

Summary of Regulatory Impact Analysis (RIA)

| Department/Office: Justice and Equality | | Title of Legislation: National Vetting Bureau Bill 2011 | |
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| Stage: General Scheme of Bill | | Date: 12 July 2011 | |
| Related Publications: First Report - Interim Report on Children on the Twenty-Eight Amendment of the Constitution Bill 2007. David P. Brennan – RIA | | | |
| Available to view or download at: Nil | | | |
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| <p>What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the option below and indicate whether a preferred option has been identified.</p> <p>1. Make the necessary legislative changes. 2. Do not make these changes.</p> <p>Preferred Option: 1. Make the necessary legislative changes.</p> | | | |
| OPTIONS | | | |
| | COSTS | BENEFITS | IMPACTS |
| 1. | <p>Taking all of the factors into consideration it is considered that the Bill will not create additional costs to the exchequer. This is based on the premise that there will not be any significant increase in demand for vetting applications, as the Bill does not create any new vetting requirements. The existing services and the scope of vetting will not be extended beyond existing applicants for the foreseeable future.</p> | <p>1. The Bill will significantly strengthen the States protections for children and vulnerable adults, as recommended by the Joint Oireachtas Committee.</p> <p>2. The Bill will provide legal certainty and it is expected that the Bill will reduce the number of legal appeals against the disclosure of information for vetting purposes.</p> <p>3. The Bill will also provide a robust legal basis for the work of the Garda Vetting Bureau.</p> | <p>In overall terms the Bill will further enhance the Governments measures to protect children and vulnerable adults.</p> |
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Regulatory Impact Analysis

Policy Objectives

Background

In September 2008 the Joint Committee on the Constitutional Amendment on Children presented an Interim Report to the Oireachtas. The Committee made the following recommendations:

- a) That legislation should be prepared and published “*to establish a statutory scheme*
 - *for the vetting of all persons involved in working in any capacity with children;*
 - *for the statutory regulation of the manner in which information in relation to records of criminal prosecutions, criminal convictions and “soft” information may be collated, exchanged and deployed by An Garda Síochána or other Statutory Agencies for the purpose of ensuring the highest standards of child protection within the State; and*
 - *to require that all agencies, organisations, bodies, clubs, educational and childcare establishments and groups working with or involved with children ensure that all of those working under their aegis either in a paid or voluntary capacity with children are subject to vetting.”*
- b) The proposed legislation “*should have due regard for the protection of the constitutional rights of any persons who may be affected by this proposed law reform*”.

The Bill therefore has two main purposes:

- 1) To provide a statutory framework for the existing vetting procedures, using criminal records information, in regard to:
 - (a) persons applying for public sector jobs,
 - (b) persons seeking employment working with children and vulnerable adults.

There is already a statutory basis for vetting of persons under various Acts:

- i) Public Service Management (Recruitment and Appointments) Act 2004.
- ii) Child Care Act 1991 and the Child Care Regulations 2006.
- iii) Employment Agency Act 1971.
- iv) Taxi Regulation Act 2003.
- v) Private Security Services Act 2004.
- vi) Teaching Council Act 2001.

However these acts do not set out the procedures to be followed in the vetting process.

- 2) To provide a statutory framework to define “soft” or “relevant” information, and to set out procedures to allow this relevant information be used, in addition to records of prosecutions or criminal convictions, in vetting persons applying for employment working with children or young adults. “Soft” information will not be disclosed in regard to general public service employment – It will only be used in regard to:
 - i) employment working with children or vulnerable adults.
 - ii) Garda Síochána and State security appointments.

1) Providing a statutory framework for existing vetting procedures.

Current Practice

The existing vetting procedures are based on the use of information about criminal prosecutions or convictions, currently derived from the Garda PULSE Data. There are two primary types of vetting applications:

- a) Applications from Government and State Agencies, or through the Public Appointments Commission, in respect of persons applying for positions of employment. The proposed Bill does not propose any change in practice in regard to these positions. i.e. Applicants will still be vetted by examining records of criminal prosecutions or convictions and disclosing this information to the prospective employer. Minor road traffic offences or fines are not be considered pertinent in assessing such applications and are not disclosed. The proposed Spent Convictions Bill will further define/limit the information regarding convictions to be used in regard to such vetting.
- b) Applications from organisations employing persons working with children or vulnerable adults. Under the Children First Guidelines, which currently operate on a non-statutory basis the Garda Central Vetting Unit has responsibility for “vetting on behalf of organisations employing personnel to work in a full-time, part-time, voluntary or student placement capacity with children or vulnerable adults.” Around 19,000 organisations currently use the services of the Garda Vetting Office for this purpose.

