

**IHRC Observations on the
National Vetting Bureau
(Children and Vulnerable
Persons) Bill 2012**

October 2012

I INTRODUCTION

1. The Irish Human Rights Commission (IHRC) is Ireland's National Human Rights Institution, established by the Irish Government pursuant to the Human Rights Commission Acts 2000 and 2001 and functioning in accordance with the United Nations Paris Principles. The IHRC has a statutory remit to promote and protect the human rights of all persons in the State. One of the functions of the IHRC is to examine legislative proposals and to report its views on the implications of such proposals for human rights, having regard to the Constitution and international human rights conventions to which Ireland is a party.¹ The IHRC is also mandated to make recommendations to the Government as it deems appropriate in relation to the measures which the IHRC considers should be taken to strengthen, protect and promote human rights in the State.²

2. The IHRC welcomes the opportunity to make a submission to the Minister for Justice, Equality and Defence ("the Minister") in relation to the National Vetting Bureau (Children and Vulnerable Persons) Bill 2012, which seeks to introduce a national scheme for the vetting of prospective employees or persons interacting with children in certain areas. The IHRC recognises the importance of a strong system for ensuring the protection of children and vulnerable adults. The IHRC notes that the Bill seeks to address the lack of a statutory framework governing the current administrative system of Garda Vetting. The IHRC therefore welcomes the initiative to introduce this legislation, and provides the present Observations to ensure its compliance with human rights standards.

3. The IHRC has previously submitted Observations to the Minister on the Heads of the National Vetting Bureau Bill 2011.³ Following the publication of the full text of the National Vetting Bureau (Children and Vulnerable Persons) Bill 2012 ("the Bill"), the IHRC is pleased to note that the majority of the recommendations presented in our previous observations have been accepted by the Minister and that the new Bill largely incorporates the suggested human rights protections. The IHRC sets out in the present observations its recommendations on how the Minister might seek to further ensure the Bill adheres to national and international human rights standards. Central to the Observations of the IHRC on the Bill is its view that legislation on 'spent convictions' should be introduced by the Government in tandem with the Bill. The IHRC has, on two occasions, issued observations on proposed spent convictions legislation.⁴ The IHRC views the issues of employment vetting and 'spent convictions' as being strongly linked in the context of the human rights standards at issue.

4. The IHRC is aware that the question of the use of so-called 'soft' information in relation to the possible endangerment of children or vulnerable adults is a difficult area, which has been the subject of considerable debate, in particular as regards

¹ See sections 8(a) and 8(b) of the Human Rights Commission Act 2000.

² Section 8(d) of the Human Rights Commission Act 2000.

³ IHRC Observations on Heads of Vetting Bill 2011, September 2011.

⁴ IHRC Observations on the Spent Convictions Bill 2007, April 2009; IHRC Observations on the Criminal Justice (Spent Convictions) Bill 2012, June 2012.

whether the use of such information requires a constitutional amendment. The IHRC recalls that the *Report of the Special Rapporteur on Child Protection* submitted to the Oireachtas in November 2007, examined the constitutional implications of vetting in the context of a child protection system. In particular, the report considered the implications for the rights to equality, privacy, a good name and to earn a livelihood of the person subject to vetting. The report noted that vetting legislation was required as a matter of some urgency, and advocated both a constitutional referendum to permit the use of soft information in vetting, and the development of a clear, concise, limited legislative framework which would be subject to procedural safeguards and proportionality.⁵ The IHRC understands that with the introduction of this present legislation, the State has chosen not to undertake a constitutional amendment, but rather to pursue the legislative option, in which case the current constitutional rights of a vetting subject need to be considered.

II. NATIONAL AND INTERNATIONAL STANDARDS

5. The IHRC is fully cognisant of the important role that vetting plays in ensuring the protection for children and vulnerable adults. It recalls in this regard that under human rights standards, States will be held responsible if they fail to take measures designed to prevent abuse of individuals and particularly children.⁶ While the State's duty to protect requires it to ensure that sufficient safeguards are in place to protect children and vulnerable adults, human rights standards also require that the State protects the rights of individuals subject to a vetting procedure.

