



**AN BILLE UM AN mBIÚRÓ NÁISIÚNTA
GRINNFHIOSRÚCHÁIN (LEANAÍ AGUS DAOINE
SOGHONTA), 2012**

**NATIONAL VETTING BUREAU (CHILDREN AND
VULNERABLE PERSONS) BILL 2012**

Mar a tionscnaíodh

As initiated

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| Mental Health Act 2001 | 2001, No. 25 |
| Nurses Act 1985 | 1985, No. 18 |
| Nurses and Midwives Act 2011 | 2011, No. 41 |
| Nursing Homes Support Scheme Act 2009 | 2009, No. 15 |
| Pharmacy Act 2007 | 2007, No. 20 |



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**NATIONAL VETTING BUREAU (CHILDREN AND
VULNERABLE PERSONS) BILL 2012**

BILL

entitled

5 AN ACT TO MAKE PROVISION FOR THE PROTECTION OF
CHILDREN AND VULNERABLE PERSONS AND, FOR
10 THAT PURPOSE, TO PROVIDE FOR THE ESTABLISH-
MENT AND MAINTENANCE OF A NATIONAL VET-
TING BUREAU (CHILDREN AND VULNERABLE
PERSONS) DATABASE SYSTEM; TO PROVIDE FOR
15 THE ESTABLISHMENT OF PROCEDURES THAT ARE
TO APPLY IN RESPECT OF PERSONS WHO WISH TO
UNDERTAKE CERTAIN WORK OR ACTIVITIES
RELATING TO CHILDREN OR VULNERABLE PER-
SONS OR TO PROVIDE CERTAIN SERVICES TO CHIL-
DREN OR VULNERABLE PERSONS; TO AMEND THE
20 GARDA SÍOCHÁNA ACT 2005; TO PROVIDE FOR THE
CHANGE OF NAME OF THE GARDA CENTRAL VET-
TING UNIT TO THE NATIONAL VETTING BUREAU;
AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

25 **PART 1**

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the National Vetting Bureau (Children and Vulnerable Persons) Act 2012. Short title and commencement.

30 **(2)** This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

35 **(3)** Notwithstanding the generality of *subsection (2)*, *sections 20* and *21* shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to different types of relevant work or activities or with reference to any other particular purpose or provision and different days may be so

appointed for different relevant work or activities, for different purposes or for different provisions.

Interpretation.

2.—In this Act—

“appellant” shall be construed in accordance with *section 18*;

“appeals officer” means a person appointed by the Minister under *section 17* as an appeals officer; 5

“application for retrospective vetting disclosure” shall be construed in accordance with *section 21*;

“application for re-vetting disclosure” shall be construed in accordance with *section 20*; 10

“appropriate person” shall be construed in accordance with *section 19*;

“Bureau” means the National Vetting Bureau of the Garda Síochána;

“Chief Bureau Officer” means the person who is for the time being appointed by the Garda Commissioner to be in charge of the Bureau; 15

“child” means a person under the age of 18 years;

“compliance officer” means a person appointed by the Chief Bureau Officer as a compliance officer under *section 23*;

“contract of employment” means— 20

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract), 25

whether the contract is express or implied and, if express, whether it is oral or in writing; 30

“criminal record”, in relation to a person, means—

(a) a record of the person’s convictions for criminal offences (if any) together with any ancillary or consequential orders made pursuant to the convictions concerned, or

(b) a record of any criminal prosecutions pending against the person, 35

or both;

“database” shall be construed in accordance with *section 6*;

“enactment” means a statute or an instrument made under a power conferred by statute; 40

“Garda Central Vetting Unit” means the national unit of the Garda Síochána known as the Garda Central Vetting Unit;

“Garda Commissioner” means the Commissioner of the Garda Síochána;

“harm”, in relation to a person, means exploitation or abuse, whether physical, sexual or emotional of the person;

5 “liaison person”, in relation to a relevant organisation, shall be construed in accordance with *section 9*;

“Minister” means the Minister for Justice and Equality;

10 “personal identification number”, in relation to a person who is the subject of an application for vetting disclosure, means the registration number assigned in respect of him or her by the Bureau for the purposes of the vetting procedures under this Act;

“prescribed” means prescribed by regulations made by the Minister under this Act;

15 “private arrangement” means an arrangement made by an individual for the provision by any person of relevant work or activities—

(a) for, or for the benefit of, the individual, or

(b) for, or for the benefit of, a child or vulnerable person who is a member of the individual’s family;

20 “register of relevant organisations” means the register established and maintained under *section 8*;

“register of specified information” means the register established and maintained under *section 10*;

“register of vetted persons” means the register established and maintained under *section 11*;

25 “relevant organisation” means a person (including a body corporate or an unincorporated body of persons)—

(a) who—

30 (i) employs (whether under contract of employment or otherwise) any person to undertake relevant work or activities,

(ii) enters into a contract for services with any person for the provision by that person of services that constitute relevant work or activities,

35 (iii) permits any person (whether or not for commercial or any other consideration) to undertake relevant work or activities on the person’s behalf,

40 (iv) is a provider of courses of education or training, including internship schemes, for persons and, as part of such education or training or scheme, places or makes arrangements for the placement of any person in work experience or activities where a necessary part of the placement involves participation in relevant work or activities,

45 but does not include an individual who does any of the matters referred to in *subparagraphs (i) to (iv)* in the course of a private arrangement,

- (b) who carries on the business of an employment agency within the meaning of the Employment Agency Act 1971 for the employment of persons to undertake relevant work or activities,
- (c) established by or under an enactment (other than the Companies Acts) whose functions include the regulation, registration, licensing or other authorisation (howsoever described) of persons who undertake relevant work or activities, or 5
- (d) who represents for the purposes of the vetting procedures under this Act, another person, trade, profession or body, organisation or group or other body of persons that undertakes relevant work or activities; 10

“relevant work or activities” means—

- (a) relevant work or activities relating to children, or 15
- (b) relevant work or activities relating to vulnerable persons;

“relevant work or activities relating to children” shall be construed in accordance with *Part 1 of Schedule 1*;

“relevant work or activities relating to vulnerable persons” shall be construed in accordance with *Part 2 of Schedule 1*; 20

“scheduled organisation” means an organisation that is specified in *Schedule 2*;

“specified information”, in relation to a person who is the subject of an application for vetting disclosure, means information concerning a finding or allegation of harm to, or neglect of, a child or vulnerable person that is received by the Bureau from— 25

- (a) the Garda Síochána pursuant to an investigation of an offence or pursuant to any other function conferred on the Garda Síochána by or under any enactment or the common law, or 30
- (b) a scheduled organisation pursuant to *subsection (1) or (2) of section 19*,

in respect of the person and which is of such a nature as to reasonably give rise to a *bona fide* concern that the person may—

- (i) harm any child or vulnerable person, 35
- (ii) cause any child or vulnerable person to be harmed,
- (iii) put any child or vulnerable person at risk of harm,
- (iv) attempt to harm any child or vulnerable person, or
- (v) incite another person to harm any child or vulnerable person; 40

“vetting disclosure”, in respect of a person, means a disclosure made by the Bureau in respect of the person under *section 14*;

“vetting procedures” means the enquiry and examination undertaken by the Bureau under *section 14* and, where appropriate, assessment by the Chief Bureau Officer of specified information under 45

section 15 in relation to an application for vetting disclosure in respect of a person who wishes to undertake relevant work or activities;

“vulnerable person” means a person, other than a child, who—

- 5 (a) is suffering from a disorder of the mind, whether as a result of mental illness or dementia,
- (b) has an intellectual disability,
- (c) is suffering from a physical impairment, whether as a result of injury, illness or age, or
- 10 (d) has a physical disability,

which is of such a nature or degree—

- (i) as to restrict the capacity of the person to guard himself or herself against harm by another person, or
- 15 (ii) that results in the person requiring assistance with the activities of daily living including dressing, eating, walking, washing and bathing.

3.—(1) This Act shall not apply to any of the following, namely: Act not to apply to certain relationships or arrangements, etc.

