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DRAFT HEADS

**NATIONAL VETTING BUREAU BILL 2011
PRESENTED BY THE MINISTER FOR JUSTICE,
EQUALITY AND DEFENCE**

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

1. Short title and commencement.
2. Interpretation.
3. Regulations.
4. Expenses.

PART 2

EMPLOYMENT POSITIONS COVERED BY THIS ACT

5. Persons required to submit vetting disclosure applications.
6. Employment Positions Excluded from this Act.

PART 3

NATIONAL VETTING BUREAU

7. National Vetting Bureau.
8. Chief Bureau Officer
9. Compliance Officers.
10. Other jurisdictions.

PART 4

VETTING DISCLOSURE PROCEDURES

11. Register of Organisations applying to have persons vetted
12. Duties of registered organisation
13. Duties of liaison persons.
14. Relevant Information.
15. Organisations Required to Report Relevant Information to the Bureau.
16. Vetting Disclosures by the Bureau in respect of employment positions–
General Provisions.

17. Vetting Disclosures in respect of employment which involves regular or ongoing unsupervised contact with children or vulnerable adults.
18. Vetting Disclosures in respect of employment in state security positions.
19. Deferral of Vetting Disclosure.
20. Use of relevant information for vetting purposes
21. Disputes and appeals regarding information contained in the proposed vetting disclosure.

PART 5

MISCELLANEOUS

22. Personal data protection
23. Offences: Falsifications, etc.

SCHEDULE 1

Schedule of offences which may be disclosed to Registered Organisations / liaison persons

SCHEDULE 2

Schedule of Organisations required to report relevant information to the Bureau.

ACTS REFERRED TO

Child Care Act 1991

Children Act 2001

Civil Service Commissioners Act 1956.

Data Protection Acts 1988 and 2003

Health Act 2004

Local Authorities (Officers and Employees) Act 1926

Private Security Services Act 2004

Prisons Act 2007

Public Service Management (Recruitment and Appointments) Act 2004

Taxi Regulations Act 2003

Teaching Council Acts 2001 and 2006

NATIONAL VETTING BUREAU BILL 2011

PART I

PRELIMINARY AND GENERAL

Short title and commencement

1. - (1) This Bill may be cited as the National Vetting Bureau Bill 2011

(2) This Bill shall come into operation on such day or days as may be fixed by order or orders made by the Minister, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different provisions and different purposes of this Bill.

Notes:

This is a standard provision giving the short title and providing for the provisions of the Bill to come into operation at such time or times as may be specified by the Minister. It also provides that different provisions can come into operation on different days.

Interpretation

2. –In this Act:-

“Bureau” means the National Vetting Bureau established under this Act;

“child” means a person under the age of 18;

“Garda Commissioner” means the Commissioner of the Garda Síochána;

“employment” includes –

- (a) full-time work for which a person is paid;
- (b) part-time work for which a person is paid;
- (c) work as a volunteer;
- (d) work which is unpaid whether or not it is undertaken by a person in accordance with agreed terms and conditions, and
- (e) placements as part of professional training or other educational course;

“Health Service Executive” means the body established under section 6 of the Health Act 2004;

“liaison person” means a person authorised to act for and under the direction of a registered organisation for the purpose of this Act.

“organisation” means a body corporate or unincorporate or an individual who employs others in the course of a business or activity.

“relevant information” means a record of information within the meaning of head 14.

“scheduled offence” means an offence as set out in Schedule 1 to this Bill.

“the Minister” means the Minister for Justice and Equality.

“vetting” means an examination by the Bureau of its records in relation to prospective employees covered by this Act, for the purpose of disclosure of records in respect of those prospective employees in accordance the provisions of this Act.

“vetting subject” means an individual who is 16 years old and over in respect of whom an application is submitted to the Bureau within the terms of head 13;

“vulnerable adult” means a person of 18 years and older who is suffering from a physical, intellectual or mental impairment, whether through disability, injury, illness or age, which is of such a nature or degree as to render a person –

- (a) a ward of court
- (b) to be in residential accommodation
- (c) to be in sheltered accommodation
- (d) to require assistance in the conduct of his/her own affairs by a person other than a family member or another who lives with him/her in the same household
- (e) unable to guard against neglect, abuse or exploitation

Notes:

This is a standard provision setting out definitions of key terms contained in the Scheme Bill.

Additional consideration will need to be given to some of the definitions contained in the provision, in particular, “employment”, “organisation” and “vulnerable adult”.

Regulations

3. – (1) The Minister may from time to time make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed.

(2) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to anything previously done thereunder.

Notes:

This is a standard provision to allow for regulations to be made by the Minister, such as the setting of fees (head 4) or the designation of organisations required to report relevant information under head 15.

Expenses

4. – (1) The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

(2) The Minister, following consultation with the Commissioner and the Minister for Public Expenditure and Reform, may make regulations providing for charges to be levied in respect of:

(a) registering organisations or registering certain categories of organisations with the Bureau, and

(b) conducting vetting for registered organisations, or for certain categories of registered organisations.

