept in a cell unless no other secure accommodation is available. Section 57 requires that a child be told the crime for which he or she is being detained, that he or she is entitled to consult a solicitor and that his or her parents or guardian are being notified. Section 58 outlines the obligation to inform the child's parents or guardian of the reasons the child is being detained, their right to consult a solicitor and their obligation to attend court proceedings in respect of the child's offence. A child brought to a Garda station may be released on bail under s.68 of the 2001 Act, if the member in charge considers it prudent to do so and no warrant which directs the detention of the child is in force to appear before the Children Court within the next 30 days, and recognizance or sureties may be taken from the child to ensure appearance.

#### Detention on remand

Provision is made under s.88 of the Children Act 2001, as amended,<sup>28</sup> for the Children Court to order the detention of children on remand. They may be detained in a remand centre, which may include part of a Children Detention School. Where a child is remanded in custody in a Children Detention School, provision is made that they will as far as it is practicable and in their best interests, be kept separate from children detained under sentence.<sup>29</sup> The Children Court is prohibited from remanding a child in custody for the sole reason that the child is in need of care or protection.<sup>30</sup>

At present, as part of the transition process for 17-year-old males from St. Patrick's Institution to Children Detention Schools, 17-year-old males continue to be detained on remand in St. Patrick's Institution.

#### Sentencing and sanctions

Sanctions under this legislation encompass a range of custodial and non-custodial options, which may be imposed by the Children Court when a child is convicted of a crime, and are set out under Part 9. Section 96 sets out a number of key principles to guide the Children Court in deciding which sanction is appropriate. Importantly, section 96 puts the principle that detention should only be used as a last resort on a statutory basis.<sup>31</sup> Before any sentence is imposed, the Court may require a report from Young Person's Probation, and will require it where a community sanction, or a detention order or detention or supervision order is considered.<sup>32</sup> A range of non-custodial or community sanctions is provided to ensure that the principle of detention as a last resort is capable of being fully realised.<sup>33</sup>

Custodial sanctions under the Act take the form of detention orders and detention and supervision orders. A detention order may be imposed on a young person convicted of an offence under s.142, and this detention will take place in a Children Detention School. Section 143 provides that an order of detention will not be made unless the Children Court "is satisfied that detention is the only suitable way of dealing with the child."<sup>34</sup> Section 149, as

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<sup>28</sup> Section 135 of the Criminal Justice Act, 2006 (No. 26 of 2006)

<sup>29</sup> Section 88(8) of the Children Act, 2001 (No 24 of 2001)

<sup>30</sup> Section 88(10) of the Children Act, 2001 (No 24 of 2001)

<sup>31</sup> Section 96(2) of the Children Act, 2001 (No 24 of 2001). It provides that "any penalty imposed on a child for an offence should cause as little interference as possible with the child's legitimate activities and pursuits, should take the form most likely to maintain and promote the development of the child and should take the least restrictive form that is appropriate in the circumstances; in particular, a period of detention should be imposed only as a measure of last resort."

<sup>32</sup> Sections 99-107 of the Children Act, 2001 (No 24 of 2001)

<sup>33</sup> Sections 115-141 of the Children Act, 2001 (No 24 of 2001)

<sup>34</sup> Section 143(1) of the Children Act, 2001 (No 24 of 2001)

amended by the Criminal Justice Act 2006,<sup>35</sup> stipulates that detention in a Children Detention School can be for any term, but not for a period longer than the term of detention or imprisonment which would be imposed on an adult convicted of a similar offence. A detention and supervision order may be imposed under section 151, under which the child is detained in the Children Detention School for the first half of the sentence, and the second half of the sentence is spent under the supervision of a Probation Officer in the community.

### Places of Detention

At present, Children Detention Schools detain females up to the age of 18 and males up to the age of 17. 17-year-old males are still detained on remand in St. Patrick's Institution, and on committal in Wheatfield Place of Detention, which is an adult prison.

Children Detention Schools are run by a Board of Management.<sup>36</sup> A Director has responsibility for the day to day running of the school and immediate control and supervision of detained children.<sup>37</sup> Provision is made for the visiting and inspection of Children Detention Schools by an authorised person under s.186 of the 2001 Act, as amended.<sup>38</sup> Inspections of each Children Detention School are carried out at least once every 12 months, and inspections can include:

- “(a) the conditions in which the children are detained and the facilities available to them,
- (b) their health, safety and well-being,
- (c) policies and practice concerning the preservation and development of relationships between them and their families,
- (d) policies and practice concerning their discipline, care and protection, and
- (e) policies and practice in relation to the normal routine of the school.”<sup>39</sup>

These inspections are carried out on a regular basis by the Health Information and Quality Authority (HIQA).

Part 10 of the 2001 Act provides for the regulation of Children Detention Schools. Section 158 sets out the principal object of Children Detention Schools as follows:

“It shall be the principal object of Children Detention Schools to provide appropriate educational and training programmes and facilities for children referred to them by a court and, by –

- (a) having regard to their health and safety, welfare and interests, including their physical, psychological and emotional wellbeing
  - (b) providing proper care, guidance and supervision for them
  - (c) preserving and developing satisfactory relationships between them and their families,
  - (d) exercising proper moral and disciplinary influences on them, and
  - (e) recognizing the personal, cultural and linguistic identity of each of them
- to promote their reintegration into society and prepare them to take their place in the community as persons who observe the law and are capable of making a positive and productive contribution to society.”

<sup>35</sup> Criminal Justice Act, 2006 (No. 26 of 2006)

<sup>36</sup> Sections 164-179 of the Children Act, 2001 (No 24 of 2001)

<sup>37</sup> Section 180 of the Children Act, 2001 (No 24 of 2001)

<sup>38</sup> Section 152 of the Criminal Justice Act, 2006 (No. 26 of 2006)

<sup>39</sup> Section 186(2) of the Children Act, 2001 (No 24 of 2001), as amended

Therefore, the primary function of the Schools includes the provision of education to young offenders and also the promotion of their reintegration on release and rehabilitation.

Due to a lack of capacity within the Children Detention Schools for young males, section 156A of the Children Act 2001 allows for the detention of 16 and 17 year old boys to be detained in St. Patrick's Institution, which is an adult prison, as a transitional provision until additional places become available within the Children Detention Schools. This practice is now being phased out as the new Children Detention School campus is being developed.

#### Policy for Detained Young People

A number of national policy documents relate to detained young people. *Tackling Youth Crime: Youth Justice Action Plan 2014-2018*<sup>40</sup> is the most recent national policy on youth justice, High Level Goal 5 aims "to provide a safe, secure environment and necessary support for detained young people to assist their re-integration into the community."<sup>41</sup> In achieving this goal, emphasis is put on the provision of evidence-based care and developmental opportunities to detained young people,<sup>42</sup> the completion of the development of integrated services across the Children Detention Schools,<sup>43</sup> and the completion of the new National Children Detention facilities, which will finally end the detention of young people under the age of 18 in St. Patrick's Institution.<sup>44</sup>

The *Standards and Criteria for Children Detention Schools*<sup>45</sup> set out the applicable standards in relation to the purpose and function of detention facilities, the care of young people, child protection, children's rights, planning for young people, staffing and management, education, health care, the premises, safety and security, and tackling offending behaviour by young people. These standards are used to measure the performance of the Children Detention Schools during inspections by HIQA.

The Board of Management of the Children Detention Schools has put in place a number of policies relating to the care of children, which are regularly reviewed.<sup>46</sup> These apply across all three Children Detention Schools on the Oberstown Campus, and include:

- Detention Schools – Behaviour Management Policy<sup>47</sup>
- Detention Schools – Supervision Policy<sup>48</sup>
- Detention Schools – Notifiable Incident Policy<sup>49</sup>
- Detention Schools – Garda Vetting Policy and Procedures<sup>50</sup>
- Detention Schools – Medication Policy<sup>51</sup>
- Detention Schools – Drugs, Alcohol and Substance Use/Misuse Policy<sup>52</sup>
- Detention Schools – Education Strategy<sup>53</sup>

<sup>40</sup> Irish Youth Justice Service, *Tackling Youth Crime: Youth Justice Action Plan 2014-2018* (Dublin: Irish Youth Justice Service, 2013)

<sup>41</sup> *ibid* at p. 24

<sup>42</sup> *ibid* at p. 25

<sup>43</sup> *ibid* at p. 26

<sup>44</sup> *ibid* at p. 27

<sup>45</sup> Irish Youth Justice Service, *Standards and Criteria for Children Detention Schools* (Dublin: Department of Justice Equality and Law Reform, 2008)

<sup>46</sup> Each of the following listed reports are available at [www.iyjs.ie](http://www.iyjs.ie)

<sup>47</sup> Irish Youth Justice Service, *CPI Behaviour Management Policy and Procedures for Children Detention Schools* (2<sup>nd</sup> July 2010)

<sup>48</sup> Irish Youth Justice Service, *Supervision Policy for the Children Detention Schools* (June 2011)

<sup>49</sup> Irish Youth Justice Service, *Children Detention Schools Notifiable Incident Policy* (August 2010)

<sup>50</sup> Irish Youth Justice Service, *Policy & Procedures for Garda Vetting in Children Detention Schools* (2 July 2010)

<sup>51</sup> Irish Youth Justice Service, *Medication Management Protocol for the Children Detention Schools* (December 2009)

<sup>52</sup> Irish Youth Justice Service, *Drugs, Alcohol and Substance Use/Misuse Policy for Children Detention Schools* (February 2013)

<sup>53</sup> Irish Youth Justice Service, *Education Strategy for the Children Detention School Service September 2010-2013* (September 2010)

- Detention Schools – HSE Social Workers & Children Detention Schools Protocol for Working Together<sup>54</sup>
- Detention Schools – Separation Policy<sup>55</sup>
- Detention Schools – Safeguarding Policy<sup>56</sup>
- Detention Schools – Complaints Procedure<sup>57</sup>
- Detention Schools – Guidelines for Good Practice<sup>58</sup>
- Detention Schools – Reporting Child Protection Concerns<sup>59</sup>
- Detention Schools – Role of Social Worker Role in Child Protection Procedures<sup>60</sup>
- Detention Schools – Guidelines for Recognising Poor Practice, Abuse, Bullying and Mental Health Problems.<sup>61</sup>

### Detention of Children in Special Care Units

Children may also be detained in Ireland as a result of behaviour which poses a substantial risk of harm to his or her own life, health, safety, development or welfare. A system of Special (or secure) Care was provided for by Part 3 the Children Act 2001, which inserted a new Part IVA into the Child Care Act 1991,<sup>62</sup> and was subsequently amended by the Child Care (Amendment) Act 2011.<sup>63</sup> The amendment made by the Child Care (Amendment) Act 2011 has not yet been commenced, and the Department of Children and Youth Affairs (DCYA) reports that work is underway to commence the Act fully.<sup>64</sup> In the absence of this legislative basis, the High Court has operated the system of Special Care under its inherent jurisdiction. At present, the Child and Family Agency (known as Tusla) also has responsibility for making an application to take a child into Special Care, under the current s.23A, inserted by s.16 of the Children Act 2001. At present, when a Special Care order is made in respect of a child, the child is committed to the care of the Child and Family Agency (formerly the Health Service Executive (HSE)) for as long as the order remains in force, and allows for the detention of the child for the purpose of providing “appropriate care, education and treatment” to the child.<sup>65</sup>

Once the new legislation is commenced, Tusla will have responsibility for the provision of Special Care to a child whose behaviour poses a risk of harm to his or her life, health, safety, development or welfare. The High Court’s jurisdiction in relation to special care will have a statutory basis. The new legislation sets out a number of specific provisions in relation to the age of children who may be subject to a Special Care order, the reasons and procedure for the making of a Special Care order or an interim Special Care order, the extension, variance or discharge of Special Care orders and the treatment of children in Special Care and the powers of Tusla in relation to children in Special Care. These new provisions, once commenced, will be much more detailed than those now in place, and will also require Tusla to develop guidelines in relation to Special Care.<sup>66</sup>

<sup>54</sup> Irish Youth Justice Service, *Protocol for Working Together: HSE Social Workers & Children Detention Schools* (2012)

<sup>55</sup> Irish Youth Justice Service, *Separation Policy for the Children Detention Schools* (September 2012)

<sup>56</sup> Irish Youth Justice Service, *Safeguarding Policy for the Children Detention Schools* (December 2010)

<sup>57</sup> Irish Youth Justice Service, *Complaints Procedure for Children Detention Schools* (December 2010)

<sup>58</sup> Irish Youth Justice Service, *Guidelines for Good Practice in Children Detention Schools* (December 2010)

<sup>59</sup> Irish Youth Justice Service, *Guidelines and Procedures for Reporting Child Protection Concerns in the Children Detention Schools* (December 2010)

<sup>60</sup> Irish Youth Justice Service, *Role of Social Worker in Child Protection Procedures* (December 2010)

<sup>61</sup> Irish Youth Justice Service, *Guidelines for Recognising Poor Practice, Abuse, Bullying and Mental Health Problems in Children Detention Schools* (December 2010)

<sup>62</sup> Child Care Act 1991 (No. 17 of 1991)

<sup>63</sup> Section 10 of the Child Care (Amendment) Act 2011 (No. 19 of 2011)

<sup>64</sup> See further [http://www.dcy.gov.ie/docs/Special\\_Care\\_and\\_High\\_Support/1914.htm](http://www.dcy.gov.ie/docs/Special_Care_and_High_Support/1914.htm) (accessed 30th July 2014)

<sup>65</sup> Section 23B(2) of the Child Care Act 1991 (No. 17 of 1991)

<sup>66</sup> See s. 10 of the Child Care (Amendment) Act 2011 (No. 19 of 2011)

### Criteria for making a Special Care order

Tusla may make an application for a Special Care order or an interim Special Care order in respect of a child if it considers that the child is in need of special care and protection which he or she is unlikely to receive unless such an order is made.<sup>67</sup> If made, the Special Care Order will remain in force for not less than 3 months and not more than 6 months, but this period may be extended as long as the Court is satisfied that the grounds on which the order was made continues to exist.<sup>68</sup>

An application may also be made by the CFA for an interim Special Care order where they are taking the steps required in relation to a Special Care order, and there is reasonable cause for them to believe it is necessary for the child to be detained in a Special Care Unit pending the determination of an application for a full Special Care order.<sup>69</sup> An interim Special Care order may last for a period not exceeding 28 days, or, with the consent of the CFA and the parent or guardian of a child, for a period lasting longer than 28 days.<sup>70</sup>

Under the current framework, if the grounds on which the child has been detained under a Special Care Order no longer exist, Tusla is required to apply to the court to have the order discharged as soon as practicable.<sup>71</sup> The Special Care order will also cease if the child in respect of whom the order is made ceases to be a child.<sup>72</sup> Under section 23F, the court also has the power, on its own motion or the application of another person, to vary or discharge the Special Care order.

