



Number 24 of 2012

**CRIMINAL JUSTICE (WITHHOLDING OF INFORMATION ON OFFENCES AGAINST
CHILDREN AND VULNERABLE PERSONS) ACT 2012**

REVISED

Updated to 27 March 2017

This Revised Act is an administrative consolidation of *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012*. It is prepared by the Law Reform Commission in accordance with its function under *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 *Health (Amendment) Act 2017 (5/2017)*, enacted 31 March 2017, and all statutory instruments up to and including *Sea-Fisheries (Quotas) Regulations 2017 (S.I. No. 136 of 2017)*, made 22 March 2017, were considered in the preparation of this Revised Act.

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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

This Act is not collectively cited with any other Act.

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Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked.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 1995, 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

- *Criminal Law (Sexual Offences) Act 2017 (2/2017)*

All Acts up to and including *Health (Amendment) Act 2017* (5/2017), enacted 31 March 2017, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2015* (S.I. No. 159 of 2015)
- *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2014* (S.I. No. 197 of 2014)
- *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) (No. 2) Order 2013* (S.I. No. 402 of 2013)
- *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2013* (S.I. No. 1 of 2013)
- *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Commencement) Order 2012* (S.I. No. 281 of 2012)

All statutory instruments up to and including *Sea-Fisheries (Quotas) Regulations 2017* (S.I. No. 136 of 2017), made 22 March 2017, were considered in the preparation of this revision.



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[No. 24.] *Criminal Justice (Withholding of Information On Offences against Children and Vulnerable Persons) Act 2012* [2012.]

ACTS REFERRED TO

Child Trafficking and Pornography Act 1998	1998, No. 22
Children Act 2001	2001, No. 24
Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010	2010, No. 24
Criminal Justice Act 2006	2006, No. 26
Criminal Justice (Female Genital Mutilation) Act 2012	2012, No. 11
Criminal Law (Human Trafficking) Act 2008	2008, No. 8
Criminal Law (Rape) (Amendment) Act 1990	1990, No. 32
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Medical Practitioners Act 2007	2007, No. 25
Non-Fatal Offences against the Person Act 1997	1997, No. 26
Nurses and Midwives Act 2011	2011, No. 41
Offences against the State (Amendment) Act 1998	1998, No. 39
Punishment of Incest Act 1908	8 Edw. 7, c.45
Sexual Offences (Jurisdiction) Act 1996	1996, No. 38



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CHILDREN AND VULNERABLE PERSONS) ACT 2012**

REVISED

Updated to 27 March 2017

AN ACT TO PROVIDE, IN CONNECTION WITH THE PROTECTION OF CHILDREN AND CERTAIN VULNERABLE ADULTS, FOR OFFENCES OF WITHHOLDING INFORMATION RELATING TO THE COMMISSION OF CERTAIN ARRESTABLE OFFENCES (INCLUDING CERTAIN SEXUAL OFFENCES) AGAINST CHILDREN, OR CERTAIN ARRESTABLE OFFENCES (INCLUDING CERTAIN SEXUAL OFFENCES) AGAINST SUCH ADULTS, IN CERTAIN CIRCUMSTANCES; TO PROVIDE FOR THE AMENDMENT OF SECTION 9 OF THE OFFENCES AGAINST THE STATE (AMENDMENT) ACT 1998; TO AMEND SECTION 16 OF THE CRIMINAL JUSTICE (FEMALE GENITAL MUTILATION) ACT 2012; AND TO PROVIDE FOR RELATED MATTERS.

[18th July, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.— (1) In this Act—

“arrestable offence” has the meaning it has in section 2 of the Criminal Law Act 1997;

“child” means a person who has not attained 18 years of age;

“Minister” means the Minister for Justice and Equality;

“prescribed” means prescribed by order made by the Minister under *section 10*;

“Schedule 1 offence” means an offence that is an arrestable offence and is specified in *Schedule 1*;

“Schedule 2 offence” means an offence that is an arrestable offence and is specified in *Schedule 2*;

“vulnerable person” means a person (including, insofar as the offences specified at *paragraph 8 of Schedule 2* are concerned, a child aged 17 years old)—

(a) who—

(i) is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or

(ii) has an intellectual disability,

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which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person, or

(b) who is suffering from an enduring physical impairment or injury which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person or to report such exploitation or abuse to the Garda Síochána or both.

