**Criminal Justice (Withholding of information on offences against children and vulnerable persons) Act 2012**

**Information Note & Application**

**Organisations Which Wish to Apply to be Prescribed Organisations**

**What is the purpose of the 2012 Act?**

Since 1998, the Criminal Justice (Offences Against the State) (Amendment) Act has made it an offence for any person to fail to notify the Garda Síochána where the person has information which he or she knows or believes might be of material assistance in securing the prosecution or conviction of a serious offence. A “serious offence” in the context of the 1998 Act includes murder, manslaughter, abduction or a serious assault causing physical injury to a person.

The 2012 Act closes a loophole in the existing legislation because it includes sexual offences in the definition of serious offences. Until now there was no offence of failing to report a sexual offence against a child or vulnerable person. This Act creates such an offence. A full list of the serious offences covered by the Act is contained in the schedules to the Act.

**If the victim of an offence covered by the 2012 Act does not want to report the offence to the Gardaí, am I obliged to report it?**

If the victim has stated that they do not want to report an offence to the Gardaí, then a person who has been informed of that fact has a defence under the Act. The Act also provides that the victim themselves cannot be prosecuted for failing to notify the Gardaí regarding the offence.

**What other defences does the Act provide for?**

The Act also establishes some limited defences for persons, such as a parent or guardian or medical professional who is acting in the interests of the health and well-being of the child or vulnerable person. These defences only apply in circumstances where the victim does not have the capacity to report an offence themselves, either because of their age or a mental or physical incapacity.

**The Act mentions “Prescribed organisations”. What does this mean?**

It is important that victims who do not want to report an offence to the Gardaí are not dissuaded from seeking treatment or therapy in respect of injury or harm that they have suffered. Persons who are victims of such violence can be extremely traumatised and often need treatment or therapy for a prolonged period before they can make a decision whether or not they want the offence reported to the Gardaí.

The Act therefore allows the Minister to prescribe such organisations, and to prescribe certain classes of persons within those organisations who are providing services in respect of the harm or injury that a child or vulnerable person has suffered. By being “prescribed” the organisations and the relevant persons are provided with a defence against prosecution so long as a decision not to report an offence to the Garda Síochána can be shown to be in accordance with the interests of the health and well-being of the victim.

**What are the criteria before an organisation can be “prescribed”?**

An organisation must provide services requiring skill or judgement to children or to vulnerable persons who have suffered injury or harm as a result of either physical or sexual abuse. The Act defines these services in section 5(10) as:

”services relating to –

1. the resolution, through guidance, counselling or otherwise, of personal, social or psychological problems,
2. the care of persons in need of protection, guidance or support,

being services that require a person providing them to exercise skill or judgement”

An organisation providing services solely to adults (other than vulnerable persons) would not require the defences provided by the Act. Equally, organisations providing services to children or vulnerable persons, but who do not provide services to children or vulnerable persons in respect of injury resulting from physical or sexual abuse cannot be prescribed.

**What are the criteria before persons can be prescribed?**

In order for a category or class of persons to be prescribed they must be providing services, as defined above, to children or vulnerable persons who have suffered injury or harm arising from physical or sexual abuse. Persons providing more general services such as administration, residential accommodation, domestic or catering services would not be considered to come within the remit of section 6 of the Act.

**Is there a Link Between the Criminal Justice (Withholding of Information…) Act 2012 and the Children First Bill?**

The Government is bringing these two separate and distinct measures in recognition of the very separate and distinct roles of the Garda Síochána and the HSE with regard to the protection of children and vulnerable persons. Only the Gardaí can investigate a criminal offence against a child or vulnerable person. It is the role of the HSE to provide the necessary supports and monitoring of children at risk. This Act addresses the role of the Garda Síochána. It requires that any person who has evidence that a person has committed a serious offence against a child or vulnerable person must provide the Gardaí with that information so that the Gardaí can investigate that alleged crime. The Children First Bill will address the role of the HSE. It will require that relevant persons in a position to assess children at risk of abuse must provide the HSE with the information necessary to monitor and provide supports to a child who may have been abused. Any criminal investigation will be conducted in a parallel investigation by the Gardaí.

**How Does an Organisation Apply to be Prescribed?**

An organisation can apply to be prescribed by completing the attached application and sending it to

Mr. David Brennan

Criminal Law Division

Department of Justice & Equality

Montague House

Montague Street

Dublin

**Criminal Justice (Withholding of information on offences against children or vulnerable persons.)**

**Application for Prescribed Organisations**

**& Prescribed Persons**

**Part A**

**Organisation Seeking to be Prescribed**

**(in accordance with section 5 of the Act)**

1. Name & Address of the Organisation :
2. Name of person making the application on behalf of the organisation:
3. Role of person making the application within the organisation:
4. Legal status of the organisation:
5. Nature and type of services which the organisation provides to children and/or vulnerable persons.
6. Details of treatment, therapy, counselling, care or other services that the organisation provides to children or vulnerable persons who have suffered injury or harm as a result of physical or sexual abuse. Please provide a summary statement of the numbers of persons availing of such services over the past three calendar years (2009, 2010, 2011).
7. Please include a copy of the organisation’s code of practice for staff providing such services. This should include any protocols to take account of the provisions of the Act.

**Part B**

**Persons that the Organisation is seeking to have prescribed:**

**(in accordance with section 6 of the Act)**

1. Categories or classes of persons which the organisation wishes to have prescribed for the purpose of the Act. This should include a brief statement of the type of services which these persons provide to children/vulnerable persons who have suffered injury or harm as a result of physical or sexual abuse:
2. Expertise and qualifications (if any, or however varied) of the persons which the organisation wishes to have prescribed: Any details of accreditation or certification held by some or all persons should be included.
3. Arrangements that the organisation has in place for training and development of the persons which the organisation wishes to have prescribed:
4. Procedures and systems that the organisation has in place for assessing the quality of services provided by the relevant persons: