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**AN BILLE UM THÚS ÁITE DO LEANAÍ, 2014  
CHILDREN FIRST BILL 2014**

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**EXPLANATORY MEMORANDUM**

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**Background**

Since its publication in 1999, *Children First: National Guidance for the Protection and Welfare of Children* has been widely used to address the identification, assessment, reporting and management of child abuse and to inform the development of child protection guidelines and practices. *Children First: National Guidance for the Protection and Welfare of Children* was reviewed and revised in 2011. Obligations arising under *Children First: National Guidance for the Protection and Welfare of Children* are to operate side by side with this Bill.

The Children First Bill 2014 provides for certain professionals and other persons working with children to have statutory reporting obligations. The Bill also provides that certain persons providing services to children are to be obliged to undertake an assessment of any potential for risk of harm to a child while that child is availing of the provider's services. In addition the Bill provides that the provider of such a service is to prepare a child safeguarding statement in accordance with the Bill.

**Purpose of the Bill**

The purpose of the Bill is to make further and better provision for the care and protection of children including raising awareness of child abuse and neglect, providing for reporting and management of child protection concerns and improving child protection arrangements in organisations providing services to children.

The Bill will operate side-by-side with the existing non-statutory obligations provided for in *Children First: National Guidance for the Protection and Welfare of Children*.

**Principal Elements of the Bill**

Part 1 — provides for the short title and commencement, definitions, regulations, expenses, guidelines and for the best interests of the child to be the Child and Family Agency's paramount consideration.

Part 2 — provides for the preparation of a child safeguarding statement by a provider of relevant services to children.

Part 3 — provides for mandated persons to make reports to the Child and Family Agency and also provides that the Agency may request mandated persons to give to the Agency such assistance as it may reasonably require.

Part 4 — provides for the establishment of the Children First Interdepartmental Group.

## **Provisions of the Bill**

### PART 1

#### **Section 1 — Short title and commencement**

*Section 1* provides that the Act may be cited as the Children First Act 2014 and also provides for its commencement.

#### **Section 2 — Interpretation**

*Section 2* — provides for definitions of certain terms used in the Bill.

#### **Section 3 — Regulations**

*Section 3* provides for a general regulation-making power for the Minister for Children and Youth Affairs.

#### **Section 4 — Expenses**

*Section 4* is a standard provision to provide that expenses incurred by the Minister or any other Minister of the Government in the administration of the Act will be paid out of moneys provided by the Oireachtas.

#### **Section 5 — Guidelines**

*Section 5* provides that the Minister may issue and publish guidelines for the purpose of providing practical guidance to persons in respect of the protection and welfare of children and any such guidelines in force at the time of commencement of this section shall be deemed to be guidelines issued by the Minister under the Act. Obligations arising under *Children First: National Guidance for the Protection and Welfare of Children* are to operate side by side with the Children First Act 2014.

#### **Section 6 — Best interests of child**

*Section 6* provides that the Child and Family Agency shall, in performing a function under the Act, regard the best interests of the child as the paramount consideration.

### PART 2

#### CHILD SAFEGUARDING STATEMENTS

#### **Section 7 — Definitions for purposes of Part 2**

*Section 7* provides for definitions of ‘contract of employment’, ‘personal relationship’ and ‘provider’ in Part 2 of the Bill.

#### **Section 8 — Part does not apply to certain relationships or arrangements**

*Section 8* provides that Part 2 of the Bill is not applicable to an individual who undertakes any work or activity in the course of a family relationship where the work or activity is undertaken solely for the benefit of his or her child or a family member or where the work or activity is undertaken in the course of a personal relationship or where assistance is given on an occasional basis for no consideration.

#### **Section 9 — Child Safeguarding**

*Section 9* provides that a provider of relevant services is to ensure

that, as far as practicable, a child, while availing of its services, is kept safe from harm. ('Relevant services' includes work or activities mainly involving access to or contact with children (set out in *Schedule 1*). 'Harm', in relation to a child, means 'to assault, ill-treat, neglect or sexually abuse the child and may be caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances or otherwise'.)

### **Section 10 — Risk assessment and child safeguarding statements, etc**

*Section 10* provides that where a person proposes to operate as a provider of relevant services he or she shall, within 3 months of the commencement of the service, carry out a risk assessment and prepare a child safeguarding statement. A person operating as a provider of relevant services immediately prior to the commencement of the Act shall carry out a risk assessment and prepare a child safeguarding statement not later than 3 months from the date of commencement of the Act.

