

# **Criminal Justice (Withholding Information on Crimes Against Children and Protected Persons) Bill 2012**

## **Regulatory Impact Analysis**

### **1. Summary RIA**

<b>Summary of Regulatory Impact Analysis (RIA)</b>	
<b>Department/Office:</b> Department of Justice and Equality	<b>Title of Legislation:</b> Criminal Justice (Withholding Information on Crimes Against Children and Protected Persons) Bill 2012
<b>Stage:</b> Publication of Bill	<b>Date:</b> March 2012
<b>Related Publications:</b> Criminal Justice (Withholding Information on Crimes Against Children and Protected Persons) Bill 2012 – Explanatory Memorandum	
<b>Available to view or download at:</b> <a href="http://www.oireachtas.ie">www.oireachtas.ie</a> – provide full address	
<b>Contact for enquiries:</b> Criminal Law Reform Division	<b>Telephone:</b> 01 602 8202
<b>What policy objectives have been pursued?</b>  The main purpose of the Bill is to create a criminal offence of withholding information relating to the commission of a serious offence, including a sexual offence, against a person who is under the age of 18 years or an otherwise vulnerable person, ensuring the more effective protection of children and other vulnerable persons from serious crime.  <b>What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified.</b>  1. Do nothing.  2. Introduce legislation to amend section 8 of the Offences Against the State (Amendment) Act 1998 to extend its provisions to cover sexual offences.  3. Introduce legislation to create a criminal offence of withholding information relating to the commission of a serious offence, including a sexual offence, against a person who is under the age of 18 years or a vulnerable person.  <b>Preferred Option:</b>  Introduce legislation to provide for 3 above.	

OPTIONS			
	COSTS	BENEFITS	IMPACTS
1.	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>No improvement of provisions relating to protection of children or other vulnerable persons from serious crime.</li> </ul>
2.	<ul style="list-style-type: none"> <li>No significant direct costs.</li> </ul>	<ul style="list-style-type: none"> <li>Extend existing provisions on withholding information to sexual offences</li> </ul>	<ul style="list-style-type: none"> <li>Inclusion of sexual offences for the purpose of withholding information in legislation concerned with offences against the State.</li> </ul>
3.	<ul style="list-style-type: none"> <li>No significant direct costs.</li> </ul>	<ul style="list-style-type: none"> <li>Stand alone statutory provisions ensuring focus on more effective protection of children and other vulnerable persons from serious crime</li> </ul>	<ul style="list-style-type: none"> <li>Criminalisation of persons who withhold information which would otherwise assist in the prosecution of serious crimes against children and other vulnerable persons.</li> </ul>

## **2. Policy Context and Objectives**

**2.1** The protection of children and other vulnerable persons from serious crime is an ongoing commitment and objective and the necessary measures to ensure maximum protection are under constant review.

**2.2** The proposals in the Criminal Justice (Withholding Information on Crimes Against Children and Protected Persons) Bill respond to a gap in our existing law.

**2.3** Similar provision exists in Irish law whereby it is an offence under the Offences Against the State (Amendment) Act 1998 to withhold information which would be of assistance in preventing or prosecuting a serious offence as defined under that Act. “Serious offence” is defined as an “offence that involves loss of human life, serious personal injury (other than injury that constitutes an offence of a sexual nature), false imprisonment or serious loss of or damage to property or a serious risk of any such loss, imprisonment or damage”. The offence must also carry a penalty of five years imprisonment or more.

**2.4** The effect is that, while there is an offence of withholding information provision in relation to a number of serious offences, there is no such provision in relation to sexual offences. In relation to crimes against children and other vulnerable persons, this is a potentially serious gap in the law.

**2.5** An amendment to the provision in the 1998 Act would not be appropriate given that that Act is concerned with Offences Against the State. It is instead considered necessary to enact a separate provision aimed at the protection of children and vulnerable persons which will include sexual offences in the list of offences relating to which it would be a crime to withhold information. It is also of note that the recent Criminal Justice Act 2011 contains a similar provision in regard to white collar crime. It would be untenable not to have an equivalent provision in regard to protecting children and other vulnerable persons.

## **3. Identification and Description of Options**

The following options were considered:

1. Do nothing.
2. Introduce legislation to amend section 8 of the Offences Against the State (Amendment) Act 1998 to extend its provisions to cover sexual offences.
3. Introduce legislation to create a criminal offence of withholding information relating to the commission of a serious offence, including a sexual offence, against a person who is under the age of 18 years or a vulnerable person.

## **4. Analysis of Costs, Benefits and Impacts for ALL Options**

1. *Do nothing.*

Doing nothing would mean that the existing gap in the law failing to provide children and other vulnerable persons with maximum protection from serious crime including sexual offences would continue.

*2. Introduce legislation to amend section 8 of the Offences Against the State (Amendment) Act 1998 to extend its provisions to cover sexual offences.*

An amendment to the provision in the 1998 Act would not be appropriate given that that Act is concerned with Offences Against the State. It would also go beyond the policy of aim of providing additional protection to children and other vulnerable persons as the 1998 Act applies to offences committed against all persons.

*3. Introduce legislation to create a criminal offence of withholding information relating to the commission of a serious offence, including a sexual offence, against a person who is under the age of 18 years or an intellectually disabled person.*

This approach ensures that the existing gap in legislation is closed and that maximum protection from serious crime is afforded children and other vulnerable persons.

## **5. Consultation**

The Bill has been drawn up in consultation with the Departments of Finance, the Office of the Attorney General, the Office of the Director of Public Prosecutions, the Department of Children and Youth Affairs, the Department of Health, the Department of Education and Skills.

## **6. Enforcement and compliance**

The provisions of the Bill concern the criminal law. Enforcement is therefore a matter for the Garda Síochána, the Director of Public Prosecutions and the courts.

## **7. Review**

The new provisions will be kept under ongoing review as to their practicality and workability as a matter of course.

## **8. Publication**

The Regulatory Impact Analysis will be published on the Department's website.

March 2012