- (a) any relevant work or activities undertaken in the course of a family relationship;
- 20 (b) any relevant work or activities undertaken—
- (i) in the course of a personal relationship, and
- (ii) for no commercial consideration;
- (c) the giving of assistance by an individual—
- (i) on an occasional basis, and
- 25 (ii) for no commercial consideration,
- at a school, sports or community event or activity, other than where such assistance includes the coaching, mentoring, counselling, teaching or training of children or vulnerable persons.

30 (2) In this section—

“family relationship” includes a relationship between 2 persons who live in the same household and treat each other as though they were members of the same family;

35 “personal relationship” means a relationship between or among friends and a friend of a member of an individual’s family shall be regarded as being a friend of the individual also.

4.—(1) The Minister may by regulations provide for any matter Regulations. referred to in this Act as prescribed or to be prescribed or for the purposes of enabling any provision of this Act to have full effect.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

PART 2

NATIONAL VETTING BUREAU (CHILDREN AND VULNERABLE PERSONS) DATABASE SYSTEM

Establishment of National Vetting Bureau (Children and Vulnerable Persons) Database System.

6.—(1) The Chief Bureau Officer shall, as soon as may be after the commencement of this section, establish, or cause to be established, in accordance with this Part a database system to be known as the National Vetting Bureau (Children and Vulnerable Persons) Database System and in this Act, referred to as the “database”.

(2) The database shall be comprised of the following registers:

- (a) the register of relevant organisations;
- (b) the register of specified information;
- (c) the register of vetted persons.

(3) The database shall be used only in connection with the provision of vetting disclosures in accordance with this Act or as otherwise provided for by law.

Functions of Bureau in relation to database, etc.

7.—(1) The Bureau shall operate and maintain the database in accordance with this Act.

(2) Without prejudice to the generality of section 7 of the Garda Síochána Act 2005, the Bureau shall, in accordance with this Act, provide vetting services to relevant organisations in respect of relevant work or activities and, without prejudice to the generality of the foregoing, the Bureau shall perform the following functions in relation to the provision of vetting services, namely:

- (a) the consideration and processing of applications for vetting disclosure received by it from relevant organisations registered in the register of relevant organisations;
- (b) the making of such enquiries within the Garda Síochána as the Bureau deems necessary to establish whether there are any criminal records or specified information relating to persons who are the subject of applications for vetting

disclosure (in this subsection referred to as “the persons concerned”);

- 5 (c) the examination of the database to establish whether it contains particulars of specified information relating to the persons concerned;
- (d) the making of such enquiries as the Bureau deems necessary for the purposes of establishing the identity of the persons concerned;
- 10 (e) the assessment for the purpose of disclosure (or otherwise) of specified information relating to the persons concerned for the purposes of determining whether or not it should be disclosed;
- 15 (f) the making of such enquiries of scheduled bodies or the Garda Síochána, as the case may be, as the Bureau deems necessary for the purposes of assessing specified information relating to the persons concerned;
- (g) the making, in accordance with the provisions of this Act, of vetting disclosures in respect of the persons concerned to relevant organisations.

20 (3) The Bureau shall have all such powers as are necessary or expedient for the performance of its functions under this Act.

8.—(1) The Chief Bureau Officer shall cause to be established and maintained, in such form (including electronic form) as he or she considers appropriate, a register of relevant organisations. Register of relevant organisations.

25 (2) A relevant organisation shall, in accordance with this section, apply to the Bureau to be registered in the register of relevant organisations.

30 (3) A relevant organisation that, immediately before the commencement of this section, is registered with the Garda Central Vetting Unit shall, on such commencement, be deemed to be registered in the register of relevant organisations.

35 (4) A relevant organisation shall not be required to comply with *subsection (2)* if applications for vetting disclosures are submitted to the Bureau on its behalf by another relevant organisation that is registered on the register of relevant organisations.

(5) A relevant organisation that submits applications for vetting disclosures on behalf of another relevant organisation shall furnish the Bureau with particulars of the name and address of the relevant organisation concerned.

40 (6) An application under this section shall—

- (a) be in such form (including electronic form) as may be specified by the Bureau,
- (b) specify the name and address of the relevant organisation,
- 45 (c) contain such other information in relation to the relevant organisation as the Bureau may reasonably require for the performance of its functions under this Act, and

(d) be accompanied by such fee (if any) as may be prescribed.

(7) The Bureau may—

(a) refuse an application for registration under this section, or

(b) remove an entry relating to an organisation registered in the register from it, 5

if it is of the opinion that the organisation is not, or is no longer, as the case may be, a relevant organisation.

(8) The Bureau shall, as soon as practicable, after a decision is made by it under this section notify an organisation of—

(a) a decision to register the organisation, 10

(b) a decision to refuse to register the organisation, or

(c) a decision to remove an entry relating to the organisation from the register,

and, in the case of a decision referred to in *paragraph (b)* or *(c)*, the Bureau shall specify in writing the grounds upon which the decision was made. 15

(9) A person who fails to comply with *subsection (2)* shall be guilty of an offence.

(10) In proceedings for an offence under *subsection (9)*, it shall be a defence for the accused person to show that the accused person neither knew nor could reasonably be expected to know that he or she or it, as the case may be, was a relevant organisation. 20

(11) If a particular entered in the register of relevant organisation is incorrect, the relevant organisation to which the particular relates shall, as soon as may be after becoming aware of its being incorrect, inform the Bureau thereof accordingly. 25

Nomination and registration of liaison persons for purposes of Act.

9.—(1) A relevant organisation that is registered in the register of relevant organisations shall, for the purposes of applying for and receiving vetting disclosures in accordance with this Act, nominate in writing a person (in this Act referred to as a “liaison person”) to be registered in the register of relevant organisations as the liaison person of the organisation. 30

(2) A relevant organisation that is registered in the register of relevant organisations may at any time nominate more than one person under *subsection (1)*. 35

(3) A nomination referred to *subsection (1)* shall be in such form as may be specified by the Bureau and shall include the following particulars in respect of the person nominated:

(a) his or her forenames, surname and, where appropriate, maiden name; 40

(b) his or her mother’s maiden name;

(c) his or her address;

(d) his or her previous addresses (if any);

- (e) his or her date of birth;
- (f) his or her Passport Number (if available);
- (g) such other information as the Bureau may reasonably require for the performance of its functions under this Act.

5

(4) A relevant organisation shall seek vetting disclosure from the Bureau in respect of the person or persons nominated by it under *subsection (1)*, and *Part 3* (other than *sections 12* and *16(1)*) shall with any necessary modifications apply to an application for vetting disclosure for persons so nominated as it applies to an application for vetting disclosure under *section 14*.

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(5) The Bureau may refuse to register a person as a liaison person for an organisation under this section if—

15

(a) the Chief Bureau Officer considers the person to be unsuitable following the vetting procedures carried out in respect of the person, or

20

(b) the number of persons nominated by the organisation as liaison persons is reasonably considered to be excessive having regard to the size of the organisation and the number of vetting disclosures likely to be sought by the organisation.

25

(6) Where the Bureau accepts the nomination of a person as a liaison person under *subsection (1)*, the name of the person shall be registered in the register of relevant organisations for the organisation concerned.

30

(7) A person who, immediately before the commencement of this section, is registered with the Garda Central Vetting Unit as a liaison person for an organisation shall, on such commencement, be deemed to be registered as a liaison person for the organisation in the register of relevant organisations.

35

(8) If a particular relating to a liaison person entered in the register of a relevant organisation is incorrect, the relevant organisation to which the particular relates shall, as soon as may be after becoming aware of its being incorrect, inform the Bureau thereof accordingly.

10.—(1) The Chief Bureau Officer shall cause to be established and maintained, in such form (including electronic form) as he or she considers appropriate a register of specified information. Register of specified information.

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(2) Any specified information in respect of a person that, immediately before the commencement of this section, is in the possession of the Garda Central Vetting Unit of the Garda Síochána shall, on such commencement, be deemed to be entered in the register of specified information.

45

11.—(1) The Chief Bureau Officer shall cause to be established and maintained, in such form (including electronic form) as he or she considers appropriate, a register of vetted persons who were or are the subject of applications for vetting disclosure in accordance with this Act. Register of vetted persons.

