



COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ
LAW REFORM
COMMISSION

REPORT

A REGULATORY
FRAMEWORK FOR ADULT
SAFEGUARDING

VOLUME 1

Report

A Regulatory Framework for Adult Safeguarding

(LRC 128 - 2024)

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2. Please note that all hyperlinks in this Report were checked for accuracy at the time of final draft.

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Our purpose is to review Irish law and make proposals for reform. We also work on modernising the law to make it easier to access and understand. Our proposals are developed in a process which starts with a Consultation Paper. Consultation Papers examine the law and set out questions on possible changes to the law. Once a Consultation Paper is published, we invite submissions on possible changes to the law. We consult widely, consider the submissions we have received and then publish a Report setting out the Commission's analysis and recommendations.

Many of the Commission's proposals have led to changes in Irish law.

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The Law Reform Commission was established by the Law Reform Commission Act 1975 to keep the law under independent, objective and expert review.

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Glossary

Term	Definition
Abuse	A single or repeated act or failure to act that has a negative impact on a person. Abuse can involve physical abuse, emotional abuse, sexual abuse or financial abuse. This is not an exhaustive list of the forms of abuse.
Adult at risk of harm/at-risk adult	A person who is not a child, and by reason of their physical or mental condition or other particular personal characteristics or family or life circumstance (whether permanent or otherwise) needs support to protect themselves from harm at a particular time.
Adult safeguarding	Measures that are, or may be, put in place to promote the health, safety and welfare of at-risk adults, minimise the risk of harm to at-risk adults, and support at-risk adults to protect themselves from harm.
Adult Safeguarding Review	A learning review to identify ways to improve the safety, quality and standards of adult safeguarding services in response to very serious adult safeguarding incidents that meet a high threshold. In Chapter 17, the Commission recommends that Adult Safeguarding Reviews should be established on a statutory basis in Ireland (i.e. contained in Irish legislation).
Adult safeguarding statement	A written statement prepared by a provider of a relevant service which outlines the policy, procedures and measures that the provider has in place to minimise the risk of harm to adults availing of the service including adults who are, may be, or may become at-risk adults. In Chapter 7, the Commission recommends the components of an adult safeguarding statement.
Approved centre	A service regulated by the Mental Health Commission under the Mental Health Act 2001 to provide in-patient treatment to people experiencing mental illness or mental disorders.
At-risk customer	An at-risk adult who is a customer of a regulated financial service provider.
Authorised officer	A person appointed by the Safeguarding Body to carry out functions of the Safeguarding Body under the Commission's Adult Safeguarding Bill 2024.
Autonomy	The right to make decisions and take actions that are in line with one's beliefs and values.
Barred lists	Databases containing details of individuals who are banned from working or volunteering with children or at-risk adults

	<p>due to past behaviours (which may have fallen below the threshold for a certain criminal offence to have been committed) or because they have committed certain criminal offences. Barred lists are in place in other jurisdictions but are not currently in place in Ireland.</p>
Capacity	<p>Decision-making capacity as defined in the Assisted Decision-Making (Capacity) Act 2015. A person's ability to make decisions for themselves. This is based on the person's ability to make a specific decision about something, at a specific time.</p>
Care plan	<p>A plan that outlines the health, personal and social care needs of an adult availing of a service and how a service intends to meet those needs in line with the adult's preferences. This is usually developed between the service and the adult concerned following an assessment of care and support needs.</p>
Care setting	<p>The place where a person receives care, for example, a person's home, a hospital, a nursing home, a residential centre, or a day service.</p>
Coercive control	<p>A pattern of controlling and threatening behaviour. This is a criminal offence under section 39 of the Domestic Violence Act 2018 which criminalises a person knowingly and persistently engaging in behaviour that is controlling or coercive, has a serious effect on a person, and which a reasonable person would expect to have a serious effect on a person. In Chapter 19, the Commission recommends the creation of an offence of coercive control of a relevant person that extends to a broader category of relationships that the existing offence under the Domestic Violence Act 2018.</p>
Coercive exploitation	<p>A new criminal offence proposed by the Commission in Chapter 19. This proposed offence would criminalise a person who, without a reasonable excuse, controls or coerces a "relevant person" so as to get control or be able to exercise control over their property or financial resources to gain a benefit or advantage for themselves or another person.</p>
Committee of the Person / Committee of the Estate	<p>In the past, if a person was unable to make certain decisions because of capacity difficulties, they might have been made a ward of court. When a person was made a ward of court, a Committee was appointed to control their assets and make decisions about their affairs. This has changed since most of the provisions of the Assisted Decision-Making (Capacity) Act 2015 came into force in April 2023.</p>

Community Health Organisations	Health	Nine HSE structures providing primary care, social care, mental health, and health and wellbeing services across Ireland. Community Health Organisations are currently being replaced by six health regions as part of the restructuring of the HSE.
Cooperation		A range of bodies working together for a common purpose. It involves the sharing of information, shared decision-making and responsibility, the pooling of resources, and the sharing of expertise and best practice. In Chapter 15, the Commission recommends that the Safeguarding Body, certain public service bodies and certain service providers should have a duty to cooperate with one another to address adult safeguarding concerns.
CORU		The Health and Social Care Professionals Council, otherwise known as CORU, protects the public by promoting high standards of professional conduct, education, training and competence through statutory registration of health and social care professionals in Ireland. It regulates multiple health and social care professions including social workers, occupational therapists, physiotherapists and speech and language therapists.
Cross-sectoral legislation		Legislation that applies to a variety of sectors, instead of one specific sector.
Cuckooing		A practice where a person or many people take over an at-risk adult's home and use the property for anti-social behaviour or criminal activity.
Day services		Services provided to adults with disabilities and older adults in day centres where they participate in activities such as recreational, social, leisure and rehabilitation activities. These services are usually provided in the community and are non-residential.
Decision Support Service		A service established under the Assisted Decision-Making (Capacity) Act 2015 to support people who face difficulties and need support exercising their decision-making capacity. It is a part of the Mental Health Commission, but it has a separate role. The Decision Support Service promotes awareness of the 2015 Act, regulates and registers decision support arrangements, and supervises the actions of decision supporters.
Designated centre		A service or centre within the meaning of section 2 of the Health Act 2007 that is regulated by HIQA. These services or centres are inspected and monitored by the Chief Inspector of Social Services. It includes residential centres for older people and residential centres for adults with disabilities.

DSGBV Agency (“Cuan”)	The Domestic, Sexual and Gender-Based Violence Agency, established on 1 January 2024. The legal name for the Domestic, Sexual and Gender-Based Violence Agency is An Ghníomhaireacht um Fhoréigean Baile, Gnéasach agus Inscnebhunaithe. It will be known as Cuan.
Empowerment and person-centredness	This includes the presumption of decision-making capacity; the facilitation of supported decision-making, where requested or required; ensuring informed consent; respecting the right to autonomy and the right to full and effective participation in society; the realisation of the right to independent advocacy; ensuring respect for will and preferences; ensuring respect for the right to have risks and options explained; and ensuring respect for the right to be consulted at every step of an intervention under adult safeguarding legislation.
Financial abuse	Theft, fraud, exploitation or pressure relating to wills, property, inheritance or financial transactions, including: (a) wrongful or unauthorised taking, withholding, appropriation or use of money, assets or property; (b) action or inaction to control, through deception, intimidation or undue influence, money, assets or property; or (c) wrongful interference with or denial of ownership, use, benefit or possession of money, assets or property.
Financial services	Services involving the investment, lending or management of money, assets or property that are provided by banks, post offices or credit unions.
Harm (civil)	Assault, ill-treatment, neglect or self-neglect in a manner that affects or is likely to affect health, safety or welfare of an at-risk adult, sexual abuse of an at-risk adult, or loss of, or damage to, property by theft, fraud deception or coercive exploitation. It may be a single, series or combination of acts, omissions or circumstances.
Harm (criminal)	Harm to body or mind which includes pain and unconsciousness, any injury or impairment of physical, mental, intellectual, emotional health or welfare, or any form of property or financial loss.
Health care assistant	These workers provide direct personal care and assistance with activities and daily living to patients and residents in a variety of health care settings. They work on implementing care plans and practices and work under the supervision of medical, nursing or other health professionals.
Home support services	Services providing care and assistance to older people and people with disabilities to allow them to live at home. This could include assisting older people and people with

	disabilities with their personal hygiene, their nutrition, or helping them take their medication or helping them to exercise.
HSE National Safeguarding Office	A national office established in 2015 in line with the HSE Social Care Division's Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures. The office oversees the implementation, monitoring, review and ongoing evaluation of the National Policy and Procedures. The office supports the work of the HSE's Safeguarding and Protection Teams.
HSE's National Policies and Procedures	The HSE's Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures published in 2014. It applies to HSE managed or funded disability services and older people's services, and to reports or allegations of harm in respect of adults living in the community who have disabilities or are over the age of 65.
Independent advocacy/ independent advocate	Advocacy support that is provided by an organisation or person who is independent from health and social care service providers and the family of the person receiving the advocacy support. An independent advocate can empower a person to express their will and preferences, communicate their perspectives and engage in decision-making processes that affect their lives.
Inherent jurisdiction of the High Court	A set of default powers, not contained in legislation, which arise from Article 34.3.1° of the Constitution. The powers have been used on a case-by-case basis to vindicate the fundamental constitutional rights of children and certain categories of adults.
International protection	Protection granted by the Government to someone who has left another country to escape being harmed or persecuted. This may include refugee status, subsidiary protection, permission to remain or temporary protection.
Issues Paper	The Law Reform Commission's Issues Paper on a Regulatory Framework for Adult Safeguarding (LRC IP 18-2019) which was published in January 2020.
Mandated person	People who are required by legislation to report actual or suspected abuse. The classes of persons (usually specific professions) who are subject to reporting requirements are generally listed in a schedule to legislation. In this report, where a mandated person knows, believes or suspects, that an at-risk adult has been harmed, is being harmed, or is at risk of being harmed, the Commission recommends that they should be under a statutory duty to report that knowledge, belief or suspicion as soon as possible to the

	Safeguarding Body. See the definition of “reportable harm” below.
Mandatory reporting	Requires the reporting of certain types of actual or suspected abuse or neglect or requires reporting of actual or suspected abuse or neglect in particular settings only, for example, a nursing home. It can also require the reporting of actual or suspected abuse by mandated persons.
Neglect	Neglect in a manner likely to cause an adult suffering or injury to their health or to seriously affect their wellbeing means a failure to adequately protect an adult under a person’s care from preventable and foreseeable harm, a failure to provide adequate food, clothing, heating or medical aid, or in circumstances where a person cannot look after an adult under their care, a failure to take steps to have them looked after under relevant legislation.
No-contact order	<p>An order proposed in Chapter 13 to be available under adult safeguarding legislation. If granted by the District Court, the order would prevent a non-intimate and non-cohabitating third party from engaging in one or more of the following behaviours:</p> <ul style="list-style-type: none"> (a) following, watching, pestering or communicating (including by electronic means) with or about an at-risk adult for whose protection the order is made; (b) attending at, or in the vicinity of, or besetting a place where the at-risk adult resides; (c) approaching or coming within a specified distance of the at-risk adult. <p>In addition to “full” no-contact orders, which may last for up to two years, the Commission recommends that interim and emergency no-contact orders be available in particular cases.</p>
Permissive reporting	Permits people to report actual or suspected abuse or neglect of at-risk adults but does not require them by law to do so.
Personal plan	A plan specific to an adult availing of a service that reflects their needs, wishes, abilities and aspirations. Personal plans typically outline the goals an adult wants to achieve and how the service will support them in their personal development. They are tailored to the individual and developed between the service and the adult concerned.

Policing and Community Safety Authority	A body that will soon be established under the Policing, Security and Community Safety Act 2024. Its legal name will be An tÚdarás Póilíneachta agus Sábháilteachta Pobail.
Power of access to at-risk adults in places including private dwellings	A proposed power to allow authorised officers of the Safeguarding Body or members of the Garda Síochána, or both, to access at-risk adults in places, including private dwellings, to assess their health, safety or welfare. This power is exercisable on foot of a warrant issued by the District Court, which will be valid for three days.
Power of entry to and inspection of relevant premises	A proposed power to allow authorised officers of the Safeguarding Body to enter and inspect relevant premises to assess the health, safety or welfare of at-risk adults. The power is exercisable without a warrant, although a warrant may be obtained if entry and inspection is being obstructed. This would allow for accompaniment by a member of the Garda Síochána.
Power of removal and transfer	A proposed power to allow members of the Garda Síochána, accompanied by authorised officers of the Safeguarding Body, where possible, to remove an at-risk adult from where they currently are, and transfer them to a designated health or social care facility or other suitable place. The power would not allow for detention of an at-risk adult in the facility or suitable place. The power is exercised to assess the at-risk adult's health, safety and welfare, and assess whether any actions are needed to safeguard them, where this cannot be done in the place where the at-risk adult currently is. This power is exercisable on foot of an order issued by the District Court and is valid for three days.
Prevention	Proactive steps are taken to minimise the risk of harm to adults, including adults who are, may be or may become at-risk adults before harm occurs.
Relevant person	The term used to describe a specific category of at-risk adults against whom the Commission's proposed offences in Chapter 19 can be committed. A relevant person means an adult whose ability to guard themselves against violence, exploitation, abuse or neglect by another person is significantly impaired through (a) a physical disability, physical frailty, illness or injury, (b) a disorder of the mind, such as mental illness or dementia, (c) an intellectual disability, (d) autism spectrum disorder.
Regulated financial service provider	A financial service provider whose service is regulated by the Central Bank of Ireland or an authority in a country in the European Union, Iceland, Liechtenstein or Norway whose

	functions are comparable to the functions of the Central Bank of Ireland.
Regulated profession	A profession where access to, or the practice of, the profession is restricted to those who meet professional qualifications required by law.
Relevant premises	Certain premises in which adults, who may be at-risk adults, are likely to be residing in, and in receipt of care or services. This includes “designated centres”, “approved centres”, hospitals and residential centres for adults in the international protection process. The full list of premises is set out in Chapter 10.
Relevant service	Any work or activity provided by a person or organisation, a necessary and regular part of which consists mainly of a person or organisation having access to, or contact with adults, or adults who are, may be, or may become at-risk adults.
Reportable harm	Assault, ill-treatment or neglect in a manner that seriously affects, or is likely to seriously affect, health, safety or welfare, sexual abuse, or serious loss of, or damage to, property by theft, fraud, deception or coercive exploitation. This harm can be caused by a single act, omission or circumstances, or a series or combination of acts, omissions or circumstances. It excludes self-neglect where the person has capacity or is believed to have capacity to make personal care or welfare decisions.
Residential care settings	Where an adult who is, may be, or may become an at-risk adult is living in residential care, such as a public or private nursing home or a residential centre for people with disabilities, including a centre providing temporary residential respite care.
Rights-based approach	Ensuring that the rights of at-risk adults are respected, including their rights to autonomy, respect, dignity, bodily integrity, privacy, control over financial affairs and property, non-discrimination, equal treatment in respect of access to basic goods and services, and respect for their beliefs and values.
Risk assessment	A process to identify any risks arising in the provision of services to adults or adults who are, may be, or may become at-risk adults.
Safeguarding and Protection Teams	Teams of social workers established within the HSE, with responsibility for assessing and managing reports or concerns regarding abuse or neglect in HSE managed and

	<p>funded services for older people and people with disabilities, and safeguarding referrals arising in the community.</p> <p>The teams support services in investigating reports, and directly assess complex cases. They also provide quality assurance, oversight and advisory support to HSE managed and funded services for older people and people with disabilities, provide training regarding adult safeguarding, and collate and publish data.</p>
Safeguarding plan	<p>A plan that is prepared where there is an adult safeguarding concern in relation to an adult availing of a service. It outlines the planned actions that have been identified to address the adult's needs and minimise the risk of harm to that adult or other adults within the service. It may be incorporated into a care plan or personal plan.</p>
Self-neglect	<p>Inability, unwillingness or failure of an adult to meet their basic physical, emotional, social or psychological needs, which is likely to seriously affect their wellbeing.</p>
Serious harm	<p>Injury which creates a substantial risk of death, is of a psychological nature which has a significant impact or causes permanent disfigurement or loss or impairment of the mobility of a body as a whole or of the function of any particular member or organ.</p>
Social care	<p>The planning and provision of services and supports to individuals who need them. This may include, for example, the provision of "Meals on Wheels", personal assistance, home care and home support, nursing care or residential services.</p> <p>It also encompasses delivery mechanisms and processes such as eligibility assessments and personal budgets.</p>
Summary power of access to at-risk adults in places including private dwellings	<p>A proposed power to allow members of the Garda Síochána to access at-risk adults in places including private dwellings, where the member reasonably believes there is a risk to the life and limb of the at-risk adult.</p> <p>This power is exercisable without a warrant, and is to be used when there is insufficient time to make an application for a warrant for access to the District Court. This summary power reflects the existing position under the common law, but adds clarity and strengthens the applicable safeguards.</p>
Transitional care arrangements	<p>Arrangements for young people as they move from the care of the State to aftercare, independent living, supported living or residential care. They can also be put in place when</p>

	young people move from children’s social care services to adult social care services.
Undue Influence	Exploitation of a position of power to cause a person to act, or not act, in a way that is detrimental to their best interests and which confers, or intends to confer, a benefit or advantage on another person.
United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”)	An international agreement which aims to protect the human rights and fundamental freedoms of people with disabilities.
Universal mandatory reporting	Requires everyone to report actual or suspected abuse or neglect of at-risk adults, irrespective of the setting or profession.
Vetting	Enquires and examinations conducted by the National Vetting Bureau of the Garda Síochána, employers recruiting employees or bodies recruiting volunteers to determine whether or not a person applying for work or activity, a necessary and regular part of which consists mainly of the person having access to, or contact with, children or “vulnerable persons”, has a criminal history or criminal convictions. This is required by Irish vetting legislation for some professions and volunteer groups.
Ward of Court	In the past, if a person was unable to make certain decisions because of capacity difficulties, they might have been made a Ward of Court to protect them and their property. When a person was made a Ward of Court, a Committee was appointed to control their property and finances and make decisions about their affairs, including their welfare. This has changed since most of the provisions of the Assisted Decision-Making (Capacity) Act 2015 came into force in April 2023.
Wardship	The legal practice of a person being made a Ward of Court. The purpose of wardship was to protect the person and their property and finances when they lacked the capacity to do so themselves. The arrangements under the Assisted Decision Making (Capacity) Act 2015 are now replacing wardship, and all existing Wards of Court are being gradually discharged from wardship.
Warrant	An order granted by a court, usually allowing named individuals (such as members of the Garda Síochána) to enter a particular place and search it. The Commission discusses warrants for access in the adult safeguarding context in Chapters 10 and 11.

The following abbreviations are used throughout this Report:

Abbreviation	Definition
ALRC	Australian Law Reform Commission
APC	Adult Protection Committee
ASPP	Adult Support and Protection Partnership
ASU	Adult Safeguarding Unit (South Australia)
CBI	Central Bank of Ireland
CCPC	Competition and Consumer Protection Commission
CEO	Chief Executive Officer
CFA	Child and Family Agency
CHO	Community Health Organisation
CIB	Citizen's Information Board
CIS	Care Inspectorate Scotland
CIW	Care Inspectorate Wales
CO	Chief Officer of the HSE Community Health Organisation
COG	Chief Officer Group in the HSE
CORU	Health and Social Care Professionals Council
CPC	Consumer Protection Code
CQC	Care Quality Commission
DBS	Disclosure and Barring Service
DHSSPS	Department of Health, Social Services and Public Safety in Northern Ireland
DPA	Data Protection Act
DPC	Data Protection Commission
DPO	Data Protection Officer
DSGBV	Domestic, Sexual and Gender Based Violence
DSS	Decision Support Service
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDPB	European Data Protection Board
EEA	European Economic Area
EU	European Union
GDPR	General Data Protection Regulation (EU) 2016/679
HCA	Health Care Assistant
HCCI	Home and Community Care Ireland
HCSA	Health Care Support Assistant
HETAC	Higher Education and Training Awards Council
HIQA	Health Information and Quality Authority
HIS	Healthcare Improvement Scotland
HMICS	His Majesty's Inspectorate of Constabulary in Scotland

HSE	Health Service Executive
HSENI	Health and Safety Executive for Northern Ireland
IASW	Irish Association of Social Workers
ICO	Information Commissioner's Office
IFSAT	Irish Financial Services Appeal Tribunal
IHA	Integrated Health Area
IPAS	International Protection Accommodation Service
ISCO	International Standard Classification of Occupations
LCDC	Local Community Development Committee
LCSP	Local Community Safety Partnership
LED	Law Enforcement Directive (EU) 2016/680
MABS	Money Advice and Budgeting Service
MHC	Mental Health Commission
NAS	National Advocacy Service for People with Disabilities
NDA	National Disability Authority
NGO	Non-governmental organisation
NHS	National Health Service
NISCC	Northern Ireland Social Care Council
NIRP	National Independent Review Panel
NMBI	Nursing and Midwifery Board of Ireland
NPHE	National Public Health Emergency Team
NMBI	Nursing and Midwifery Board of Ireland
NSO	National Safeguarding Office
OECD	Organisation for Economic Co-operation and Development
OPCAT	United Nations Optional Protocol to the Convention against Torture
PAS	Patient Advocacy Service
PHA	Public Health Agency
PSNI	Police Service of Northern Ireland
QQI	Quality and Qualifications Ireland
RFSP	Regulated Financial Service Provider
RQIA	Regulation and Quality Improvement Authority (Northern Ireland)
SAB	Safeguarding Adults Board
SAI	Serious Adverse Incident
SALRI	South Australia Law Reform Institute
SAO	Senior Accountable Officer according to HSE Incident Management Framework
SAR	Safeguarding Adult Review
SCR	Serious Case Review
SEC	Securities and Exchange Commission
SPT	Safeguarding and Protection Team

SPPG	Strategic Planning and Performance Group in Northern Ireland
SRE	Serious Reportable Event
SSSC	Scottish Social Services Council
SUSR	Single Unified Safeguarding Review (Wales)
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
VCPR	Voluntary Care Professional Register
WHO	World Health Organisation

EXECUTIVE SUMMARY - REPORT ON A REGULATORY FRAMEWORK FOR ADULT SAFEGUARDING

CONTENTS

Executive Summary - Report on A Regulatory Framework For Adult Safeguarding 1

Chapter 1: The Need for a Regulatory Framework for Adult Safeguarding	2
Chapter 2: Defining Key Statutory Terms for Adult Safeguarding Legislation.....	4
Chapter 3: Guiding Principles Underpinning Adult Safeguarding Legislation	8
Chapter 4: A Rights-Based Adult Safeguarding Framework	11
Chapter 5: A Safeguarding Body: Functions, Duties and Powers.....	13
Chapter 6: Organisational and Regulatory Structures: A Safeguarding Body and Powers of Various Regulatory Bodies.....	16
Chapter 7: Imposing Safeguarding Duties on Certain Service Providers	19
Chapter 8: Independent Advocacy	24
Chapter 9: Reporting Models	27
Chapter 10: Powers of Entry to and Inspection of Relevant Premises.....	32
Chapter 11: Powers of Access to At-Risk Adults in Places including Private Dwellings	35
Chapter 12: Powers of Removal and Transfer.....	37
Chapter 13: No-Contact Orders.....	40
Chapter 14: Financial Abuse	44
Chapter 15: Cooperation.....	46
Chapter 16: Information Sharing.....	49
Chapter 17: Adult Safeguarding Reviews.....	50
Chapter 18: Regulation of Professionals and Occupational Groups	53
Chapter 19: Adult Safeguarding and the Criminal Law.....	54
Chapter 20: A Regulatory Framework for Adult Safeguarding – Implementation and a Whole of Government Approach.....	57

Chapter 1: The Need for a Regulatory Framework for Adult Safeguarding

1. In Chapter 1, the Commission explains what is meant by a “regulatory framework for adult safeguarding” and a statutory framework for adult safeguarding. This Chapter outlines why adult safeguarding legislation is needed in Ireland, and notes the existing gaps and consultees’ calls for change.
2. Currently, there is a limited amount of legislation in Ireland that is relevant to adult safeguarding, such as the Health Act 2007, the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012, the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016, and the Assisted Decision-Making (Capacity) Act 2015. However, this legislation does not establish an overarching statutory framework for adult safeguarding in Ireland, and significant gaps remain. Although there are existing guidelines, policies and operational measures relevant to adult safeguarding in Ireland, they are limited in their effectiveness and in the range of settings and services to which they apply. In the absence of legislation, the inherent jurisdiction of the High Court is currently used on a case-by-case basis to obtain orders in relation to individuals.
3. The Commission believes that the current position is undesirable and would be greatly improved by the provision of a statutory and regulatory framework for adult safeguarding. This would entail comprehensive, cross-sectoral legislation which assigns responsibility for regulation and oversight to appropriate bodies, and provides powers, duties and obligations for those who interact with adults, who may be at-risk adults, across different settings. Ensuring that legislation is cross-sectoral will facilitate cooperation, collaboration and information-sharing, which are critical to ensuring that adult safeguarding measures work in practice.
4. Providing for such a framework on a statutory basis would address the existing gaps and shortcomings, provide greater legislative certainty and clarity, and establish a robust, rights-based adult safeguarding framework in Ireland. It would also help to place the focus on empowerment, prevention and proactive adult safeguarding practice. The Commission therefore recommends that (civil and criminal) adult safeguarding legislation should be introduced in Ireland.
5. Most of the chapters in the Report on a Regulatory Framework for Adult Safeguarding (“Report”) recommend changes to civil law. However, the Commission also considered whether any reform of the criminal law is

required to keep at-risk adults safe. The Report makes a number of recommendations in this regard, including the introduction of new criminal offences which are discussed in Chapter 19 and reflected in the Commission's Criminal Law (Adult Safeguarding) Bill 2024.

6. The Commission is mindful, however, that legislation is not a panacea. Any changes to the law concerning adult safeguarding will need to be supported by awareness-raising, capacity-building and concrete implementation plans. Consultees have stressed to the Commission the need for adequate resourcing and changes in culture to achieve the intended outcomes. The Commission hopes that the proposed statutory and regulatory framework for adult safeguarding will encourage and prompt those necessary steps.
7. The Commission acknowledges that, although strictly beyond the scope of this law reform project, the context of social care in Ireland is highly relevant to adult safeguarding. While existing legislation provides for the funding of nursing home care and the regulation of residential centres for older people and people with disabilities, provision of social care in Ireland is largely on a policy or administrative basis. There are no statutory provisions in Ireland for generally assessing the care and support needs of adults, who may be at-risk adults. Furthermore, there are no statutory provisions for meeting social care and support needs. This contrasts with the statutory social care frameworks in jurisdictions such as England and Wales.
8. Chapter 1 discusses the likely benefits of introducing a comprehensive statutory framework for social care in Ireland, including that it would significantly improve the position of at-risk adults, empower them to support themselves, and reduce the need for other, more reactive, safeguarding measures in the future. The Commission recommends that the Government should consider whether it would be appropriate to introduce a comprehensive statutory framework for social care in Ireland.
9. Chapter 1 sets out the scope of the Report, including its cross-sectoral focus. It outlines the range of contexts and sectors in which adult safeguarding concerns may arise. It also examines the existing structures and legislation in relation to incidents or complaints arising in respect of adults, who may be at-risk adults, in prisons or Garda custody. In particular, the Commission has had regard to the recommendations of the Garda Síochána Inspectorate, the ongoing work in relation to the Inspection of Places of Detention Bill, the functions of existing and soon-to-be-established bodies, and the distinct nature of, and particular security concerns arising in relation to, prisons and Garda custody. The Commission concludes that primary responsibility for adult safeguarding in such settings should remain the responsibility of the relevant bodies in these areas. However, the Commission believes that there could be scope for cooperation with the Safeguarding Body in certain

contexts – for example, where an individual is being released from prison and may be an at-risk adult in the community upon release.

10. Finally, Chapter 1 outlines the law reform remit of the Commission pursuant to the Law Reform Commission Act 1975 (as amended). Chapter 1 explains the Commission’s rationale in circumstances where it cannot make firm recommendations, for example with regard to matters which raise complex and competing policy considerations that require consideration by the Government. With regard to matters which the Commission believes fall outside its remit, the Commission explains its rationale for not making a firm recommendation at the relevant point in the Report.

Chapter 2: Defining Key Statutory Terms for Adult Safeguarding Legislation

11. In Chapter 2, the Commission clarifies the meaning of key terms used in its proposed framework for adult safeguarding in Ireland. Many terms used in the proposed framework are familiar to most people. However, some terms have a particular meaning in the adult safeguarding context, which is why it is important for everyone to understand the terms used in the proposed framework.
12. The Commission notes that many terms used in adult safeguarding do not have a consistent meaning. This is because different bodies use the same term to mean different things. The terms used in the proposed framework need to have a consistent meaning because the terms will likely form part of Irish law in the future, and it is essential that laws are clear and certain.
13. The Commission makes the following recommendations in Chapter 2.
14. The term “adult at risk of harm” should be used in adult safeguarding legislation and should be defined as an adult who by reason of their physical or mental condition or other particular personal characteristic or family or life circumstance (whether permanent or otherwise) needs support to protect themselves from harm at a particular time.
15. The word “adult”, in the definition of “adult at risk of harm”, means a person who is not a child. “Child” means a person who has not attained the age of 18 years.
16. A person is not an “adult at risk of harm” if they have the ability to protect themselves from harm at a particular time, without support, and freely choose not to protect themselves.
17. “Safeguarding” should be defined in adult safeguarding legislation as measures that are, or may be, put in place to promote the health, safety and welfare of adults at risk of harm, including to:

- (a) minimise the risk of harm to adults at risk of harm; and
 - (b) support adults at risk of harm to protect themselves from harm at a particular time.
18. "Safeguarding plan" should be defined in adult safeguarding legislation as a documentary record of the planned actions that have been identified to promote the health, safety and welfare of an adult at risk of harm, including to:
- (a) minimise the risk of harm to an adult at risk of harm; and
 - (b) support an adult at risk of harm to protect themselves from harm at a particular time.
19. "Capacity" in adult safeguarding legislation should have the same meaning as it has in the Assisted Decision-Making (Capacity) Act 2015.
20. "Harm" should be defined in civil adult safeguarding legislation as:
- (a) assault, ill-treatment or neglect in a manner that affects, or is likely to affect, health, safety or welfare;
 - (b) sexual abuse; or
 - (c) loss of, or damage to, property by theft, fraud, deception or coercive exploitation,
- whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.
21. The Commission believes that a higher threshold of harm is necessary for the purposes of its mandated reporting proposals in Chapter 9, to ensure that only more serious forms of harm, known as "reportable harm", are required to be reported.
22. "Reportable harm" should be defined in adult safeguarding legislation as:
- (a) assault, ill-treatment or neglect in a manner that seriously affects, or is likely to seriously affect, health, safety or welfare;
 - (b) sexual abuse; or
 - (c) serious loss of, or damage to, property by theft, fraud, deception or coercive exploitation,
- whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

23. "Reportable harm" should be construed in adult safeguarding legislation as excluding "self-neglect", other than where a mandated person has:
- (a) assessed an adult who is reasonably believed to be an adult at risk of harm as lacking capacity; or
 - (b) a belief, based on reasonable grounds, that the adult who is reasonably believed to be an adult at risk of harm lacks capacity, to make personal care or welfare decisions at the particular point in time when the mandated person knows, believes or has reasonable grounds to suspect that the adult is self-neglecting.
24. The Commission is of the view that a different definition of harm is necessary for the proposed criminal offences in Chapter 19 because these criminal law reforms have a deterrent and punitive purpose. This definition of "harm" will form part of the criminal law, and is distinct from the preventative intervention focus of the civil law reforms which are discussed elsewhere in the Report.
25. "Harm" should be defined in criminal adult safeguarding legislation as:
- (a) harm to body or mind and includes pain and unconsciousness;
 - (b) any injury or impairment of physical, mental, intellectual, emotional health or welfare; or
 - (c) any form of property or financial loss.
26. There is also a definition of "serious harm" used in Chapter 19. "Serious harm" should be defined in criminal adult safeguarding legislation as injury which:
- (a) creates a substantial risk of death;
 - (b) is of a psychological nature which has a significant impact; or
 - (c) causes permanent disfigurement or loss or impairment of the mobility of the body as a whole, or of the function of any particular member or organ.
27. "Neglect" should be defined in criminal adult safeguarding legislation as neglect in a manner likely to cause suffering or injury to health, or to seriously affect wellbeing, which means:
- (a) a failure to adequately protect a relevant person under a person's care from preventable and foreseeable harm;

(b) a failure to provide adequate food, clothing, heating or medical aid for a relevant person under a person's care; or

(c) in the case of a person being unable to provide such:

(i) protection from harm; or

(ii) food, clothing, heating or medical aid,

to a relevant person under their care, a failure to take steps to have each provided under the enactments relating to health, social welfare or housing.

28. The term "relevant person", as contained in the criminal law definition of "neglect", should be defined in criminal adult safeguarding legislation as a person, other than a child, whose ability to guard themselves against violence, exploitation or abuse, whether physical, sexual or emotional, or against neglect by another person is significantly impaired through one, or more, of the following:

(a) a physical disability, a physical frailty, an illness or an injury;

(b) a disorder of the mind, whether as a result of mental illness or dementia;

(c) an intellectual disability;

(d) autism spectrum disorder.

29. "Neglect" should be defined in civil adult safeguarding legislation as neglect in a manner likely to cause suffering or injury to health, or to seriously affect wellbeing, which means:

(a) a failure to adequately protect an adult under a person's care from preventable and foreseeable harm;

(b) a failure to provide adequate food, clothing, heating or medical aid for an adult under a person's care; or

(c) in the case of a person being unable to provide such—

(i) protection from harm, or

(ii) food, clothing, heating or medical aid,

to an adult under their care, a failure to take steps to have each provided under the enactments relating to health, social welfare or housing.

30. The term "self-neglect" should be defined in civil adult safeguarding legislation as the inability, unwillingness or failure of an adult to meet their

basic physical, emotional, social or psychological needs, which is likely to seriously affect their wellbeing.

31. The Commission also recommends that statutory guidance should be provided in relation to the definition of “self-neglect”, which should include guidance on:
 - (a) safeguarding adults at risk of harm who are self-neglecting; and
 - (b) engaging with, and offering optional supports to, adults who are self-neglecting and who have capacity to choose to self-neglect.

Chapter 3: Guiding Principles Underpinning Adult Safeguarding Legislation

32. The inclusion of guiding principles in legislation is important. Chapter 3 outlines the Commission’s recommendations on guiding principles for adult safeguarding legislation. The Commission recommends that the exercise of functions or powers by the Safeguarding Body or its authorised officers under adult safeguarding legislation should be based on these guiding principles.
33. The principles are based on the Commission’s review of international human rights standards and the principles underpinning the following:
 - (a) social care legislation and adult safeguarding legislation in England, Scotland and Wales;
 - (b) existing Irish safeguarding policy and relevant legislation; and
 - (c) the National Standards for Adult Safeguarding of the Health Information and Quality Authority (“HIQA”) and the Mental Health Commission (“MHC”).
34. The Commission proposes the following guiding principles for adult safeguarding legislation in Ireland:
 - (a) a rights-based approach;
 - (b) empowerment and person-centredness;
 - (c) protection;
 - (d) prevention;
 - (e) proportionality;
 - (f) integration and cooperation; and
 - (g) accountability.

35. **Guiding principle 1 (a rights-based approach):** this means ensuring that the rights of at-risk adults are respected, including their rights to autonomy, respect, dignity, bodily integrity, privacy, control over financial affairs and property, non-discrimination, equal treatment in respect of access to basic goods and services, and respect for their beliefs and values.
36. **Guiding principle 2 (empowerment and person-centredness):** this means:
- (a) the presumption of decision-making capacity;
 - (b) the facilitation of supported decision-making, where requested or required;
 - (c) ensuring informed consent;
 - (d) respecting the right to autonomy and the right to full and effective participation in society;
 - (e) the realisation of the right to independent advocacy;
 - (f) ensuring respect for will and preferences;
 - (g) ensuring respect for the right to have risks and options explained; and
 - (h) ensuring respect for the right to be consulted at every step of an action or intervention under adult safeguarding legislation.
37. **Guiding principle 3 (protection):** this means:
- (a) responding effectively to actual or suspected abuse or safeguarding concerns in relation to at-risk adults;
 - (b) protective steps are taken to ensure that safeguarding actions or interventions are taken to protect at-risk adults from harm;
 - (c) support is provided to protect the safety and dignity of at-risk adults and to protect the physical, mental and emotional wellbeing of at-risk adults; and
 - (d) protective measures are taken in relation to adult safeguarding legislation, including to ensure that:
 - (i) the Safeguarding Body and its authorised officers are provided with training regarding the legislation and the exercise of functions or powers under the legislation;
 - (ii) the Safeguarding Body and its authorised officers who are engaged in exercising functions or powers under the legislation to protect at-risk adults from harm are obliged and

facilitated to complete training on these principles, as well as training on their specific roles, before exercising any functions or powers under the legislation; and

(iii) adequate mentoring and supervision of authorised officers is provided.