### Detention of Children in Psychiatric Units

Provision is made for the involuntary detention of children in psychiatric units under s. 25 of the Mental Health Act 2001.

### Criteria for detention of children suffering from a mental disorder

Tusla may make an application to the District Court authorising the detention of the child in an approved centre where it appears that the child is suffering from a mental disorder and it is considered he or she needs medical treatment which he or she would be unlikely to receive unless an order is made.<sup>73</sup> A “mental disorder” is defined under s.3 of the Act as a:

- “mental illness, severe dementia or significant intellectual disability where –
- (a) because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, or
  - (b)(i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and
  - (ii) the reception, detention and treatment of the person concerned in

<sup>67</sup> Section 23B(1) of the Child Care Act 1991 (No. 17 of 1991)

<sup>68</sup> Section 23B(4) of the Child Care Act 1991 (No. 17 of 1991)

<sup>69</sup> Section 23C(1) of the Child Care Act 1991 (No. 17 of 1991)

<sup>70</sup> Section 23C(2) of the Child Care Act 1991 (No. 17 of 1991)

<sup>71</sup> Section 23B(5) of the Child Care Act 1991 (No. 17 of 1991)

<sup>72</sup> Section 23B(6) of the Child Care Act 1991 (No. 17 of 1991)

<sup>73</sup> Section 25(1) of the Mental Health Act 2001 (No. 25 of 2001)

an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.”<sup>74</sup>

Section 4 of the Act stipulates that the best interests of the individual must be the principal consideration in making such decisions, with due regard to the interests of other persons who may be at risk of serious harm if the decision is not made. A prerequisite for the making of an application for the involuntary admission of a child is that the child must be examined by a consultant psychiatrist.<sup>75</sup> The Court, in deciding whether to make the order, and having considered this report, may make an order that the child be detained and admitted for treatment if satisfied that the child is suffering from a mental disorder. This detention may last for a period of time not exceeding 21 days.<sup>76</sup> Once such an order is in force, an application may be made to extend the detention of a child for a further period of up to three months.<sup>77</sup> Once this extension has been granted, a further application may be made for a further order of detention for a period not exceeding six months, and thereafter for periods not exceeding six months.<sup>78</sup> In granting these extensions, the court must be satisfied that the child has been examined by a consultant psychiatrist and is still suffering from a mental disorder.<sup>79</sup>

#### Treatment of Detained Young People and Policy Framework

A number of provisions relate to the treatment which can be imposed on a detained child. The approval of the court is required in order to perform psycho-surgery or to administer electro-convulsive therapy on a detained child.<sup>80</sup> Section 61 sets out further directions for the treatment of detained children. Section 61 provides that where medicine is administered to ameliorate the mental disorder for a continuous period of 3 months, the medicine shall not be continued unless it is either approved by a consultant psychiatrist or is authorised by another consultant psychiatrist following referral of the matter to him by the first psychiatrist. Consent to treatment or approval and authorisation remains valid for a further three months and must be renewed and re-approved every three months thereafter. Section 69(1) stipulates that patients, including detained children, shall not be placed in seclusion or have mechanical means of bodily restraint applied unless such treatment is necessary either for the purposes of treatment or to prevent the patient from injuring himself or herself or others.

*A Vision for Change*<sup>81</sup> was published by the Expert Group on Mental Health Policy in 2006, and sets out a policy framework for the delivery of mental health services in Ireland. It relates to all mental health service delivery in Ireland and sets out a number of important general principles. The Mental Health Commission, which is particularly concerned with the treatment of individuals involuntarily admitted to approved centres for psychiatric treatment, has published *Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint*<sup>82</sup> which contain rules for the treatment of children. It has also published a *Code of Practice on the Admission of Children under the Mental Health Act*,<sup>83</sup> which is currently under review, and a subsequent *Addendum to the Code of Practice on the Admission of Children*<sup>84</sup>. These set out

<sup>74</sup> Section 3(1) of the Mental Health Act 2001 (No. 25 of 2001)

<sup>75</sup> Section 25(2) of the Mental Health Act 2001 (No. 25 of 2001)

<sup>76</sup> Section 25(6) of the Mental Health Act 2001 (No. 25 of 2001)

<sup>77</sup> Section 25(9) of the Mental Health Act 2001 (No. 25 of 2001)

<sup>78</sup> Section 25(10) of the Mental Health Act 2001 (No. 25 of 2001)

<sup>79</sup> Section 25(11) of the Mental Health Act 2001 (No. 25 of 2001)

<sup>80</sup> Section 25(12-13) of the Mental Health Act 2001 (No. 25 of 2001)

<sup>81</sup> Department of Health and Children, *A Vision for Change: Report of the Expert Group on Mental Health Policy* (Dublin: Stationery Office, 2006) at p. 86

<sup>82</sup> Mental Health Commission, *Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint* (2009)

<sup>83</sup> Mental Health Commission, *Code of Practice on the Admission of Children under the Mental Health Act* (November 2006)

<sup>84</sup> Mental Health Commission, *Addendum to the Code of Practice on the Admission of Children* (July 2009)

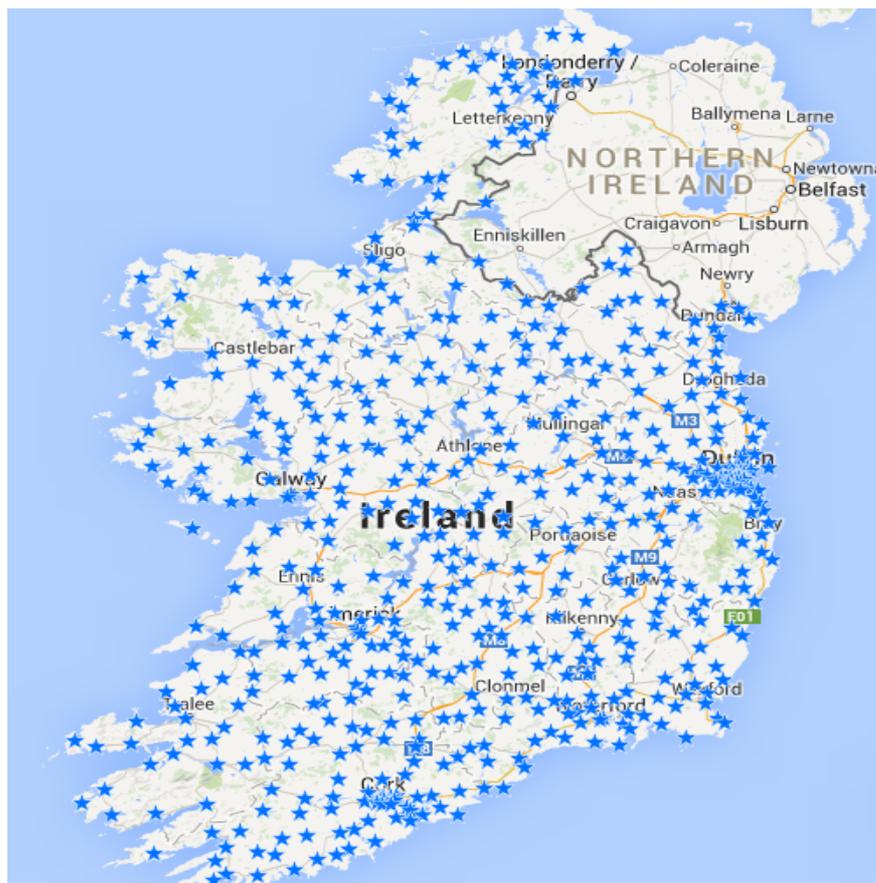
regulations on the admission of children, treatment of children and leave provisions.

### Mapping of detention facilities for children

#### *Detention Facilities for Children Detained in the Juvenile Justice System*

Children in conflict with the law may be detained either on conviction in Children Detention Schools or in Garda Stations if they are held for questioning in respect of alleged offences . Under s.56 of the Children Act 2001, children should not be kept in cells in Garda Stations unless no other secure accommodation is available, and members of the Gardaí have a duty to ensure that children in Garda custody are separated from adults as far as is reasonably practicable. The treatment of children in Garda custody is not addressed anywhere in current national policy. .<sup>85</sup> Section 66 of the Children Act 2001 provides that while failure by a member of the Gardaí to ensure the provisions of the Act are complied with will not in itself render the member liable to civil or criminal proceedings, or will not affect the lawfulness of the child's detention or the admissibility of any statement made into evidence, failure to comply with the provisions of the Act in relation to the treatment of children in custody may render the member liable to disciplinary proceedings. There are no dedicated facilities for the questioning of child suspects and children can thus be held in any Garda Station nationally. Garda stations are located throughout Ireland as illustrated in Figure 1.

**Figure 1**<sup>86</sup> Garda Stations



<sup>85</sup> It is not addressed in either the Children and Youth Strategy 2012-2014 (Dublin: An Garda Strategy, 2012) or the Irish Youth Justice Service, Youth Justice Action Plan 2014-2018: Tackling Youth Crime (Dublin: IJYS, 2014).

<sup>86</sup> Source Fig. 1: [http://www.garda.ie/Documents/User/Garda\\_Stations.kmz](http://www.garda.ie/Documents/User/Garda_Stations.kmz)

Currently, there are three Children Detention Schools which detain young people accused or convicted of a criminal offence in Ireland. These are Trinity House School, Oberstown Boys School and Oberstown Girls School, which are all based on the same campus in Lusk, Co. Dublin. Trinity House School is the most secure facility and detains boys up to the age of 17. Oberstown Boys School detains boys up to the age of 17, and Oberstown Girls School detains girls up to the age of 18. Both Oberstown Boys School and Oberstown Girls School operate “a more open model of detention”.<sup>87</sup> All three of these facilities are also designated as remand centres for the detention of children on remand.<sup>88</sup> Recent statistics indicate the number of young people detained in Children Detention Schools. The most recent inspections of the Children Detention Schools from HIQA report that on the first day of the inspection, 18<sup>th</sup> June 2013, there were 36 young people detained on Oberstown Campus.

The occupancy for each school was as follows:

Children Detention School	Maximum Occupancy	Occupancy on Inspection
Trinity House School	24 on committal/remand	16 – 9 committal, 7 remand
Oberstown Boys School	20 – 12 committal, 8 remand	20 – 12 committal, 8 remand
Oberstown Girls School	8 on committal/remand	0

The detention of 16 and 17 year old boys in St. Patrick’s Institution as a transitional provision is being phased out, and since 1<sup>st</sup> May 2012, all new 16-year-old males subject to a detention order or a detention and supervision order may be detained in a Children Detention School only.<sup>89</sup> In 2012, capital funding of €50 million was obtained to develop and expand the facilities currently in place at Oberstown into a new National Children Detention facility, and this is expected to be completed by 2015.<sup>90</sup> At present, 17-year-old males are detained on remand in St. Patrick’s Institution, and on committal in Wheatfield Place of Detention, which is an adult prison. As of 26<sup>th</sup> June 2014, figures from the Irish Prison Service indicated that there were 4 17-year-old males detained in St. Patrick’s Institution.<sup>91</sup> Daily figures for those detained in Wheatfield are not broken down to indicate how many 17-year-olds are detained on any given day. However, the most recent monthly statistics available indicate that on the 31<sup>st</sup> May 2014, there were nine 17-year-olds under sentence in prisons.<sup>92</sup>

<sup>87</sup> See further [http://www.iyjs.ie/en/IYJS/Pages/WP08000052#Children\\_Detention\\_School\\_Policies](http://www.iyjs.ie/en/IYJS/Pages/WP08000052#Children_Detention_School_Policies)

<sup>88</sup> Children Act 2001 (Designation of Remand Centres) Order 2012, S.I. No. 136/2012

<sup>89</sup> See further <http://www.dcy.gov.ie/viewdoc.asp?fn=/documents/YouthJustice/detentionmenu.htm>

<sup>90</sup> See further <http://www.dcy.gov.ie/viewdoc.asp?fn=/documents/YouthJustice/detentionmenu.htm>

<sup>91</sup> See further [http://www.irishprisons.ie/images/dailynumbers/26\\_june\\_2014.pdf](http://www.irishprisons.ie/images/dailynumbers/26_june_2014.pdf)

<sup>92</sup> See further [http://www.irishprisons.ie/images/monthlyinfonote/may\\_2014\\_web.pdf](http://www.irishprisons.ie/images/monthlyinfonote/may_2014_web.pdf) (accessed 30th July 2014)

**Figure 2 Places of remanded and committed young people**



**Figure 2a Places of remanded and committed young people**



Places of Detention for Children Detained in the Special Care System

There are currently three Special Care Units in Ireland. Ballydowd Special Care Unit is based in Co. Dublin and caters for up to 10 young people, both male and female.<sup>93</sup> Coovagh House in Co. Limerick caters for both males and females and has a maximum occupancy of three young people.<sup>94</sup> Gleann Alainn Special Care Unit is based in Cork, caters for females only, and can accommodate up to four children.<sup>95</sup>

On the dates that the most recent inspections by HIQA took place:

- Four girls were detained in Gleann Alainn Special Care Unit; they were aged between 14 and 16 years old and were detained for periods of between 3 and 21 weeks.<sup>96</sup>
- Six males and two females were detained in Ballydowd Special Care Unit; they were aged between 13-17 and placements varied widely between 5 days at one end of the spectrum and 1 year 3 months and 2 weeks at the other end.<sup>97</sup>
- Two females and one male were detained in Coovagh House Special Care Unit; they were aged between 14 and 16 and placements were between 3 weeks and 7 months.