(2) In this Act references to a Schedule 1 offence or a Schedule 2 offence shall include—

(a) references to an offence of participating as an accomplice of a person who commits a Schedule 1 offence or a Schedule 2 offence, as the case may be, and

(b) references to an offence of attempting or conspiring to commit, or inciting the commission of, a Schedule 1 offence or a Schedule 2 offence, as the case may be,

but shall not include such an offence of participating, attempting, conspiring or inciting, as the case may be, if it is not an arrestable offence.

(3) In this Act references to the commission of an offence against a child or vulnerable person shall, in the case of any of the offences of a sexual nature specified in *Schedule 1* or *Schedule 2*, include references to where the child or vulnerable person was the other party to the offence (other than the person who committed it).

Offence of withholding information on certain offences against children.

2.— (1) Subject to this section, a person shall be guilty of an offence if—

(a) he or she knows or believes that an offence, that is a Schedule 1 offence, has been committed by another person against a child, and

(b) he or she has information which he or she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of that other person for that offence,

and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.

(2) *Subsection (1)* applies only to information that a person acquires, receives or becomes aware of after the passing of this Act irrespective of whether the Schedule 1 offence concerned was committed before or after that passing.

(3) The child against whom the Schedule 1 offence concerned was committed (whether or not still a child) shall not be guilty of an offence under this section.

(4) This section is without prejudice to any right or privilege that may arise in any criminal proceedings by virtue of any rule of law or other enactment entitling a person to refuse to disclose information.

(5) For the avoidance of doubt it is hereby declared that the obligation imposed on a person by *subsection (1)* to disclose information that he or she has to a member of the Garda Síochána is in addition to, and not in substitution for, any other obligation that the person has to disclose that information to the Garda Síochána or any other person, but that subsection shall not require the first-mentioned person to disclose that information to the Garda Síochána more than once.

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Offence of withholding information on certain offences against vulnerable persons.

3.— (1) Subject to this section, a person shall be guilty of an offence if—

(a) he or she knows or believes that an offence, that is a Schedule 2 offence, has been committed by another person against a vulnerable person, and

(b) he or she has information which he or she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of that other person for that offence,

and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.

(2) *Subsection (1)* applies only to information that a person acquires, receives or becomes aware of after the passing of this Act irrespective of whether the Schedule 2 offence concerned was committed before or after that passing.

(3) The vulnerable person against whom the Schedule 2 offence concerned was committed (whether or not still a vulnerable person) shall not be guilty of an offence under this section.

(4) This section is without prejudice to any right or privilege that may arise in any criminal proceedings by virtue of any rule of law or other enactment entitling a person to refuse to disclose information.

(5) For the avoidance of doubt it is hereby declared that the obligation imposed on a person by *subsection (1)* to disclose information that he or she has to a member of the Garda Síochána is in addition to, and not in substitution for, any other obligation that the person has to disclose that information to the Garda Síochána or any other person, but that subsection shall not require the first-mentioned person to disclose that information to the Garda Síochána more than once.

Defences to offence under section 2 or 3.

4.— (1) Subject to this section, in any proceedings for an offence under *section 2* or *3*, it shall be a defence for the accused person to show—

(a) that the child or vulnerable person against whom the Schedule 1 offence or the Schedule 2 offence, as the case may be, concerned was committed made known his or her view (provided that he or she was capable of forming a view on the matter) that the commission of that offence, or information relating to it, should not be disclosed to the Garda Síochána, and

(b) that he or she (the accused person) knew of and relied upon that view.

(2) Without prejudice to the right of the child or vulnerable person against whom the Schedule 1 offence or the Schedule 2 offence, as the case may be, concerned was committed to disclose the commission of that offence, or information relating to it, to the Garda Síochána, it shall be presumed for the purposes of *subsection (1)*, unless the contrary is shown, that if—

(a) the child concerned has not attained the age of 14 years, or

(b) the vulnerable person concerned falls under *paragraph (a)* of the definition of vulnerable person in *section 1(1)* (whether or not he or she also falls under *paragraph (b)* of that definition),

he or she does not have the capacity to form a view as to whether the commission of that offence, or information relating to it, should be disclosed to the Garda Síochána.