Notes:

This is a standard provision to provide for the administration costs of the Act and to allow for regulations to be made for fees to be charged by the National Vetting Bureau should decisions be made in the future to make such charges.

PART 2

EMPLOYMENT POSITIONS COVERED BY THIS ACT

Persons required to submit vetting disclosure applications.

5. – (1) Persons applying for employment in the following positions are subject to the vetting disclosure requirements of this Act and a vetting disclosure must be made in respect of such employment applications in accordance with the relevant provisions of this Act –

(a) employment governed by

(i) the Public Service Management (Recruitment and Appointments) Act 2004;

(ii) the Private Security Services Act 2004;

(iii) the Taxi Regulation Act 2003;

(b) employment in pre-school services as defined by the Child Care Act 1991;

(c) employment in positions as teachers, as defined by the Teaching Council Acts 2001 and 2006;

(d) other employment working with children or vulnerable adults which involves regular or ongoing unsupervised contact with children or vulnerable adults;

(e) employment involving state security including –

(i) the security of the State;

(ii) the prevention, detection, investigation or prosecution of offences, or

(iii) the apprehension or prosecution of offenders;

(f) employment which involves a role which is part of the administration of justice including –

(i) a position in the Garda Síochána or a civilian position of employment with the Garda Síochána;

(ii) a position as a judge;

(iii) a position concerning the management or operation of a prison as defined by the Prisons Act 2007;

(iv) a position concerning the management or operation of a children detention school, as defined by the Children Act 2001;

(v) a position in the Courts Service which is directly concerned with the administration of justice, including a position as court clerk or registrar;

(vi) a position in the Office of the Director of Public Prosecutions;

(vii) a position in the Customs and Excise;

(viii) a position in the Chief State Solicitors Office;

(ix) a position in the Criminal Assets Bureau;

(x) a position in the Probation Service;

(xi) a position in the Forensic Science Laboratory;

or

(g) any other employment position which requires vetting under any other enactment.

(2) The provisions of this Act shall also apply to persons providing accommodation in their private home for children or vulnerable adults, other than family relatives.

Notes:

This Head, together with Head 6, is intended to provide clarity regarding who is and who is not required to apply for a vetting disclosure. This Head seeks to define the positions which will be subject to vetting by reference to the type of employment rather than type of employer. It is considered important to make clear that even in registered organisations; employment positions which do not involve working with children do not require vetting.

Head 5(1) lists the employments which will be subject to vetting. Paragraph (a) lists those statutes under which the civil servants and employees of local authorities are appointed. It also lists the Private Security Services Act which includes a provision whereby the Private Security Authority may seek Garda information in relation to applicants for licences under that Act. The Taxi Regulation Act is also included as there is provision in that Act for the mandatory disqualification from holding a licence under that Act on conviction of certain offences.

Paragraphs (b) and (c) require vetting for persons employed in pre-school services as defined by the Child Care Act 1991 or employment as teachers.

Paragraph (d) provides for other employment involving regular or ongoing unsupervised contact with children or vulnerable adults. This provision is directed at carers and other independent health sector employees. The term “regular or ongoing unsupervised contact with children or vulnerable adults” has been suggested to screen out those employments which have everyday contact with children but do not have ongoing contact – e.g. a sales employee in a shop. The recent Home Office Report on

the Vetting & Barring Scheme (February 2011) uses the term “regular and close” contact.

Paragraphs (e) and (f) concern employment involving state security or the administration of justice.

Subhead (2) is required to provide that persons such as those taking in summer students will also be subject to vetting.

Employment Positions Excluded from this Act

6.- The following persons are not required to submit applications for vetting under this Act:

- (a) family members caring for a child or vulnerable adult;
- (b) persons minding a child or vulnerable adult in the family home of the child or vulnerable adult, at the request of a parent or guardian;
- (c) persons assisting on an occasional, ad-hoc, voluntary basis in sports or community or other organisations which involve children or vulnerable adults but where those persons do not have regular or ongoing unsupervised contact with children or vulnerable adults, and
- (d) students providing occasional or *ad hoc* tutoring to other students.

Notes:

This head clarifies the positions which are excluded from the provisions of the Scheme and therefore not subject to the vetting requirements.

Paragraph (a) excludes persons who care for another family member.

Paragraph (b) provides that vetting is not required in respect of babysitting or child minding in the family home. If a private individual wishes to employ a private babysitter who has been vetted they can do so by employing a person via a registered child care agency. But it is not the intended policy to make vetting of domestic babysitters mandatory.

Paragraph (c) is intended to clarify that a person helping out on an ad-hoc basis, for example at a sports day, or a community event, or a fund-raising event does not have to be vetted, provided they are not going to have regular or ongoing unsupervised contact with children.

Paragraph (d) provides exemption for students providing ad-hoc tutoring to other students.