(2) The register of vetted persons shall contain the following information in respect of each vetted person:

- (a) his or her forenames, surname and, where appropriate, maiden name;
- (b) his or her mother's maiden name; 5
- (c) his or her address;
- (d) his or her previous addresses (if any);
- (e) his or her date of birth;
- (f) his or her Passport Number (if available);
- (g) his or her personal identification number (if any); 10
- (h) the date of application for vetting disclosure and the outcome of the application;
- (i) the name and particulars of the relevant organisation making the application for vetting disclosure;
- (j) the relevant work or activity to which the application 15 relates;
- (k) declaration of consent referred to in *section 13(4)(e)*;
- (l) particulars of the vetting disclosures made in respect of the vetted person;
- (m) such other particulars as the Bureau considers appropriate. 20

(3) Any information referred to in *subsection (2)* in respect of a person who was or is the subject of an application for vetting disclosure that, immediately before the commencement of this section, is in the possession of the Garda Central Vetting Unit shall, on such commencement, be deemed to be entered in the register of vetted 25 persons.

PART 3

PROCEDURES FOR VETTING DISCLOSURES

Requirement for vetting disclosure in respect of certain work or activities.

12.—(1) A relevant organisation shall not—

- (a) employ (whether under contract of employment or 30 otherwise) any person to undertake relevant work or activities,
- (b) enter into a contract for services with any person for the provision by that person of services which constitute relevant work or activities, 35
- (c) permit any person to undertake relevant work or activities on behalf of the organisation (whether or not for commercial or any other consideration),
- (d) in a case where the relevant organisation is a provider of any course of education, training or scheme, including an 40

internship scheme, place or make arrangements for the placement of a person as part of such education, training or scheme, if a necessary and regular part of such placement requires the participation by the person in relevant work or activities,

5

unless the organisation receives a vetting disclosure from the Bureau in respect of that person.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

10 (3) In proceedings for an offence under *subsection (2)*, it shall be a defence for the accused person to show that the accused person neither knew nor could reasonably be expected to know that the work or activity to which the employment, contract, permission or placement referred to in *subsection (1)* constituted relevant work or
15 activities.

(4) This section shall not apply to any employment, contract, permission or placement referred to in *subsection (1)* that commenced or was entered into, given or made, as the case may be, before the commencement of this section.

20 **13.—(1)** An application for vetting disclosure in respect of a person shall be made by a liaison person for a relevant organisation.

Applications for
vetting disclosure
and who may apply.

(2) A relevant organisation may submit an application for vetting disclosure under this section on its own behalf or on behalf of another relevant organisation that the organisation represents for the
25 purposes of the vetting procedures under this Act and, where a relevant organisation submits an application on behalf of another relevant organisation, it shall inform the Bureau of that and provide it with the particulars referred to in *section 8(5)*.

(3) Without prejudice to the generality of *subsection (2)*, an application for vetting disclosure in respect of a person who is self-
30 employed shall be made by—

(a) a relevant organisation that intends to enter into a contract for services of the person,

(b) a relevant organisation referred to in *paragraph (c)* of the
35 definition of relevant organisation, or

(c) a relevant organisation referred to in *paragraph (d)* of the definition of relevant organisation.

(4) An application under this section for vetting disclosure in respect of a person shall—

40 (a) be in such form as may be specified by the Bureau,

(b) include the information specified in *subsection (5)* in relation to the person,

(c) identify the relevant work or activity to which the application relates,

45 (d) include, in such form as may be specified by the Bureau, a declaration that the applicant is a liaison person for a

relevant organisation and is authorised by the organisation to seek vetting disclosure in respect of the person,

(e) subject to *subsection (6)*, include, in such form as may be specified by the Bureau, a declaration (in this Act referred to as a “declaration of consent”) by the person that he or she consents to the making of the application and to the disclosure of information by the Bureau to the liaison person for the purposes of this Act, and

(f) be accompanied by such fee (if any) as may be prescribed.

(5) The following information is specified for the purposes of *subsection (4)(b)* in relation to a person in respect of whom an application for vetting disclosure is made:

(a) the forenames, surname and, where appropriate, maiden name, of the person;

(b) his or her mother’s maiden name;

(c) his or her address;

(d) his or her previous addresses (if any);

(e) his or her date of birth;

(f) his or her Passport Number (if available);

(g) his or her personal identification number (if any);

(h) such other information as the Bureau may reasonably require for the purposes of its functions under this Act.

(6) If a person in respect of whom an application for vetting disclosure is made under this section is under 18 years of age, a declaration under *subsection (4)(e)* may be made on his or her behalf by a parent or guardian of the person.

(7) In this section “self employed person” means a person who works for profit or gain otherwise than under a contract of employment.

Consideration by Bureau of application for vetting disclosure.

14.—(1) Where the Bureau receives an application for vetting disclosure duly made under *section 13* in respect of a person concerning relevant work or activities, the Bureau shall—

(a) make such enquiries of the Garda Síochána as it deems necessary to establish whether there is any criminal record or specified information relating to the person, and

(b) undertake an examination of the database to establish whether it contains particulars of any record of, or specified information relating to, the person concerned.

(2) The Bureau shall, upon completion of its enquiries and examination referred to in *subsection (1)*, including, where appropriate, any assessment under *section 15*, make, in accordance with this section a vetting disclosure in such form (including electronic form) as the Bureau considers appropriate, to the liaison person for the relevant organisation who made the application for it.

5 (3) Where a member of staff of the Bureau considers there is specified information relating to a person who is the subject of an application for vetting disclosure, he or she shall refer the matter to the Chief Bureau Officer for assessment and determination under *section 15* as to whether the information concerned should be disclosed.

(4) A vetting disclosure shall be in such form (including electronic form) as the Bureau may specify and shall in respect of the person who is the subject of the application for vetting disclosure—

10 (a) include—

(i) particulars of the criminal record (if any) relating to the person, and

15 (ii) a statement of the specified information (if any) relating to the person which the Chief Bureau Officer has determined in accordance with *section 15* should be disclosed,

or

(b) state that there is no criminal record or specified information, in relation to the person.

20 (5) The Bureau shall not make a vetting disclosure in respect of the person who is the subject of the application for vetting disclosure if he or she has lodged an appeal under *section 18* which has not yet been determined.

25 **15.—**(1) Where a matter is referred under *section 14(3)* to the Chief Bureau Officer for assessment and determination, he or she shall— Assessment of specified information.

(a) notify in writing, or cause to be so notified, the person who is the subject of the application for vetting disclosure concerned of that fact,

30 (b) furnish that person with a summary in writing of the specified information relating to him or her, and

(c) inform that person that he or she may make a written submission in relation to the specified information concerned.

35 (2) A person to whom a notification under *subsection (1)* is sent, may make a submission in writing to the Chief Bureau Officer concerning the information not later than 14 days, or such longer period as the Chief Bureau Officer may for good and sufficient reason specify, from the date of the notification.

40 (3) The Chief Bureau Officer shall assess the application for vetting disclosure and the specified information relating to the person who is the subject of that application but he or she shall not make a determination that that information concerned should be disclosed unless—

45 (a) he or she reasonably believes that that information is of such a nature as to give rise to a *bona fide* concern that the person concerned may—

- (i) harm any child or vulnerable person,
- (ii) cause any child or vulnerable person to be harmed,
- (iii) put any child or vulnerable person at risk of harm,
- (iv) attempt to harm any child or vulnerable person, or
- (v) incite another person to harm any child or vulnerable person, 5

and

- (b) he or she is satisfied that its disclosure is necessary, proportionate and reasonable in the circumstances for the protection of children or vulnerable persons or both, as the case may be. 10

(4) In assessing, for the purposes of making a determination as to whether the specified information referred to in *subsection (3)* relating to a person should be disclosed, the Chief Bureau Officer shall have regard to— 15

- (a) the information concerned,
- (b) its relevance to the type of relevant work or activity to which the application for vetting disclosure concerned relates,
- (c) the extent to which the proposed relevant work or activity is likely to necessitate contact with children or vulnerable persons or both, and the nature of that contact, 20
- (d) the source and reliability of the information,
- (e) any submissions made by or on behalf of the person under this section or pursuant to an investigation or other process referred to in *subsection (1)* or *(2)* of *section 19* or otherwise, 25
- (f) whether the rights of the person have been considered and taken account of in a manner that is consistent with fairness and natural justice, and 30
- (g) any other matter which the Chief Bureau Officer considers relevant to the application for vetting disclosure concerned.