**Figure 3 Special Care Units**



<sup>93</sup> Health Information and Quality Authority, *Ballydowd Special Care Unit in the Health Service Executive Dublin Mid-Leinster: Inspection Report ID Number 647* (5<sup>th</sup> December 2013) at p. 4 available at [www.hiqa.ie](http://www.hiqa.ie)

<sup>94</sup> Health Information and Quality Authority, *Coovagh House Special Care Unit in the Health Service Executive West: Inspection Report ID Number 656* (16<sup>th</sup> December 2013) at p. 4 available at [www.hiqa.ie](http://www.hiqa.ie)

<sup>95</sup> Health Information and Quality Authority, *Gleann Alainn Special Care Unit in the Health Service Executive South: Inspection Report ID Number 642* (24<sup>th</sup> July 2013) at p. 4 available at [www.hiqa.ie](http://www.hiqa.ie) *ibid* at p. 7

<sup>97</sup> Health Information and Quality Authority, *supra* n. 91 at p. 7

*Detention Facilities for Children Detained in the Approved Centres for Psychiatric Care*

Approved centres where a child may be detained include hospitals or other in-patient facilities for the care and treatment of persons suffering from a mental illness or a mental disorder.<sup>98</sup> All approved centres must be registered with the Mental Health Commission.<sup>99</sup> There are five approved Centres in Child and Adolescent Services:

Name of Centre	Location of Centre	Capacity
Adolescent In-patient Unit, St. Vincent's Hospital	Fairview, Dublin 3	8
Child & Adolescent In-patient Unit, Merlin Park University Hospital	Galway	20
Eist Linn Child & Adolescent In-patient Unit	Blackrock, Cork	20
Linn Dara Child & Adolescent In-patient Unit, St. Lornan's Hospital	Palmerstown, Dublin 20	8
Willow Grove Adolescent Unit, St. Patrick's University Hospital	James's Street, Dublin 8	14

In-patient child and adolescent mental health services are also provided by the Ginesa Suite, which is registered as part of St. John of God Hospital, Stillorgan Co. Dublin. These Child and Adolescent Services are both for children who are voluntarily and involuntarily admitted, and so the figures for the capacity of these units do not solely relate to detained children. The most recent figures from the Mental Health Commission indicate that in 2013, there were 14 orders under s.25 for the involuntary admission of children to approved centres, in relation to 13 children.<sup>100</sup> One involuntary admission related to a child who was initially admitted as a voluntary patient but whose status changed during admission.<sup>101</sup> Six of these involuntary admissions were to adult units, and eight were to child units.<sup>102</sup> The Mental Health Commission reported that there has been a decrease in the number of children involuntarily admitted to approved centres under s.25 since 2011.<sup>103</sup>

**Figure 4 Centres for inpatient mental health treatment**

<sup>98</sup> Section 62 of the Mental Health Act 2001 (No. 25 of 2001)

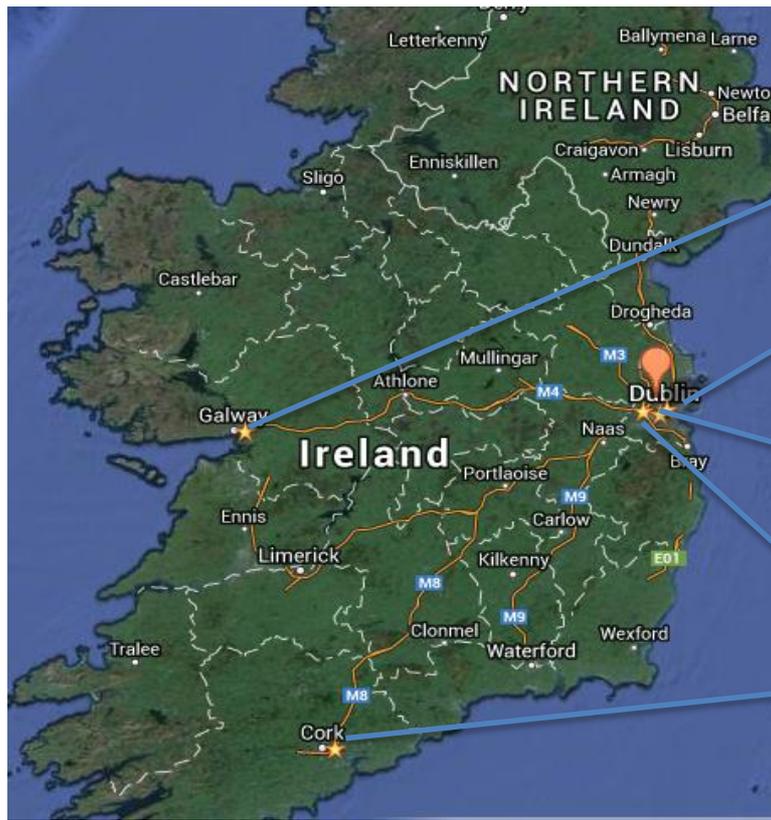
<sup>99</sup> Full register available to view at <http://www.mhcirl.ie/Registration/ACRegister>

<sup>100</sup> Mental Health Commission, *Mental Health Commission Annual Report 2013 Including Report of the Inspector of Mental Health Services* (Mental Health Commission, June 2014) at p. 32

<sup>101</sup> *Ibid.* at p. 33

<sup>102</sup> *Ibid.* at p. 33

<sup>103</sup> *Ibid.* at p. 33



Merlin Park  
University Hospital,  
Galway

St. Vincent's  
Hospital, Dublin

St. Patrick's  
University Hospital,  
Dublin

St. Loman's  
Hospital, Dublin

Eist Linn, Cork

#### Detention Facilities Related to Immigration

As noted above, there is no system of detention for immigrant children in Ireland, and therefore no places of detention for immigrant children.

#### National monitoring mechanisms/bodies/persons who carry out visits

##### Monitoring Mechanisms for Detained Children in the Juvenile Justice System

A number of monitoring mechanisms exist for children deprived of their liberty in Children Detention Schools. Provision is made under s.186 of the Children Act 2001, as amended, for an authorised person to carry out inspections at least once every 12 months of the Children Detention Schools. HIQA carry out these inspections. HIQA may interview children in private, with the child's consent.<sup>104</sup> The new s.186A, inserted by the Criminal Justice Act 2006, makes provision for further investigation if it feels matters of concern arise from the authorised person's report which warrant further scrutiny. In this circumstance, an Inspector will be appointed by the Minister to investigate, and the subsequent report will be presented by the Minister to both Houses of the Oireachtas. HIQA monitors the Children Detention Schools in line with the *Standards and Criteria for Children Detention Schools*.<sup>105</sup>

In line with these Standards, inspections by HIQA focus on conditions in detention and the quality of care being received by children in Children Detention Schools. They also inspect whether young people are involved in decisions affecting them. Inspections take place annually and last for up to three days. Inspectors speak with children detained, parents, staff

<sup>104</sup> Section 186(4) of the Children Act, 2001 (No 24 of 2001)

<sup>105</sup> Irish Youth Justice Service, *supra*, n. 45

and managers of the facilities, and they also review records of meetings held, complaints, restrictive procedures and daily logs. Following the inspection, a report is drawn up which outlines the extent to which Standards have been met and where necessary recommendations for improvement are made.<sup>106</sup> On the final day of the inspection, verbal feedback will ordinarily be given to the Director, the Principal, the Irish Youth Justice Service Child Welfare Advisor and the Chairperson of the Board of Management. A draft report is sent to the Director of the Children Detention School before finalisation to check for factual accuracy, and the Director may consult in this regard with the Chairman of the Board of Management of the Children Detention School, the National Manager of Detention School Services in the IYJS, the IYJS Child Welfare Advisor and the School Principal. The final report is submitted to the Minister for Children and Youth Affairs and ultimately published online on [www.hiqa.ie](http://www.hiqa.ie). Copies are also sent to Director of the Children Detention School, the National Manager of Detention School Services in the IYJS, the IYJS Child Welfare Advisor and the Chairman of the Board of Management. The Director of the Children Detention School has responsibility for implementing the recommendations made, and must return an action plan to HIQA within three weeks of receipt of the final report. Follow-up inspections may be undertaken by HIQA to ascertain the extent to which the recommendations have been implemented.<sup>107</sup>

The inspection of St. Patrick's Institution and of Wheatfield Place of Detention falls within the remit of the **Inspector of Prisons** under the Prisons Act 2007.<sup>108</sup> Although the investigation and adjudication of complaints from individual prisoners is not part of the function of the Inspector of Prisons, he does have the capacity to examine the circumstances surrounding a complaint when it is necessary for the performance of his functions.<sup>109</sup> The Inspector of Prisons carries out his inspections in line with the *Standards for the Inspection of Prisons in Ireland*,<sup>110</sup> and has developed a separate Juvenile Supplement to provide standards specifically for children who are detained in adult prisons.<sup>111</sup> The independence of the Inspector of Prisons in carrying out his functions is guaranteed under s. 30(5) of the Prisons Act 2007. In 2008, the Inspector of Prisons set out a number of principles, standards and working arrangements he intended to adopt for the inspection of prisons.<sup>112</sup> In this, he outlined his intention to undertake both announced and unannounced visits to prisons. In unannounced visits, he detailed that he would carry out thorough inspections of the prisons, including speaking to both prisoners and staff, bringing matters of concern to the Governor of the Prison and the Irish Prison service, and requesting, if necessary, further information on technical details. About 2-3 months after this, he set out that an announced visit would take place, during which he would meet with a wide range of people including prisoners, prison staff, visitors, the senior managers, chaplains, teachers, healthcare workers, Probation Officers, counsellors and any others who wish to see him. Unannounced visits would also be carried out between the first inspection and submission of the report.<sup>113</sup> If very serious matters are identified, these are reported to the Minister as a matter of urgency.<sup>114</sup> Under s. 31 of the

<sup>106</sup> See further <http://www.hiqa.ie/social-care/children-young-people/inspections>

<sup>107</sup> See further Irish Youth Justice Service, *supra* n. 45 at pp. 23-25

<sup>108</sup> Part 5 of the Prisons Act 2007 (No. 10 of 2007)

<sup>109</sup> Section 31(6) of the Prisons Act 2007 (No. 10 of 2007)

<sup>110</sup> Inspector of Prisons, *Standards for the Inspection of Prisons in Ireland* (Inspector of Prisons, 1<sup>st</sup> September 2009)

<sup>111</sup> Inspector of Prisons, *Standards for the Inspection of Prisons in Ireland: Juvenile Supplement* (Inspector of Prisons, 24<sup>th</sup> July 2009)

<sup>112</sup> See further Inspector of Prisons, *Interim Report presented to the Minister for Justice Equality and Law Reform by Judge Michael Reilly, Inspector of Prisons* (September 2008) available at <http://www.inspectorofprisons.gov.ie>

<sup>113</sup> *Ibid.* pp. 4-5

<sup>114</sup> See further [http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Prison\\_Inspections](http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Prison_Inspections)

Prisons Act 2007, the reports of the Inspector of Prisons are furnished to the Minister for Justice, and he also brings matters of concern to the attention of the Governor of the Prison, the Inspector-General of the Irish Prison Service, or the Minister. The Minister, on receiving the report, has a duty to lay it before the Houses of the Oireachtas and to cause it to be published as soon as is practicable.

In addition, a **Prison Visiting Committee** is appointed to each prison, including places where children are detained, under the Prisons (Visiting Committees) Act 1925.<sup>115</sup> This Committee visits the facility on a regular basis, and reports any abuses or urgent repairs needed to the Minister. They are also empowered under s.3 of the legislation to hear complaints from prisoners.

#### Monitoring Mechanisms for Detained Children in the Special Care System

Section 69 of the Child Care Act 1991, as amended<sup>116</sup> provides for inspections of Special Care Units to be carried out by the **Health Information and Quality Authority (HIQA)**. HIQA is authorised to inspect Special Care Units under s.69(2) of the Child Care Act 1991, and produces regular reports outlining the results of their inspections. HIQA was established as a statutory body under the Health Act 2007.<sup>117</sup> Under the Child Care (Special Care) Regulations 2004,<sup>118</sup> provision is made for HIQA to interview both staff and children in carrying out these inspections.<sup>119</sup> The *National Standards for Special Care Units*<sup>120</sup> is a policy document which provides the criteria against which the performance of the facilities are judged by HIQA, and set out standards relating to the purpose and function of the units, management and staffing, monitoring, planning for young people, the care of young people, premises, safety and security, and educational provision.

During inspections, HIQA examine the conditions in which young people are cared for, and inspect whether young people are involved in and listened to in relation to decisions affecting them, whether they and their families are treated with respect, whether there is a need for change and if adequate planning is taking place for the future. Inspections take place every year and last for 2 days. During the inspections, inspectors may speak with children and young people, parents and guardians ad litem, social workers and staff. They may also examine records of meetings, complaints, care plans, restrictive procedures, fire safety checks and daily logs.<sup>121</sup> A final report is published, which outlines aspects of good practice and makes recommendations for changes, on the HIQA website, and follow-up inspections may take place to ascertain the extent to which recommendations have been implemented. While neither the Standards nor the Regulations for Special Care Units outline the procedure for consulting with staff in respect of the report, or for publishing the report and follow-up, it is likely that the same procedure as applies in relation to the Children Detention Schools also applies in relation to Special Care.

#### Monitoring Mechanisms for Detained Children in the Approved Centres for Psychiatric Care

The Mental Health Commission was established by s.32 of the Mental Health Act 2001 as an independent body, and has responsibility to “promote, encourage and foster the

<sup>115</sup> Prisons (Visiting Committees) Act 1925 (No. 11 of 1925)

<sup>116</sup> By the Child Care (Amendment) Act 2011

<sup>117</sup> Health Act 2007 (No. 23 of 2007)

<sup>118</sup> Child Care (Special Care) Regulations 2004 (S.I. No. 550/2004)

<sup>119</sup> Section 34(1)(c) of the Child Care (Special Care) Regulations 2004 (S.I. No. 550/2004)

<sup>120</sup> Department of Health and Children, *National Standards for Special Care Units* (Dublin: Department of Health and Children, 2000)

<sup>121</sup> See further <http://www.hiqa.ie/social-care/children-young-people/inspections>

establishment and maintenance of high standards and good practice in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres under the Act.”<sup>122</sup> Under s.50, an office of an **Inspector of Mental Health Services** was established, and this Inspector has responsibility to visit every approved centre at least once a year and provide a report to the Mental Health Commission.<sup>123</sup>

These inspections by the Inspector of Mental Health Services take place annually, and ascertain the level of compliance of approved centres with the various Codes of Practice, regulations and rules prepared by the Mental Health Commission under the Mental Health Act 2001. The functions and duties of the Inspector are set out under ss.51-52 of the Mental Health Act 2001. The Inspector has the power to visit and inspect approved centres at any time, require that information be furnished to him, to examine documents, and to take evidence on oath. Under s.52, the Inspector is required to see any person whom he has been requested to see, to see any patient the propriety of whose detention is in doubt, to ascertain whether the provisions of the Act and regulations made under the Act are being adhered to, and to provide a report of his inspection to the Mental Health Commission. Under s. 42(2) these reports are required to be submitted by the Commission to the Minister. Regulation 29 of the Mental Health Act 2001 (Approved Centres) Regulations,<sup>124</sup> requires that all written operational policies and procedures in place in approved centres are reviewed at least every three years having due regard to any recommendations made by either the Inspector or the Commission. Under Regulation 35, the Commission is required to satisfy itself as to the compliance of approved centres with the Regulations, having regard to any reports of the Inspector.

### **Complaint mechanisms available to children who are detained**

A number of mechanisms exist for detained young people in Ireland to make complaints about their treatment. These mechanisms include the **Ombudsman for Children (OCO)**, and specific complaints procedures for the facilities and centres which may detain children.

