



**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.