

IRLANDA

PROTECCION DE LA VIDA DURANTE EL EMBARAZO (LEY 35/2013, de 30 de julio)

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El pasado 30 de julio el Parlamento Irlandés aprobó la controvertida ley del aborto que tanto debate social ha suscitado en los últimos meses, bajo la rúbrica de “Ley de protección de la vida durante el embarazo”, título de por sí ya significativo de la orientación de esta medida legal que responde, además, al planteamiento tradicional de esta realidad en un país mayoritariamente católico desde su fundación en 1921.

Se trata de la primera Ley del aborto para Irlanda que legaliza la interrupción del embarazo cuando la vida de la madre corra peligro, si bien, la promulgación de esta norma pretende conciliar sus disposiciones con el contenido de la Constitución que defiende tanto el derecho a la vida de la madre como el derecho a la vida del no nacido.

Durante décadas, el aborto ha sido considerado ilegal en Irlanda, salvo en aquellos supuestos en que estaba en peligro la vida de la madre. En este sentido, la Constitución Irlandesa de forma genérica e imprecisa reconocía que “(...) el feto no nacido tiene el mismo derecho a la vida que la madre”, y “(...) el aborto sólo se considera un recurso viable cuando está en peligro la vida de ésta (...)”¹. Además, estas previsiones constitucionales estaban sujetas a interpretación por parte de los facultativos encargados de llevar a cabo la interrupción del embarazo en estos supuestos, quienes, en unas ocasiones para evitar posibles consecuencias legales y en otras, por

¹ Vid., art. 40.1.3 de la Constitución de Irlanda, aprobada el 29 de diciembre de 1937.

convicciones religiosas (no olvidemos que se trata de una población, la irlandesa, mayoritariamente católica) se negaban a practicar este tipo de intervenciones.

La redacción de esta ley permite la interrupción voluntaria del embarazo cuando la vida de la madre corra un peligro “real y sustancial”, lo que incluye también la amenaza de suicidio. No obstante, desde el punto de vista de derecho comparado, si tenemos en cuenta la normativa sobre el aborto con que cuentan los países del entorno de Irlanda, se trata de una de las normativas más restrictivas de Europa, pues prohíbe, por ejemplo, la interrupción del embarazo en caso de agresión sexual o cuando el feto sufre graves anomalías, supuestos comúnmente admitidos en los ordenamientos jurídicos de los países de la Unión Europea. No obstante, la norma sí ofrece claridad y certeza sobre las circunstancias específicas bajo las cuales está permitido practicar un aborto cuando la vida de la madre corre un peligro “real y sustancial”, lo que incluye también la amenaza de suicidio.

El texto propone que las interrupciones del embarazo en “casos no considerados de urgencia se practicarán en unidades de ginecología del servicio público de salud, una vez que dos facultativos certifiquen que existe un “riesgo sustancial y real” para la vida de la madre. Si se trata de una emergencia, un solo facultativo podrá decidir si es necesario practicar el aborto para salvar la vida de la embarazada”.

En cualquiera de los casos contemplados por la Ley, los facultativos irlandeses podrán negarse a practicar el aborto alegando el derecho de “objeción de conciencia”, si bien, los facultativos que ejerzan este derecho deberán procurar a la mujer embarazada la atención necesaria para hacer uso del procedimiento médico previsto en la norma, de forma análoga a lo que sucede en la mayor parte de los ordenamientos jurídicos europeos. En otras palabras, el centro hospitalario seguirá estando obligado a proporcionar la prestación sanitaria en que consiste la interrupción del embarazo en los supuestos y condiciones establecidos por esta Ley.

Sin embargo, es la inclusión de la amenaza de suicidio como motivo aducido para abortar la cláusula que más controversia ha suscitado. A la primera redacción de la Ley se propusieron enmiendas por parte del sector más conservador en relación con el número de

facultativos que debían emitir dictamen en este supuesto, llegándose a proponer un comité integrado por hasta seis expertos para evaluar la veracidad de la situación de la madre. Un significativo grupo de diputados conservadores necesitaban tales garantías porque, a su juicio, la cuestión del suicidio podría abrir la puerta a lo que denominaban “abortos a la carta” mientras que los laboristas veían este cuadro médico como un instrumento casi “inquisitorial”. Al final se ha optado por un comité de tres expertos, compuestos por dos psiquiatras y un obstetra, encargados de evaluar el estado de salud físico y mental de la madre a través de su historial clínico y sucesivas entrevistas. Si los expertos aprueban la solicitud de la mujer embarazada, será ésta la que decida seguir adelante con la interrupción de su embarazo, pero si ésta es denegada, será ella la única que puede apelar la decisión ante otra instancia médica compuesta por otros tres especialistas.

La aprobación de esta ley ha supuesto un punto de inflexión en el tratamiento del aborto en Irlanda. El espíritu reformador en esta materia responde a la conmoción social que tuvo lugar a raíz de la muerte el pasado mes de octubre de una mujer india en un hospital donde los médicos se negaron a interrumpir su embarazo a pesar de la grave enfermedad que padecía, tras alegar que “la ley impedía hacerlo mientras latiera el corazón de feto” pese a que la salud de la mujer embarazada se iba deteriorando. La conmoción causada por este caso, ha obligado al ejecutivo a legislar, a pesar de que dos sentencias judiciales ya habían presionado a anteriores gobiernos para que actuaran, si bien, ninguno de ellos quiso tocar un asunto tan delicado en un país profundamente católico.

