

# **Criminal Records Information System Bill**

## **Draft Scheme**

## **Head 1 – Short Title**

To provide:

The Bill will be known as “The Criminal Records Information System Bill, 2011”

**Note:** The Bill is required to give effect to the Framework Decision on the European Criminal Records Information System. However, because it is intended to use this Bill to provide for exchange of criminal records information with States other than EU Member States, it is not proposed to refer to “European” Criminal Information in the title.

## **Head 2: Interpretation**

To provide –

“Council Decision” means the Council Framework Decision of 2009/315 JHA on the establishment of the European Criminal Records Information System (ECRIS).

“Criminal Record” means a record from a national register which records a final decision by a criminal court regarding convictions against a natural person or a body corporate in respect of a criminal offence.

“Criminal Proceedings” means proceedings against a person for an offence.

“Member State” means a member state of the European Union (other than the State).

**Note:** The definition of criminal record proposed above is based on Article 2 of 2009/315 Framework Decision.

### **Head 3 Expenses**

Provide that:

The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

**Note:** This is a standard provision.

## **ECRIS HEADS**

### **Head 4 - National Criminal Records Register**

Provide that:

- (1) The Garda Commissioner shall maintain a national criminal records register.
- (2) The national criminal records register shall consist of:
  - (i) details of criminal convictions by the courts and
  - (ii) records of criminal convictions of Irish nationals, or persons ordinarily, or at the time the offence was committed, living in the State, as notified by other states.
  - (iii) records of any successful appeals against convictions in respect of criminal offences.
  - (iv) details of offenders' forenames and surnames, mother's family name/maiden name, address, place and date of birth, gender, nationality, Passport Number if available, fingerprints or other information identifying the individual.
- (3) From the commencement of this section, the Courts Service shall provide the Garda Commissioner with details of all decisions of the courts regarding criminal convictions. Such details shall include such information as is in the possession of the courts in regard to the offences, details of convictions and sentence of persons convicted of criminal offences and details of any subsequent modifications of decisions and sentences.

#### **Notes**

A) These subheads are required to give effect to the objectives of FD 2009/315 JHA. The data listed in subhead (3) is in accordance with Article 11 of the FD. Art. 11 (c ) requires transmission of fingerprints, if they are available, hence they are included above.

B) This head has a linkage with the National Vetting Office Bill. The requirement that the "Garda Commissioner shall maintain a national criminal records register" is required in order for vetting and for ECRIS. Head 5 of the Vetting Bill scheme contains an equivalent provision, so depending on which Bill is enacted first, the second of the two Bills to be enacted should be modified to take account of the earlier enactment.

## **Head 5 - Central Authority and its functions**

(1) The Garda Commissioner shall be designated as the Central Authority for Criminal Records for the purposes of Council Framework Decision 2009/315 JHA.

(2) The Garda Commissioner may, if he considers it appropriate, designate persons to perform specified functions of the Central Authority.

(3) The Central Authority has the function of maintaining and updating:

i) the national register of criminal records, and

ii) a register of records of criminal convictions in respect of Irish citizens or persons currently or previously resident in Ireland where such information has been transmitted or received from other states.

(iii) a register of offences committed in other states by persons charged with offences in this state.

and transmitting and receiving these criminal records, or alterations thereto, to and from other states in accordance with the provisions of this Act.

(4) The Central Authority shall, as soon as possible, inform the relevant central authority of another member state or the relevant authority in any state of any decisions by the courts, or any subsequent alteration or deletion of such decisions, in respect of criminal convictions by the courts of nationals of that member state(s) or persons ordinarily resident in that member state(s) or state, regardless of whether or not the relevant person is also a national of this state. On request of that member state(s) the Central Authority shall provide the Central Authority of the relevant member state with a copy of the convictions, subsequent penalties and relevant information related thereto.

(5) The Central Authority may submit a request to any state for information and related data to be extracted from the criminal record of that state, in respect of any person under investigation for a criminal offence, charged with a criminal offence or convicted of a criminal offence, or for the purposes provided for in the National Vetting Bureau Act 2011, or for the purposes of any other enactment.

(6) The Central Authority shall, as soon as possible, on request from any designated state, as defined by the Criminal Justice (Mutual Assistance) Act 2008, or member state,

i) transmit information and related data to be extracted from the National Criminal Records Register, in respect of any person convicted of a criminal offence in that state or member state. Such information or data may be transmitted by any means capable of producing a written record, and shall be translated into the language of the requesting state where the requesting state has requested translation into its language.

ii) specify that information and related data transferred to another state or member state in accordance with subhead (i) may only be used for the purposes of criminal proceedings, or in accordance with the provisions of any other enactment.

**Drafting Notes:**

Subhead (1) is required to give effect to the requirement in Article 3 of FD 2009/315 JHA to designate a central authority.