PART 3

NATIONAL VETTING BUREAU

National Vetting Bureau

7. – (1) The functions of the Bureau shall include the following:

- (a) the establishment and maintenance of a register of registered organisations in accordance with head 11 of this Act;
- (b) the maintenance of a list of liaison person nominated by registered organisations in accordance with head 12 of this Act;
- (c) the establishment and maintenance of records concerning:
 - (i) prosecutions and convictions for offences, including successful appeals against convictions for offences, or any other court orders and court decisions in regard to offences;
 - (ii) relevant information within the meaning of head 14 of this Act and as provided to the Bureau in accordance with the provisions of this Act, and
 - (iii) information received by the Bureau from other jurisdictions in accordance with Head 10.
- (d) assessment, for the purpose of disclosure under this Act, of information contained in records as defined in this subhead; and
- (e) the disclosure in accordance with Part 4 of records established and maintained under subhead (c) above, in respect of persons applying for employment positions covered by this Act.

(2) The Garda Commissioner shall be responsible for the day-to-day management and control of the Bureau, and shall appoint such persons to the Bureau as he considers necessary.

Notes:

This section sets out the functions of the Bureau. The Bureau will, in effect, simply replace the existing Garda Central Vetting Office. It will do so in name only as the work, procedures, systems and reporting structures of that office will continue as is. This approach obviates any requirement to set up any new agency, or to make any new provisions for such issues as staffing, office structures, employment conditions etc.

The functions set out provide for the maintenance and use of a register of registered organisations (i.e. those organisations which will be required to seek vetting of employees), the maintenance of details of liaison persons (persons nominated by organisations to process vetting requests) and the maintenance of records concerning–

- (i) prosecutions or convictions
- (ii) relevant information, as defined by this Act.
- (iii) information received from other jurisdictions.

The functions also include the disclosure of these records, in accordance with Part 4, in respect of persons applying for employment positions covered by the Act.

Chief Bureau Officer

8.—(1) There shall be a chief officer of the Bureau who shall be known, and is referred to in this Act, as the Chief Bureau Officer.

(2) The Chief Bureau Officer may assign such of his or her functions from time to time to be performed by such employee of the Bureau as may be authorised by the Chief Bureau Officer.

Notes:

The purpose of this head is to establish the Chief Bureau Officer who has specific functions under this Act, see Part 4.

Subhead (2) allows the Chief Bureau Officer to delegate functions as required – e.g due to absence arising from leave or illness.

Compliance Officers

9.- (1) The Chief Bureau Officer may assign members of staff of the Bureau to be compliance officers for the purposes of this Act.

(2) For the purpose of ensuring that any provision of this Act is being complied with a compliance officer may –

(a) at all reasonable times enter premises that he or she reasonably believes to be occupied by a registered organisation, inspect the records relating to vetting procedures under this Act therein, and require any employee of the registered organisation to disclose to the officer any such records and to provide such information as he may reasonably require;

(b) make such examination and enquiry as may be necessary to establish whether the relevant provisions of this Act or regulations thereunder are being complied with;

(c) require the production of any records or documents (in hard or electronic form) which it is necessary for the compliance officer to see for the purposes of this provision and inspect, examine and copy them or require that a copy of them or of any entries in them be provided to him or her;

(d) require access to electronic documents, passwords and encryption keys to be provided to the compliance officer on request;

(e) require any person to afford him or her such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the compliance officer to exercise any of the powers conferred on him or her under paragraphs (a), (b), (c) or (d).

(3) In this section, 'premises' does not include private residences.

Notes:

The object of this Head is to provide the equivalent powers as compliance officers in the UK/Scotland. It is also modelled on section 24 of the Data Protection Act 1988 which sets out the powers of authorised officers under that Act.

This provision will allow the Bureau to obtain documents and records from registered organisations in order to ensure that they are complying with their obligations under this scheme and to investigate any offences as provided under this Act.

Other jurisdictions

10. (1) The Garda Commissioner, with the consent of the Government, may enter into agreements with other jurisdictions for the exchange of information for the purposes of this Act.

(2) The Bureau may access and use criminal records information provided by other states for the purposes of this Act.

Notes:

The purpose of this Head is to allow the Commissioner to obtain information from other jurisdictions and to include this information from other jurisdictions for vetting purposes.

This Head is based on section 28 of the Garda Síochána Act, 2005. The head allows the Commissioner to establish arrangements with vetting authorities in other jurisdictions, regardless of whether or not they are police forces.

PART 4

VETTING DISCLOSURE PROCEDURES

Register of Organisations applying to have persons vetted

11. – (1) The Bureau shall establish and maintain a register of organisations or employers who apply to have persons vetted for the purpose of employment positions defined by head 5.

(2) Those organisations, including State agencies, already registered with the Garda Central Vetting Office on the day on which this Act is commenced shall be deemed registered for the purpose of this Act.

(3) Organisations not already registered with the Bureau and whose functions involve employing, controlling, managing, licensing or regulating persons in employment positions covered by head 5 shall register with the Bureau, and shall furnish such information as may be required by the Bureau for the purposes of registration under the provisions of this Act.

(4) The Bureau shall accept an application for registration, in the manner required by the Bureau, from any organisation which the Bureau considers to be an organisation whose functions involve employing, controlling, managing, licensing or regulating persons in employment positions covered by head 5, and shall so register such organisation.

(5) The Bureau shall refuse to register any organisation that does not come within the remit of this Act.

(6) The Bureau may remove from the register any organisation which has ceased to operate or which no longer comes within the remit of this Act.