En definitiva, esta Ley denominada de Protección de la vida durante el embarazo trata de acabar con el vacío legal creado desde que el Tribunal Supremo de Dublín ampliase en 1992 las situaciones en las que se puede interrumpir un embarazo si la vida de la madre corre peligro para incluir, entre otras, la amenaza de suicidio. Hace ya dos años la Gran Sala del Tribunal Europeo de Derechos Humanos instó a Irlanda a legislar, tras condenar a sus autoridades a indemnizar a una mujer gravemente enferma a la que no se permitió abortar aunque su vida corría peligro.

A pesar de las previsiones contenidas en esta norma, sigue siendo una de las más restrictivas de Europa pues continúa criminalizando severamente la práctica de estas intervenciones realizadas contraviniendo la ley y, en este sentido, propone penas de cárcel de hasta catorce años tanto para el profesional médico como para la madre que sigan un procedimiento antirreglamentario.

OCULTACIÓN DE INFORMACIÓN SOBRE DELITOS CONTRAMENORES Y PERSONAS VULNERABLES

(LEY 24/2012, de 18 de julio)

En el marco de la Unión Europea se ha asumido el compromiso de otorgar protección a las víctimas de ciertos delitos mediante la promulgación de una serie de normas. En este sentido, dentro de las coordinadas del Programa de Estocolmo, adoptado por el Consejo de Europa en diciembre de 2009², en el que se propugna una Europa abierta y segura que sirva y proteja al ciudadano, se ha solicitado a la Comisión y a los Estados miembros que analicen cómo mejorar su legislación y que pongan en marcha medidas prácticas de apoyo para la protección de las víctimas de estos delitos.

En este orden de cosas, la Directiva 2011/99/UE del Parlamento Europeo y del Consejo, de diciembre de 2011³, establece un mecanismo para el reconocimiento mutuo entre los Estados miembros de las medidas de protección adoptadas en este sentido. Pero interesa especialmente a nuestro estudio dos Directivas⁴ que específicamente abordan las cuestiones que son objeto de la Ley irlandesa que nos ocupa en esta sede y que tratan de las necesidades específicas de las categorías particulares de víctimas de la trata de seres humanos, los abusos sexuales, la explotación sexual y la pornografía infantil.

En aplicación de estas normas, se ordena a los Estados miembros que en sus respectivas legislaciones se haga primar el interés superior del menor, de acuerdo con lo establecido en la Carta de Derechos Fundamentales de la Unión Europea y la Convención de las Naciones Unidas sobre Derechos del Niño adoptada en 1989, de manera que las víctimas menores de edad deben ser consideradas y tratadas como titulares plenos de los derechos que les reconoce la legislación de cada estado miembro. De la misma forma, se invita a los Estados a adoptar las medidas precisas para garantizar que las

² DOL 82 de 22.3.2001, p. 1.

³ DO L 338 de 21.12.2011, p. 2.

⁴ Vid., La Directiva 2011/36/UE del Parlamento Europeo y del Consejo, de 5 de abril de 2011, relativa a la prevención y lucha contra la trata de seres humanos y la protección de las víctimas. DO L 101 de 15.4.2011, p. 1. Y la Directiva 2011/93/UE del Parlamento Europeo y del Consejo, de 13 de diciembre de 2011, relativa a la lucha contra los abusos sexuales, la explotación sexual de menores y la pornografía infantil. DC L 335 de 17.12.1011.

víctimas con discapacidad puedan disfrutar plenamente de sus derechos, en pie de igualdad con los demás ciudadanos de su país.

En las Directivas mencionadas, se establecen normas de carácter mínimo y se hace un llamamiento a los Estados de la Unión Europea para que a través de sus legislaciones, amplíen el contenido de los derechos reconocidos en las mismas, con la finalidad de proporcionar un nivel más elevado de protección⁵.

Precisamente en cumplimiento de esta normativa Europea, el Parlamento Irlandés ha aprobado en julio de 2012 una Ley cuya finalidad es la adopción de una serie de medidas orientadas a reforzar la protección dispensada a los menores y a las personas especialmente vulnerables para el caso de que se produzca una ocultación de información relacionada con la comisión de delitos perpetrados contra estos colectivos y que afectan singularmente a su libertad sexual y reproductiva.

Se trata de una Ley cuyas disposiciones van a afectar a más de una decena de normas relacionadas con las infracciones contempladas en la misma, normas cuyos preceptos van a verse reformados con motivo de la entrada en vigor de esta Ley. Entre las normas que se van a ver afectadas, merece especial mención la Ley 2010, N° 24, de Unión Civil y sobre derechos y obligaciones de los convivientes o la Ley 2012, N° 11, sobre mutilación genital femenina⁶.

El ámbito de aplicación de la Ley afecta a menores, es decir, a personas que no hayan alcanzado la edad de dieciocho años, así como a personas vulnerables, entendiéndose por tales aquéllas que superando esta edad, sufran un trastorno mental, ya sea éste resultado de una enfermedad mental o consecuencia de una demencia, o bien padezcan una discapacidad intelectual. Pero tiene que tratarse de una alteración

⁵ Vid., Directiva 2012/29/UE del Parlamento Europeo y del Consejo, de 25 de octubre de 2012, por la que se establecen normas mínimas sobre los derechos, el apoyo y la protección de las víctimas de delitos, y por la que se sustituye la Decisión marco 2001/220/JAI del Consejo. Exposición de Motivos. Apartado 11.