The section provides that a child safeguarding statement shall include a written assessment of risk including an outline of the procedures in place to manage any risk identified, and an outline of the procedures in respect of an employee who is the subject of investigation in respect of any act or omission with regard to a child. The section also provides that a child safeguarding statement shall include an outline of procedures in place for reducing any identified risk including procedures for (i) the recruitment of staff (suitable for working with children); (ii) the provision of information, instruction and training in relation to the identification of harm and (iii) the reporting to the Child and Family Agency by an employee or by the provider in accordance with any guidelines issued by the Minister for Children and Youth Affairs under *section 5 (Guidelines)*, and a list of persons (if any) in the relevant service who are mandated persons.

*Section 10* also provides that a provider of relevant services shall make a copy of the child safeguarding statement available to members of staff and on request to a parent or guardian, to the Child and Family Agency or to members of the public and the provider is required to display the child safeguarding statement or a review of the statement (which is required to be undertaken at least at intervals of not more than 24 months), as the case may be, in a prominent place related to the relevant service. The section also provides that the Minister for Children and Youth Affairs may make regulations in relation to child safeguarding statements.

## PART 3

### REPORTING

### **Section 11 — Mandated persons**

*Section 11* provides that certain professionals and other persons in specified occupations (as listed in *Schedule 2: Mandated Persons*) are mandated persons for the purpose of the Act and the section sets out the circumstances whereby a mandated person is required to make a report to the Child and Family Agency. The section provides that where a mandated person knows, believes or has reasonable grounds to suspect that a child is being harmed, has been harmed or is at risk of being harmed, he or she shall report that belief or suspicion to the Child and Family Agency, as soon as practicable. Where a child makes a disclosure to a mandated person that he or she believes that he or she is being harmed, has been harmed or is at risk of being harmed, that mandated person shall, as soon as practicable, report that disclosure to the Child and Family Agency.

A mandated person shall not be required to make a report to the Child and Family Agency where a child aged 15 years or more but less than 17 years is engaged in sexual activity with a person who is not more than 2 years older than the child and where the mandated person knows or believes that there is no material difference in capacity or maturity between the two parties, and where the child has made known his or her view that a report should not be made to the Child and Family Agency and where the mandated person relied upon that view. This section does not apply where the child has made the disclosure to a mandated person.

Also, a mandated person is not required to make a report where the sole basis for his or her knowledge, belief or suspicion of harm is as a result of becoming aware that another mandated person has made a report to the Child and Family Agency in respect of the child concerned.

A mandated person is only required to make a report if he or she becomes aware of the information after the commencement of this section (irrespective of whether the harm occurred before or after the commencement of the section).

The report is to be made on a mandated report form to be made available by the Child and Family Agency and may be made by a mandated person acting on his or her own, or may be made jointly with one or more other mandated persons. A report may be made other than on the mandated report form where a mandated person has reasonable grounds to suspect that a child may be at risk of immediate harm but the mandated person, within 3 days, must provide the report to the Child and Family Agency on a mandated report form.

The Minister for Children and Youth Affairs may make regulations regarding the procedures for the making of reports to the Child and Family Agency.

The section provides that reporting obligations under this section are in addition to and not in substitution for any other obligations that the mandated person has to disclose information to the Child and Family Agency but this does not give rise to a requirement to make more than one report (other than as set in *subsection 8*). The section also provides that nothing shall affect any other obligation a person has to disclose information to An Garda Síochána under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 or to any other person or under any other enactment or rule of law.

### **Section 12 — Authorised persons**

*Section 12* provides that the chief executive officer shall authorise a member or members of staff of the Child and Family Agency (to be referred to as an authorised person) for the purposes of receiving reports made by a mandated person (and for acknowledging, in writing, those reports to the mandated person). The section also provides that an authorised person shall be deemed to be a designated officer within the meaning of the Protections for Persons Reporting Child Abuse Act 1998 for the purposes of that Act.

### **Section 13 — Agency may request mandated persons to assist with assessments**

*Section 13* provides that a mandated person may be requested to assist the Child and Family Agency and to give to the Agency such information and assistance as it may reasonably require and the

section also provides that a mandated person shall comply with such a request. Assistance to the Agency by a mandated person includes the provision of verbal or written reports, attendance at meetings arranged by the Agency; and the production to the Agency of any document or thing.

The section also provides that the Child and Family Agency may share information concerning a child who is the subject of a report with a mandated person who is assisting the Agency but the sharing of that information shall be only as considered by the Agency to be necessary and proportionate in the circumstances of the case.

The section provides that, for the purposes of carrying out its functions under this Part, the Child and Family Agency shall have the same powers as it has under the Child Care Act 1991 or under any other enactment in respect of children who are not receiving adequate care and protection.

