



Number 4 of 2016

CRIMINAL JUSTICE (SPENT CONVICTIONS AND CERTAIN DISCLOSURES) ACT 2016

REVISED

Updated to 25 May 2018

This Revised Act is an administrative consolidation of the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Data Protection Act 2018* (7/2018), enacted 24 May 2018, and all statutory instruments up to and including *Data Protection Act 2018 (Establishment Day) Order 2018* (S.I. No. 175 of 2018), made 24 May 2018, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



Number 4 of 2016

CRIMINAL JUSTICE (SPENT CONVICTIONS AND CERTAIN DISCLOSURES) ACT 2016

REVISED

Updated to 25 May 2018

Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* (4/2016), s. 1(2)). The Acts in this group are:

- *National Vetting Bureau (Children and Vulnerable Persons) Act 2012* (47/2016)
- *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* (4/2016), Part 3

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1985, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Data Protection Act 2018 (7/2018)*
- *Criminal Law (Sexual Offences) Act 2017 (2/2017)*

All Acts up to and including *Data Protection Act 2018 (7/2018)*, enacted 24 May 2018, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 (Commencement) Order 2016 (S.I. No. 215 of 2016)*

All statutory instruments up to and including *Data Protection Act 2018 (Establishment Day) Order 2018 (S.I. No. 175 of 2018)*, made 24 May 2018, were considered in the preparation of this revision.



Number 4 of 2016

CRIMINAL JUSTICE (SPENT CONVICTIONS AND CERTAIN DISCLOSURES) ACT 2016

REVISED

Updated to 25 May 2018

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation, construction and commencement
2. Definition
3. Expenses

PART 2

SPENT CONVICTIONS

4. Interpretation
5. Convictions which may be regarded as spent in certain circumstances
6. General effect of spent conviction
7. General effect of spent conviction — court proceedings
8. Limitation of section 6
9. Information sought by state other than the State
10. Disclosure required for work
11. Disclosure required for certain licences, etc.
12. Disclosure by Garda Síochána of criminal records held
13. Transitional provision

PART 3

AMENDMENT OF ACT OF 2012

14. Definition for purposes of Part
15. Amendment of section 3 of Act of 2012
16. Amendment of section 7 of Act of 2012

17. Amendment of section 9 of Act of 2012
18. Amendment of section 12 of Act of 2012
19. Amendment of section 13 of Act of 2012
20. Amendment of section 14 of Act of 2012
21. Certain convictions are not required to be disclosed
22. Amendment of section 16 of Act of 2012
23. Amendment of section 20 of Act of 2012
24. Amendment of section 21 of Act of 2012
25. Amendment of section 31 of Act of 2012

PART 4

MISCELLANEOUS

26. Amendment of Garda Síochána Act 2005
27. Amendment of Schedule 1 to Act of 2012
28. Amendment of Schedule 2 to Act of 2012
29. Excluded offences for purposes of section 14A

SCHEDULE 1

SEXUAL OFFENCES FOR PURPOSES OF PART 2 OF ACT

PART 1

PART 2

SCHEDULE 2

SPECIFIED WORK

ACTS REFERRED TO

Central Bank Reform Act 2010 (No. 23)
Child Care Acts 1991 to 2015
Child Trafficking and Pornography Act 1998 (No. 22)
Children Act 1908 (8 Edw. 7, c. 67)
Children Act 2001 (No. 24)
Criminal Justice (Community Service) Act 1983 (No. 23)
Criminal Justice (Public Order) Act 1994 (No. 2)
Criminal Justice Act 2006 (No. 26)
Criminal Law (Human Trafficking) Act 2008 (No. 8)
Criminal Law (Rape) (Amendment) Act 1990 (No. 32)
Criminal Law (Sexual Offences) Act 1993 (No. 20)
Criminal Law (Sexual Offences) Act 2006 (No. 15)
Criminal Law Amendment Act 1885 (48 & 49 Vict., c. 69)
Criminal Law Amendment Act 1935 (No. 6)
Data Protection Act 1988 (No. 25)
Defence Act 1954 (No. 18)
Dentists Act 1985 (No. 9)
Domestic Violence Act 1996 (No. 1)
Education Act 1998 (No. 51)
Employment Agency Act 1971 (No. 27)
Firearms Act 1925 (No. 17)
Firearms Act 1964 (No. 1)
Firearms Acts 1925 to 2009
Firearms and Offensive Weapons Act 1990 (No. 12)
Garda Síochána Act 2005 (No. 20)
Health and Social Care Professionals Act 2005 (No. 27)
Intoxicating Liquor Act 1988 (No. 16)
Medical Practitioners Act 2007 (No. 25)
Misuse of Drugs Act 1977 (No. 12)
Misuse of Drugs Acts 1977 to 2015
National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (No. 47)
Non-Fatal Offences Against the Person Act 1997 (No. 26)
Nurses Act 1985 (No. 18)
Nurses and Midwives Act 2011 (No. 41)
Nursing Homes Support Scheme Act 2009 (No. 15)
Pharmacy Act 2007 (No. 20)
Private Security Services Act 2004 (No. 12)
Probation of Offenders Act 1907 (7 Edw. 7, c. 17)
Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)
Punishment of Incest Act 1908 (8 Edw. 7, c. 45)
Road Traffic Act 1961 (No. 24)
Road Traffic Act 1968 (No. 25)
Road Traffic Acts 1961 to 2015
Road Traffic and Transport Act 2006 (No. 28)
Sexual Offences (Jurisdiction) Act 1996 (No. 38)
Taxi Regulation Act 2003 (No. 25)
Teaching Council Act 2001 (No. 8)



Number 4 of 2016

CRIMINAL JUSTICE (SPENT CONVICTIONS AND CERTAIN DISCLOSURES) ACT 2016

REVISED

Updated to 25 May 2018

An Act to make provision for the limitation of the effect of certain criminal convictions in certain circumstances and after certain periods of time; to amend the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and the Garda Síochána Act 2005; and to provide for related matters.

[11 *th* February, 2016]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

**Short title,
collective cita-
tion, construc-
tion and
commencement**

1. (1) This Act may be cited as the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.

(2) The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and *Part 3* may be cited together as the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 and shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Annotations

Editorial Notes:

E1 Power pursuant to subs. (3) exercised (29.04.2016) by *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 (Commencement) Order 2016* (S.I. No. 215 of 2016).

2. The 29th day of April 2016 is appointed as the day on which the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 (No. 4 of 2016) comes into operation.

Definition

2. In this Act “Minister” means the Minister for Justice and Equality.

Expenses

3. 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.

PART 2**SPENT CONVICTIONS****Interpretation**

4. (1) In this Part —

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

“community service order” has the meaning assigned to it by section 3 of the Criminal Justice (Community Service) Act 1983;

“conviction”, in relation to a person, means the conviction by a court of the person of an offence or, in the case of an appeal (whether against conviction or sentence, or both), the final determination by a court of the appeal or the withdrawal of the appeal;

“court” means any court in the State exercising criminal or civil jurisdiction and includes a Special Criminal Court but does not include a court martial;

“custodial sentence”, in relation to a person convicted of an offence, means any sentence of imprisonment imposed by the District Court or a sentence of imprisonment for a term of 12 months or less imposed by any other court on the person in respect of the offence (whether or not a fine is also imposed on the person in respect of the offence) and includes—

- (a) a sentence that is imposed concurrently with another sentence or sentences of imprisonment provided that the longer, or the longest, of the sentences is 12 months or less,
- (b) a sentence that is imposed consecutively with another sentence or sentences of imprisonment provided that the total period of imprisonment is 12 months or less,
- (c) a sentence of imprisonment for a term of 12 months or less, the execution of a part of which is suspended for a period specified by the court,
- (d) a sentence of imprisonment for a term of 12 months or less, the execution of a part of which is suspended for a period specified by the court but which suspension is subsequently revoked in whole or in part by the court,
- (e) a sentence of imprisonment for a term of 12 months or less, the execution of the whole of which is suspended for a period specified by the court but which suspension is subsequently revoked in whole or in part by the court, or
- (f) a sentence of imprisonment for a term of 12 months or less which is imposed on the person in relation to the offence following a revocation under section 8 or 11, as the case may be, of the Criminal Justice (Community Service) Act 1983 of a community service order in respect of the offence;

“effective date of conviction”, means the date on which a custodial sentence or a non-custodial sentence, as the case may be, becomes operative in accordance with the order of the court concerned;

“excluded sentence” means a sentence imposed by a court, other than the District Court —

- (a) of imprisonment for a term of more than 12 months unless it is a sentence specified in *paragraph (a)* of the definition of “non-custodial sentence”,

(b) for an offence that is reserved by law to be tried by the Central Criminal Court,
or

(c) for a sexual offence;

“non-custodial sentence”, in relation to a person convicted of an offence, means a sentence imposed by a court on the person in respect of an offence that is not a custodial sentence and is not in addition to a custodial sentence and includes—

(a) a sentence of imprisonment for a term of 2 years or less, the execution of the whole of which is suspended for a period specified by the court and that suspension is not subsequently revoked in whole or in part by the court,

(b) a fine,

(c) an order under section 1(2) of the Probation of Offenders Act 1907,

(d) a community service order made by a court that—

(i) is not revoked, or

(ii) if revoked under section 8 or 11, as the case may be, of the Criminal Justice (Community Service) Act 1983, is not replaced by a custodial sentence,

or

(e) a restriction on movement order made under section 101 of the Criminal Justice Act 2006;

“relevant sentence” means a custodial sentence or a non-custodial sentence or both, as the case may be;

“sexual offence” shall be construed in accordance with *Schedule 1*;

“spent conviction” shall be construed in accordance with *section 5*;

“state”, in relation to a state other than the State, includes a territory, whether in the state or outside it, for whose external relations the state or its government is wholly or partly responsible and references to a state shall be construed as including references to a subdivision of the government of the state or a national, regional or local entity of the state.

(2) For the purposes of this Part, the following circumstances are circumstances ancillary to a conviction:

(a) the offence which is the subject of the conviction;

(b) the conduct constituting that offence;

(c) any process or proceedings preliminary to the conviction;

(d) any penalty imposed in respect of the offence which is the subject of the conviction;

(e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or penalty imposed for it;

(f) anything done in pursuance of, or undergone in compliance with, any order made in connection with or as a result of the conviction.