The **OCO** was established by the Ombudsman for Children Act 2002<sup>125</sup> as an independent body to promote the rights and welfare of children. It has a mandate to examine and investigate complaints against public bodies,<sup>126</sup> schools and voluntary hospitals<sup>127</sup> about matters affecting children. This remit extends to hearing complaints from children in Children Detention Schools, in Special Care Units and in approved centres for the treatment of mental disorders. Although the Ombudsman for Children was originally precluded by the provisions of the Ombudsman for Children Act, 2002 from investigating complaints relating to the administration of prisons, this exclusion was removed in July 2012 such that the Ombudsman for Children can now examine and investigate complaints relating to administrative actions which have had, or may have had, an adverse effect on a young person under 18 years detained in prison (in effect St. Patrick’s Institution or Wheatfield Place of Detention).<sup>128</sup> Complaints can be made to the OCO either by young people themselves or by adults who wish to bring a complaint on their behalf. Complaints will be acknowledged in writing and, if it is

<sup>122</sup> Section 33 of the Mental Health Act 2001 (No. 25 of 2001)

<sup>123</sup> Section 51(1) of the Mental Health Act 2001 (No. 25 of 2001)

<sup>124</sup> S.I. No. 551/2006 – Mental Health Act 2001 (Approved Centres) Regulations 2006

<sup>125</sup> Ombudsman for Children Act 2002 (No. 22 of 2002)

<sup>126</sup> Section 8 of the Ombudsman for Children Act 2002 (No. 22 of 2002)

<sup>127</sup> Section 9 of the Ombudsman for Children Act 2002 (No. 22 of 2002)

<sup>128</sup> Ombudsman for Children Act 2002 (Section 11(2)(a)) Order 2012 (S.I. No. 210 of 2012)

decided that the complaint meets the criteria for the full investigation of the complaint, the public body will be contacted in order to provide them with an opportunity to respond. The OCO is required to operate in a manner which is fair and impartial, and thus both sides of the complaint must be fully examined and considered. This aspect of their role in investigating complaints was emphasised by a key stakeholder during the consultation, who stressed that in conducting investigations into complaints the OCO is: “*not an adversary of the public body and ... not an advocate for the child in the context of its complaint handling role.*” [Interviewee 5] It is possible that complaints may be fully resolved at this stage, however, if this is not possible, a decision may be taken that further, full investigation is required.<sup>129</sup> In consultation with key stakeholders in this area, it was reported that in relation to the detention of children in the penal system: “*the number of complaints ... received over the last ten years from this cohort of young people is actually very small, relative to the overall number of complaints ... received, which is over 10,000 at this stage.*” [Interviewee 5]

Advocacy agencies such as EPIC (an independent non-governmental organisation which works with young people in state care and provides advocacy services to young people in care, including those in Children Detention schools) can also play an informal role in assisting young people in care to make complaints. EPIC is engaged by the state to work with young people detained in Special Care and Children Detention Schools as well as young people in other forms of State care, and part of their advocacy role may involve assisting young people in making a complaint.<sup>130</sup>

#### Complaint Mechanisms for Detained Children in the Juvenile Justice System

Under s.186(3) of the Children Act 2001 there is provision for this authorised person to hear complaints from children who are detained in the Children Detention School, or from children who were detained there at any time. For this purpose, **HIQA** is permitted to interview the children themselves and any member of staff who is concerned, and is also permitted access to records relating to the administration of the school and to children detained there. Although **the Inspector of Prisons** has no remit to deal with complaints from those detained in St. Patrick’s Institution, he does have the capacity to examine the circumstances surrounding a complaint when it is necessary for the performance of his functions.<sup>131</sup>

Under the *Standards and Criteria for Children Detention Schools*<sup>132</sup> criteria for complaints mechanisms in Children Detention Schools were set out. Standard 4.1 requires Children Detention Schools to have a written complaints procedure which is readily available in age appropriate language for young people, parents, guardians and other representatives. The complaints procedure is required to clearly outline what might constitute a complaint, and detailed procedures as to how a young person can make a complaint.<sup>133</sup> Young people should be regularly informed, both formally and informally, of their right to complain,<sup>134</sup> and they should be advised of a person who is outside the Children Detention School who they can contact to make a complaint or lodge an appeal against the outcome of a complaint.<sup>135</sup> Staff within the Children Detention School are required to treat “the complaint procedure seriously

<sup>129</sup> See further <http://www.oco.ie/complaints/>

<sup>130</sup> See further, EPIC Advocacy Leaflet Service, available at <http://www.epiconline.ie/epic-advocacy-service-leaflet.html>

<sup>131</sup> Section 31(6) of the Prisons Act 2007 (No. 10 of 2007)

<sup>132</sup> Irish Youth Justice Service, *supra* n. 45

<sup>133</sup> *ibid*, Standard 4.2

<sup>134</sup> *ibid*, Standard 4.3

<sup>135</sup> *ibid*, Standard 4.4

and does not feel unduly threatened by it or play it down”<sup>136</sup> and are required to help young people in formulating a complaint, if appropriate.<sup>137</sup> Standard 4.7 requires complaints to be recorded and signed by both a staff member and the young person who is making the complaint, and standard 4.8 stipulates that subject to the overriding need to protect the child, complaints against staff members should balance the interests of the staff concerned with the need to protect detained children. Standard 4.9 requires management to monitor all incidents and outcomes of complaints made. Further, Standard 4.13 outlines that young people should be informed that they have access to independent advocacy services and should be provided with the names of at least two people whom they can contact in this regard.

The Board of Management of the Children Detention Schools on Oberstown Campus have published a Detention Schools – Complaints Procedure,<sup>138</sup> which sets out both formal and informal complaints mechanisms for detained young people. It emphasises “early problem solving and discussion” and suggests that young people’s forums and regular meetings between young people and staff may facilitate this.<sup>139</sup> A complaint is defined as “an expression of dissatisfaction or grievance which requires a response”, but does not include child protection issues,<sup>140</sup> which are dealt with under a separate policy on child protection.<sup>141</sup> A set of principles is set out, which emphasise “a culture of openness, transparency and continuous improvement that welcomes feedback”, the need for young people to be able to speak in confidence to staff in an understanding that there will be no adverse consequences, the need for complaints to be dealt with speedily, and for young people to have access to an advocate and to external sources of information, staff responsibility to hear young people’s concerns and the keeping of a detailed complaints log.<sup>142</sup> An informal complaints procedure can be used to resolve complaints immediately and may involve a staff member explaining policies or decisions, arranging meetings to discuss concerns further or arranging to help the child access an independent advocate. However, if an issue of concern cannot be resolved informally, a formal complaints mechanism is in place.<sup>143</sup> This formal procedure involves three stages: a preliminary assessment, investigation and appeals.<sup>144</sup>

In adult prisons where children are detained (effectively St. Patrick’s Institution and Wheatfield Place of Detention), key stakeholders reported that “*a complaints procedure ...[has] been in place for about just over year, a formal complaints procedure*” [Interviewee 1]. This was described as a “*general complaints procedure that’s part of ...[the] prison rules for all people who are detained in prison*” [Interviewee 1] and is not specific to children. Concern was expressed that it was “*perhaps not being used in the way that it was meant to.*” [Interviewee 1]. **The Prisons Visiting Committees** are also able to hear complaints from those detained in prisons, including children, under s.3 of the Prisons (Visiting Committees) Act 1925.

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<sup>136</sup> *ibid.*, Standard 4.5

<sup>137</sup> *ibid.*, Standard 4.6

<sup>138</sup> Irish Youth Justice Service, *supra* n. 57

<sup>139</sup> *ibid.* at p. 2

<sup>140</sup> *ibid.* at p. 2

<sup>141</sup> Irish Youth Justice Service, *supra*, n. 59

<sup>142</sup> Irish Youth Justice Service, *supra* n. 57

<sup>143</sup> *ibid.* at p. 4

<sup>144</sup> *ibid.* at p. 5-6

### Complaint Mechanisms for Detained Children in the Special Care System

Section 19 of the Child Care (Special Care) Regulations 2004,<sup>145</sup> requires a complaints mechanism to be in place in Special Care Units. This requires a procedure to be in place for the timely investigation of complaints made by children detained in a Special Care Unit, their parents or guardian, a guardian *ad litem* or legal representative, or another person with a *bona fide* interest in the child.<sup>146</sup> The manager of a Special Care Unit is required to provide the child with written information about their right to complain,<sup>147</sup> and also has responsibility to ensure that complaints are heard in a timely manner and that records of complaints are kept.<sup>148</sup> If the Child and Family Agency is dissatisfied with the actions taken by a manager of a Special Care Unit, the matter may be referred to the Chief Executive Officer for further investigation.<sup>149</sup>

The *National Standards for Special Care Units* elaborate further on the complaints mechanisms which should be in place. Standards 5.68-5.74 deal with procedures for making complaints. These standards require that written information is available to both staff and young people on the complaints procedure.<sup>150</sup> The complaints procedure should be easy to access for young people,<sup>151</sup> their parents and staff, and serious complaints should be notified to the health authorities.<sup>152</sup> All complaints must be recorded, and a procedure must be in place to investigate in a timely manner.<sup>153</sup> Staffs are required to treat complaints seriously and record the resolution of complaints,<sup>154</sup> and standard 5.73 requires that both young people and parents be able to confirm that complaints have been seriously treated and resolved. Systems should be in place for the recording and monitoring of all complaints and their outcomes.<sup>155</sup>

### Complaint Mechanisms for Detained Children in Psychiatric Units

The Inspector of Mental Health Services has responsibility under the Mental Health Act 2001 to carry out inspections of approved centres at least once a year and to report this to the Mental Health Commission. In carrying out the investigations the Inspector has a duty to see every resident whom he or she has been requested to examine either by the resident himself or herself or by somebody else and to see every patient in respect of whom the Inspector doubts the propriety of their detention.<sup>156</sup> There is no provision made for a complaints mechanisms for detained persons under the Act.

However, the Mental Health Act 2001 (Approved Centres) Regulations 2006<sup>157</sup> contain requirements in relation to complaints mechanisms. Section 31 sets out the duties of the proprietors of approved centres for the treatment of individuals detained by reason of a mental disorder. The regulations provide that every approved centre must have a written policy and procedure detailing the making, handling and investigation of complaints by any

<sup>145</sup> Child Care (Special Care) Regulations 2004 (S.I. No. 550/2004)

<sup>146</sup> Section 19(1) of the Child Care (Special Care) Regulations 2004 (S.I. No. 550/2004)

<sup>147</sup> Section 19(2) of the Child Care (Special Care) Regulations 2004 (S.I. No. 550/2004)

<sup>148</sup> Section 19(3) of the Child Care (Special Care) Regulations 2004 (S.I. No. 550/2004)

<sup>149</sup> Section 19(5) of the Child Care (Special Care) Regulations 2004 (S.I. No. 550/2004)

<sup>150</sup> Department of Health and Children, *supra* n. 119, Standard 5.68

<sup>151</sup> *ibid*, Standard 5.69

<sup>152</sup> *ibid*, Standard 5.70

<sup>153</sup> *ibid*, Standard 5.71

<sup>154</sup> *ibid*, Standard 5.72

<sup>155</sup> *ibid*, Standard 5.74

<sup>156</sup> Section 52 of the Mental Health Act 2001 (No. 25 of 2001)

<sup>157</sup> Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006)

person about any aspect of the service, care or treatment provided.<sup>158</sup> Each resident must be made aware of the complaints procedure as soon as possible after their admission,<sup>159</sup> and the written policy is to be displayed prominently.<sup>160</sup> A nominated person should be assigned to deal with complaints,<sup>161</sup> and there is a requirement that all complaints are investigated promptly<sup>162</sup> and properly recorded.<sup>163</sup> The proprietor of the approved centre is required to ensure that residents do not suffer adverse consequences as a result of a complaint being made.<sup>164</sup> These regulations apply to all residents of approved centres, whether adults or children.

**The Mental Health Commission** has outlined its own complaints procedure<sup>165</sup> which is not specific to children, but deals with all complaints from service users. Complaints made to staff of the Mental Health Commission are to be recorded in writing, and the individual making the complaint is to receive a response within five working days.<sup>166</sup> If the issue still remains unresolved, a formal complaint may be submitted to the Chief Executive of the Mental Health Commission in writing,<sup>167</sup> and forms are provided for this purpose. Standards for dealing with complaints contain a commitment to making an effort to resolve complaints within the shortest possible period of time, providing the complainant with written acknowledgement within five working days, and a reply sent to the complaint within 20 working days. In addition, a staff member other than person who the person making the complaint originally dealt with will examine the complaint, and all complaints are to be dealt with confidentially, fairly and impartially.<sup>168</sup>

The Mental Health Commission has also outlined the complaints procedure specifically for young people in a child-friendly way, through a Toolkit provided at [www.headspaceireland.ie](http://www.headspaceireland.ie). It is intended for the use of all young people who are inpatients of the mental health services. Information on making a complaint is provided in child-friendly language,<sup>169</sup> and “Power Tool 9” is provided on the website to help young people to make a complaint about the service.<sup>170</sup> Advice is also given on to young people on how to make and formulate their complaint.<sup>171</sup>

<sup>158</sup> Section 31(1) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006)

<sup>159</sup> Section 31(2) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006)

<sup>160</sup> Section 31(3) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006)

<sup>161</sup> Section 31(4) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006)

<sup>162</sup> Section 31(5) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006)

<sup>163</sup> Section 31(6) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006)

<sup>164</sup> Section 31(8) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006)

<sup>165</sup> Mental Health Commission, *Complaints Procedure* available at [http://www.mhcirl.ie/File/MHC\\_Comp\\_Proc13.pdf](http://www.mhcirl.ie/File/MHC_Comp_Proc13.pdf)

<sup>166</sup> *ibid.* at para 4.2

<sup>167</sup> *ibid.* at para 4.3

<sup>168</sup> *ibid.* at para 5

<sup>169</sup> See further <http://www.headspaceireland.ie/complaint.html>

<sup>170</sup> See further [http://www.headspaceireland.ie/pdf\\_files/IMHC%20-%20HeadSpace%20Power%20Tool%209.pdf](http://www.headspaceireland.ie/pdf_files/IMHC%20-%20HeadSpace%20Power%20Tool%209.pdf)

<sup>171</sup> See further <http://www.headspaceireland.ie/expresscomplaint.html>

### 1.3 From Theory to practice: Analysis

#### The evolution of the main aspects related to the detention of minors identified by the monitoring bodies during the last 5-10 years

##### Developments following recommendations made by international bodies

The CPT and the CAT have either visited places of detention in Ireland or conducted a review of Ireland. Both of these bodies made recommendations and observations only in relation to the detention of children in St. Patrick's Institution. Other places of detention for children, including Children Detention Schools, Special Care Units and approved centres have not been subject to international monitoring or inspection. A number of developments have taken place which impact on these bodies' concerns in relation to St. Patrick's Institution. Since these concerns were outlined, two further national reports on St. Patrick's Institution have been published, one by the Inspector of Prisons,<sup>172</sup> and another by the OCO.<sup>173</sup>