(5) The Chief Bureau Officer may, but shall not be obliged to, make a request for further information from the scheduled organisation or member of the Garda Síochána who furnished the specified information concerned to the Bureau and, where he or she does so, the scheduled organisation or member of the Garda Síochána, as the case may be, to whom the request is made shall comply with it within such reasonable period as the Chief Bureau Officer may specify in the request. 35 40

(6) Where the Chief Bureau Officer makes a determination under this section that specified information should be disclosed, he or she shall—

(a) notify, or cause to be notified, the person who is the subject of the application for vetting disclosure concerned in writing of the determination and of the reasons for it,

5 (b) provide, or cause to be provided, to the person a copy of the specified information proposed to be disclosed,

(c) notify, or cause to be notified, the person of the intention to disclose the specified information to a liaison person for the relevant organisation concerned after the expiry of 14 days from the notification, and

10 (d) inform, or cause to be informed, the person that he or she may appeal the determination to an appeals officer not later than 14 days, or such longer period as the appeals officer may for good and sufficient reason determine after the date of the notification under this section is sent
15 to that person.

(7) The Bureau shall not make a vetting disclosure in respect of a person until—

(a) the first-mentioned period referred to in *subsection (6)(d)* has elapsed, or

20 (b) where a notice of appeal is lodged within that first-mentioned period, until the determination or withdrawal of the appeal,

whichever is the later.

25 (8) Notwithstanding the generality of *paragraph (d)* of *subsection (6)*, a person may appeal a determination made under this section after the expiry of the first-mentioned period referred to in that subsection if allowed to do so by an appeals officer under *section 18(2)* but the bringing of such an appeal shall not operate to prevent the making of the disclosure concerned.

30 **16.—(1)** Where a vetting disclosure made to a relevant organisation contains criminal records information or specified information in respect of a person who is the subject of the application for vetting disclosure, the relevant organisation shall, as soon as practicable, make available a copy of the vetting disclosure to the person
35 concerned.

Assessment and use of vetting disclosures by relevant organisations.

(2) A relevant organisation to whom a vetting disclosure made in accordance with this Act may consider and take into account all the information disclosed to it by the Bureau when assessing the suitability of the person who is the subject of the disclosure to do relevant work or activities.
40

(3) Information contained in a vetting disclosure made by the Bureau to a relevant organisation shall not—

(a) be used by, or

(b) disclosed by,

45 the relevant organisation otherwise than in accordance with this Act.

(4) A person who contravenes *subsection (2)* shall be guilty of an offence.

Appeals officers.

17.—(1) The Minister may appoint one or more persons to be appeals officers.

(2) A person shall be a practising barrister or practising solicitor of not less than 7 years' standing to be appointed as an appeals officer.

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(3) An appeals officer shall—

(a) hold office for a term of 3 years and shall be eligible for re-appointment as such an officer,

(b) subject to this Act, be independent in the performance of his or her functions, and

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(c) be paid such remuneration and allowances for expenses as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.

(4) An appeals officer may—

(a) resign from office by letter addressed to the Minister and the resignation shall take effect on the date on which the Minister receives the letter,

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(b) be removed from office by the Minister if, in the opinion of the Minister, the appeals officer has become incapable through ill-health of effectively performing his or her functions under this Act or has committed stated misbehaviour.

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Appeals from determination of Chief Bureau Officer.

18.—(1) A person (in this section referred to as the “appellant”) who is aggrieved by a determination of the Chief Bureau Officer under *section 15* may, not later than 14 days after the date the notification of the determination is sent to the person, appeal to an appeals officer against that determination.

25

(2) The period referred to in *subsection (1)* may, at the request in writing of the appellant, be extended for a further period not exceeding 14 days if the appeals officer determines that there is good and sufficient reason to so extend.

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(3) An appeal under this section shall—

(a) be made in writing,

(b) be accompanied by a statement of grounds relied on by the appellant, and

35

(c) indicate whether the appellant wishes the appeals officer to conduct an oral hearing for the purposes of the appeal.

(4) The Minister may prescribe the procedures to be followed in respect of the conduct and consideration of appeals under this section and, subject to *section 17(3)(b)*, the appeals officer shall comply with those procedures.

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(5) The appeals officer may, in determining an appeal under this section—

(a) affirm, in whole or in part, the determination of the Chief Bureau Officer, or

(b) set aside the determination of the Chief Bureau Officer in whole or in part and replace it with such other decision as the appeals officer considers appropriate.

(6) An appeals officer shall inform the appellant and the Chief Bureau Officer in writing of his or her determination of an appeal under this section and the reasons for it.

(7) An appellant may at any time withdraw an appeal under *subsection (1)* by sending a notice of withdrawal to the appeals officer concerned and the appeals officer shall, as soon as may be, notify the Bureau of the withdrawal.

(8) A party to an appeal under this section may appeal to the High Court from a determination of an appeal by an appeals officer on a point of law and the determination of the High Court on such an appeal shall be final and conclusive.

19.—(1) Where, following an investigation, inquiry or regulatory process (howsoever described) in respect of a person, (including an investigation, inquiry or regulatory process initiated but not yet concluded before the commencement of this section) a scheduled organisation, has as a result of the investigation, inquiry or regulatory process, a *bona fide* concern that the person who is the subject of that investigation, inquiry or regulatory process, may—

Scheduled organisations required to notify specified information to Bureau.

- (a) harm any child or vulnerable person,
- (b) cause any child or vulnerable person to be harmed,
- (c) put any child or vulnerable person at risk of harm,
- (d) attempt to harm any child or vulnerable person, or
- (e) incite another person to harm any child or vulnerable person,

the scheduled organisation shall, as soon as may be, for the purposes of providing specified information to the Bureau, notify the Bureau in writing of that concern and shall state the reasons for it.

(2) Notwithstanding the generality of *subsection (1)*, where in the course of exercising its powers under the Child Care Act 1991, the Health Service Executive has, in respect of a person, a *bona fide* concern that the person may do any of the matters referred to in *paragraphs (a) to (e) of subsection (1)*, the Health Service Executive shall, as soon as may be, for the purpose of providing specified information to the Bureau, notify the Bureau in writing of that concern and shall state the reasons for it.

(3) The scheduled organisation shall, in relation to the person in respect of whom it has a concern under *subsection (1) or (2)*, as the case may be, notify the person of the fact of that concern and of its intention to notify the Bureau of it.

(4) If any specified information furnished by a scheduled organisation to the Bureau under *subsection (1) or (2)* is incorrect or is otherwise inaccurate, the scheduled organisation shall, as soon as

may be, after becoming aware of its being incorrect or inaccurate, as the case may be, inform the Bureau thereof.

(5) A scheduled organisation shall nominate a person (in this Act referred to as an “appropriate person”) as the appropriate person, for the scheduled organisation, for the purposes of notifying the Bureau under this section. 5

(6) A scheduled organisation may nominate more than one person as an appropriate person for the scheduled organisation.

(7) *Section 9* shall, with any necessary modifications, apply to the nomination of an appropriate person for a scheduled organisation as it applies to the nomination of a liaison person for a relevant organisation under that section. 10

(8) A person who contravenes *subsection (1)* or *(2)* shall be guilty of an offence.

(9) For the avoidance of doubt it is hereby declared that the obligation imposed on a person by *subsection (1)* or *(2)* to disclose specified information to the Bureau is in addition to, and not in substitution for, any other obligation that the person has to disclose that information to the Garda Síochána. 15

Re-vetting.

20.—(1) A relevant organisation that, following receipt of a vetting disclosure under this Act in respect of a person— 20

(a) employs (whether under contract of employment or otherwise) the person to undertake relevant work or activities,

(b) enters into a contract for services with the person for the provision by the person of services that constitute relevant work or activities, or 25

(c) permits the person (whether or not for commercial or any other consideration) to undertake relevant work or activities on its behalf, 30

shall, after the expiration of such period as may be prescribed from the issue of the previous vetting disclosure, and such intervals thereafter as may be prescribed, make a further application for vetting disclosure (in this Act referred to as an “application for re-vetting disclosure”) in respect of that person. 35

(2) The Minister may in relation to the periods and intervals of time referred to in *subsection (1)*—

(a) prescribe periods of time and intervals of time in respect of different relevant organisations or classes of relevant organisations, and 40

(b) prescribe different periods of time or different intervals of time in respect of different circumstances or classes of circumstances or in relation to different types of relevant work or activities or classes of relevant work or activities.