⁶ Otras de las disposiciones que se van a ver afectadas son: Ley por la que se sanciona el incesto (1908), Leyes que contemplan delitos sexuales (N° 20, 1993, N° 15, 2006), Ley sobre la trata de personas (N° 8, 2008), Ley sobre la trata de niños y pornografía infantil (N° 22, 1998), Ley sobre la infancia (N° 24, 2001). Ley de delitos contra el Estado (1998), Ley de profesionales de la salud (N° 27, 2005), Ley de Médicos (N° 25, 2007), Ley de enfermeras y matrona (N° 41, 2011).

mental de tal naturaleza y grado que restrinja gravemente la capacidad de la persona para protegerse a sí misma contra la explotación y el abuso, ya sea físico o sexual, efectuado por otra persona. Igualmente, esta norma será de aplicación a las personas que hallándose en idénticas circunstancias, experimenten una discapacidad física permanente o lesiones de la misma entidad.

Por lo que se refiere al primero de los colectivos objeto de protección de la Ley, los menores, las disposiciones de esta norma sancionan una serie de actos constitutivos del delito de ocultación de información relacionada con la comisión de hechos delictivos cometidos contra estas personas⁷. En este sentido, se castiga a quien conoce de la comisión de estos hechos, así como a quien pudiera colaborar en la aprehensión, enjuiciamiento o condena de la persona que los ejecuta, en el caso de que no ponga en conocimiento de la autoridad competente esta información careciendo de excusa razonable para ello. Se refiere a información que la persona adquiera, reciba o tenga conocimiento con posterioridad a la aprobación de esta Ley, aunque se trate de hechos cometidos antes de su entrada en vigor, sin perjuicio del derecho o aforamiento que pueda ser alegado en cualquier proceso en virtud del cual una norma legal permita a una persona negarse a divulgar este tipo de información.

En parecidos términos se pronuncia la Ley respecto a la información concerniente a los delitos cometidos contra las personas vulnerables⁸, si bien, la obligación impuesta de revelar esta

⁷ Los delitos cometidos contra personas menores de edad, cuya omisión de información relacionada con los mismos da lugar a los hechos constitutivos de la infracción penal prevista y penada por esta ley, son los siguientes: 1. Asesinato, 2. Homicidio involuntario, 3. Delito de detención ilegal, 4. Violación, 5. Agresión sexual, 6. Delito de incesto cometido por varones o mujeres de más de 17 años, 7. Delito de corrupción de menores, 7.- Delito de tráfico de menores con fines de explotación sexual y pornografía infantil, 8.- Delitos no fatales contra la persona, entre los que se encuentra el secuestro de menores por sus progenitores o por terceras personas, 9. Delito de mutilación genital femenina, incluida la salida del Estado a los efectos de perpetrar este delito.

⁸⁸ Los delitos cometidos contra las personas vulnerables, cuya omisión de información relacionada con los mismos da lugar a los hechos constitutivos de la infracción penal prevista y penada por esta ley, son los siguientes: 1. Detención ilegal, 2. Violación, 3. Agresión sexual, 4. Delito de incesto cometido por varones o mujeres de más de 17 años, 5. Delitos sexuales entre los que se comprende obligar a un discapacitado

información, se debe entender además de, y no en sustitución de, cualquier otra obligación que la persona tenga de poner en conocimiento de la autoridad competente los hechos constitutivos de la correspondiente infracción penal.

A partir de estas premisas, la norma delimita las personas que son susceptibles de ser enjuiciadas por la comisión de estos delitos y extiende el ámbito de parentesco con la persona afectada a todos los grados en la línea recta y al cuarto grado en la línea colateral, tanto por consanguinidad como por afinidad. También comprende no sólo al cónyuge, sino también a la pareja de hecho de conformidad con lo establecido en la Ley de Uniones Civiles y de derechos y obligaciones de los convivientes de 2010. Y en el caso de menores que se encuentren en centros de internamiento, será de aplicación la ley a las personas que detentan la patria potestad o custodia del menor.

Los facultativos encargados de atender a la víctima de los delitos a los que hace referencia la Ley, deben ser médicos colegidos, en el sentido del art. 2 de la Ley de 2007, lo mismo que las enfermeras o matronas, de conformidad con la Ley de 2011. Se exige al psicólogo que se encuentre inscrito en el registro al que se refiere la Ley de 2005 para el ejercicio de su profesión, y lo mismo sucede en el supuesto de los trabajadores sociales. En cualquier caso, los servicios prestados por estos profesionales en relación con los menores o personas vulnerables tienen que concretarse en acciones de conservación o mejora de la salud y el bienestar de las personas a quien se atiende, así como el diagnóstico, tratamiento o atención de las personas lesionadas, perjudicadas o dañadas, sin olvidar las tan importantes labores de orientación y asesoramiento en relación con problemas personales, sociales o psicológicos.

Especial atención presta la Ley a lo que denomina “organizaciones prescritas”, de manera que si una entidad se dedica a la prestación de cualquiera de los servicios mencionados a menores o a personas vulnerables que han sufrido algún tipo de lesión como consecuencia del abuso físico o sexual, pueden solicitar del Ministerio de Justicia e Igualdad el reconocimiento de la condición de organización prescrita en los términos y para los fines establecidos en

mental a ejercer la prostitución o a mantener relaciones sexuales de forma no voluntaria, 6. Delito de tráfico de personas sea a no con fines de prostitución.

la presente Ley. Para ello, la entidad deberá acreditar una serie de extremos:

- a) Naturaleza y tipo de servicios prestados por la organización que se ocupe de los menores o personas vulnerables
- b) El número de afectados a los que han sido proporcionados estos servicios
- c) Naturaleza jurídica de la entidad u organismo solicitante
- d) El método utilizado para llevar a cabo las prácticas respecto a la prestación de sus servicios y, en particular, los procedimientos y protocolos que se han observado para asegurar el cumplimiento de la presente Ley.