Notes:

This head is intended to provide a legal framework for the current procedures regarding the registration of organisations for the purposes of vetting. This provision confirms that the Bureau will establish a register of organisations that are required to have persons vetted for the purpose of employment. The organisations are those which offer positions as set out in head 5.

Subhead (2) is an administrative provision confirming that organisations registered with the Bureau on commencement of the Act will be deemed registered for the purpose of the Act. This provision is intended to ensure that the organisations already registered do not have to apply to re-register.

Subhead (3) sets down an obligation to register on those organisations which are not already registered, but which otherwise would be subject to the provisions of head 5. It requires such organisations to notify the Bureau for the purpose of being registered for vetting under the Act. The purpose of the provision is to ensure a requirement is placed on all organisations to vet persons where there will be an employment position as defined under head 5. It addresses organisations which may not already be registered or which may be established or set up following the Act.

Subhead (4) places an obligation on the Bureau to accept an application for registration from an organisation, where the organisation comes within the remit of the Act.

Subhead (5) allows the Bureau to refuse to register organisations that do not come within the remit of the Act.

Subhead (6) allows the Bureau to remove an organisation from the register where it is determined that registration is no longer required or no longer comes within the remit of the Act.

Duties of registered organisation

12. – 1) Every organisation registered under this Part shall

(a) nominate a person or persons from within the organisation to be registered with the Bureau, as the liaison person or persons for the purpose of making an application for a vetting disclosure record under this Act;

(b) furnish to the Bureau, in writing,

(i) the name, address, date of birth, and proof of identity of the liaison person or persons, and

(ii) any other information regarding the registration of the liaison person or persons that the Bureau may require for the performance of its functions under this Act;

(c) notify the bureau of any change of address, change of liaison person or other change in registration details previously notified to the Bureau;

(d) seek vetting disclosures in respect of persons applying for employment covered by head 5, and

(e) at all reasonable times provide the Bureau and/or compliance officers with records, documents or access to premises upon request by the Bureau.

(2) The Bureau may refuse to accept the nomination of a liaison person or persons as provided in subhead 1(a) if the number of persons proposed is considered by the Bureau to be excessive.

(3) A registered organisation that obtains a vetting disclosure in accordance with this Act may consider and take into account all information contained in that disclosure in assessing the subject of that disclosure for the purpose of employment.

(4) A registered organisation shall, via the liaison officer, make available to the subject person a copy of any vetting disclosure which provides details of criminal records information or relevant information as defined by this Act, where, on the basis of that disclosure, the person is deemed to be unsuitable for the position that they have applied for. Where the disclosure states that there is no record of information relevant to the person, or the organisation considers that a vetting disclosure is not relevant to the employment application, the registered organisation shall not be obliged to inform the vetting subject but may do so upon request of the vetting subject.

Notes:

Subhead (1) sets out the duties of registered organisations. This includes the nomination of liaison officers who will submit vetting requests and receive vetting disclosures on behalf of the organisation.

Subhead (2) allows the Bureau to refuse to accept nominations of liaison persons if it is considered that the number of liaison persons is excessive. This provision is included here because it is considered very important that information provided to and from the Bureau is very tightly controlled within the registered organisations.

Subhead (3) recognises that the responsibility for determining the suitability of a subject for employment lies with the organisation. The Bureau shall disclose any records which may arise on foot of vetting. The determination of the suitability of the subject for employment is a matter for the organisation in question. This reflects existing practice.

Subhead (4) places an obligation on the organisation to notify a subject of the vetting disclosure where there is information disclosed. This is considered necessary in order to have transparency in procedures and also to enable the person concerned to challenge the accuracy or relevance of any information contained in the vetting disclosure.

Duties of Liaison Persons

13. – (1) A liaison person shall submit applications on behalf of a registered organisation for a vetting disclosure to the Bureau in respect of all persons, and only those persons, seeking employment for positions covered by head 5.

(2) The Minister may make regulations under this Act to provide that a registered organisation/liaison person may submit applications in respect of persons already employed in positions covered by head 5 where they have not previously been subject to a vetting application within the preceding 5 years.

(3) A liaison person shall receive vetting disclosures from the Bureau in respect of applications for vetting disclosures submitted under the provisions of this Act.

(4) An application for a vetting disclosure shall –

(a) be in the form required by the Bureau;

(b) in relation to the vetting subject, include his or her forenames and surname, mother's family name/maiden name, address, date of birth, Passport Number if available, or other information identifying the individual as required by the Bureau;

(c) include a declaration that the applicant is a liaison person and has a right to the information, and

(d) include a declaration by the vetting subject that he or she has consented to the disclosure of information by the Bureau to a liaison person for the purposes of this Act, or include the consent to vetting provided in writing by a parent or guardian if a vetting subject is between 16 and 18 years of age.

Notes:

This Head sets out the duties and responsibilities of liaison persons under the Act. In effect, provision is made reflecting the existing practice.

Subhead (1) provides that the liaison persons are responsible for forwarding the applications for vetting to the Bureau.