In developing this legislation the Department’s key objective is to provide a basis in law for existing vetting procedures, together with allowing disclosure of certain “soft” information. These procedures have developed on the basis of a number of legal challenges to vetting, and consequent legal advices.

Key Principles of the Existing Procedures

The following are key principles of the existing procedures which must be retained in the legislation:

- Decisions on whether or not to employ a person are made by the employer, not by the Vetting Bureau.
- The consent of the person seeking employment is obtained prior to vetting.

- The Vetting Bureau's role is primarily to disclose verified, accurate information to enable employers make informed decisions, in order to protect the public interest.
- Persons applying for vetting will not take up employment until vetting has been concluded satisfactorily. The exception to this are teachers employed under the Teaching Council Act 2001, which allows for appointment pending vetting.
- The Bill provides that the Minister may make regulations providing for re-vetting of persons on a periodic basis of not less than 5 years. This policy decision might be reconsidered at some future time, after enactment, but in the current economic climate and with the resources of the Vetting Office already severely stretched it is considered that it is currently not feasible to re-vet people at regular intervals after recruitment.

Consideration of other Legislative Models

In preparing the Draft Scheme, consideration was given to a Barring List system such as operates in the UK and Northern Ireland and South Africa's Children's Act 2005. Based on previous advices from the Attorney the Departments & Gardaí felt that a Barring List system could not readily be adapted here, given our constitutional obligation to protect a person's good name. While the Draft Scheme reflects certain provisions of other jurisdictions legislation, such as disclosure provisions, Registered Organisations, Authorised Persons, etc., the Draft Scheme has been developed with a particular regard to our own constitutional constraints, in particular Article 40.3.2, and with regard to numerous specific advices from the Attorney General which have shaped the evolution of the current Irish system of vetting.

The Structure of the Bureau

A policy decision has been made **not** to create a new statutory agency to do the work of vetting, but to use the structure of the existing Garda Vetting Office, as this is a significantly less costly option.

2) Providing a statutory basis for the use of "soft" information.

In 2008 the Oireachtas Joint Committee on the Constitutional Amendment on Children recommended that a single piece of legislation be prepared that deals with the use of criminal record information and "soft" information.

Until now, "soft" information has not been disclosed in assessing vetting applications. There are, however, a number of cases that the Vetting Office are dealing with where disclosure of "soft" information is an ongoing issue. There is also no clear definition of what is meant by "soft" information.

In defining "soft" information and providing for its use in legislation it is considered that there are a number of key principles that are being adhered to:

- In using "soft" information it will be necessary to balance the rights of individuals to the protection of their good name, and the rights of children

and vulnerable adults to be protected from persons who are likely to cause them harm. Consequently, the definition of “soft” or “relevant” information in the scheme is quite restrictive and only includes information arising from a formal investigation, either by the Gardaí or another specified body which has responsibility for conducting such investigations, where that investigation found bona fide evidence that a person is likely to cause harm to a child or vulnerable adult.

- Before any “soft” information is disclosed, the person to whom the record refers must be afforded the opportunity to challenge the information in question. The scheme provides for an independent appeals mechanism if the person concerned is not satisfied with the decision of the Vetting Bureau. The scheme also provides that all information held under the Act will be subject to the provisions of the Data Protection Acts.
- The disclosure of “soft” information in the vetting process is restricted to employment which involves substantial ongoing contact with children or vulnerable adults, or appointments to positions in State security.

Offences

It is proposed that minor road traffic offences, fines on the spot etc. will not form part of the Criminal Records database. The Spent Convictions Bill will further address the issue of discounting minor offences.

Options

Do nothing. Non-implementation is not really an option:

1. To do nothing would mean that we would ignore the findings of the Oireachtas Committee. Furthermore, there are a number of ongoing legal actions in regard to the vetting procedures which already operate. The Attorney General has strongly advised that it is essential to put the vetting procedures on a statutory footing if the State is to limit its liabilities in such cases.

Partial implementation of the legislation. In effect what is proposed for the foreseeable future is a partial implementation option. The three types of vetting provided for in the Bill – Public Service Appointments, persons working with children or vulnerable adults and State security appointments require vetting already, under existing legislation. The Minister may make regulations providing for re-vetting of persons on a periodic basis of not less than 5 years. For resource reasons it will not be possible to do this in the foreseeable future.