38. **Guiding principle 4 (prevention):** this means:

- (a) taking proactive steps to ensure that safeguarding actions or interventions are taken to prevent harm to at-risk adults;
- (b) providing support to ensure the safety and dignity of at-risk adults and promoting the physical, mental and emotional wellbeing of at-risk adults; and
- (c) taking proactive measures in relation to adult safeguarding legislation, including to ensure that:
 - (i) the Safeguarding Body and its authorised officers are provided with training regarding the legislation and the exercise of functions or powers under the legislation;
 - (ii) the Safeguarding Body and its authorised officers who are engaged in exercising functions or powers under the legislation to protect at-risk adults from harm are obliged and facilitated to complete training on these principles, as well as training on their specific roles, before exercising any functions or powers under the legislation; and
 - (iii) adequate mentoring and supervision of authorised officers is provided.

39. **Guiding principle 5 (proportionality):** this means ensuring that actions or interventions under adult safeguarding legislation:

- (a) are necessary, having regard to the circumstances of each at-risk adult;
- (b) are, insofar as possible, the least intrusive and restrictive of the freedom of an at-risk adult;
- (c) are proportionate to the level of risk presented to an at-risk adult;
- (d) are limited to the necessary duration;
- (e) adopt a trauma-informed approach; and

- (f) are monitored and evaluated regularly, in accordance with international best practice.
40. **Guiding principle 6 (integration and cooperation):** this means that:
- (a) coordinated and cohesive responses should be taken, in accordance with adult safeguarding legislation, to recognise the potential for harm and to prevent harm to at-risk adults;
 - (b) services should be integrated, and coordinated multidisciplinary responses should be taken to prevent and address adult safeguarding concerns should be taken in accordance with adult safeguarding legislation; and
 - (c) national sectoral policies should be aligned with adult safeguarding legislation to ensure the consistency of practice, policy and legislation across sectors.
41. **Guiding principle 7 (accountability):** this means ensuring:
- (a) accountability and transparency in adult safeguarding;
 - (b) that the Safeguarding Body and its authorised officers who take actions or interventions under adult safeguarding legislation are accountable and answerable for such actions or interventions;
 - (c) that services are transparent and it is clear how the providers of relevant services to at-risk adults respond to safeguarding concerns under adult safeguarding legislation; and
 - (d) that proper procedures are implemented for risk management, ownership, information sharing and reporting.

Chapter 4: A Rights-Based Adult Safeguarding Framework

42. In the Report, the Commission aims to develop a rights-based framework for adult safeguarding. Chapter 4 outlines the relevant rights that must be considered in that context. There are particularly significant rights implications arising with the safeguarding actions and interventions proposed in Chapters 10, 11, 12 and 13, which include powers of access to relevant premises, powers of access to at-risk adults in places including private dwellings, powers of removal and transfer, and no-contact orders.
43. A number of constitutional rights are engaged by these safeguarding actions and interventions and the Commission's other recommendations, including:

- (a) the right to life, which is explicitly protected under Article 40.3.2° of the Constitution;
- (b) the right to personal liberty, which is explicitly protected under Article 40.4.1° of the Constitution;
- (c) the right to privacy, an unenumerated right protected by Article 40.3.1° of the Constitution;
- (d) the right to bodily integrity, an unenumerated right protected by Article 40.3.1° of the Constitution;
- (e) the right to autonomy, an unenumerated right protected by Article 40.3.1° of the Constitution;
- (f) the right to dignity, an unenumerated right protected by Article 40.3.1° of the Constitution;
- (g) the right to the protection of the person, which is explicitly protected by Article 40.3.2° of the Constitution;
- (h) the inviolability of the dwelling, which is explicitly protected under Article 40.5 of the Constitution; and
- (i) the guarantee of equality before the law, provided by Article 40.1 of the Constitution.

44. The Commission's proposed safeguarding actions and interventions have the potential to both vindicate and interfere with the constitutional rights of at-risk adults. They may also vindicate or interfere with the constitutional rights of third parties such as family members of the at-risk adult, or other individuals who live, interact or work with at-risk adults.

45. Constitutional rights are very important, but they are not absolute. In certain circumstances, constitutional rights may be legitimately limited or interfered with. The legitimacy of an interference is generally analysed by reference to a proportionality framework, which has been set out in caselaw. However, some constitutional rights, such as the equality guarantee, are analysed differently. The Commission closely considered the relevant tests for limitations of constitutional rights. It had particular regard to the proportionality framework when developing the proposed safeguarding actions and interventions in the Report.

46. The Commission believes that the objective of safeguarding and protecting the health, safety and welfare of an at-risk adult is, as a matter of principle, of sufficient importance to warrant overriding a right protected by the Constitution. The Commission notes the importance of the means used to achieve this objective. Safeguarding activities entail a broad range of

measures that must be tailored to the specific risk to an at-risk adult at a particular time.

47. The Commission has developed safeguards for each of the proposed safeguarding actions and interventions, such as thresholds and time limits, to ensure that actions or interventions are only used when necessary and proportionate in the circumstances.
48. Many of the rights protected by the Constitution are also protected by the European Convention on Human Rights (“ECHR”). For example, the right to respect for private and family life is protected by Article 8 of the ECHR, the right to liberty and security by Article 5 of the ECHR, and the right to life by Article 2 of the ECHR. Article 3 of the ECHR prohibits torture and inhuman or degrading treatment. Similar to rights under the Constitution, ECHR rights are not absolute. The ECHR permits proportionate and legitimate restrictions on ECHR rights. The Commission considered the potential engagement of ECHR rights when developing its proposed adult safeguarding actions and interventions.
49. Although not all at-risk adults are persons with disabilities, and not all persons with disabilities are at-risk adults, rights under the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”) are also relevant to adult safeguarding. The Commission carefully considered these rights when developing its recommendations in the Report.
50. The Commission recommends that in deciding whether to grant any safeguarding order, whether a warrant for access to a relevant premises, a warrant for access to a place including a private dwelling, a removal and transfer order or any form of no-contact order, adult safeguarding legislation should provide that the court must adopt the least intrusive means possible to meet the objective of safeguarding and protecting the health, safety and welfare of the at-risk adult in the particular circumstances.

Chapter 5: A Safeguarding Body: Functions, Duties and Powers

51. Chapter 5 discusses the need for a body to have statutory responsibility for adult safeguarding. It discusses the existing safeguarding functions of various bodies including the National Safeguarding Office of the Health Service Executive (“HSE”) and the HSE’s Safeguarding and Protection Teams. While various bodies, agencies and services have responsibilities for safeguarding at-risk adults, Chapter 5 identifies that there is a need for a single body to have statutory responsibility for leading and coordinating adult safeguarding practice in Ireland. It proposes that a “Safeguarding Body” should be established as the lead statutory agency with responsibility for adult safeguarding in Ireland. In this Executive Summary and in the Report, the

Commission uses the term “Safeguarding Body” to mean a statutory social work-led adult safeguarding agency which, subject to the decisions of the Government and the Oireachtas, could be established as:

- (a) an independent statutory agency; or
 - (b) a statutory National Adult Safeguarding Office within an existing statutory agency.
52. The question of whether an independent statutory Safeguarding Body should be established or whether such a body should be established within an existing statutory body is addressed in Chapter 6. In Chapter 5, the Commission discusses the role of the Safeguarding Body, which would be established on a statutory basis with relevant functions, duties and powers.
53. In Chapter 5, the Commission recommends that the Safeguarding Body should have a primary statutory function to promote the health, safety and welfare of adults who need support to protect themselves from harm at a particular time.
54. The Commission recommends in Chapter 5 that the proposed adult safeguarding legislation should provide for a duty on the Safeguarding Body to receive reports from persons who know, believe or suspect that an adult at risk of harm has been harmed, is being harmed or is at risk of being harmed.
55. The Commission recommends that the Safeguarding Body should have all such powers as are necessary or expedient for, or incidental to, the performance of its functions, which may include the making of such enquiries as it considers appropriate. The Commission recommends that the proposed adult safeguarding legislation should provide for a duty on the Safeguarding Body to take whatever action it deems necessary to safeguard an adult who it believes needs support to protect themselves from harm where it reasonably believes that there is a risk to the health, safety or welfare of the at-risk adult. In addition to providing for the making of a report to the Garda Síochána where criminality is suspected, legislation should permit the Safeguarding Body to:
- (a) make a referral or report to the National Vetting Bureau of the Garda Síochána;
 - (b) make a referral or report to a professional regulatory body where a member of the relevant profession is a person believed to be causing concern in relation to the health, safety or welfare of an at-risk adult;
 - (c) prepare a safeguarding plan where it determines that it is the most appropriate body to do so;

- (d) lead on cooperation with the HSE or with other agencies to arrange for access to legal, medical, social care, accommodation and other services for the at-risk adult and to ensure that such services are provided in a coordinated manner;
 - (e) make a referral to the Director of the Decision Support Service or make an application to the Circuit Court under Part 5 of the Assisted Decision-Making (Capacity) Act 2015; or
 - (f) cooperate or share information with other relevant statutory bodies, agencies and professionals to prepare a safeguarding plan and plan for its implementation.
56. To facilitate the exercise of the proposed functions of the Safeguarding Body, appropriate staff of the Safeguarding Body should be designated as authorised officers of the Safeguarding Body to facilitate the performance of its adult safeguarding functions.
57. The Commission also recommends that proposed adult safeguarding legislation should permit the Safeguarding Body or its authorised officers to make the following safeguarding actions and interventions where the applicable thresholds are met:
- (a) using powers of entry and inspection to relevant premises to assess the health, safety or welfare of an at-risk adult or at-risk adults, where the thresholds outlined in Chapter 10 are met;
 - (b) applying for a warrant to access an at-risk adult in a place including a private dwelling for the purposes of assessing the health, safety or welfare of the at-risk adult, where the thresholds outlined in Chapter 11 are met;
 - (c) applying for a removal and transfer order for the purposes of assessing the health, safety or welfare of the at-risk adult, and whether any actions are needed to safeguard them, where the thresholds outlined in Chapter 12 are met;
 - (d) applying for an order under the Domestic Violence Act 2018 or an adult safeguarding no-contact order, where the thresholds and pre-conditions outlined in Chapter 13 are met; and
 - (e) assisting a member or members of the Garda Síochána in the exercise of their summary power of access to an at-risk adult in a place including a private dwelling, where the thresholds outlined in Chapter 11 are met.
58. The Commission recommends that adult safeguarding legislation should provide for a statutory power of the Safeguarding Body to prepare a

safeguarding plan or cooperate with other organisations, services or professionals in the preparation of a safeguarding plan where the Safeguarding Body:

- (a) believes that the development of such a plan is necessary; and
 - (b) determines that it would not be more appropriate for a provider of a relevant service to independently prepare a safeguarding plan.
59. The Commission recommends that the Safeguarding Body should have the following statutory functions, the exercise of which would allow it to further its primary statutory function of promoting the health, safety and welfare of at-risk adults:
- (a) to provide training, information and guidance to staff of publicly and privately funded providers of relevant services, mandated persons and any others that the Safeguarding Body or relevant Minister may deem appropriate; and
 - (b) to collect and evaluate data and undertake, commission or collaborate in research related to its statutory functions.

Chapter 6: Organisational and Regulatory Structures: A Safeguarding Body and Powers of Various Regulatory Bodies

60. Chapter 6 discusses organisational and regulatory structures related to adult safeguarding. It discusses the need for:
- (a) a statutory agency to have functions and powers to provide social work-led adult safeguarding services including receiving and responding to reports of actual or suspected abuse or neglect of at-risk adults arising across all sectors – a “Safeguarding Body”; and
 - (b) the need for regulatory gaps to be filled by conferring additional regulatory functions on existing regulators.
61. The Commission recommends that a designated statutory adult safeguarding body, the Safeguarding Body, should be established with the statutory functions, duties and powers recommended in Chapter 5.
62. The Commission’s view is that the Safeguarding Body should be a social work-led adult safeguarding agency with statutory functions, duties and powers to receive and respond to reports of actual or suspected abuse or neglect of at-risk adults. The Commission believes that the Safeguarding Body should not be a regulatory body and that additional regulatory functions should instead be conferred on existing regulators. The

Government may also decide to establish a new regulatory body in the future.

63. The table below provides an overview of the proposed functions of the Safeguarding Body and additional regulatory functions to be conferred on existing regulatory bodies including HIQA, the Mental Health Commission, the Policing and Community Safety Authority, and the Domestic, Sexual and Gender-based Violence Agency (Cuan).

Functions of Safeguarding Body	Relevant regulatory functions
<ul style="list-style-type: none"> • receiving reports of actual or suspected harm; • exercising its functions to promote the health, safety and welfare of adults who need support to protect themselves from harm at a particular time, including exercising proposed powers to take safeguarding actions and make interventions (less serious incidents of actual or suspected harm occurring in services settings can be addressed by the providers of the services directly); • developing safeguarding plans, where appropriate; • putting in place preventative measures; • data collection; • research; • training; and • public education/awareness raising. 	<ul style="list-style-type: none"> • monitoring compliance by providers of relevant services with proposed duties to undertake a documented risk assessment and prepare an adult safeguarding statement (multiple regulatory bodies); • setting standards and inspecting any centralised social work-led adult safeguarding services - such as those of the Safeguarding Body; or the HSE's existing Safeguarding and Protection Teams or future Regional Adult Safeguarding and Protections Teams - including the usage of the proposed powers to make safeguarding interventions (a single regulatory body or a partnership of multiple regulatory bodies); and • conducting serious incident reviews (reviewing body to be determined by the Government; it may decide that existing regulators should carry out this function).

64. Chapter 6 discusses whether the Safeguarding Body should be established as a new independent statutory body or within an existing statutory agency. The Commission outlines its view that the Government is best placed to determine whether the Safeguarding Body should most appropriately be established:
- (a) within an existing statutory body; or
 - (b) as a new independent statutory body.
65. This is a decision that would most appropriately be made by the Government given the substantial competing policy aspects involved, including resource-management (including, but not limited to, financial resources); organisational structure and accountability; transition management; risk management; effectiveness; independence; and perceptions of independence. The Commission believes that these issues, in particular questions regarding how best to balance countervailing policy and economic considerations, are outside the specific expertise and remit of the Commission and would be best considered by the Government.
66. The Commission recommends that if the Government determines that the Safeguarding Body cannot, or should not, be established as an independent statutory body or within an existing statutory agency in the short term, the Safeguarding Body should be established as a statutory office within the HSE as an interim measure (unless the Government decides that it should be a longer-term measure). If established within the HSE, the Safeguarding Body could be established as a National Adult Safeguarding Office to replace the existing National Safeguarding Office. Until the Government determines whether the Safeguarding Body should be established as an independent statutory body or within an existing statutory agency, the Commission recommends that an interim Safeguarding Body established as a statutory office within the HSE should be conferred with the statutory powers and functions recommended in the Report and contained in the Commission's Adult Safeguarding Bill 2024.
67. If the Government decides to establish the Safeguarding Body as a National Adult Safeguarding Office within the HSE as an interim or longer-term measure, the Commission believes that this Office should:
- (a) be responsible for the provision of social work-led adult safeguarding services through the Safeguarding and Protection Teams across the HSE's Community Healthcare Organisations or future Regional Adult Safeguarding and Protection Teams across the HSE's health regions;
 - (b) lead on the exercise of the statutory functions of the Safeguarding Body; and

- (c) insofar as is practicable, operate independently from the HSE's Social Care Division in the performance of its functions, and the Director of the Office should report directly to the Chief Executive Officer of the HSE.
- 68. The Commission recommends that any recommendations applicable to the Safeguarding Body in the Report should apply to the Safeguarding Body regardless of whether the Government decides to establish the Safeguarding Body within an existing statutory body or as a new independent statutory body.
- 69. In Chapter 6, the Commission also recommends that an existing regulatory body or multiple existing regulatory bodies should have functions to regulate social work-led adult safeguarding services provided by the Safeguarding Body (such services are currently provided by the HSE's Safeguarding and Protection Teams). The Commission believes that this should be achieved by:
 - (a) extending the existing functions of HIQA in relation to setting standards and inspecting compliance with standards to include the regulation of social work-led adult safeguarding services (this would be in line with HIQA's existing function to regulate children's social care services); or
 - (b) the conferring of relevant functions on another appropriate regulatory body or multiple regulatory bodies designated and/or established by the Government.
- 70. The Commission refers to its recommendations in Chapter 7 that existing regulatory bodies should be conferred with functions to monitor compliance by providers of certain services (known as relevant services) with their proposed new duties. It concludes that the Commission is not recommending the establishment of a new adult safeguarding regulatory body. This is because the Commission seeks to avoid duplication in remits of regulatory bodies and seeks to make best use of the expertise of existing regulatory bodies. However, the Government may decide to establish a regulatory or reviewing body to conduct serious incident reviews, for example.

Chapter 7: Imposing Safeguarding Duties on Certain Service Providers

- 71. Chapter 7 discusses safeguarding duties on certain service providers, known as providers of relevant services. These duties reflect the fact that adult safeguarding is not the sole responsibility of one body, agency or service, and that many different entities have an important role in safeguarding at-risk adults in Ireland. Currently, there are no safeguarding duties that apply universally to all organisations who provide services to adults, including

adults who are, may be or may become at-risk adults. There are existing regulations, policies or standards that place safeguarding duties on providers of relevant services, but they are sector specific. Some of these services are regulated, but others are not.

72. Chapter 7 recommends that all safeguarding duties proposed therein should apply to providers of a relevant service, and that a “relevant service” should be defined as “any work or activity which is carried out by a person or organisation, a necessary and regular part of which consists mainly of a person or organisation having access to, or contact with, adults, or adults who are, may be, or may become adults at risk of harm”.
73. The list of relevant services should include but should not be limited to:
- (a) a designated centre within the meaning of section 2(1) of the Health Act 2007, insofar as it relates to an institution wherein residential services are provided to older people or to adults with disabilities;
 - (b) a service that provides care to adults in private dwellings;
 - (c) a service that provides day services to adults with disabilities;
 - (d) a service that provides day services to older adults;
 - (e) a service that provides personal assistance to adults with disabilities;
 - (f) a hospital, hospice, health care centre or other centre which receives, treats or otherwise provides physical services to adults;
 - (g) a service that receives, treats or provides mental health services to adults, including approved centres under the Mental Health Act 2001;
 - (h) a reception or accommodation centre which provides residential accommodation services to adults in the international protection process managed by, or under contract to the Department of Children, Equality, Disability, Integration and Youth;
 - (i) a centre which provides refuge accommodation services for victims of domestic, sexual or gender-based violence;
 - (j) a centre which provides residential accommodation services for the purposes of providing substance misuse services;
 - (k) a centre which provides residential accommodation services to adults experiencing homelessness;

- (l) a service that provides treatment (including assessment which may lead to treatment), therapy or counselling to an adult;
 - (m) any work or activity as a driver of, or as an assistant to the driver, or as a conductor, or as a supervisor of adults using a vehicle which is being hired or used only for the purpose of conveying adults to or from day services or respite services and related activities of such services;
 - (n) any work or activity which is carried out by a member of the Garda Síochána, a necessary and regular part of which consists mainly of the person having access to, or contact with, adults who may be at risk of harm or “vulnerable persons” within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.
74. The Commission recognises that recommending that unregulated services should be brought within regulation would be outside of the scope of the project as it involves considerations beyond adult safeguarding. Instead, the Commission recommends that the Government should carefully consider whether relevant services, which are not currently subject to statutory regulatory regimes including statutory inspections, should be brought within such regulatory regimes. Where a relevant service is unregulated and standards exist or will exist in the future, the relevant funding agencies or Government departments could consider updating or drafting standards to encompass the safeguarding duties proposed in Chapter 7. This could be done in the interim while regulation is awaited.
75. Chapter 7 discusses the existing duties on providers of relevant services to safeguard at-risk adults in regulations, policy requirements in existing standards and contractual agreements on providers of certain relevant services. It concludes that there are no statutory safeguarding duties that apply universally to all organisations in the provision of services to adults, including adults who are, may be or may become at-risk adults. The Commission therefore recommends that the following duties on a providers of relevant services should be introduced in adult safeguarding legislation:
- (a) a duty to ensure, as far as reasonably practicable, that its services are organised, managed and provided in such a way as to prevent harm to any adult who is, may be or may become, an at-risk adult while availing of the service.
 - (b) a duty to undertake, and document, a risk assessment of any potential for harm to an adult while availing of the service; and
 - (c) a duty to prepare an adult safeguarding statement.

76. The Commission recommends that each provider of a relevant service must document its risk assessment and maintain records of it. An adult safeguarding statement relates to safeguarding of adults availing of the service generally in the context of provision of services. In comparison, a safeguarding plan (discussed below) is specific to safeguarding individual at-risk adults where there is a safeguarding concern.
77. The Commission recommends that an adult safeguarding statement should specify the policies, procedures and measures that a provider of a relevant service has in place to safeguard adults, including adults who are, may be, or may become at-risk adults. This would include any policies, procedures and measures put in place to address the risks identified in a risk assessment.
78. The Commission recommends that a provider of a relevant service should be required to make:
- (a) records of its adult safeguarding risk assessment; and
 - (b) a copy of its adult safeguarding statement
- available to all adults availing of the service and members of staff of the provider of a relevant service and, on request, to members of the public and regulatory bodies responsible for oversight of the relevant service.
79. Chapter 7 discusses measures for addressing non-compliance with the duties to undertake and document a risk assessment and prepare an adult safeguarding statement, including the role of existing regulators in oversight of compliance. The enforcement mechanism recommended by the Commission includes the issuing of warning notices, non-compliance notices and placement on a non-compliance register. The Commission recommends that where relevant services are regulated, existing regulators of relevant services should have responsibility for monitoring compliance and should maintain a register of non-compliance for the services they regulate.
80. Chapter 7 also discusses safeguarding plans and existing statutory and policy requirements on providers of certain relevant services to have a safeguarding plan, care plan or personal plan in place. Some of these are statutory requirements, for example, in regulations where the residential centre is regulated by HIQA or the MHC. However, other relevant services may be required to comply with non-statutory standards or policies that contain requirements in respect of care plans, personal plans or safeguarding plans.
81. Chapter 7 discusses the distinction between safeguarding plans and care plans or personal plans. A safeguarding plan may be put in place where a provider of a relevant service is concerned that there is a risk of harm to a particular adult availing of the service, or a group of adults. A safeguarding plan outlines the steps that should be taken to keep a particular adult or

group of adults safe or to minimise the risk of harm posed by one adult availing of a service to others. A safeguarding plan should be implemented only with the consent of the relevant at-risk adult where the at-risk adult has capacity make decisions about their personal care and welfare.

82. The Commission also makes recommendations in respect of providers of specific relevant services. It recommends that the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013, the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 and the Mental Health Act 2001 (Approved Centres) Regulations 2006 should be amended to include a requirement to update a care plan or personal plan to incorporate a safeguarding plan, where a resident is identified as being at risk of harm. The amendments to the regulations should also provide that where a safeguarding plan has been incorporated into a care plan or personal plan, providers of a relevant service are required to undertake an initial review no later than six months, and a subsequent review no later than twelve months, from the date of the update of the care plan or personal plan to assess whether progress has been made to adequately safeguard the resident. It also recommends that personal support plans for service users availing of home support services (or any other equivalent plan that may be identified in future regulations) should incorporate a safeguarding plan where an adult is identified as being at risk of harm.
83. In Chapter 7, the Commission also makes recommendations about duties on providers of relevant services to provide adult safeguarding training. It recommends that regulation 26 of the Mental Health Act 2001 (Approved Centres) Regulations 2006 should be amended to require that staff of approved centres are provided with adult safeguarding training, including training on how to detect, prevent and respond to abuse. The Commission recommends that any future regulations that may be introduced for home support services should require that staff providing home support services are provided with adult safeguarding training, including training on how to detect, prevent and respond to abuse.
84. The Commission also recommends that requirements to ensure that staff are provided with adult safeguarding training, including training on how to detect, prevent and respond to abuse should be imposed on providers of relevant services other than those regulated by HIQA and the Mental Health Commission. It is difficult to achieve this in the absence of regulation, but consideration could be given to updating or drafting existing or future standards on the service to include expectations regarding adult safeguarding training. Furthermore, Chapter 7 identifies a specific training gap in respect of taxi drivers. The Commission recommends that the Taxi Regulation (Small Public Service Vehicle) Regulations 2015 should be

amended to introduce a requirement on holders of licences to drive small public vehicles to undertake adult safeguarding training, including training on how to detect, prevent and respond to abuse. This should be provided by the National Transport Authority and the Garda Síochána in cooperation with the Safeguarding Body. Finally, Chapter 7 discusses data collection and information sharing duties on providers of relevant services.

Chapter 8: Independent Advocacy

85. Chapter 8 considers whether more can be done to ensure that adults who are or are believed to be at-risk adults can access independent advocacy services. Independent advocacy means advocacy support provided by organisations or individuals that are independent of family members and service providers. Independent advocacy aims to empower and assist individuals who face challenges exercising their rights by ensuring that they can express their views, communicate their wishes and participate in decision-making processes that affect their lives.
86. Currently in Ireland, statutory duties to facilitate access to independent advocacy in the adult safeguarding context are limited to adults with disabilities and older people residing in residential centres, and people with mental health disorders receiving treatment in residential centres under the Mental Health Act 2001. However, a uniform approach has not been taken in these residential centres, meaning that the strength of the obligations placed on service providers varies significantly across the regulations. Furthermore, because these statutory obligations only apply to service providers in residential centres for older people, people with disabilities and people with mental health disorders, adults who are cared for outside of these settings do not have statutory entitlements to access independent advocacy support to express their views and receive support to enable them to participate in decision-making processes that affect their lives.
87. At present, there are different organisations offering independent advocacy services, with varying remits and funding streams to provide services to different groups of people. A statutory and regulatory framework for adult safeguarding should place at-risk adults at the centre of all decisions, respect their autonomy, empower them to express their views about safeguarding measures, and enhance their ability to actively engage in decision-making processes and understand the purpose of any actions or interventions proposed. Independent advocates play a crucial role in helping adults who are, may be, or may become at-risk adults communicate their views and engage with relevant professionals. However, other forms of advocacy are equally important, such as peer advocacy and self-advocacy, as well as the support provided by social workers to empower adults to advocate for themselves.

88. The Commission recommends that the Government should adopt a consistent approach to the provision of independent advocacy across all care settings. To ensure consistency, the Commission recommends that the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 should be amended to require designated centres for people with disabilities to facilitate access to independent advocacy services for adults residing in those centres. The Commission also recommends that the Mental Health Act 2001 (Approved Centres) Regulations 2006 should be amended to require approved centres to facilitate access to independent advocacy services for adults residing in approved centres.
89. In terms of unregulated services, or services where non-statutory standards exist, the Commission believes that when such services are regulated, similar duties in respect of independent advocacy should be placed on these services to ensure consistency. Where standards or contracts for service arrangements exist, relevant funding agencies and Government Departments could consider updating current standards and contracts to include similar independent advocacy provisions, as exist in the regulations under the Health Act 2007 and Mental Health Act 2001. Any future standards or contracts could also include these requirements.
90. Throughout the Report, the Commission recommends that the Safeguarding Body should be empowered to exercise certain functions and powers to promote the health, safety and welfare of at-risk adults and to minimise the risk of harm to them. Where the Safeguarding Body is exercising its functions under adult safeguarding legislation, some of the actions it may take could be distressing for an adult who is or is believed to be an at-risk adult. Having an independent advocate present could help the at-risk adult to understand what is going to happen, and help them to express their views on the situation. The Commission therefore recommends that adult safeguarding legislation should introduce a duty on the Safeguarding Body to facilitate, so far as is reasonably practicable, access to independent advocacy services for an adult who is, or is believed to be, an at-risk adult, where it engages with such adult directly for the purposes of exercising its functions under adult safeguarding legislation.
91. Some at-risk adults may have no difficulties engaging with adult safeguarding processes, expressing their preferences and perspectives, or communicating with relevant professionals, including the Safeguarding Body and its authorised officers. For this reason, the Commission recommends that the proposed duty to facilitate access to independent advocacy services should only apply where the Safeguarding Body is satisfied that, without access to independent advocacy services, an adult who is, or is believed to be,

an at-risk adult may experience significant challenges in doing one or more of the following:

- (a) understanding relevant information;
- (b) retaining that information;
- (c) using or weighing that information as part of the process of engaging with the Safeguarding Body;
- (d) communicating their views, wishes, or feelings (whether by talking, using sign language or any other means).

92. Furthermore, the Commission recommends that the proposed duty to facilitate access to independent advocacy services should only apply where the Safeguarding Body is satisfied that there is no other suitable person who could effectively support the adult who is, or is believed to be, an at-risk adult to enable their engagement with the Safeguarding Body. This could be a family member, a friend or a professional who has built up trust with the adult.
93. The Commission believes that it would be helpful to have a code of practice for independent advocates working in the adult safeguarding context, similar to the codes of practice that have been published by the Director of the Decision Support Service under the Assisted Decision-Making (Capacity) Act 2015. The Commission recommends that adult safeguarding legislation should include a provision to allow the Safeguarding Body to publish a code of practice for independent advocates providing support to adults who are, or are believed to be, at-risk adults.
94. Given the increasing importance of, and reliance on, independent advocacy in the health and social care sector in particular, there is a real need for standardisation in training, conduct and procedures in respect of the provision of independent advocacy services. The regulation of independent advocates or independent advocacy services is outside the scope of this project because it is not specific to the adult safeguarding context. The extent to which individual independent advocates or independent advocacy services should be regulated involves many competing considerations and should be considered as a whole across various relevant sectors, as opposed to in isolation in the context of a statutory and regulatory framework for adult safeguarding. As such, the Commission recommends that the Government should consider whether a form of regulation of independent advocates or independent advocacy services is required.

Chapter 9: Reporting Models

95. In Chapter 9, the Commission discusses reporting models in Ireland and other jurisdictions and makes recommendations for reform. Reporting of abuse or neglect of at-risk adults is an important part of adult safeguarding. Reporting can prevent further abuse or neglect of at-risk adults, or uncover institutional or historic abuse.
96. Although Irish law provides for an offence of withholding information about certain offences against “vulnerable persons” in particular circumstances, there is no statutory framework for the reporting of concerns about at-risk adults more broadly. Existing legislation provides for offences of withholding information in specified circumstances and imposes, for example, duties on specified persons to report notifiable incidents in designated centres under the Health Act 2007. However, none of the existing offences or obligations in Ireland are designed to allow for the investigation of concerns of actual or suspected abuse or neglect of individual at-risk adults.
97. Furthermore, the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023, which has not yet commenced at the time of writing, contains a list of incidents required to be notified by health services providers to HIQA or the MHC.
98. However, upon the commencement of the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023, there will still be a gap in protection for patients of health services providers who are or may be at-risk adults because incidents which involve the actual or suspected abuse or neglect of at-risk adults, but which do not amount to notifiable incidents under the 2023 Act or regulations made thereunder, will not be required to be notified by health services providers.
99. There are different models for reporting abuse or neglect of at-risk adults:
 - (a) Permissive reporting permits people to report actual or suspected abuse or neglect. We currently have a permissive reporting system in Ireland, although it does not exist on a statutory basis.
 - (b) Universal mandatory reporting requires everyone to report actual or suspected abuse or neglect of at-risk adults.
 - (c) General reporting for mandated persons requires specified persons, known as “mandated persons”, to report actual or suspected abuse or neglect of at-risk adults.
 - (d) Mandatory reporting of specified incidents requires the reporting of certain types of actual or suspected abuse or neglect, for example, physical or sexual abuse.

- (e) Mandatory reporting in specified settings requires the reporting of actual or suspected abuse in particular settings only, for example, in residential care settings.
100. In Chapter 9, the Commission makes the following recommendations.
101. Statutory provisions for universal mandatory reporting in the adult safeguarding context should not be introduced in Ireland.
102. Schedule 2 to the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 should be amended to insert the following:
- (a) the offence of coercion under section 9 of the Non-Fatal Offences against the Person Act 1997;
 - (b) the offence of endangerment under section 13 of the Non-Fatal Offences against the Person Act 1997; and
 - (c) the following offences proposed by the Commission in Chapter 19:
 - (i) the offence of intentional or reckless abuse, neglect or ill-treatment of a relevant person;
 - (ii) the offence of exposure of a relevant person to a risk of serious harm or sexual abuse;
 - (iii) the offence of coercive control of a relevant person; and
 - (iv) the offence of coercive exploitation of a relevant person.
103. The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 and the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 should be amended to extend the list of notifiable incidents to include financial coercion, patterns of neglect, and psychological or emotional abuse.
104. The Mental Health Act 2001 (Approved Centres) Regulations 2006 should be amended to require the following incidents to be notified to the Inspector of Mental Health Services:
- (a) the unexpected death of any resident;
 - (b) any serious injury to a resident that requires immediate medical and/or hospital treatment;
 - (c) any unexplained absence of a resident from an approved centre;

- (d) any allegation of misconduct by the registered proprietor or a member of staff;
 - (e) any occasion where the registered proprietor became aware that a member of staff is the subject of a review by a professional body;
 - (f) any allegation of financial coercion by the registered proprietor or a member of staff;
 - (g) any allegation of patterns of neglect of a resident by the registered proprietor or a member of staff; and
 - (h) any allegation of psychological or emotional abuse of a resident by the registered proprietor or a member of staff.
105. Where a person listed in Schedule 2 (Mandated Persons) to the Commission's proposed Adult Safeguarding Bill 2024 knows, believes or has reasonable grounds to suspect, on the basis of information that they have received, acquired or become aware of in the course of their employment or profession as a mandated person, that an at-risk adult has been harmed, is being harmed or is at risk of being harmed, they should be under a statutory duty to report, as soon as practicable, that knowledge, belief or suspicion, as the case may be, to the Safeguarding Body.
106. The appropriate body for the receipt and assessment of reports is the Safeguarding Body.
107. The threshold that should apply to the proposed statutory duty on mandated persons to report should be that a mandated person knows, believes or has reasonable grounds to suspect, on the basis of information that they have received, acquired or become aware of in the course of their employment or profession as a mandated person, that an at-risk adult has been harmed, is being harmed or is at risk of being harmed.
108. "Reportable harm" should be defined in adult safeguarding legislation. The Commission's proposed definition is contained in Chapter 2.
109. "Reportable harm" should be construed as excluding "self-neglect", other than in the circumstances outlined in Chapter 2.
110. As recommended in Chapter 2, statutory guidance should be provided in relation to the definition of "self-neglect", which should include guidance on:
- (a) safeguarding adults at risk of harm who are self-neglecting; and
 - (b) engaging with, and offering optional supports to, adults who are self-neglecting and who have capacity to choose to self-neglect.