(3) For the purposes of this Part, a conviction of a person by the District Court—

(a) which is appealed by the person to the Circuit Court, and

(b) is affirmed or varied by the Circuit Court,

shall, as so affirmed or varied by the Circuit Court be treated as if it were a conviction imposed by the District Court.

**Convictions
which may be
regarded as
spent in certain
circumstances**

5. (1) Where a person is convicted of an offence, whether before or after the commencement of this Part, and the conditions specified in *subsection (2)* are satisfied, then subject to provisions of this Part, the conviction may be regarded as a spent conviction.

(2) The conditions referred to in *subsection (1)* are the following, namely:

- (a) the person shall be a natural person and shall have attained the age of 18 years at the date of the commission of the offence which is the subject of the conviction concerned;
- (b) not less than 7 years shall have passed since the effective date of conviction;
- (c) the sentence imposed by the court in respect of the conviction shall not be an excluded sentence;
- (d) the person shall have served or otherwise undergone or complied with any sentence imposed, or order made by the court in dealing with the person in respect of the conviction concerned.

(3) Subject to *subsection (5)*, no more than one conviction may be regarded as a spent conviction and if a person has more than one conviction, this section shall not apply to that person.

(4) Where in any proceedings before a court, a person is convicted of 2 or more offences which are committed simultaneously or arise from the same incident, and the court in passing sentence, imposes more than one relevant sentence in respect of those offences, the convictions shall be regarded as one single conviction.

(5) *Subsection (3)* shall not apply to a relevant sentence imposed by the District Court on a person in respect of an offence under—

- (a) the Road Traffic Acts 1961 to 2015, other than section 53 of the Road Traffic Act 1961,
- (b) section 37A of the Intoxicating Liquor Act 1988,
- (c) section 4, 5, 6, 7, 8, 8A(4) or 9 of the Criminal Justice (Public Order) Act 1994.

**General effect
of spent conviction**

6. (1) Subject to the provisions of this Part, where a person has a conviction which is, in accordance with this Part, regarded as a spent conviction, he or she shall not be required by—

- (a) any rule of law, or
- (b) by the provisions of any agreement or arrangement which purport to require the person to disclose the conviction or any circumstances ancillary to the conviction,

to disclose that conviction or the circumstances ancillary thereto.

(2) Where, otherwise than before a court, a question is put to a person purporting to seek information in relation to the person's previous convictions or the circumstances ancillary thereto and the person has a conviction which is, in accordance with this Part, regarded as a spent conviction, then, subject to the provisions of this Part—

- (a) the question shall be regarded as not applying to the spent conviction and the person may respond accordingly, and

- (b) the person shall not incur any liability or be otherwise prejudiced in law because he or she did not disclose the spent conviction or the circumstances ancillary to that conviction.

**General effect
of spent conviction — court
proceedings**

7. (1) Subject to *subsections (2) and (3)*, in any proceedings before a court—

- (a) no evidence shall be admissible to show that a person, who has a conviction which is, in accordance with this Part, regarded as a spent conviction, has committed or been charged with or prosecuted for or convicted of or sentenced in respect of an offence which is the subject of the spent conviction, and
- (b) no question shall be asked in any such proceedings and if asked, the person shall not be required to answer, any question relating to his or her past which cannot be answered without disclosing the spent conviction or the circumstances ancillary to that conviction.

(2) A court, in any proceedings before it and at any stage during those proceedings, may, notwithstanding *subsection (1)*, admit or require evidence relating to a person's spent conviction or the circumstances ancillary thereto if the court is satisfied in all the circumstances that justice cannot be done except by so admitting or requiring the evidence concerned but, where such evidence is admitted or required, the court may make such orders as the court considers necessary to prevent or restrict publication of that evidence.

(3) Nothing in this Part shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's spent conviction or to the circumstances ancillary to the conviction—

- (a) in any criminal proceedings before a court, including any appeal or other application relating to those proceedings in which the person is a party to the proceedings,
- (b) in any proceedings concerning the adoption, guardianship or custody of, or access to, a child, including proceedings under the Child Care Acts 1991 to 2015,
- (c) in any proceedings relating to the provision by any person of accommodation, care, training or education for a child,
- (d) in any proceedings relating to the provision by any person of accommodation, care, training or education for a vulnerable person,
- (e) in any proceedings under section 21 of the Nursing Homes Support Scheme Act 2009, or
- (f) in any proceedings in which the person is a party or a witness, if he or she, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, consents to the determination of the issue or, as may be appropriate, the admission or requirement of the evidence relating to his or her spent conviction or to the circumstances ancillary to the conviction, as the case may be.

**Limitation of
section 6**

8. (1) *Section 6* shall not apply where a requirement is made of a person to disclose any previous convictions or the circumstances ancillary thereto—

- (a) in any interview of the person conducted by a member of the Garda Síochána following the arrest of that person in connection with the investigation of an offence,
- (b) in respect of an application by the person—

- (i) to enter, be or remain in the State, or
- (ii) for Irish citizenship,

or

- (c) in respect of any application pursuant to, or any investigation under, Part 3 of the Central Bank Reform Act 2010.