In relation to the separation of children from adults in St. Patrick's, the OCO found that responses from young people detained there indicated that 16 and 17 year olds were held along with 18 year olds in a number of sections of the facility.<sup>174</sup> Efforts to increase separation could sometimes act as a barrier to accessing more varied training and educational activities.<sup>175</sup> In response, the Irish Prison Service commented that while these were issues, the separation of children from adults was "the rule rather than the exception" and staff were always present when children and adults had contact, and noted that a further review of the situation was then under way.<sup>176</sup> In 2012, the Inspector of Prisons reported that while B Division in St. Patrick's detained children aged 16 and 17 years, C and D Divisions detained adults. However, another area known as the Unit detained both children and adults, and was used for those who could not be accommodated in the main units because of their crimes.<sup>177</sup>

In response to concerns raised about the detention of children and adults together, the Government advised the CPT about the plan to develop 167 new places at a new National Children Detention Facilities at Oberstown, which would provide new facilities for 16 and 17 year old boys, thereby ending the situation whereby adults and children were detained together within the Institution.<sup>178</sup> On 2<sup>nd</sup> April 2012, then Minister for Children and Youth affairs Ms Frances Fitzgerald announced that capital funding had been secured in order to end the detention of children in St. Patrick's Institution.<sup>179</sup> From the 1<sup>st</sup> May 2012, all newly remanded or sentenced 16 year olds have been detained in Children Detention School facilities in Oberstown, Lusk, rather than in St. Patrick's. Following criticisms leveled at St. Patrick's Institution by the Inspector of Prisons, who found that the Irish Prison Service could "no longer guarantee the safe and secure custody of young offenders detained in St. Patrick's

<sup>172</sup> Inspector of Prisons, *Inspector of Prisons Report on St. Patrick's Institution*, (Inspector of Prisons, 26<sup>th</sup> June 2012)

<sup>173</sup> Ombudsman for Children, *Young People in St. Patrick's Institution* (Dublin: Ombudsman for Children's Office, 2011)

<sup>174</sup> *ibid.* at p. 26

<sup>175</sup> *ibid.* at p. 26

<sup>176</sup> *ibid.* at p. 28

<sup>177</sup> Inspector of Prisons, *supra* n. 170

<sup>178</sup> *Response of the Government of Ireland to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Ireland from 25 January to 5 February 2010* (CPT/Inf(2011)4) (Strasbourg, 10 February 2011) available at <http://www.cpt.coe.int/documents/irl/2011-04-inf-eng.htm> at paras. 26 & 28

<sup>179</sup> See further <http://www.dcy.gov.ie/viewdoc.asp?Docid=1842&CatID=11&mn=&StartDate=1+January+2012>

Institution”,<sup>180</sup> and recommended that St. Patrick’s Institution should be closed,<sup>181</sup> the Government announced the closure of St. Patrick’s Institution. All adult offenders previously detained in St. Patrick’s Institution have now been transferred to Wheatfield Place of Detention, and only a small number of children remain detained on remand in St. Patrick’s. However, 17-year-old males under sentence are detained in a wing of Wheatfield Place of Detention, which also detains adults.

Ending the detention of children in St. Patrick’s and moving them to child-specific detention facilities are very significant developments, which will address many of the major concerns highlighted by CPT and CAT, although a small number of children are still detained within St. Patrick’s and Wheatfield Place of Detention. It is also notable in the interim that the remit of the OCO was extended in July 2012 meaning that it can now investigate complaints in relation to children detained in these facilities.<sup>182</sup>

#### Recent Key Concerns Highlighted by National Monitoring Bodies

Key concerns in relation to detained children are also highlighted by national monitoring bodies, and the most recent concerns in relation to detention of children are outlined below.

#### Concerns in relation to Detention in the Juvenile Justice System

The most recent inspection reports by HIQA and the Inspector of Prisons shed light on the situation of detained children. The most recent report from HIQA on the Children Detention Schools on Oberstown Campus<sup>183</sup> found that overall there was a good standard of care in the detention schools and that the views of children who were interviewed generally reflected this, reporting that they felt staff were kind and interested and that they enjoyed attending school and participating in extracurricular activities.<sup>184</sup>

In a study carried out with young people in St. Patrick’s Institution in 2011, particular concerns were raised in relation to the quality of information provided to young people detained there, and the adequacy of the complaints mechanism.<sup>185</sup> Major concerns were also highlighted by the Inspector of Prisons about conditions in the facility.<sup>186</sup> These concerns related to

“...the improper use of Safety Observation and Close Supervision Cells, the excessive/improper use of control and restraint techniques, the inadequacy of investigations of prisoner complaints, the manner in which disciplinary sanctions were being imposed, aspects of prisoner healthcare, inadequate education and poor to non-existent record keeping.”<sup>187</sup>

In 2012, the Inspector of Prisons found that the Irish Prison Service could “no longer guarantee the safe and secure custody of young offenders detained in St. Patrick’s

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<sup>180</sup> Inspector of Prisons, *Office of the Inspector of Prisons Report Annual Report 2012*, (Tipperary: Inspector of Prisons, 20<sup>th</sup> May 2013) at p. 18

<sup>181</sup> *ibid.* at p. 22

<sup>182</sup> Ombudsman for Children Act 2002 (Section 11(2)(a)) Order 2012 (S.I. No. 210 of 2012)

<sup>183</sup> Health Information and Quality Authority, *Inspection Report of a Children Detention School on Oberstown Campus: Inspection Dates 18th to 20th June 2013* (Dublin: Health Information and Quality Authority, 2013)

<sup>184</sup> *ibid.* at p. 8

<sup>185</sup> Ombudsman for Children, *supra* n. 171 at p. 69-71

<sup>186</sup> Inspector of Prisons, *supra* n. 170 at p. 5

<sup>187</sup> Inspector of Prisons, *supra* n. 178 at p. 17

Institution”,<sup>188</sup> and recommended that St. Patrick’s Institution should be closed, and the name of the institution “consigned to history”.<sup>189</sup> The closure of St. Patrick’s Institution was announced by the Government following this recommendation.

#### Concerns in relation to Detention in the Special Care System

The most recent inspection reports from HIQA provide insight into the operation of Special Care Units. In the most recent reports of all three units, generally positive impressions were formed by the inspectors. They found that developments continued to be made to ensure safe and secure environments for the detention of young people in all three units,<sup>190</sup> and they noted a particularly child-centred culture in evidence in Ballydowd.<sup>191</sup> Particular concerns and areas for improvement were also highlighted in relation to all three centres. In Gleann Alainn, it was recommended that improvements could be made in relation to the manner in which child protection concerns were dealt with and responses co-ordinated between departments and in improvements which could be made with the complaints system.<sup>192</sup> In Ballydowd, improvements should be made in relation to obtaining outcomes and updates from relevant social work departments when child protection issues were reported to them, and that delays in the outcomes of complaints made by young people should be addressed. In Coovagh House, concerns were expressed around co-ordination with relevant social work departments in relation to child protection concerns reported to them, the inclusion of young people in decision-making within the unit and education.

The latest HIQA inspection reports on the three Special Care Units shed some light on the operation of the complaints mechanisms in the facilities. In Gleann Alainn Special Care Unit, it was found that the standard in relation to complaints was only partly met, and they recommended that the units should ensure that “it is documented as to whether a complainant is satisfied with the outcome of their complaint, and if not what further steps have been taken [and] parents are made fully aware of the complaints process”<sup>193</sup>. The complaints mechanism was also identified as an area which could be improved upon in Ballydowd Special Care Unit, and in particular, delays in the way complaints were dealt with were noted.<sup>194</sup>

#### Concerns in relation to Detention in Approved Centres for Psychiatric Treatment

Concerns about the detention of children in approved centres relate to the lack of adequate child and adolescent facilities, and the resulting admission of children to adult facilities.<sup>195</sup> The *Addendum to the Code of Practice on the Admission of Children* attempted to address this by providing a guideline in to the effect that children should not be admitted to an adult unit in an approved centre, and this was due to be fully rolled out so that no child under the age of 18 was to be admitted to an adult unit by December 2011.<sup>196</sup> Despite this, the detention of children in adult units continues to be a significant concern. The most recent figures suggest that of the 91 admissions of children to adult units in 2013, five were involuntary admissions,

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<sup>188</sup> *ibid.* at p. 18

<sup>189</sup> *ibid.* at p. 22

<sup>190</sup> Health Information and Quality Authority, *supra* n. 93 at p. 7; Health Information and Quality Authority, *supra* n. 92 at p. 7

<sup>191</sup> Health Information and Quality Authority, *supra* n. 91 at p. 4

<sup>192</sup> Health Information and Quality Authority, *supra* n. 93 at p. 21

Health Information and Quality Authority, *supra* n. 93 at p. 21

<sup>194</sup> Health Information and Quality Authority, *supra* n. 91 at p. 17

<sup>195</sup> Mental Health Commission, *supra* n. 83 at p. 2; Mental Health Commission, *supra* n. 84 at p. 2

<sup>196</sup> Mental Health Commission, *supra* n. 84 at p. 3

and one had his status changed from voluntary to involuntary.<sup>197</sup>

The Mental Health Commission reported in 2013 that children admitted to adult units were more likely to be older than those admitted to approved centres for children.<sup>198</sup> A concern was the “particular difficulty for 16 and 17 year olds in accessing age appropriate mental health services”.<sup>199</sup> The lack of dedicated child and adolescent mental health teams, and the insufficient places for children in in-patient and day hospital facilities were also criticised by *A Vision for Change* in 2006.<sup>200</sup> Concerns have also been raised in the most recent reports that all of the in-patient beds in Child and Adolescent Mental Health Units were fully operational.<sup>201</sup> Concerns about the adequacy of the protection provided to detained children under the Mental Health Act have also been raised. The Children’s Mental Health Coalition have pointed out that, unlike adults, neither the admission of children, nor the renewal of admissions, nor the administration of treatments to children is subject to review by the Mental Health Tribunal.<sup>202</sup> Also absent from the legislation is a requirement that children detained under its provisions be accommodated separately to adults.<sup>203</sup> Further concern has been raised about the voice of the child and their capacity to consent to medical treatment.<sup>204</sup>

#### Developments highlighted in consultation with key stakeholders

Key stakeholders with knowledge or experience of monitoring mechanisms interviewed for this study identified a number of developments over the last number of years in relation to the detention of children.

Some key developments were described as follows:

*“...the main areas that we see improvements in are probably some conditions for the children ...a growth certainly in terms of the assessment and treatment of mental health, for example... a lot of these are new innovations and new initiatives.” [Interviewee 10]*

*“there’s certainly a move to acknowledge the challenges that children in detention schools and special care have in relation to mental health.” [Interviewee 10]*

*“We’re certainly seeing significant moves in terms of education.” [Interviewee 10]*

*“[young people] have good attendance at school... both in detention schools and in special care, so from the rights point of view those are positive things” [Interviewee 9]*

<sup>197</sup> Inspectorate of Mental Health Services, *Child and Adolescent Mental Health Services 2013 – Admissions of Children to Adult Units in 2013* (Mental Health Commission, June 2014) at p. 2

<sup>198</sup> Mental Health Commission, *supra* n. 98 at p. 33

<sup>199</sup> *ibid.* at p. 33

<sup>200</sup> Department of Health and Children, *supra*, n. 81

<sup>201</sup> Inspectorate of Mental Health Services, *Child and Adolescent Mental Health Services 2013 – Admissions of Children to Adult Units in 2013* (Mental Health Commission, June 2014) at p. 3-4

<sup>202</sup> See further <http://www.childrensmentalhealth.ie/children-and-mental-health/irish-legal-framework/>

<sup>203</sup> See further <http://www.childrensmentalhealth.ie/children-and-mental-health/irish-legal-framework/>

<sup>204</sup> Committees Team, Library and Research Service, “The Mental Health Act 2001: Delivering on best practice?” (May 2012)

No. 5 *Spotlight* at p. 11 available at

<http://www.oireachtas.ie/parliament/media/housesoftheoireachtas/libraryresearch/spotlights/SpotlightMentalHealthAct2001Final3.pdf>

In relation to the detention of children in adult facilities, one commentator particularly noted that:

*“One of the big strides is that the children have been taken out of the prison system altogether.” [Interviewee 7]*

Aspects of the system which still need improvement, however, were also noted in consultations with stakeholders:

*“Some of the things that we still see, needs more reflection really, are the use of things like single separations and better guidance and more rights as well, there’s a balance between, you know, managing behaviour against managing imminent risk and ensuring that practice aren’t just for compliance. And this is worth protecting.” [Interviewee 10]*

*“One of the concerns that we had was about, the use of single separation, which is detention within detention and (HIQA) is always concerned that that type of detention would become routinised... and institutionalised and also that the facilities in which that was done, were not acceptable.” [Interviewee 9]*

*“But if the children don’t have access to an offending programme, they’ve been in detention for a period of time and then they leave detention pretty much in the same kind of mind.” [Interviewee 9]*

In commenting specifically on the recent developments in complaints and monitoring mechanisms, one stakeholder commented as follows:

*“I think we’ve come late to the game [in Ireland]... The Ombudsman for Children has only had [investigative] powers in the prison system for less than two years. The Inspector of Prisons, I suppose, maybe five, six years. So God only knows how things were seen in the past. Of course, it was a self regulatory system, so people looked after their own complaints and mostly, complaints were dealt with internally.”<sup>205</sup> [Interviewee 1]*

### **Control mechanisms (national and international) of different places where minors are deprived of liberty: good practices**

Consultations with key stakeholders for this study highlighted a number of good practices and positive developments. One positive aspect of the monitoring regime was the regular visits made by monitoring bodies to places where children are detained, which were often unannounced. One key stakeholder reported that the *“Inspector of Prisons, I presume, would visit maybe several times a year, and the Ombudsman for Children would certainly be in touch and visit several times a year.” [Interviewee 1]*. In commenting on the process of the Inspector of Prisons in making visits, another stakeholder reported:

*“Virtually all of the Inspector of Prison’s contact with prisons is by arriving unannounced in prisons and the Inspector of Prisons would arrive at any time of*

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<sup>205</sup> Note: Prior to the Children Act 2001, the Children Detention Schools came under the Department of Education and the Children Act 1908 Act. There were care inspection reports carried out since 1999, with other visits prior to this time.