111. A mandated person should not be required to make a report to the Safeguarding Body in the following circumstance:
- (a) where the mandated person reasonably believes that an adult at risk of harm has decision-making capacity in relation to their care and welfare at a particular point in time;
 - (b) where the adult at risk of harm, who has decision-making capacity under paragraph (a), has made known to the mandated person their view that the knowledge, belief or suspicion, or information relating to it, should not be disclosed to the Safeguarding Body and the mandated person relied upon that view; and
 - (c) where the mandated person reasonably believes that the adult at risk of harm is deciding of their own free will, without undue influence or duress, to state that they do not want a report to be made to the Safeguarding Body.
112. The Commission recommends that a provision similar to section 14(4) of the Children First Act 2015, which avoids the need for duplicative reporting by mandated persons, should be included in adult safeguarding legislation.
113. Mandated persons for the purposes of the duty to report actual or suspected abuse or neglect of at-risk adults should be prescribed in a schedule to adult safeguarding legislation.
114. The full list of persons who the Commission believes should be prescribed as mandated persons is contained in Schedule 2 to the Commission's proposed Civil Law (Adult Safeguarding) Bill 2024.
115. Members of the Garda Síochána should be prescribed as mandated persons for the purposes of the proposed duty to report in adult safeguarding legislation.
116. Managers of the following types of services should be prescribed as mandated persons for the purposes of the proposed duty to report in adult safeguarding legislation:
- (a) a day service for adults;
 - (b) a professional home support provider;
 - (c) a centre that provides refuge accommodation services for victims of domestic, sexual or gender-based violence;
 - (d) a homeless provision or emergency accommodation facility;

- (e) an accommodation centre for people seeking, or offered, international protection (i.e. direct provision); and
 - (f) an addiction or substance misuse service.
117. Probation officers within the meaning of section 1(1) of the Criminal Justice (Community Service) Act 1983 should be included in the schedule of mandated persons for the purposes of the proposed duty to report in adult safeguarding legislation.
118. The schedule of mandated persons for the purposes of the proposed duty to report in adult safeguarding legislation should include:
- (a) safeguarding officers or other persons, howsoever described, who are employed for the purpose of performing the adult safeguarding function of religious, sporting, advocacy, charitable, recreational, cultural and educational bodies and organisations; and
 - (b) other bodies and organisations offering services to adults, who may include at-risk adults.
119. A failure by a mandated person to report under adult safeguarding legislation should not result in the imposition of a criminal sanction.
120. Each code of professional conduct and ethics relevant to mandated persons who are registered medical, health or social care professionals should include provisions about reporting and compliance with relevant legal obligations that are uniform to all of the codes.
121. Failures to report by mandated persons who are not registered medical, health or social care professionals should be addressed by:
- (a) internal disciplinary procedures, where possible and appropriate;
 - (b) notifications to HIQA so that failures to report can be taken into account in the inspection of designated centres and relevant social care services under the Health Act 2007;
 - (c) notification to the HSE, which should be considered in light of any funding arrangements in place for the relevant setting under section 38 or section 39 of the Health Act 2004; or
 - (d) notification of the breach of a duty to report to the National Vetting Bureau of the Garda Síochána.
122. Regular training should be provided to mandated persons for the purposes of the proposed duty to report in adult safeguarding legislation.

123. Adult safeguarding legislation should provide that where the Safeguarding Body receives a report from a mandated person, it may take such steps as it considers necessary to exercise its functions under adult safeguarding legislation which include, but are not limited to, a request to any mandated person whom it believes, based on reasonable grounds, may be in a position to assist it for those purposes, to provide it with such information and assistance as it may reasonably require and is, in its opinion, necessary and proportionate in all of the circumstances of the case.
124. Statutory protection should be introduced in adult safeguarding legislation that is applicable to anyone who makes a report of actual or suspected harm of an at-risk adult, provided the report is made reasonably and in good faith.
125. A system of permissive reporting in the adult safeguarding context should not be introduced on a statutory basis.
126. Having regard to the lead-in time required for the commencement of mandated reporting provisions and the need to ensure the successful introduction of mandated reporting in Ireland, the Government should conduct preparatory work which may include the following:
 - (a) drafting guidance and resources;
 - (b) developing training and e-learning programmes; and
 - (c) raising awareness.

Chapter 10: Powers of Entry to and Inspection of Relevant Premises

127. In Chapter 10, the Commission considers powers of entry to, and inspection of, relevant premises for the purposes of assessing the health, safety or welfare of at-risk adults. The term “relevant premises” includes but is not limited to designated centres, approved centres, hospitals, premises in which day services are provided to adults with disabilities or older adults, and centres providing residential accommodation services to adults in the international protection process. The full list is in Chapter 10.
128. As safeguarding issues can arise in many settings, the Safeguarding Body must have adequate powers to assess such issues. Currently, there are very limited powers of access available to professionals. The HSE’s Safeguarding and Protection Teams have no statutory power to enter public or private facilities, and only a limited policy basis for entering certain public facilities. HIQA’s inspection powers are also limited. This is contrasted with expansive powers of access available to equivalent bodies in Scotland, Wales, and jurisdictions in Canada and Australia. The need for enhanced powers of access in Ireland was supported by many consultees, who recognised the

gaps in the current safeguarding framework and the challenges faced by social workers in accessing at-risk adults, particularly in private nursing homes.

129. The Commission conducted a rights analysis to examine the implications of enhanced powers of access to relevant premises on the rights of at-risk adults and third parties. The proposed power is intended to vindicate an at-risk adult's constitutional rights to life, liberty, bodily integrity, autonomy, dignity and protection of the person. However, the power may also interfere with the constitutional rights to liberty, privacy, autonomy and the inviolability of the dwelling of the at-risk adult or third parties. The power similarly engages several ECHR rights. The Commission is of the view that the power is necessary to vindicate the rights of at-risk adults, and can be tailored so as to minimally, and proportionately, interfere with rights.
130. The Commission recommends that adult safeguarding legislation should provide authorised officers of the Safeguarding Body with a warrantless power of entry to and inspection of a relevant premises, for the purposes of assessing the health, safety or welfare of an at-risk adult or at-risk adults. As mentioned above, the Commission recommends defining "relevant premises" to include a range of settings where at-risk adults may reside and receive care. The relevant Minister should be empowered to prescribe additional "relevant premises" as necessary. The power of access does not extend to private dwellings, in light of the constitutional protection they receive.
131. The Commission recommends that the definition of "dwelling" for this purpose should not encompass the rooms of residents in relevant premises. The Commission recognises that residents live in these premises and that they are their homes. However, such rooms are rarely, if ever, self-contained premises, and many staff members and others may have access to these rooms on a regular basis. It would be impracticable and disproportionate to require a warrant, when access is not for a punitive or disciplinary reason. Indeed, it may be in the interests of residents for authorised officers to have a warrantless power of entry that would allow for timely interventions. However, the definition of "dwelling" should include any self-contained part of a relevant premises used as a residence by the service provider or staff. An authorised officer should only enter such a dwelling with the consent of the occupier or in accordance with a warrant or other legal power of entry.
132. Given the nature of relevant premises, the Commission is of the view that no warrant should be required for entry by an authorised officer of the Safeguarding Body. However, it should be possible to obtain a warrant from the District Court where access has been prevented or is likely to be prevented. The Commission believes that the same basic threshold should apply to the warrantless power of entry and inspection and to the application

for a warrant in the context of obstruction. This threshold includes a reasonable belief that there is a risk to the health, safety or welfare of an at-risk adult on the relevant premises that is caused by abuse, neglect or ill-treatment, and that access to the premises is necessary to assess the health, safety or welfare of the at-risk adult. To obtain a warrant, the authorised officer (or any persons permitted to accompany them) must also have been prevented, or be likely to be prevented, from entering the relevant premises. Obtaining a warrant would allow for accompaniment by members of the Garda Síochána. It should be possible to use reasonable force, if necessary, to gain access to a relevant premises in accordance with a warrant.

133. The proposed legislation should also give the authorised officer powers to effectively assess the risk to at-risk adults, including powers to inspect documents and other items on the premises and interview staff members. Authorised officers should be empowered to require persons in charge to provide information which is reasonably required to assess the health, safety or welfare of at-risk adults, and to produce documents and provide explanations of them.
134. Authorised officers and accompanying health or social care professionals should also be able to interview an at-risk adult or at-risk adults at the premises, if they consent. Authorised officers and accompanying health or social care professionals should also be able to conduct a private medical examination of an at-risk adult, again if the at-risk adult consents. An at-risk adult must be informed of their right to refuse any interview or medical examination in advance.
135. To ensure that appropriate expertise is available to assess the health, safety or welfare of an at-risk adult on the relevant premises, an authorised officer may be accompanied by an appropriately qualified health or social care professional, such as a GP or public health nurse. An authorised officer may also be accompanied by any other persons they reasonably consider necessary or appropriate, such as a trusted friend or family member of the at-risk adult. Finally, an authorised officer may be accompanied by a member of the Garda Síochána if a warrant has been obtained in the context of obstruction, as outlined above.
136. It should be an offence for a staff member, service provider or other person carrying out functions for and within a relevant premises to obstruct authorised officers or any person accompanying them in their duties. It should not be an offence for an at-risk adult to cause such obstruction.
137. In Chapter 10, the Commission recommends additional safeguards such as providing for the anonymity of the at-risk adult in court proceedings and an explanation of the power or warrant to be provided to the at-risk adult.

Chapter 11: Powers of Access to At-Risk Adults in Places including Private Dwellings

138. Chapter 11 discusses a power of access to at-risk adults in places including private dwellings. The Commission considers such a power to be necessary, having regard to consultees' submissions and comparative research undertaken on powers of access in other jurisdictions. The power would operate to allow relevant authorities to gain access to people who are otherwise invisible to the social care system, in order to vindicate their rights.
139. There are relatively few powers of entry to dwellings under existing Irish law. Generally, powers of entry apply to members of the Garda Síochána for the purpose of criminal investigation, with some powers of entry for particular purposes (such as child welfare) granted under legislation. Orders may be sought under the High Court's inherent jurisdiction, but this is a costly and cumbersome process. There are no provisions under Irish law which allow for a general power of access to a private dwelling to assess the health, safety or welfare of an at-risk adult. This means that, in the absence of suspected criminality or other exceptional circumstances, relevant authorities such as authorised officers and members of the Garda Síochána may be refused access to an at-risk adult in their dwelling, the private dwelling of another individual, or other such places. However, it may not be possible to assess potential levels of risk and/or criminality without access to an at-risk adult in the first instance.
140. Powers of access and interview are available in many other jurisdictions, including Scotland, Wales, South Australia and a number of Canadian provinces. The introduction of powers of access for social workers is currently being considered in England and in Northern Ireland. Having considered the arguments for and against a power of entry, and the constitutional and ECHR rights engaged, the Commission believes that such a power should be provided for in adult safeguarding legislation, subject to appropriate safeguards.
141. The Commission recommends that adult safeguarding legislation should give authorised officers and members of the Garda Síochána powers of access to at-risk adults in places including private dwellings. In light of the inviolability of the dwelling under the Constitution, a warrant issued by the District Court should be required to exercise such a power of access.
142. The Commission recommends that an authorised officer or a member of the Garda Síochána must have a reasonable belief that meets a particular threshold before they can apply for a warrant for access. The District Court must be satisfied as to the same threshold in order to grant a warrant for access. This threshold includes that there are reasonable grounds for believing that there is a risk to the health, safety or welfare of an at-risk adult

in the particular place, a warrant for access is necessary to assess the at-risk adult's health, safety or welfare, and access cannot be gained by less intrusive means. The Commission recommends that the applicant for a warrant must give sworn evidence in relation to these matters, and in relation to the reasonable efforts that have been made to gain access to the at-risk adult by other means.

143. The Commission recommends that the power to execute a warrant for access should apply to a member of the Garda Síochána or authorised officer of the Safeguarding Body, or both. They may be accompanied by appropriately qualified health or social care professionals (such as GPs and public health nurses) or any other persons considered necessary or appropriate. For example, the presence of a trusted friend or family member of the at-risk adult could assist in reassuring the at-risk adult as to the nature and purpose of the order.
144. As with the power of access to relevant premises in Chapter 10, this power of access is intended to allow authorised officers and accompanying health or social care professionals to conduct a private interview and medical examination of the at-risk adult, if necessary. However, such steps should only be taken if the at-risk adult consents. The at-risk adult must be informed of their right to refuse to answer any question or to be medically examined before an interview or examination is carried out.
145. The Commission also recommends that adult safeguarding legislation should provide for a warrantless or summary power of access to at-risk adults in places including dwellings. This would be conferred on members of the Garda Síochána, and would be similar to the common law power of access that exists in other circumstances, for example in the case of *Director of Public Prosecutions v Delaney* where the Supreme Court found that a sergeant's entry into a dwelling without a warrant did not breach constitutional rights because it was done to safeguard the "life and limb" of people in the dwelling. Given the significant rights implications, such a warrantless power requires a high threshold, including a reasonable belief of an immediate risk to the life and limb of the at-risk adult, which is so immediate that there is not sufficient time to apply to the District Court for a warrant.
146. The Commission recommends safeguards for the use of the summary power of access, including recording its usage and notifying the Safeguarding Body as to its usage as soon as practicable.
147. The use of reasonable force to access the place, including a dwelling, should be permitted, where necessary, under both the warrant for access and summary power of access. It should also be an offence for a person, other than the at-risk adult, to obstruct a member of the Garda Síochána or an

authorised officer in executing a warrant for access or exercising a summary power of access.

148. In Chapter 11, the Commission recommends additional safeguards such as providing for the anonymity of the at-risk adult in court proceedings and an explanation of the warrant or power to be provided to the at-risk adult.

Chapter 12: Powers of Removal and Transfer

149. Chapter 12 considers whether powers should be introduced to allow for the removal and transfer of an at-risk adult to a designated health or social care facility, or other suitable place specified by a court. This power is intended to facilitate an assessment of the health, safety and welfare of an at-risk adult, and of whether any actions are needed to safeguard them, where this cannot be done in or at the place where the at-risk adult presently is.
150. Such powers have significant rights implications and raise complex ethical questions about liberty, paternalism and protection. Removing an at-risk adult from their home or another place engages a number of rights protected under the Constitution and the ECHR. Similarly, moving an at-risk adult to a designated health or social care facility or other suitable place has the potential to deprive them of their personal liberty and engage rights which are strongly protected under the Constitution and the ECHR. This is the case even if the at-risk adult is free to leave upon arrival, as they will have been detained during the period of transfer. The Commission carefully considered these rights implications, and is of the view that a power of removal and transfer is required under adult safeguarding legislation, and can be drafted so as to interfere minimally and proportionately with constitutional and ECHR rights.
151. There are some existing mechanisms in Irish legislation for transfer and for deprivation of liberty in the criminal, public health and mental health contexts. In the adult safeguarding context, the Commission believes that removal and transfer orders could provide greater legal certainty and clarity for actions which are currently primarily taken pursuant to orders granted under the inherent jurisdiction of the High Court. A removal and transfer order would allow authorities to assess an at-risk adult's health, safety and welfare, and whether any actions are needed to safeguard them, where this cannot be done in the place where the at-risk adult presently is. This might be the case where such place is too unsafe or unsanitary to assess these matters or to conduct a medical examination, or where a third party is posing a significant risk to an at-risk adult and is prohibiting contact with the relevant authorities and a no-contact order would be insufficient or ineffective in the circumstances.

152. The Commission recommends that adult safeguarding legislation should make provision for a removal and transfer order issued by the District Court. This order would allow a member of the Garda Síochána, accompanied by an authorised officer of the Safeguarding Body where possible and by any such other persons as may be necessary (including appropriately qualified health or social care professionals, members of an assisted admissions team, or friends or family members of the at-risk adult), to:
- (a) enter the place where the at-risk adult is believed to be, including a relevant premises or a private dwelling;
 - (b) remove the at-risk adult from that place; and
 - (c) transfer the at-risk adult to a designated health or social care facility, or other suitable place specified by the court.
153. In order for to apply for a removal and transfer order, an authorised officer of the Safeguarding Body or member of the Garda Síochána must first meet a high threshold. The applicant must have a reasonable belief as to a range of matters, including that: (a) there is a serious and immediate risk to the health, safety or welfare of an at-risk adult in a particular place; (b) actions may be required to safeguard the at-risk adult's health, safety or welfare; and (c) it is necessary to remove the at-risk adult to a designated facility or other suitable place to assess those matters because assessment cannot be conducted in the place where the at-risk adult presently is. The applicant must give evidence in relation to these matters, and the evidence of a health or social care professional should also be required. The District Court must be satisfied as to this threshold in order to grant the order.
154. Given the significance of such an order for the at-risk adult, the applicant must first make reasonable efforts to ascertain the at-risk adult's views, and must consider those views when deciding whether to make the application. The District Court must enquire as to whether those steps have been taken. Where the at-risk adult objects to the making of a removal and transfer order, the order can only be sought or granted where there is a reasonable belief that the apparent objection of the at-risk adult is not voluntary, or there is a reasonable doubt as to the at-risk adult's capacity to decide whether to remain in the place where they presently are or be moved to a designated health or social care facility or other suitable place.
155. If the order is sought in circumstances where access to the at-risk adult has not yet been obtained, to grant the order (and in addition to the general threshold for the granting of a removal and transfer order) a judge of the District Court must be satisfied that the granting of a warrant for access would be insufficient in the circumstances. This is to ensure that the

Commission's tiered approach is adhered to, and that the least intrusive order is granted in every case.

156. The Commission recognises that an acute hospital or other clinical setting will not always be an appropriate place to take an at-risk adult who does not require healthcare for the purposes of assessing the risk to their health, safety and welfare, and whether any other actions are needed to safeguard them. In the future, more appropriate settings may emerge such as community residential respite or refuge facilities. The Commission therefore recommends that the relevant Minister may prescribe by regulations designated health or social care facilities to which an at-risk adult may be removed. Where it is sought to bring an at-risk adult to a place other than a designated facility, the District Court must be satisfied that such place is suitable for the purposes of assessment of the at-risk adult.
157. As with the other orders, a removal and transfer order should allow for the use of reasonable force by a member of the Garda Síochána or an authorised officer, if necessary, to gain access to the place where the at-risk adult is believed to be. A member of the Garda Síochána should be permitted to take all reasonable measures necessary for the removal and transfer of an at-risk adult including, where necessary, the detention or restraint of the at-risk adult. These measures should be a last resort, if the use of social work skills and explaining matters to the at-risk adult fail to bring about their cooperation.
158. As with the other interventions, the Commission recommends safeguards such as providing for the anonymity of the at-risk adult in court proceedings and providing a plain English notice to the at-risk adult which explains the nature and purpose of the order. The Commission also recommends an obligation on the authorised officer or member of the Garda Síochána to, insofar as practicable, explain to the at-risk adult: (a) the nature and purpose of the order and the powers exercisable under it; and (b) that upon arrival at the designated health or social care facility or other suitable place, the at-risk adult may choose to leave, and will be facilitated in doing so. However, failure to give an oral explanation will not invalidate the order or exercise of any power on foot of the order.
159. The Commission is of the view that without provision for temporary detention, the effect of a removal and transfer order in preventing harm or further harm to an at-risk adult is substantially reduced. Providing for statutory powers of temporary detention would also be preferable to reliance on the High Court's inherent jurisdiction. However, the Government is currently working on a Protection of Liberty Safeguards Bill. It is preferable that this important issue be dealt with under a comprehensive statutory framework. As such, the Commission recommends that a removal and

transfer order should not allow for any period of detention of the at-risk adult, other than their removal and transfer to the designated health or social care facility or other suitable place, as specified in the order. The Commission has taken this approach in light of the imminent legislation concerning detention more generally. Such a statutory regime is essential and should be implemented as a matter of urgency. If, for any reason, this work does not continue, legislation will be needed to remedy this gap in the future.

160. As no power of detention is provided for, if an at-risk adult chooses to leave the designated health or social care facility or other suitable place, the Safeguarding Body, members of the Garda Síochána, and any other relevant professionals, as appropriate, should support them in doing so and in particular must safely return the at-risk adult to the place from which they were removed or to a place of the adult's choice, insofar as practicable. The Safeguarding Body should also continue to offer assistance and support to the at-risk adult, including providing information in relation to such other supports as may be available. Where there is a concern that the at-risk adult may lack capacity to decide whether to remain in the particular place, the Safeguarding Body, members of the Garda Síochána or other professionals should endeavour to support the at-risk adult to make the decision and, where necessary, consider supports under the Assisted Decision-Making (Capacity) Act 2015 and notifying the Director of the Decision Support Service.
161. If the at-risk adult does not object to remaining in the facility or other suitable place, the powers of interview and medical examination as set out in previous chapters would arise. These powers would facilitate an assessment of the health, safety and welfare of the at-risk adult, and an assessment as to whether any actions are needed in respect of the at-risk adult. These powers cannot be exercised where the at-risk adult objects, and the at-risk adult must be informed in advance of their right to refuse any interview or medical examination in advance.
162. It should be an offence for a person, other than the at-risk adult, to obstruct or impede a member of the Garda Síochána or an authorised officer when the member or officer is executing a removal and transfer order.
163. In light of the significant rights implications that would arise, the Commission recommends that adult safeguarding legislation should not make provision for a summary power of removal and transfer.

Chapter 13: No-Contact Orders

164. In Chapter 13, the Commission considers orders that would prevent a third party from contacting an at-risk adult. The Commission's recommendations are designed to recognise domestic abuse within the adult safeguarding

context, and provide ways to achieve protection in situations of harm or exploitation that do not fit within existing definitions of domestic abuse, but still require a legal response to vindicate an at-risk adult's rights.

165. Protective orders are available in Irish law, although not specifically in the adult safeguarding context. For example, such orders are available under the Non-Fatal Offences against the Person Act 1997 for cases of harassment and stalking, and civil restraining orders will be available under the Criminal Justice (Miscellaneous Provisions) Act 2023 once Part 5 of the Act is commenced. The Domestic Violence Act 2018 ("2018 Act") provides for an elaborate regime of protection, safety, interim barring, emergency barring and barring orders. However, these orders are only available in the context of certain specified relationships between close family members, and intimate or former intimate partners.
166. As with the other safeguarding actions and interventions proposed in the Report, the Commission conducted a rights analysis, which guided it in establishing the parameters of its reform proposals.
167. The Commission believes that the 2018 Act should be amended to ensure that it functions effectively for adults in close familial, caring or intimate relationships who are also at-risk adults. As such, the Commission recommends that the 2018 Act should be amended to allow for barring orders in the context of individuals of full age who cohabit with an "adult at risk of harm" (as defined in adult safeguarding legislation) on a non-contractual basis, or who cohabit with an adult at risk of harm on a contractual basis where the contractual arrangement involves the individual of full age caring for the adult at risk of harm. The Commission also recommends the amendment of the 2018 Act to allow for safety orders in the context of individuals of full age who cohabit with an adult at risk of harm on a contractual basis where the contractual arrangement involves the individual of full age caring for the adult at risk of harm.
168. Orders under the 2018 Act can be sought and made without the consent of the person whose protection the order intends to ensure. The Commission recommends that both the Child and Family Agency and the Safeguarding Body should be allowed to make applications for an order in respect of an at-risk adult under the 2018 Act.
169. Along with amending existing legislation, the Commission makes recommendations for full, interim and emergency no-contact orders under the adult safeguarding regime. These orders would prohibit a non-intimate and non-cohabiting third party from engaging in particular behaviour towards an at-risk adult such as following, watching, pestering or communicating with or about the at-risk adult, or coming near an at-risk

adult or the place where the at-risk adult lives. These orders could be sought by the at-risk adult themselves, or by the Safeguarding Body.

170. In order to apply for the full adult safeguarding no-contact order (permitted on an *inter partes* or “between the parties” basis), the Commission recommends that an authorised officer of the Safeguarding Body must have a reasonable belief that the health, safety or welfare of the at-risk adult requires the order. The applicant must make reasonable efforts to ascertain the at-risk adult’s views before seeking an order, and must consider those views when deciding whether to make the application. The District Court must enquire as to whether those steps have been taken. Where the at-risk adult objects to the making of a full no-contact order, it cannot be sought or granted.
171. The threshold for the District Court to grant the order should be that the court is satisfied there are reasonable grounds for believing that the health, safety or welfare of the at-risk adult requires it. The Commission recommends that the District Court should be required to take the expressed views or wishes of the at-risk adult into consideration.
172. The Commission recommends that a full no-contact order should be valid for up to two years. However, the at-risk adult and respondent should be entitled under adult safeguarding legislation to make an application to discharge the order. The Safeguarding Body should also be so entitled, where it has applied for a no-contact order. The Commission recommends that non-compliance with the terms of a no-contact order should be a criminal offence. As in family law, there should be no sanction imposed on an at-risk adult if they choose to contact the person against whom an order is made.
173. In a similar way to the 2018 Act, the Commission recommends that no-contact orders should be available on an interim and emergency basis. An interim adult safeguarding no-contact order should be available, on an *inter partes* or *ex parte* basis, where an application for a full adult safeguarding no-contact order has been made. In order to apply for an interim order, an authorised officer must have a reasonable belief that there is an immediate risk to the health, safety or welfare of the at-risk adult such that an interim no-contact order is required. In order to grant the interim order, the District Court must be satisfied that there are reasonable grounds for believing that there is an immediate risk to the health, safety or welfare of the at-risk adult such that an interim no-contact order is required.
174. If granted on an *inter partes* or “between the parties” basis, the interim order should be valid until the determination of the pending application for the full no-contact order. If granted on an *ex parte* basis, the interim no-contact order should be valid for a maximum of 8 working days. This short period is necessary in light of the constitutional and ECHR rights of the individual who is to be subject to the order.

175. There may be urgent situations involving an immediate risk to an at-risk adult where the delay in making an *inter partes* application for a full no-contact order could result in increased risk, or frustrate the purpose of the intervention. There may also be urgent cases where the at-risk adult objects to the making of a no-contact order but there are concerns about the voluntariness of such objection, or there are concerns as to the at-risk adult's capacity to decide whether to have contact with the intended respondent. As such, the proposed legislation provides for an emergency adult safeguarding no-contact order to be available in limited cases, on an *ex parte* basis, without any requirement to have applied for a full adult safeguarding no-contact order.
176. In order to apply for an emergency no-contact order, the authorised officer must have a reasonable belief that there is an immediate risk to the health, safety or welfare of the at-risk adult, and a no-contact order is required to:
- (a) address or mitigate that risk; or
 - (b) assess the voluntariness of the at-risk adult's objection to the making of a no-contact order and, where necessary, to facilitate a capacity assessment.
177. In order to grant an emergency no-contact order, the District Court must be satisfied that there are reasonable grounds for believing such matters.
178. The most difficult issue the Commission has had to grapple with in Chapter 13 is whether adult safeguarding no-contact orders should be capable of being made without the consent of the at-risk adult. The Commission recommends that full and interim adult safeguarding no-contact orders cannot be sought or granted where the at-risk adult objects to the making of the order. However, in light of the urgent situations that may arise, the Commission recommends that an emergency adult safeguarding no-contact order may be sought and granted against the wishes of an at-risk adult whose protection is intended to be secured by the making of the order. In order to safeguard the at-risk adult's right to autonomy, the Commission recommends extra criteria if an emergency order is sought in the context of apparent objection on the part of the at-risk adult. For the authorised officer to apply for the order, and for the Court to grant it, there must be reasonable grounds for believing that: (a) the at-risk adult's apparent objection is not voluntary; or (b) the at-risk adult may lack capacity to decide whether to continue to have contact with the intended respondent to the no-contact order.
179. The emergency no-contact order should be valid for a maximum of 8 working days. This short period is necessary in light of the constitutional and ECHR rights of the at-risk adult and the respondent to the order. An authorised

officer should also be required to apply for immediate revocation of the emergency order if the voluntariness of the at-risk adult's objection to the order is confirmed, and the at-risk adult has, at the relevant time, capacity to object to the making of the order. Where there is a concern that the at-risk adult may lack capacity to decide whether to have contact with the respondent, the Safeguarding Body should endeavour to support the at-risk adult to make the decision and, where necessary, consider supports under the Assisted Decision-Making (Capacity) Act 2015 and notifying the Director of the Decision Support Service.

180. The Commission also makes some general recommendations about all three no-contact orders, for example regarding the extension of legal aid to at-risk adults who are bringing applications, and preserving the anonymity of the at-risk adult in court proceedings. The Commission also recommends that the District Court should consider the respective rights, title or interests in the property wherein the at-risk adult resides. An adult safeguarding no-contact order should not affect title to or interest in a particular property, or disturb the existing property law mechanisms available to an individual with a superior legal or beneficial interest in the relevant property. The proposed legislation provides that an appeal of a full no-contact order may stay the operation of the order if the court that made the order or the court to which the appeal is brought sees fit. However, an appeal of an interim no-contact order or emergency no-contact order shall not stay the operation of the order.

Chapter 14: Financial Abuse

181. Chapter 14 examines the actual or suspected financial abuse of at-risk adults and sets out proposals to prevent and address such abuse. Financial abuse is one of the most prevalent forms of abuse against at-risk adults. There are a number of ways in which Irish law could be strengthened to address the issue of financial abuse.
182. The Commission makes the following recommendations in Chapter 14.
183. The Central Bank of Ireland's proposed Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations should provide for obligations on regulated financial service providers ("RFSPs") to prevent and address actual or suspected financial abuse of at-risk adults who are customers of RFSPs ("at-risk customers").
184. RFSPs, credit unions and post offices should be under a statutory obligation to ensure that relevant personnel receive regular adult safeguarding awareness training.

185. The Central Bank of Ireland's proposed Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations should be consistent with the Assisted Decision-Making (Capacity) Act 2015 and existing codes, such as the statutory codes of practice made under the Assisted Decision-Making (Capacity) Act 2015, for example, the Code of Practice for Financial Service Providers published by the Director of the Decision Support Service.
186. The following amendments and clarifications should be made and provided respectively in relation to the proposed definition of "consumer in vulnerable circumstances" in the Central Bank of Ireland's proposed Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations:
- (a) the words "especially susceptible to harm" and "harm" should be defined in the proposed definition or elsewhere in the Regulations;
 - (b) certain other circumstances wherein a consumer will constitute a "consumer in vulnerable circumstances" should be provided in the proposed definition or elsewhere in the Regulations;
 - (c) the proposed definition should be amended, in part, to refer to a consumer that is a natural person and whose individual circumstances (whether permanent or otherwise) at a particular time make that consumer especially susceptible to harm; and
 - (d) the Central Bank of Ireland's proposed Guidance on Protecting Consumers in Vulnerable Circumstances should clarify:
 - (i) the meaning of "especially susceptible to harm" in the proposed definition;
 - (ii) what constitutes "harm" for the purposes of the proposed definition; and
 - (iii) the certain other circumstances wherein a consumer will constitute a "consumer in vulnerable circumstances".
187. RFSPs should be provided with a power in primary legislation (i.e. an Act of the Oireachtas) or in secondary legislation (i.e. regulations) to temporarily suspend the completion of a financial transaction where there is knowledge or a reasonable belief that an at-risk customer is being, has been or is likely to be subject to financial abuse.

188. A statutory immunity should be introduced in primary or secondary legislation to clarify that no action shall lie against a RFSP or a branch manager, director, officer, employee, agent or other representative of a RFSP in respect of an action taken in good faith to safeguard an at-risk customer from actual or suspected financial abuse when there is knowledge or a reasonable belief that an at-risk customer is being, has been or is likely to be subject to financial abuse.
189. Certain provisions of the Social Welfare Consolidation Act 2005 and the Social Welfare (Consolidated Claims, Payments and Control Provisions) Regulations 2007 should be amended to ensure consistency with the Assisted Decision-Making (Capacity) Act 2015, the United Nations Convention on the Rights of Persons with Disabilities, and the Council of Europe Recommendation (CM/Rec(2014)2) of the Committee of Ministers to Member States on the promotion of human rights of older persons.
190. The remit of the Safeguarding Body to receive and respond to reports of actual or suspected abuse or neglect of at-risk adults should apply to reports of all types of abuse, including actual or suspected financial abuse of at-risk adults.
191. Provision should be made in secondary legislation to clarify the financial procedures for the confirmation of fee arrangements in contracts for care between home support providers and service users to allow for advance consideration of home support providers by potential service users and to provide financial certainty to potential service users.
192. A standard regarding the prevention of financial abuse by service providers should be introduced and included in the National Standards for Homecare and Home Support Services.

Chapter 15: Cooperation

193. Chapter 15 considers whether cooperation arrangements are necessary to prevent and address adult safeguarding concerns and are necessary in transitional care arrangements for persons who are transitioning from children's services to adult services. Cooperation involves the cooperation of the Safeguarding Body, certain public service bodies and providers of relevant services to at-risk adults.
194. Cooperation encompasses information sharing, shared decision-making and responsibility, the pooling of resources, and the sharing of expertise and best practice between the Safeguarding Body, certain public service bodies and providers of relevant services to at-risk adults.
195. In the Report, transitional care arrangements refer to arrangements for young people as they move from the care of the State to aftercare, independent

living, supported living or residential care, as well as arrangements that are implemented when young people move from children's social care services to adult services.

196. Existing cooperation arrangements in Ireland are either informal or underpinned by policy rather than legislation and are unenforceable. Such arrangements are inadequately resourced, inconsistently implemented and rely upon individual relationships and local partnerships.
197. In Chapter 15, the Commission makes the following recommendations.
198. Adult safeguarding legislation should provide for a statutory function of the Safeguarding Body to cooperate with any person or body that it considers appropriate in relation to any matter connected to its functions.
199. As set out below, Chapter 15 also provides for statutory duties to cooperate which would apply to public service bodies. Such statutory duties to cooperate should only apply to the following public service bodies, who are most likely to be involved in adult safeguarding in Ireland:
 - (a) the Child and Family Agency;
 - (b) a Department of State;
 - (c) the Director of the Decision Support Service;
 - (d) the Garda Síochána;
 - (e) the Domestic, Sexual and Gender-Based Violence Agency (Cuan);
 - (f) the HSE;
 - (g) HIQA;
 - (h) the International Protection Accommodation Services, under the authority of the Minister for Children, Equality, Disability, Integration and Youth;
 - (i) the MHC;
 - (j) the Policing and Community Safety Authority; and
 - (k) a body designated as a "public service body" under the relevant section of the Commission's proposed Adult Safeguarding Bill 2024.
200. Adult safeguarding legislation should impose a statutory duty on a public service body, when requested by the Safeguarding Body, to cooperate with the Safeguarding Body for the purpose of the performance of a function of the Safeguarding Body.

201. Adult safeguarding legislation should impose a statutory duty on a public service body, when requested by another public service body, to cooperate with that body for the purpose of the performance of a function of that body which relates to safeguarding the health, safety or welfare of an at-risk adult.
202. Adult safeguarding legislation should impose a statutory duty on a public service body, when requested by a provider of a relevant service, to cooperate with that provider where such provider is of the opinion, based on reasonable grounds, that there is a risk to the health, safety or welfare of an at-risk adult that is caused by abuse, neglect or ill-treatment.
203. Each work or activity listed in Schedule 1 to the Commission's proposed Adult Safeguarding Bill 2024 should be a "relevant service" for the purposes of adult safeguarding legislation. Moreover, each provider of a "relevant service" should be a "provider of a relevant service" for the purposes of adult safeguarding legislation.
204. Adult safeguarding legislation should impose a statutory duty on a provider of a relevant service, when requested by the Safeguarding Body, to cooperate with the Safeguarding Body for the purpose of the performance of a function of the Safeguarding Body.
205. Adult safeguarding legislation should impose a statutory duty on a provider of a relevant service, when requested by a public service body, to cooperate with that body for the purpose of the performance of a function of that body which relates to safeguarding the health, safety or welfare of an at-risk adult.
206. Adult safeguarding legislation should impose a statutory duty on a provider of a relevant service, when requested by another provider of a relevant service, to cooperate with that provider where such provider is of the opinion, based on reasonable grounds, that there is a risk to the health, safety or welfare of an at-risk adult that is caused by abuse, neglect or ill-treatment.
207. In addition, adult safeguarding legislation should provide that in circumstances where, on the basis of information reported or available to the Safeguarding Body, an authorised officer of the Safeguarding Body believes, based on reasonable grounds, that there is a risk to the health, safety or welfare of an at-risk adult, the Safeguarding Body should be able to take whatever action it deems necessary to safeguard the at-risk adult. These actions should include, but should not be limited to, cooperating with other agencies to develop a safeguarding plan to safeguard the at-risk adult.
208. An interdepartmental steering group should be established on a statutory basis in Ireland to provide oversight of cooperation in the adult safeguarding context.

209. Statutory provisions for transitional care arrangements should be included in any future social care legislation that may be considered by the Government.
210. If statutory provisions for transitional care arrangements are provided for in any future social care legislation, the Government should consider:
- (a) the appointment of a lead organisation, or two or more organisations as lead organisations, to manage transitional care arrangements in cooperation with certain public service bodies and certain providers of relevant services to at-risk adults; and
 - (b) the introduction of a duty on the lead organisation(s) to:
 - (i) assess whether a child who is considered to be at risk or has complex needs is likely to be an at-risk adult upon transition from children’s services to adult services; and
 - (ii) undertake timely transitional care planning and safeguarding planning for that child.