6. In order to ensure State compliance with the European Convention on Human Rights (ECHR), the proposed legislation must thus be informed by Article 8 of that Convention - the right to respect for private and family life - and it should seek to balance robust measures necessary to prevent abuse with fair procedures to allow individuals to correct inaccurate information made concerning them and to prevent any unwarranted intrusion into the person's private life. In this regard, the IHRC reiterates its previous **recommendation** that a number of overarching principles inform the drafting of the legislation and be reflected in its normative values as follows:

- a) Information, although already in the public domain, can fall within the scope of Article 8 (private life) where it is systematically collected and stored by State authorities.⁷
- b) In order to meet the requirements of Article 8 (1) that interferences with one's private life be in accordance with law, the storage of information by

⁵ The use and sharing of soft information was included in the wording of the proposed constitutional amendment contained in the Twenty-Eighth Amendment to the Constitution Bill 2007. The proposed draft Article 42A stated that, "*Provision may be made by law for the collection and exchange of information relating to the endangerment, sexual exploitation or sexual abuse, or risk thereof, of children, or other persons of such a class or classes as may be prescribed by law*".

⁶ See for instance *A v The United Kingdom*, [1998] 27 EHRR 611

⁷ *Rotaru v Romania* (App.28341/95), Judgment of 4 May 2000.

State authorities should be established under primary legislation that is sufficiently clear and precise as to its ambit.⁸

- c) The retention of personal data is permitted under Article 8(2) for, *inter alia*, the prevention of crime, the protection of health and for the protection of the rights and freedoms of others.⁹ However, the compatibility of the proposed vetting scheme, which necessarily involves not only the storage of personal information but also its disclosure to third parties, with the protections of Article 8 may be called into question if it cannot be shown to be proportionate. In order to meet this requirement, the decision-making process proposed under the vetting scheme regarding disclosures by the National Vetting Bureau should incorporate a proportionality assessment on a case-by-case basis. Thus, a case-by-case assessment of the appropriate balance between the pressing social need to protect children and vulnerable adults and the individual's right to respect for private life should be undertaken.¹⁰
- d) On its establishment, the National Vetting Bureau will be an "organ of the State" for the purposes of section 3 of the European Convention on Human Rights Act 2003 - which creates a statutory duty on such bodies to perform their functions in a manner compatible with the State's obligations under the ECHR.

7. In relation to "specified information" as defined in the Bill, the IHRC considers that the reality of the system established under this legislation is that a finding akin to 'guilt' in relation to a person (that is, an assessment resulting in a disclosure that a person may pose a risk to children or vulnerable adults) may be the result of the vetting process. The vetting procedure is not undertaken however, through a court of law, although it is noted that there is provision for an independent appeal. In these circumstances it is vital that full procedural and administrative safeguards are in place throughout the entire vetting process. This is particularly important given the impact that a disclosure by the Bureau, that a person is unfit to work with children or vulnerable adults, may have on a person's life. The IHRC welcomes the further safeguards and the explicit recognition of the rights of the person subject to the vetting procedure now being introduced in the Bill. However the IHRC considers that there is still the possibility that fair procedures are not fully protected in the Bill, and this is addressed under section IV (D) below.

⁸ *Leander v Sweden* (1987) 9 EHRR 433.

⁹ The requirements of a vetting system for employment purposes must be considered to be wholly different from the recording of criminal convictions, prosecutions and so on, for purposes relating to the core functions of An Garda Síochána.

¹⁰ *See, S and Marper v United Kingdom* (App. 30562/04), Judgment of 4 December 2008, (2009) 48 EHRR 1169.