El reconocimiento de esta condición o, en su defecto, la desestimación de la solicitud, debe ser comunicada de forma motivada a la entidad solicitante, para que ésta pueda efectuar, en el plazo establecido a tal efecto, las alegaciones que tenga por conveniente. Obtenido el reconocimiento por parte de la entidad solicitante, ésta queda habilitada para la prestación de servicios relativos a la resolución, orientación y asesoramiento de los problemas personales, sociales o psicológicos del menor o persona especialmente vulnerable.

No obstante, la prestación de estos servicios requiere de la concurrencia de lo que la ley denomina “persona prescrita”, quien sólo podrá obtener este reconocimiento en virtud de la correspondiente solicitud de la entidad u organización para la que trabaja, que debe de tratarse, en cualquier caso, de una “organización prescrita”. Para que el profesional obtenga esta condición, la organización deberá seguir un procedimiento similar al señalado anteriormente, si bien, en este caso la solicitud deberá ir acompañada de la siguiente documentación:

- a) Naturaleza y carácter de los servicios prestados por dichas personas a menores y personas vulnerables
- b) Su cualificación y experiencia en este ámbito
- c) La acreditación o certificación con que cuentan
- d) Las medidas que la entidad ha puesto a disposición de estas personas para su formación en este campo de atención

- e) Los procedimientos y sistemas de que dispone la organización para evaluar la calidad de los servicios prestados por tales personas.

El Ministerio de Justicia e Igualdad puede denegar la solicitud si entiende que la persona propuesta por la organización prescrita para el reconocimiento de esta misma condición, no cumple con las exigencias previstas legalmente, en cuyo caso, deberá comunicar su decisión motivada a la entidad solicitante. Para dar cumplimiento a lo establecido en los artículos quinto y sexto de esta Ley respecto a las “entidades y personas prescritas”, el Ministerio de Justicia e Igualdad ha dictado un Reglamento que ha entrado en vigor en enero de 2013 por el que se aprueban tanto las entidades y organismos acreditados para prestar los servicios como las personas en quienes concurre esta misma condición⁹.

Desde el punto de vista de la responsabilidad penal, las personas declaradas culpables de la comisión de cualquiera de los delitos previstos en los artículos segundo y tercero de la presente ley podrá ser condenado, en virtud de un procedimiento sumario, en los siguientes términos: a) a una pena de multa o pena privativa de libertad no superior a doce meses, o a ambas; b) dependiendo de la gravedad de la infracción respecto de la cual la persona no dio a conocer la información de que disponía tan pronto como le fue posible, se le puede imponer una pena de prisión no superior a diez años cuando se trata de un delito que tiene prevista la pena máxima de prisión como es la cadena perpetua. Si se trata de un delito que lleva aparejada la pena privativa de libertad por tiempo no superior a diez años, se podrá imponer, a quien omite la información relacionada con la perpetración de este delito, una pena de prisión no superior a cinco años.

⁹ El Reglamento ha sido publicado en “*Iris Oifigiúil*” con fecha de 11 de enero de 2013, y ha entrado en vigor el 14 de enero. Vid., <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0001.pdf>

ANEXO

PROTECTION OF LIFE DURING PREGNANCY ACT 2013

Number 35 of 30th July, 2013

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PROTECTION OF LIFE DURING PREGNANCY ACT 2013

An Act to protect human life during pregnancy; to make provision for reviews at the instigation of a pregnant woman of certain medical opinions given in respect of pregnancy; to provide for an offence of intentional destruction of unborn human life; to amend the Health Act 2007; to repeal sections 58 and 59 of the Offences Against the

Person Act 1861; and to provide for matters connected therewith.
[30th July, 2013]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Protection of Life During Pregnancy Act 2013.

(2) 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.

Interpretation

2. (1) In this Act—

“Act of 2007” means the Medical Practitioners Act 2007;

“Act of 2011” means the Nurses and Midwives Act 2011;

“appropriate institution” means—

(a) an institution that is specified in the *Schedule*, or

(b) an institution that is specified in an order under *section 3*;

“approved centre” has the meaning it has in section 63 of the Mental Health Act 2001;

“certification” means a *section 7* certification, *section 8* certification, *section 9* certification or *section 13* certification, and includes a copy of any such certification;

“certifying obstetrician”, in relation to a certification, means the obstetrician who made the certification;

“Executive” means the Health Service Executive;

“general practitioner”, in relation to a pregnant woman, means a medical practitioner who provides a general practitioner medical service to the pregnant woman;

“medical practitioner” means a medical practitioner who is for the time being registered in the register;

“medical procedure” includes the prescribing, by a medical practitioner, of any drug or medical treatment;

“medical speciality” means a medical speciality recognised by the Medical Council under section 89 of the Act of 2007;

“mental health services” has the meaning it has in the Mental Health Act 2001;

“midwife” means a person whose name is for the time being registered in the midwives division of the register of nurses and midwives established under section 46 of the Act of 2011;

“Minister” means the Minister for Health;

“nurse” means a person whose name is for the time being registered in the nurses division of the register of nurses and midwives established under section 46 of the Act of 2011;

“obstetrician” means an obstetrician and gynaecologist;

“obstetrician and gynaecologist” means a medical practitioner who is registered in the

Specialist Division of the register under the medical speciality of “Obstetrics and Gynaecology”;

“pregnant woman”, in relation to a review, means the pregnant woman to whom the review relates;

“prescribed” means prescribed by regulations made under *section 4*;

“psychiatrist” means a medical practitioner who is registered in the Specialist

Division of the register under a medical speciality of “Psychiatry”;