Chapter 16: Information Sharing

211. Chapter 16 deals with information sharing in the adult safeguarding context. The need for information sharing in the adult safeguarding context has been consistently expressed by consultees. Safeguarding concerns may arise, necessitating the sharing of information to investigate or mitigate adult safeguarding concerns in, for example, community care, residential care, day services, health and community services settings, or when financial products or services are offered or provided to at-risk adults. Those working with at-risk adults may want to share information but may be reluctant to do so for fear of breaching data protection law. Uncertainty as to when data can be shared for adult safeguarding purposes has been raised as a serious issue by many consultees.
212. Chapter 16 explains how the current data protection legal framework in Ireland does not adequately provide for information sharing between private and public bodies involved in adult safeguarding.
213. Under existing law, there is no specific legal obligation or permission to share information where necessary and proportionate to safeguard the health, safety or welfare of at-risk adults. There is no specific guidance in Ireland on how the legal bases for processing personal data under Article 6(1) of the General Data Protection Regulation (“GDPR”) and the conditions for processing special categories of personal data under Article 9(2) of the GDPR can be safely relied on to share the personal data and special categories of personal data of at-risk adults insofar as is necessary and proportionate to safeguard the health, safety or welfare of at-risk adults.

214. A consequence of this legal uncertainty is the adoption of inconsistent approaches to information sharing by private and public bodies involved in adult safeguarding. Much of this inconsistency is likely due to a lack of understanding of, and a lack of clarity around, the legal bases for information sharing in the specific context of adult safeguarding.
215. In Chapter 16, the Commission makes the following recommendations.
216. Primary legislation (i.e. an Act of the Oireachtas) should provide for information sharing between “relevant bodies” whose functions relate, in whole or in part, to safeguarding the health, safety or welfare of at-risk adults.
217. Each of the bodies contained within the definition of “relevant body” in the Commission’s proposed Adult Safeguarding Bill 2024 should be a “relevant body” for the purposes of an information sharing provision in adult safeguarding legislation. An example of such a provision can be found in the Commission’s Adult Safeguarding Bill 2024.
218. Both a statutory obligation and a statutory permission should be introduced in primary legislation to specifically provide for information sharing between relevant bodies whose functions relate, in whole or in part, to safeguarding the health, safety or welfare of at-risk adults.
219. Until adequate provision is made for information sharing in the adult safeguarding context in primary legislation (i.e. an Act of the Oireachtas), regulations (i.e. secondary legislation) under sections 51(3) and 73(2) of the Data Protection Act 2018 should be introduced to allow relevant bodies, whose functions relate in whole or in part to safeguarding the health, safety or welfare of at-risk adults, to share the special categories of personal data of at-risk adults with relevant bodies for the substantial public interest reason of safeguarding the health, safety or welfare of at-risk adults in Ireland.
220. Guidance and/or codes of conduct should be published on the sharing of the personal data and special categories of personal data of at-risk adults in the adult safeguarding context.

Chapter 17: Adult Safeguarding Reviews

221. Chapter 17 discusses existing review mechanisms where a serious incident occurs in relation to an adult. It proposes the introduction of adult safeguarding reviews in Ireland. These reviews are focused on learning from past incidents where things have gone wrong to bring about improvements to the quality and safety of services and reduce the likelihood of similar incidents happening again in future.
222. Currently, there are a wide range of review mechanisms that can be engaged where a serious incident occurs in relation to an at-risk adult. There is no

consistency in approach or set pathway to be followed where a serious incident occurs. Some serious incidents result in multiple reviews, and different review processes are often chosen for similar serious incidents. Most of the review mechanisms require a decision to set up or commission a review. This gives rise to a concern that serious incidents that do not receive the media attention or public scrutiny to prompt a review are not being adequately addressed, and lessons are not being learned.

223. In contrast, in England, Scotland and Wales, adult safeguarding specific reviews are required to be carried out in all cases where an incident meets prescribed criteria. These reviews are carried out by local inter-agency Safeguarding Adults Boards or Adult Protection Committees. They also have the option to carry out discretionary reviews in certain circumstances.
224. The Commission recommends that adult safeguarding reviews should be introduced on a statutory basis in Ireland. This would give adult safeguarding reviews an enhanced status and ensure that they are carried out for all cases where set criteria are met. It would also provide an opportunity to standardise the review process, and to introduce statutory powers to require information to ensure their effectiveness. These reviews will not replace general incident reviews or reviews by regulators that are often required to determine if any immediate actions are required to safeguard a service user or group of service users, or to bring a provider into compliance. Instead, adult safeguarding reviews will focus on deriving learnings from very serious incidents involving at-risk adults that meet the high threshold for a mandatory review, as identified by the Commission.
225. The Commission is not in a position to determine what body should be responsible for conducting adult safeguarding reviews. While the Commission considers that there may be several eligible bodies, an evaluation of which body should perform the role involves many policy considerations and significant resource implications that are outside of the scope of this project. The Commission briefly outlines the possibility of regulators conducting these reviews in Chapter 6, and describes why, in its view, it would be inappropriate to designate the Safeguarding Body as a reviewing body.
226. The Commission recommends that the following principles should underpin adult safeguarding reviews:
 - (a) adult safeguarding reviews should be learning focused; the objective is not to attribute blame. The aim should be to identify changes that can be made to improve the quality and safety of services and reduce the likelihood of reoccurrence;

- (b) there should be a consistent, standardised and transparent adult safeguarding review process for very serious incidents, and adult safeguarding review reports should be made publicly available where possible;
- (c) adult safeguarding reviews should apply to all very serious incidents involving at-risk adults that meet set criteria, irrespective of the care setting;
- (d) adult safeguarding reviews should be completed in a timely manner in order to disseminate learnings without delay;
- (e) there should be a shared learning culture, where at-risk adults, their families, advocates, staff and service providers are all given the opportunity to engage meaningfully in the review process;
- (f) the implementation of recommendations should be audited and evaluated by the reviewing body to ensure that reviews are achieving their objective and are effectively bringing about systems improvement; and
- (g) a response should be required from agencies and organisations identified in the review, outlining their acceptance or rejection of the recommendations contained therein, and the actions they have taken, or will take, to implement the recommendations. These responses should be made publicly available by the reviewing body.

227. The Commission recommends that an adult safeguarding review must be carried out where:

- (a) (i) an at-risk adult dies and abuse or neglect is known or suspected to be a factor in the death; or
 - (ii) an at-risk adult does not die, but it is known or suspected that they experienced or are experiencing serious abuse or neglect; and
- (b) where an incident or series of incidents suggests that there have been serious and significant failings by one or more agencies, organisations or individuals responsible for the care and protection of at-risk adults.

228. The Commission also recommends that an adult safeguarding review may be carried out where the criteria for a mandatory review are not met and the reviewing body has reasonable grounds for believing that an adult safeguarding review could provide material information regarding how the safety, quality and standards of adult safeguarding services provided by one or more agencies, organisations or individuals can be improved to:

- (a) protect and promote the health, safety and welfare of at-risk adults, and
 - (b) minimise the risk of harm to at-risk adults.
229. There may be circumstances where the reviewing body thinks it should not undertake an adult safeguarding review, or that a review that has been commenced should be discontinued or paused. For example, the serious incident being reviewed may be the subject of criminal proceedings, or a review or investigation into the incident is already being carried out by another statutory body or officeholder. The Commission recommends that the review body may decide not to undertake a mandatory or discretionary adult safeguarding review, or decide to discontinue or pause such a review in certain circumstances.
230. In order for the reviewing body to carry out adult safeguarding reviews, it may need access to documentation or information in relation to the serious incident under review. Without this, it would be difficult for the reviewing body to determine what took place and what should be done different in the future to reduce the likelihood of reoccurrence. Therefore, the Commission recommends that the reviewing body should have powers to require information and interview relevant persons, and in the case of non-compliance, the ability to apply for a court order to enforce these powers.

Chapter 18: Regulation of Professionals and Occupational Groups

231. Chapter 18 considers the regulation of professionals and occupational groups who are involved in caring and support work, as well as the adequacy of pre-employment vetting as a protective measure. Chapter 18 also assesses the approaches of neighbouring jurisdictions to the regulation and oversight of unregulated work, and the use of 'barred lists' in the United Kingdom, which are databases containing details of individuals prohibited from working in regulated activities with children or "vulnerable adults".
232. Currently in Ireland, there is little to prevent a worker in an unregulated occupational group in respect of whom abuse or neglect concerns have been raised from moving to another job and continuing to commit abuse or harm. The absence of minimum standards of training required to operate as a health care assistant or a health care support assistant and the lack of post-employment regulation poses a significant adult safeguarding risk.
233. Beyond the health and social care sectors, risks continue to be posed to at-risk adults because provision for mandatory re-vetting in section 20 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 has not yet commenced in Ireland.

234. The Commission makes the following recommendations in Chapter 18.
235. Health care assistants and health care support assistants should be regulated in Ireland to ensure the:
- (a) protection of the public;
 - (b) establishment of minimum educational and training requirements for health care assistants and health care support assistants;
 - (c) standardisation of the roles of health care assistants and health care support assistants;
 - (d) establishment of defined scopes of practice for health care assistants and health care support assistants; and
 - (e) implementation of controls on access to employment as a health care assistant or health care support assistant.
236. The above recommendation endorses the conclusions of the HSE in its Review of Role and Function of Health Care Assistants in December 2018.
237. Having regard to the Irish constitutional context, barred lists should not be established in Ireland.
238. Post-conviction prohibition orders should be introduced in primary legislation (i.e. an Act of the Oireachtas) to prohibit persons who have been convicted of offences under adult safeguarding legislation or assisted decision-making legislation, or whose victims were at-risk adults, from engaging in work or activities where such persons would have access to, or contact with, at-risk adults.
239. A system of mandatory re-vetting should be introduced in Ireland for persons subject to mandatory vetting in respect of relevant work or activities under the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

Chapter 19: Adult Safeguarding and the Criminal Law

240. Chapter 19 considers possible reforms that could be made to the criminal law to better safeguard at-risk adults. It recommends the introduction of new criminal offences specific to the adult safeguarding context. The Commission considers that the criminal reforms proposed in Chapter 19 would complement the proposed civil law reforms outlined throughout the Report and achieve a comprehensive statutory and regulatory framework for adult safeguarding. The Commission's proposed offences are outlined in its Criminal Law (Adult Safeguarding) Bill 2024.

241. The Commission recommends the following new criminal offences against “relevant persons” (i.e. a specified category of at-risk adults which is discussed below):
- (a) an offence of intentional or reckless abuse, neglect or ill-treatment;
 - (b) an offence of exposure to risk of serious harm or sexual abuse;
 - (c) an offence of coercive control that extends to a broader range of relationships than the current offence in section 39 of the Domestic Violence Act 2018; and
 - (d) an offence of coercive exploitation.
242. In Ireland, there are few criminal offences that specifically criminalise actions or inactions committed against at-risk adults. Undoubtedly, the general criminal law applies where an offence is committed against an at-risk adult. However, it can be difficult to prosecute and secure convictions where the at-risk adult is unable to be interviewed or give evidence about the harm they experienced. While there are specific offences that criminalise child cruelty and endangerment of children, no equivalent offence exists that applies to at-risk adults who may also have difficulty protecting themselves from harm. In the Commission’s view, the abuse, neglect, ill-treatment or exposure to harm of an at-risk adult is unquestionably reprehensible and deserving of criminalisation.
243. Throughout the Report, the Commission uses the term “at-risk adult” to refer to adults who might be at risk of harm, as it wishes to avoid using the inappropriate term “vulnerable person”. However, the Commission is mindful that the criminal law requires specificity and for that reason it uses the term “relevant person”, as opposed to “at-risk adult” to refer to a specific category of at-risk adults for the purposes of Chapter 19 and the proposed criminal offences contained in the Criminal Law (Adult Safeguarding) Bill 2024.
244. The Commission defines a “relevant person” as a person, other than a child, whose ability to guard themselves against violence, exploitation or abuse, whether physical, sexual or emotional, or against neglect by another person is significantly impaired through one, or more, of the following:
- (a) a physical disability, a physical frailty, an illness or an injury;
 - (b) a disorder of the mind, whether as a result of mental illness or dementia;
 - (c) an intellectual disability;

(d) autism spectrum disorder.

245. The Commission is aware that some people might find terms like “disorder of the mind” and “autism spectrum disorder” offensive and outdated. However, a recent National Disability Authority paper acknowledged that specific terms like autism spectrum disorder which use medical language may need to be used in legislation. The Commission uses the terms above because they are frequently used in other laws or in court judgments and the criminal law requires specificity so everyone knows who the offences apply in respect of.
246. In the Commission’s view, an offence mirroring section 246 of the Children Act 2001 in respect of children is required to criminalise abuse, neglect or ill-treatment of relevant persons, where there is no requirement to prove harm. This should apply where a person who provides care for a relevant person or resides in the same household as a relevant person intentionally or recklessly assaults, ill-treats or neglects a person or causes them to be assaulted, neglected, or ill-treated in a manner likely to cause suffering or injury to their health or seriously affect their wellbeing.
247. In Ireland, it is an offence to expose a child to the risk of serious harm or sexual abuse. The Commission recommends the introduction of a similar offence in respect of relevant persons as exists for children in section 176 of the Criminal Justice Act 2006. This would criminalise the exposure of a relevant person to a risk of serious harm or sexual abuse. The Commission is of the view that “serious harm” in this context should not be limited to physical harm (as is the case in respect of children currently) and should also include psychological harm that would have a significant impact on a relevant person.
248. The Commission acknowledges the limitations of the existing offence of coercive control under the Domestic Violence Act 2018 for adult safeguarding purposes, due to its narrow application to married couples, intimate partners or former intimate partners. It is beyond the scope of this project to recommend the expansion of the offence in the Domestic Violence Act 2018 to a broader category of familial, caring and cohabitating relationships. Instead, the Commission recommends that a new offence of coercive control of a relevant person should be introduced in the proposed Criminal Law (Adult Safeguarding) Bill 2024, which would apply to coercive control by persons in a familial, caring or cohabitating relationship with a relevant person. This proposed offence is modelled on the existing offence in section 39 of the Domestic Violence Act 2018.
249. The Commission also recommends the introduction of a new offence of coercive exploitation of a relevant person to address “cuckooing”, and “mate crimes” which are prominent and concerning issues in the adult safeguarding context. Coercive exploitation is not currently a crime in Ireland, although

there are existing criminal offences of theft, fraud and deception that could be applicable in certain circumstances.

250. There are many media reports of at-risk adults being targeted and exploited by others in their community, who use their property or resources to engage in anti-social and criminal behaviour, to the detriment of the at-risk adult's health, safety and welfare and financial wellbeing. The Commission believes that a specific offence of coercive exploitation is required to criminalise such behaviour in respect of relevant persons. The Commission has evaluated existing legal provisions regarding coercion, fraud, and theft, but these laws primarily target behaviours involving violence, intimidation, deception, or unlawful property appropriation and do not fully encompass the nuanced and often non-violent, non-deceptive forms of exploitation that at-risk adults may encounter.
251. The Commission's proposed offence of coercive exploitation would make it a crime for a person who, without reasonable excuse, engages in controlling or coercive behaviour in relation to a relevant person, for the purpose of obtaining or exercising control over their property or financial resources for their own benefit or advantage, or the benefit or advantage of another person. The Commission believes that it should not be a defence for a person to argue that the relevant person consented or acquiesced to the controlling or coercive behaviour, or to the benefit or advantage. The Commission considers that for the purposes of the offence it should be irrelevant whether the person actually gained a benefit or advantage.
252. These proposed offences would apply to care providers as well as natural persons where the elements of the offence are met. It is important to acknowledge that the proposed offences would not operate in a vacuum, as regulatory offences under the Health Act 2007 and the Mental Health Act 2001 exist, which address failures in care by regulated care providers. Where a care provider is found guilty of certain offences under the Criminal Law (Adult Safeguarding) Bill 2024, the Commission recommends that courts should be empowered to impose publicity orders which are intended to make clear to the public that the care provider has committed a particular offence.

Chapter 20: A Regulatory Framework for Adult Safeguarding – Implementation and a Whole of Government Approach

253. As outlined in Chapter 1, there is no comprehensive statutory and regulatory framework for adult safeguarding in Ireland. While adult safeguarding measures are currently in place, they primarily exist on a policy or administrative basis and the approach across sectors is somewhat fragmented and siloed. It is crucial that any legislation enacted in the area of

adult safeguarding is cross-sectoral, and not unduly limited to the health and social care sector. The Safeguarding Body will have a major role to play in promoting awareness of adult safeguarding issues, and the need for those who come into contact with at-risk adults, whether individuals, service providers or other State bodies, to respond effectively to any safeguarding concerns. Cooperation and the sharing of information between services and service providers across sectors is vital to ensure that there is a joined-up approach, and that timely and comprehensive actions are taken to safeguard at-risk adults.

254. Equally important is the need for inter-departmental cooperation. In Chapter 15, the Commission recommends that cooperation should be overseen by an inter-departmental steering group established on a statutory basis. The adult safeguarding measures proposed by the Commission will require the Department of Health, the Department of Children, Equality, Disability, Integration and Youth, the Department of Justice, the Department of Social Protection, and the Department of Housing to work together to achieve the aims of the legislation and safeguard at-risk adults from harm. In this chapter, the Commission recommends that an inter-departmental steering group should be established, and that each department should be required to prepare a sectoral plan for implementation. The Commission considers that the question of which department should be the lead department in the adult safeguarding context is a matter for the Government. However, the requirement for all relevant departments to produce sectoral plans and participate in the proposed inter-departmental steering group should ensure that “safeguarding is everyone’s business” and prevent silos or safeguarding gaps from materialising.
255. Throughout the Report, the Commission makes various civil and criminal law recommendations with the primary objective of putting measures in place to safeguard at-risk adults in this jurisdiction. The Commission endeavoured to ensure that the regime it proposes is centred on the views and preferences of at-risk adults, respects their autonomy, and promotes their right to make their own decisions. The guiding principles, outlined in Chapter 3, informed the making of all the recommendations contained in the Report, and the Commission believes they should guide all actions taken under adult safeguarding legislation going forward, if the proposed legislation is enacted.
256. The Commission’s recommendations are reflected in two draft pieces of legislation that accompany the Report: the Adult Safeguarding Bill 2024 and the Criminal Law (Adult Safeguarding) Bill 2024. The Commission considers that if both pieces of legislation are enacted, together, they will vastly improve the approach to adult safeguarding in Ireland and move Ireland into line with other jurisdictions that have specific legislation in place to safeguard at-risk adults from harm and criminalise the abuse of at-risk adults. The cases

of “Emily”, “Brandon”, Leas Cross and Áras Attracta highlight the urgent need for a robust, practical and comprehensive statutory and regulatory framework for adult safeguarding in Ireland.

257. The Commission acknowledges that legislation only forms part of the picture. There is a need for clear and detailed statutory guidance to assist the Safeguarding Body, public bodies, regulators, services, service providers and individuals to understand their obligations under adult safeguarding legislation. This may be in the form of guidelines or codes of practice. Accordingly, the Commission recommends that statutory guidance should accompany adult safeguarding legislation and provide further guidelines on various aspects covered by the legislation.
258. It is important to recognise that the adult safeguarding legislation being proposed by the Commission will interact with various pieces of legislation, particularly the Assisted Decision-Making (Capacity) Act 2015, the Mental Health Acts 2001 to 2018 and the Health Act 2007. If the Government’s Protection of Liberty Safeguards Bill is enacted in due course, consideration should also be given to how it would align with the Commission’s proposed Adult Safeguarding Bill 2024. The Commission believes that the Government should consider, by way of regulatory impact analysis, how the proposed adult safeguarding legislation would interact with the Assisted Decision-Making (Capacity) Act 2015, the Mental Health Acts 2001 to 2018, the Health Act 2007 and any future relevant legislation such as the Protection of Liberty Safeguards Bill.

Table of Contents

Background

1.	Introduction	3
2.	Examples of incidents in Ireland which involved failures to appropriately recognise and address adult safeguarding concerns	8
	(a) Leas Cross	8
	(b) Áras Attracta	10
	(c) Grace	14
	(d) Brandon	15
	(e) Emily	17
3.	Coronavirus disease 2019 (Covid-19)	18
4.	Legislative and policy developments	21
	(a) Guidance on a Human Rights-based Approach in Health and Social Care Services	23
	(b) National Standards for Adult Safeguarding	23
	(c) Health and Social Care Sectoral Policy Developments	24
	(i) <i>Sláintecare, HSE Restructure and the Programme for Government 2020</i> 24	
	(ii) <i>Health and Social Care Sector Adult Safeguarding Policy</i>	26
	(iii) <i>Commission on Care for Older People</i>	27
	(d) Prohibition of Incitement to Hatred Act 1989	28
	(e) Protection of Liberty Safeguards	29
	(f) Revision of the Consumer Protection Code and the publication of draft guidance on protecting “consumers in vulnerable circumstances”	30
	(g) Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023	32
	(h) Policing, Security and Community Safety Act 2024	33
	(i) Policing and Community Safety Authority	34
	(j) Domestic, Sexual and Gender-Based Violence Agency (Cuan)	35
	(k) Health (Adult Safeguarding) Bill	35
	(l) General Scheme of the Health (Amendment) Bill	36
	(m) Draft Regulations for Providers of Home Support Services	36
5.	Existing organisational and regulatory structures relevant to adult safeguarding in Ireland	37
	(a) Government Departments	37
	(i) <i>Department of Health</i>	37
	(ii) <i>Department of Children, Equality, Disability, Integration and Youth</i> 39	
	(iii) <i>Department of Justice</i>	40
	(iv) <i>Department of Housing, Local Government and Heritage</i>	40

(v)	<i>Department of Social Protection</i>	41
(vi)	<i>All Government Departments</i>	42
(b)	Health Service Executive	43
(i)	<i>National Safeguarding Office</i>	43
(ii)	<i>Safeguarding and Protection Teams</i>	45
(iii)	<i>Multi-agency Committees</i>	46
(iv)	<i>Section 38 and 39 Health Act 2004 agencies</i>	47
(c)	Health Information and Quality Authority	48
(d)	Mental Health Commission	49
(e)	Office of the Director of the Decision Support Service	49
(f)	An Garda Síochána	50
(g)	Child and Family Agency	51
(h)	Office of the Ombudsman	52
(i)	Central Bank of Ireland	53
(j)	National Disability Authority	54
(k)	CORU and other relevant professional regulatory bodies	55
(l)	Citizens Information Board	58
(m)	The Domestic, Sexual and Gender-Based Violence Agency	59
(n)	Competition and Consumer Protection Commission	60
(o)	Policing and Community Safety Authority	61
6.	International developments	62
(a)	Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities.....	62
(b)	Proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults	64
7.	Conclusion	65

BACKGROUND

1. Introduction

1. This Report on a Regulatory Framework for Adult Safeguarding (“Report”) relates to a law reform project that forms part of the Fifth Programme of Law Reform (“Fifth Programme”) of the Law Reform Commission (“Commission”).¹ The Fifth Programme was approved by the Government of Ireland (“Government”) on 20 March 2019. This Report involves an examination of the form of a statutory and regulatory framework for adult safeguarding in Ireland.
2. This Report builds upon existing rights-based analyses, policies and legislation, and proposes a statutory and regulatory framework for adult safeguarding that seeks to provide an appropriate balance between the empowerment and protection of adults at risk of harm, otherwise known as at-risk adults. An “adult at risk of harm” is defined in the Adult Safeguarding Bill 2024 appended to this Report² as an adult who by reason of their physical or mental condition or other particular personal characteristics or family or life circumstance (whether permanent or otherwise) needs support to protect themselves from harm at a particular time.
3. This Report explores the elements of a statutory and regulatory framework for adult safeguarding. In general terms, the key elements of such a framework are that it should be rights-based, prevent and protect against forms of abuse, and promote, supervise and enforce high standards of adult safeguarding.
4. In the development of the statutory and regulatory framework outlined in this Report, the Commission has been conscious of the need to take account of a range of legislative and policy developments which are summarised below.

¹ Law Reform Commission, *Report on Fifth Programme of Law Reform* (LRC 120-2019), Project 2 <<https://www.lawreform.ie/fileupload/Programmes%20of%20Law%20Reform/LRC%20120-2019%20Fifth%20Programme%20of%20Law%20Reform.pdf>> accessed on 16 April 2024.

² The Commission’s Adult Safeguarding Bill 2024 and Criminal Law (Adult Safeguarding) Bill 2024 are appended to this Report.

5. The Adult Safeguarding Bill 2017 (“2017 Bill”), a Private Member’s Bill, was introduced in Seanad Éireann on 30 March 2017.³ The 2017 Bill proposes a rights-based framework for adult safeguarding and protections and supports for “adults at risk”.
6. The First Stage and Second Stage of the 2017 Bill occurred on 30 March 2017 and 5 April 2017 respectively.⁴ At Second Stage, the Minister for Health noted that the development of appropriate legislation for adult safeguarding was under consideration. The Minister further noted that he had sought the assistance of the Attorney General of Ireland (“Attorney General”) to liaise with the Commission to conduct research on the development of a regulatory framework for adult safeguarding in accordance with the Commission’s functions under section 4 of the Law Reform Commission Act 1975.⁵ The Minister for Health stated that by identifying major legislative gaps and the views of Departments of State and stakeholders, the Government could determine, in the future, the Departments most appropriately equipped to lead on the development of legislative solutions and the bodies to be tasked with the implementation of any proposed legislation.⁶ The Minister for Health also stated that the 2017 Bill could be refined to reflect the views of stakeholders and the work of the Commission.⁷
7. The Committee Stage occurred on 11 April 2017.⁸ Subsequently, the 2017 Bill was discussed by the Joint Oireachtas Committee on Health (“Committee”) in debates on adult safeguarding in October 2017. The Committee agreed that the contents of the 2017 Bill required further research and refinement. At that time, the Commission was engaged in a consultation process as part of the development of the Fifth Programme. The Committee and the Minister for Health suggested that the Commission could consider the development of a regulatory framework for adult safeguarding as part of the Fifth Programme. After applying the

³ Adult Safeguarding Bill 2017 (No 44 of 2017) (As initiated) <<https://data.oireachtas.ie/ie/oireachtas/bill/2017/44/eng/initiated/b4417s.pdf>> accessed on 16 April 2024.

⁴ Seanad Éireann Debates 30 March 2017 vol 251 no 3 <<https://www.oireachtas.ie/en/debates/debate/seanad/2017-03-30/9/>> accessed on 16 April 2024; Seanad Éireann Debates 5 April 2017 vol 251 no 5 <<https://www.oireachtas.ie/en/debates/debate/seanad/2017-04-05/10/>> accessed on 16 April 2024.

⁵ Seanad Éireann Debates 5 April 2017 vol 251 no 5.

⁶ Seanad Éireann Debates 5 April 2017 vol 251 no 5.

⁷ Seanad Éireann Debates 5 April 2017 vol 251 no 5.

⁸ Seanad Éireann Debates 5 April 2017 vol 251 no 5.

relevant selection criteria for the inclusion of a project in the Fifth Programme,⁹ the Commission concluded that a project on the development of a regulatory framework for adult safeguarding in Ireland was suitable for inclusion in the Fifth Programme.

8. At this juncture, it is useful to note that the Commission has previously completed work in the area of adult safeguarding. In 2006, the Commission published a Report on Vulnerable Adults and the Law wherein it recommended the replacement of the adult wardship system with legislation on adult capacity that is based on a functional test of capacity.¹⁰ The Commission's recommendations were largely reflected in the enactment of the Assisted Decision-Making (Capacity) Act 2015 ("2015 Act").

9. With respect to adults with disabilities, the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD") was signed by Ireland on 30 March 2007, ratified on 20 March 2018, and entered into force in Ireland on 19 April 2018. The aim of the UNCRPD is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".¹¹ Article 16(5) of the UNCRPD provides that "State Parties shall put in place effective legislation and policies ... to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted". The National Disability Inclusion Strategy 2017-2021 ("NDIS") contained commitments to improve the position of people with disabilities in Ireland, including through the provision of disability awareness training to public servants. The NDIS proposed a mechanism for delivering Ireland's commitment to implement the UNCRPD. The NDIS Steering Group, which oversaw and monitored the implementation of the NDIS, guided progress in this area until 2022. On 10 November 2021, the Minister of State with Special Responsibility for Disabilities published Ireland's first report to the UN Committee on the Rights of Persons with Disabilities.¹² The report described what Ireland had been doing to

⁹ With regard to the selection criteria, see Law Reform Commission, *Report on Fifth Programme of Law Reform* (LRC 120-2019), Part 2.

¹⁰ Law Reform Commission, *Report on Fifth Programme of Law Reform* (LRC 120-2019) at page 4.

¹¹ Article 1 of the United Nations Convention on the Rights of Persons with Disabilities.

¹² Department of Children, Equality, Disability, Integration and Youth, *Initial Report of Ireland under the Convention on the Rights of Persons with Disabilities* (2021) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/204196/138b7f87-c6e7-4176-bdd7-61b9e7fff6b9.pdf#page=null>> accessed on 16 April 2024.

protect and enhance the rights of people with disabilities. The work completed under the NDIS featured in this report. The NDIS concluded in 2022. At the time of writing, the Department of Children, Equality, Disability, Integration and Youth is working with the National Disability Authority to develop a successor strategy to the NDIS that will provide guidance on the implementation of the UNCRPD in Ireland.¹³

10. On 29 January 2020, the Commission published an Issues Paper on a Regulatory Framework for Adult Safeguarding (“Issues Paper”).¹⁴ Consultees’ submissions on the Issues Paper were considered in the preparation of this Report.
11. Most of the provisions of the 2015 Act commenced on or before 26 April 2023. At the time of writing, a number of provisions have yet to be commenced. The 2015 Act replaces the Wards of Court system by repealing the Lunacy Regulation (Ireland) Act 1871.¹⁵ The 2015 Act was amended by the Assisted Decision-Making (Capacity) (Amendment) Act 2022. The 2015 Act, as amended, replaces wardship in Ireland with a new, progressive, rights-based system of supported decision-making. From 26 April 2023 onwards, wardship has been abolished and the more than 2,000 wards of court which existed in the State on that date will now have a review of their circumstances undertaken by the Wardship Court. Wards of court will exit wardship on a phased basis across a three-year period.¹⁶
12. The 2015 Act is rights-based and consistent with constitutional and international human rights standards. The 2015 Act is underpinned by the guiding principles in section 8 therein, which include a presumption of capacity, that an intervention should only be made when it is necessary, and that an intervention should minimise the restriction of a relevant

¹³ National Disability Authority, National Disability Strategies <<https://nda.ie/monitoring/national-disability-strategies>> accessed on 16 April 2024.

¹⁴ Law Reform Commission, *Issues Paper on A Regulatory Framework for Adult Safeguarding* (LRC IP 18 – 2019) <<https://publications.lawreform.ie/Portal/External/en-GB/RecordView/Index/61438>> accessed on 16 April 2024.

¹⁵ 1871 (34 & 35 Vict) c 22. See also sections 1(2), 7(2) and 56 of the Assisted Decision-Making (Capacity) Act 2015.

¹⁶ Department of Children, Equality, Disability, Integration and Youth, *Minister O’Gorman and Minister Rabbitte announce the abolition of wardship and the operationalisation of the Assisted Decision-Making Acts and Decision Support Service* (DCEDIY 2023) <<https://www.gov.ie/en/press-release/3544a-minister-ogorman-and-minister-rabbitte-announce-the-abolition-of-wardship-and-the-operationalisation-of-the-assisted-decision-making-acts-and-decision-support-service/>> accessed on 16 April 2024; ‘Date set for final scrapping of wardship system’ *Law Society Gazette* (24 February 2023) <<https://www.lawsociety.ie/gazette/top-stories/2023/february/date-set-for-final-scrapping-of-wardship-system>> accessed on 16 April 2024.

person’s rights.¹⁷ The 2015 Act promotes the empowerment of relevant persons and provides appropriate protections where a relevant person’s decision-making capacity may be in question. Since the commencement of the 2015 Act, the Director of the Decision Support Service has been responsible for publishing and supervising a range of statutory codes of practice in relation to assisted decision-making.¹⁸ At the time of writing, the Decision Support Service has published 13 codes of practice.¹⁹ As outlined in this Report, it is imperative that any future adult safeguarding legislation aligns with the 2015 Act and codes of practice made thereunder.

13. While the 2015 Act has been an important reference point for the Commission when drafting this Report, there is a need for the development of specific adult safeguarding legislation to address gaps in the existing law.
14. Bodies with functions related to adult safeguarding include but are not limited to: the Department of Health; the Department of Children, Equality, Disability, Integration and Youth; the Health Information and Quality Authority (“HIQA”); the Health Service Executive (“HSE”); the Mental Health Commission (“MHC”); the Director of the Decision Support Service on health, social care and decision-making capacity matters; the Central Bank of Ireland on financial matters; the Department of Social Protection on social welfare matters; the Department of Justice in relation to the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (as amended) and the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 and regulations made thereunder; the National Vetting Bureau of the Garda Síochána in relation to the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 and regulations made thereunder; and the Garda Síochána in relation to its function under section 9(1)(f) of the Policing, Security and Community Safety Act 2024 to “provide policing services and security services, including vetting, for the State with the objective of— (f) preventing harm to individuals, in particular individuals who are vulnerable or at risk”.²⁰ The roles of these bodies, and others, are discussed further in section 5 below.

¹⁷ Sections 8(2), 8(5) and 8(6) of the Assisted Decision-Making (Capacity) Act 2015.

¹⁸ Section 103(2) of the Assisted Decision-Making (Capacity) Act 2015.

¹⁹ Decision Support Service, Resources, Codes of Practice
<<https://decisionsupportservice.ie/resources/codes-practice>> accessed on 16 April 2024.

²⁰ At the time of writing, the Policing, Security and Community Safety Act 2024 has not yet commenced.

2. Examples of incidents in Ireland which involved failures to appropriately recognise and address adult safeguarding concerns

15. Addressing adult safeguarding as a public policy issue at a government level has been a relatively recent development in Ireland.²¹ The publication of a research study on the abuse, neglect and mistreatment of older people in 1998 led to the establishment of the Working Group on Elder Abuse in 1999.²² A milestone in policy development was the publication of the first Irish policy research document on responding to elder abuse by the Working Group on Elder Abuse in 2002, which recommended the establishment of a specialised service in the HSE to respond to suspected cases of physical abuse, psychological abuse, sexual abuse, financial abuse and neglect of older people.²³
16. Over the past two decades, a number of incidents have occurred in Ireland which involved failures to appropriately recognise and address adult safeguarding concerns. Some of these incidents are outlined below.

(a) Leas Cross

17. Leas Cross nursing home (“Leas Cross”) was a large nursing home in Dublin wherein the majority of residents had high dependency levels.²⁴ On 30 May 2005, RTÉ broadcast an episode of ‘Prime Time Investigates’ entitled ‘Home Truths’ which reported on the treatment of residents at Leas Cross.²⁵ Using a hidden camera, a qualified case worker filmed conditions and practices in Leas Cross.²⁶ This broadcast provoked strong

²¹ Donnelly and O’Brien, “Speaking Up Against Harm: Options for Policy and Practice in the Irish Context” (University College Dublin 2018) at page 8
<<https://researchrepository.ucd.ie/server/api/core/bitstreams/01900f8a-4958-49c9-8d59-f61791b36853/content>> accessed on 16 April 2024.

²² O’Loughlin and Duggan, *Abuse, Neglect and Mistreatment of Older People: An Exploratory Study* (Report No 52) (National Council on Ageing and Older People 1998) at pages 10 to 13
<<https://www.lenus.ie/bitstream/handle/10147/44465/zAbuseNeglect.pdf?sequence=1>> accessed on 16 April 2024.

²³ Working Group on Elder Abuse, *Protecting Our Future: Report of the Working Group on Elder Abuse* (2002)
<<https://www.lenus.ie/bitstream/handle/10147/46362/1303.pdf?sequence=1&isAllowed=y>> accessed on 16 April 2024.

²⁴ O’Neill, *A Review of the Deaths at Leas Cross Nursing Home 2002-2005* (HSE 2006) at page 15
<<https://www.hse.ie/eng/services/publications/olderpeople/leas-cross-report-pdf>> accessed on 16 April 2024.