Subhead (2) provides that in the case of existing employees, vetting can be carried out where such persons have not previously been vetted in the past 5 years. The possibility of re-vetting of persons previously vetted and in employment will be dependant on available resources.

Subhead (3) provides that the liaison person will receive the vetting disclosures.

Subhead (4) sets out the content of an application for vetting.

Paragraph (a) provides that an application for a vetting disclosure shall be in the form required by the Bureau. In effect, this is currently a written procedure but it would be anticipated that on-line requests will be available in the future.

Paragraph (b) sets out the information to be submitted relating to the vetting subject for the purpose of providing for clear identification of the subject. [Note: The Data Protection Acts apply – limiting the type of identification that the Bureau can request]

Paragraph (c) requires a declaration of the liaison officer submitting the request confirming their entitlement to the information.

Provision is included in paragraph (d) requiring the consent of the vetting subject to vetting. In a case, where the vetting subject is between 16 and 18 years, the consent of his or her parent or guardian will be required.

Relevant Information

14. – Relevant Information is a record of information arising from either:

(a) A determination by the Bureau that there are bona fide grounds for believing that a person may cause harm or attempt to cause harm to a child or vulnerable adults, where that belief arises from the investigation of a criminal offence, **or**

(b) A determination that there are bona fide reasons for believing that a person may cause harm or attempt to cause harm to a child or vulnerable adult, where this determination has been made by an organisation listed in Schedule 2 to this Act, in accordance with the provisions of head 15.

(c) Court decisions in regard to barring orders, safety orders, interim barring orders or protection orders as notified to an Garda Síochána in accordance with the provisions of section 11 (3) of the Domestic Violence Act, 1996.

Notes:

It is important to note that “relevant information” under this head will only be disclosed **if** in accordance with the procedures set out in head 20, the Bureau determine that the person concerned poses a bona fide risk to children or vulnerable adults. Information included as “relevant information” will **also** not be disclosed to a potential employer until the appeals procedures in this Part are complete. This is considered necessary in order to provide natural justice and to meet the constitutional requirement that a person has a right to their good name.

This Head defines the types of “relevant information” as provided by the vetting office. In each case the information would arise from a formal investigative process.

This definition of “relevant information” would exclude any unsubstantiated allegations, rumour, innuendo etc. Only where there are bona fide grounds for believing that a person poses a risk would any information be considered to be relevant.

The use of relevant information is limited to instances where persons are seeking positions which involve ongoing and substantial contact with children or vulnerable adults or involves a position of state security in accordance with heads 17 and 18.

Organisations Required to Report Relevant Information to the Bureau

15. – (1) Organisations listed in Schedule 2 of this Act are obliged to comply with the provisions of this section.

(2) Where such an organisation has conducted an investigative or regulatory or disciplinary process or licensing process and has as a consequence concluded that there is a bona fide reason to believe that a person may harm or attempt to cause harm to children or vulnerable adults, the organisation shall:

(a) notify the Bureau immediately of such belief stating the reason for that belief;

(b) inform the person that it is proposed to enter said information on a register of relevant information for the purposes of this Act, and

(c) shall invite a submission from the vetting subject so that same may be taken into account when the Bureau is making a determination on the matter, as provided in head 20.

(3) Any additional, including corroborative, information sought by the Bureau in relation to a report received under this section shall be furnished to it as soon as practicable and without delay.

(4) Where the organisation is conducting an investigation into a serious allegation of abuse of a child or a vulnerable adult, and that investigation has not been concluded, the organisation shall-

(a) advise the Bureau that it is conducting the investigation, and

(b) request the Bureau to defer, should a request for vetting be received, vetting disclosures in respect of the person under investigation, pending the conclusion of the investigation.

(5) The Minister may make regulations amending the list of organisations in Schedule 2.

Notes:

This head is intended to place an obligation on those organisations which perform disciplinary or supervisory roles for the various professions, including religious, to notify the Bureau of any finding that a person poses a risk to a child or vulnerable adult. This head does not address the issue of mandatory reporting as this head will only refer to specified professional/disciplinary bodies – not individuals. Further developments in regard to placing the Children First Guidelines on a statutory basis may require a fresh consideration of this head.

Essentially, this provision will lead to the availability of the information provided for in head 14(2) regarding relevant information. The obligation to notify information to

the Bureau for the purpose of its disclosure will only arise following internal investigations within the listed organisations and which conclude that a person poses a risk to a child or vulnerable adult. It provides for those situations where the information arises outside of the criminal process.

The list of organisations subject to the obligation under this provision will be set out in Schedule 2

It should also be noted that as this is currently drafted, the onus is on the scheduled organisation to inform the person in relation to whom relevant information has been established that it is proposed to enter their name on a register of relevant information for the purposes of this Act and to advise that person of their right to appeal that decision in accordance with the provisions of this Act.

Vetting Disclosures by the Bureau in respect of employment positions other than those dealt with in head 17 and head 18.

16. (1) On conclusion of the vetting process for positions other than those under Head 17 or Head 18, the Bureau shall issue a Vetting Disclosure to the requesting liaison person, unless a disclosure is deferred under head 19, or there is an ongoing appeal under the provisions of head 21.