*the day or the night, the Inspector of Prisons could easily arrive at a prison at 3 o'clock in the morning and want to see what was there.” [Interviewee 7]*

*“... external independent monitoring [is important and] the people involved in that should be able to make regular announced and unannounced visits or inspections, whether that be HIQA in the case of the detention schools or the Inspector of Prisons in the case of prisons...it’s important also that those involved in independent monitoring are able to engage effectively with different stakeholders in those kinds of settings, and to create conditions that enable different stakeholders, including children to speak openly and freely, and that can be a challenge.” [Interviewee 5]*

In relation to the OCO, while it was noted that while they “don’t have an inspection role per se” [Interviewee 5], they have visited places where children are detained:

*“The Ombudsman for Children had visited the detention schools, undertaken a dedicated initiative with young people in St. Patrick’s Institution and, more recently, has visited Wheatfield Place of Detention. The Ombudsman for Children has expressed...serious concerns about St. Patrick’s Institution publicly on several occasions since 2005, both nationally and internationally, and also in the context of providing legislative advice to government.” [Interviewee 5]*

Another positive aspect of the monitoring process which was cited by interviewees was the fact that monitoring bodies such as the Inspector of Prisons, the Ombudsman for Children and HIQA were independent in their functions, under the Prisons Act 2007, the Ombudsman for Children Act 2002 and the Health Act 2007 respectively. This independence is explicitly guaranteed in the legislation in respect of the Inspector of Prisons under s.30(5) of the Prisons Act 2007, and under s.6 of the Ombudsman for Children Act 2002. HIQA also is an independent office, not part of the Department of Health, which functions under its own statute, the Health Act 2007 although the Minister determines the maximum amount of net expenditure that may be incurred by HIQA in any given year under s.31, HIQA must submit their annual report to the Minister, who is obliged to lay this before the Oireachtas within 21 days under s.37. Under s.3 of the Ombudsman for Children Act and s.3 of the Prisons Act 2007, expenses for the OCO and the Inspector of Prisons are paid out of monies from the Oireachtas. The Ombudsman for Children is required to set a report on the performance of her functions before the Houses of the Oireachtas annually under s.13(7) of the Ombudsman for Children Act. While, the Minister is required to cause a copy of the reports of the Inspector of Prisons which are submitted to the Minister annually under s.32 to be laid before the Houses of the Oireachtas and published “as soon as practicable after receiving a report”, there is no set time limit allowed in the legislation for this.

Specific comments were also made in relation to the independence of these bodies and the potential implications for monitoring:

*“Well, both those groups, the Inspector and the Ombudsman, are completely independent of [the prisons]. They’re set up with statutory powers, so they have the right to enter, visit, review, interview, who and whatever they want. So I think that that’s working well in that people have rights to actually access children, and they are right, that are above the prison, so they are more powerful than the prison. So the prison has no authority to stop or to block, but they have the right to come in and the right to do whatever they want.” [Interviewee 1]*

*“There are no obstacles put in the Inspector of Prisons’ way because the Inspector of Prisons is...guaranteed independence through legislation. And the prisons have to open the door to the Inspector of Prisons the moment he arrives. The Inspector of Prisons has unlimited and free access to every part of the prison and the Inspector of Prisons can say, ‘I want that door opened’ and they have to open it.”*  
**[Interviewee 7]**

*“I think some of the positives; the fact that in both cases they are independent, and that their mandates around inspection and monitoring are underpinned by legislation. I think it’s positive that they can do announced and unannounced inspections and that they publish reports arising from those inspections, so there’s an element of transparency and accountability around what they’re doing.”*  
**[Interviewee 5]**

Another positive aspect of the monitoring regime which was mentioned was the standards used by monitoring bodies in inspecting places where children are detained:

*“The other piece that I think is positive is the standards that HIQA are working with, while not particularly new standards, do include explicit reference to children’s rights, do include a dedicated section on children’s rights, and matters such as information being provided to young people in the detention schools about their rights, complaints handling, access to advocacy, and so on. It’s useful that those things are included explicitly in the standards, because HIQA obviously works with those standards, and so needs to consider these matters when inspecting.”*  
**[Interviewee 5]**

*“In terms of the Inspector of Prisons, I think it is positive that there is a dedicated juvenile supplement to the Standards for the Inspection of Prisons that includes explicit references to international standards relating to juvenile justice including provisions of the UN Convention on the Rights of the Child. So, again, it’s a body working with standards and therefore the expectations that include an explicit recognition of children’s rights including under international standards.”*  
**[Interviewee 5]**

A further positive aspect of the monitoring bodies which was highlighted in consultation with stakeholders was the level of contact monitoring bodies have with detained children:

*“I think that the prisoners have faith in what the Inspector of Prisons does, they sort of see the Inspector of Prisons as the person who can improve their lot. He’s a person that will listen to them. The Inspector of Prisons’ contact with the youngsters has been probably on a proportionate basis, it was greater than his contact with the older prisoners in prisons.”* **[Interviewee 7]**

*“But if you can get them to have some interest in what you’re doing, then they’ll talk and they’ll talk openly to you.”* **[Interviewee 7]**

*“So, and I suppose our concentration is on meeting the children because, as we know, closed environments have been, you know, children haven’t been consulted or been part of a lot of reviews or reports. And we make it a point of getting to see as many of them as we can, we give that opportunity to talk to us*

*and I suppose we've an advocacy role as well when we go in and that, you know, we tell children what their rights are."* [Interviewee 10]

In consultations with young people detained in Children Detention Schools, varying levels of awareness of the monitoring process were evident. There was a difference between the girls' and boys' group in this regard, with the boys showing far more awareness than the girls. One young person described "people in suits" who came in and spoke to him and "they were asking you what are the staff like and all that". Another said that "The inspectors are always in here", and young people said that they were "Just looking around". When one young person who wasn't interviewed by inspectors was asked whether he would have liked to be, he replied "Yeah. We all would." This seems to suggest that detained young people view being interviewed during these inspection processes positively.

Stakeholders also spoke positively about the completeness of the reports produced by monitoring bodies. In discussing the Inspector of Prisons' most recent report on St. Patrick's Institution, one stakeholder commented:

*"I have been impressed with the robustness of that report. I think he has been quite honest and forthright in his brief."* [Interviewee 6]

In discussing the scope of the work of monitoring bodies, one key stakeholder involved in the monitoring process of children detention schools and special care units commented:

*"We're in a nice position that we don't just go into the centre... we also look at their overall governance right up to boards of management or national officers. So we've quite a wide scope."* [Interviewee 10]

A further point which was made about positive aspects of the monitoring regime was where recommendations made had led to an improvement in service provision or care of detained young people:

*"[The Inspector of Prisons] made a very clear recommendation in that report that the name of St Patrick's should be consigned to history, so I think that was right and I think he did his job and as far as effectiveness goes and actually seeing what was going on inside that prison, I think the fact that a report of his seemed to lead to a ministerial decision to close that prison, I think is evident probably of the effectiveness of his actions, on that particular prison at any rate."* [Interviewee 6]

*"Since 2008 the Inspector of Prisons has provided, I think it's about 60 reports, to the Minister. And virtually all of those have been acted on, you know. And probably acted on before they were published."* [Interviewee 7]

*"Well, the HIQA reports are seen as very valuable, we have taken all the observations that HIQA have listed. They've gone through things like, you know, the level of care, the health of the children, the training of staff, and flagged other issues and one of the things that stood out in the HIQA reports was that there was a difference in terms of how staff responded to certain incidents across the three schools. And that was down to the use of single separation. So they flagged that, and then [the Board of Management of the Children Detention Schools started to monitor that." [Interviewee 3]*

*“[The Board of Management of the Children Detention schools] took the comments and recommendations into a work plan, [and] where they said, you know, 'Fully compliant or compliant in parts', [the board] took examined progress on these issues raised by HIQA every month.” [Interviewee 3]*

*“So I suppose what it has done and what really makes it work is that it has made people – recording has had to become a lot better of all situations, of everything that happens within a detention school.” [Interviewee 2]*

*“But I mean it has worked in as much as it has forced...children detention schools look at what [they]’re doing, the way [they]’re doing things, making things a lot more transparent and when you have outside people coming in, it has meant that [they]’ve brought in independent advocacy for young people and obviously [they]’re always open to the Ombudsman for Children as well... and then [the] Board of Management has a governance role.” [Interviewee 2]*

### **Collaboration – formal and informal – between the different monitoring and complaint mechanisms**

Collaboration between formal and informal systems of monitoring and complaints mechanisms, and collaboration between various stakeholders in relation to detained children were described in consultations with the stakeholders. A key area where collaboration was evident was in Children Detention Schools, where stakeholders described how internal informal monitoring mechanisms were being developed within the Children Detention Schools to run side by side with the more formal inspections by HIQA:

*“This is part of a recommendation of the HIQA report. They asked for visibility in terms of board members doing unannounced visits and speaking directly to children etc.... And so [the Board does]... some unannounced visits and do a walk-through with the key staff and speak to children. Now, we're doing a piece on corporate governance with the board itself and we're going to formalise the visits .This is because in some schools you have a younger age group. You also have a high number on remand in some schools. A lot of children who are on remand as well and Trinity tend to be in a more secure school, and then you have the Girls' School so we want to have appropriate guidelines for the board for that independent inspection. Recently two Board Members carried out unannounced inspections over a weekend and reported those back to the board. And in that process you're trying to hear the voice of the young person.” [Interviewee 3]*

*“And while the HIQA report sets out their inspection regime as part of that process, they would interview, [the] Chair of the Board of Management taking [him] through their various findings. So, [the Chair] would also have had discussions with the Ombudsman for Children not in relation to inspections, but in relation to the detention of children in St Pat's, and the transfer from that prison model to the care model which Oberstown represents.” [Interviewee 3]*

This collaboration between formal and informal mechanisms was also evident in the complaints mechanisms in place in the Children Detention Schools, where advocacy agencies,

such as EPIC, the independent agency working with and providing advocacy services for young people in care, including children detained in Special Care and in Children Detention Schools (see above) would enter the facility and young people could bring complaints to them:

*“But we also have a complaints mechanism where young people can complain to any of the bodies I named earlier because they would meet members of the Board walking around, they’ll meet EPIC who have a clinic in each of the rooms on at least – well they’re there at least three times a month on campus and where a note goes up to say, “EPIC will be on campus this evening between such and such times if you want to get in contact or meet them or anything like that, this is how you do it...” and now the advocates who come out, they’ve got to know the places and they come down to the units themselves and if they want to have dinner with them they can, if the kids want to invite them to have dinner with them or talk to them on their own, rather than it be more formal and make it easier for them, the kids to talk.” [Interviewee 2]*

Another stakeholder discussed how monitoring was developing lines of accountability:

*“And boards of management I think particularly in the sense of detention schools that have been home a lot clearer to them through inspection and that’s pushed that accountability up the line as opposed to it all sitting with the director. For example, they were very often, they were directors, autonomous in a lot of ways for many years and accountable really to nobody except, you know, the Department of Education. And now there are much clearer lines of accountability right up the Irish Youth Justice Service.” [Interviewee 10]*

It was made clear by one stakeholder working closely with monitoring mechanisms that: *“monitoring is very much about driving improvement and we try and revise our methodology all the time in terms of trying to be able to do that more effectively.” [Interviewee 9]*. One example of the interactions between HIQA and those responsible for the facilities which they inspect was provided by one stakeholder:

*“So they’re monitoring of the standards currently, my experience has been they look for an update in relation to the action plan for the recommendation, an action plan devised in a full inspection. Once they do their inspection they come back then and [the detention facility] just currently received a request for an update in relation to the recommendations going now into 2013 inspection.” [Interviewee 4]*

The OCO is another agency with a key role in relation to complaints, whose approach to complaints handling can be described as follows:

*“ [the Ombudsman for Children’s Office] respects local complaints procedures and promotes local resolution of complaints. One of the first things that [the OCO will] try and establish when ... a complaint [is made] is whether or not they have communicated or sought to have that complaint dealt with locally. So [they] don’t jump in if you like and in principle the Office is there as a place of last resort for complaints.” [Interviewee 5]*

## Main obstacles and difficulties with implementation

### Non-ratification of OPCAT

Article 3 of the Optional Protocol to the Convention against Torture requires States Parties to establish “one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment”, known as a National Preventative Mechanism (NPM).

A National Preventative Mechanism for Ireland is not yet in place. This was identified in consultations as a significant barrier in ratifying OPCAT:

*“I think that the main barrier is the fact that we haven’t taken any steps to designate a national preventative mechanism. That, for me, is the main barrier and Ireland tends to not ratify a convention unless we already have things in place.” [Interviewee 8]*

The proposed Inspection of Places of Detention Bill is to be a key part of establishing Ireland’s NPM. On 13<sup>th</sup> March 2013, then Minister for Justice Alan Shatter indicated that the drafting of a General Scheme of an Inspection of Places of Detention Bill had been approved by the Government, and it was expected that the General Scheme would be published in that year.<sup>206</sup> This legislation would make siting Committees more effective and expand the role of the Inspector of Prisons.<sup>207</sup> The proposed legislation appears on the Government Legislation Programme for Spring/Summer 2014 however on the list of Bills in respect of which heads have yet to be approved by government. There is no indication when publication of the legislation is expected<sup>208</sup> and so it is unclear when the Irish legislative framework will be in place in order to meet the obligations set out under OPCAT.

This has been pointed out by concerned human rights bodies. In 2011, the *Joint Shadow Report to the First Periodic Review of Ireland under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* produced by the Irish Council for Civil Liberties and the Irish Penal Reform Trust<sup>209</sup> pointed out that the non-ratification of OPCAT is “at variance with its Belfast/Good Friday Agreement 1998 commitment to guarantee equivalence of human rights protection in both legal jurisdictions on the island of Ireland”. Further, the Irish Council for Civil Liberties has again commented on the lack of progress in establishing a National Preventative Mechanism in its recent *Civil Society Report to the Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights*.<sup>210</sup> Noting the Minister for Justice, Equality and Defence’s assertion that the drafting of a General Scheme of an Inspection of Places of Detention Bill had been approved by the Government, but also the absence of a set timeframe for the introduction of the legislation, they recommended that the legislation putting an NPM in place should be prioritized.<sup>211</sup> The IPRT has also drawn attention to the need for Ireland to

<sup>206</sup> Dail Eireann Debates (Written Answers), Wednesday 13<sup>th</sup> March 2013 at [13294/14] available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2013031300083#N16> (accessed 30<sup>th</sup> July 2014)

<sup>207</sup> *ibid.*

<sup>208</sup> *ibid.*

<sup>209</sup> Irish Council for Civil Liberties & Irish Penal Reform Trust, *Joint Shadow Report to the First Periodic Review of Ireland under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (April 2011) available at <http://www.iprt.ie/files/ICCL-IPRT-report-web.pdf> (accessed 30<sup>th</sup> July 2014)

<sup>210</sup> Irish Council for Civil Liberties, *Civil Society Report to the Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights* (June 2014) available at <http://www.iccl.ie/civil-society-report-to-the-fourth-periodic-examination-of-ireland-under-the-icpr-%28june-2014%29.html> (accessed 30<sup>th</sup> July 2014)

<sup>211</sup> *ibid.* at p. 98

ratify the Optional Protocol to the Convention Against Torture, and has recommended the establishment of an NPM and of a Prisons Ombudsman.<sup>212</sup> The lack of a set timeframe, therefore, for the passing of legislation establishing a NPM is a barrier to Ireland's ratification of OPCAT.