²⁵ RTÉ Archives, Leas Cross Nursing Home 2005 <<https://www.rte.ie/archives/exhibitions/681-history-of-rte/708-rte-2000s/289869-home-truths/>> accessed on 16 April 2024.

²⁶ RTÉ Archives, Leas Cross Nursing Home 2005.

public reaction.²⁷ Following the broadcast, the HSE commissioned Professor O'Neill to review the deaths of residents in Leas Cross between 2002 and 2005.²⁸ In April 2007, the Government announced the establishment of a Commission of Investigation into the management, ownership and operation of Leas Cross.²⁹

18. A number of issues at Leas Cross arose after it expanded from a 38-bed to a 111-bed nursing home. The Commission of Investigation concluded that the registration of these additional beds was granted "without adequate regard to the wellbeing of the residents" because it was granted without conditions and adequate monitoring.³⁰
19. The staffing at Leas Cross was found to be deficient with regard to specialist expertise, nursing numbers and infrastructure.³¹ For example, it was found that despite having obtained employment at Leas Cross, some staff members did not possess formal qualifications or prior relevant experience.³² The Commission of Investigation concluded that the decline of care standards at Leas Cross coincided with a significant increase in the number of frail, high-dependency residents admitted therein.³³ The failure of Leas Cross to employ an adequate number of competent staff to provide care was found to be the principal cause of the decline in care standards.³⁴ At the relevant time, Leas Cross did not appear to have an internal complaints policy or procedure in place.³⁵ When complaints were

²⁷ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 6 <<https://www.lenus.ie/bitstream/handle/10147/76516/?sequence=1>> accessed on 16 April 2024.

²⁸ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 6.

²⁹ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 6.

³⁰ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 338.

³¹ O'Neill, *A Review of the Deaths at Leas Cross Nursing Home 2002-2005* (HSE 2006) at page 25; Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 100.

³² Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 101.

³³ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 338.

³⁴ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 338.

³⁵ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 112.

made to the HSE, the Commission of Investigation found that the person in charge of Leas Cross did not respond in relation to such complaints.³⁶

20. Responsibility for the inspection of nursing homes was transferred from health boards to the HSE by section 59 of the Health Act 2004. Health boards continued to function until 1 January 2005, when they were dissolved pursuant to section 58 of the Health Act 2004.³⁷ Pursuant to section 60 of the Health Act 2004, anyone employed by health boards at the time of their dissolution became an employee of the HSE.
21. The general approach adopted by the HSE's nursing home inspectors of Leas Cross was to follow up on matters at the next inspection.³⁸ Some inspectors decided not to make additional follow-up visits which appeared to the Commission of Investigation to have been made by such inspectors of their own volition.³⁹ The Commission of Investigation, while commending the actions of certain inspectors, considered that a more consistent follow-up visitation policy would have been desirable.⁴⁰ The Commission of Investigation recommended the development and adequate staffing of nursing home inspections teams to identify poor practice patterns. It was recommended that such teams should be supported by the HSE. This inspection function was assigned to HIQA in the Health Act 2007.

(b) Áras Attracta

22. Áras Attracta is a large, campus-based, HSE-operated residential setting for people with intellectual disabilities in Mayo.⁴¹ In December 2014, RTÉ broadcast a programme called 'Prime Time Investigates' which concerned the treatment of residents at Áras Attracta. The broadcast provoked

³⁶ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 113.

³⁷ Article 2 of the Health Act 2004 (Commencement) (No 2) Order 2004 (SI No 887 of 2004).

³⁸ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 156.

³⁹ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 156.

⁴⁰ Commission of Investigation, *The Commission of Investigation (Leas Cross Nursing Home): Final Report* (Department of Health and Children 2009) at page 156.

⁴¹ Health Information Quality Authority, *Overview of HIQA's Monitoring Activity in Áras Attracta 2015-2017* (2017) at page 6 <<https://www.hiqa.ie/sites/default/files/2017-11/Overivew-report-Aras-Attracta-2015-2017.pdf>> accessed on 16 April 2024.

- strong public reaction. Following the broadcast, the HSE took action to improve the safety and quality of life of residents at Áras Attracta.⁴²
23. In 2015, HIQA carried out five inspections at Áras Attracta. Some inspections were announced and some were unannounced.⁴³ One inspection led to a Notice of Proposal to Cancel Registration (“Notice”) of Áras Attracta in August 2015 unless immediate changes were made.⁴⁴ Subsequently, sufficient changes were made which resulted in the withdrawal of the Notice.
 24. The Áras Attracta Review Group (“Review Group”) made three overarching recommendations for Áras Attracta. The first was to transition to a rights-based model of service delivery. The second was to facilitate, listen to and promote the voices of residents. The third was to strengthen and enhance the leadership and management of Áras Attracta.⁴⁵ The Review Group recommended that certain actions should be taken by the HSE, for example, the inclusion of guidance on the development of local adult protection and welfare procedures in the HSE’s 2014 Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures (the “HSE’s National Policy and Procedures”).⁴⁶ At the time of writing, the HSE’s National Policy and Procedures is currently under review. A draft updated policy was published by the HSE’s National Safeguarding Office (“NSO”) in June 2019 but was not brought into operation.⁴⁷ As reported by the Medical Independent on 7 February 2022, the June 2019 draft updated policy remains the only draft revised policy published and that there is unlikely to be a revised policy for the foreseeable future.⁴⁸ It has

⁴² Health Information Quality Authority, *Overview of HIQA’s Monitoring Activity in Áras Attracta 2015-2017* (HIQA 2017) at page 6.

⁴³ Áras Attracta Swinford Review Group, *What Matters Most: Report of the Áras Attracta Swinford Review Group* (2016) at page 10
<<https://www.hse.ie/eng/services/publications/disability/aasrgwhatmattersmost.pdf>> accessed on 16 April 2024.

⁴⁴ Áras Attracta Swinford Review Group, *What Matters Most: Report of the Áras Attracta Swinford Review Group* (2016) at page 10.

⁴⁵ Áras Attracta Swinford Review Group, *What Matters Most: Report of the Áras Attracta Swinford Review Group* (2016) at pages 167 and 168.

⁴⁶ Áras Attracta Swinford Review Group, *What Matters Most: Report of the Áras Attracta Swinford Review Group* (2016) at page 170; Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (2014)
<<https://assets.hse.ie/media/documents/ncr/personsatriskofabuse.pdf>> accessed on 16 April 2024.

⁴⁷ HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (2019).

⁴⁸ Reilly, “New HSE adult safeguarding policy in stasis” *The Medical Independent* (7 February 2022) <<https://www.medicalindependent.ie/in-the-news/latest-news/new-hse-adult-safeguarding-policy-in-stasis/>> accessed on 16 April 2024.

been reported that serious concerns about roles and responsibilities described in the draft policy, the under-investment in adult safeguarding in Ireland and the Covid-19 pandemic have stymied work to bring the draft revised policy into effect.⁴⁹ The HSE’s National Policy and Procedures therefore remain in effect. The coverage and response to the events at Áras Attracta led to the establishment of the HSE’s NSO in 2015.⁵⁰

25. There have been calls to place the HSE’s National Policy and Procedures on a statutory footing, in order for it to have “teeth” and to ensure that it is fully implemented.⁵¹ In 2023, adult safeguarding expert, Jackie McIlroy, was requested to conduct an independent review in the aftermath of the ‘Emily’ case which is discussed below. The second stage of her work involved conducting a high-level review of HSE safeguarding policies and procedures and providing the HSE Chief Executive Officer with options for the future of safeguarding in Ireland.⁵²
26. In July 2023, the HSE requested Jackie McIlroy to review the report of the National Independent Review Panel (“NIRP”) and the report of the safeguarding review which were undertaken subsequent to the Emily case.⁵³ The terms of reference for this work were: (1) to review the relevant reports relating to Emily and to report to the HSE’s Chief Executive Officer (“CEO”) on whether further examination of individual records was warranted to identify past harm; and (2) if further

⁴⁹ Reilly, “New HSE adult safeguarding policy in stasis” *The Medical Independent* (7 February 2022).

⁵⁰ Irish Association of Social Workers, *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at page 10
<<https://www.iasw.ie/download/1076/IASW%20Adult%20Safeguarding%20Position%20Paper%202022%20%282%29.pdf>> accessed on 16 April 2024.

⁵¹ Áras Attracta Swinford Review Group, *Time for action – Priority actions arising from national consultation* (2016) at page 4
<<https://www.hse.ie/eng/services/publications/disability/aasrgtimeforaction.pdf>> accessed on 16 April 2024.

⁵² Jackie McIlroy, *Adult Safeguarding Review: Professional Advice to the CEO, The Health Service Executive* (HSE 2023) at para 1.3.

⁵³ Health Service Executive, “HSE publishes the report undertaken by independent safeguarding expert Jackie McIlroy following her review of reports relating to the Emily case” (22 September 2023) <<https://www.hse.ie/eng/services/news/media/pressrel/hse-publishes-the-report-undertaken-by-independent-safeguarding-expert-jackie-mcilroy-following-her-review-of-reports-relating-to-the-emily-case.html>> accessed on 16 April 2024.

examination was warranted, whether such examination should amount to a full review or should be limited in scope or duration.⁵⁴

27. The report relating to the first part of the terms of reference was published in August 2023.⁵⁵ In the report, Jackie McIlroy recommended a further examination of individual periods covering the period of employment of the perpetrator in the Emily case.⁵⁶ The second part of the terms of reference involve conducting a high level review of the HSE's safeguarding policies and procedures and providing the HSE's CEO with options for the future of safeguarding in Ireland.⁵⁷
28. At the time of writing, the report relating to the second part of the terms of reference has not been published. It is expected that this will be published soon. This may inform revisions to the HSE's National Policy and Procedures. Updating of the HSE's National Policy and Procedures will also be informed by the responses to the public consultation on the Government's policy proposals on adult safeguarding in the health and social care sector ("Policy Proposals").⁵⁸
29. On 31 January 2024, the Government launched a Public Consultation on the Policy Proposals, as prepared by the Department of Health.⁵⁹ The timeframe for the making of submissions on the Policy Proposals closed on 2 April 2024. At the time of writing, a number of submissions on the Policy Proposals are publicly available, for examples the submissions from

⁵⁴ McIlroy, *Adult Safeguarding Review: Professional Advice to the CEO, The Health Service Executive* (HSE 2023) at para 1.3
<<https://www.hse.ie/eng/services/news/newsfeatures/adult-safeguarding/adult-safeguarding-review-2023-ms-jackie-mcilroy.pdf>> accessed on 16 April 2024.

⁵⁵ McIlroy, *Adult Safeguarding Review: Professional Advice to the CEO, The Health Service Executive* (HSE 2023).

⁵⁶ McIlroy, *Adult Safeguarding Review: Professional Advice to the CEO, The Health Service Executive* (HSE 2023) at para 6.1.

⁵⁷ McIlroy, *Adult Safeguarding Review: Professional Advice to the CEO, The Health Service Executive* (HSE 2023) at para 1.3.

⁵⁸ Government of Ireland, *Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024)
<<https://www.gov.ie/pdf/?file=https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf#page=null>> accessed on 16 April 2024.

⁵⁹ Government of Ireland, *Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024).

the Irish Association of Social Workers⁶⁰ and The Bar of Ireland.⁶¹ A report on the findings of the public consultation will be prepared by the Institute of Public Health for the Department of Health and this report will be published in the future. Detailed policy proposals and related implementation options will be submitted to the Government for decision. Subject to Government approval, any legislation required to underpin the approved policy will then be prepared.⁶²

(c) Grace

30. The 'Grace' case concerned investigations into allegations of physical and sexual abuse involving a woman with intellectual disabilities in a foster home in the south east of Ireland.⁶³ Investigations were conducted into the circumstances of the Grace case, including the publication of the Final Report of an Inquiry into Protected Disclosures ("Devine Report") and the ongoing Commission of Investigation on certain matters relative to a disability service in the South East and related matters ("Farrelly Commission").⁶⁴ On 5 March 2024, it was reported that the Minister for Children, in consultation with the Minister of State with Special Responsibility for Disabilities, had received Government approval to grant the Farrelly Commission a further extension of the timeframe for submission of its final report until 12 September 2024.⁶⁵

⁶⁰ McGarry, Casey, Donnelly and Geiran, *IASW Response to Public Consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Irish Association of Social Workers April 2024) <https://www.iasw.ie/download/1238/IASW%20Submission%20to%20DOH%20re.%20Adult%20Safeguarding_02.04.24.pdf> accessed on 16 April 2024.

⁶¹ The Bar of Ireland, *Department of Health public consultation on policy proposals for adult safeguarding in the health and social care sector* (Bar of Ireland 2024) <<https://www.lawlibrary.ie/app/uploads/securepdfs/2024/04/TBOI-submission-on-adult-safeguarding-8.4.2024.pdf>> accessed on 16 April 2024.

⁶² Government of Ireland, *Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 2.

⁶³ Cullen, "Who is 'Grace' and what happened to her?" *The Irish Times* (28 February 2017), <<https://www.irishtimes.com/news/social-affairs/who-is-grace-and-what-happened-to-her-1.2992650>> accessed on 16 April 2024.

⁶⁴ Devine, Mulvihill and Wall, *Inquiry into Protected Disclosures, SU1* (March 2012) <<https://www.hse.ie/eng/services/news/media/pressrel/inquiry-protected-disclosures-su1.pdf>> accessed on 16 April 2024. At the time of writing, the latest report is: Farrelly, *Eight Interim Report of the Commission of Investigation (Certain Matters Relative to a Disability Service in the South East and Related Matters)* (Department of Health 2022) <<https://www.gov.ie/en/publication/4a081-eight-interim-report-of-the-farrelly-commission-of-investigation/>> accessed on 16 April 2024.

⁶⁵ Horgan-Jones, "Final report into 'Grace' abuse case delayed for further six months" *The Irish Times* (6 March 2024) <<https://www.irishtimes.com/politics/2024/03/06/final-report-into->

31. As an infant, Grace entered into the voluntary care of the State, and lived in a number of residential and foster settings until she was 11 years of age.⁶⁶ She was placed in the foster care of Family X in 1989 and resided with them until she was nearly 31 years of age.⁶⁷ During her time with Family X, a range of concerns were raised, including the bruising of Grace's body which was observed by day centre employees, her sustained absence from school and day services, and allegations of child sexual abuse against her male foster parent.⁶⁸
32. The Devine Report concluded that there was:
- (a) inadequate monitoring, supervision and oversight of Grace's care;
 - (b) an absence of liaison between those responsible for Grace's placement in a foster home;
 - (c) inadequate action to remove her from the foster home after significant concerns were raised;
 - (d) an absence of the necessary protocols and arrangements to support the placement of "vulnerable" children and adults with a disability with foster families; and
 - (e) serious deficiencies in record and case management.⁶⁹

(d) Brandon

33. In the 'Brandon' case, an adult with intellectual disabilities committed at least 108 sexual assaults on fellow residents from 2003 to 2016 with the

[grace-abuse-case-delayed-for-further-six-months/](#)> accessed on 16 April 2024. See further discussion in Chapter 17 on the number of extensions granted.

⁶⁶ Farrelly, *First Substantive Interim Report of the Commission of Investigation (Certain Matters Relative to a Disability Service in the South East and Related Matters)* (Department of Health 2021) at page 1, para. 2.3
<https://www.lenus.ie/bitstream/handle/10147/630570/200284_5d7896f9-61fc-4673-b07e-a09bd8876a98.pdf?sequence=1&isAllowed=y> accessed on 16 April 2024.

⁶⁷ Farrelly, *First Substantive Interim Report of the Commission of Investigation (Certain Matters Relative to a Disability Service in the South East and Related Matters)* (Department of Health 2021) at page 1, para. 2.3.

⁶⁸ Devine, Mulvihill and Wall, *Inquiry into Protected Disclosures, SU1* (2012) at paras 4.3.18, 4.6.3 and 4.9.2.

⁶⁹ Farrelly, *First Substantive Interim Report of the Commission of Investigation (Certain Matters Relative to a Disability Service in the South East and Related Matters)* (Department of Health 2021) at page 13, para 1.8.

full knowledge of staff and management of the HSE.⁷⁰ The abuse committed by Brandon included indecent exposure and masturbation in the presence of others, inappropriate touching of residents inside and outside their clothing, entrance to the bedrooms of residents at night time, and displays of verbal and physical aggression towards residents and staff.⁷¹ The factors that contributed to these events include the clinical environment of the centre wherein Brandon resided, a lack of external management oversight and leadership within the HSE, and a lack of adequate training for staff to properly implement policies and procedures.⁷²

34. In November 2021, the National Independent Review Panel (“NIRP”) published an executive summary of its Independent Review of the Management of Brandon.⁷³ At the time of writing, the entire Independent Review of the Management of Brandon (“Brandon Report”) has not been published, despite requests from the Minister of State with Special Responsibility for Disabilities.⁷⁴ The Attorney General has advised the Government that the Brandon Report cannot be published in its entirety because it “would be contrary to the undertakings given to family members who participated in the review process and ... could potentially prejudice any disciplinary actions that might be taken”.⁷⁵ A second “validation report” arising from a follow-up investigation has reportedly been published internally by the HSE.⁷⁶ A report by HIQA in 2022 identified gaps in safeguarding arrangements in HSE designated centres

⁷⁰ Irish Association of Social Workers, *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at page 7.

⁷¹ National Independent Review Panel, *Independent Review of the Management of Brandon: The National Independent Review Panel – Brandon Report for Publication* (NIRP 2021) at page 5.

⁷² National Independent Review Panel, *Independent Review of the Management of Brandon: The National Independent Review Panel – Brandon Report for Publication* (NIRP 2021) at page 10.

⁷³ National Independent Review Panel, *Independent Review of the Management of Brandon: The National Independent Review Panel – Brandon Report for Publication* (NIRP 2021).

⁷⁴ Burns, “Not possible to publish full Brandon report, AG advises Minister” *The Irish Times* (17 January 2022) <<https://www.irishtimes.com/news/social-affairs/not-possible-to-publish-full-brandon-report-ag-advises-minister-1.4778917>> accessed on 16 April 2024.

⁷⁵ Burns, “Not possible to publish full Brandon report, AG advises Minister” *The Irish Times* (17 January 2022).

⁷⁶ Coleman Legal LLP, “Follow-up Brandon Report sparks fears of further abuse” *Coleman Legal LLP* (1 June 2022) <<https://colemanlegalpartners.ie/brandon-report-sparks-fears-of-further-abuse/>> accessed on 16 April 2024.

in Donegal, including poor quality surveillance of the centres by the HSE and generic and ineffective auditing and oversight.⁷⁷

(e) Emily

35. In August 2020, the HSE commissioned the NIRP to complete a review of a serious reportable event which occurred in one of the HSE’s community nursing homes for older people in April 2020.⁷⁸ ‘Emily’, a resident who resided in the nursing home, reported that a male care assistant entered her room and raped her.⁷⁹ The allegation was reported to the Garda Síochána and the alleged perpetrator was arrested and subsequently convicted.⁸⁰
36. The NIRP considered that a key issue in the Emily case was that staff were unable to believe that sexual abuse could occur in their place of work “despite the fact that [the NIRP] ha[d] information from a number of sources that a number of residents on occasions displayed signs and symptoms of possible sexual abuse”.⁸¹ As part of its review, the NIRP accessed a document drafted by a member of staff which outlined allegations of sexual abuse by a convicted care assistant towards six other female residents.⁸²
37. The NIRP recommended that the HSE should establish a working group to examine and reform the management and model of care in residential facilities for older people in accordance with international best practice. The NIRP also recommended that the HSE should implement a staff awareness campaign to ensure that safeguarding allegations are taken

⁷⁷ Health Information and Quality Authority, *Overview report of governance and safeguarding in HSE designated centres for people with disabilities in Donegal in January 2022* (HIQA 2022) at pages 11 and 12 <<https://www.hiqa.ie/sites/default/files/2022-04/HIQA-Overview-report-of-governance-and-safeguarding-monitoring-programme-in-Designated-Centres-HSE-CHO1-Donegal.pdf>> accessed on 16 April 2024.

⁷⁸ National Independent Review Panel, *Independent Review of the Governance Arrangements in a HSE Nursing Home: ‘Emily’* (NIRP 2023) at page 2 <<https://www.hse.ie/eng/services/publications/independent-review-of-the-governance-arrangements-in-a-hse-nursing-home.pdf>> accessed on 16 April 2024.

⁷⁹ National Independent Review Panel, *Independent Review of the Governance Arrangements in a HSE Nursing Home: ‘Emily’* (NIRP 2023) at page 2.

⁸⁰ National Independent Review Panel, *Independent Review of the Governance Arrangements in a HSE Nursing Home: ‘Emily’* (NIRP 2023) at page 2.

⁸¹ National Independent Review Panel, *Independent Review of the Governance Arrangements in a HSE Nursing Home: ‘Emily’* (NIRP 2023) at page 7.

⁸² National Independent Review Panel, *Independent Review of the Governance Arrangements in a HSE Nursing Home: ‘Emily’* (NIRP 2023) at page 7.

seriously.⁸³ The NIRP further recommended that all staff working in HSE facilities should receive training on the signs and symptoms of abuse of older persons, and a crisis response plan should be developed to ensure there is an appropriate management response to a serious event in a residential facility.⁸⁴ The NIRP also recommended the creation of a memorandum of understanding or joint protocol between the HSE and the Garda Síochána on their responsibilities in circumstances where allegations of sexual abuse of residents are under investigation.⁸⁵

3. Coronavirus disease 2019 (Covid-19)

38. Coronavirus disease 2019 (“Covid-19”) was characterised as a pandemic by the World Health Organisation (“WHO”) on 11 March 2020.⁸⁶ The national response to Covid-19 was supported by a governance structure to ensure a public health-led approach.⁸⁷ The National Public Health Emergency Team (“NPHET”) was established on 27 January 2020.⁸⁸ NPHET oversaw and provided direction, guidance, support and advice on the development and implementation of a strategy to respond to Covid-19 in Ireland.⁸⁹
39. The Covid-19 pandemic further highlighted the need for a statutory and regulatory framework for adult safeguarding in Ireland. In May 2020, NPHET recommended the establishment of an Expert Panel on Nursing Homes (“Expert Panel”) to examine the management of Covid-19 in Irish

⁸³ National Independent Review Panel, *Independent Review of the Governance Arrangements in a HSE Nursing Home: ‘Emily’* (NIRP 2023) at page 11.

⁸⁴ National Independent Review Panel, *Independent Review of the Governance Arrangements in a HSE Nursing Home: ‘Emily’* (NIRP 2023) at page 11.

⁸⁵ National Independent Review Panel, *Independent Review of the Governance Arrangements in a HSE Nursing Home: ‘Emily’* (NIRP 2023) at page 12.

⁸⁶ World Health Organisation, “WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020” (11 March 2020) <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed on 16 April 2024.

⁸⁷ COVID-19 Nursing Homes Expert Panel, *Examination of Measures to 2021: Report to the Minister for Health* (Department of Health 19 August 2020) at page 8 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/84889/b636c7a7-a553-47c0-88a5-235750b7625e.pdf#page=null>> accessed on 16 April 2024.

⁸⁸ Government of Ireland, *Ireland’s National Action Plan in response to COVID-19 (Coronavirus): Update 16th March 2020* (Department of the Taoiseach 2020) at page 6 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/71728/2b46989c737f4b689eb87842ce80325b.pdf#page=null>> accessed on 16 April 2024.

⁸⁹ Government of Ireland, *Ireland’s National Action Plan in response to COVID-19 (Coronavirus): Update 16th March 2020* (Department of the Taoiseach 2020) at page 6.

nursing homes.⁹⁰ The Expert Panel's terms of reference included: (a) the provision of assurance that national public health measures adopted to safeguard residents of nursing homes were appropriate and comprehensive; (b) the provision of an overview of the international response to Covid-19; and (c) the making of reports to the Minister for Health to provide immediate learnings and recommendations.⁹¹ In its report to the Minister for Health on 19 August 2020, the Expert Panel made 86 recommendations on various issues, including nursing home procedures, communication across the Irish health system, and the need for a revised model of care for nursing homes.⁹²

40. The Expert Panel recommended that the Department of Health should explore a suitable structure and process for external oversight of individual care concerns arising in nursing homes, once internal processes have been exhausted without satisfaction.⁹³ The Expert Panel also made recommendations on independent advocacy, which relate to the discussion in Chapter 8 of this Report.⁹⁴
41. The Special Committee on Covid-19 Response ("Special Committee") was established in May 2020 to consider and document the State's response to Covid-19.⁹⁵ The Special Committee examined the deaths of residents in nursing homes after they contracted Covid-19. However, the Special Committee was unable to obtain satisfactory answers during its examination.⁹⁶ In its final report published on 6 October 2020 ("Final Report"), the Special Committee concluded that the State was overly

⁹⁰ COVID-19 Nursing Homes Expert Panel, *Examination of Measures to 2021: Report to the Minister for Health* (Department of Health 2020) at page 1.

⁹¹ COVID-19 Nursing Homes Expert Panel, *Examination of Measures to 2021: Report to the Minister for Health* (Department of Health 2020) at page 1.

⁹² COVID-19 Nursing Homes Expert Panel, *Examination of Measures to 2021: Report to the Minister for Health* (Department of Health 2020) at page 6.

⁹³ COVID-19 Nursing Homes Expert Panel, *Examination of Measures to 2021: Report to the Minister for Health* (Department of Health 2020) at page 112.

⁹⁴ COVID-19 Nursing Homes Expert Panel, *Examination of Measures to 2021: Report to the Minister for Health* (Department of Health 2020) at pages 111-112.

⁹⁵ Special Committee on Covid-19 Response, *Final Report* (SCCR004) (Houses of the Oireachtas 2020) at para 1
<https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/special_committee_on_covid_19_response/reports/2020/2020-10-09_final-report-of-the-special-committee-on-covid-19-response-sccr004_en.pdf> accessed on 8 April 2024.

⁹⁶ Special Committee on Covid-19 Response, *Final Report* (SCCR004) (Houses of the Oireachtas 2020) at para 9.

reliant on institutional care for its “vulnerable population”.⁹⁷ It noted that the HSE’s Safeguarding and Protection Teams (“SPTs”) have no legislative authority to investigate complaints and that HIQA does not have legal powers to carry out investigations of individual complaints.⁹⁸ The Special Committee made 11 recommendations in its Final Report, including the drawing up of an implementation plan for the recommendations contained in the Report of the Covid-19 Nursing Homes Expert Panel to the Minister for Health on 19 August 2020.⁹⁹ Members of the Expert Panel informed the Special Committee that there was a need for a process of investigation of complaints arising in nursing homes, which is independent of the provider, whether public or private.¹⁰⁰ The Special Committee recommends that recommendation 15.3 of the Final Report of the Covid-19 Nursing Homes Expert Panel on the issue of an independent structure be implemented immediately.¹⁰¹

42. The Covid-19 pandemic resulted in the isolation of many individuals and the under-reporting of abuse.¹⁰² According to the HSE’s NSO, under-reporting was particularly acute in 2020 when reports of safeguarding concerns fell by 9% on 2019 figures.¹⁰³ As restrictions eased in Ireland, referrals to the HSE’s SPTs increased.¹⁰⁴ In its 2022 annual report, the NSO stated that 10,574 safeguarding concerns were reported in 2020, 11,640

⁹⁷ Special Committee on Covid-19 Response, *Final Report* (SCCR004) (Houses of the Oireachtas 2020) at para 14.

⁹⁸ Special Committee on Covid-19 Response, *Final Report* (SCCR004) (Houses of the Oireachtas 2020) at para 63.

⁹⁹ Special Committee on Covid-19 Response, *Final Report* (SCCR004) (Houses of the Oireachtas 2020) at para 15; COVID-19 Nursing Homes Expert Panel, *Examination of Measures to 2021: Report to the Minister for Health* (Department of Health 2020).

¹⁰⁰ Special Committee on Covid-19 Response, *Final Report* (SCCR004) (Houses of the Oireachtas 2020) at para 63.

¹⁰¹ Special Committee on Covid-19 Response, *Final Report* (SCCR004) (Houses of the Oireachtas 2020) at para 63.

¹⁰² HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2020* (2021) at pages 35 and 40 <<https://safeguardingireland.org/wp-content/uploads/2021/11/NSO-Safeguarding-Annual-Report-2020.pdf>> accessed on 16 April 2024. See also Rickard-Clarke, “The Impact of the Covid-19 Pandemic on the Lives of Older People” (2021) 24(4) *Irish Journal of Family Law* 77 at pages 77 to 78.

¹⁰³ HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2020* (2021) at page 30.

¹⁰⁴ Conneely, “Drop in safeguarding concerns notified in 2020” *RTÉ* (28 October 2021) <<https://www.rte.ie/news/health/2021/1028/1256538-hse-safeguarding-drop-reports/>> accessed 16 April 2024.

were reported in 2021, and 13,700 were reported in 2022.¹⁰⁵ In 2022, 68% of reports in relation to “adults at risk of abuse” between the ages of 18 and 64 identified service users or peers as the persons allegedly causing concern.¹⁰⁶ With respect to adults aged between 65 and 79 years of age in 2022, 38% of reports to the NSO involved service users or peers as the persons allegedly causing concern, and 36% of reports involved immediate family members as the persons allegedly causing concern.¹⁰⁷ With respect to adults aged 80 years of age or older in 2022, 53% of reports to the NSO involved immediate family members as the persons allegedly causing concern.¹⁰⁸ The most common type of abuse reported in 2022 was psychological abuse, followed by physical abuse.¹⁰⁹

4. Legislative and policy developments

43. Subsequent to a number of publicly documented shortcomings with regard to adult safeguarding in Ireland, it is notable that some progress has been made in Ireland in relation adult safeguarding. The introduction of a statutory and regulatory framework for adult safeguarding could provide legal certainty, greater protections for at-risk adults, and focus on proactive and preventative rather than reactive safeguarding practices. The introduction of a statutory and regulatory framework for adult safeguarding in Ireland could also provide greater clarity to the friends and family members of at-risk adults, including others who may work with, care for or otherwise interact with at-risk adults. Such a framework would outline what safeguarding means, what responsibilities people have, and what supports are available.
44. The following are some of the measures that have progressed in Ireland which evidence positive steps towards ensuring that the capacity of at-risk adults is maximised and that such adults are empowered to participate as fully as possible in decisions that affect their lives.

¹⁰⁵ HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2022 (2023)* at page 18
<<https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/national-safeguarding-office-annual-report-20221.pdf>> accessed on 16 April 2024.

¹⁰⁶ HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2022 (2023)* at page 29.

¹⁰⁷ HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2022 (2023)* at page 29.

¹⁰⁸ HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2022 (2023)* at page 29.

¹⁰⁹ HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2022 (2023)* at page 30.

45. In 2022, the National Care Experience Programme, which involved the joint initiative of HIQA, the HSE and the Department of Health, conducted the National Nursing Home Experience Survey (“Survey”). Two questionnaires were distributed as part of the Survey to identify the experiences of: (1) residents; and (2) family members or friends of residents. Survey responses demonstrated that residents: (a) placed a high level of trust and confidence in nursing home staff; (b) had limited awareness of relevant advocacy organisations; and (c) were not always involved in decisions that affected them.¹¹⁰ Relatives and friends of nursing home residents were positive about the staff and living environments in nursing homes. However, they noted that there was room to improve residents’ awareness of how residents could contact advocacy organisations and how nursing homes could encourage residents’ independence and participation in activities.¹¹¹
46. Other policy and legislative developments with regard to adult safeguarding include:
- (a) Safeguarding Ireland and HIQA’s Guidance on a Human Rights-based Approach in Health and Social Care Services;
 - (b) HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding;
 - (c) the Sláintecare programme and commitments in the Programme for Government;
 - (d) the review of the Prohibition of Incitement to Hatred Act 1989;
 - (e) the Department of Health’s Protection of Liberty Safeguards Bill;
 - (f) the proposed revision of the Consumer Protection Code by the Central Bank of Ireland and the publication of draft guidance on protecting “consumers in vulnerable circumstances”;

¹¹⁰ National Nursing Home Experience Survey, *Experiences of Residents 2022* (November 2022) at page 6 <<https://yourexperience.ie/wp-content/uploads/2022/11/Nursing-Home-Resident-Report-2022-V3.pdf>> accessed on 16 April 2024.

¹¹¹ National Nursing Home Experience Survey, *Experiences of Relatives and Friends 2022* (November 2022) at page 7 <<https://yourexperience.ie/wp-content/uploads/2022/11/Nursing-Home-Family-Friends-Report-2022-V3-1.pdf>> accessed on 16 April 2024.

- (g) the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023;¹¹²
- (h) the Policing, Security and Community Safety Act 2024;¹¹³
- (i) the establishment of the Policing and Community Safety Authority;
- (j) the establishment of the Domestic Sexual and Gender-Based Violence Agency, otherwise known as Cuan;
- (k) the Health (Adult Safeguarding) Bill;
- (l) General Scheme of the Health (Amendment) Bill; and
- (m) Draft Regulations for Providers of Home Support Services.

47. These policy and legislative developments are discussed briefly below and are considered in further detail elsewhere in this Report.

(a) Guidance on a Human Rights-based Approach in Health and Social Care Services

48. In November 2019, Safeguarding Ireland and HIQA published Guidance on a Human Rights-based Approach in Health and Social Care Services. The guidance seeks to ensure the protection of the human rights of health and social care service users.¹¹⁴

(b) National Standards for Adult Safeguarding

49. In December 2019, HIQA and the Mental Health Commission published National Standards for Adult Safeguarding (“Standards”). The Standards were developed to promote improvements in quality and safety of care and support, and to outline the expectations of service users, the public, service providers and professionals.¹¹⁵ The principles underpinning the

¹¹² Not yet commenced at the time of writing.

¹¹³ Not yet commenced at the time of writing.

¹¹⁴ Safeguarding Ireland and Health Information Quality Authority, *Guidance on a Human Rights-based Approach in Health and Social Care Services* (Safeguarding Ireland and HIQA 2019) at page 4 <<https://www.hiqa.ie/sites/default/files/2019-11/Human-Rights-Based-Approach-Guide.PDF>> accessed on 16 April 2024.

¹¹⁵ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) <<https://www.hiqa.ie/sites/default/files/2019-12/National-Standards-for-Adult-Safeguarding.pdf>> accessed on 16 April 2024.

Standards include empowerment, a rights-based approach and proportionality.¹¹⁶ These three principles are included in the guiding principles underpinning the Commission’s Adult Safeguarding Bill 2024 which is appended to this Report. The guiding principles to underpin adult safeguarding legislation are discussed in Chapter 3 of this Report.

(c) Health and Social Care Sectoral Policy Developments

(i) *Sláintecare, HSE Restructure and the Programme for Government 2020*

50. Sláintecare is a 10-year programme designed to transform Ireland’s health and social care services. The objective of Sláintecare is “the [provision of the] right care in the right place at the right time for all”.¹¹⁷ The Sláintecare Implementation Strategy and Action Plan 2021-2023 was approved by the Government in May 2021.¹¹⁸ In the implementation of its 2014 National Policy and Procedures, the HSE established the NSO and nine Safeguarding and Protection Teams (“SPTs”) in each Community Health Organisation (“CHO”) in 2015.¹¹⁹ SPTs are managed and led by a principal social worker and staffed by qualified social workers.¹²⁰ In April 2022, the Government approved the programme of work and timelines for the implementation of health regions.¹²¹ This was central to the restructuring and division of the HSE into six health regions on 1 March 2024.¹²² The objectives of this division are to: (a) deliver more integrated care closer to patients’ homes; (b) allow for the planning and delivery of services around the needs of local populations; (c) improve governance

¹¹⁶ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at pages 9 and 10.

¹¹⁷ Government of Ireland and the HSE, *Organisational Reform: HSE Health Regions – Implementation Plan* (Government of Ireland and HSE 2023) at page 10
<<https://www.gov.ie/pdf/?file=https://assets.gov.ie/266115/7b86800b-934d-4849-88ae-e8fc4b809465.pdf#page=null>> accessed on 16 April 2024.

¹¹⁸ Government of Ireland, *Sláintecare: Progress Report 2022 – Sláintecare Implementation Strategy & Action Plan 2021-2023* (2021) at page 6
<<https://www.gov.ie/pdf/?file=https://assets.gov.ie/251348/50049595-9b2d-48d2-95ee-b00b53c7f47e.pdf#page=null>> accessed on 16 April 2024.