“register” means the register of medical practitioners established under section 43 of the Act of 2007;

“relevant decision” shall be construed in accordance with *section 10*;

“relevant speciality”, in relation to a medical practitioner and his or her assessment of the risk of the loss of a pregnant woman’s life, means a medical speciality—

(a) in respect of which the medical practitioner is registered in the Specialist

Division of the register, and

(b) relevant to the care or treatment of the physical illness in respect of which the risk of such loss arises;

“review” means a review under *section 13* of a relevant decision;

“review committee”, in relation to a relevant decision, means the committee established under *section 12(1)* to review that decision;

“review panel” means the panel established under *section 11(1)*;

“*section 7* certification” means a certification referred to in *section 7(1)(a)*;

“*section 8* certification” means a certification referred to in *section 8(2)*;

“*section 9* certification” means a certification referred to in *section 9(1)(a)*;

“*section 13* certification” means a certification referred to in *section 13(3)*;

“unborn”, in relation to a human life, is a reference to such a life during the period of time commencing after implantation in the womb of a woman and ending on the complete emergence of the life from the body of the woman;

“woman” means a female person of any age.

(2) A *section 13* certification shall be deemed to be—

(a) *asection 7* certification where *section 12(2)* applies, and

(b) *asection 9* certification where *section 12(3)* applies,

and the other provisions of this Act shall be construed accordingly.

(3) A reference in this Act to physical illness includes a reference to a physical injury but does not include a reference to suicide.

Appropriate institutions for purposes of Act

3. (1) The Minister may by order, where he or she thinks it appropriate for the purposes of this Act, specify any institution managed by the Executive, or by another person pursuant to an arrangement entered into under section 38 of the Health Act 2004—

(a) at which in-patient services are provided under the direction of medical practitioners from not less than 3 medical specialities and which is wholly or partly used for the care and treatment of women in relation to any one or more of the following:

(i) pregnancy;

(ii) childbirth;

(iii) post-partum care,

or

(b) at which in-patient services (including intensive and critical care services) are provided under the direction of medical practitioners from not less than 7 medical specialities,

and any institution so specified shall be an appropriate institution for the purposes of

this Act.

(2) Every order made by the Minister 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 sits after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Regulations

4. (1) The Minister may by regulations provide—

(a) for any matter referred to in this Act as prescribed, or

(b) for any matter that appears to the Minister to be necessary or expedient for bringing this Act into operation.

(2) Without prejudice to any provisions of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the

Minister to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made by the Minister 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 regulation is passed by either such House within the next 21 days on which that

House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Repeals

5. Sections 58 and 59 of the Offences Against the Person Act 1861 are hereby repealed.

Expenses

6. 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

MEDICAL PROCEDURES LAWFUL UNDER ACT

CHAPTER 1

Risk of loss of life of pregnant woman

Risk of loss of life from physical illness

7. (1) It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where—

(a) subject to *section 19*, two medical practitioners, having examined the pregnant woman, have jointly certified in good faith that—

(i) there is a real and substantial risk of loss of the woman's life from a physical illness, and

(ii) in their reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out the medical procedure,

and

(b) that medical procedure is carried out by an obstetrician at an appropriate institution.

(2) Of the 2 medical practitioners referred to in *subsection (1)(a)*—

(a) one shall be an obstetrician who practises as such at an appropriate institution,

and

(b) the other shall be a medical practitioner of a relevant speciality.

(3) If practicable, at least one of the medical practitioners referred to in *subsection (1)(a)*

shall, with the pregnant woman's agreement, consult with the woman's general practitioner (if any) for the purposes of obtaining information in respect of the woman

from that general practitioner that may assist the medical practitioners in their decision as to whether or not to make a *section 7* certification in respect of the woman.

(4) Subject to *section 19*, the certifying obstetrician shall—

(a) forward, or cause to be forwarded, the *section 7* certification to an appropriate institution, and

(b) make such arrangements as may be necessary for the carrying out of the medical procedure to which the *section 7* certification relates at the appropriate institution.

Risk of loss of life from physical illness in emergency

8. (1) Notwithstanding the generality of *section 7*, or any determination made or pending pursuant to *section 13* of an application under *section 10(2)*, it shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where—

(a) a medical practitioner, having examined the pregnant woman, believes in good faith that there is an immediate risk of loss of the woman's life from a physical illness,

(b) the medical procedure is, in his or her reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) immediately necessary in order to save the life of the woman, and

(c) the medical procedure is carried out by the medical practitioner.

(2) Subject to *section 19*, where a medical practitioner—

(a) subject to *paragraph (b)*, proposes to carry out a medical procedure referred to in *subsection (1)*, he or she shall, before carrying out the medical procedure, certify the matters referred to in *subsection (1)(a)* and *(b)*,

(b) proposes to carry out the medical procedure without first making such certification because it is not practicable to do so, he or she shall make such certification as soon as may be but, in any event, not later than 72 hours after carrying out the medical procedure.

Risk of loss of life from suicide

9. (1) It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where—

(a) subject to *section 19*, three medical practitioners, having examined the pregnant woman, have jointly certified in good faith that—

- (i) there is a real and substantial risk of loss of the woman's life by way of suicide, and
- (ii) in their reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out the medical procedure, and
- (b) that medical procedure is carried out by an obstetrician at an appropriate institution.
- (2) Of the 3 medical practitioners referred to in *subsection (1)(a)*—
 - (a) one shall be an obstetrician who practises as such at an appropriate institution,
 - (b) one shall be a psychiatrist who practises as such at an appropriate institution, and
 - (c) one shall be a psychiatrist who practises as such—
 - (i) at an approved centre, or
 - (ii) for, or on behalf of, the Executive, or both.
- (3) Of the 2 psychiatrists referred to in *subsection (2)*, at least one shall be a psychiatrist who provides, or who has provided, mental health services to women in respect of pregnancy, childbirth or post-partum care.
- (4) If practicable, at least one of the medical practitioners referred to in *subsection (1) (a)* shall, with the pregnant woman's agreement, consult with the woman's general practitioner (if any) for the purposes of obtaining information in respect of the woman from that general practitioner that may assist the medical practitioners in their decision as to whether or not to make a *section 9* certification in respect of the woman.
- (5) Subject to *section 19*, the certifying obstetrician shall—
 - (a) forward, or cause to be forwarded, the *section 9* certification to an appropriate institution, and
 - (b) make such arrangements as may be necessary for the carrying out of the medical procedure to which the *section 9* certification relates at the appropriate institution.

CHAPTER 2

Reviews

Application for review of medical opinion

10. (1) Where a medical practitioner, who has been requested to give an opinion in respect of a pregnant woman in the circumstances referred to in *section 7(1)* or *9(1)*—

(a) does not give an opinion, or

(b) gives an opinion but not such as would be required for the purposes of a *section 7* certification or *section 9* certification, as the case may be, (in this Act referred to as a “relevant decision”) he or she shall inform the woman in writing that she may make an application in accordance with *subsection (2)* to review the relevant decision.

(2) A pregnant woman, or a person acting on her behalf, may make an application in the prescribed form and manner to the Executive for a review of a relevant decision.

Establishment of review panel, etc.

11. (1) Subject to *subsection (2)*, the Executive shall establish and maintain a panel consisting of at least 10 medical practitioners appointed for such term and on such conditions as the Executive determines.

(2) The membership of the review panel shall consist only of medical practitioners and the Executive shall revoke the appointment of a member of the panel who ceases to be a medical practitioner.

(3) The Executive shall, in addition to appointing medical practitioners duly identified by it for appointment to the review panel, request—

(a) the Institute of Obstetricians and Gynaecologists,

(b) the College of Psychiatrists of Ireland,

(c) the Royal College of Surgeons in Ireland, and

(d) the Royal College of Physicians of Ireland, to nominate medical practitioners for appointment to the panel.

(4) The Executive may, if it considers it appropriate to do so, appoint to the review panel one or more of the medical practitioners nominated under *subsection (3)*.

Establishment of review committee, etc.

12. (1) As soon as may be but, in any event, not later than 3 days from the date on which it receives an application under *section 10(2)*, the Executive shall establish and convene (or cause to be convened) a committee, the membership of which shall, subject to *subsections (2)* to *(5)*, be drawn from the review panel, to review the relevant decision that is the subject of the application.

(2) In the case of a relevant decision which relates to the circumstances referred to in *section 7(1)*, the review committee shall consist of—

(a) an obstetrician who practises as such at an appropriate institution, and

(b) a medical practitioner of a relevant speciality.

(3) In the case of a relevant decision which relates to the circumstances referred to in *section 9(1)*, the review committee shall consist of—

(a) an obstetrician who practises as such at an appropriate institution,

(b) a psychiatrist who practises as such at an appropriate institution, and

(c) a psychiatrist who practises as such—

(i) at an approved centre, or

(ii) for, or on behalf of, the Executive,

or both.

(4) Of the 2 psychiatrists referred to in *subsection (3)*, at least one shall be a psychiatrist who provides, or who has provided, mental health services to women in respect of pregnancy, childbirth or post-partum care.

(5) A medical practitioner shall be disqualified from sitting on the review committee where he or she has previously been consulted by

the pregnant woman in relation to the matter that is the subject of the relevant decision to be reviewed by the committee.

(6) For the purposes of this Chapter, a relevant decision which falls within *paragraph (a)*

of *section 10(1)* shall be treated as if it were a refusal to give an opinion such as would be required for the purposes of a *section 7* certification (where the circumstances referred to in *section 7(1)* apply) or a *section 9* certification (where the circumstances referred to in *section 9(1)* apply).

Review of relevant decision

13. (1) The review committee shall complete its review of a relevant decision as soon as may be but, in any event, not later than 7 days from the date on which the review committee was established and convened under *section 12(1)*.

(2) The review committee shall, for the purposes of reaching a determination on its review of the relevant decision, examine the pregnant woman.

(3) Where the review committee has completed its review of the relevant decision and is satisfied in good faith that—

(a) there is a real and substantial risk of loss of the pregnant woman's life from a physical illness or by way of suicide, as the case may be, and

(b) in its reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out a medical procedure referred to in *section 7(1)* or *9(1)*, as the case may be, the committee shall, subject to *section 19*, jointly certify that it is so satisfied and, as soon as may be, give notice in writing of its determination to the woman (or, if the application under *section 10(2)* concerned was made by another person on behalf of the woman, to that other person) and the Executive.

(4) Where the review committee has completed its review of the relevant decision and is not satisfied as referred to in *subsection (3)*, it shall, as soon as may be, give notice in writing of its determination to the pregnant woman (or, if the application under *section 10(2)*

concerned was made by another person on behalf of the woman, to that other person) and the Executive.

(5) Subject to *section 19*, the certifying obstetrician shall—

(a) forward, or cause to be forwarded, the *section 13* certification to an appropriate institution, and

(b) make such arrangements as may be necessary for the carrying out of the medical procedure to which the *section 13* certification relates at the appropriate institution.

(6) In *subsection (3)* “jointly certify”, in relation to the review committee, means that all of the members of the committee make the *section 13* certification concerned.