(3) A person who contravenes *subsection (1)* shall be guilty of an offence. 45

(4) This Part (other than *section 12*) shall, with any necessary modifications, apply to an application for re-vetting as it applies to an application for vetting disclosure under *section 13*.

5 **21.—(1)** Where, immediately before the commencement of this section, a relevant organisation— Retrospective vetting.

(a) employs (whether under contract of employment or otherwise) a person to undertake relevant work or activities,

10 (b) enters into a contract for services with a person for the provision by the person of services that constitute relevant work or activities, or

(c) permits a person (whether or not for commercial or any other consideration) to undertake relevant work or activities on its behalf,

15 the organisation shall, where the person concerned has not previously been the subject of an application for vetting disclosure under this Act, not later than such period as may be prescribed, make an application for vetting disclosure (in this Act referred to as an “application for retrospective vetting disclosure”) in respect of that
20 person.

(2) The Minister may, in relation to the period of time referred to in *subsection (1)*—

(a) prescribe periods of time in respect of different relevant organisations or classes of relevant organisations, and

25 (b) prescribe different periods of time in respect of different circumstances or classes of circumstances or in relation to different types of relevant work or activities or classes of relevant work or activities.

30 (3) A person who contravenes *subsection (1)* shall be guilty of an offence.

(4) This Part (other than *section 12* shall, with any necessary modifications, apply to an application for retrospective vetting disclosure as it applies to an application for vetting disclosure under *section 13*.

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PART 4

MISCELLANEOUS

22.—(1) The Chief Bureau Officer shall be appointed by the Garda Commissioner. Appointment of Chief Bureau Officer and delegation of functions of Chief Bureau Officer.

40 (2) The Chief Bureau Officer may delegate in writing any of his or her functions under this Act (other than this section) to a member of the staff of the Bureau specified by rank or name.

(3) A delegation under *subsection (2)* may—

- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
- (b) be made subject to conditions or restrictions, and
- (c) be revoked or varied by the Chief Bureau Officer at any time. 5

(4) The delegation of a function under *subsection (2)* shall not preclude the Chief Bureau Officer from performing the function.

(5) Where the functions of the Chief Bureau Officer under a provision of this Act are delegated to a member of the staff of the Bureau, any references in that provision to the Chief Bureau Officer shall be construed as references to that member of staff. 10

(6) An act or thing done by a member of the staff of the Bureau pursuant to a delegation under this section has the same force and effect as if done by the Chief Bureau Officer. 15

Compliance officers.

23.—(1) The Chief Bureau Officer may assign one or more members of staff to be compliance officers for the purposes of this Act.

(2) A person assigned to be a compliance officer under this section shall be furnished with a warrant of appointment and when performing a function conferred under this section shall, if requested to do so by any person thereby affected, produce such warrant or a copy of it to that person for inspection. 20

(3) A compliance officer may—

- (a) enter and inspect at all reasonable times any premises which he or she has reasonable grounds for believing are being occupied by a relevant organisation, 25
- (b) at such premises, inspect and take copies of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom relating to vetting procedures under this Act, which he or she finds in the course of his or her inspection, 30
- (c) remove any such books, records or documents from such place and detain them for such period as he or she reasonably considers to be necessary for the purposes of this Act, 35
- (d) require any person at the premises concerned, including the liaison person or person in charge of that place or premises to give him or her such information and assistance as the compliance officer may reasonably require for the purposes of his or her functions under this Act, 40
- (e) require any person at the premises concerned including the liaison person, the owner or person in charge of that place or premises to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's possession or procurement or under that person's control, as the compliance officer may reasonably 45

require for the purposes of his or her functions under the Act, and

5 (f) examine with regard to any matter under this Act any person whom the compliance officer has reasonable grounds for believing to be a liaison person or to be employed by the relevant organisation or to be the owner or person in charge of that place or premises and require the person to answer such questions as the compliance officer may ask relative to those matters and to make a declaration of the truth of the answers to those questions.
10

(4) When performing a function under this Act, a compliance officer may be accompanied by such number of other compliance officers or members of the Garda Síochána as the compliance officer considers appropriate.

15 (5) A compliance officer shall not enter a dwelling other than with the consent of the occupier.

(6) Any person who—

20 (a) obstructs or interferes with an officer or member of the Garda Síochána in the course of performing a function conferred on him or her under this section, or

(b) impedes the performance by the officer or member, as the case may be, of such function,

shall be guilty of an offence.

25 **24.**—Section 7 of the Garda Síochána Act 2005 is amended, by the substitution in subsection (1), of “policing and security, including vetting, services for the State” for “policing and security services for the State”. Amendment of section 7 of Garda Síochána Act 2005.

25.—A person shall be guilty of an offence if he or she—

30 (a) falsifies or alters a vetting disclosure,

(b) makes a false statement for the purpose of obtaining, or enabling another person to obtain, a vetting disclosure,

35 (c) allows a vetting disclosure which relates to him or her to be used by another person in such a way as to give rise to the reasonable belief that the record relates to that other person.

Falsification of vetting disclosures, etc.

26.—(1) A person guilty of an offence under *section 8(9), 12(2), 16(3), 19(8), 20(3), 21(3) or 25* shall be liable— Penalties.

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

40 (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

(2) A person guilty of an offence under *section 23(6)* shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.

Liability for offences by bodies corporate.

27.—(1) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 5 10

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate. 15

Garda Central Vetting Unit — change of name to National Vetting Bureau.

28.—The national unit of the Garda Síochána known before the commencement of this section as the Garda Central Vetting Unit shall, after that commencement, be known as the National Vetting Bureau.

Service of notices.

29.—A notice that is required to be sent or given to a person under this Act may be sent or given to the person in one of the following ways: 20

- (a) by delivering it to the person;
- (b) by addressing it to the person and leaving it at the address at which he or she ordinarily resides, or in a case in which an address for service has been furnished, at that address; 25
- (c) by sending it to the person by post in a prepaid registered envelope to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address. 30

Transitional provision.

30.—Where, before the commencement of this section a liaison person had made an application for vetting disclosure in respect of any person concerning relevant work or activities but the vetting procedures in relation thereto had not been completed by the Garda Central Vetting Unit then, the application shall be deemed to be an application under *section 13* and shall be dealt with accordingly and, any step taken by the Garda Central Vetting Unit before such commencement in relation to the application (being a step required to be taken under this Act in relation to an application under this Act) shall be deemed to have been taken under this Act. 35 40

Fees.

31.—The Minister may, after consultation with the Garda Commissioner and with the consent of the Minister for Public Expenditure and Reform, by regulations prescribe fees in relation to any or all of the following:

- (a) the registration of a relevant organisation in the register of relevant organisations; 45

- (b) the provision of a vetting disclosure;
- (c) the provision of a re-vetting disclosure;
- (d) the provision of a retrospective vetting disclosure.