¹¹⁹ HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2022* (2023) at page 7.

¹²⁰ HSE National Safeguarding Office, *National Safeguarding Office Annual Report 2022* (2023) at page 7.

¹²¹ Government of Ireland, *Sláintecare: Progress Report 2022 – Sláintecare Implementation Strategy & Action Plan 2021-2023* (2021) at page 6.

¹²² Health Service Executive, “HSE health regions will commence on 1 March 2024” *HSE Staff News* (20 December 2023) <<https://healthservice.hse.ie/staff/news/staff-news-listing-page/hse-health-regions-will-commence-on-1-march-2024/>> accessed on 16 April 2024.

and accountability at all levels; and (d) provide a consistent quality of care across Ireland.¹²³ The six health regions will be supported by the HSE and the Department of Health. Each region will be divided into a number of Integrated Health Areas (“IHAs”). Each IHA will serve a population of up to 300,000, taking into account varying geographies, population size, local needs and services.¹²⁴ The division of the HSE into six health regions will likely result in regional SPTs being established in place of the SPTs in each CHO.¹²⁵

51. The Government has committed to the acceleration of the implementation of Sláintecare,¹²⁶ the introduction of a statutory homecare scheme,¹²⁷ the continuous professional development of health sector staff,¹²⁸ and the enhancement of HIQA’s patient safety role.¹²⁹ With regard to supports for older people, the Government has committed to working with the Nursing Home Expert Panel to examine whether the remit of the Patient Advocacy Service could be extended to residents of long-term residential care facilities to ensure the implementation of the best possible safeguards to protect residents.¹³⁰ With regard to people with disabilities, the Government has committed to the provision of additional residential places and the expansion of adult day services and

¹²³ Government of Ireland, *Business Case for the Implementation of Regional Health Areas (RHAs)* (Department of Health 2022) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/220582/178975ac-74de-40ee-8131-37db61c64612.pdf#page=null>> accessed on 16 April 2024; Government of Ireland and the HSE, *Organisational Reform: HSE Health Regions – Implementation Plan* (Government of Ireland and HSE 2023).

¹²⁴ Health Service Executive, “HSE health regions will commence on 1 March 2024” *HSE Staff News* (20 December 2023).

¹²⁵ Government of Ireland and the HSE, *Organisational Reform: HSE Health Regions – Implementation Plan* (Government of Ireland and HSE 2023) at page 10.

¹²⁶ Department of the Taoiseach, *Programme for Government: Our Shared Future* (2020) at page 44 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/130911/fe93e24e-dfe0-40ff-9934-def2b44b7b52.pdf#page=null>> accessed on 16 April 2024.

¹²⁷ Department of the Taoiseach, *Programme for Government: Our Shared Future* (2020) at page 45.

¹²⁸ Department of the Taoiseach, *Programme for Government: Our Shared Future* (2020) at page 46.

¹²⁹ Department of the Taoiseach, *Programme for Government: Our Shared Future* (2020) at page 47.

¹³⁰ Department of the Taoiseach, *Programme for Government: Our Shared Future* (2020) at page 52.

supports throughout Ireland for adults with physical and sensory disabilities, intellectual disabilities and autism.¹³¹

(ii) *Health and Social Care Sector Adult Safeguarding Policy*

52. In the Programme for Government published by the Department of the Taoiseach in June 2020, the Government outlined its intention to review and improve the HSE's National Policy and Procedures.¹³² It was agreed that the Minister for Health would develop a national adult safeguarding policy for the health sector, beyond social care, which would be underpinned by legislation, if required.¹³³ The objective of the adult safeguarding sectoral policy project is to identify and address policy and legislative gaps in the existing adult safeguarding framework.¹³⁴ Mazars was commissioned by the Department of Health to prepare an evidence review on adult safeguarding.¹³⁵ Mazars' report, published in 2020, provided a systematic literature review of the status of adult safeguarding in various jurisdictions.¹³⁶ The Institute of Public Health was commissioned to undertake research on behalf of the Department of Health, in the form of focus groups, to inform the Department's policy development process on adult safeguarding.¹³⁷ The main themes arising

¹³¹ Department of the Taoiseach, *Programme for Government: Our Shared Future* (J2020) at page 79.

¹³² Department of the Taoiseach, *Programme for Government: Our Shared Future* (2020) at page 79.

¹³³ Redmond, *Development of a National Policy on Adult Safeguarding in the Health Sector: Background and Context* (Department of Health 2019) <<https://assets.gov.ie/10877/203bd4bd15304cd9893a2a3485ef2256.pdf>> accessed on 16 April 2024.

¹³⁴ Redmond, *Development of a National Policy on Adult Safeguarding in the Health Sector: Background and Context* (Department of Health 2019).

¹³⁵ Mazars, *Evidence Review to Inform Development of a National Policy on Adult Safeguarding in the Health and Social Care Sector: Final Report* (Department of Health 2020) at page 1 <<https://assets.gov.ie/90644/cff9c3b-e77f-481b-b5ed-4dfe60a611f0.pdf>> accessed on 16 April 2024.

¹³⁶ Mazars, *Evidence Review to Inform Development of a National Policy on Adult Safeguarding in the Health and Social Care Sector: Final Report* (Department of Health 2020) at page 462.

¹³⁷ Sheehan and O'Sullivan, *Report on Adult Safeguarding Focus Groups with Health and Social Care Service Users: A Report by the Institute of Public Health for the Department of Health to Inform the Development of a National Policy on Adult Safeguarding in the Health and Social Care Sector in Ireland* (Institute of Public Health 2021) at page 11 <<https://assets.gov.ie/123620/f7f6341e-a1d2-41aa-a6af-03105f124ef7.pdf>> accessed on 16 April 2024.

from these focus groups centred upon empowerment and partnership, prevention and protection, and accountability and proportionality.¹³⁸

(iii) Commission on Care for Older People

53. In the Programme for Government published by the Department of the Taoiseach in June 2020, the Government committed to the establishment of a commission to examine care and supports for older people (“Commission on Care for Older People”).¹³⁹ In October 2023, it was announced that the Commission on Care for Older People would be established in January 2024.¹⁴⁰ On 29 February 2024, the Minister for Health and the Minister of State for Mental Health and Older People announced the appointment of the members of the Commission on Care for Older People.¹⁴¹ The Commission on Care for Older People will examine the health and social care services and supports for older people across the continuum of care and make recommendations for their strategic developments. A reference group of stakeholders will provide expertise and lived experience of the diverse and evolving needs of Ireland’s ageing population.
54. The Department of Health confirmed on 29 February 2024 that the Commission on Care for Older People “will be formally established imminently”.¹⁴² The Commission’s work will be advanced through three modules of work. The modules will run consecutively. Module 1 is due to commence in early 2024.¹⁴³
55. Module 1 will explore current services and learning for the future, particularly focusing on health and social care services, models of

¹³⁸ Sheehan and O’Sullivan, *Report on Adult Safeguarding Focus Groups with Health and Social Care Service Users: A Report by the Institute of Public Health for the Department of Health to Inform the Development of a National Policy on Adult Safeguarding in the Health and Social Care Sector in Ireland* (Institute of Public Health 2021) at page 96.

¹³⁹ Department of the Taoiseach, *Programme for Government: Our Shared Future* (2020) at page 51.

¹⁴⁰ Department of Health, “Minister Donnelly and Minister Butler announce government approval of Commission on Care” (5 October 2023) <<https://www.gov.ie/en/press-release/bfade-minister-donnelly-and-minister-butler-announce-government-approval-of-commission-on-care/>> accessed on 16 April 2024.

¹⁴¹ Department of Health, “Ministers for Health announce appointment of members of Commission on Care for Older People” (29 February 2024) <<https://www.gov.ie/en/press-release/b979c-ministers-for-health-announce-appointment-of-members-of-commission-on-care-for-older-people/>> accessed on 16 April 2024.

¹⁴² Department of Health, “Ministers for Health announce appointment of members of Commission on Care for Older People” (29 February 2024).

¹⁴³ Department of Health, “Ministers for Health announce appointment of members of Commission on Care for Older People” (29 February 2024).

supported living for older people, and policy initiatives for the social care system.¹⁴⁴

56. Module 2 will explore options for the future, particularly focusing on the strategic development of health and social care, the strategic development of capital infrastructure, new technologies, and funding and resource allocation. A report will be prepared after Module 2 for the consideration of the Minister for Health and the Minister of State for Mental Health and Older People which will detail challenges and opportunities. The report will present a framework for the overarching strategic development of health and social care services and supports for older people that advances national strategic objectives.¹⁴⁵
57. Subsequently, a cross-departmental group will be established under the auspices of the Commission on Care for Older People to consider whether the supports for positive ageing across the life course are fit-for-purpose and to develop a costed implementation plan for options to optimise these supports.¹⁴⁶

(d) Prohibition of Incitement to Hatred Act 1989

58. The Prohibition of Incitement to Hatred Act 1989 was enacted to make incitement to hatred (i.e. hate speech) a crime in Ireland.¹⁴⁷ In 2019, the Government undertook a public consultation to consider how the legislation on hate speech could be improved. One of the issues consulted upon was the protected characteristics covered by the 1989 Act, namely “race, colour, nationality, religion, ethnic or national origins, membership of the travelling community [and] sexual orientation”.¹⁴⁸ The Department of Justice has considered whether the list of protected characteristics should be expanded to take account of current social issues in Ireland.¹⁴⁹ Stakeholders considered that a range of

¹⁴⁴ Department of Health, “Ministers for Health announce appointment of members of Commission on Care for Older People” (29 February 2024).

¹⁴⁵ Department of Health, “Ministers for Health announce appointment of members of Commission on Care for Older People” (29 February 2024).

¹⁴⁶ Department of Health, “Ministers for Health announce appointment of members of Commission on Care for Older People” (29 February 2024).

¹⁴⁷ Department of Justice and Equality, *Review of the Prohibition of Incitement to Hatred Act 1989 – Public Consultation* (Department of Justice and Equality 2019) <<https://assets.gov.ie/237923/e8314384-5f81-47ea-b3c7-128eb23a6e23.pdf>> accessed on 16 April 2024.

¹⁴⁸ Section the definition of “hatred” in section 1(1) of the Prohibition of Incitement to Hatred Act 1989.

¹⁴⁹ Department of Justice and Equality, *Review of the Prohibition of Incitement to Hatred Act 1989 – Public Consultation* (Department of Justice and Equality 2019).

characteristics, including disability and age, should be included as protected characteristics.¹⁵⁰ The Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 (“2022 Bill”), as passed by Dáil Éireann, defines “protected characteristic” as including descent, gender, sex characteristics, sexual orientation and disability. However, it is notable that ‘age’ has not been included in the definition of “protected characteristic” in the 2022 Bill.¹⁵¹ At the time of writing, the Bill is at Committee Stage in Seanad Éireann.

(e) Protection of Liberty Safeguards

59. In October 2019, the decision of the Supreme Court in *AC and Ors v Cork University Hospital and Ors*¹⁵² provided important guidance on the application of the relevant principles concerning decision-making capacity. Such guidance has been previously summarised by the Commission in the Issues Paper. As mentioned therein, this guidance will provide a greater degree of clarity to the HSE and medical professionals on the appropriate steps to take in determining whether a patient should remain in or be discharged from hospital. This will assist with: (a) safeguarding at-risk adults in circumstances where they do not have capacity to make a decision to discharge themselves; and (b) protecting the liberty of persons who have capacity to decide to leave a hospital at a particular time.
60. In December 2017, the Government published, for consultation purposes, preliminary draft Heads of a Bill that were intended to form Part 13 of the Assisted Decision-Making Capacity Act 2015 (“2015 Act”).¹⁵³ At the time

¹⁵⁰ Law Society of Ireland, *Submission on the Review of the Prohibition of Incitement to Hatred Act 1989* (Law Society of Ireland 2020) at para 2.1 <<https://www.lawsociety.ie/globalassets/documents/submissions/submission-prohibition-incitement-to-hatred-act-1989.pdf>> accessed on 16 April 2024; The Bar of Ireland, *Submission by Council of The Bar of Ireland to the Department of Justice and Equality on the Review of the Prohibition of Incitement to Hatred Act 1989* (Bar of Ireland 2019) at page 13 <<https://www.lawlibrary.ie/app/uploads/securepdfs/2021/05/Submission-on-the-Review-of-the-Prohibition-of-Incitement-to-Hatred-Act-1989-13Dec2019-1.pdf>> accessed on 16 April 2024; Irish Network Against Racism, *Re: Review of the Prohibition of Incitement to Hatred Act 1989* (Irish Network Against Racism 2019) at page 3 <<https://inar.ie/wp-content/uploads/2019/12/INAR-Submission-to-review-of-1989-Incitement-to-Hatred-Act.pdf>> accessed on 16 April 2024.

¹⁵¹ Section 3(1) of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022, as passed by Dáil Éireann on 26 April 2023 <https://data.oireachtas.ie/ie/oireachtas/bill/2022/105/eng/ver_b/b105b22d.pdf> accessed on 16 April 2024.

¹⁵² [2019] IESC 73.

¹⁵³ Department of Health, *The Deprivation of Liberty Safeguard Proposals: Report on the Public Consultation* (Department of Health 2019) at page 4

of writing, protection of liberty safeguards have not been introduced in Irish legislation.¹⁵⁴ Moreover, it is notable that neither the 2015 Act nor the Mental Health Act 2001 provide for procedural safeguards to ensure people are not unlawfully deprived of their liberty in relevant facilities.¹⁵⁵

61. The progress of protection of liberty safeguards legislation slowed for a period.¹⁵⁶ However, an Expert Advisory Group was established in January 2023¹⁵⁷ and has met on occasions to inform the development of policy proposals. According to the Government Legislation Programme Spring 2024 (“Legislation Programme”), work is underway in the Department of Health on the Protection of Liberty Safeguards Bill.¹⁵⁸ According to the Legislation Programme, “it is intended that Protection of Liberty Safeguards legislation will establish the process for authorising care arrangements where deprivation of liberty may occur, along with the requisite safeguards.”¹⁵⁹ However, it is notable that the Protection of Liberty Safeguards Bill has not been classified in the Legislation Programme as “Legislation for Priority Drafting” or “Legislation for Priority Publication” in the 2024 Spring Session.¹⁶⁰

(f) Revision of the Consumer Protection Code and the publication of draft guidance on protecting “consumers in vulnerable circumstances”

62. The Consumer Protection Code (“CPC”) was introduced by the Central Bank of Ireland (“CBI”) in August 2006. The CPC has been revised on a

<<https://www.gov.ie/pdf/?file=https://assets.gov.ie/43856/286eb5d2ebca4b088d65cfef7b5c23a2.pdf#page=null>> accessed on 16 April 2024.

¹⁵⁴ Phelan, “Adult Safeguarding in Ireland: A Critical Review of Context and Gaps” (2023) 25(3) *The Journal of Adult Protection* 117 at page 123.

¹⁵⁵ Department of Health, *The Deprivation of Liberty Safeguard Proposals: Report on the Public Consultation* (Department of Health 2019) at page 7.

¹⁵⁶ Phelan, “Adult Safeguarding in Ireland: A Critical Review of Context and Gaps” (2023) 25(3) *The Journal of Adult Protection* 117 at page 126.

¹⁵⁷ Safeguarding Ireland, *Safeguarding Ireland – Opening Statement Disability Matters Committee* (21 February 2024) <https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_disability_matters/submissions/2024/2024-02-21_opening-statement-patricia-rickard-clarke-chairperson-et-al-safeguarding-ireland_en.pdf> accessed on 16 April 2024.

¹⁵⁸ Department of the Taoiseach, *Government Legislation Programme Spring 2024* (2024) at page 18 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/283170/1e4c4505-aa02-4b5e-a35b-a793fa74eee8.pdf#page=null>> accessed on 16 April 2024.

¹⁵⁹ Department of the Taoiseach, *Government Legislation Programme Spring 2024* (2024) at page 18.

¹⁶⁰ See Department of the Taoiseach, *Government Legislation Programme Spring 2024* (2024) at page 18.

number of occasions.¹⁶¹ There was widespread support among consultees who responded to the Issues Paper for the revision of the CPC. The revision process is currently underway. On 7 March 2024, the CBI published a Consultation Paper on the CPC (“Consultation Paper”).¹⁶² The CBI noted that “while the [CPC] has served consumers well, a review is timely”.¹⁶³ On the same day, the CBI published draft Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations and draft Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations.¹⁶⁴ The CBI has stated that the revised CPC will be reflected in these two regulations.¹⁶⁵ Among the most important changes proposed in the CBI’s Consultation Paper are the need to: (a) revise the CPC pursuant to regulations made under the Central Bank Acts 1942 to 2018; (b) depart from the language of vulnerability; (c) comply with the requirements of the UNCRPD; and (d) align with, and reflect, the changes introduced by the 2015 Act and its functional capacity test for assessing decision making ability. The CBI noted that consultees mentioned the need for clear guidance to ensure a consistent approach by regulated financial service providers.

63. Reflecting the movement towards a broader concept of vulnerability and in alignment with the updated recognition of vulnerability under the G20/OECD High-Level Principles on Financial Consumer Protection, the CBI intends to define a “consumer in vulnerable circumstances” in its draft Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations as:

¹⁶¹ Central Bank of Ireland, Unofficial Consolidation of the Consumer Protection Code 2012 (revised 13 December 2023).

¹⁶² Central Bank of Ireland, Consultation Paper on the Consumer Protection Code (7 March 2024) (CP158) <https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp158/cp158-consultation-paper-consumer-protection-code.pdf?sfvrsn=45d631a_4> accessed on 16 April 2024.

¹⁶³ Central Bank of Ireland, Consultation Paper on the Consumer Protection Code (7 March 2024) (CP158) at page 4.

¹⁶⁴ See draft Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/consumer-protection-code-review/draft-central-bank-reform-act-2010-section-17a-regulations.pdf?sfvrsn=dc5f631a_1> accessed on 16 April 2024; and draft Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/consumer-protection-code-review/central-bank-supervision-and-enforcement-act-2013-section-48.pdf?sfvrsn=d45f631a_1> accessed on 16 April 2024.

¹⁶⁵ Central Bank of Ireland, Consultation Paper on the Consumer Protection Code (7 March 2024) (CP158) at page 19.

a consumer that is a natural person and whose individual circumstances make that consumer especially susceptible to harm, particularly where a regulated financial service provider is not acting with the appropriate levels of care, and ‘vulnerable circumstances’ shall be construed accordingly.

64. On 7 March 2024, the CBI published draft Guidance on Protecting Consumers in Vulnerable Circumstances.¹⁶⁶ Of further note is the inclusion by the CBI of a definition of “financial abuse” in the Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations and the draft Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations.¹⁶⁷
65. The CBI seeks to engage with stakeholders on its proposals for a revised CPC. The CBI’s consultation period opened on 7 March 2024 and will close on 7 June 2024. The revision of the CPC and the financial abuse of at-risk adults are discussed in Chapter 14 of this Report.

(g) Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023

66. For many years, open disclosure has been on a voluntary basis applicable to HSE and HSE-funded service providers only.¹⁶⁸ If a patient safety incident occurred in the provision of healthcare by a health services provider, a provider had the option to make an open disclosure to a patient.

¹⁶⁶ Central Bank of Ireland, Guidance on Protecting Consumers in Vulnerable Circumstances (7 March 2024) <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/consumer-protection-code-review/guidance-on-protecting-consumers-in-vulnerable-circumstances.pdf?sfvrsn=d55f631a_1> accessed on 16 March 2024.

¹⁶⁷ “Financial abuse” is defined as “any of the following: (a) the wrongful or unauthorised taking, withholding, appropriation, or use of a consumer’s money, assets or property; (b) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a consumer, to - (i) obtain control, through deception, intimidation or undue influence, over the consumer’s money, assets or property, or (ii) wrongfully interfere with or deny the consumer’s ownership, use, benefit or possession of the consumer’s money, assets or property”.

¹⁶⁸ Part 4 of the Civil Liability (Amendment) Act 2017; Civil Liability (Open Disclosure) (Prescribed Statements) Regulations 2018 (SI No 237 of 2018); Health Service Executive, *Open Disclosure Policy: Communicating with Patients Following Patient Safety Incidents* (NATOD-POL-001) (2019). The HSE Open Disclosure Policy went out for consultation in 2021. The launch of this revised policy is currently on hold due to the forthcoming commencement of the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023.

67. The Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 (“2023 Act”) introduces a legislative framework for the mandatory open disclosure of certain patient safety incidents which occur in the course of the provision of a public or private healthcare service. At the time of writing, the 2023 Act has not yet commenced.
68. Upon commencement of the 2023 Act, if a patient safety incident listed in Schedule 1 therein occurs during the provision of a health service, there is an obligation on the health practitioner concerned to notify the health service provider. The health service provider is obliged to notify HIQA, the Chief Inspector of Social Services or the Mental Health Commission, depending on the health service provided. There is a further obligation on the health service provider to notify the patient concerned or a “relevant person” in cases where it would not be appropriate or possible to inform the patient. A failure by a health service provider to comply with the mandatory open disclosure procedure will amount to a criminal offence and a fine of up to €5,000.¹⁶⁹

(h) Policing, Security and Community Safety Act 2024

69. As mentioned above, section 9(1)(f) of the 2024 Act provides that “the function of [the] Garda Síochána is to provide policing services and security services, including vetting, for the State with the objective of— (f) preventing harm to individuals, in particular individuals who are vulnerable or at risk”.¹⁷⁰ “Vulnerable” is defined in section 2(1) of the 2024 Act as “an individual— (a) who is under the age of 18 years, or (b) whose capacity to guard [themselves] against harm by another individual is significantly impaired through— (i) a physical disability, illness or injury, (ii) a disorder of the mind, whether as a result of mental illness or dementia, or (iii) an intellectual disability”. Section 2(1) defines “at risk” as “an individual (including an individual aged under the age of 18 years) who is at risk, at a particular point in time, of harm and who requires, whether due to [their] personal characteristics or personal circumstances, assistance in protecting [themselves] from such harm at that time”.¹⁷¹ In relation to individuals, there are four instances in the 2024 Act where the terms “vulnerable” and “at risk” appear together as “vulnerable or at

¹⁶⁹ Part 8 of the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023.

¹⁷⁰ At the time of writing, the Policing, Security and Community Safety Act 2024 has not yet commenced.

¹⁷¹ At the time of writing, the Policing, Security and Community Safety Act 2024 has not yet commenced.

risk”.¹⁷² At the time of writing, the 2024 Act is the only legislation in force in Ireland to define “at risk” in relation to an individual.

70. The Commission observes that the inclusion of a definition of “vulnerable” in the 2024 Act is consistent with existing legislation in Ireland, such as the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (as amended) and the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016. Moreover, the term “vulnerable” is readily understood by the general public. However, the application of a definition of “vulnerable” to certain persons in Ireland is problematic because the term “vulnerable” has been widely interpreted as incorrectly implying that it is a person’s characteristics, or a weakness on their part, which results in them being abused or harmed.¹⁷³ As evidenced by consultees’ submissions and as further outlined in Chapter 2 of this Report, there has been a gradual and widespread movement from ‘vulnerable’ to ‘at risk’ by public bodies and policymakers in Ireland and neighbouring jurisdictions.

(i) Policing and Community Safety Authority

71. Pursuant to section 120 of the Policing, Security and Community Safety Act 2024 (“2024 Act”), the Minister shall, by order, appoint a day to be the establishment day of the Policing and Community Safety Authority (“Authority”)¹⁷⁴ for the purposes of the 2024 Act. At the time of writing, the Policing, Security and Community Safety Act 2024 has not yet commenced. From the establishment day, the Authority shall perform the functions conferred on it by or under the 2024 Act and any other enactment. The objective of the Authority shall be to oversee and assess, in an independent and transparent manner, the performance by the Garda Síochána of its function relating to policing services in order to support the effective provision and continuous improvement of such services to the benefit of the safety of the public.¹⁷⁵ The functions of the Authority are contained in section 122(2) of the 2024 Act and outlined in

¹⁷² See sections 9(1)(f), 118(1), 118(3) and 124(3)(b)(vi) of the Policing, Security and Community Safety Act 2024.

¹⁷³ Department of Health, Social Services and Public Safety (Northern Ireland) and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 5 <<https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/adult-safeguarding-policy.pdf>> accessed on 16 April 2024.

¹⁷⁴ The legal name of the Policing and Community Safety Authority is An tÚdarás Póilíneachta agus Sábháilteachta Pobail.

¹⁷⁵ Section 122(1) of the Policing, Security and Community Safety Act 2024.

Chapter 6 of this Report. Of particular note is the function of the Authority “to promote inter-agency collaboration” to improve community safety.¹⁷⁶ Cooperation in the adult safeguarding context is discussed in Chapter 15 of this Report.

(j) Domestic, Sexual and Gender-Based Violence Agency (Cuan)

72. The Domestic, Sexual and Gender-Based Violence Agency Act 2023 (“2023 Act”) commenced in its entirety on 31 December 2023.¹⁷⁷ On 1 January 2024, the Domestic, Sexual and Gender-Based Violence Agency, commonly known as Cuan (“Cuan”),¹⁷⁸ was established to perform the functions conferred on it by or under the 2023 Act.¹⁷⁹ Cuan is dedicated to tackling and reducing domestic, sexual and gender-based violence (“DSGBV”) in Ireland. Victims of DSGBV may be at-risk adults at particular times. Cuan’s functions are contained in section 6 of the 2023 Act and outlined in Chapter 6 of this Report. Cuan brings together staff from the Child and Family Agency, the Department of Children, Equality, Disability, Integration and Youth, and the Department of Justice “to work together more coherently with a specific focus on the provision of DSGBV supports and services”.¹⁸⁰ Cuan’s budget for 2024 is approximately €59 million, with €47 million dedicated to the provision of supports and services and approximately €6 million allocated for prevention and awareness raising initiatives.¹⁸¹

(k) Health (Adult Safeguarding) Bill

73. The Health (Adult Safeguarding) Bill proposes to “underpin a planned national health sector policy on safeguarding vulnerable or at-risk adults in the context of their interactions with the health sector”.¹⁸² The Bill was included in the Department of the Taoiseach’s Government Legislation

¹⁷⁶ Section 122(2)(m) of the Policing, Security and Community Safety Act 2024.

¹⁷⁷ Article 2 of the Domestic, Sexual and Gender-Based Violence Agency Act 2023 (Commencement) Order 2023 (SI No 667 of 2023).

¹⁷⁸ The legal name for the DSGBV Agency is An Ghníomhaireacht um Fhoréigean Baile, Gnéasach agus Inscnebhunaithe.

¹⁷⁹ Article 2 of the Domestic, Sexual and Gender-Based Violence Agency Act 2023 (Establishment Day) Order 2023 (SI No 668 of 2023).

¹⁸⁰ Department of Justice, “Minister McEntee opens Cuan – the new statutory domestic, sexual and gender based violence agency” (23 February 2024) <<https://www.gov.ie/en/press-release/1da52-minister-mcentee-opens-cuan-the-new-statutory-domestic-sexual-and-gender-based-violence-agency/>> accessed on 16 April 2024.

¹⁸¹ Department of Justice, “Minister McEntee opens Cuan – the new statutory domestic, sexual and gender based violence agency” (23 February 2024).

¹⁸² Department of the Taoiseach, *Government Legislation Programme Spring 2024* (16 January 2024) at page 18.

Programme Spring/Summer Session 2018 on 16 January 2018 and has continued to feature on legislation programmes since this date.¹⁸³ With regard to the status of the Bill at the time of writing this Report, the Government’s Legislation Programme Spring 2024 states that “work is underway”.¹⁸⁴

(l) General Scheme of the Health (Amendment) Bill

74. The Chief Inspector of Social Services’ functions are likely to be subject to legislative reform in the foreseeable future. The Government published its General Scheme of the Health (Amendment) Bill in October 2022.¹⁸⁵ The Bill proposes to enhance the regulatory framework for designated centres under the Health Act 2007. It proposes to strengthen the enforcement powers of the Chief Inspector to allow them to serve advance notices, non-compliance notices and urgent orders on non-compliant designated centres.¹⁸⁶
75. It would also give the Chief Inspector a new function to establish and maintain a reporting mechanism for the collection of key data in relation to designated centres.¹⁸⁷

(m) Draft Regulations for Providers of Home Support Services

76. The Government has published and conducted a public consultation on the Draft Regulations for Providers of Home Support Services (the “Draft Regulations”). The Draft Regulations put forward the minimum requirements that public, private and not-for-profit providers of home

¹⁸³ Department of Department of the Taoiseach, *Government Legislation Programme Spring/Summer Session 2018* (16 January 2018) <https://merriestreet.ie/en/imagelibrary/legislative_programme_spring_summer_2018.pdf> accessed on 16 April 2024.

¹⁸⁴ Department of the Taoiseach, *Government Legislation Programme Spring 2024* (16 January 2024) at page 18.

¹⁸⁵ Department of Health, Minister Donnelly and Minister Butler welcome government approval to draft Health (Amendment) Bill – Regulatory Amendments to the Health Act 2007 <<https://www.gov.ie/en/press-release/89f62-minister-donnelly-and-minister-butler-welcome-government-approval-to-draft-health-amendment-bill-regulatory-amendments-to-the-health-act-2007/>> accessed 16 April 2024. See Department of Health, *General Scheme of the Health (Amendment) Bill 2022* <<https://assets.gov.ie/237826/520c746e-ed5f-4711-9df7-a993dce6cdd0.pdf>> accessed 16 April 2024.

¹⁸⁶ See Department of Health, *General Scheme of the Health (Amendment) Bill 2022* at pages 8 to 9 <<https://assets.gov.ie/237826/520c746e-ed5f-4711-9df7-a993dce6cdd0.pdf>> accessed 16 April 2024.

¹⁸⁷ See Department of Health, *General Scheme of the Health (Amendment) Bill 2022* at page 5 <<https://assets.gov.ie/237826/520c746e-ed5f-4711-9df7-a993dce6cdd0.pdf>> accessed 16 April 2024.

support services should be required to meet to obtain a licence to operate.¹⁸⁸

77. Home-support includes assistance with personal hygiene, mobility, social engagement, and essential household tasks, where such support and assistance enable a person to live at home. If adopted, HIQA will have the authority to grant, amend and where necessary, revoke, a license where providers of home support services fail to meet the minimum requirements set out in the Draft Regulations.

5. Existing organisational and regulatory structures relevant to adult safeguarding in Ireland

78. As discussed in Chapter 5, there are a range of organisations, bodies, agencies and services that have responsibilities for adult safeguarding. Some of these bodies have regulatory functions, and are involved in overseeing other bodies, organisations, agencies and services and assessing their compliance with legal standards. This section discusses the Government Departments, statutory agencies and other bodies that are most relevant to adult safeguarding in Ireland.

(a) Government Departments

79. The functions and responsibilities of Government Departments are sometimes transferred from one Department to another. For example, on 1 March 2023 responsibility for specialist disability services was transferred from the Department of Health to the Department of Children, Equality, Disability, Integration and Youth.¹⁸⁹ The remit of each of the Government Departments mentioned in this Report were accurate at the time of writing. The functions and responsibilities of Government Departments may change in the future, for example if a new Government is elected and decides to allocate responsibilities in a different way.

(i) Department of Health

80. The Department of Health is responsible for improving the health and wellbeing of people in Ireland by:

(a) supporting people to lead healthy and independent lives;

¹⁸⁸ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022).

¹⁸⁹ Government of Ireland, *Transfer of the specialist Disability services function to Department of Children, Equality, Disability, Integration and Youth* (1 March 2023) <<https://www.gov.ie/en/press-release/32cef-transfer-of-the-specialist-disability-services-function-to-department-of-children-equality-disability-integration-and-youth/>> accessed on 14 March 2024. See Specialist Community-Based Disability Services (Transfer of Departmental Administration and Ministerial Functions) Order 2022 (SI No 688 of 2022).

- (b) ensuring the delivery of high quality and safe health and social care;
 - (c) creating a more responsive, integrated and people-centred health and social care service; and
 - (d) promoting effective and efficient management of the health and social care service and ensuring best value from health system resources.¹⁹⁰
81. The functions of the Department are to serve the public and support the Minister for Health, Ministers of State, and the Government by:
- (a) providing leadership and policy direction for the health sector to improve health outcomes;
 - (b) undertaking effective governance and performance oversight to ensure accountable and high-quality services and systems;
 - (c) collaborating to achieve health priorities and contribute to wider social and economic goals; and
 - (d) creating an organisational environment where high performance is achieved, collaborative working is valued, and the knowledge and skills of staff are developed and deployed.¹⁹¹
82. The Department is sub-divided into a number of divisions, including the Acute Care Division, Primary Care Division and Social Care Division. The Department sets the policy direction for the health sector by developing policy, sometimes with the benefit of public consultation, and assisting with underpinning these policies with sector-specific legislation, where necessary. In the final stages of drafting this Report, the Department launched its public consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (the “Policy Proposals”).¹⁹² The Commission refers to the Policy Proposals in relevant chapters of this Report. The Department is also responsible for the implementation of health policy and strategy, and the allocation of funding and resources across the health and social care sector.

¹⁹⁰ Department of Health, *Statement of Strategy 2023-2025* (2023) at page 1

¹⁹¹ Department of Health, *Statement of Strategy 2023-2025* (2023) at page 5.

¹⁹² Government of Ireland, *Public Consultation – Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024).

83. There are a number of bodies under the aegis of the Department of Health, including the Health and Social Care Professionals Council (“CORU”), the Health Information and Quality Authority (“HIQA”), the Health Service Executive (“HSE”), the Mental Health Commission and the Nursing and Midwifery Board of Ireland.¹⁹³ The Department works with these bodies, and other stakeholders, to deliver health and social care services in Ireland. It is responsible for governance and oversight of these bodies.

(ii) *Department of Children, Equality, Disability, Integration and Youth*

84. The Department of Children, Equality, Disability, Integration and Youth is responsible for improving the lives of children, young people, adults, families and communities, recognising diversity and promoting equality of opportunity in Ireland. The Department is made up of a number of divisions, including:

- (a) Child Policy and Tusla Governance Division;
- (b) Disability Division;
- (c) Equality, Youth and Participation Division; and
- (d) International Protection, Integration and Equality Division. The International Protection Accommodation Service (“IPAS”) is a sub-division of this.

85. The Department sets the policy direction for a wide range of areas, including child protection and welfare, youth services, equality, disability, integration and provision for people in the international protection process. The Department develops policy, sometimes with the benefit of public consultation, and assists with bringing that policy into law, where necessary, through the development of sector-specific legislation. For example, the Department is currently working on a Bill which will amend the Child Care Act 1991.¹⁹⁴ The Department is also responsible for the implementation of policy and strategy, and the allocation of funding and resources across the relevant sectors.

¹⁹³ Department of Health, *Statement of Strategy 2023-2025* (2023) at page 5 and Appendix III <<https://www.gov.ie/en/publication/49239-department-of-health-statement-of-strategy-2023-2025/>> accessed on 14 March 2024.

¹⁹⁴ See the Heads and General Scheme of the Child Care (Amendment) Bill 2023 <<https://assets.gov.ie/254561/1b92fe3a-97b6-46e2-8db2-87f21b813db7.pdf>> last accessed 14 March 2023.

86. There are a number of bodies under the aegis of the Department of Children, Equality, Disability, Integration and Youth, including the Child and Family Agency (commonly referred to as “Tusla”),¹⁹⁵ the Irish Human Rights and Equality Commission,¹⁹⁶ and the National Disability Authority.¹⁹⁷

(iii) Department of Justice

87. The Department of Justice is responsible for advancing State security and public safety and promoting justice and human rights. Its remit includes the prevention and detection of crime, the administration of justice, the management of inward migration and the international protection process, and the reform of civil and criminal law in Ireland.¹⁹⁸
88. The Department sets the policy direction for the justice sector by developing policy, sometimes with the benefit of public consultation, and assisting with bringing that policy into law, where necessary, through the development of sector-specific legislation. The Department is also responsible for the implementation of justice policy and strategy, and the allocation of funding and resources across the justice sector.
89. There are a range of bodies under the aegis of the Department of Justice, including the Courts Service, the Data Protection Commission, the Garda Síochána, and the Irish Prison Service. More recently, the Domestic, Sexual and Gender-Based Violence Agency, or “Cuan”, also began operating under the aegis of the Department of Justice.¹⁹⁹ When established, the Policy and Community Safety Authority will also operate under the aegis of the Department.²⁰⁰

(iv) Department of Housing, Local Government and Heritage

90. The Department of Housing, Local Government and Heritage is responsible for supporting sustainable development, the efficient delivery

¹⁹⁵ The Agency was established in January 2014 under the Child and Family Agency Act 2013.