(3) Where—

(a) in the case of a child referred to in *paragraph (a)* of *subsection (2)*, or

(b) in the case of a vulnerable person referred to in *paragraph (b)* of that subsection,

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the presumption in that subsection is not rebutted, then, any of the defences provided for in *subsections (4), (5) and (8)* may be raised by an accused person in any proceedings for an offence under *section 2 or 3* in accordance with whichever of those subsections applies.

(4) Subject to *subsections (6) and (7)*, in any proceedings for an offence under *section 2 or 3*, it shall be a defence for the accused person to show, in the circumstances specified in *subsection (3)*—

(a) that a parent or guardian of the child or vulnerable person concerned against whom the Schedule 1 offence or the Schedule 2 offence, as the case may be, concerned was committed made known his or her view, on behalf of that child or vulnerable person, that the commission of that offence, or information relating to it, should not be disclosed to the Garda Síochána, and

(b) that he or she (the accused person) knew of and relied upon that view.

(5) Subject to *subsections (6) and (7)*, in any proceedings for an offence under *section 2 or 3*, it shall be a defence for a parent or guardian of a child or vulnerable person against whom a Schedule 1 offence or Schedule 2 offence, as the case may be, was committed to show, in the circumstances specified in *subsection (3)*, that he or she formed the view, on behalf of that child or vulnerable person, that the commission of that offence, or information relating to it, should not be disclosed to the Garda Síochána.

(6) The defence provided for in *subsection (4) or (5)* shall be established only if the parent or guardian concerned had reasonable grounds for forming the view concerned on behalf of the child or vulnerable person concerned and, in so doing, he or she acted and is continuing to act *bona fide* in the best interests of that child or vulnerable person.

(7) The defence provided for in *subsection (4) or (5)* shall not apply if the parent or guardian of the child or vulnerable person concerned who formed the view that the commission of the Schedule 1 offence or the Schedule 2 offence, as the case may be, concerned, or information relating to it, should not be disclosed to the Garda Síochána is a family member of the person who is known or believed to have committed that Schedule 1 offence or Schedule 2 offence, as the case may be.

(8) Subject to *subsection (11)*, in any proceedings for an offence under *section 2 or 3*, it shall be a defence for the accused person (including a parent or guardian of the child or vulnerable person concerned) to show, in the circumstances specified in *subsection (3)* but where *subsection (7)* applies to the parent or guardian concerned—

(a) that a member of a designated profession who provided or is providing services to the child or vulnerable person concerned in respect of the injury, harm or damage caused to him or her as a result of the Schedule 1 offence or the Schedule 2 offence, as the case may be, concerned made known his or her view, on behalf of that child or vulnerable person, that the commission of that offence, or information relating to it, should not be disclosed to the Garda Síochána, and

(b) that he or she (the accused person) knew of and relied upon that view.

(9) A parent or guardian of a child or vulnerable person or a member of a designated profession shall, for the purposes of considering on behalf of the child or vulnerable person whether or not the commission of the Schedule 1 offence or the Schedule 2 offence, as the case may be, concerned against that child or vulnerable person, or information relating to it, should be disclosed to the Garda Síochána, insofar as practicable have regard to the wishes of that child or vulnerable person.

(10) Subject to *subsection (11)*, in any proceedings for an offence under *section 2 or 3*, it shall be a defence for the accused person who is a member of a designated profession to show that—

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- (a) he or she is a member of a designated profession who provided or is providing services to the child or vulnerable person concerned in respect of the injury, harm or damage caused to him or her as a result of the Schedule 1 offence or the Schedule 2 offence, as the case may be, concerned, and
- (b) he or she formed the view, in relation to that child or vulnerable person, that the commission of that offence, or information relating to it, should not be disclosed to the Garda Síochána.