(2) The Vetting Disclosure shall-

(a) contain all records of prosecutions, convictions, appeals, court orders or court decisions relating to an offence contained in Schedule 1, insofar as this information applies to the vetting subject, or

(b) shall state that there is no record of information in regard to the vetting subject.

Notes:

Heads 16, 17 and 18 set out the type of information which can be disclosed on foot of a vetting request. Effectively, three levels of vetting disclosure are permitted under the Scheme.

Head 16 concerns those employment positions (as set out under Head 5) which do not involve positions involving contact with children or vulnerable adults (covered under Head 17) or state security positions (covered under Head 18). For this reason, head 16 allows for the disclosure of so-called hard information (paragraph 2(a)) or a statement that no information exists. Additional disclosure of relevant information will be permitted in relation to the employment positions covered by heads 17 and 18 – see below.

The disclosure is made to the liaison person who will, in accordance with head 12(4) disclose any records to the vetting subject.

Vetting Disclosures in respect of positions which involve regular or ongoing unsupervised contact with children or vulnerable adults

17. (1) Where vetting applications are received in respect of employment positions which involve regular or ongoing unsupervised contact with children or vulnerable adults and involve positions under head 5(1)(b), 5(1)(c), 5(1)(d), 5(f)(iv) or 5(2), then on conclusion of the vetting process, the Bureau shall issue a Vetting Disclosure to the requesting liaison person, unless a disclosure is deferred in accordance with this head 19 or there is an ongoing appeal under the provisions of this head 21.

(2) The vetting disclosure shall include:

- (a) (i) all records of prosecutions, convictions, appeals, court orders or court decisions relating to an offence contained in Schedule 1, insofar as this information applies to the vetting subject, and
- (ii) all records of relevant information as defined by head 14, where a determination has been made in accordance with head 20 that there are bona fide grounds for believing that the person poses a risk to children or vulnerable adults, and no prosecution has occurred in respect of this information.

or

- (b) shall state that there is no record of information in regard to the vetting subject.

Notes:

This head relates specifically to vetting in the context of positions involving regular or ongoing unsupervised contact with children or vulnerable adults. In addition to the disclosure of “hard” information regarding convictions or prosecutions etc., “relevant information” arising under head 14 may also be disclosed **only in accordance with the procedures set out in Head 20**, where the employment involves regular or ongoing unsupervised contact with children.

As with head 16, a disclosure may state that there is no information relating to the vetting subject, where that is the case.

Vetting Disclosures in respect of employment in state security positions

18. (1) Where vetting applications are received in respect of employment positions which involve regular or ongoing unsupervised contact with children or vulnerable adults and involve positions under head 5(1)(b), 5(1)(c), 5(1)(d), 5(f)(iv) or 5(2), then on conclusion of the vetting process, the Bureau shall issue a Vetting Disclosure to the requesting liaison person, unless a disclosure is deferred in accordance with this head 19 or there is an ongoing appeal under the provisions of this head 21.

(2) The vetting disclosure shall include:

- (a) (i) all records of prosecutions, convictions, appeals, court orders or court decisions relating to an offence contained in Schedule 1, insofar as this information applies to the vetting subject, and
 - (ii) all records of relevant information as defined by head 14, where a determination has been made in accordance with head 20 that there are bona fide grounds for believing that the person poses a risk to children or vulnerable adults, and no prosecution has occurred in respect of this information.

or

- (b) shall state that there is no record of information in regard to the vetting subject.

Notes:

This Head attempts to provide a legal framework for the existing vetting procedures regarding state security positions. This Head requires further consultation and consideration and is likely to be added to during drafting.

Deferral of Vetting Disclosure

19. (1) The Bureau may defer the issuing of a vetting disclosure in accordance with the provisions of head 15(4) or where the vetting disclosure would prejudice any ongoing criminal investigation, criminal proceeding or the detection or prevention of a crime.

(2) Where the Bureau defers the issuing of a vetting disclosure the Bureau shall advise the liaison person that the issuing of the vetting disclosure will be delayed but shall not be obliged to provide a reason for the delay.

Notes:

This provision allows for the deferral of vetting disclosures in circumstances where a registered organisation is conducting an ongoing investigation into allegations of abuse of a child or vulnerable adult and an obligation to disclose that information, if substantiated, would arise under head 15.

Should a vetting request be received prior to the conclusion of the investigation, the Bureau will be required to inform the liaison person that vetting will be delayed but shall not be obliged to provide a reason for the delay.

Use of relevant information for vetting purposes

20 - (1) This head applies to requests for vetting received from registered organisations and the employment position in question relates to:

- (a) employment which involves regular or ongoing unsupervised contact with children or vulnerable adults, as provided in head 17, or
- (b) employment in state security positions as provided in head 18.

(2) Where, following a request for vetting received under subhead (1), an examination of Bureau records establishes the existence of relevant information within the meaning of this Act, the Bureau shall, for the purpose of preparing the vetting disclosure,

- (a) assess the said relevant information and where an investigation is ongoing shall defer a decision as provided in head 19, and

- (c) in deciding whether to disclose relevant information the Chief Bureau Officer shall have regard to the following considerations:

- (i) any submission that the subject has made as to why the information should not be disclosed. If the subject has not been afforded the opportunity to make such submission, the Bureau shall invite the vetting subject to do so, before proceeding with consideration of a disclosure.