III. CONSIDERATION IN LIGHT OF THE SPENT CONVICTIONS BILL 2012

8. The IHRC recalls its Observations on the Spent Convictions Bill 2012.¹¹ As noted above, the IHRC views the issues of employment vetting and 'spent convictions' as being inter-linked. This is because under the current Bill, when a person is undertaking education/ training for an employment or is being vetted for an employment with children or vulnerable persons, all previous minor convictions may be disclosed to the would-be educator or employer which would otherwise not be disclosed under Spent Convictions legislation. This is so where the previous minor offence did not relate to the training or employment being applied for (e.g. it could be a Road Traffic or larceny offence). The IHRC particularly notes that in pursuing the objectives of protecting the peace, order and security of the State and ensuring the protection of vulnerable persons, the State must in its laws, as far as practicable, continue to protect the constitutional rights of the individual and thus act proportionately. In this regard, legislation must not be overly broad in its pursuit of a legitimate purpose.¹²

9. Once the procedure envisaged under the Bill is established, it appears that information regarding all convictions, whether 'spent' or not, will be obtainable by means of the vetting process by a range of State agencies and authorities identified in the Bill. As the present Bill does not contain a provision separating 'spent' convictions from other convictions, it therefore has the potential effect of negating some of the impact of the proposed Spent Convictions legislation.

10. The IHRC recalls the Council of Europe Recommendation on the Criminal Records and the Rehabilitation of Convicted Persons which considered that:

a crime policy aimed at crime prevention and the social integration of offenders should be pursued in member States[...]and **considering that any other use of criminal records (other than assisting the judiciary to dispose of individual cases) may jeopardise the convicted person's chances of social integration, and should therefore be restricted to the utmost**, the committee of Members [...]recommends that the governments of Member States review their legislation and their practices relating to criminal records.¹³

In adopting the Recommendation, the Committee of Ministers considered that the use of criminal records may jeopardise the convicted person's chances of social reintegration and should therefore be heavily circumscribed. The indeterminate

¹¹ IHRC Observations on the Spent Convictions Bill 2012, June 2012, pp. 4-7.

¹² *Cox v Ireland* (1992) 2 IR 563, per Finlay CJ.

¹³ Recommendation No. R (84) 10 Para 2. (emphasis added). A Research Study by the UK Home Office in 2001 found that two thirds of prisoners in the UK were serving sentences of less than one year and, of this number, over a half of those persons were reconvicted within 2 years. '*Building Bridges to Employment for Offenders, Home Office Research Study*', 2001 p.226. This indicates that the likelihood of recidivism increases with each sentence served. It is also significant that the same findings point to employment as the single greatest factor in reducing re-offending.

period for which convictions may be disclosed under the present Bill must therefore be considered in light of the proposed Spent Convictions legislation.

Data Protection Issues

11. The IHRC notes that the Council of Europe Committee of Ministers Recommendation Regulating the Use of Personal Data, in the Section on policing, provides, inter alia:

Principle 7 – Length of Storage and Updating of Data

7.1 Measures should be taken so that personal data for police purposes are deleted if they are no longer necessary for the purposes for which they were stored. For this purpose, consideration shall in particular be given to the following criteria: the need to retain data in the light of the conclusion of an inquiry into a particular case; a final judicial decision, in particular an acquittal; rehabilitation; **spent convictions**; amnesties; the age of the data subject, particular categories of data.¹⁴

12. The IHRC welcomes the introduction in the new Bill of further safeguards surrounding the disclosure of specified information, which will be discussed in further detail in Section IV (D) below. However, the IHRC still considers that the impact of the availability of data by means of the vetting procedure of a person's conviction, if that conviction is deemed 'spent' under spent convictions legislation, may negate the benefit of that legislation. Rather than the confusion of amending the current Bill at a later date with the introduction of the Spent Convictions legislation, it would be preferable if the current Bill could specify that convictions deemed spent by a procedure prescribed by law shall not be disclosed by the National Vetting Bureau (Children and Vulnerable Persons) Database System. This would mean that the databases prescribed in the legislation could be designed in such a manner as to allow certain minor convictions data to be excluded from the databases.