(11) The defence provided for in *subsection (8) or (10)* shall be established only if—

- (a) the member of the designated profession concerned had reasonable grounds for forming the view concerned in relation to the child or vulnerable person concerned for the purpose of protecting the health and well-being of that child or vulnerable person, and
- (b) the member of the designated profession concerned, in forming that view in relation to the child or vulnerable person, as the case may be, concerned—
 - (i) acted and continues to act in a manner, and
 - (ii) applied and continues to apply the standards of practice and care,that can reasonably be expected of a member of that profession in forming such a view in the circumstances concerned.

(12) Subject to *subsection (13)*, in any proceedings for an offence under *section 2 or 3*, it shall be a defence for the accused person who is a prescribed person to show that—

- (a) he or she is a prescribed person employed or otherwise engaged by a prescribed organisation who provided or is providing services to the child or vulnerable person concerned in respect of the injury, harm or damage caused to him or her as a result of the Schedule 1 offence or the Schedule 2 offence, as the case may be, concerned, and
- (b) he or she formed the view, in relation to that child or vulnerable person, that the commission of that offence, or information relating to it, should not be disclosed to the Garda Síochána.

(13) The defence provided for in *subsection (12)* shall be established only if—

- (a) the prescribed person concerned had reasonable grounds for forming the view concerned in relation to the child or vulnerable person concerned for the purpose of protecting the health and well-being of that child or vulnerable person, and
- (b) the prescribed person concerned, in forming that view in relation to the child or vulnerable person, as the case may be, concerned—
 - (i) acted and continues to act in a manner, and
 - (ii) applied and continues to apply the standards of practice and care,that can reasonably be expected of a prescribed person forming such a view in the circumstances concerned.

(14) This section is without prejudice to any other defence recognised by law as a defence to a criminal charge that may be available to a person charged with an offence under *section 2 or 3*.

(15) In this section—

“Act of 2005” means the Health and Social Care Professionals Act 2005;

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“family member”, in relation to a person, means—

- (a) a parent, grandparent, child, brother, sister, nephew, niece, uncle or aunt, whether of the whole blood, of the half blood or by affinity, of the person,
- (b) a spouse, a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 or a cohabiting partner of the person,
- (c) any other person who is ordinarily a member of the person’s household, or
- (d) any child who has been placed in foster care with the person or any person referred to in *paragraphs (a) to (c)*;

“member of a designated profession” means—

- (a) a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007,
- (b) a registered nurse or a registered midwife both within the meaning of section 2 of the Nurses and Midwives Act 2011,
- (c) a psychologist and, following the establishment of the register of members of psychologists under section 36 of the Act of 2005, only a person whose name is entered in that register, or
- (d) a social worker whose name is entered in the register of members of social workers established and maintained under section 36 of the Act of 2005;

“prescribed organisation” means an organisation or body prescribed by the Minister under *section 5*;

“prescribed person”, in relation to a prescribed organisation, means one of a class of persons prescribed by the Minister under *section 6*;

“services” means—

- (a) in relation to a member of a designated profession, services relating to—
 - (i) the preservation or improvement of the health or well-being of persons to whom the services are provided,
 - (ii) the diagnosis, treatment or care of persons who are injured, harmed or damaged,
 - (iii) the resolution, through guidance, counselling or otherwise, of personal, social or psychological problems,
 - (iv) the care of persons in need of protection, guidance or support,and
- (b) in relation to a prescribed organisation, services relating to—
 - (i) the resolution, through guidance, counselling or otherwise, of personal, social or psychological problems,
 - (ii) the care of persons in need of protection, guidance or support,

and, in either case, being services that require a person providing them to exercise skill or judgement in relation to them.

(16) In the definition of “family member” in *subsection (15)*, the reference to any member of a person’s family shall include a reference to any such member of his or her family who is adopted.