Procedures of review committee

14. (1) The pregnant woman shall be entitled to be heard by the review committee and, here the woman or a person acting on her behalf informs the committee that she wishes to be heard, the committee shall make such arrangements as may be necessary in order to hear the woman or a person acting on her behalf.

(2) The review committee may, for the purposes of its review of a relevant decision, by direction in writing require a medical practitioner or former medical practitioner, at such time and place as may be specified in the direction—

(a) to produce to the committee such documents or other records in his or her possession or control as may be so specified, or

(b) to attend before the committee and to give to the committee such assistance and answer such questions as it may require.

(3) The review committee may, subject to the provisions of this Act, determine its own procedures.

(4) The Executive shall provide, or arrange for the provision of, such administrative facilities as may be necessary to enable the review committee to perform its functions.

(5) A member of the review committee shall be paid by the Executive out of funds at its disposal such remuneration and such allowances for expenses as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.

(6) A person who attends the review committee pursuant to a direction under *subsection*

(2) shall be paid by the Executive out of funds at its disposal such remuneration and such allowances for expenses as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.

(7) A person who fails to comply with a direction under *subsection (2)* shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

(8) Summary proceedings for an offence under *subsection (7)* may be brought and prosecuted by the Executive.

Report by Executive on operation of Chapter

15. (1) The Executive shall, not later than 30 June in each year, prepare and submit to the Minister a report on the operation of this Chapter in the immediately preceding year, and the Minister shall, as soon as may be after receiving the report, cause copies of the report to be laid before each House of the Oireachtas.

(2) Notwithstanding the generality of *subsection (1)*, a report under this section shall, in respect of the year that is the subject of the report, include information on—

(a) the total number of applications for review received by the Executive,

(b) the number of reviews carried out,

(c) in the case of the reviews carried out, the reason why the review was sought, and

(d) the outcome of the reviews.

(3) In preparing a report under this section, the Executive shall exclude from the report information that identifies, or that could reasonably lead to the identification of—

(a) a woman who has made an application under *section 10(2)* or in respect of whom such an application has been made by a person acting on her behalf, or

(b) a medical practitioner who has carried out a review.

(4) The Executive shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subsection (1)* to be published in such form and manner as it thinks appropriate as soon as practicable after copies of the report are so laid.

PART 3

MISCELLANEOUS

Consent

16. Nothing in this Act shall operate to affect any enactment or rule of law relating to consent to medical treatment.

Conscientious objection

17. (1) Subject to *subsections (2) and (3)*, nothing in this Act shall be construed as bliging any medical practitioner, nurse or midwife to carry out, or to assist in carrying out, any medical procedure referred to in *section 7(1) or 9(1)* to which he or she has a conscientious objection.

(2) *Subsection (1)* shall not be construed to affect any duty to participate in any medical procedure referred to in *section 8(1)*.

(3) A person who has a conscientious objection referred to in *subsection (1)* shall make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of the medical procedure concerned.

Travel and information

18. (1) Nothing in this Act shall operate to limit the freedom—

(a) to travel between the State and another state, or

(b) to obtain or make available in the State, in accordance with conditions for the time being laid down by law, information relating to services lawfully available in another state.

(2) Nothing in this Act shall operate to restrict any person from travelling to another tate on the ground that his or her intended conduct there would, if it occurred in the State, constitute an offence under *section 22*.

Certification

19. A certification shall—

- (a) be made in the prescribed form and manner, and
- (b) contain the prescribed information (which shall include the clinical grounds for carrying out the medical procedure to which the certification relates).

Notifications

20. (1) Where a medical procedure referred to in *section 7(1), 8(1) or 9(1)* is carried out in respect of a pregnant woman at an appropriate institution, the person in charge of the appropriate institution shall—

(a) keep a record—

(i) in the prescribed form and manner of the carrying out of the medical procedure, and

(ii) containing the information specified in *subsection (3)*,

and

(b) not later than 28 days after the medical procedure has been carried out, forward, or cause to be forwarded, a copy of that record, or such part of that record as may be prescribed, to the Minister in such manner as may be prescribed.

(2) Where a medical procedure referred to in *section 8(1)* is carried out in respect of a pregnant woman in a location other than an appropriate institution, the medical practitioner who carried out the medical procedure or, where appropriate, the person in charge (if any) of the location where the medical procedure was carried out shall—

(a) keep a record—

(i) in the prescribed form and manner of the carrying out of the medical procedure, and

(ii) containing the information specified in *subsection (3)*,

and

(b) not later than 28 days after the medical procedure has been carried out, forward, or cause to be forwarded, a copy of that record, or such part of that record as may be prescribed, to the Minister in such manner as may be prescribed.

(3) The following information is specified for the purposes of *subsections (1)(a) and (2)*

(a):

(a) the Medical Council registration number attached to the registration of the medical practitioner who carried out the medical procedure referred to in *section 7(1)*, *8(1)* or *9(1)*, as the case may be, in respect of the pregnant woman concerned;

(b) whether the medical procedure was carried out in respect of the pregnant woman pursuant to a *section 7* certification, *section 8* certification (whether made before or after the medical procedure was carried out) or *section 9* certification and the Medical Council registration number attached to the registration of each of the medical practitioners who made the certification concerned;

(c) the name of the appropriate institution where the medical procedure was carried out in respect of the pregnant woman or, if that medical procedure is a medical procedure referred to in *section 8(1)* that was carried out at a location other than an appropriate institution, a description of that location sufficient to identify it;

(d) the date on which the medical procedure was carried out in respect of the pregnant woman.