Recommendations

13. The IHRC **recommends** that the operation in practice of the two pieces of legislation (Spent Convictions Bill and Vetting Bill) and their impact on individuals subject to their provisions must be considered in tandem. Furthermore, their inter-relationship should be clearly specified in each piece of legislation. There is a concern that while a conviction may be deemed 'spent' for the purposes of the Spent Convictions Bill, its existence will still be available to a wide range of potential education institutions and employers by way of the operation of the National Vetting Bureau Bill. This may, in practice, weaken the operation and impact of the Spent Convictions legislation, and result in discrimination in practice against persons convicted of minor offences – particularly those not seeking to work directly with children or persons in vulnerable situations.¹⁵

¹⁴ Recommendation No. R (87) 15. Emphasis added.

¹⁵ IHRC Observations on the Spent Convictions Bill 2012, June 2012.

14. Accordingly the IHRC **recommends** that the current Bill specify that convictions deemed spent by a procedure prescribed by law shall not be disclosed by the National Vetting Bureau (Children and Vulnerable Persons) Database System. The IHRC also recommends that further safeguards on the storage, transmission and use of spent conviction data be put in place, and that a review mechanism be provided to ensure that each database is periodically reviewed to ensure that data is not being stored for an excessive length of time in light of the purpose for which it was gathered.

IV ANALYSIS AND RECOMMENDATIONS ON SPECIFIC PROVISIONS OF THE LEGISLATION

A. Object and Purpose of the Bill

15. The IHRC welcomes the inclusion of a long title and a further explanation of the purpose of the Bill in the Explanatory Memorandum accompanying the Bill. A Long Title was omitted from the previous Heads of Bill and as the IHRC noted in its previous Observations, this lack of precision as to the object and purpose of the Bill was a significant deficiency which impacted across many of the provisions in the proposed Heads of Bill. The present Bill sets out the objects and the purpose of the Bill in its full title as:

An Act to make provision for the protection of children and vulnerable persons and, for that purpose, to provide for the establishment and maintenance of a National Vetting Bureau (Children and Vulnerable Persons) Database system; to provide for the establishment of procedures that are to apply in respect of persons who wish to undertake certain work or activities relating to children or vulnerable persons or to provide certain services to children or vulnerable persons; to amend the Garda Síochána Act 2005; to amend the change of name of the Garda Central Vetting Unit to the National Vetting Bureau; and to provide for related matters.¹⁶

16. The Explanatory Memorandum to the Bill states that: “The purpose of this Bill is to provide a legislative basis for the vetting of persons who seek positions of employment relating to children or vulnerable persons. Currently persons applying for such positions are vetted on a non-statutory basis. This Bill will make this vetting mandatory.”¹⁷ The Bill goes further in that persons interacting with children such as persons involved in “coaching, mentoring, counselling, teaching or training of the children or vulnerable persons” are also to be vetted. Although referred to in Part 1 of the Explanatory Memorandum, this should also be referred to under the purpose of the Bill.

¹⁶ National Vetting Bureau (Children and Vulnerable Persons) Bill 2012, p5.

¹⁷ National Vetting Bureau (Children and Vulnerable Persons) Bill 2012, Explanatory Memorandum, ‘Purpose of the Bill’.

18. The IHRC welcomes that its recommendation to remove the reference to State security from the Heads of Bill has been accepted by the Minister. The present Bill contains no such reference. The reference to State security was not relevant to the object and purpose of protecting children and vulnerable adults and its inclusion could potentially have risked confusion in the purpose of the Bill.

B. Part 2 of the Bill: National Vetting Bureau (Children and Vulnerable Persons) Database System

22. The broad range of records made available through the vetting process under this Bill points to a serious *lacuna* in the existing legal framework in this area as is evident under Section 7(2)(b) which permits the “making of such enquiries within the Garda Síochána as the Bureau deems necessary to establish whether there are any criminal records or specified information relating to persons who are the subject of applications for vetting”. As previously highlighted by the IHRC in its Observations on the Heads of Bill¹⁸, no clear guidance is provided under existing law concerning the duration for which criminal record information is retained and subject to disclosure. The IHRC **recommends** that a clause be introduced to require the Bureau to specify the type of information it seeks; to specify that the information sought must be directly relevant to the employment or activity being applied for and to further require An Garda Síochána to undertake any such specified inquiries in a manner which is proportionate and precise.