Annotations

Editorial Notes:

- E1** Organisations and persons prescribed for purposes of section (30.04.2015) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2015* (S.I. No. 159 of 2015), arts. 4, 5 and sch., in effect as per art. 2.
- E2** Organisations and persons prescribed for purposes of section (2.05.2014) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2014* (S.I. No. 197 of 2014), arts. 4, 5 and sch., in effect as per art. 2.
- E3** Organisations and persons prescribed for purposes of section (12.10.2013) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) (No. 2) Order 2013* (S.I. No. 402 of 2013), arts. 4, 5 and sch., in effect as per art. 2.
- E4** Organisations and persons prescribed for purposes of section (14.01.2013) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2013* (S.I. No. 1 of 2013), arts. 4, 5 and sch., in effect as per art. 2.

Prescribed organisations.

5.— (1) An organisation or body which provides services to children or vulnerable persons or both who have suffered injury, harm or damage as a result of physical or sexual abuse may apply to the Minister, in accordance with this section, to be a prescribed organisation for the purposes of *section 4*.

(2) An application by an organisation or body under *subsection (1)* shall be made in the manner specified by the Minister and shall be accompanied by particulars in writing of the following matters in relation to the organisation or body:

- (a) the nature and type of services provided by the organisation or body to children or vulnerable persons or both;
- (b) the numbers of children or vulnerable persons or both to whom services were provided by the organisation or body before the date of the application for such period or periods as the Minister may specify;
- (c) the legal status of the organisation or body; and
- (d) the code of practice (if any) of the organisation or body (by whatever name called) with regard to the provision of its services and, in particular, its procedures and protocols for ensuring compliance with this Act.

(3) If, in relation to an application under *subsection (2)*, the Minister is satisfied having regard to the provisions of *section 4* that it is appropriate to do so, he or she may prescribe the organisation or body concerned as a prescribed organisation for the purposes of that section.

(4) If, in relation to an application under *subsection (2)*, the Minister is not satisfied having regard to the provisions of *section 4* that it is appropriate to prescribe the organisation or body concerned as a prescribed organisation for the purposes of that section, he or she shall refuse the application.

(5) The Minister shall inform the organisation or body concerned in writing of his or her decision in relation to an application under *subsection (2)* and of the reasons for that decision.

(6) Where an organisation or body has been prescribed by the Minister under this section for the purposes of *section 4*, the Minister may, if he or she is of opinion that

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it is no longer appropriate for the organisation or body to be so prescribed, revoke that prescription of the organisation or body by order made under this subsection for that purpose.

(7) Whenever the Minister proposes to make an order under *subsection (6)*, he or she shall inform the organisation or body concerned in writing of the proposal and of the reasons for it and he or she may specify a period for the making of a submission under *subsection (8)*.

(8) An organisation or body to which a proposal to make an order under *subsection (6)* relates may make a submission to the Minister within the period (if any) specified by the Minister under *subsection (7)* regarding the proposal specifying the reasons why the order should not be made.

(9) The Minister shall consider any submission made to him or her under *subsection (8)* before making an order under *subsection (6)*.

(10) In this section and in *section 6* “services” means services relating to—

(a) the resolution, through guidance, counselling or otherwise, of personal, social or psychological problems,

(b) the care of persons in need of protection, guidance or support,

being services that require a person providing them to exercise skill or judgement in relation to them.

Annotations

Editorial Notes:

- E5 Power pursuant to section exercised (30.04.2015) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2015* (S.I. No. 159 of 2015), in effect as per art. 2.
- E6 Power pursuant to section exercised (2.05.2014) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2014* (S.I. No. 197 of 2014), in effect as per art. 2.
- E7 Power pursuant to section exercised (12.10.2013) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) (No. 2) Order 2013* (S.I. No. 402 of 2013), in effect as per art. 2.
- E8 Power pursuant to section exercised (14.01.2013) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2013* (S.I. No. 1 of 2013), in effect as per art. 2.

Prescribed persons.

6.— (1) An organisation or body prescribed under *section 5*, or an organisation or body applying to be so prescribed, which provides services to children or vulnerable persons or both who have suffered injury, harm or damage as a result of physical or sexual abuse may apply to the Minister, in accordance with this section, for a class or classes of persons employed or otherwise engaged by the organisation or body in the provision of those services to be prescribed persons for the purposes of *section 4*.