#### **Section 14 — Information obtained by Agency or other persons pursuant to Act**

*Section 14* provides that information shared with a mandated person by the Child and Family Agency during the course of an assessment shall not be disclosed to a third party by that mandated person unless in accordance with the law or in circumstances where the disclosure is authorised in writing by the Child and Family Agency. A person who fails to comply with this section is guilty of an offence and liable to a class A fine or imprisonment for a term not exceeding 6 months or both.

#### **Section 15 — Agency is specified body for purposes of National Vetting Bureau (Children and Vulnerable Persons) Act 2012**

*Section 15* provides that the Child and Family Agency is a specified body for the purposes of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (*Schedule 2 of 2012 Act: Organisations required to notify specific information to Bureau*).

#### **Section 16 — Views of child — amendment of Child and Family Agency Act 2013**

*Section 16* provides that section 9(4) of the Child and Family Agency Act 2013 is amended to include a reference to the Children First Act 2014 to provide for the views of the child to be taken into account by the Child and Family Agency in performing its functions under the Children First Act.

### **PART 4**

#### **CHILDREN FIRST INTER-DEPARTMENTAL IMPLEMENTATION GROUP**

#### **Section 17 — Children First Inter-Departmental Implementation Group**

*Section 17* provides for the establishment of the Children First Inter-Departmental Implementation Group to be referred to as the 'Implementation Group' to perform functions assigned to it under this Bill.

#### **Section 18 — Membership of Implementation Group**

*Section 18* provides for the membership of the Implementation Group to consist of a chairperson (an official of the Department of Children and Youth Affairs) to be appointed by the Minister for Children and Youth Affairs and not less than 17 ordinary members including an official from each Department of State nominated by

the Minister having charge of the Department concerned, a member of An Garda Síochána nominated by the Garda Commissioner and an employee of the Child and Family Agency nominated by the chief executive officer of the Child and Family Agency.

### **Section 19 — Functions of Group**

*Section 19* provides for the functions of the Implementation Group to —

- promote compliance by Departments of State with their obligations under this Act,
- monitor the implementation of this Act and any guidelines issued by the Minister under *section 5*,
- provide support to Departments of State in respect of the preparation and publication of sectoral implementation plans,
- promote a consistent approach by Departments of State in respect of the preparation and publication of sectoral implementation plans,
- report to the Minister, when requested, on the implementation of this Act and any guidelines issued by the Minister under *section 5*, and
- provide information or advice, or make proposals, to the Minister on matters relating to the functions of the Implementation Group.

### **Section 20 — Directions of Minister**

*Section 20* provides that the Minister may give a direction in writing to the Implementation Group requiring it to comply with a policy of the Government as specified in the direction.

### **Section 21 — Conditions and cessation of membership**

*Section 21* provides that the Minister may determine the terms and conditions for appointment of membership to the Implementation Group and for cessation of such membership. The section also provides for the filling of vacancies to the Implementation Group.

### **Section 22 — Meetings and procedures**

*Section 22* provides that the Implementation Group shall hold meetings as necessary for the performance of its functions and make arrangements for the conduct of its meetings and business as it considers appropriate. The quorum for a meeting of the Implementation Group shall be 8.

### **Section 23 — Reports**

*Section 23* provides that the Implementation Group shall submit an annual report to the Minister to include such information and regarding such matters as the Minister may from time to time direct. The Minister may also require the Implementation Group to supply a report on any matter connected with its functions as may be specified by the Minister.

### **Section 24 — Sectoral implementation plans**

*Section 24* provides that each Minister of State shall publish a sectoral implementation plan concerning relevant services provided by the Department concerned and concerning relevant services provided by any body that is in receipt of funds from that Department, to include the measures taken or proposed to promote, review and report on compliance with the Act and other matters as

the relevant Minister considers appropriate. The relevant Minister shall cause copies of the sectoral implementation plan to be laid before each House of the Oireachtas as soon as may be after the preparation of the plan. The relevant Minister shall also publish a revised sectoral implementation plan not later than 3 years (or such other period as may be determined by the Minister) after the date of publication of that plan.

## SCHEDULE 1

### RELEVANT SERVICES

Schedule 1 specifies work or activities for the purposes of the definition of relevant services and includes work or activities mainly involving access to or contact with children.

## SCHEDULE 2

### MANDATED PERSONS

Schedule 2 specifies professions or occupations for the purposes of specifying classes of persons to be mandated persons for the purposes of the Bill.

## SCHEDULE 3

### OFFENCES FOR PURPOSES OF PARAGRAPH (A) OF DEFINITIONS OF SEXUAL ABUSE“ IN SECTION 2

Schedule 3 specifies offences for the purposes of paragraph (a) of the definition of ‘sexual abuse’ in *section 2* of the Bill.

*Department of Children and Youth Affairs,  
April 2014*