Subhead (2) allows the Commissioner to designate persons to perform specified functions of the Central Authority

Subhead (3) is required to give effect to Article 5 of the FD, which sets out the obligation to maintain and update criminal records provided by the domestic courts and those provided by other states in respect of Irish residents/nationals.

Note that 3(i) does not use the term “ordinarily resident” as this would usually refer to persons resident here 12 months or more. The purpose of the section is simply to allow the Gardaí retain information from other jurisdictions notified by other persons who are (at the time that the information is conveyed) or who have been resident here, regardless of how long that person is resident.

Subhead (4) is required to give effect to the information requirements set out in the Framework Decision and the specific obligations contained in Article 4.

Subhead (5) is required to give effect to Article 4.2 of the FD. It is proposed not to limit this provision to member states only, but to also allow exchange of criminal records information with designated states outside the EU. This is already the practice, and for this reason a provision that is broader than "member states" is considered necessary.

Subhead (6) is required to give effect to Article 7 of the FD. Again, it is proposed not to limit the provision/transmission of criminal records information to member states, but to allow information exchange with "designated states". 6 (i) includes provision for translation, as required by Article 10. Subhead 6 (ii) provides that information may be used “in accordance with the provisions of any other enactment.” This is considered necessary to allow for a variety of Acts which allow exchange of Criminal Records information: e.g. vetting in accordance with the provisions of the Vetting Bill, or the use of information in accordance with section 28 of the Garda Síochána Act 2005, or in accordance with section 9 of the Criminal Justice (Mutual Assistance) Act 2008. There may also be other future enactments which would require the exchange of such information.

## **Head 6 –**

### **Provide that:**

Where a member of an Garda Síochána charges any person with any offence, the member shall demand, record and retain the person's forenames, surnames, fathers name, mother's family name/maiden name, address, place of birth, date of birth, gender, nationality, national identity number, and Passport Number insofar as such information is available.

**Note:** It is necessary to allow a Garda have the right to obtain details of nationality and/or place of birth in order to comply with the requirements of ECRIS. The right to retain such information is also required. The Gardaí would also like to obtain details of mother's maiden/family name as this is often a key identifier between people with the same name. We also need to create offences of failing to provide information on nationality or providing false information – see head 9.



## Head 7- Use of Criminal Records Information

Provide that –

Criminal records obtained from another state under this Act shall only be used for the purposes of criminal investigation, criminal proceedings or for the purposes specified in obtaining the information, or for preventing an immediate and serious threat to public security.

**Note:** This head explicitly limits the use of the information to the purposes provided for. It should be noted that the FD states that information transmitted by another state should **only** be used for the purpose specified. For example, if information provided via ECRIS is to be used for a Garda vetting disclosure the Garda Vetting Bureau will have to request the information for that specific purpose, as per article 9.2.

The **Spent Convictions Bill** will not apply to disclosure of criminal records on request by other states. It will also not apply to criminal records data transmitted to this state by another state.

## **Head 8 - Request for Personal Information on Conviction**

Provide that:

(1) Where a person asks for information on his/her own criminal record, the central authority shall furnish the person with a copy of their criminal record and may submit a request to the Central Authority of another member state or designated state for relevant information and related data to be extracted from the criminal record of that state.

(2) The Data Protection Acts 1988 and 2003 apply in relation to data collected, processed, kept and used in accordance with this Act.

### **Drafting Note:**

This provision is being made for the avoidance of doubt. The Data Protection Act 1988 restricts right of access to personal data “kept for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders”. Such a restriction does not cover criminal records information, as this information is used for purposes other than detecting or investigating crime and it is also information recorded in open court, so it is a matter of public record. The Data Protection Acts therefore already apply in respect of criminal records information. This provision above is being made to make this explicit.

This provision complies with Article 6.2 of FD 2009/315 JHA. The Council of Europe Convention of 28 Jan 1981 for the protection of individuals with regard to automatic processing of Data applies to the Framework Decision. Furthermore, Framework Decision 2008/977 JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters also provides a requirement that persons have a right of access to a person’s individual criminal record.

This “avoidance of doubt” provision is modelled on equivalent provisions in the Europol Bill and the National Vetting Bureau Bill.

## **Head 9 – Offences**

### **Provide that:**

Any person who fails or refuses to give his name(s), address, nationality and other evidence of identification required under this Act or gives a name or address or nationality or other evidence of identification when so demanded which is false or misleading, shall be guilty of an offence and liable on summary conviction to a class B fine or to a term of imprisonment not exceeding 6 months or to both.

**Note:** This head is modelled on the Public Order Act 1997, s 24, but the penalty has been update as per the penalty standards set out in the Fines Act 2010.

## **Head 10 - General Provision**

Provide that:

Nothing in this Act modifies the obligations of any bilateral or multilateral agreements which Ireland has entered into in accordance with the provisions of the 2008 Criminal Justice (Mutual Assistance) Act or any other enactment.

## Schedule

Copy in the English language of Council Decision 2009/315 JHA