(2) An application by an organisation or body under *subsection (1)* shall be made in the manner specified by the Minister and shall be accompanied by particulars in writing of the following matters in relation to the class or classes of persons concerned:

(a) the nature and type of services provided by such persons to children or vulnerable persons or both;

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- (b) the expertise and qualifications of such persons to provide such services;
- (c) the accreditation or certification (if any) held by such persons in relation to the provision of such services;
- (d) the arrangements that the organisation or body has in place for the training and development of such persons to provide such services; and
- (e) the procedures and systems that the organisation or body has in place for assessing the quality of the services provided by such persons.

(3) A class or classes of persons employed or otherwise engaged by an organisation or body may not be prescribed under this section if the organisation or body is not prescribed under *section 5*.

(4) If, in relation to an application under *subsection (2)*, the Minister is satisfied having regard to the provisions of *section 4* that it is appropriate to do so, he or she may prescribe the class or classes of persons concerned employed or otherwise engaged by the organisation or body in the provision of its services as prescribed persons for the purposes of that section and, in particular, the Minister shall be satisfied that members of that class or those classes are qualified to provide such services and to form a view referred to in *subsection (12)* of that section in relation to a child or vulnerable person in the circumstance referred to in that subsection.

(5) If, in relation to an application under *subsection (2)*, the Minister is not satisfied having regard to the provisions of *section 4* that it is appropriate to prescribe the class or classes of persons concerned employed or otherwise engaged by the organisation or body in the provision of its services as prescribed persons for the purposes of that section, he or she shall refuse the application.

(6) The Minister shall inform the organisation or body concerned in writing of his or her decision in relation to an application under *subsection (2)* and of the reasons for that decision.

(7) Where a class or classes of persons have been prescribed by the Minister under this section for the purposes of *section 4*, the Minister may, if he or she is of opinion that it is no longer appropriate for the class or classes of persons to be so prescribed, revoke that prescription of the class or classes of persons by order made under this subsection for that purpose.

(8) Whenever the Minister proposes to make an order under *subsection (7)*, he or she shall inform the organisation or body to which the proposal relates in writing of the proposal and of the reasons for it and he or she may specify a period for the making of a submission under *subsection (9)*.

(9) An organisation or body to which a proposal to make an order under *subsection (7)* relates may make a submission to the Minister within the period (if any) specified by the Minister under *subsection (8)* regarding the proposal specifying the reasons why the order should not be made.

(10) The Minister shall consider any submission made to him or her under *subsection (9)* before making an order under *subsection (7)*.

Annotations

Editorial Notes:

- E9** Power pursuant to section exercised (30.04.2015) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2015* (S.I. No. 159 of 2015), in effect as per art. 2.

<p>E10 Power pursuant to section exercised (2.05.2014) by <i>Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2014</i> (S.I. No. 197 of 2014), in effect as per art. 2.</p> <p>E11 Power pursuant to section exercised (12.10.2013) by <i>Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) (No. 2) Order 2013</i> (S.I. No. 402 of 2013), in effect as per art. 2.</p> <p>E12 Power pursuant to section exercised (14.01.2013) by <i>Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2013</i> (S.I. No. 1 of 2013), in effect as per art. 2.</p>
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Penalties.

7.— A person guilty of an offence under *section 2* or *3* shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or imprisonment or both according to the gravity of the Schedule 1 offence or Schedule 2 offence, as the case may be, concerned in respect of which the person failed to disclose information that he or she had as soon as it was practicable to do so to a member of the Garda Síochána, in the following manner:
 - (i) if the Schedule 1 offence or Schedule 2 offence, as the case may be, concerned is one for which the maximum sentence is imprisonment for life, he or she shall be liable to imprisonment for a term not exceeding 10 years;
 - (ii) if it is one for which a person of full capacity and not previously convicted may be sentenced to imprisonment for a term of 14 years, he or she shall be liable to imprisonment for a term not exceeding 7 years;
 - (iii) if it is not one included in *subparagraph (i)* or *(ii)* but is one for which a person of full capacity and not previously convicted may be sentenced to imprisonment for a term of 10 years, he or she shall be liable to imprisonment for a term not exceeding 5 years;
 - (iv) in any other case, he or she shall be liable to imprisonment for a term not exceeding 3 years.