(2) A person who is convicted of fraud, deceit or dishonesty in respect of a claim under a policy of insurance or a policy of assurance shall not be excused under *section 6* from disclosing any such conviction on any insurance proposal or form or any assurance proposal or form, as the case may be.

(3) Nothing in this Part shall affect—

- (a) the enforcement by any process or proceedings in respect of any fine or other sum deemed payable by, or imposed on, a person in respect of a conviction, which is, if the requirements of this Part apply and are fulfilled, regarded as a spent conviction,
- (b) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement that applies to a sentence imposed in respect of a conviction which is, if the requirements of this Part apply and are fulfilled, regarded as a spent conviction, or
- (c) the operation of an enactment under which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty or any registration requirement, whether or not the period of which extends beyond the relevant period applying to the sentence for such conviction.

(4) This Part is without prejudice to a person's right to disclose his or her previous convictions or the circumstances ancillary thereto.

**Information
sought by state
other than the
State**

9. A person who has a conviction which is, in accordance with this Part, regarded as a spent conviction, shall not be entitled to regard any question put to him or her seeking information in relation to his or her previous convictions as not applying to the spent conviction where—

- (a) he or she is in a state, other than the State, and the information is sought pursuant to the exercise of the jurisdiction of the law of that state, or
- (b) he or she is within the State but the information sought relates to a matter being dealt with pursuant to the law of a state other than the State.

**Disclosure
required for
work**

10. (1) *Section 6* shall not apply where a person—

- (a) applies for, seeks or is offered any employment, activity or service specified in *Schedule 2* (in this section referred to as "specified work"),
- (b) enters or proposes to enter into a contract of employment to do specified work,
- (c) applies to another person to do specified work on that other person's behalf (whether or not in return for payment or any other consideration), or
- (d) enters or proposes to enter into a contract for services to do specified work.

(2) *Section 6* shall not apply in respect of a person—

- (a) who—

- (i) applies for, seeks or is offered relevant work or activities specified in Part 1 or 2 of Schedule 1 to the Act of 2012 (in this section referred to as “relevant work”),
- (ii) enters or proposes to enter into a contract of employment to do relevant work,
- (iii) applies to another person to do relevant work on that other person’s behalf (whether or not in return for payment or any other consideration), or
- (iv) enters or proposes to enter into a contract for services to do relevant work,

and

- (b) who has a conviction, other than a conviction to which section 14A of the Act of 2012 applies.

(3) In this section—

“Act of 2012” means the National Vetting Bureau (Children and Vulnerable Persons) Act 2012;

“Civil Service” and “public service body” have the meanings they have in section 2 of the Public Service Management (Recruitment and Appointments) Act 2004;

“contract of employment” means—

- (a) a contract of service or apprenticeship, or
- (b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract).

(4) In this section a reference to a person who applies for, seeks or is offered specified work or relevant work includes a reference to a person who applies for, seeks or is offered a new or different position that involves specified work or relevant work with his or her current employer.

(5) For the purposes of *subsection (4)*, the Civil Service and other public service bodies shall be deemed to be a single employer.

Disclosure required for certain licences, etc.

11. (1) Without prejudice to any other enactment which provides for the disclosure of a person’s criminal convictions as part of an application by or on behalf of the person for a licence, permit or any other form of authorisation, approval or registration, *section 6* shall not apply where a person applies in his or her own right or as a party to an application—

- (a) for a licence under section 82 of the Road Traffic Act 1961,
- (b) for a licence under section 18 of the Road Traffic Act 1968,
- (c) for a licence under section 2 of the Road Traffic and Transport Act 2006,
- (d) for an authorisation as a driver tester within the meaning of Regulation 3(1) of the Road Traffic (Licensing of Drivers) Regulations 2006 (S.I. 537 of 2006),
- (e) for a licence under section 34 of the Taxi Regulation Act 2003,
- (f) for a licence under Part 3 of the Private Security Services Act 2004,

- (g) for a certificate, licence or permit under the Firearms Acts 1925 to 2009, or
- (h) for a licence or other form of authorisation or approval that is issued by the Central Bank of Ireland.

(2) In this section a reference to an application for a licence, permit or any other form of authorisation, approval or registration includes a reference to an application for a renewal, extension or variation of such a licence, permit or other form of authorisation, approval or registration.

Disclosure by Garda Síochána of criminal records held

12. F1[(1)] Without prejudice to any other enactment which provides for the making of applications for the disclosure of personal data F2[...], where a person makes a request to the Garda Síochána for a copy of his or her criminal record, the Garda Síochána shall provide information regarding the person's spent convictions (if any) and, in so far as it is appropriate, circumstances ancillary to those convictions separately from information concerning that person's other convictions (if any).

F1[(2) In this section—

'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016⁵² on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

'personal data' means personal data within the meaning of—

- (a) the Data Protection Act 1988,
- (b) the Data Protection Regulation, or
- (c) Part 5 of the Data Protection Act 2018.]

Annotations

Amendments:

- F1 Inserted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 230(a), (c), S.I. No. 174 of 2018.
- F2 Deleted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 230(b), S.I. No. 174 of 2018.