C. Part 3 of the Bill: Procedures for Vetting Disclosures

Information on Previous Convictions and Pending Prosecutions

23. The IHRC considers that difficulties could arise in relation to the indiscriminate disclosure of previous criminal convictions and pending prosecutions. The IHRC noted in detail the reasons for this concern in the Observations on the Heads of National Vetting Bureau Bill 2011 and also in its Observations on the Spent Convictions Bill 2012. These concerns are highlighted in Section III above. This difficulty regarding disclosure of previous criminal convictions arises in part as a result of the continued failure to enact legislation in relation to the treatment of previous “spent” convictions, while the disclosure of pending prosecutions raises a concern regarding the presumption of innocence, and foreseeability.¹⁹

24. Pursuant to section 14(4) of the present Bill, a vetting disclosure **shall** (a) include particulars of the criminal record (if any) relating to the person and a statement of the specified information (if any) relating to the person which the Chief Bureau Officer has determined should be disclosed or (b) state that there is no criminal record or specified information, in relation to the person.

¹⁸ Heads 16, 17, 18 of Heads of the National Vetting Bureau Bill 2011.

¹⁹ In relation to the foreseeability of disclosure by police authorities see *Mikolajova v Slovakia*, European Court of Human Rights, Judgment 18 January 2011.

25. Under section 15 of the Bill, specified information which may contain allegations and not necessarily established facts, may only be disclosed if the Chief Bureau Officer is satisfied that there exists a *bona fide* concern that the person may harm children and/or vulnerable persons. The literal interpretation of section 14(4) when read with section 2 however, suggests that the vetting disclosure will contain any criminal record (**conviction and prosecutions pending**) regardless of its relevance or connection with potential harm to children and vulnerable persons. In effect section 14, subject to the provisions of section 15, does not leave any discretion in relation to the content of a vetting disclosure, and therefore manifestly lacks a requirement to assess the proportionality of the disclosure before making it. In particular it is noted that all persons who engage in relevant work or activities will be subject to periodic vetting, by virtue of section 20 of the Bill, and therefore any successful prosecution against the person, if relevant, will come to light in due course in any event. On the other hand if a prosecution is unsuccessful, and does not come within the category of specific information, then under the current wording in the Bill, the prosecution will have been disclosed unnecessarily to the employer and the person's right to privacy and to earn a livelihood will have been disproportionately interfered with.

26. The IHRC reiterates that the Bill cannot be considered in isolation. The provisions contained therein referring to the disclosure of criminal records are too closely linked with the Criminal Justice (Spent Convictions) Bill for this to be practicable. The IHRC **recommends** that data concerning a pending prosecution would be dealt with under the rubric of specified information. It is also recommended that there be included in the legislation an easily accessible mechanism by which persons can apply to exclude the disclosure of convictions, on the basis that such a disclosure would constitute a breach of their fundamental rights.²⁰ In addition there should be a provision that a conviction which is 'deemed' spent, is excluded from disclosure for the purposes of vetting, unless the provisions in relation to specified information apply.

27. It is noted that in relation to data protection concerns, section 16 of the Bill outlines and delimits the use that can be made of vetting disclosures by relevant organisations. Section 16(3) provides that a vetting disclosure may only be used in accordance with the Act. Section 16(4) states that a person who contravenes subsection (2) of the section shall be guilty of an offence. In light of the wording of subsection (2) it is assumed that this is a typographical error, and it is intended to refer to subsection (3), and it is **recommended** that this be amended.