Amendment of section 9 of Offences against the State (Amendment) Act 1998.

8.— (1) Section 9 of the Offences against the State (Amendment) Act 1998 is amended by the substitution of the following subsections for subsection (3):

“(3) In this section—

‘child’ means a person who has not attained 18 years of age;

‘serious offence’ has the same meaning as it has in section 8 but does not include—

- (a) subject to subsection (4), an offence that is committed, or that it is anticipated will be committed, against a child, or
- (b) the offence specified in *paragraph >1* of *Schedule 2* to the *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012* that is committed, or that it is anticipated will be committed, against a person other than a child.

(4) Nothing in subsection (3) shall prevent an offence from being a serious offence by reason only of the fact that it is committed, or it is anticipated that it

S. 8. [No. 24.] *Criminal Justice (Withholding of Information On Offences against Children and Vulnerable Persons) Act 2012* [2012.]

will be committed, against more than one person in circumstances in which at least one of those persons is a child and at least one of them is not a child.”.

(2) The amendment of section 9 of the Offences against the State (Amendment) Act 1998 effected by *subsection (1)* shall not—

- (a) affect the previous operation of that section in relation to the offence under that section or anything duly done or suffered thereunder,
- (b) affect any penalty or punishment imposed or carried out in respect of that offence which was committed before that amendment, or
- (c) prejudice or affect any proceedings pending at the time of that amendment in respect of that offence,

insofar as that section applied to information relating to matters to which this Act applies.

(3) Any proceedings in respect of an offence under section 9 of the Offences against the State (Amendment) Act 1998 committed before the amendment effected by *subsection (1)* comes into operation may be instituted, continued or enforced and any penalty or punishment may be imposed and carried out as if that amendment had not been made.

Amendment of section 16(2) of Criminal Justice (Female Genital Mutilation) Act 2012.

9.— Section 16(2) of the Criminal Justice (Female Genital Mutilation) Act 2012 is amended by the insertion of “for Health” after “Minister”.

Orders.

10.— (1) The Minister may make an order prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed.

(2) An order under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the order.

(3) Every order (other than an order under *section 12(2)*) under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Annotations

Editorial Notes:

- E13** Power pursuant to section exercised (30.04.2015) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2015* (S.I. No. 159 of 2015), in effect as per art. 2.

Expenses.

11.— 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.

Short title and commencement.

12.— (1) This Act may be cited as the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012.

S. 12. [No. 24.] *Criminal Justice (Withholding of Information On Offences against Children and Vulnerable Persons) Act 2012* [2012.]

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

Annotations

Editorial Notes:

E14 Power pursuant to subs. (2) exercised (1.08.2012) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Commencement) Order 2012* (S.I. No. 281 of 2012).

2. The 1st day of August 2012 is appointed as the day on which the *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012* (No. 24 of 2012) shall come into operation.

Section 2.

SCHEDULE 1

OFFENCES AGAINST CHILDREN FOR PURPOSES OF OFFENCE UNDER SECTION 2

1. Murder.
2. Manslaughter.
3. Common law offence of false imprisonment.
4. Rape.
5. Rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990.
6. Sexual assault.
7. Aggravated sexual assault within the meaning of section 3 of the Criminal Law (Rape) (Amendment) Act 1990.
8. An offence under section 1 of the Punishment of Incest Act 1908 (incest by males).
9. An offence under section 2 of the Punishment of Incest Act 1908 (incest by females of or over 17 years of age).
10. An offence under section 6(1) of the Criminal Law (Sexual Offences) Act 1993.
11. An offence under section 2 of the Criminal Law (Sexual Offences) Act 2006 (defilement of child under 15 years of age).
12. An offence under section 3 of the Criminal Law (Sexual Offences) Act 2006 (defilement of child under the age of 17 years).
- F1[12A. An offence under section 3A of the Criminal Law (Sexual Offences) Act 2006 (offence by person in authority).]
- F2[13. 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),
 - (c) section 4A (organising etc. child prostitution or production of child pornography),
 - (d) section 5A (participation of child in pornographic performance).]
14. An offence under section 2 of the Sexual Offences (Jurisdiction) Act 1996 insofar as it relates to an offence specified in the Schedule to that Act that is also specified in this Schedule.
15. An offence under any of the following provisions of the Criminal Law (Human Trafficking) Act 2008—
 - (a) section 2 (trafficking, etc., of children),
 - (b) section 5 insofar as it relates to a child who has been trafficked for the purpose of his or her exploitation (soliciting or importuning for purposes of prostitution of trafficked person),
 - (c) section 7 insofar as it relates to an offence under section 2 of that Act or section 3 (other than subsections (2A) and (2B)) of the Child Trafficking and Pornography Act 1998.