In consultations, stakeholders working with and on behalf of detained children expressed mixed views, however, as to the impact the lack of ratification of OPCAT has made on monitoring and complaint mechanisms in Ireland. Some did not agree that the failure to ratify thus far has had an impact on the monitoring system:

*"No, I don't, because I think that however we're going to operate the protocol is probably through some form of similar mechanism like an Ombudsman for Children or an Inspectorate. But somebody is going to have to do it, so it is either one of the two will be given that role, or a third force will come into play, that will have that role. So I don't think that it's a major obstacle at the moment."*

**[Interviewee 1]**

*"My gut instinct is, I don't think so because we've had so much scandal in this country, you know, childcare now has well developed protocols, have seen in all areas such as social worker and all. However, what I would say about applying directives is that we should try for best practice, even if we haven't ratified it, there's nothing to stop us now saying before it's ratified, what would it look like? Would we subject ourselves to that, I would say, we should be open to that, so my view is, while I can't say yay or nay to that, I still think it's a good idea."*

**[Interviewee 3]**

Others felt that the ratification of OPCAT would make a significant difference:

*"Well, I suppose the straightforward answer is obviously the failure to ratify means that we don't have a national preventative mechanism. And the impact of not having national preventative mechanisms is that really the system at the moment is quite reactive, you know, it's... We get to these crisis points where we get an absolutely shocking report from the inspector of prisons that sparks action or positive reform. Now, that's not good enough, because in the interim you have children who are experiencing these appalling conditions, so while it's all very well to react to an appalling report and that's as it should be, there should have been a response to that report, that's clearly a case that there were many children that would have suffered before any action was taken, and indeed there's still children on remand as well I can see in St Patrick's institution. So, the real benefit of a national preventative mechanism is that one would hope it prevents these things,"* **[Interviewee 6]**

*"I think any measures that are put in place to strengthen complaints and monitoring mechanisms in relation to places of detention, including those where children are detained are to be welcomed, and that would include obviously ratification of OPCAT and the introduction of a national preventative mechanism here as envisaged under OPCAT... in addition to being a positive measure in itself, the establishment or existence of that kind of robust external independent monitoring and complaints mechanism, it can also serve to strengthen internal*

<sup>212</sup> Irish Penal Reform Trust, *IPRT Submission to Human Rights Committee on Ireland's Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights* (June 2014) available at <http://www.iprt.ie/contents/2634>

*local monitoring and complaints procedures. If you know that you're subject to external independent monitoring, inspection and complaint handling and those mechanisms are supporting you to do your job, to be able to deal with things internally first and in accordance with good practice."* [Interviewee 5]

#### Challenges and difficulties with implementation identified by stakeholders

A key potential challenge which was identified by many of the stakeholders in relation to implementing monitoring mechanisms in places of detention for children was the culture of the institution being inspected. Some key comments in this regard were as follows:

*"Well, I suppose the biggest challenge is the culture of the institution, in both accepting that independent monitoring is the way to go, and also then accepting findings of the independent monitors. Sometimes when a report is produced, 92% of it might be completely accurate, 8% might be less than accurate, but people concentrate on the 8%. They miss the bigger picture. So this is a culture reaction to people who are using a different lens to looking in at an organisation, and look in. So I think the obstacle again, is the stand off that happens between who sees what and through which lens. But I think the cultural issue is the big thing about people seeing, monitoring, and review, and inspection, as normal, normative, and actually helpful and progressive, rather than challenging and punitive."* [Interviewee 1]

*"It is important to be cognisant that every organisation will have a culture...it's being aware that there will be a culture in these environments and that culture will permeate throughout, from senior management right across to people who are detained there."* [Interviewee 5]

*"You know, organisations don't like any change really and who likes an inspector coming in? They don't. You know? That's just the nature of the job. And I suppose there's a, I suppose, and it's coming but it's slow particularly with detention schools but I suppose a lot better with special care because they're more used to it. The value of inspections. And also learning how to self-regulate."* [Interviewee 10]

One stakeholder expressed concern in relation to the Inspector of Prisons Office that it may not be "as resourced as it should be", especially given the fact that "his remit is very wide" [Interviewee 6].

Further concerns were expressed about the means by which monitoring bodies' recommendations could be effectively enforced:

*"So, in trying to fulfil their role I suppose part of any monitoring mechanism role is either to prevent inhumane or degrading treatment or punishment or to address it if it's discovered to be occurring, and I'm not sure how... I'm not sure if there is the mechanism at the moment that goes beyond simple recording of difficulties, or recording of poor practice, towards ensuring that better practice replaces that poor practice..."* [Interviewee 6]

*"We also need to ensure that investment is put into the mechanism and that action is taken where a young person's complaint is substantiated. If action is*

*not taken then there is no reason to complain and therefore young people won't complain."* [Interviewee 8]

It was particularly significant for one stakeholder in this regard that monitoring of the Children Detention Schools was done only on an annual basis, with little external monitoring in between:

*"..what you have is a one stop onsite inspection and no further monitoring until six months later an update is required, so there's not regular monitoring so we are not notified to any external parties, any particular information around children and for them in particular? That doesn't exist, so [the Children Detention Schools] are managing those internally, so there isn't a monitoring except for the annual inspection basically."* [Interviewee 4]

One interviewee expressed concern that the Inspector of Prisons does not have independent control over the publishing of his reports, but rather, his reports are handed over to the Minister for Justice, who then makes the decision of when to publish the report:

*"And the really practical issue actually ...is if we don't know when a report is going to be published it is possible that it can be published at a time where it is least likely to receive the attentions of NGOs or the public at large...so...if you want to see clear independence, allowing him to publish his reports independently ... I think is really important."* [Interviewee 6]

Other stakeholders involved closely in the monitoring process expressed concern that the environment, particularly within Children Detention Schools, was a particularly closed one, and identified this as a potential challenge:

*"I think traditionally the detention schools are more a closed environment than, you know, even physically they are less accessible than a special care unit for example."* [Interviewee 10]

Concern was also expressed by a stakeholder that the standards used for inspection, and particularly those used for the Children Detention Schools, are now old and outdated:

*"I think one of the interesting things about monitoring is the sense that a lot of thinking around standards has moved on. And these standards were drawn up by the Irish Youth Justice System. They were drawn up in 2008. And I think, when you start looking at standards now we will have... more detail."* [Interviewee 9]

*"But, you know, there is certainly... not enough emphasis on certain issues from our point of view. They're of a time, and the residential standards and the foster care standards look the same. Special care standards are very similar. But they are standards that need revision."* [Interviewee 9]

*"Well I suppose from the monitoring, our standards appear, our standards are quite old...So, to monitor, I think, have you got in relation to the school, the detention school itself can be constant, in terms of has evolved significantly over the past number of years, so there's an interpretation of standards taking into context how they were worded a number of years ago, in contrast to what the best practice was, the best outcome for, and what the new legislation and requirements are. So there's as far as there, so from a monitoring perspective,*

*it's evolving so quickly that the monitoring process needs to be in tune with, with services and changes."* [Interviewee 4]

One stakeholder also drew attention to the manner in which the monitoring of children's rights is done and interpreted within an environment wherein children's rights are already curtailed by virtue of the very fact of their detention:

*"In relation to types of the placement that are found, so how you manage or how you interpret children's rights in the context that they've lost some rights already by being detained or because of current behaviour. And that raises issues, so a very simple one regards the communication with family, this, that and the other, the children do not have rights, a right to have telephones or mobile phones. So communication with family, communication is already limited. Whereas you look at the rights in relation to other children we'd say they should have the right to have contact with whoever whenever they want so there are limitations, so from a monitoring perspective the need to understand that and to consider that in the context of the monitoring approach and how you collate information and you're find exactly."* [Interviewee 4]

Another general observation from a stakeholder outlined that the political context of a given country might pose a potential obstacle to effective monitoring of places of detention:

*"I'm not speaking particularly about Ireland or about the situation here but just more generally, there is the whole question of whether the political environment in which monitoring mechanisms are operating, whether it's supportive of and interested in providing for robust independent monitoring...And there is the whole matter of public opinion, you know, what's the backdrop against which independent monitoring mechanisms are operating in any country? And I suppose it could be a challenge if that backdrop is one of public apathy or indeed antipathy towards people, including young people, who are in detention, particularly if they're in criminal detention"* [Interviewee 5]

### **Complaint mechanisms (at a national and international level) available to minors deprived of their liberty: good practices**

A number of good practices were also identified in consultation with key stakeholders in relation to how complaint mechanisms work in places in which children are detained. The first thing cited in relation to good practice was the existence of complaint mechanisms which constituted independent statutory oversight of places of detention for children, as well as informal mechanisms:

*"Oh, well, that we have independent statutory oversight by two groups, that we have a published complaints system, that people should be aware of, that families have regular access to visit children and telephone children. Because I think informal mechanisms are as important as the formal ones, like people having access to children like teachers, psychologists, social workers, family members, visiting committees, all that kind of groups. They can be as powerful through their informal structures. So I think all of that is working well."* [Interviewee 1]

*"I'm happy that the complaints system is there but I know I would welcome the fact that somebody else coming in using an agreed template could have conversation with the young people and we as a board getting an independent view of that of the reality for the young people in detention." [Interviewee 3]*

A particularly positive aspect of this which was noted was the extension of the Ombudsman for Children's remit to allow it to take complaints from children detained in St. Patrick's Institution:

*"[The Ombudsman for Children] can now investigate individual complaints that are either made by or on behalf of young people under 18 whether they are detained in St. Patrick's or in Wheatfield. That's actually the innovation. It may sound very basic but that's a really important thing that's happened, you know, because that mechanism just did not exist until really quite recently." [Interviewee 5]*

Another positive aspect of the complaints mechanisms which was identified was the existence of agreed protocols for the making of complaints by detained children:

*"I do think it's positive that, for example, the Inspector of Prisons has developed a model of complaints handling which ... [involves] encouraging local resolution of complaints, that the model developed places a strong emphasis on local complaints procedures within prisons, on local resolution and I suppose, with that, around prison management taking responsibility for dealing with complaints in accordance with good practice." [Interviewee 5]*

*"The Prison Service engaged between 20 and 30 outside investigators to investigate serious complaints. And that's been working reasonably well. These people have been drawn from all different walks of life, some of the people are experienced formal guard officers, there are some lawyers, there are doctors... And that's working reasonable well. But there are an awful lot of things that have to work in the complaints system. One is that you have to be able to make a complaint without fear, that there won't be consequences from making a complaint. That's the first thing. But then the complaint has to be properly investigated, but after it has been properly investigate then you have to see some results." [Interviewee 7]*

There was also a sense in consultation with key stakeholders that children detained in the Children Detention Schools were well aware of the complaints mechanisms open to them, and a stakeholder working closely with children in this context reported that *"complaints procedures are actually posted pretty well throughout the school"* and that *"[HIQA] have said that children themselves were aware of the complaints and the complaints process"*. [Interviewee 3].

*"I think generally I don't think that any time that I spoke to them I found anyone not aware of the complaints system, there's been the odd perky guy who'd stand up and say anything, you know, but as a system, 1. I'd say, it's posted in view of the Children and 2. it's taken seriously." [Interviewee 3]*

*"I think one of the Inspectors in the last HIQA Inspection was very much concentrating on that [complaints procedures] and felt, from what he got back from interviewing the kids and everything else, staff who had handled complaints*

*that the kids found it easy enough to make a complaint and felt that when they were making one that it was taken seriously.” [Interviewee 2]*

*“We also now have put in that as part of the Complaints Procedure if the complaint comes in, sometimes they put it in writing and there’s a separate area for it to go, but that would always be acknowledged in writing to the young person, that we have received it and it is going to such and such a person and, “You should expect an answer back within a week” or two weeks or whatever it is and, “If you don’t, you have a right to ask again”. [Interviewee 2]*

However, more ambiguity about the level of awareness of the complaints mechanisms by young people was evident in the consultations with young people detained in the Children Detention Schools. One young person did suggest that the complaints procedure was clearly posted:

*“But it says it on it. Like as soon as you come in the door you can see it, it says on it.”*

Others, however, suggested that they had not been told about it when they first arrived in detention, or else could not remember being told, and said they found out about complaints mechanisms through more informal means:

*“No, you’re waiting around three weeks for them to say something like that.”*

*“I think they were on about complaints, I don’t know, I can’t remember.”*

*“When I first came down we were up there and I didn’t know anything about complaints. But I wouldn’t put in a complaint anyway. Then my friend she used be saying ‘Oh I’m going to put in a complaint over you’ and this that and the other thing and that’s how I found out about complaints.”*

Others reported that they received a booklet when they arrived. They seemed to indicate that this set out rules and procedures for mobilities and home leave, but didn’t mention that the booklet said anything about complaints, even when specifically asked about it.

*“Well when you come in here we get a leaflet book as well, go through it, you know. It send out to family and tells you what the place is, and all about you’re not allowed curse and what the rules are and what the school is, and you get mobilities and home leave.”*

*“We just throw that little booklet in the bin.”*

This seems to indicate that the complaints procedure may not be set out clearly or accessible enough or be put in a sufficiently prominent place including to ensure it is made available to young people at admission. The latter comment also seems to question the value of giving young people, particularly those who may have difficulties with literacy, information in written form.

That being said, however, there appeared awareness amongst young people interviewed about how to go about making a complaint, although there appeared to be greater reliance on formal complaint processes by the girls, than by the boys. As a female interviewee explained:

“You’d talk to the manager first about it, and if you’re not happy with what happens then, get one of them green forms and fill it out, and that goes to [named person] then.”

The girls also seemed to have more awareness of a “green form” used within the facility as a complaints form, where it was available “outside the office door”. However some of the boys didn’t seem to be aware of this form, while others who were said that these forms were kept “inside the office”. It should here be noted that the green form is an incident report form rather than a general complaints form. There is also a generic green envelope for general complaints, which must be written out freely without the aid of a form.

Another stakeholder reported that, within the Children Detention Schools, “*the mechanism of dealing with complaints is to try and ensure that complaints are dealt with at source.*” [Interviewee 4]. This was elaborated on further:

*“So whether it’s the chips or whether it is mummy not coming, access was stopped for a reason if we don’t try to explain to the child why that decision was made, or what the alternative option would be. Now, not all people would be satisfied, you know, the mother may not be satisfied or the child may not be satisfied. But again, those core overall beliefs ensure that there’s appropriate documentation around that complaint, how will this be addressed and the outcome. Again there are different mechanisms in place, some poor, some good.”* [Interviewee 4]

Stakeholders also cited the relationship between staff and young people as helping to make the complaints system accessible to young people:

*“So the relationship I would say on the ground is very good and they would all be known by first name and all of that, you know so I think if there was genuinely a problem there you would see it.”* [Interviewee 3]

In interviews with young people, relationships with staff were often discussed, with a mix of views emerging. However, while many negative views were expressed about staff, (see section below), young people also mentioned that there were some staff they felt they could talk to. Again, there appeared to be a difference in attitude between the boys’ and the girls’ group, with the girls expressing generally more positive attitudes:

*“One or two... Staff that are alright, like... Someone that you could trust. But I wouldn’t trust them as in tell them serious things, like, I’d tell them things like in here.”*

*“Yeah. There is staff I’d talk to, yeah.”*

Some young people also responded positively that they felt that staff would take them seriously if they spoke to them about a concern, and mentioned that they knew of a “nice member of staff”.

Another positive feature noted was the oversight of the complaints mechanisms by monitoring bodies. In describing the process of overseeing the complaints mechanisms in place, one stakeholder closely involved in monitoring of places of detention said:

*“We look at all complaints so we ask when we go in to do an inspection of the log of every complaint that’s been made. And then we look at them to see how they*

*were dealt with, were they dealt with in line with our own policy and process? Where they safe, where they timely, where they, was it an equitable process? And then we look at thing they've done, we ask questions that people don't like..... like, "Why have you, why do all your complaints end in a positive finding for the service but never the child?" Or... you know? So we also look at things like have, do services confuse a child's protection issue with the complaints because they're very different. So for example, if it's an allegation against a staff member but it's seen as a complaint, you go through a very different process. So, we look at that. We'd also look at who investigates complaints, is that safe?" [Interviewee 10]*

Another positive aspect of complaints mechanisms was evidenced in descriptions of how complaints may lead to a change of practice in a facility in which children are detained:

*"Now, one of the complaints that I was aware of, I can only give you this one because it's the only one that sticks in my mind, it relates to smoking, you know, the people are saying this is a really big issue, they're not of legal age and it would be ridiculous to facilitate a breach like that, but what they're saying is, 'But our careers smoke, I can smell it off their clothes.' That issue cropped up, like being able to smell a bag of chips if a fella's walking past you and suddenly you want it, you know. Well that's not reasonable, so a conversation has taken place with some of the care staff, can't remember how that panned itself out but I don't think it's reasonable for the care staff to be walking out and walking straight back in after cigarettes...so it struck me that some smoking must be happening in confined spaces and In any event this matter is under review." [Interviewee 3]*

*"So there is lots of scope to change, you know, complaints provide a very healthy source of information but if you have a sense from an organisation which is averse to hearing complaints, which has a negative culture in terms of complaints, that would be a concern to us. You know? And something that, you know, we would look at. An excellent practice is when a service encourages and embraces complaints." [Interviewee 10]*

### **Main obstacles and difficulties with implementation**

A number of obstacles and difficulties in implementing complaint mechanisms effectively were also identified in consultation with key stakeholders. One obstacle identified related to the culture of the particular institution:

*"I think again, you need to get over this institutional, cultural problem. There's no doubt that young children who are very vulnerable, they're not encouraged to complain, that complaining is seen as a negative activity, rather than actually a positive activity, that the organisations where you have complaints, as a negative, but I actually see it as healthy." [Interviewee 1]*

This was closely linked to the key challenge of empowering young people to make complaints:

*"I suppose the first thing is, my own experience is this kind of denial, this kind of diluting of people's right to complain, and children's right to complain, and this lack of empowerment of young people, giving them easy access to hotlines, telephones, freephones, or written complaints forms. Now, we have a complaints procedure that's been in place for about just over year, a formal*

*complaints procedure. Again, my concern is that it is maybe not being used in the way that it was meant to. Because again, I think there can be subtle activities that dissuade people from actually complaining.” [Interviewee 1]*

*“And then there’s the psychological issues... So, if you have a culture or a lack of confidence within the prisoner cohort that there is, a) their complaint is going to be listened to, that, b) whether or not there is a risk of repercussion, and, c) whether anything is actually tangibly going to change as a result of their complaint.” [Interviewee 6]*

In this regard, one stakeholder expressed the view that: *“We all have complaints about things and therefore any healthy system should have complaints. So for me, an absence of complaints in and of itself concerns me.” [Interviewee 8]*

Particular concern was expressed by some stakeholders about the ability of young people to complain in environments in which they are detained:

*“But it’s also their very nature and their vulnerability because they are detained and they’re limited in their interactions with the outside world. You know, if children don’t, and specifically children in detention schools, they can be very...mistrusting and children in special care because they feel, “Why am I here? I didn’t do anything wrong”. They’re... you know, it’s difficult for them then to complain to a system that they don’t trust..... anyway. And that’s real skill in the staff to, you know, to give children this kind of confidence, but also if you’ve made several complaints and they’ve never been [investigated], ... And we do hear children say, “Yeah, I’ve complained but nobody ever listens to me and now I don’t complain anymore”. [Interviewee 10]*

*“One of the things that I have experienced in terms of engaging with young people generally around the issue of bringing complaints is that there’s things, you know, that can inhibit young people. One can be a lack of confidence that the complaint is going to be dealt with appropriately, a lack of confidence in authority or in an officialdom, you know. Another may be concerns about privacy. And people perhaps feeling very alone and very isolated if they don’t feel they have an advocate. That can create a challenge about bringing a complaint if you feel like you’re doing it all on your own, and you’re in a closed environment and you’re in a vulnerable situation. And also concerns young people can have, and they definitely had them in St. Pat’s around negative repercussions, either for themselves or those that they’re close to.” [Interviewee 5]*

Another potential area which may inhibit the making of complaints effectively was the manner in which information was given to young people about how to complain. In describing the issues which were given particular attention in monitoring complaints mechanisms, one stakeholder described the process:

*“We look at how they’re given information. Is it information in adult speak, you know, does it consider children’s learning ability, their cognitive ability? And their reading skills? You know? So it’s within a format that they understand? Is it simplified enough for them? You know? For... to acknowledge all levels of understanding of all the children?” [Interviewee 10]*

Giving young people information in written form, particularly where young people may experience literacy difficulties, seemed to be a particular barrier to make a complaint for young people. Some young people spoke about having been put off making complaints in the past because they required a lot of writing, although some said:

“If it was something important, I’d sit down and write it.”

For others, the written means of making a complaint was a more significant barrier:

“Yes. And I couldn’t be arsed [bothered] writing it all down, doing all that writing for nothing like”

When asked about whether they would go about filling out complaints forms, one young person responded:

“Yeah. I wouldn’t waste my time filling out one of those.”

Therefore, the written form of complaints procedures may present an obstacle to young people making complaints, and discourage them from making complaints at all.

Clarity around what constitutes a complaint was also noted as significant in consultations. One interviewee said that there is a need for clarity around the “*definition of complaints*” [Interviewee 4]. He emphasised the need for:

*“Well, to go back to what I said, a clear understanding or an agreement in relation to the declaration of complaints, I think ensure that there’s consistent policies right across the board in relation to how a complaint should be made and who should deal with it. And I think the right to appeal in relation to a complaint, so a decision is made again for the needs for improvement around and tells you how is that to be considered?”* [Interviewee 4]

One stakeholder expressed the view that, for the authorities dealing with the complaint, getting to the root cause of the issue was another matter which needed attention:

*“I think often young people complain in a circular way. They might not be straight out what they’re complaining about, but they may be complaining about different things that should lead you to think about, what’s going on here? What’s going on in the system?”* [Interviewee 1]

Concern was also expressed in relation to a potential lack of independence within the complaints mechanisms, and the impact that even a perceived lack of independence may have on a young person’s ability and willingness to make a complaint if necessary:

*“Very often the difficulty with all of these systems is the absence of an independent mechanism. If you’re complaining to those who are determining your care, determining how you’re going to be held, and determining all of these pieces, you’re not necessarily going to complain because it may have a negative effect on how you are treated.”* [Interviewee 8]

In this regard, it was particularly significant that relationships with staff emerged as a prominent theme in consultations with young people:

“You can’t talk to no one, no one listens to you.”

“Yeah, but you know the only way you’re going to get through to the staff if there’s another staff on your side. Because if there’s not enough staff on your side then they’ll get just get and...[overspeaking] and you’re never going to get through to anyone.”

When asked if the staff would help them to make a complaint if they had difficulty with it, young people responded:

“Some staff would and some staff wouldn’t.”

This was a particular problem when the complaints which they wanted to make were actually about staff; they responded:

“No, because it’s about the staff.”

Another key observation was the need for effective complaints mechanisms to be in place so that the staff members working in these institutions were empowered and facilitated to make a complaint if they felt there was a need to:

*“Another thing about the complaints system, that I think often gets overlooked, is how individual staff members can complain. We saw that in special care placement work for staff members who report to HIQA, that they want HIQA to look at the place. How do staff members make a complaint where there is pressure to conform and to do as we have always done? This is how we treat these young people. We have to have a place – I know it’s more sort of whistle-blowers – but how do we ensure that we also have that aspect to it? If a staff member feels a young person is being unfairly or inappropriately treated, how do they raise that concern when they are in a very discreet locality where their colleagues will know that they have made that complaint? How do we change that culture? That it’s not acceptable to stand by.” [Interviewee 8]*

A final point related to the need to ensure that a definite conclusion was reached in the complaints process, and the need to see clear outcomes when children do complain:

*“And I think outcomes for children making complaints, I think feedback and the feedback for the decision sometimes is not provided, which warrants children becoming more and, you know, frustrated and annoyed in relation to their complaint. So a further challenge would be to make sure that you reach a conclusion, either if it’s not to everybody’s satisfaction. And to be in the position to communicate that to the relevant people.” [Interviewee 4]*

A key point which emerged from the consultations with young people was that there was a perceived circularity in the process of making a complaint:

“You’d say it to the staff, and then the staff would say to you, say it to your key worker, and then you say it to the key worker, and they tell you to say it to the manager...” “...And when you say it to your manager, the manager says to say it to your key worker, so you’re just running round in circles.”

“I’d go straight up to the manager with it, and the manager would tell me to take it up with the staff, and the staff then would tell me to take it up with the manager, so you’d be going back and forth”

This fed into a perception that nothing would be done, or nothing would really change if they made a complaint, which was a clear point of frustration for young people:

“But they never do anything about it.”

“No, there’s no point doing anything, because nothing happens.”

“So, I don’t really like making complaints, to be honest with you, cos there’s just no point. So you don’t get anything out of it”

“You know even if we make a complaint does anything even be done about it? I doubt it”

It was particularly significant that these concerns seemed to have an impact on young people’s willingness to make a complaint at all. In particular, it was significant that young people reported that when they made a complaint either no one came back to them about it, or there was a significant delay in responding to their complaint:

“We ask them for stuff and then they say, “Well, we’re going to look into it,” and then about, and then, and then about two months later it comes back up and... nothing ever happens”

“But it takes a week or two or something, so you might as well work it out with the manager before you put in a complaint.”

“You don’t understand, you write complaints in this place, but it doesn’t go anywhere, like...you know, apparently he was trying for his sister that could come in and visit him, yeah? And they guaranteed he wrote, he wrote about ten letters...And they just wrote back then, they just said no. They didn’t even give him a reason.”

## 1.4 Conclusions

### Current status and perceptions of the possibilities for monitoring and complaint mechanisms to guarantee the respect of children's rights behind bars

The current status of monitoring and complaint mechanisms for children who are detained is therefore a complex picture. While Ireland has not yet ratified OPCAT, it is subject to monitoring and oversight by a number of other international bodies, including the CPT and the Committee Against Torture. In addition, a range of national monitoring mechanisms monitor places where children are detained, including the Inspector of Prisons, HIQA, the OCO, and the Inspectorate of Mental Health Services. Complaints from detained children can be taken by the OCO, HIQA and the Mental Health Commission, and facilities in which children are detained also have internal complaints systems through which children can express dissatisfaction.

As discussed above, there are a number of both positive and negative aspects of both the monitoring and complaints mechanisms as they currently operate in Ireland. A number of elements were identified in consultation with stakeholders which may help to develop practice going forward. One stakeholder emphasised the need for an approach which is child-focused and based on concrete evidence in developing complaints mechanisms going forward:

*“Any complaints mechanism that is used for children in places of detention should be informed by evidence. So there should be an evidence based approach to what actually works for children, and for the child-focussed approach and a human rights based approach.” [Interviewee 6]*

Another stakeholder suggested that having a clearly identifiable person attached to a complaints mechanism would be useful in encouraging children to complain and developing trust in the system:

*“Certainly, from the international research I have read, it is important that the complaint mechanism has a person linked, that there is a specific entity. It is more likely for the public to come forward to a person than to a body. And that's why – you know, in Ireland we don't...we nearly get afraid of somebody having a personality but actually that's what brings people forward.” [Interviewee 8]*

Another stakeholder emphasised the need to develop internal monitoring practices within places where children are detained, which would be ongoing and would help to feed into external monitoring by independent agencies:

*“So we need to have a robust empowered monitoring system based on the certain standards or framework for external services as well. So, in one sense we should be self-regulating or self-monitoring and feeding that into external monitoring entities whether that is HIQA or other international bodies and that there should be clarity around what the standards are of what we're all looking, so we need to be all looking at the same thing.” [Interviewee 4]*

There were also a number of suggestions put forward from young people who were interviewed about how complaints mechanisms, in particular, could be improved, many of which reflected their concerns about making complaints. Some of these suggestions centred around young people knowing what the outcome of their complaints were, and delay:

“Like if you have a problem then and there it should be dealt with then and there like. You shouldn’t have to wait weeks for someone to read it all and then come back to you.”

Others said it would make a difference “If something was done about it” and suggested a change in staff attitudes would make it easier to make complaints:

“Not to be giving us cheek, not to be putting us down, treating us like dogs like.”

Others suggested outsiders should come in on a regular basis:

“Yeah, you could get someone to come in who... once a month or two months or anything.”

Comments like this seems to indicate that young people didn’t view consultations with EPIC as a channel for making complaints.

The continual monitoring of progress in relation to complaints and monitoring mechanisms going forward will be an important aspect of ensuring that these mechanisms are effective in efforts to uphold and protect children’s rights behind bars.

## Annex

### Establishments Visited

Oberstown Boys' Detention School, Lusk, Co. Dublin  
Oberstown Girls' Detention School, Lusk, Co. Dublin

### Interviewees

Interviews were held with ten stakeholders to include staff of detention centres, regulatory and monitoring bodies, statutory bodies with responsibility for the detention of children, an NGO and a parliamentarian.

Focus group interviews were held with seven young people (both girls and boys) in Oberstown Detention School.

The names of all interviewees will remain confidential as per their written consent to participate in this research.