- (ii) the relevance of the information to considerations of risk and, in particular, any risk to children and vulnerable adults.

- (ii) the reliability of the information and whether the information is believed to be true, on the balance of probabilities.

- (iii) the proportionality of the information and whether a decision to disclose goes no further than is necessary, based on the information.

- (iv) whether or not the natural justice rights of the person affected have been adequately safeguarded.

- (v) whether or not the decision to disclose is a reasonable decision in the circumstances.

- (c) The consideration of the above matters shall be recorded in writing.

(3) Where the Chief Bureau Officer has considered in accordance with subsection (1) that it is appropriate and necessary for a disclosure to be made, the Bureau shall:

- (a) notify the vetting subject, in writing, of the intention to disclose the relevant information to the registered organisation,

(b) provide the vetting subject with a copy of all of the relevant information to be contained in the proposed vetting disclosure, and

(c) notify the vetting subject that he/she may make an appeal under head 21 within 15 working days of the receipt of the notification under this head, stating any grounds for challenging the accuracy, veracity or relevance of the information in the disclosure.

(4) The Bureau shall not issue the vetting disclosure until:

(a) The 15 day notification period at subhead (3)(c) has elapsed, and

(b) Any appeal received in accordance with subhead (3)(c) has been considered and taken into account in confirming or altering the decision to disclose the information, in accordance with head 21.

Notes:

This Head sets out the procedures to be followed in disclosing relevant information. The provision is concerned with balancing the rights of a vetting subject in relation to whom soft information may be available with the need to protect children and vulnerable adults.

Subhead (1) provides that the use of “relevant information” is restricted to State security positions or employment involving substantial ongoing contact with children or vulnerable adults.

Subhead (2) is concerned with those circumstances where the existence of relevant information is established. Subparagraph (2)(a) allows for a deferral of vetting pending the conclusion of an ongoing investigation. Subparagraph (2)(b) sets out the matters to which the Chief Bureau Officer shall have regard in deciding whether or not to disclose the relevant information. The considerations which are listed are in accordance with the existing decision model and legal advices. Subparagraph (2)(c) provides that the consideration by the Chief Bureau Officer of the matters listed in subparagraph (2)(b) shall be recorded in writing and, if requested, made available to the vetting subject.

Subhead (3) requires that the vetting subject shall be notified by the Bureau in circumstances where it is decided to disclose the relevant information. The vetting subject must also receive a copy of the relevant information which it is intended to disclose. In addition, the vetting subject must be notified of their right to appeal against the disclosure. An appeal must be submitted to the Bureau within 15 working days of the receipt, by the vetting subject, of the notice to disclose.

Subhead (4) provides that disclosure to the registered organisation is deferred until the vetting subject has either not responded or has appealed and the appeal has been finally determined.

Disputes and appeals regarding information contained in the proposed vetting disclosure

21. (1) A vetting subject may submit an appeal against the disclosure of relevant information to the Bureau, within the timeframe contained in subsection (3)(c) of head 20, stating grounds for appeal and seeking in respect of the proposed vetting disclosure the non-disclosure, correction or deletion of the information because it is considered not to be factually correct or not relevant.

(2) On receipt of an application from a vetting subject under subsection (1), the Chief Bureau Officer shall review the accuracy and relevance of the information.

(3) Where appropriate, on the basis of the review under subsection (2), the Chief Bureau Officer shall seek the correction or deletion, if required, of the relevant information in the proposed vetting disclosure and, where necessary, shall notify any organisation that provided that information with a view to so correcting or deleting the information in question, as appropriate.

(4) Where the Chief Bureau officer believes that the information is accurate and relevant and does not warrant correction or deletion of the relevant information in question, he or she shall refer the appeal to the independent appeals officer for decision.

(5) The Appeals Officer shall

(a) be a practising barrister or practising solicitor of not less than seven years standing, appointed by the Minister, and

(b) shall not be a member of the Bureau staff.

(6) Following receipt of an appeal under this section, the Appeals Officer shall, with a view to concluding the appeal as soon as possible-

(a) consider such an appeal, and for this purpose may seek and receive submissions, from the vetting subject, from the Chief Bureau Officer and any other individual or body whom the Appeals Officer considers appropriate, given the matter at issue;

(b) ensure that the person making the appeal is afforded an opportunity to have an oral hearing, if requested;

(c) make a decision in respect of the said appeal having regard to the following considerations-

(i) the relevance of the information to considerations of risk, in particular to any risk to children and vulnerable adults;

(ii) the reliability of the information and whether it is believed to be true, on the balance of probabilities;

- (iii) the proportionality of the information and whether the decision goes no further than is necessary, based on the information;
- (iv) whether or not the natural justice rights of the person affected been adequately safeguarded;
- (v) whether or not the decision to disclose is a reasonable decision in the circumstances,

and

- (d) advise the vetting subject and the Chief Bureau Officer in writing of the said decision.