¹⁹⁶ This is an independent public body that accounts to the Oireachtas, with a mandate established under the Irish Human Rights and Equality Commission Act 2014.

¹⁹⁷ The National Disability Authority is discussed at section 5(j) below.

¹⁹⁸ Department of Justice, *A safe, fair and inclusive Ireland – Statement of Strategy 2021 – 2023* (2021) at page 7 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/135915/662ce275-c0db-4f0d-81d4-f57bc21b99d7.pdf#page=1>> accessed on 14 March 2024.

¹⁹⁹ The statutory name for this body is An Ghníomhaireacht um Fhoréigean Baile, Gnéasach agus Inscnebhunaithe. See section 5(1) of the Domestic, Sexual and Gender-Based Violence Agency Act 2023.

²⁰⁰ The statutory name for this body is An tÚdarás Póilíneachta agus Sábháilteachta Pobail. See section 121(1) of the Policing, Security and Community Safety Act 2024.

of well-planned homes, and the promotion of effective local government in Ireland.²⁰¹

91. The Department is sub-divided into a number of divisions, including the Housing Affordability, Inclusion and Homelessness Division. The Department sets the policy direction for the housing, local government and heritage sectors by developing policy, sometimes with the benefit of public consultation, and assisting with bringing that policy into law, where necessary, through the development of sector-specific legislation. The Department is also responsible for the implementation of policy and strategy, and the allocation of funding and resources across the relevant sectors.
92. Some of the Department's responsibilities and goals are particularly relevant to adult safeguarding, such as its aims to:
 - (a) support and increase the delivery of age-friendly housing and housing for people with disabilities in Ireland;²⁰²
 - (b) reform the "Fair Deal" scheme, which provides financial support for individuals in long-term nursing home care in Ireland;²⁰³ and
 - (c) provide a policy and funding framework to address and reduce homelessness.²⁰⁴
93. There are a range of bodies under the aegis of the Department, including the Residential Tenancies Board and the Housing Agency.

(v) Department of Social Protection

94. The Department of Social Protection is responsible for promoting active participation and inclusion in society through the provision of income

²⁰¹ Department of Housing, Local Government and Heritage, *Statement of Strategy 2021 – 2025* (2021) at page 3.

²⁰² Department of Housing, Local Government and Heritage, *Statement of Strategy 2021 – 2025* (2021) at page 5.

²⁰³ Department of Housing, Local Government and Heritage, *Statement of Strategy 2021 – 2025* (2021) at page 6.

²⁰⁴ Department of Housing, Local Government and Heritage, *Statement of Strategy 2021 – 2025* (2021) at page 7.

supports, employment services, and other social protection and social inclusion services.²⁰⁵

95. There are a number of sections and offices within the Department of Social Protection, including the Safeguarding Unit.²⁰⁶ The Department acts on reports of alleged abuse of recipients of pensions or benefits and consults, as appropriate, with other bodies such as the HSE and the Garda Síochána.²⁰⁷ Investigations of alleged abuse are coordinated by the Safeguarding Unit within the Department.²⁰⁸ The Safeguarding Unit oversees the social welfare agent arrangements and undertakes preliminary screenings of social welfare abuse claims involving at-risk adults.
96. As with other Departments, the Department for Social Protection sets the policy direction for the sector, develops legislation, implements policy and strategy, and allocates funding and resources. There are a range of bodies under the aegis of the Department, including the Citizens Information Board and the Pensions Authority. The Citizens Information Board, which is discussed below at section 5(l), has a significant role in the provision of independent advocacy services in Ireland, as discussed in detail in Chapter 8.

(vi) All Government Departments

97. Every Department of State is included in the definition of a “public service body” in section 103 of the Policing, Security and Community Safety Act 2024 (“2024 Act”). At the time of writing, the 2024 Act has not yet been commenced. Section 118(1) of the 2024 Act provides that a public service body shall, in performing its functions, take all reasonable steps to improve community safety, including through the prevention of crime and harm to individuals, “in particular those who are vulnerable or at risk”. They will also be required to “cooperate with each other, as appropriate, in the performance of their functions for the purposes of improving community safety, including through the prevention of crime and

²⁰⁵ Department of Social Protection, *Statement of Strategy 2023 – 2026* (2023) at page 4 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/268774/3a3a4d01-3910-4bd8-9c48-e579301b381b.pdf#page=null>> accessed on 14 March 2024.

²⁰⁶ Department of Social Protection, *Safeguarding Vulnerable Adults* (last updated 30 May 2022) <<https://www.gov.ie/en/publication/3f6bc5-safeguarding-vulnerable-adults/>> accessed on 10 March 2024.

²⁰⁷ Department of Social Protection, *Safeguarding Vulnerable Adults* (last updated 30 May 2022).

²⁰⁸ Department of Social Protection, *Safeguarding Vulnerable Adults* (last updated 30 May 2022).

through the prevention of harm to individuals, in particular those who are vulnerable or at risk".²⁰⁹ Such cooperation includes the sharing of documents and information, including personal data, in accordance with law and to the extent that is necessary and proportionate for the purpose of the performance of the stated functions.

(b) Health Service Executive

- 98. The central functions of the HSE are to manage and deliver, or arrange to be delivered on its behalf, health and personal social services.²¹⁰ In undertaking this function, the HSE must integrate the delivery of health and personal social services and facilitate the education and training of relevant persons insofar as it enables the HSE to perform its functions.²¹¹
- 99. The HSE is defined as a "public service body" in section 103 of the Policing, Security and Community Safety Act 2024 ("2024 Act"). Once the 2024 Act is commenced, the HSE will be subject to the duty to take all reasonable steps to improve community safety, including through the prevention of crime and harm to individuals, "in particular those who are vulnerable or at risk".²¹²

(i) National Safeguarding Office

- 100. Following the establishment of the Social Care Division of the HSE in mid-2013, the HSE launched the HSE's Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures in 2014 (the "HSE's National Policy and Procedures").²¹³ The National Safeguarding Office ("NSO") was established in 2015²¹⁴ and was within the governance of the HSE's Community Operations from 2015 until 2019.²¹⁵ In 2019, responsibility for adult safeguarding and the NSO moved within the governance of the

²⁰⁹ Section 118(3) of the Policing, Security and Community Safety Act 2024.

²¹⁰ Section 7(4) of the Health Act 2004.

²¹¹ Sections 7(4)(a) and (4)(b) of the Health Act 2004.

²¹² Section 118(1) of the Policing, Security and Community Safety Act 2024.

²¹³ HSE, *National Safeguarding Office Annual Report 2017* (2018) at page 7 <<https://safeguardingireland.org/wp-content/uploads/2018/10/the-national-safeguarding-office-report-2017.pdf>> accessed on 9 March 2024. The remit of the National Policy and Procedures is discussed in Chapter 5.

²¹⁴ HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 7.

²¹⁵ HSE, *National Safeguarding Office Annual Report 2017* (2018) at page 4; HSE, *National Safeguarding Office Annual Report 2018* (2019) at page 13.

HSE's Quality and Patient Safety.²¹⁶ It is now part of the HSE's Quality and Patient Safety Community Healthcare.²¹⁷

101. The NSO's objectives are to support the consistent implementation of the HSE's National Policy and Procedures, and provide leadership, oversight and coordination for aspects of policy and practice in relation to the safeguarding of "vulnerable persons".²¹⁸ Its functions include:
- (a) implementing the HSE's service plan objectives in relation to adult safeguarding;²¹⁹
 - (b) collecting, collating and monitoring data and reporting data in relation to notifications and referrals to the HSE's Safeguarding and Protection Teams of alleged abuse of at-risk adults, which is considered at various levels to improve service delivery;²²⁰
 - (c) publishing an annual report which is inclusive of data and trends on safeguarding concerns of "vulnerable persons";²²¹
 - (d) contributing to public awareness campaigns related to adult safeguarding;²²²
 - (e) commissioning research to establish best practices in promoting the welfare and protection of "vulnerable persons" from abuse;²²³
 - (f) acting as a resource of information for HSE staff, HSE funded agencies and other relevant bodies on adult safeguarding matters;²²⁴ and
 - (g) supporting the development of education and practice support measures to deliver service improvement.²²⁵

²¹⁶ HSE, *National Safeguarding Office Annual Report 2019* (2020) at page 5
<<https://safeguardingireland.org/wp-content/uploads/2020/11/national-safeguarding-office-annual-report-2019.pdf>> accessed on 9 March 2024.

²¹⁷ HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 13.

²¹⁸ HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 13.

²¹⁹ HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 13.

²²⁰ HSE, *National Safeguarding Office Annual Report 2022* (2023) at pages 8 and 13.

²²¹ HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 13.

²²² HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 13.

²²³ HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 13.

²²⁴ HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 13.

²²⁵ HSE, *National Safeguarding Office Annual Report 2022* (2023) at page 8.

102. The Government’s Policy Proposals on Adult Safeguarding in the Health and Social Care Sector propose that there would continue to be a national-level Safeguarding Office within the HSE referred to as the “Sectoral Adult Safeguarding Office”, but that it would have an expanded remit spanning all public, voluntary and private healthcare and social care services.²²⁶

(ii) Safeguarding and Protection Teams

103. In 2015, the HSE set up nine Safeguarding and Protection Teams (“SPTs”), one in each Community Health Organisation (“CHO”) of the HSE.²²⁷ This will change somewhat with the transition from CHOs to regional health areas – but the SPTs will continue to exist. SPTs are managed and led by principal social workers and are staffed by qualified social workers.²²⁸ SPTs have responsibility for assessing and managing community safeguarding referrals,²²⁹ primarily concerning persons with a disability or who are over the age of 65.²³⁰ The main focus of SPTs is to coordinate consistent responses to concerns of abuse and neglect.²³¹ Community concerns are referred directly to SPTs, who act as designated officers in these cases.²³² Additionally, SPTs provide a range of safeguarding functions, including quality assurance, oversight and advisory support to HSE managed and funded services for older people and people with disabilities.²³³ SPTs also directly assess and manage complex cases and collect and collate data.²³⁴

²²⁶ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 15.

²²⁷ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 7.

²²⁸ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 7.

²²⁹ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 7. Safeguarding concerns arising in relation to persons in receipt of services from the HSE or a HSE-funded agency are managed by a Designated Officer within the organisation who liaises with the SPTs in the management of the concern: HSE National Safeguarding Office, *2016 Safeguarding Data Report* at page 2.

²³⁰ HSE National Safeguarding Office, *2016 Safeguarding Data Report* at page 2.

²³¹ HSE, *National Safeguarding Office Annual Report 2017* (2018) at page 10.

²³² HSE, *National Safeguarding Office Annual Report 2021* (2022) at page 15.

²³³ HSE, *National Safeguarding Office Annual Report 2021* (2022) at page 7.

²³⁴ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (2014) at page 25.

104. The oversight function of SPTs is of particular importance in monitoring the standards of individual preliminary screenings and safeguarding plans completed by services providers where there are safeguarding concerns about a service user.²³⁵ The service provider retains responsibility for the safety of an at-risk adult; responsibility for safeguarding an at-risk service user does not transfer to a SPT.²³⁶ The HSE funds services under sections 38 and 39 of the Health Act 2004.²³⁷ The HSE service agreements with funded agencies contain an obligation on funded service providers to demonstrate compliance with the HSE's National Policy and Procedures.²³⁸
105. The Government's Policy Proposals on Adult Safeguarding in the Health and Social Care Sector envision a continued role for SPTs in each health region, to be known as Regional Adult Safeguarding and Protection Teams. These social work-led teams will support the provision of adult safeguarding services, and respond to and address suspected and reported adult safeguarding concerns arising within their area, in line with all relevant legislation, policies and procedures.²³⁹ The Policy Proposals suggest that the remit of the teams will expand in line with the policy proposals and will include "all public, voluntary and private healthcare and social care services".²⁴⁰ The Policy Proposals outline that the Regional Adult Safeguarding and Protection Teams will provide expert advice and practical guidance to services operating with health regions, and where appropriate, undertake case management of more complex and serious safeguarding concerns, or address concerns where there is a conflict of interest within the service.²⁴¹

(iii) Multi-agency Committees

106. The HSE's National Policy and Procedures requires each Community Health Organisation ("CHO") to set up a Safeguarding and Protection Committee (Vulnerable Persons). These are inter-agency structures that

²³⁵ HSE, *National Safeguarding Office Annual Report 2022 (2023)* at page 7.

²³⁶ HSE, *National Safeguarding Office Annual Report 2022 (2023)* at page 7.

²³⁷ See section 5(b)(iv) below.

²³⁸ HSE, *National Safeguarding Office Annual Report 2022 (2023)* at page 7.

²³⁹ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 14.

²⁴⁰ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 14.

²⁴¹ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 15.

are appointed by the Chief Officer and chaired by the Head of Social Care in each CHO.

107. The Safeguarding and Protection Committees have the following functions:
- (a) represent relevant personnel and agencies;
 - (b) support the development of a culture within the area and with services which promotes the welfare of “vulnerable” persons;
 - (c) develop, approve and have oversight of the area plan to promote the welfare of vulnerable persons, consistent with Service Plan objectives;
 - (d) support inter-agency communication and collaboration in respect of services and responses to the needs of vulnerable persons;
 - (e) provide a support and advisory service to the Senior Manager and Safeguarding and Protection Team (Vulnerable Persons) in addressing the needs of vulnerable persons, including consideration of particularly complex cases and systems issues; and
 - (f) contribute, as agreed, to relevant activities and initiatives.²⁴²
108. The Commission understands that the efficiency and level of activity of these Safeguarding and Protection Committees varies from CHO to CHO. There is no standardised guidelines or procedures governing their operation. Accordingly, their effectiveness largely depends on the proactiveness of whoever is in charge of the Committees in each CHO.

(iv) Section 38 and 39 Health Act 2004 agencies

109. Section 38 of the Health Act 2004 allows the HSE to enter into arrangements with service providers for the provision of a health or personal social service by that provider, on behalf of the HSE. Section 39 of the Health Act 2004 allows the HSE to give assistance to any person or body that provides, or proposes to provide, a service similar or ancillary to a service that the HSE may provide. Such “assistance” may be provided by contributing to the expenses incurred by the person or body, permitting the use by the person or body of premises maintained by the

²⁴² Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures* (2014) at pages 52 to 53.

HSE and, where required, executing alterations and repairs to and supplying furniture and fittings for such premises, or providing premises (with all requisite furniture and fittings) for use by the person or body.

110. Under both sections, the HSE commissions, funds or supports a wide range of services and organisations, many of which are relevant for adult safeguarding purposes. The range of organisations providing health and social care services pursuant to section 38 and 39 arrangements is wide, and includes:
- (a) large, acute teaching hospitals;
 - (b) specialist hospitals;
 - (c) national level disability providers such as Rehab Group, the Irish Wheelchair Association, Brothers of Charity Services Ireland, and Saint John of God;
 - (d) hospices such as Our Lady's Hospice and Care Service, St Francis Hospice, and the Galway Hospice Association;
 - (e) regional non-acute care services in areas such as mental health and rehabilitation;
 - (f) small community-based support groups and social care services such as Meals on Wheels and social clubs; and
 - (g) advocacy and representative groups, such as the Disability Federation of Ireland and Inclusion Ireland.²⁴³

(c) Health Information and Quality Authority

111. HIQA is an independent authority established in 2007 to drive high-quality and safe care for people using health and social care services in Ireland.²⁴⁴ The statutory objective of HIQA is to promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public.²⁴⁵ In addition to furthering

²⁴³ Independent Review Group, *Report of the Independent Review Group established to examine the role of voluntary organisations in publicly funded health and personal social services* (2018) at page 21 <<https://assets.gov.ie/9386/6d02f4a9fb554e30adb3e3ec5091d9.pdf>> accessed 15 March 2024.

²⁴⁴ HIQA, *Annual Report 2022* (2023) at page 9 <<https://www.hiqa.ie/sites/default/files/2023-06/HiQA-Annual-Report-2022.pdf>> accessed on 9 March 2024.

²⁴⁵ Section 7 of the Health Act 2007.

its statutory objective to the extent practicable, the functions of HIQA are to set standards of safety and quality in relation to the services that it regulates, including residential centres for older people and adults with disabilities.²⁴⁶ HIQA is also charged with monitoring compliance with those standards²⁴⁷ and undertaking investigations in accordance with the Health Act 2007.²⁴⁸ HIQA's additional functions include reviewing and making recommendations in respect of relevant services,²⁴⁹ operating accreditation programmes in respect of services, and granting accreditation to any services meeting standards set or recognised by HIQA.²⁵⁰

(d) Mental Health Commission

112. The Mental Health Commission ("MHC") is an independent statutory body established in 2002 under the provisions of the Health Act 2001. The remit of the MHC incorporated the broad spectrum of mental health services for all ages in all settings.²⁵¹ The principal functions of the MHC are to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services, and to take all reasonable steps to protect the interests of persons detained in inpatient mental health facilities (known as "approved centres") under the Mental Health Act 2001.²⁵² One of MHC's core functions is to regulate and regularly inspect approved centres.²⁵³ One of the MHC's strategic priorities to be delivered by 2027 is to continue to drive standards, improve quality and "safeguard persons in relation to mental health services".²⁵⁴

(e) Office of the Director of the Decision Support Service

113. The Director of the Decision Support Service has a range of functions related to the operation of the Assisted Decision-Making (Capacity) Act 2015 (the "2015 Act").²⁵⁵ The Director of the Decision Support Service is

²⁴⁶ Section 8(1)(b) of the Health Act 2007.

²⁴⁷ Section 8(1)(c) of the Health Act 2007.

²⁴⁸ Section 8(1)(d) of the Health Act 2007.

²⁴⁹ Section 8(1)(e) of the Health Act 2007.

²⁵⁰ Section 8(1)(f) of the Health Act 2007.

²⁵¹ MHC, *Annual Report 2022 (2023)* at page 9 <<https://www.mhcirl.ie/publications/2022-annual-report>> accessed on 10 March 2024.

²⁵² Section 33 of the Mental Health Act 2001.

²⁵³ MHC, *Annual Report 2022 (2023)* at page 18.

²⁵⁴ MHC, *Annual Report 2022 (2023)* at page 10.

²⁵⁵ Section 95 of the Assisted Decision-Making (Capacity) Act 2015.

appointed by the Mental Health Commission, and the Decision Support Service is established within the Mental Health Commission.²⁵⁶ The functions of the Director include the promotion of awareness relating to the exercise of capacity by persons who require, or may shortly require, assistance in exercising their capacity.²⁵⁷ The Director also has functions to provide information to relevant persons in relation to their options under the 2015 Act for exercising their capacity.²⁵⁸ Additionally, the Director has functions to provide information to persons appointed to provide decision-making supports in relation to the performance of their statutory functions²⁵⁹ and to supervise compliance by decision-making assistants, co-decision-makers, decision-making representatives and attorneys in the performance of their functions.²⁶⁰ The Director's additional functions include, among others, the provision of information and guidance to organisations and bodies in the State in relation to their interaction with relevant persons and persons appointed to provide decision-making supports under the 2015 Act.²⁶¹

(f) An Garda Síochána

114. The functions of the Garda Síochána include the provision of policing and security, including vetting services, for the State with the objectives²⁶² of, among others, protecting life and property,²⁶³ vindicating the human rights of each individual²⁶⁴ and preventing crime.²⁶⁵ Section 9(1)(f) of the Policing, Security and Community Safety Act 2024, which has not yet commenced at the time of writing, will expand the objectives of the Garda Síochána in providing policing services and security services (including vetting services) for the State to include, among others, the objective of preventing harm to individuals, in particular individuals who

²⁵⁶ Mental Health Commission, Decision Support Service < <https://www.mhcirl.ie/what-we-do/decision-support-service> > accessed 15 March 2024.

²⁵⁷ Section 95(1)(a) of the Assisted Decision-Making (Capacity) Act 2015.

²⁵⁸ Section 95(1)(c) of the Assisted Decision-Making (Capacity) Act 2015.

²⁵⁹ Section 95(1)(d) of the Assisted Decision-Making (Capacity) Act 2015.

²⁶⁰ Section 95(1)(e) of the Assisted Decision-Making (Capacity) Act 2015.

²⁶¹ Section 95(1)(f) of the Assisted Decision-Making (Capacity) Act 2015.

²⁶² Section 7(1) of the Garda Síochána Act 2005.

²⁶³ Section 7(1)(b) of the Garda Síochána Act 2005.

²⁶⁴ Section 7(1)(c) of the Garda Síochána Act 2005.

²⁶⁵ Section 7(1)(e) of the Garda Síochána Act 2005.

are “vulnerable” or “at risk”. “Vulnerable”²⁶⁶ and “at risk”²⁶⁷ are defined in section 2(1) of the 2024 Act. Moreover, the Garda Síochána is defined as a “public service body” in section 2(1) of the 2024 Act. Section 118(1) of the 2024 Act provides that a public service body shall, in performing its functions, take all reasonable steps to improve community safety, including through the prevention of crime and harm to individuals, “in particular those who are vulnerable or at risk”.

(g) Child and Family Agency

115. The Child and Family Agency (“Agency”) was established by section 7 of the Child and Family Agency Act 2013. Its functions include:

- (a) supporting and promoting the development, welfare and protection of children;²⁶⁸
- (b) supporting and encouraging the effective functioning of families;²⁶⁹ and
- (c) maintaining and developing support services, including support services in local communities.²⁷⁰

116. The Child Care Act 1991 and the Child Care (Amendment) Act 2015 place a statutory obligation on the Agency to provide aftercare services. In 2022, there were 511 referrals to aftercare services and at the end of 2022, there were 2,949 young persons or adults in receipt of aftercare services.²⁷¹ The Agency has published a strategic plan for aftercare services for young people and young adults for 2023 to 2026.²⁷²

²⁶⁶ “An individual (a) who is under the age of 18 years, or (b) whose capacity to guard himself or herself against harm by another individual is significantly impaired through— (i) a physical disability, illness or injury, (ii) a disorder of the mind, whether as a result of mental illness or dementia, or (iii) an intellectual disability.”

²⁶⁷ “An individual (including an individual aged under the age of 18 years) who is at risk, at a particular point in time, of harm and who requires, whether due to his or her personal characteristics or personal circumstances, assistance in protecting himself or herself from such harm at that time.”

²⁶⁸ Section 8(1)(b) of the Child and Family Agency Act 2013.

²⁶⁹ Section 8(1)(c) of the Child and Family Agency Act 2013.

²⁷⁰ Section 8(1)(d) of the Child and Family Agency Act 2013.

²⁷¹ Child and Family Agency, *Annual Report & Financial Statements (2022)* at page 9 <https://www.tusla.ie/uploads/content/Tusla_Annual_Report_FS_2022.pdf> accessed on 10 March 2024.

²⁷² Child and Family Agency, *Strategic Plan for Aftercare Services for Young People and Young Adults (2023-2026)* <https://www.tusla.ie/uploads/content/Strategic_Plan_on_Aftercare_Services_for_Young_Adults-2023-26.pdf> accessed on 10 March 2024.

117. The Agency is defined as a “public service body” in section 2(1) of the Policing, Security and Community Safety Act 2024. At the time of writing, the 2024 Act has not yet commenced. Section 118(1) of the 2024 Act provides that a public service body shall, in performing its functions, take all reasonable steps to improve community safety, including through the prevention of crime and harm to individuals, “in particular those who are vulnerable or at risk”.

(h) Office of the Ombudsman

118. The Office of the Ombudsman has the remit to investigate complaints in relation to a wide range of reviewable agencies, including government departments, public bodies and publicly funded voluntary and private bodies.²⁷³ These complaints may relate to adult social care and other issues if they fall within the remit of the Ombudsman. These reviewable agencies include the HSE and agencies delivering health and personal social services on behalf of the HSE. These reviewable agencies can include charitable organisations and voluntary bodies. Public nursing homes run by the HSE also come within the Ombudsman’s remit.²⁷⁴ Complaints can relate to a wide range of issues including failures to follow procedures, to communicate clearly or to provide a promised service, unfair decisions, misleading advice and failures to fairly manage complaints.
119. Complaints in relation to private healthcare are excluded from the remit of the Ombudsman. However, since August 2015, the Ombudsman can deal with complaints in relation to administrative actions of private nursing homes in receipt of public funding. Additionally, since 2005 the Ombudsman has the power to investigate complaints under the Disability Act 2005 concerning failures by public services to provide accessible buildings, services and information.²⁷⁵
120. The Ombudsman can conduct an investigation upon receipt of a complaint in relation to a reviewable agency.²⁷⁶ The complainant must have used an internal complaint procedure first, if available, including any appeal procedures.²⁷⁷ The complaint is examined to establish whether it is

²⁷³ For example, the Department of Justice is a reviewable agency. See the Ombudsman Act 1980 (Section 4(10)) Order 2013 (SI No 341 of 2013).

²⁷⁴ A nursing home within the meaning of section 2 of the Health (Nursing Homes) Act 1990 is a reviewable agency. See the Ombudsman Act 1980 (Section 1A) (No 2) Order 2015 (SI No 300 of 2015).

²⁷⁵ Section 40 of the Disability Act 2005 amends the Ombudsman Act 1980.

²⁷⁶ The Ombudsman can also initiate an investigation without having received a report.

²⁷⁷ Section 4(5)(b)(iii) of the Ombudsman Act 1980.

within the remit of the Office. The specific powers of the Ombudsman in relation to conducting an examination or an investigation are set out in section 7 of the Ombudsman Act 1980. The Ombudsman contacts the relevant service provider for a report and conducts any necessary investigation. The Ombudsman is concerned with any maladministration, such as whether the action/decision was: taken without proper authority; taken on irrelevant grounds; the result of negligence or carelessness; based on incorrect or incomplete information; improperly discriminatory; based on an undesirable administrative practice; otherwise contrary to fair or sound administration; or where a reviewable agency has failed to give reasonable assistance and guidance, or failed to provide information on a person's right of appeal or review.²⁷⁸

121. If the Ombudsman finds that the complainant was adversely affected by maladministration and the reviewable agency did not take steps to rectify this, the Ombudsman can make a recommendation to the reviewable agency to review what it has done, change its decision and/or offer an appropriate remedy. While the recommendations of the Ombudsman are not binding, they are followed in the majority of cases.²⁷⁹ If a recommendation is not accepted by a reviewable agency, the Ombudsman can report the non-acceptance to the Oireachtas, which can bring the matter to the relevant Oireachtas Committee.

(i) Central Bank of Ireland

122. The Central Bank of Ireland ("CBI") regulates regulated entities in Ireland. As part of its consumer protection functions, the CBI issued the Consumer Protection Code ("CPC") pursuant to section 117 of the Central Bank Act 1989²⁸⁰ in August 2006 and revised the CPC in January 2021. The CPC is a set of rules and principles that all regulated entities must follow when providing financial products and services to customers.²⁸¹ Section 3.1 of the CPC provides that "where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable

²⁷⁸ Section 4(2) of the Ombudsman Act 1980.

²⁷⁹ Ombudsman, Developing and Optimising the Role of the Ombudsman <<https://www.ombudsman.ie/publications/submissions-and-proposals/developing-and-optimising/>> accessed on 7 September 2022.

²⁸⁰ CBI, Unofficial Consolidation of the Consumer Protection Code 2012 (revised 1 January 2015) at page 6.

²⁸¹ CBI, Unofficial Consolidation of the Consumer Protection Code 2012 (revised 1 January 2015).

arrangements and/or assistance that may be necessary to facilitate [them] in [their] dealings with the regulated entity”.

123. The CPC is currently under review, and there is scope within that process for the adoption of a more robust protective regime to safeguard at-risk adults from actual or suspected financial abuse.²⁸² In its recently published Consultation Paper on the CPC, the CBI noted that its proposals to revise the CPC will complement the 2015 Act and that given the important role that financial services firms play in the lives of all customers, including those in “vulnerable circumstances”, it is vital that firms are mindful of their statutory obligations under the 2015 Act.²⁸³ Annex 5 of the CBI’s Consultation Paper on the CPC contains draft guidance on protecting consumers in vulnerable circumstances and advises that consumers in vulnerable circumstances require additional support when engaging with financial services and that firms need to understand vulnerability, and ensure that their culture, policies and processes take account of the needs of consumers in vulnerable circumstances.²⁸⁴ The CBI currently seeks the views of stakeholders and the public on its proposals and draft guidance so that it can consider such views and finalise its revision of the CPC.²⁸⁵ The CBI expects to publish the revised CPC and guidance in early 2025. For further information on the CBI, see Chapter 14.

(j) National Disability Authority

124. The National Disability Authority (“NDA”) was established as an independent statutory body on 12 June 2000.²⁸⁶ The principal function of the NDA is to advise the Minister for Children, Equality, Disability, Integration and Youth and keep them informed of developments in

²⁸² See the CBI’s Consultation Paper on the CPC (7 March 2024) (CP158) <https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp158/cp158-consultation-paper-consumer-protection-code.pdf?sfvrsn=45d631a_4> accessed on 7 March 2024.

²⁸³ CBI, *Consultation Paper on the CPC* (7 March 2024) (CP158) at pages 58 and 59.

²⁸⁴ CBI, *Draft Guidance on Protecting Consumers in Vulnerable Circumstances* (7 March 2024) <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/consumer-protection-code-review/guidance-on-protecting-consumers-in-vulnerable-circumstances.pdf?sfvrsn=d55f631a_1> accessed on 8 March 2024.

²⁸⁵ CBI, *Draft Guidance on Protecting Consumers in Vulnerable Circumstances* (7 March 2024) at page 25.

²⁸⁶ Section 6(1) of the National Disability Authority Act 1999 and the National Disability Authority Act 1999 (Establishment Day) Order 2000 (SI No 162 of 2000).

relation to any disability of persons which concern issues of policy and practice.²⁸⁷ The NDA also has the following functions:

- (a) acting as a central, national body which will assist the Minister in the coordination and development of policy relating to persons with disabilities;
- (b) undertaking, commissioning or collaborating in research projects and activities on issues relating to disability;
- (c) advising the Minister on appropriate standards for programmes and services provided, or to be provided, to persons with disabilities;
- (d) monitoring the implementation of standards and codes of practice in programmes and services provided to persons with disabilities, and to report to the Minister;
- (e) liaising with other bodies involved in the provision of services to persons with disabilities; and
- (f) preparing codes of practice.²⁸⁸

(k) CORU and other relevant professional regulatory bodies

125. CORU was established under the Health and Social Care Professionals Act 2005 (“2005 Act”) and its role is to protect the public by promoting high standards of professional conduct, education, training and competence through statutory registration of health and social care professionals.²⁸⁹ CORU comprises of the Health and Social Care Professionals Council and the Registration Boards, one for each profession named in the 2005 Act.²⁹⁰ Many of these professionals work with, or come into contact with, at-risk adults, who may be users of services provided by professionals in professions regulated by CORU.

²⁸⁷ Section 8(1) of the National Disability Authority Act 1999.

²⁸⁸ Section 8(2) of the National Disability Authority Act 1999.

²⁸⁹ CORU, About, What is CORU? <<https://www.coru.ie/about-us/what-is-coru/>> accessed on 10 March 2024.

²⁹⁰ CORU currently regulates dieticians, dispensing opticians, medical scientists, occupational therapists, optometrists, physical therapists, physiotherapists, podiatrists/chiropractors, radiographers, radiation therapists, social workers, speech and language therapists, and social care workers. Clinical biochemists, counsellors, orthoptists, psychologists and psychotherapists will soon be regulated by CORU.

126. Registration Boards establish and maintain registers for a range of health and social care professions.²⁹¹ Entry onto a register allows a person to use the title of that profession. This system of statutory registration is fundamental to the delivery of quality and accountability in the provision of professional services, in particular to at-risk adults. According to CORU, the objective of the statutory registration system is to protect, guide and inform the public by ensuring that health and social care professionals are properly regulated and qualified for the job, whether they work in the public or private sectors or are self-employed.²⁹²
127. In May 2017, CORU published Standards of Proficiency for Social Care Workers.²⁹³ On 14 February 2019, CORU published the Social Care Workers Registration Board Code of Professional Conduct and Ethics. Social care workers have a duty to act in the best interests of service users and they must, insofar as possible, protect service users if they believe that service users are or may be at risk from another professional's conduct, performance or health.²⁹⁴ If a social care worker becomes aware of any situation that puts a service user at risk, they must bring this to the attention of a responsible person or authority.²⁹⁵ Social care workers must be aware of, and comply with, national guidelines and legislation for the protection of "vulnerable adults"²⁹⁶ and must report concerns they have in relation to the welfare of "vulnerable adults" to the appropriate authorities.²⁹⁷ Social care workers must also communicate sensitively, effectively, honestly and appropriately with service users, taking into

²⁹¹ CORU, *Standards of Proficiency for Social Care Workers* at page 2 <<https://www.coru.ie/files-education/scwrb-standards-of-proficiency-for-social-care-workers.pdf>> accessed on 10 March 2024.

²⁹² CORU, *Social Care Workers Registration Board Standards of Proficiency for Social Care Workers* at page 2 <<https://www.coru.ie/files-education/scwrb-standards-of-proficiency-for-social-care-workers.pdf>> accessed on 10 March 2024.

²⁹³ CORU, *Standards of Proficiency for Social Care Workers* <<https://www.coru.ie/files-education/scwrb-standards-of-proficiency-for-social-care-workers.pdf>> accessed on 10 March 2024.

²⁹⁴ CORU, *Social Care Workers Registration Board Code of Professional Conduct and Ethics* (2019) at page 8 <<https://www.coru.ie/files-codes-of-conduct/scwrb-code-of-professional-conduct-and-ethics-for-social-care-workers.pdf>> accessed on 10 March 2024.

²⁹⁵ CORU, *Social Care Workers Registration Board Code of Professional Conduct and Ethics* (2019) at page 8.

²⁹⁶ CORU, *Social Care Workers Registration Board Code of Professional Conduct and Ethics* (2019) at page 14.

²⁹⁷ CORU, *Social Care Workers Registration Board Code of Professional Conduct and Ethics* (2019) at page 14.

account the particular needs of “vulnerable adults” who may be service users.²⁹⁸

128. In 2019, CORU noted that social care work is a relationship-based approach to the purposeful planning and provision of care, protection, psychosocial support and advocacy in partnership with vulnerable individuals and groups who experience marginalisation, disadvantage or special needs.²⁹⁹ On 30 November 2023, CORU launched the Social Care Workers Register.
129. In January 2024, CORU announced that the Psychologists Registration Board is currently drafting the standards of proficiency for the specialisms of clinical, counselling and educational psychology which have been prioritised for regulation by CORU.³⁰⁰ CORU has noted that psychologists provide care and support to “vulnerable people” and that the regulation of these three specialisms will provide greater protection to the public.³⁰¹
130. Older people and people with disabilities may be at-risk adults at particular points in time. In its Statement of Strategy for 2022 to 2026, CORU noted that further regulation must be considered within the context of the ageing population, with increasing numbers of people with disabilities living independently in the community.³⁰² CORU notes that independent living generates demands for health and social care services.³⁰³ While many older people and people with disabilities live healthy lives, there are those who are among the most at risk of harm in our society, who need greater levels of protection from harm.³⁰⁴ CORU

²⁹⁸ CORU, *Social Care Workers Registration Board Code of Professional Conduct and Ethics* (2019) at page 18.

²⁹⁹ CORU, *Update on the Registration of Social Care Workers* (Updated on 6 April 2022) <<https://coru.ie/about-us/registration-boards/social-care-workers-registration-board/updates-on-the-social-care-workers-registration-board/update-on-the-registration-of-social-care-workers/>> accessed on 10 March 2024.

³⁰⁰ CORU, *Update on Statutory Regulation of Psychologists* (Updated on January 2024) <<https://coru.ie/about-us/registration-boards/psychologists-registration-board/update-on-statutory-regulation-of-psychologists/>> accessed on 10 March 2024.

³⁰¹ CORU, *Update on Statutory Regulation of Psychologists* (Updated on January 2024).

³⁰² CORU, *Statement of Strategy 2022-2026* at page 5 <<https://coru.ie/files-publications/general-publications/coru-statement-of-strategy-2022-2026.pdf>> accessed on 10 March 2024.