Reporting and Disclosure of Specified Information

28. The IHRC notes with approval that the provisions in relation to reporting and disclosure of specified information now contain significant safeguards, to deal with issues concerning fair procedures and the reliability of the information placed on the relevant database.

²⁰ IHRC Observations of the Spent Convictions Bill 2007, April 2009.

29. The IHRC still has some concerns regarding the procedure in relation to dealing with specified information. In this regard there is provision under the Bill for a number of statutory organisations to report the outcome of an inquiry or investigation conducted by the organisation.²¹ The IHRC has concerns that there is potential for the inquiry or investigation procedure followed by each organisation to vary, therefore creating a lack of uniformity between each organisation as to the reporting of specified information. In this regard the IHRC **recommends** that provision be made in the legislation to empower the Minister, to make detailed regulations in relation to the practice and procedure to be adopted by each scheduled organisation in relation to the conduct of investigations and/or inquiries, (regulatory processes being excluded), which may lead to a notification being made to the Bureau under section 19.

30. The IHRC welcomes the detailed safeguards included in section 15 in relation to the disclosure of specified information. The IHRC notes however that a very limited period of 14 days is allowed to appeal a decision to disclose such information by the Chief Bureau Officer. In particular the IHRC is concerned that although the Appeals Officer may allow a longer period for making such an appeal, this would not prevent the disclosure being made. The IHRC **recommends** that in light of the gravity of such a disclosure and the damage that unjustified disclosure may cause, a decision by an Appeals Officer to allow an appeal to proceed after the statutory time period has elapsed should operate as an automatic stay on making the disclosure. Further, the IHRC considers that in order to ensure that the Appeals mechanism is as independent as possible; both in substance and perception, section 17 should be amended to make provision for Appeals Officers to be appointed, re-appointed, and removed from Office, by a process independent of the Minister. In addition it is further recommended that section 18 (4) be amended to provide for the procedure to be followed by Appeals Officers to be set out in the primary legislation rather than secondary legislation.

Education

31. The IHRC notes that currently up to 230 higher level courses within the 2012 CAO process require Garda Vetting.²² These courses in medicine, health, social work and education are stated by the CAO to “require students to undertake placements that will bring them into contact with children or vulnerable adults and in which they will assume positions of trust.”²³ The CAO website states that:

²¹ The provision also refers to the outcome of a regulatory procedure; however, as regulatory procedures concern the discharge of statutory functions, already regulated by law, and the implied requirement to follow fair procedures, such procedures do not engage the same concerns as arise in relation to internal investigations and inquiries.

²² See, Observations on the Criminal Justice (Spent Convictions) Bill 2012, IHRC, June 2012

²³ CAO website, accessed 4th September 2012.

To ensure the protection of the public, and justify public trust and confidence, the HEIs [Higher Education Institutions] are committed to ensuring that only suitable candidates are allowed to undertake these programmes.

The HEIs use the Garda Central Vetting Unit (GCVU) vetting service to assess the suitability of such applicants, and in some cases, may also require applicants to provide an enhanced disclosure by the completion of an affidavit. Therefore, offers on the following programmes are conditional and could subsequently be withdrawn if applicants do not meet the Garda Vetting requirements of the HEI.²⁴

32. The IHRC notes that courses that require vetting are in a very broad range of areas including Industrial Design, Pharmacy, Irish Music and Dance, and Arts with Human Rights. The IHRC has serious concerns regarding the proportionality and pursuit of a legitimate aim in restricting a person's ability to undertake a college course for the reason that it is in a field that might potentially bring them into contact with a child or a person in a vulnerable situation if they were to subsequently obtain a job in that area.