(7) Where the Appeals Officer directs that the information contained in the vetting disclosure be modified or erased the Bureau shall comply with that decision of the Appeals Officer, and the vetting disclosure will then issue to the liaison person, as appropriate in accordance with the provisions of this Act.

Notes:

This Head sets out the process and procedure for the lodging and determination of an appeal by an individual against the disclosure of relevant information. . It allows the Chief Bureau Officer to deal with an appeal where it is found that the information to be disclosed is either not accurate or not relevant. If the information is believed to be accurate and relevant, the appeal then issues to the independent appeals officer who makes a determination.

Subhead (1) provides for the submission of an appeal to the Bureau against the disclosure of relevant information. The appeal should state the grounds for the appeal and stating the outcome sought i.e., non-disclosure, correction or deletion of the information concerned.

Subhead (2) requires the Chief Bureau Officer to examine the information in question for the purpose of determining it's accuracy and relevance.

Under subhead (3), the Chief Bureau Officer, following from the review under subhead (2), may seek the correction or deletion, if appropriate, of the information in question. The Chief Bureau Officer shall also notify the source of the relevant information with a view to their correcting or deleting the information as appropriate.

Subhead (4) provides for the situation where the Chief Bureau Officer determines that the information is accurate. In this circumstance, the question as to the disclosure of the information is forwarded to an independent appeals officer. In this instance, the appeals officer shall be a practicing barrister or solicitor.

The role of the appeals officer is set out in subhead (6) and is equivalent to that of an Appeals Tribunal under the UK legislation: Safeguarding Vulnerable Groups Act 2006.

A timeframe for the completion of an appeal is not included. To do so may preclude the additional powers of an appeals officer provided in subhead (6) to the extent that he or she may seek and receive submissions from various parties and also that an oral hearing is afforded. Given the nature of the appeals officer and the various issues which can cause delay such as non-availability of certain individuals, it is considered appropriate that a definitive deadline is not imposed. The provision does however, aspire to “concluding the appeal as soon as possible” as such would be in the best interest of the vetting subject.

Subhead (7) requires the Bureau to comply with the decision of the Appeals Officer.

PART 5

MISCELLANEOUS

Personal data protection

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

Notes:

This is essentially an “avoidance of doubt” provision confirming the application of the Data Protection Acts 1988 and 2003 to the data collected, processed, kept and used under this Act.

The phraseology “collected, processed, kept and used” replicates the language contained in section 2 of the Data Protection Acts.

Offences: Falsifications, etc.

23. - (1) A person commits an offence if he or she -

(a) falsifies or alters a vetting disclosure record;

(b) makes a false statement for the purpose of obtaining or enabling another person to obtain a vetting disclosure record;

(c) uses a vetting disclosure record which relates to another person in a way which suggests that it relates to himself or herself, or

(d) allows a vetting disclosure record which relates to him or her to be used by another person in a way which suggests that it relates to that other person.

(2) It shall be an offence for an organisation required to register with the National Bureau, in accordance with head 11, not to do so.

(3) It shall be an offence for an organisation listed in Schedule 2 to fail to comply with the provisions of head 15.

(4) It shall be an offence for any person to disclose information contained in a vetting disclosure issued by the Bureau other than in accordance with this Act.

(5) It shall be an offence to employ a person in a position for which a vetting disclosure is required without obtaining such disclosure or having obtained such disclosure to employ such person where there are reasonable grounds for believing that such a person may pose a risk to children or vulnerable adults.

(6) A person/organisation who is guilty of an offence under this section shall be liable

(a) on summary conviction to a fine of up to €5,000 or up to 12 months imprisonment or both, or

(b) on conviction on indictment to a fine of up to €10,000 or up to 5 years imprisonment or both.

Notes:

This is an offence provision setting out the offences which may arise under the Act.

Subhead (1) concerns offences relating to the vetting disclosure record such as tampering with the record, making a false statement with a view to obtaining such a record or using the record of another person.

Subhead (2) makes it an offence for an organisation, required to register under head 11, to fail to do so.

Subhead (3) creates an offence for an organisation to fail to comply with the disclosure of relevant information provision contained in head 15.

Subhead (4) concerns the protection of data arising under the Act and makes it an offence to disclose information contained in a vetting disclosure other than in accordance with the Act.

Subhead (5) creates an offence of employing a person in a position for which a vetting disclosure is required without obtaining such disclosure. It also creates an offence of employing a person where there are reasonable grounds for believing that such a person may pose a risk to children or vulnerable adults.

Subhead (6) sets out the penalties for an offence under this head which on summary conviction may result in a fine of up to €5,000 or up to 12 months imprisonment. Conviction on indictment may result in a fine up to €10,000 or up to 5 years imprisonment.

SCHEDULE 1

Schedule of offences which may be disclosed to Registered Organisations/ Liaison Persons. This list will exclude minor offences for road traffic fines-on-the-spot etc.

SCHEDULE 2

Organisations required to Disclose information to the Bureau in accordance with the provisions of head 15

Note: The Department is consulting with a range of organisations which conduct relevant disciplinary or investigative proceeding, with a view to including them in this schedule.