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

17. An offence under section 176 of the Criminal Justice Act 2006 (reckless endangerment of children).

18. An offence under any of the following provisions of the Non-Fatal Offences against the Person Act 1997—

- (a) section 3 (assault causing harm),
- (b) section 4 (causing serious harm),
- (c) section 5 (threats to kill or cause serious harm),
- (d) section 13 (endangerment),
- (e) section 15 (false imprisonment),
- (f) section 16 (abduction of child by parent, etc.),
- (g) section 17 (abduction of child by other persons).

19. An offence under section 246 of the Children Act 2001 (cruelty to children).

20. An offence under any of the following provisions of the Criminal Justice (Female Genital Mutilation) Act 2012—

- (a) section 2 (offences of female genital mutilation, etc.),
- (b) section 3 (offence of removal from State for purpose of female genital mutilation),
- (c) section 4 (acts, etc., done outside State).

F3[21. 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).]

Annotations

Amendments:

- F1** Inserted (27.03.2017) by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 53(a)(i), S.I. No. 112 of 2017.
- F2** Substituted (27.03.2017) by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 53(a)(ii), S.I. No. 112 of 2017.
- F3** Inserted (27.03.2017) by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 53(a)(iii), S.I. No. 112 of 2017.

Section 3.

SCHEDULE 2

OFFENCES AGAINST VULNERABLE PERSONS FOR PURPOSES OF OFFENCE UNDER SECTION 3

1. Common law offence of false imprisonment.
2. Rape.
3. Rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990.
4. Sexual assault.
5. Aggravated sexual assault within the meaning of section 3 of the Criminal Law (Rape) (Amendment) Act 1990.
6. An offence under section 1 of the Punishment of Incest Act 1908 (incest by males).
7. An offence under section 2 of the Punishment of Incest Act 1908 (incest by females of or over 17 years of age).
8. An offence under either of the following provisions of the Criminal Law (Sexual Offences) Act 1993—
 - (a) subsection (1) of section 5 insofar as it provides for an offence of having sexual intercourse, or committing an act of buggery, with a person who is mentally impaired within the meaning of that section (other than a person to whom the alleged offender is married or to whom he or she believes with reasonable cause he or she is married),
 - (b) subsection (2) of section 6 insofar as it provides for an offence of soliciting or importuning a person who is mentally impaired within the meaning of that section (whether or not for the purposes of prostitution) for the purposes of the commission of an act that would constitute an offence under section 5(1) (insofar as it is referred to in *paragraph (a)*) of that Act or an offence referred to in section 2 of the Criminal Law (Rape) (Amendment) Act 1990.
9. An offence under section 2 of the Sexual Offences (Jurisdiction) Act 1996 insofar 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.
10. An offence under any of the following provisions of the Criminal Law (Human Trafficking) Act 2008—
 - (a) section 4 (trafficking of persons other than children),
 - (b) section 5 insofar as it relates to a person in respect of whom an offence under subsection (1) or (3) of section 4 of that Act has been committed (soliciting or importuning for purposes of prostitution of trafficked person),
 - (c) section 7 insofar as it relates to an offence under section 4 of that Act.
11. An offence under section 3 of the Non-Fatal Offences against the Person Act 1997 (assault causing harm).
- F4[12. An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2017—
 - (a) section 21 (sexual act with protected person),
 - (b) section 22 (offence against relevant person by person in authority).]

Annotations**Amendments:**

- F4** Inserted (27.03.2017) by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 53(b), S.I. No. 112 of 2017.