Transitional provision

13. This Part applies to a response given on or after the commencement of this Part to—

- (a) a request made (either orally or in writing), or
- (b) a requirement notified (either orally or in writing),

before the commencement of this Part seeking, or requiring, as the case may be, information in relation to a person's previous convictions if, on the commencement of this Part, the information sought or required, as the case may be, relates to a conviction which is, in accordance with this Part, regarded as a spent conviction.

PART 3

AMENDMENT OF ACT OF 2012

⁵² OJ No. L 119, 4.5.2016, p.1

Definition for purposes of Part

14. In this Part “Act of 2012” means the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

Amendment of section 3 of Act of 2012

15. Section 3(1) of the Act of 2012 is amended by—

- (a) the substitution of “or vulnerable persons;” for “or vulnerable persons.”, and
- (b) the insertion of the following paragraph after paragraph (c):

“(d) the employment of, or entering into a contract for services with, a person either by or on behalf of the State Examinations Commission, for the purposes of the performance by the person on a temporary basis of any functions in respect of the conduct and delivery of examinations to which Part VIII of the Education Act 1998 applies.”.

Amendment of section 7 of Act of 2012

16. Section 7 of the Act of 2012 is amended, in subsection (2)(f), by the substitution of “scheduled organisations” for “scheduled bodies”.

Amendment of section 9 of Act of 2012

17. Section 9 of the Act of 2012 is amended—

- (a) in subsection (3), by the substitution of the following paragraph for paragraph (k):

“(k) subject to subsection (9), in a case where he or she has a criminal record, particulars of such record;”,

and

- (b) by the insertion of the following subsection after subsection (8):

“(9) A person shall not be obliged to provide details of any convictions to which section 14A applies.”.

Amendment of section 12 of Act of 2012

18. Section 12 of the Act of 2012 is amended by—

- (a) the insertion of the following subsection after subsection (3):

“(3A) Where 2 or more relevant organisations jointly agree in writing to the employment, contracting, permitting or placement of a person to undertake relevant work or activities, it shall be a defence in any proceedings brought against a person for an offence under subsection (2) to show that another relevant organisation who was party to the agreement received a vetting disclosure in respect of the employment, contract, permission or placement of the person concerned.”,

- (b) the substitution of the following subsection for subsection (4):

“(4) In the case of the employment of, entering into a contract for services with, permitting or placement of any person to undertake relevant work on a casual or part-time recurring but non-continuous basis with the same relevant organisation, the obligations placed on a relevant organisation pursuant to subsection (1) shall, subject to section 20, be regarded as being satisfied where the relevant organisation concerned received a vetting disclosure in respect of the person in respect of that initial employment, contract, permission or placement, as the case may be.”,

and

- (c) the substitution of the following subsection for subsection (5):

“(5) This section shall not apply to the following:

- (a) any employment, contract, permission or placement that commenced or was entered into, given or made, as the case may be, before the commencement of this section;
- (b) any employment, contract, permission or placement on a casual or part-time recurring but non-continuous basis with the same employer where the initial employment, contract, permission or placement, as the case may be was entered into, given or made as the case may be, before the commencement of this section;
- (c) any employment, contract, permission or placement, including a casual or part-time recurring but non-continuous employment which was not entered into before the commencement of this Act but in respect of which a relevant organisation had, before that commencement, requested and received vetting information in respect of the person who was the subject of the employment, contract, permission or placement concerned from the national unit of the Garda Síochána known as the Garda Central Vetting Unit.”.

**Amendment of
section 13 of
Act of 2012**

19. Section 13 of the Act of 2012 is amended—

(a) by the substitution of the following subsection for subsection (2) :

“(2) A relevant organisation may submit an application for vetting disclosure under this section on its own behalf or on behalf of another relevant organisation that the organisation represents for the purposes of the vetting procedures under this Act and, where a relevant organisation submits an application on behalf of another relevant organisation, it shall—

- (a) inform the Bureau of that fact and provide the Bureau with the particulars referred to in section 8(5), and
- (b) provide or make available, in written or electronic form, a copy of the vetting disclosure received from the Bureau to the relevant organisation that it represents or on whose behalf the application for vetting was made.”,

(b) in subsection (5), by the substitution of the following paragraph for paragraph (l):

“(l) subject to subsection (6A), in a case where he or she has a criminal record, particulars of such record;”,

and

(c) by the insertion of the following subsection after subsection (6):

“(6A) A person shall not be obliged to provide details of any convictions to which section 14A applies.”.

**Amendment of
section 14 of
Act of 2012**

20. Section 14 of the Act of 2012 is amended—

(a) in subsection (4)(a)(i), by the substitution of “subject to subsection (4A), particulars of the criminal record” for “particulars of the criminal record”, and

(b) by the insertion of the following subsection after subsection (4):

“(4A) Where a person who is the subject of an application for vetting disclosure has a conviction to which section 14A applies, the conviction shall

be excluded from the vetting disclosure made by the Bureau in respect of the person.”.

Certain convictions are not required to be disclosed

21. The Act of 2012 is amended by the insertion of the following section after section 14:

“14A. (1) This section applies to a conviction by the District Court of a person in respect of an offence where the following conditions are met in respect of the conviction:

- (a) the person to whom the conviction relates shall be a natural person and shall have attained the age of 18 years at the date of the commission of the offence which is the subject of the conviction concerned;
- (b) the offence shall not be an excluded offence;
- (c) not less than 7 years has passed since the effective date of conviction;
- (d) the person shall have served or otherwise undergone or complied with any sentence imposed, or order made by the court in dealing with the person in respect of the conviction concerned.

(2) Subject to subsection (4), this section shall apply in respect of one single conviction only and where a person has more than one conviction this section shall not apply to that person.

(3) Where in any proceedings before a court, a person is convicted of 2 or more offences which are committed simultaneously or arise from the same incident, and the court in passing sentence, imposes more than one sentence in respect of those offences, the convictions imposed shall be regarded as one single conviction.

(4) Subsection (2) shall not apply to a conviction imposed on a person in respect of an offence—

- (a) under the Road Traffic Acts 1961 to 2014, other than section 53(2) of the Road Traffic Act 1961,
- (b) under section 37A of the Intoxicating Liquor Act 1988,
- (c) under section 4, 5, 6, 7, 8, 8A(4) or 9 of the Criminal Justice (Public Order) Act 1994.

(5) In this section—

‘effective date of conviction’ means, in relation to the imposition by the District Court of a sentence for an offence, the date on which the sentence becomes operative in accordance with the order of the court;

‘excluded offence’ means—

- (a) an offence specified in Schedule 3, or
- (b) an offence specified in *Part 1 or 2 of Schedule 1 of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*.

(6) For the purposes of this section a criminal conviction of a person by the District Court—

- (a) which is appealed by the person to the Circuit Court, and
- (b) is affirmed or varied by the Circuit Court,

shall, as so affirmed or varied by the Circuit Court be treated as if it were a conviction of the District Court.”.

**Amendment of
section 16 of
Act of 2012**

22. Section 16 of the Act of 2012 is amended—

(a) in subsection (1), by the substitution of “a relevant organisation (other than a relevant organisation who applies for vetting on behalf of another relevant organisation in accordance with section 13(2)) contains” for “a relevant organisation contains”,

(b) by the substitution of the following subsection for subsection (2):

“(2) A relevant organisation (including a relevant organisation who applies for a vetting disclosure on behalf of another relevant organisation in accordance with section 13(2)) to whom a vetting disclosure is made in accordance with this Act may—

(a) consider and take into account the information disclosed in the vetting disclosure when assessing the suitability of the person who is the subject of the disclosure to undertake relevant work or activities, and

(b) to the extent that it is so authorised by law other than by virtue of this section, consider and take into account, in accordance with such law, the information disclosed in the vetting disclosure when assessing the suitability of the person who is the subject of the vetting disclosure to be registered, licensed, considered fit to practice or otherwise authorised (howsoever described) to undertake relevant work or activities.”,

and

(c) in subsection (3), by the substitution of “otherwise than in accordance with this Act or as otherwise authorised by law” for “otherwise than in accordance with this Act”.

**Amendment of
section 20 of
Act of 2012**

23. Section 20 of the Act of 2012 is amended—

(a) in subsection (1) —

(i) by the substitution of “under this Act in respect of a person or, vetting information issued in respect of a person by the Garda Central Vetting Unit before the commencement of section 12,” for “under this Act in respect of a person,”, and

(ii) by the substitution of “application for vetting” for “further application for vetting”,

and

(b) in subsection (3), by the substitution of “without reasonable excuse fails to comply with” for “contravenes”.

**Amendment of
section 21 of
Act of 2012**

24. Section 21 of the Act of 2012 is amended—

(a) in subsection (1), by the substitution of “vetting disclosure under this Act or, a request made before the commencement of section 12 to the Garda Central Vetting Unit for vetting information in respect of the person concerned,” for “vetting disclosure under this Act,”, and

(b) in subsection (3), by the substitution of “without reasonable excuse fails to comply with” for “contravenes”.

Amendment of section 31 of Act of 2012

25. Section 31 of the Act of 2012 is amended by—
- (a) the designation of that section as subsection (1),
 - (b) the substitution, in subsection (1), of “vetting information” for “vetting disclosure”, and
 - (c) the insertion of the following subsection after subsection (1):

“(2) Where, before the commencement of this section, a person had appealed a determination made by the Garda Central Vetting Unit in respect of the person but the appeal had not been concluded before that commencement, then the appeal shall be deemed to be an appeal under section 18 and shall be dealt with accordingly and, any step taken before such commencement in relation to the appeal (being a step required to be taken under this Act in relation to an appeal under this Act) shall be deemed to have been taken under this Act.”.

PART 4

MISCELLANEOUS

Amendment of Garda Síochána Act 2005

26. The Garda Síochána Act 2005 is amended by the insertion of the following section after section 127:

“Regulations relating to fees for provision of vetting services

127A. The Minister may—

- (a) after consultation with the Garda Commissioner, and
- (b) with the consent of the Minister for Public Expenditure and Reform,

make regulations prescribing fees in relation to the provision of vetting services in accordance with section 7(1).”.