(4) The Minister shall, not later than 30 June in each year, prepare a report on the notifications received by him or her under this section during the immediately preceding year, and shall, as soon as may be after preparing the report, cause copies of the report to be laid before each House of the Oireachtas.

(5) The Minister shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subsection (4)* to be published in such form and manner as he or she thinks appropriate as soon as practicable after copies of the report are so laid.

(6) In preparing a report under this section, the Minister shall exclude from the report information that identifies, or that could reasonably lead to the identification of—

(a) a woman who is the subject of a notification under this section,

(b) a medical practitioner referred to in *subsection (3)(a)*, or

(c) a medical practitioner referred to in *subsection (3)(b)*.

(7) In this section, “notification” means a copy of a record, or a part thereof, that is forwarded or caused to be forwarded to the Minister under *subsection (1) or (2)*.

Amendment of section 9 of Health Act 2007

21. Section 9 of the Health Act 2007 is amended—

(a) in subsection (1), by the substitution of the following paragraph for paragraph

(a):

“(a) there is a serious risk—

(i) to the health or welfare of a person receiving those services, or

(ii) of a failure to comply with the provisions of the Act of 2013,
and”,

(b) by the insertion of the following subsections after subsection (3):

“(4) Where an investigation under this section is being undertaken in respect of a serious risk referred to in subsection (1)(a)(ii) and such risk relates to an appropriate institution, the Minister may, by notice in writing served on the person in charge of the appropriate institution, direct that person to ensure that, from the date, or the event, specified in the notice for the purpose—

(a) a medical procedure referred to in *section 7(1)* of the Act of 2013 is not carried out at the institution, or

(b) a medical procedure referred to in *section 9(1)* of that Act is not carried out at the institution, or both.

(5) Where—

(a) the Minister has served a notice under subsection (4) on the person in charge of an appropriate institution, and

(b) subsequent to the service of the notice referred to in paragraph (a), the Minister believes that the serious risk concerned referred to in subsection (1)(a)(ii) that caused him or her to serve such notice is not, or is no longer, such serious risk (regardless of whether he or she comes to that belief during the course of, or after the conclusion of, the investigation concerned under this section), the Minister shall, as soon as practicable after coming to the belief referred to in paragraph

(b), by notice in writing served on the person in charge of that appropriate institution, revoke the notice referred to in paragraph (a) on the date, or the event, specified in the notice so served on that person.

(6) In this section—

‘Act of 2013’ means the *Protection of Life During Pregnancy Act 2013*; ‘appropriate institution’ has the meaning it has in the Act of 2013.”.

Destruction of unborn human life

22. (1) It shall be an offence to intentionally destroy unborn human life.

(2) A person who is guilty of an offence under this section shall be liable on indictment to a fine or imprisonment for a term not exceeding 14 years, or both.

(3) A prosecution for an offence under this section may be brought only by or with the consent of the Director of Public Prosecutions.

Offence by body corporate

23. (1) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

SCHEDULE

Section 2

APPROPRIATE INSTITUTIONS

Adelaide and Meath Hospital Dublin Incorporating the National
Children's Hospital
Beaumont Hospital
Coombe Women & Infants University Hospital
Cavan General Hospital
Cork University Hospital and Cork University Maternity Hospital
Galway University Hospitals
Kerry General Hospital
Letterkenny General Hospital
Mater Misericordiae University Hospital
Mayo General Hospital
Midland Regional Hospital Mullingar
Midland Regional Hospital Portlaoise
Mid-Western Regional Hospital Dooradoyle
Mid-Western Regional Maternity Hospital
The National Maternity Hospital, Dublin
Our Lady of Lourdes Hospital, Drogheda
Portiuncula Hospital Ballinasloe
The Rotunda Hospital
Sligo General Hospital
South Tipperary General Hospital
St Luke's Hospital, Kilkenny
St James's Hospital
St Vincent's University Hospital
Waterford Regional Hospital
Wexford General Hospital

ANEXO

Number 24 of 2012

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

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,

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.

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,

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-

(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 ;

"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 persons 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 persons family shall include a reference to any such member of his or her family who is adopted.

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 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.

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;

(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).

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 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.

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.

(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.

SCHEDULE 1

Offences against children for purposes of offence under section 2

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).
13. An offence under either 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).
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).

SCHEDULE 2

Offences against vulnerable persons for purposes of offence under section 3

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).

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STATUTORY INSTRUMENTS.

S.I. No. 1 of 2013

CRIMINAL JUSTICE (WITHHOLDING OF INFORMATION ON OFFENCES AGAINST CHILDREN AND VULNERABLE PERSONS) ACT 2012 (PRESCRIBED ORGANISATIONS AND PRESCRIBED PERSONS) ORDER 2013² [1]

S.I. No. 1 of 2013

CRIMINAL JUSTICE (WITHHOLDING OF INFORMATION ON OFFENCES AGAINST CHILDREN AND VULNERABLE PERSONS) ACT 2012 (PRESCRIBED ORGANISATIONS AND PRESCRIBED PERSONS) ORDER 2013

I, ALAN SHATTER, Minister for Justice and Equality, in exercise of the powers conferred on me by sections 5 and 6 of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (No. 24 of 2012), hereby order as follows:

1. This Order may be cited as the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2013.

2. This Order shall come into operation on 14th January 2013.

3. In this Order “Act of 2012” means the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (No. 24 of 2012).

4. Each of the organisations and bodies specified in column (2) of the Schedule is prescribed for the purposes of section 4 of the Act of 2012.

(...)

GIVEN under my Official Seal, 7 January 2013.

ALAN SHATTER, Minister for Justice and Equality.