SCHEDULE 1

PART 1

RELEVANT WORK OR ACTIVITIES RELATING TO CHILDREN

1. Any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, children in— 5
 - (a) an establishment which provides pre-school services within the meaning of Part VII of the Child Care Act 1991,
 - (b) a school or centre of education, both within the meaning of the Education Act 1998, 10
 - (c) any hospital or health care centre which receives, treats or otherwise provides services to children,
 - (d) a designated centre within the meaning of section 2 of the Health Act 2007, in so far as it relates to an institution at which residential services are provided in accordance with the Child Care Act 1991, 15
 - (e) a special care unit provided and maintained in accordance with section 23K of the Child Care Act 1991,
 - (f) a children detention school within the meaning of section 3 of the Children Act 2001. 20
2. Any work or activity which consists of the provision of home tuition by a person pursuant to the Scheme administered and funded by the Department of Education and known as the Home Tuition Scheme.
3. Any work or activity which consists of treatment, therapy or counselling provided to a child by a person in the course of that work or activity. 25
4. Any work or activity which consists of care or supervision of children unless the care or supervision is merely incidental to the care or supervision of persons who are not children. 30
5. Any work or activity which consists of the provision of educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) to children unless the provision of educational, training, cultural, recreational, leisure, social or physical activities is merely incidental to the provision of educational, training, cultural, recreational, leisure, social or physical activities to persons who are not children. 35
6. Any work or activity which consists of the provision of advice, guidance, developmental, or counselling services, (including by means of electronic interactive communications) to children unless the provision of the advice, guidance, developmental or counselling service is merely incidental to the provision of those services to persons who are not children. 40

7. Any work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs.
8. Work as a driver of a public service vehicle which is being used only for the purpose of conveying children.
- 5 9. The provision by a person, whether or not for commercial or other consideration, of accommodation for a child in his or her own home.
- 10 10. Any research work or activities (howsoever described) carried out in a university, institute of technology or other establishment at which third level education is provided where a necessary and regular part of the research work or activity involves contact with or access to children.
11. Any application by a person to carry on or manage a designated centre within the meaning of section 2 of the Health Act 2007.
- 15 12. Any application by a person for a declaration of eligibility and suitability within the meaning of section 3 of the Adoption Act 2010.
13. Any assessment of a person's suitability to act as a foster carer by or under section 39 of the Child Care Act 1991.
- 20 14. Any assessment by or under section 41 of the Child Care Act 1991 of a person's suitability to act as a carer of a child in respect of whom he or she is a relative.
15. Any work or activity which is carried on by a person, a necessary and regular part of which requires the person to have access to, or contact with, children pursuant to the following enactments:
 - (a) Medical Practitioners Act 2007;
 - (b) Nurses Act 1985;
 - (c) Nurses and Midwives Act 2011;
 - (d) Dentists Act 1985;
 - 30 (e) Health and Social Care Professionals Act 2005;
 - (f) Pharmacy Act 2007;
 - (g) Pre-Hospital Emergency Care Council Order 2000 (S.I. No. 109 of 2000);
 - 35 (h) Pre-Hospital Emergency Care Council (Establishment) Order 2000 (Amendment) Order 2004 (S.I. No. 575 of 2004).

PART 2

RELEVANT WORK OR ACTIVITIES RELATING TO VULNERABLE PERSONS

- 40 1. Any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, vulnerable persons in—

- (a) a school or centre of education, both within the meaning of the Education Act 1998, unless, in the case of a centre of education, the work or activity is merely incidental to work or activities undertaken in relation to persons who are not vulnerable persons, 5
 - (b) any hospital or care centre which receives, treats or otherwise which provides services to vulnerable persons,
 - (c) a designated centre within the meaning of section 2 of the Health Act 2007, in so far as it relates to an institution at which residential services are provided to vulnerable persons, 10
 - (d) an approved centre within the meaning of Part 5 of the Mental Health Act 2001,
 - (e) any organisation or facility which provides educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) for vulnerable persons, 15
 - (f) in any organisation or facility which provides welfare, advice, guidance, developmental, or counselling services for vulnerable persons. 20
2. Any work or activity which consists of treatment, therapy or counselling provided to a vulnerable person by a person in the course of that work or activity.
 3. Any work or activity which consists of the care (including the provision of health and personal social services and essential domestic services) of vulnerable persons unless the care is merely incidental to the care of persons who are not vulnerable persons. 25
 4. Any work or activity which consists of the provision of educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) to vulnerable persons unless the provision of educational, training, cultural, recreational, leisure, social or physical activities is merely incidental to the provision of educational, training, cultural, recreational, leisure, social or physical activities to persons who are not vulnerable persons. 30
35
 5. Any work or activity which consists of the provision of advice, guidance, developmental, or counselling services, (including by means of electronic interactive communications) to vulnerable persons unless the provision of the advice, guidance, developmental or counselling service is merely incidental to the provision of those services to persons who are not vulnerable persons. 40
 6. Work as a driver of a public service vehicle which is being used only for the purpose of conveying vulnerable persons. 45
 7. Any work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs.
 8. The provision by a person, whether or not for commercial or other consideration, of accommodation for a vulnerable person in his or her own home. 50

- 5 9. Any research work or activities (howsoever described) carried out in a university, institute of technology or other establishment at which third level education is provided where a necessary and regular part of the research work or activity involves contact with or access to vulnerable persons.
10. Any assessment of a person's suitability to act as a care representative under section 21 of the Nursing Homes Support Scheme Act 2009.
- 10 11. Any application by a person to carry on or manage a designated centre both within the meaning of section 2 of the Health Act 2007.
- 15 12. Any work or activity which is carried on by a person, a necessary and regular part of which requires the person to have access to, or contact with, vulnerable persons pursuant to the following enactments:
- (a) Medical Practitioners Act 2007;
 - (b) Nurses Act 1985;
 - (c) Nurses and Midwives Act 2011;
 - (d) Dentists Act 1985;

20 (e) Health and Social Care Professionals Act 2005;

 - (f) Pharmacy Act 2007;
 - (g) Pre-Hospital Emergency Care Council (Establishment) Order 2000 (S.I. No. 109 of 2000);

25 (h) Pre-Hospital Emergency Care Council (Establishment) Order 2000 (Amendment) Order 2004 (S.I. No. 575 of 2004).

SCHEDULE 2

ORGANISATIONS REQUIRED TO NOTIFY SPECIFIED INFORMATION TO
BUREAU

1. The Health Service Executive.
2. The Teaching Council. 5
3. The Medical Council.
4. The Nursing and Midwifery Board of Ireland.
5. The Dental Council.
6. The Health and Social Care Professionals Council.
7. The Mental Health Commission. 10
8. The Pharmaceutical Society of Ireland.
9. The Pre-Hospital Emergency Care Council.
10. The Health Information and Quality Authority.
11. The National Transport Authority.



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**AN BILLE UM AN mBIÚRÓ NÁISIÚNTA
GRINNFHIOSRÚCHÁIN (LEANAÍ AGUS DAOINE
SOGHONTA), 2012
NATIONAL VETTING BUREAU (CHILDREN AND
VULNERABLE PERSONS) BILL 2012**

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of this Bill is to provide a legislative basis for the vetting of persons who seek positions of employment relating to children or vulnerable persons. Currently persons applying for such positions are vetted on a non-statutory basis. This Bill will make this vetting mandatory.

PART 1

Preliminary and General

Section 1 — Short title and commencement

This is a standard provision setting out the short title and commencement provisions for the Bill.

Section 2 — Interpretation

This is a standard provision providing interpretation of certain words and phrases used in the Bill.

Section 3 — Act not to apply to certain relationships or arrangements, etc.

Subsection (1) provides that the Act will not apply to:

- any work or activity undertaken in the course of a family relationship.
- any unpaid work or activity undertaken in the course of a personal relationship.
- persons who assist occasionally and on a voluntary basis in certain activities or events be they school, sport or community related. This provision recognises the occasional but necessary involvement or assistance of parents or other persons in certain activities in which children or vulnerable persons are participating. However, the Act will apply where such involvement includes coaching, mentoring, counselling, teaching or training of the children or vulnerable persons.

Subsection (2) provides a definition of the terms “family relationship” and “personal relationship”.

Section 4 — Regulations

This is a standard regulation making provision allowing the Minister for Justice and Equality to prescribe such matters as the Act requires to be prescribed. Every regulation under the Act must be laid before the Houses of the Oireachtas as soon as may be after it is made.

Section 5 — Expenses

This is a standard expenses provision.

PART 2

National Vetting Bureau (Children and Vulnerable Persons) Database System

Section 6 — Establishment of National Vetting Bureau (Children and Vulnerable Persons) Database System

This section provides for the establishment by the Chief Bureau Officer of a database containing information relevant for the purpose of vetting of persons seeking positions working with children or vulnerable persons, known in the Bill as “relevant work or activities”. The type of work or activities that require vetting is set out in Schedule 1 to the Bill.

Subsection (1) provides that the Chief Bureau Officer shall establish a database which will be known as the National Vetting Bureau (Children and Vulnerable Persons) Database. Subsection (2) provides that the database will contain the register of relevant organisations, the register of specified information and the register of vetted persons (see sections 8, 10 and 11 respectively). Subsection (3) provides that the database may only be used in connection with the provision of vetting disclosures in accordance with the Bill, or otherwise as provided for by law.

Section 7 — Functions of Bureau in relation to database, etc.