Amendment of Schedule 1 to Act of 2012

27. Schedule 1 to the Act of 2012 is amended—
- (a) in paragraph 7 of Part 1, by the substitution of “any religious beliefs to children unless such work or activity is merely incidental to the advancement of religious beliefs to persons who are not children” for “any religious beliefs”, and
 - (b) in paragraph 7 of Part 2, by the substitution of “any religious beliefs to vulnerable persons unless such work or activity is merely incidental to the advancement of religious beliefs to persons who are not vulnerable persons” for “any religious beliefs”.

Amendment of Schedule 2 to Act of 2012

28. Schedule 2 to the Act of 2012 is amended by the insertion of the following paragraph after paragraph 11:

“12. The Garda Síochána Ombudsman Commission.”.

Excluded offences for purposes of section 14A

29. The Act of 2012 is amended by the insertion of the following Schedule after Schedule 2:

“SCHEDULE 3

Section 14A

Excluded Offences for Purposes of Section 14A

1. An offence under section 17 of the Domestic Violence Act 1996.
2. An offence under the Non-Fatal Offences against the Person Act 1997.
3. An offence under section 246 of the Children Act 2001 (cruelty to children).
4. An offence under section 176 of the Criminal Justice Act 2006 (reckless endangerment of children).
5. An offence under section 80 of the Health and Social Care Professionals Act 2005.
6. An offence under section 41 of the Medical Practitioners Act 2007.
7. An offence under section 44 of the Nurses and Midwives Act 2011.
8. An offence under section 49 of the Nurses Act 1985.
9. Any offence under the following provisions of the Dentists Act 1985:
 - (a) section 50;
 - (b) section 51.
10. An offence under section 32 of the Pharmacy Act 2007.
11. An offence under section 56 of the Teaching Council Act 2001.
12. An offence under the Firearms Act 1925.
13. An offence under the Firearms Act 1964.
14. An offence under the Firearms and Offensive Weapons Act 1990.
15. An offence under section 31 or 32 of the Intoxicating Liquor Act 1988.
16. An offence under the Misuse of Drugs Acts 1977 to 2015, other than a first offence under section 3 of the Misuse of Drugs Act 1977.
17. An offence under section 14, 15, 16, 17, 18 or 19 of the Criminal Justice (Public Order) Act 1994.”.

SCHEDULE 1

Sexual Offences for purposes of *Part 2* of Act*Section 5*

Part 1

1. Each of the offences referred to in *Part 2* of this Schedule shall, subject to *paragraphs 2, 3 and 4* of this Part be a sexual offence for the purposes of *Part 2* of this Act.

2. An offence referred to in—

- (a) *paragraph 2 of Part 2* (sexual assault or indecent assault), other than an offence of sexual assault or indecent assault of a person who, at the time of the commission of the offence, was mentally impaired within the meaning of section 5 of the Criminal Law (Sexual Offences) Act 1993,
- (b) *paragraph 5 of Part 2* (incest by males),
- (c) *paragraph 6 of Part 2* (incest by females of or over 17 years of age), or
- (d) *paragraph 23, 24 or 25 of Part 2* in so far as it relates to an offence referred to in sub *paragraph (a), (b) or (c)*,

shall not be a sexual offence for the purposes of *Part 2* of this Act if—

- (i) the victim of or, as the case may be, the other party to the offence was aged, at the date of the commission of the offence, 17 years or older, and
- (ii) the person guilty of the offence has not, in respect of the offence, been sentenced to any punishment involving deprivation of liberty for a limited or unlimited period of time or been made subject to any measure involving such deprivation of liberty.

3. An offence referred to in—

- (a) *paragraph 10 of Part 2* (defilement of girl between 15 and 17 years of age),
- (b) *paragraph 12 of Part 2* (buggery of persons under 17 years of age),
- (c) *paragraph 13 of Part 2* (gross indecency with males under 17 years of age), or
- (d) *paragraph 23, 24 or 25 of Part 2* in so far as it relates to an offence referred to in sub *paragraph (a), (b) or (c)*,

shall not be a sexual offence for the purposes of *Part 2* of this Act if—

- (i) the victim of or, as the case may be, the other party to the offence was aged, at the date of the commission of the offence, 15 years or older but less than 17 years, and
- (ii) the person guilty of the offence was aged, at that date, not more than 3 years older than that victim or other party.

F3[4. An offence referred to in—

- (a) *paragraph 8 of Part 2* (defilement of child under the age of 17 years), or

(b) *paragraph 23, 24 or 25 of Part 2 in so far as it relates to an offence referred to in subparagraph (a),*

committed prior to the commencement of section 17 of the Criminal Law (Sexual Offences) Act 2017 shall not be a sexual offence for the purposes of *Part 2* of this Act if the person who is convicted of the offence was at the date of the commission of the offence, not more than 24 months older than the child with whom he or she engaged or attempted to engage in a sexual act within the meaning of section 1 of the Criminal Law (Sexual Offences) Act 2006.]

Annotations

Amendments:

- F3** Substituted (27.03.2017) by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 56(a), S.I. No. 112 of 2017.