Identification of costs and benefits

There are a number of potential costs which will arise from the implementation of the Bill but these are not considered to be significant:

- 1) The cost of providing “Relevant Information”. This will involve costs to the scheduled organisations which conduct investigations e.g. HSE, HIQA, Teaching Council etc. who will be required to notify the Bureau where an investigation has been concluded and where it has been found that there are bona fide reasons to believe that a person poses a threat to children or vulnerable adults. It should be borne in mind that the Bill creates no onus on these organisations to conduct any enquiry that they would not otherwise conduct. Therefore the costs are only related to the communication of information to the Bureau. It is considered that these communication costs will be incidental and will not create any extra demands on the exchequer. Separately, it is understood that the Department of Children is considering placing the Children First Guidelines on a statutory basis and that process may create additional process requirements for organisations reporting abuse of children. But it is considered that any such extra reporting costs or associated administrative costs are not proper to this Bill. Equally, changes in reporting requirements or procedures which might arise in future in regard to vulnerable adults or schools are entirely separate to any provisions of this Bill.
- 2) The cost of establishing the “Relevant Information” Database. Based on UK experience it is expected that the number of records on this database will be small (no more than 1,000 records) and the cost of establishing the database will be met from existing Garda IT resources. This will be a tiny database, relative the size of the Criminal Records database. This requirement will be met from existing resources.
- 3) The costs of extra vetting demand. It should be noted that there is unlikely to be an additional demand for vetting of persons applying for public sector posts or for posts working with children or vulnerable adults as these vetting requirements have already been created by other legislation or by the Children First Guidelines. The Bill does provide however, that the Minister may make regulations providing for re-vetting of persons on a periodic basis of not less than 5 years. For resource reasons it will not be possible to do this in the short to medium term. Consideration of making such regulations to provide for re-vetting will only arise in the long term and will be subject to resource availability in the future. If, in the future it is decided to proceed with re-vetting this would need to be discussed and agreed with the Department of Public Expenditure and Reform. For all of these reasons, the cost of increased vetting demand is being set at “nil” for the present.
- 4) Potential extra legal liabilities for the state. It can be argued that by putting vetting on a statutory basis, the State may assume a liability to provide an efficient vetting service and the state may be exposed to legal claims arising from vetting delays. It will be important in finalising the Bill to create adequate safeguards to protect the State from any such claims. This issue will be further considered in consultation with the Attorney General at the drafting stage.
- 5) Identifiable cost savings. The Gardaí propose rolling out an on-line vetting application process in 2012 and this will free up some staffing resources in the Bureau due to the fact that the on-line applications will no longer require staff to open post and register each individual item of mail. These staffing resources will be employed in reducing the time required to vet applications. The average time taken to vet persons has already been reduced from 16 weeks to 8 weeks. There has also been a significant fall in demand for vetting for public sector

appointments due to the public service recruitment freeze. This is expected to continue into the medium term.

- 6) Cost of Appeals Procedure. It is estimated that the cost of fees to the independent Appeals Officer will be of the order of €30,000 per annum. This estimate is based on the experience of the costs of the Prisons Appeals system. This cost will be significantly lower than the costs of appeals going to court, as they do at present. In overall terms therefore this procedure will save money.

Taking all of the above factors into consideration it is considered that the Bill will not create any significant costs to the exchequer and can be implemented on a cost neutral basis within existing resources.

Other Impacts

The Bill will significantly strengthen the States protections for children and vulnerable adults, as recommended by the Joint Oireachtas Committee.

The Bill will provide legal certainty and it is expected that the Bill will reduce the number of legal appeals against the disclosure of information for vetting purposes. It will also provide a robust legal basis for the work of the Garda Vetting Bureau.

The Bill has no implications for wider social policies, such as social inclusion, general economic development etc.

Consultations

Detailed consultations have taken place with:

- the Gardaí,
- Office of the Attorney General,
- Department of Children,
- Department of Health,
- Department of Education & Skills.

The draft Bill reflects the observations and comments received in that consultation process.

Recommendation

It is recommended that the Scheme of the Bill proceed to drafting.

Enforcement and Compliance

It will be a matter for the Garda Síochána and the Organisations listed in the schedule to the Bill to implement the legislation. The Department of Justice and Law Reform will monitor the implementation of the legislation.

Review

Any difficulties encountered will be considered as they arise.