33. The IHRC notes that in response to a question on the matter in the Dáil, the Minister stated that:

Certain courses offered by the Higher Education Institutions through the Central Applications Office (CAO) require students to undertake placements that bring them into contact with children or vulnerable adults. Before a student can undertake such a placement, he or she must be vetted by the Garda Central Vetting Unit.²⁵

34. The IHRC notes that sections 12 and 13 of the Bill obliges a relevant organisation which provides any course of education or training which involves placements that require the person to participate in relevant work and activities, to first receive a vetting disclosure from the Bureau in respect of that person. While the IHRC understands the necessity for such a provision, it considers that this section of the Bill is not tightly enough drawn in two respects. First, where a course involves the discretionary participation in such placements, then it should be clear that a student or trainee who does not wish to participate in such a placement will not be required to undergo the vetting procedure, and there should be no blanket approach to vetting students or trainees on such courses. Secondly, it should be mandatory for such an education provider, when making an offer of a course of education or training to state precisely the circumstances in which a prospective student or trainee will be subjected to the vetting procedure. This would allow the person to make an informed choice before commencing on a course of education or training as to whether they can complete it in circumstances where they have a previous conviction or there is "specified information" recorded against them. The IHRC **recommends** that the draft legislation be amended to reflect these two issues.

²⁴ CAO website, accessed 4th September 2012.

²⁵ Dáil Written Answers, Reply by Minister Alan Shatter TD, Minister for Justice, Equality and Defence, 1st December 2011.

35. As noted previously in relation to the interplay between the proposed Spent Convictions legislation and the present Bill, the former may be of no assistance to persons applying for a range of education or training courses as it appears convictions will never be 'spent' for the purposes of Garda Vetting or the National Vetting Bureau under the present Bill. While the Bill is silent as to how a disclosure of a previous conviction should be dealt with by an education provider, it may reasonably be assumed that it has the potential for negative consequences for the person concerned, and may result in a restriction on access to education. Such restrictions, however they arise, may fall foul of the requirements on the State that interferences with the right to private and family life be proportionate and in pursuit of a legitimate aim.

Re-Vetting

36. The IHRC notes the requirements of section 20 in relation to re-vetting, and understands the desirability of ensuring that the vetting process would not be a once off precaution, and would happen on a rolling basis. However, the IHRC also acknowledges that the vetting process is, on each occasion, an interference with the individual's right to privacy, albeit justified in the public interest. In this regard the IHRC **recommends** that in making regulations for periodic vetting the Minister would be required to have regard to the principle of proportionality.

D. General Comments

37. The IHRC welcomes the fact that its recommendations regarding the disclosure of information and data protection issues were taken on board in the drafting of the new Bill. As noted in the previous Observations, in light of the seriousness of a determination made under the proposed legislation that a person may cause harm to children or vulnerable adults and the impact that public disclosure of such a finding may have on a person's private and family life, the prohibition of disclosure of information relating to vetting should be clearly highlighted in the Bill.²⁶ The IHRC is pleased to note that section 16 of the new Bill prohibits the storage or onward transmission of information contained in a vetting disclosure otherwise than in accordance with the Act. It also lays down the penalty for contravention of that provision.

38. The IHRC had previously recommended that access to, management of and utilisation of the information in the Database be clearly set out in legislation.²⁷ The IHRC welcomes the fact that Part 2 and 3 of the present Bill clearly set out the establishment, functions and management of the National Vetting Bureau Database, as well as the procedures for vetting disclosures.

39. The IHRC noted as important, that with the introduction of new powers, the National Vetting Bureau should ensure that the relevant international human rights standards be incorporated into its working procedures and practices. The IHRC

²⁶ IHRC, Observations on the Heads of the National Vetting Bureau Bill 2011, Sept 2011, p. 17.

²⁷ IHRC, Observations on the Heads of the National Vetting Bureau Bill 2011, Sept 2011, p. 12.

recommended that relevant standards should be explicitly and clearly referred to in the legislation to assist with this process.²⁸ Unfortunately, the Bill does not explicitly refer to international human rights standards. As such, the IHRC recommends that explicit recognition of the need to uphold the fundamental rights of the vetting subject by the newly established National Vetting Bureau be included in all relevant sections of the present Bill.

²⁸ IHRC, Observations on the Heads of the National Vetting Bureau Bill 2011, Sept 2011, p. 12.