Part 2

1. Rape.
2. Sexual assault (whether the offence of which the person was convicted was known by that name or by the name “indecent assault upon a female person” or “indecent assault upon a male person”).
3. Aggravated sexual assault within the meaning of section 3 of the Criminal Law (Rape) (Amendment) Act 1990.
4. Rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990.
5. An offence under section 1 of the Punishment of Incest Act 1908 (incest by males).
6. An offence under section 2 of the Punishment of Incest Act 1908 (incest by females of or over 17 years of age).
7. An offence under section 2 of the Criminal Law (Sexual Offences) Act 2006 (defilement of child under 15 years of age).
8. An offence under section 3 of the Criminal Law (Sexual Offences) Act 2006 (defilement of child under the age of 17 years).
9. An offence under section 1 of the Criminal Law Amendment Act 1935 (defilement of girl under 15 years of age).
10. An offence under section 2 of the Criminal Law Amendment Act 1935 (defilement of girl between 15 and 17 years of age).
11. An offence under section 6 of the Criminal Law (Sexual Offences) Act 1993 (soliciting or importuning for purposes of commission of sexual offence).
12. An offence under section 3 of the Criminal Law (Sexual Offences) Act 1993 (buggery of persons under 17 years of age).
13. An offence under section 4 of the Criminal Law (Sexual Offences) Act 1993 (gross indecency with males under 17 years of age).
14. An offence under section 11 of the Criminal Law Amendment Act 1885 (acts of gross indecency).

15. An offence under section 5 of the Criminal Law (Sexual Offences) Act 1993 (protection of mentally impaired persons).

16. An offence under section 4 of the Criminal Law Amendment Act 1935 (defilement of mentally impaired females).

17. An offence under any of the following provisions of the Child Trafficking and Pornography Act 1998:

(a) section 3 (child trafficking and taking, etc., child for sexual exploitation);

(b) section 4 (allowing child to be used for child pornography);

F4[(ba) section 4A (organising etc. child prostitution or production of child pornography);]

(c) section 5 (producing, distributing, etc., child pornography);

F4[(ca) section 5A (participation of child in pornographic performance);]

(d) section 6 (possession of child pornography).

18. An offence under the Criminal Law (Human Trafficking) Act 2008 in so far as the offence is committed for the purposes of the sexual exploitation, within the meaning of that Act, of a person.

19. An offence under section 249 of the Children Act 2001 (causing or encouraging sexual offence upon child).

20. An offence under section 17 of the Children Act 1908 (causing or encouraging sexual offence upon child).

21. An offence under section 3 of the Criminal Law Amendment Act 1885 (procuring defilement of woman by threats or fraud or administering drugs).

22. An offence under section 2 of the Sexual Offences (Jurisdiction) Act 1996 (sexual offences committed outside the State) in so far as it relates to an offence specified in the Schedule to that Act that is also specified in this Schedule to the extent that it is so specified.

F5[22A. An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2017:

(a) section 3 (obtaining, providing etc. a child for purpose of sexual exploitation),

(b) section 4 (invitation etc. to sexual touching),

(c) section 5 (sexual activity in presence of child),

(d) section 6 (causing child to watch sexual activity),

(e) section 7 (meeting child for purpose of sexual exploitation),

(f) section 8 (use of information and communication technology to facilitate sexual exploitation of child),

(g) section 21 (sexual act with protected person),

(h) section 22 (offence against relevant person by person in authority).]

23. An offence consisting of attempting to commit an offence referred to in any of the paragraphs of this Part of this Schedule (other than such an offence that itself consists of an attempt to do a particular act).

24. An offence consisting of aiding, abetting, counselling, procuring or inciting the commission of an offence referred to in any of the paragraphs of this Part of this Schedule (other than an offence referred to in *paragraph 23* in so far as the offence itself consists of procuring a particular act).

25. An offence consisting of conspiracy to commit an offence referred in any paragraph of this Part of this Schedule.

Annotations**Amendments:**

- F4** Inserted (27.03.2017) by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 56(b)(i), S.I. No. 112 of 2017.
- F5** Inserted (27.03.2017) by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 56(b)(ii), S.I. No. 112 of 2017.

SCHEDULE 2

Specified Work

Section 5

1. Employment with—
- (a) the Defence Forces,
 - (b) the Department of Justice and Equality,
 - (c) the Garda Síochána,
 - (d) the Garda Síochána Ombudsman Commission,
 - (e) the Garda Inspectorate,
 - (f) the Office of the Chief State Solicitor,
 - (g) the Office of the Attorney General,
 - (h) the Office of the Director of Public Prosecutions,
 - (i) the Criminal Assets Bureau,
 - (j) the Courts Service,
 - (k) the Department of the Taoiseach,
 - (l) the Department of Foreign Affairs and Trade,
 - (m) the Office of the President,
 - (n) the Central Bank of Ireland,
 - (o) the National Treasury Management Agency.

2. Any activity, service or employment which involves the performance of a controlled function under Part 3 of the Central Bank Reform Act 2010.

3. Service as—

- (a) a member of the Reserve Defence Force within the meaning of section 2 of the Defence Act 1954,
- (b) a reserve member of the Garda Síochána within the meaning of section 3 of the Garda Síochána Act 2005.