This section sets out the functions of the Bureau in relation to the database established under section 6. Subsection (1) provides that the Bureau is responsible for the maintenance of the database. Subsection (2) confirms that, without prejudice to the general functions of An Garda Síochána under section 7 of the Garda Síochána Act 2005, the Bureau will provide vetting services to relevant organisations in respect of relevant work or activities relating to children or vulnerable persons. The relevant functions include: the consideration and processing of applications for vetting disclosures; the making of enquiries to determine if there is any criminal record or specified information relating to a person; to establish the identity of the person being vetted; the assessment of specified information; and, ultimately, the making of vetting disclosures. Subsection (3) confirms that the Bureau shall have all such powers as are necessary for the performance of its functions under the Act.

Section 8 — Register of relevant organisations

Subsection (1) provides that the Chief Bureau Officer shall establish and maintain a register of relevant organisations. Subsection (2) provides that relevant organisations are required to apply to the Bureau to be registered. Subsection (3) provides that organisations already registered with the Bureau before

commencement of the Act will be deemed to be on the register following the commencement of the Act. Subsection (4) provides that a relevant organisation shall not be required to comply with the requirement to register where another relevant organisation, which is registered with the Bureau, submits, on behalf of the first organisation, applications for vetting disclosures. This provision is being included in order to enable organisations such as schools or crèches to submit applications through a representative body without requiring each and every school or crèche to register individually. Subsection (5) requires that the relevant organisation which submits the application on behalf of another organisation shall furnish the Bureau with the name and address of that other organisation. Subsection (6) sets out the procedures for applying for registration. Subsection (7) permits the Bureau to refuse an application for registration or remove an organisation from the register where the applicant is not, or is no longer, a relevant organisation for the purpose of the Act. Subsection (8) provides for the notification of decisions on applications for registration. Subsection (9) provides that a person who fails to comply with the requirement to register under subsection (2) is guilty of an offence. Subsection (10) provides that it is a defence to show that the accused person did not know nor could be reasonably expected to know that the organisation was a relevant organisation for the purpose of the Act. Subsection (11) provides that a relevant organisation shall notify the Bureau if particulars entered in the register under this section are incorrect.

Section 9 — Nomination and registration of liaison persons for purposes of Act

This section provides for the registration of liaison persons. Subsection (1) provides that a liaison person shall be nominated by their relevant organisation in order to apply for and receive vetting disclosures in accordance with the Act. Subsection (2) provides for the nomination of additional liaison persons. Subsection (3) sets out the information relating to a liaison person which must be submitted by a relevant organisation when nominating a liaison person. Subsection (4) requires that liaison persons will be subject to prior vetting. Subsection (5) provides that the Bureau may refuse to register a person as a liaison person on the grounds that they are unsuitable or where an excessive number of persons are proposed. Subsection (6) confirms that persons who are accepted as liaison persons shall be registered by the Bureau. Subsection (7) confirms that persons already registered with the Bureau as liaison persons (prior to the commencement of the Act) shall be deemed to be registered following the commencement of the Act. Subsection (8) requires the relevant organisation to notify the Bureau if particulars entered in the register under this section are incorrect.

Section 10 — Register of specified information

This section establishes the register of specified information as defined in section 2. This is information held by the Garda Síochána or an organisation which is listed in Schedule 2 of the Bill where such information gives rise to a bona fide concern that a person may harm a child or vulnerable person. Under subsection (1), the Chief Bureau Officer shall establish and maintain a register of specified information. Subsection (2) confirms that any specified information in the possession of the Bureau prior to the commencement of this Act shall be deemed entered in the register of specified information following the commencement of the Act.

Section 11 — Register of vetted persons

This section provides for the establishment of a register of vetted persons. Under subsection (1), the Chief Bureau Officer shall

establish and maintain a register of vetted persons, i.e. persons who are vetted in accordance with this Act. Subsection (2) sets out the information relating to a vetted person which is to be included in the register. Subsection (3) provides that information in the possession of the Garda Central Vetting Unit prior to the commencement of the Act which relates to a subject of an application for vetting shall be deemed, following commencement of the Act, to be entered in the register of vetted persons.

PART 3

Procedures for Vetting Disclosures

Section 12 — Requirement for vetting disclosure in respect of certain work or activities

Subsection (1) prohibits the engagement of persons to do relevant work or activities relating to children or other vulnerable persons, unless that person has been subject to the vetting procedures under the Bill. Subsection (2) provides that to do so will be an offence. Subsection (3) provides that it will be a defence for a person to show that he or she did not know, nor could be reasonably expected to know, that the work for which a person was engaged constituted relevant work or activity. Subsection (4) confirms that the section does not apply to employment or activities which preceded the commencement of this section.

Section 13 — Applications for vetting disclosure and who may apply

This section sets out the procedure for the making of applications for vetting disclosures. Subsection (1) provides that it is the responsibility of liaison officers to submit applications for vetting disclosures on behalf of a relevant organisation. Subsection (2) confirms that an application from a relevant organisation for a vetting disclosure may be on its own behalf or on behalf of another relevant organisation that it represents for the purpose of the vetting procedures under the Act. Subsection (3) sets out the application procedures in respect of a self-employed person (as defined under subsection (7)). Subsection (4) sets out the information which must be included in an application for a vetting disclosure. This includes a declaration by the subject of the vetting disclosure that he or she consents to the making of the application and consents to any disclosure. Subsection (5) specifies the information relating to the vetting subject which must be included in the application. Subsection (6) provides that if the applicant is under 18 years of age a declaration may be made by a parent or guardian on his or her behalf.

Section 14 — Consideration by Bureau of application for vetting disclosure

This section details the procedures followed by the Bureau in considering an application for a vetting disclosure. Subsection (1) provides that following the receipt of an application for vetting disclosure the Bureau will undertake an examination of its own database and Garda Síochána records for the purpose of establishing whether any criminal records or any specified information relates to the applicant. Subsection (2) provides for the release by the Bureau of a vetting disclosure upon completion of all necessary enquiries and procedures as required by the Bill. Subsection (3) provides that where a member of the Bureau staff considers that there is specified information in regard to the applicant it will be referred to the Chief Bureau Officer for assessment as to whether the information should be disclosed. Subsection (4) provides that the disclosure will include details of any criminal record(s) relating to the vetting subject and a

statement of any specified information which the Chief Bureau Officer has determined should be disclosed. Alternatively, the disclosure shall state that there is no criminal record or specified information relating to the applicant. Subsection (5) establishes the circumstances under which a vetting disclosure may not be made. This includes a pending appeal under section 18.

Section 15 — Assessment of specified information

This section sets out the procedures to be followed by the Chief Bureau Officer in assessing specified information for the purpose of its inclusion in a vetting disclosure. Subsection (1) provides that the Chief Bureau Officer, on the referral of specified information to him or her, shall notify the vetting subject of the referral, provide the subject with a summary of the information and inform him or her of their right to make a written submission in relation to the information. Under subsection (2), a written submission must be made within 14 days from the date of notification under subsection (1). The Chief Bureau Officer may allow a period of more than 14 days for receipt of written submission. Under subsection (3), the Chief Bureau Officer shall assess the specified information. A decision to disclose the specified information requires the Chief Bureau Officer to believe that the information in question is of such a nature as to give rise to a bona fide concern that the vetting subject may harm, attempt to harm or put at risk of harm a child or vulnerable person. Subsection (4) provides that the Chief Bureau Officer must also be satisfied that the disclosure is necessary, proportionate and reasonable in the circumstances in order to protect children or vulnerable persons. Subsection (5) provides that the Chief Bureau Officer may request further information from the Garda Síochána or the organisation which provided the information to the Bureau. Subsection (6) provides that the Chief Bureau Officer must notify the vetting subject of the intention to disclose the information and must inform the subject that he or she may appeal the decision to disclose within 14 days or such longer period as the Chief Bureau Officer may determine. Subsection (7) provides that the disclosure shall not be made until the period for appeal has elapsed or, if appealed, until the conclusion of an appeal. Subsection (8) allows that a person may appeal a determination after the expiry of the 14 days if allowed to do so by an appeals officer but this shall not delay the making of a disclosure.

Section 16 — Assessment and use of vetting disclosures by relevant organisations

Subsection (1) provides that where a vetting disclosure contains details of criminal records or specified information the relevant organisation must provide a copy of the disclosure to the vetting applicant. Subsection (2) provides that the organisation may consider and take into account the information disclosed in assessing the suitability of the person for the position for which they have applied. Subsection (3) provides that the organisation may not disclose that information otherwise than in accordance with the Act. Subsection (4) provides that to do so will be an offence.

Section 17 — Appeals officers

Subsection (1) provides that the Minister may appoint one or more persons to be an appeals officer. Subsection (2) requires that an appeals officer must be a practising barrister or solicitor of at least 7 years. Subsection (3) provides for the period of office, the independence and the remuneration and expenses of an appeals officer. Subsection (4) provides for the resignation or removal from office of an appeals officer.

Section 18 — Appeals from determination of Chief Bureau Officer

In accordance with subsection (1) a person may make an appeal not later than 14 days after the date of notification. Subsection (2) allows that this period may be extended if it is found by the appeals officer that there is good and sufficient reason to do so. Subsection (3) sets out the manner of an appeal which shall be in writing, be accompanied by grounds for appeal and indicate whether an oral hearing is sought. Subsection (4) allows the Minister to prescribe the procedures to be followed regarding the conduct and consideration of appeals which the appeals officer must follow. Subsection (5) provides that the appeals officer may affirm, in whole or part, the decision of the Chief Bureau Officer or may set aside that decision, in whole or part. Subsection (6) requires the appeals officer to inform the appellant and the Chief Bureau Officer of his or her decision and the reasons for it. Subsection (7) provides for an appellant to withdraw an appeal at any time by notice to the appeals officer who will notify the Bureau. An appeal to the High Court on a point of law is provided for in subsection (8) and this determination is final and conclusive.

Section 19 — Scheduled organisations required to notify specified information to Bureau

This section requires the scheduled organisations (listed in Schedule 2 to the Bill) to notify the Bureau of specified information in respect of a person. For example, if, as a result of a statutory inquiry or a fitness-to-practice process, a scheduled organisation has a bona fide concern that a person may harm a child or vulnerable person, that organisation is required under subsection (1) to inform the Bureau of the information giving rise to that concern. Subsection (2) places a similar obligation on the Health Service Executive in regard to its powers and function under the Child Care Act 1991. Subsection (3) requires the scheduled organisation to notify the person in respect of whom there is such a concern that it is notifying the Bureau of that concern. Subsection (4) requires the scheduled organisation to notify the Bureau of any incorrect or inaccurate specified information. Subsection (5) requires scheduled organisations to nominate a person (to be known as an “appropriate person”) for the purpose of making notifications to the Bureau under this section. Subsection (6) allows for the nomination of more than one “appropriate person”. Subsection (7) provides for ‘appropriate persons’ to be vetted in accordance with the procedures under the Act. Subsection (8) provides that it is an offence to fail to comply with the obligations under subsections (1) and (2). Subsection (9) states that any such obligation under this section is in addition to any other obligation the person may have to disclose that information to the Garda Síochána or any other person.

Section 20 — Re-vetting

This section provides for the re-vetting of persons previously vetted for their current position. The re-vetting shall occur after the expiry of a specified period to be prescribed by the Minister. Subsection (1) creates the obligation for relevant organisations to undertake re-vetting. Subsection (2) provides that the Minister for Justice and Equality will set out the frequency of re-vetting. Subsection (3) makes it an offence to fail to conduct re-vetting, where required. Subsection (4) states that the procedures for vetting disclosures in relation to re-vetting are the same as those which apply to ordinary vetting applications.

Section 21 — Retrospective vetting

This section provides for the retrospective vetting of persons who are currently in positions which would be subject to vetting under

the Bill but who have not previously been vetted because they took up that position prior to the availability of vetting in the State. Subsection (1) creates the obligation for organisations to make retrospective vetting applications. Subsection (2) provides that an application for retrospective vetting shall be made not later than the period prescribed by the Minister. Subsection (3) makes it an offence to fail to conduct retrospective vetting, where required. Subsection (4) states that the procedures for vetting disclosures in relation to retrospective vetting are the same as those which apply to ordinary vetting applications.

PART 4

Miscellaneous

Section 22 — Appointment of Chief Bureau Officer and delegation of functions of Chief Bureau Officer

Subsection (1) provides that the Chief Bureau Officer is appointed by the Garda Commissioner. Subsection (2) allows the Chief Bureau Officer to delegate his or her functions under the Act to specified members of staff of the Bureau. Subsection (3) allows that the delegation can be restricted or revoked or varied by the Chief Bureau Officer. Subsection (4) provides that even where a function has been delegated by the Chief Bureau Officer, he or she is not precluded from undertaking that function. Subsection (5) provides that where a function has been delegated to a specified person, any reference to the Chief Bureau Officer in the Act shall be construed as a reference to that member of staff. Subsection (6) provides that any delegated function has the same force and effect as if done by the Chief Bureau Officer.

Section 23 — Compliance officers

Subsection (1) provides that the Chief Bureau Officer may assign one or more members of staff as compliance officers for the purposes of the Act. Subsection (2) requires that compliance officers are provided with a warrant of appointment. Subsection (3) sets out the powers and functions of compliance officers. These include entering and inspecting premises occupied by registered organisations and inspecting and taking copies of records found in the course of such inspection. Subsection (4) provides that a compliance officer may be accompanied by other compliance officers or Gardaí when carrying out their functions under the Act. Subsection (5) provides that a compliance officer may not enter a private home other than with the consent of the owner. Subsection (6) makes it an offence to obstruct a compliance officer.

Section 24 — Amendment of section 7 of Garda Síochána Act 2005

This section provides for a minor amendment to the Garda Síochána Act 2005. Section 7 of that Act sets out the functions of the Garda Síochána and the amendment introduced by this section includes vetting services as part of those functions.

Section 25 — Falsification of vetting disclosures, etc.

This section makes it an offence to falsify a vetting disclosure, or to make a false statement for the purpose of obtaining or enabling another person to obtain a vetting disclosure, or to allow a vetting disclosure be falsely used by another person.

Section 26 — Penalties

Subsection (1) sets out the penalties for the offences under sections 8(9), 12(2), 16(3), 19(8), 20(3), 21(3) and 25. This provides

that the penalty on summary conviction is a Class A fine or imprisonment for a term of up to 12 months or both and on conviction on indictment to a fine of up to €10,000 or imprisonment for up to five years or both. Subsection (2) provides that a person guilty of an offence of obstructing or interference with a compliance officer is liable to a Class A fine or up to 6 months imprisonment.

Section 27 — Liability for offences by bodies corporate

Subsection (1) provides that where an offence is committed by a corporate body, but with the connivance or consent of an officer of that body, the person concerned is guilty of an offence. Subsection (2) makes the same provision in regard to a person who is a member of a corporate body that is managed by its members.

Section 28 — Garda Central Vetting Unit — change of name to National Vetting Bureau

This section provides for the change of name of the Garda Central Vetting Unit to the National Vetting Bureau.

Section 29 — Service of notices

This section is to provide clarity as regards the means by which information is sent or given to the person concerned. Notice may be given by delivering it to the person, addressing it to and leaving it at the person's address or by sending it by registered post.

Section 30 — Transitional provision

This section provides that incomplete applications for vetting procedures made before the commencement of the Act are to be treated as an application under this Act.

Section 31 — Fees

This section enables the Minister, with the consent of the Minister for Public Expenditure and Reform, to prescribe fees for the purpose of:

- (a) the registration of a relevant organisation in the register;
- (b) the provision of vetting disclosures;
- (c) the provision of re-vetting disclosures, or
- (d) the provision of retrospective vetting disclosures.

Schedule 1 — Part 1

This schedule sets out the relevant work or activities relating to children which will be subject to the vetting requirements of this Bill.

Schedule 1 — Part 2

This schedule sets out the relevant work or activities relating to vulnerable adults which will be subject to the vetting requirements of this Bill.

Schedule 2

This schedule sets out the organisations which will be required to disclose specified information to the Bureau in accordance with section 19 of the Bill.

*Department of Justice and Equality,
July, 2012.*

Wt. —. 629. 7/12. Clondalkin Pharma and Healthcare. (X59942). Gr. 30-15.