³⁰³ CORU, *Statement of Strategy 2022-2026* at page 5.

³⁰⁴ CORU, *Statement of Strategy 2022-2026* at page 5.

has noted that these factors will inform its regulation of designated professions in the future.³⁰⁵

131. Other professional regulatory bodies are also relevant in the adult safeguarding context, such as the Nursing and Midwifery Board of Ireland,³⁰⁶ the Medical Council,³⁰⁷ and the Dental Council.³⁰⁸

(l) Citizens Information Board

132. The Citizens Information Board is a statutory body which was established under the Comhairle Act 2000. This Act was amended by the Citizens Information Act 2007, which changed the name of the organisation to the Citizens Information Board, and by the Social Welfare and Pensions Act 2011. The Citizens Information Board has responsibility for supporting the provision of information, advice and advocacy relating to social services and entitlements.³⁰⁹ The Citizens Information Board also funds and supports a range of services, including the Citizens Information Services ("CIS") and the Money Advice and Budgeting Service ("MABS"). As discussed in Chapter 8, the Citizens Information Board funds and supports the National Advocacy Service for People with Disabilities ("NAS") which provides independent advocacy services exclusively for adults with disabilities. NAS was also awarded the tender to provide the Patient Advocacy Service ("PAS"), which is an independent advocacy service available to all patients in public acute hospitals and nursing homes, including private nursing homes.³¹⁰

133. The statutory functions of the Citizens Information Board include:
- (a) supporting the provision of or, where it considers appropriate, providing directly, independent information, advice and advocacy services so as to ensure that individuals have access to accurate, comprehensive and clear information relating to social services and are referred to the relevant services;
 - (b) supporting the provision of or, where it considers appropriate, providing directly, advocacy services to individuals, in particular those with a disability, that would assist them in identifying and

³⁰⁵ CORU, *Statement of Strategy 2022-2026* at page 5.

³⁰⁶ Nursing and Midwives Act 2011.

³⁰⁷ Medical Practitioners Act 2007.

³⁰⁸ Dentist Act 1985.

³⁰⁹ Section 7(1) of the Comhairle Act 2000.

³¹⁰ PAS is funded by the Department of Health.

understanding their needs and options, and in securing their entitlements to social services;

(c) supporting, promoting and developing:

(i) greater accessibility, co-ordination and public awareness of social services, and

(ii) the provision and dissemination of integrated information in relation to such services by statutory bodies and voluntary bodies; and

(d) supporting the provision of MABS.³¹¹

(m) The Domestic, Sexual and Gender-Based Violence Agency

134. The Domestic, Sexual and Gender-Based Violence Agency, otherwise known as Cuan, is a statutory agency under the remit of the Department of Justice. Cuan was established on 1 January 2024³¹² and is dedicated to tackling and reducing domestic, sexual and gender-based violence (“DSGBV”).³¹³ Victims of DSGBV may be at-risk adults at particular points in time. Cuan’s functions include:

(a) directly funding, delivering and monitoring specific services to victims of DSGBV, including delivering on the number of safe and accessible accommodation spaces available, as well as ensuring that helpline and other supports are available to victims of DSGBV;

(b) establishing a robust set of national service standards and governance arrangements to ensure adherence to the appropriate standards for supports available to victims of DSGBV;

(c) leading on consistent and ongoing research to inform DSGBV policy development and working with others, such as the Central Statistics Office, on data projects;

³¹¹ Section 7 of the Comhairle Act 2000.

³¹² Section 5(1) of the Domestic, Sexual and Gender-Based Violence Agency Act 2023 and the Domestic, Sexual and Gender-Based Violence Agency Act 2023 (Establishment Day) Order 2023 (SI No 668 of 2023), art 2. Cuan was formally opened by the Minister for Justice on 29 February 2024: Department of Justice, Launch of Cuan – the new statutory domestic, sexual and gender based violence agency <<https://www.gov.ie/en/news/78a38-launch-of-cuan-the-new-statutory-domestic-sexual-and-gender-based-violence-agency/>> accessed on 10 March 2024. Cuan’s legal name is An Ghníomhaireacht um Fhoréigean Baile, Gnéasach agus Inscnebhunaithe.

³¹³ Department of Justice, About Cuan (1 January 2024) <<https://www.gov.ie/en/publication/989a8-about-cuan/>> accessed on 10 March 2024.

- (d) leading on awareness-raising campaigns designed to reduce the incidence of DSGBV in Ireland and ensuring that victims of DSGBV know how to access supports; and
 - (e) coordinating all actions by the Government set out in the Third National Strategy and reporting on their delivery to the Minister for Justice.³¹⁴
135. Cuan will bring together staff from the Child and Family Agency, the Department of Children, Equality, Disability, Integration and Youth, and the Department of Justice to work together more coherently with a specific focus on the provision of DSGBV supports and services.³¹⁵ Cuan's budget for 2024 is approximately €59 million, with €47 million dedicated to the provision of supports and services and approximately €6 million allocated for prevention and awareness raising initiatives.³¹⁶

(n) Competition and Consumer Protection Commission

136. In 2019, the Competition and Consumer Protection Commission ("CCPC") issued guidelines under section 90 of the Consumer Protection Act 2007 for contracts of care in nursing homes to address actual or suspected financial abuse of at-risk adults who are parties to contracts for care in nursing homes.³¹⁷ Prior to publishing the guidance, the CCPC undertook an extensive 18-month programme of research, consultation and engagement with the nursing home sector.³¹⁸ The CCPC has noted that residents of nursing homes are some of the most vulnerable consumers in Irish society.³¹⁹ By their nature, care services are expensive and, for

³¹⁴ Department of Justice, About Cuan (1 January 2024); section 6 of the Domestic, Sexual and Gender-Based Violence Agency Act 2023; Department of Justice, Minister McEntee opens Cuan – the new statutory domestic, sexual and gender based violence agency (23 February 2024) <<https://www.gov.ie/en/press-release/1da52-minister-mcentee-opens-cuan-the-new-statutory-domestic-sexual-and-gender-based-violence-agency/>> accessed on 10 March 2024.

³¹⁵ Department of Justice, Minister McEntee opens Cuan – the new statutory domestic, sexual and gender based violence agency (23 February 2024) <<https://www.gov.ie/en/press-release/1da52-minister-mcentee-opens-cuan-the-new-statutory-domestic-sexual-and-gender-based-violence-agency/>> accessed on 10 March 2024.

³¹⁶ Department of Justice, Minister McEntee opens Cuan – the new statutory domestic, sexual and gender based violence agency (23 February 2024).

³¹⁷ CCPC, *Nursing Home Guidelines* <<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/12/2023.12.11-100967-CCPC-Nursing-Home-Guidelines-V5.pdf>> accessed on 10 March 2024.

³¹⁸ CCPC, *Annual Report 2019* (2020) at page 8 <<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/07/CCPC-Annual-Report-2019.pdf>> accessed on 10 March 2024.

³¹⁹ CCPC, *Annual Report 2019* (2020) at page 4.

many people, there are limited options to choose from and, if you are not happy, moving to another nursing home may not be feasible.³²⁰ This means residents are particularly vulnerable.³²¹ The CCPC also stated that the stressful and difficult circumstances of moving into a nursing home means it is essential for residents to be provided with all the information they need to make an informed decision, and to ensure they are not bound by unfair terms in their contracts for care.³²²

137. The guidelines were updated in 2023 as a result of the enactment of the Consumer Rights Act 2022 which strengthened consumer protection law in Ireland.³²³ The updated guidance provides a minimum 30-day notice period for increases in care home fees, a black-list of contract terms that are always unfair, increased transparency considerations, consumer information and cancellation rights, and the right to withhold payment when the care service is not in conformity with the contract for care.³²⁴

(o) Policing and Community Safety Authority

138. Once the Policing, Security and Community Safety Act 2024 is commenced, it will establish the Policing and Community Safety Authority.³²⁵ The statutory objective of the Policing and Community Safety Authority is to oversee and assess, in an independent and transparent manner, the performance by the Garda Síochána of its function relating to policing services in order to support the effective provision and continuous improvement of such services to the benefit of the safety of the public.³²⁶ The functions of the Authority include:
- (a) keeping under review the performance by the Garda Síochána of its function relating to policing services;
 - (b) carrying out inspections;

³²⁰ CCPC, *Annual Report 2019 (2020)* at page 8.

³²¹ CCPC, *Annual Report 2019 (2020)* at page 8.

³²² CCPC, *Annual Report 2019 (2020)* at page 4.

³²³ CCPC, *Nursing Home Guidelines* <<https://www.ccpc.ie/business/help-for-business/guidelines-for-business/nursing-home-guidelines/>> accessed on 10 March 2024.

³²⁴ CCPC, *Nursing Home Guidelines*.

³²⁵ The legal name for the Policing and Community Safety Authority is An tÚdarás Póilíneachta agus Sábháilteachta Pobail

³²⁶ Section 122 of the Policing, Security and Community Safety Act 2024.

- (c) preparing reports of inspections and making such recommendations to the Garda Commissioner or the Minister, as the Authority considers necessary;
- (d) monitoring and assessing the implementation by the Garda Síochána of recommendations arising from such inspections or from investigations, inspections, inquiries or reviews carried out by bodies other than the Authority, as the Authority considers appropriate or as may be requested by the Minister;
- (e) promoting professional policing standards (including human rights standards) and the continuous improvement of policing, having regard to best international practice;
- (f) promoting inter-agency collaboration and community engagement to improve community safety; and
- (g) undertaking or commissioning research regarding matters relating to policing services which the Authority believes may—
 - (i) promote improvements in standards of policing services and public awareness of such services,
 - (ii) promote improvements in inter-agency collaboration and community engagement to improve community safety, or
 - (iii) contribute to a reduction in the number of complaints against members of garda personnel or the Garda Síochána in relation to policing services,and make recommendations to the Garda Commissioner and the Minister arising from such research.³²⁷

6. International developments

(a) Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities

139. As aforementioned, the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”) was signed by Ireland on 30 March 2007, ratified on 20 March 2018, and entered into force in Ireland on 19 April 2018. In the Programme for Government published by the Department of the Taoiseach in June 2020, the Government stated that it would ratify the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (“Optional Protocol”) after the first

³²⁷ Section 122 of the Policing, Security and Community Safety Act 2024.

reporting cycle.³²⁸ In Dáil Éireann debate on 30 March 2023, the Minister for Children, Equality, Disability, Integration and Youth (“Minister”) stated that the timeline for ratification was originally anticipated to follow the conclusion of Ireland’s first review period before the United Nations (“UN”).³²⁹ Ireland’s appearance before the UN was delayed.³³⁰ However, the Minister stated that the Department of Children, Equality, Disability, Integration and Youth continued to scope out the requirements for ratification of the Optional Protocol.³³¹ The Minister stated that an ongoing scoping exercise was necessary to ensure that Ireland could fulfil its obligations under the Optional Protocol.³³² The Minister was unable to provide an exact date for ratification but noted that it was his priority to ensure that the Optional Protocol would be ratified at the earliest possible date.³³³

140. On 5 March 2024, the Minister announced his intention to establish an inter-departmental group on the ratification of the Optional Protocol to the UNCPRD (“Inter-Departmental Group”).³³⁴ The Inter-Departmental Group will include members of all relevant government departments and the Office of the Attorney General.³³⁵ The Inter-Departmental Group will work through the complexities of ratification and report to the Government with a pathway to ratify the Optional Protocol.³³⁶
141. At the time of writing, Ireland has not ratified the Optional Protocol. However, it appears that Ireland may ratify the Optional Protocol in the near future. On 6 April 2024, three days prior to becoming the Taoiseach of Ireland, Simon Harris TD stated in a speech at the 82nd annual political

³²⁸ Department of the Taoiseach, *Programme for Government: Our Shared Future* (2020) at page 78.

³²⁹ Dáil Éireann Debates 30 March 2023 vol 1036 no 3 <https://www.oireachtas.ie/en/debates/question/2023-03-30/21/#pg_21> accessed on 9 April 2024.

³³⁰ Dáil Éireann Debates 30 March 2023 vol 1036 no 3.

³³¹ Dáil Éireann Debates 30 March 2023 vol 1036 no 3.

³³² Dáil Éireann Debates 30 March 2023 vol 1036 no 3.

³³³ Dáil Éireann Debates 30 March 2023 vol 1036 no 3.

³³⁴ Department of Children, Equality, Disability, Integration and Youth, “Inter-Departmental Group to accelerate work to ratify the Optional Protocol to the UNCPRD” (5 March 2024) <<https://www.gov.ie/en/press-release/91941-inter-departmental-group-to-accelerate-work-to-ratify-the-optional-protocol-to-the-uncrpd/>> accessed on 9 April 2024.

³³⁵ Department of Children, Equality, Disability, Integration and Youth, “Inter-Departmental Group to accelerate work to ratify the Optional Protocol to the UNCPRD” (5 March 2024).

³³⁶ Department of Children, Equality, Disability, Integration and Youth, “Inter-Departmental Group to accelerate work to ratify the Optional Protocol to the UNCPRD” (5 March 2024).

party conference of Fine Gael that “this year, [Ireland] will ratify the Optional Protocol to the [UNCRPD]”.³³⁷

(b) Proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults

142. The Hague Convention 2000 on the International Protection of Adults (“Hague Convention”) provides for “the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests”.³³⁸ The Hague Convention has been ratified by twelve EU Member States,³³⁹ signed by a further five,³⁴⁰ and has been ratified by Switzerland and the UK.³⁴¹ In May 2023, the European Commission drafted a proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults (“Regulation”).³⁴² The purpose of the Regulation is to complement the rules of the Hague Convention by laying down rules aimed to simplify, streamline and modernise the procedures and cooperation among

³³⁷ Fine Gael, *Speech of the Leader of Fine Gael at the 82nd Fine Gael Ard Fheis* (6 April 2024) <<https://www.finegael.ie/speech-of-the-leader-of-fine-gael-simon-harris-t-d/>> accessed on 9 April 2024. See also President of Ireland, “President Higgins presents the seal of the Taoiseach and seal of the Government to Mr Simon Harris TD” (9 April 2024) <<https://president.ie/en/diary/details/president-higgins-presents-the-seal-of-the-taoiseach-and-seal-of-the-government-to-mr-simon-harris-td>> accessed on 9 April 2024.

³³⁸ Council Conclusions on the Protection of Vulnerable Adults across the European Union (2021/C 330 I/01) at para 1.

³³⁹ The States that have ratified the Hague Convention 2000 are Austria, Belgium, Cyprus, Czechia, Estonia, Finland, France, Germany, Greece, Latvia, Malta and Portugal.

³⁴⁰ The States that have signed the Hague Convention 2000 are Ireland, Italy, Luxembourg, the Netherlands and Poland.

³⁴¹ Hague Conference on Private International Law, *Convention of 13 January 2000 on the International Protection of Adults* (8 March 2023) <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=71>> accessed on 8 April 2024.

³⁴² European Commission, *Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults* (COM(2023) 280 final) (31 May 2023) <https://eur-lex.europa.eu/resource.html?uri=cellar:28ff9588-007b-11ee-87ec-01aa75ed71a1.0001.02/DOC_1&format=PDF> accessed on 8 April 2024.

competent authorities of Member States in the area of adult protection.³⁴³

143. On 2 August 2023, the UN Special Rapporteur on the rights of persons with disabilities and the Independent Expert on the enjoyment of all human rights by older persons published a joint submission (“Joint Submission”) which criticised the Regulation for being non-compliant with international human rights treaties, in particular the UNCRPD.³⁴⁴ On 16 August 2023, the European Disability Forum agreed with the Joint Submission and expressed considerable concerns in relation to the current text of the Regulation.³⁴⁵ At the time of writing, the Regulation is subject to discussions between the Council of the European Union and its preparatory bodies.³⁴⁶

7. Conclusion

144. The Commission’s Report is situated against a complex and evolving policy and legislative landscape. In developing its proposed statutory and regulatory framework for adult safeguarding, the Commission has carefully considered the safeguarding incidents; legislative and policy developments; global developments; remits of existing statutory and regulatory bodies; and the international developments outlined in this Background to the Report.

³⁴³ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults* (COM(2023) 280 final) (31 May 2023) at pages 2 and 13.

³⁴⁴ Quinn and Mahler, Joint Submission of the UN Special Rapporteur on the rights of persons with disabilities and the Independent Expert on the enjoyment of all human rights by older persons on the European Commission’s proposal for a Regulation and Council Decision governing the Hague Convention on the Protection of Adults (2 August 2023) <<https://www.ohchr.org/sites/default/files/documents/issues/disability/olderpersons/Annex-Joint-Submission-Towards-Greater-Coherence-International-Law.pdf>> accessed on 8 April 2024.

³⁴⁵ European Disability Forum, “The proposed Regulation on Protection of Adults must be amended” (6 November 2023) <<https://www.edf-feph.org/the-proposed-regulation-on-protection-of-vulnerable-adults-must-be-amended/#:~:text=Formally%20referred%20to%20as%20E2%80%9CProposal.on%20the%20process%20of%20negotiation>> accessed on 8 April 2024.

³⁴⁶ Eur-Lex, Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults <<https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52023PC0280&sortOrder=asc>> accessed on 8 April 2024.

CONTENTS

Chapter 1 The Need for a Regulatory Framework for Adult Safeguarding.

1. Introduction	69
(a) Impetus for this project.....	70
(b) The Commission’s consultations and work process.....	71
2. Current legal and policy provision for adult safeguarding in Ireland.....	72
(a) Existing legislation relevant to adult safeguarding	72
(b) Existing and proposed policy relevant to adult safeguarding	75
(i) <i>The HSE’s National Policy and Procedures, National Safeguarding Office, and Safeguarding and Protection Teams.....</i>	<i>75</i>
(ii) <i>Proposed sectoral adult safeguarding policy for the health and social care sector.....</i>	<i>77</i>
(iii) <i>Other policies relevant to adult safeguarding</i>	<i>77</i>
(c) The use of the inherent jurisdiction in relation to adult safeguarding matters	78
(i) <i>The use of the inherent jurisdiction of the High Court</i>	<i>79</i>
(ii) <i>The use of the inherent jurisdiction to detain individuals following commencement of the Assisted Decision-Making (Capacity) Act 2015..</i>	<i>82</i>
(iii) <i>The use of the inherent jurisdiction in England and Wales.....</i>	<i>85</i>
(iv) <i>Conclusions regarding the use of the inherent jurisdiction in Ireland in the absence of a statutory framework for adult safeguarding</i>	<i>87</i>
3. Adult safeguarding legislative frameworks in other jurisdictions	89
(a) Scotland.....	90
(b) England.....	91
(c) Wales.....	91
(d) Australia and Canada – table overview	93
4. Conclusions regarding the need for adult safeguarding legislation, capacity-building and culture change.....	93
(a) The need for adult safeguarding legislation	93
(b) The need for capacity-building and culture change.....	96
5. Who is the legislation intended to support and protect from harm?.....	98
6. Adult safeguarding and the need for a comprehensive legislative framework for social care	100

(a)	Introduction – what is social care?	100
(b)	The current framework for the provision of social care in Ireland	101
	(i) <i>Existing and proposed law and policy in Ireland</i>	101
	(ii) <i>No overarching framework for social care in Ireland</i>	103
(c)	Relevant social care frameworks in other jurisdictions.....	106
	(i) <i>England</i>	106
	(ii) <i>Wales</i>	109
	(iii) <i>Northern Ireland</i>	111
(d)	Conclusions regarding adult safeguarding and the need for a comprehensive legislation framework for social care	113
7.	The scope of the Commission’s Report	114
(a)	A cross-sectoral legislative framework.....	115
	(i) <i>Sectors and settings within the scope of this Report</i>	115
	(ii) <i>Exclusion of safeguarding concerns in prisons or Garda custody from the scope of this Report</i>	115
	(iii) <i>Conclusions on the need for a cross-sectoral framework</i>	120
(b)	The boundary between law and policy	120

Chapter 2 - Defining Key Statutory Terms for Adult Safeguarding Legislation

1.	Introduction	125
2.	Adults at risk of harm	126
	(a) The gradual and widespread movement from “vulnerable” to “at risk”	127
	(b) Conclusion.....	130
3.	Defining an “adult at risk of harm” in adult safeguarding legislation.....	131
	(a) A functional approach to define an “adult at risk of harm”	132
	(i) <i>Examples of relevant definitions</i>	132
	(ii) <i>Arguments in favour of the adoption of a functional approach to define an “adult at risk of harm”</i>	133
	(iii) <i>Arguments against the adoption of a functional approach to define an “adult at risk of harm”</i>	134
	(b) An approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances.....	134
	(i) <i>Examples of relevant definitions</i>	134
	(ii) <i>Arguments in favour of the adoption of an approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances</i>	136
	(iii) <i>Arguments against the adoption of an approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances</i>	137
	(c) A hybrid approach to define an “adult at risk of harm”	137
	(i) <i>Examples of relevant definitions</i>	138
	(d) Conclusion.....	139
4.	Safeguarding.....	140
	(a) Definitions of “safeguarding” in Ireland.....	140
	(b) Definitions of “safeguarding” in Northern Ireland, England and Scotland	141
	(c) Adult safeguarding and the promotion of welfare.....	142
	(d) Adult safeguarding and the promotion or protection of human rights	143
	(e) The adoption of a service-based approach to define “adult safeguarding”	143

(f)	Conclusion.....	144
5.	Safeguarding plan.....	145
(a)	Definitions of “safeguarding plan” in Ireland	145
(b)	Definitions of “safeguarding plan” in England, British Columbia, Newfoundland and Labrador	146
(c)	Conclusion.....	147
6.	Capacity	148
(a)	Decision-making capacity	148
(b)	Capacity and safeguarding	150
(c)	Conclusion.....	151
7.	Harm	151
(a)	Definitions of “harm” and “reportable harm” for civil aspects of adult safeguarding legislation.....	151
(i)	<i>Definitions of “harm” in Irish vetting and child safeguarding legislation.....</i>	<i>152</i>
(ii)	<i>Definitions of “harm” in Irish national standards and proposed policy for the health and social care sector</i>	<i>153</i>
(iii)	<i>Definitions of “harm” in Scotland and Queensland.....</i>	<i>153</i>
(iv)	<i>Proposed definition of “harm” for civil aspects of the statutory and regulatory framework on adult safeguarding in Ireland.....</i>	<i>155</i>
(v)	<i>Proposed definition of “reportable harm” for civil aspects of the statutory and regulatory framework on adult safeguarding in Ireland</i>	<i>156</i>
(b)	Definitions of “harm” and “serious harm” for criminal aspects of adult safeguarding legislation.....	158
(i)	<i>Definition of “harm” in existing criminal legislation in Ireland... 158</i>	
(ii)	<i>Proposed definition of “harm” for criminal aspects of the statutory and regulatory framework on adult safeguarding in Ireland.....</i>	<i>158</i>
(iii)	<i>Proposed definition of “serious harm” for criminal aspects of the statutory and regulatory framework on adult safeguarding in Ireland</i>	<i>159</i>
8.	Neglect and self-neglect	161
(a)	Definitions of “neglect” in Ireland.....	161
(b)	Definitions of “neglect” in England, Wales, British Columbia and Singapore.....	162
(c)	Proposed definition of “neglect” in adult safeguarding legislation	163
(d)	Definitions of “self-neglect” in Ireland, Singapore and Washington ..	164
(e)	Proposed definition of “self-neglect” in adult safeguarding legislation C.....	166
(f)	Provision of statutory guidance on “self-neglect”	168
9.	Conclusion.....	169

Chapter 3 - Guiding Principles Underpinning Adult Safeguarding

1.	Introduction	171
2.	Values and principles underpinning adult safeguarding practice in Ireland, England, Scotland and Wales	172
3.	Guiding principles to underpin adult safeguarding legislation in Ireland	176
	(a) A rights-based approach	178
	(b) Empowerment and person-centredness	178
	(c) Protection	180
	(d) Prevention.....	180
	(e) Proportionality	181
	(f) Integration and cooperation	182
	(g) Accountability	182
4.	Conclusions and recommendations.....	183

Chapter 4 - A Rights-Based Adult Safeguarding Framework

1.	The Relevance of Individual Rights Throughout this Report	189
	(a) Interventions Proposed in Chapters 10, 11, 12 and 13.....	189
2.	Constitutional Rights of At-Risk Adults and Third Parties	191
	(a) The right to life.....	192
	(b) The right to personal liberty.....	194
	(c) The right to privacy.....	195
	(d) The right to bodily integrity	196
	(e) The right to autonomy	197
	(f) The right to dignity.....	198
	(g) The right to the protection of the person.....	199
	(h) The inviolability of the dwelling.....	200
	(i) The guarantee of equality before the law.....	202
	(j) The rights of the family	203
	(k) The freedom to associate.....	205
	(l) The right to private property	206
	(m) The rights to work and to earn a livelihood.....	206
	(n) The right to one’s good name.....	207
	(o) The right to fair procedures	208
3.	Framework for Analysing the Limitation of Constitutional Rights	209
	(a) Proportionality Analysis	209
	(b) Interferences with Particular Rights.....	212
	(c) Rationality Analysis.....	213
4.	Additional Protection under the European Convention on Human Rights	214
	(a) The right to life.....	214
	(b) The right to respect for private and family life	215
	(c) Protection of property.....	216
	(d) The right to liberty and security	217
	(e) Prohibition of torture and inhuman or degrading treatment or punishment.....	219
5.	United Nations Convention on the Rights of Persons with Disabilities ..	221
6.	Conclusions and Recommendations	221

Chapter 5 - A Safeguarding Body: Functions, Duties and Powers

A Safeguarding Body: Functions, Duties and Powers.....225

1. Introduction 227

2. A primary statutory function of the Safeguarding Body..... 228

 (a) Existing relevant statutory functions of public bodies 228

 (b) Non-statutory functions of the Health Service Executive National Safeguarding Office 233

 (i) Role of the HSE National Safeguarding Office 233

 (ii) Role of the HSE Safeguarding and Protection Teams 234

 (c) The need for a statutory body to have an adult safeguarding function as its primary statutory function 234

3. A duty the Safeguarding Body to receive reports and information about actual or suspected harm of at-risk adults..... 236

4. A duty on the Safeguarding Body to take actions to safeguard at-risk adults and powers of the Safeguarding Body in relation to its primary function 237

 (a) The HSE’s National Policy and Procedures and the need for statutory provisions 240

 (b) Adult safeguarding functions, duties and powers to respond to reports or abuse or neglect in other jurisdictions..... 243

 (i) Scotland..... 243

 (ii) Wales..... 246

 (iii) England..... 248

 (iv) Northern Ireland..... 251

 (v) Australia (Federal) 251

 (vi) South Australia (Australia)..... 254

 (vii) Queensland (Australia) 259

 (viii) Victoria (Australia)..... 261

 (ix) New South Wales (Australia)..... 262

 (x) Nova Scotia (Canada) 264

 (xi) Newfoundland and Labrador (Canada)..... 266

 (xii) British Columbia (Canada).....269

 (xiii) New Brunswick (Canada).....272

 (xiv) Manitoba (Canada).....273

 (c) The Child and Family Agency and issues posed by the lack of a statutory power to undertake investigations.....276

(d)	A statutory duty of the Safeguarding Body to take action where it deems action necessary to safeguard an at-risk adult and associated powers to take action.....	277
(e)	A power to make enquiries in relation to the performance of the Safeguarding Body's functions.....	279
5.	A statutory power to prepare a safeguarding plan.....	283
(a)	Existing statutory requirements to prepare a care plan or personal plan	284
(b)	Current policy provisions for preparation of safeguarding plans by the HSE Safeguarding and Protection Teams	284
(c)	The need for a statutory power to prepare a safeguarding plan	286
6.	Provision of training and information	290
(a)	Existing non-statutory functions of the HSE National Safeguarding Office to provide education and training.....	291
(b)	A statutory function of the Safeguarding Body to provide training and information.....	291
7.	Research and data functions of the Safeguarding Body	292
(a)	Data and research functions in relation to reports or allegations of harm of at-risk adults.....	292
(b)	Data on the implementation of the proposed adult safeguarding legislation.....	295
(c)	Need for statutory research and data collection functions of the Safeguarding Body.....	295

Chapter 6 - Organisational and Regulatory Structures: A safeguarding Body and Powers of Various Regulatory Bodies

1.	Introduction	301
2.	Organisational and regulatory structures in other jurisdictions	303
	(a) Scotland.....	303
	(b) Wales.....	306
	(c) England.....	307
	(d) Australia.....	308
	(i) <i>South Australia</i>	308
	(ii) <i>New South Wales</i>	308
	(iii) <i>Queensland</i>	309
	(iv) <i>Victoria</i>	311
	(e) Canada.....	311
	(i) <i>Manitoba</i>	311
3.	Introduction to possible organisational and regulatory models and powers	312
	(a) Perspectives of consultees	313
	(b) Institute of Public Administration Report.....	315
	(c) Relevant legal and policy considerations.....	316
	(i) <i>United Nations Convention on the Rights of Persons with Disabilities</i>	316
	(ii) <i>"Better regulation" principles</i>	321
	(iii) <i>National agency rationalisation policy</i>	322
4.	A Safeguarding Body as a social work-led adult safeguarding agency .	323
	(a) Functions and powers.....	324
	(b) Cross-sectoral remit of the Safeguarding Body.....	324
	(c) The establishment of the Safeguarding Body within the HSE:.....	326
	(i) <i>Arguments in support of the Safeguarding Body being established within the HSE</i>	326
	(ii) <i>Arguments against the Safeguarding Body being established within the HSE</i>	328

(iii)	<i>The proposed cross-sectoral remit of the Safeguarding Body if established within the HSE.....</i>	330
(iv)	<i>Conclusions on the establishment of the Safeguarding Body within the HSE.....</i>	333
(d)	Establishment of the Safeguarding Body within an existing agency other than the HSE.....	334
(i)	<i>HIQA.....</i>	334
(ii)	<i>The Child and Family Agency.....</i>	335
(iii)	<i>Mental Health Commission.....</i>	336
(iv)	<i>Conclusions on establishment of the Safeguarding Body within an existing agency other than the HSE.....</i>	338
(e)	Establishment of a new independent Safeguarding Body.....	339
(i)	<i>Advantages of establishing the Safeguarding Body as a new independent agency.....</i>	340
(ii)	<i>Disadvantages of establishing the Safeguarding Body as an independent agency.....</i>	341
(iii)	<i>Conclusions on establishing the Safeguarding Body as an independent agency.....</i>	343
(f)	Establishing a multi-agency safeguarding structure or safeguarding partnership model.....	344
(i)	<i>Advantages of a multi-agency safeguarding structure or partnership model.....</i>	345
(ii)	<i>Disadvantages of a multi-agency safeguarding structure or partnership model.....</i>	345
(iii)	<i>Conclusions on the establishment of a multi-agency safeguarding structure or multi-agency partnership model.....</i>	345
5.	Adult safeguarding regulatory functions.....	346
(a)	Functions and powers.....	346
(b)	Setting standards for adult safeguarding to apply across sectors.....	347
(c)	Regulation of social work-led adult safeguarding services.....	350
(i)	<i>Current practice: social work-led adult safeguarding services in Ireland.....</i>	350
(ii)	<i>Regulation of child social care services in Ireland.....</i>	351
(iii)	<i>Regulation of social work-led adult safeguarding services in other jurisdictions.....</i>	352
(iv)	<i>Need for regulation of social work-led adult safeguarding services</i> <i>355</i>	
(d)	Adult safeguarding reviews being conducted by a regulator.....	356
(e)	Coordination of the relevant regulatory powers of existing organisations including HIQA, the Mental Health Commission and the Central Bank.....	359
(f)	Powers to direct the HSE and other statutory and non-statutory bodies to take unspecified actions to safeguard at-risk adults.....	359

(g) Conclusions on the need for a regulatory body or for existing regulatory bodies to be conferred with additional regulatory functions...	360
6. Regional adult safeguarding structures.....	361
(a) Regional social work-led adult safeguarding services	362
(b) Regional multi-agency adult safeguarding structures	362
(c) Conclusions on regional adult safeguarding structures.....	363
7. Proposals: Organisational and regulatory models and powers.....	364
(a) Proposed model: a Safeguarding Body for adult safeguarding and conferral of regulatory functions	365
(i) <i>A Safeguarding Body</i>	365
(ii) <i>Conferral of regulatory functions</i>	365
(b) Appropriate agency to act as the Safeguarding Body	366
(c) Regulation of social work-led adult safeguarding services.....	369

Chapter 7 - Imposing Safeguarding Duties on Certain Service Providers

1.	Introduction	371
2.	Relevant services for the purpose of safeguarding duties	374
	(a) Proposed providers of a “relevant services”	374
	(b) Regulated and unregulated relevant services	378
3.	Safeguarding duties on providers of a relevant service in proposed adult safeguarding legislation.....	384
	(a) Existing adult safeguarding requirements on providers of relevant services and gaps identified	387
	(i) <i>The Health Act 2007, associated regulations and standards.....</i>	<i>388</i>
	(ii) <i>Mental Health Act 2001 and associated regulations.....</i>	<i>390</i>
	(iii) <i>National Standards for Adult Safeguarding (health and social care sectors)</i>	<i>391</i>
	(iv) <i>Home support services</i>	<i>392</i>
	(v) <i>Interim Standards for day services for adults with disabilities....</i>	<i>394</i>
	(vi) <i>National Standards for accommodation offered to people in the protection process</i>	<i>395</i>
	(vii) <i>National Quality Standards Framework for Homeless Services.</i>	<i>400</i>
	(viii) <i>Service providers that provide refuge accommodation services for victims of domestic, sexual or gender-based violence.....</i>	<i>401</i>
	(ix) <i>Relevant services who are charities.....</i>	<i>403</i>
	(x) <i>Safeguarding and HSE funding agreements</i>	<i>404</i>
	(b) A duty to prevent harm.....	405
	(c) A duty to undertake and document a risk assessment and prepare an adult safeguarding statement.....	406
	(i) <i>Components of an adult safeguarding statement.....</i>	<i>407</i>
	(ii) <i>Furnishing and publication of an adult safeguarding statement</i>	<i>409</i>
	(d) Proposed oversight bodies for the purposes of monitoring compliance with safeguarding duties in adult safeguarding legislation	411
	(e) Measures to address non-compliance with statutory safeguarding duties in adult safeguarding legislation.....	416
4.	A duty to prepare a safeguarding plan.....	421
	(a) Existing requirements to prepare a care plan or personal plan	424

(i)	<i>Mental Health Act 2001, the Health Act 2007 and associated regulations.....</i>	<i>424</i>
(ii)	<i>National Standards for Adult Safeguarding (health and social care sectors) and HIQA's National Standards.....</i>	<i>424</i>
(iii)	<i>Home support services.....</i>	<i>425</i>
(iv)	<i>Interim Standards for Day Services for Persons with Disabilities.....</i>	<i>426</i>
(v)	<i>National Standards for accommodation offered to people in the international protection process.....</i>	<i>427</i>
(vi)	<i>National Quality Standards Framework for Homeless Services.....</i>	<i>429</i>
(vii)	<i>Service providers that provide refuge accommodation services for victims of domestic, sexual or gender-based violence.....</i>	<i>430</i>
(b)	The need for a statutory requirement to prepare a safeguarding plan	430
(c)	A duty to prepare a safeguarding plan on relevant services where standards exist.....	433
5.	Provision of training and information.....	434
(a)	Duty on providers of a relevant service to ensure staff are provided with training and to provide information.....	434
(i)	<i>Health Act 2007, associated regulations and standards.....</i>	<i>434</i>
(ii)	<i>Mental Health Act 2001 and associated regulations.....</i>	<i>435</i>
(iii)	<i>National Standards for Adult Safeguarding.....</i>	<i>436</i>
(iv)	<i>Home support services.....</i>	<i>436</i>
(v)	<i>Interim Standards for day Services for adults with disabilities....</i>	<i>437</i>
(vi)	<i>National Standards (for accommodation offered to people in the international protection process).....</i>	<i>438</i>
(vii)	<i>National Quality Standards Framework for Homeless Services.....</i>	<i>438</i>
(viii)	<i>Relevant services who are charities.....</i>	<i>439</i>
(ix)	<i>Safeguarding and HSE Funding Agreements.....</i>	<i>440</i>
(x)	<i>A duty to provide adult safeguarding training and information.....</i>	<i>440</i>
(b)	Requirement on taxi drivers to undertake safeguarding training.....	443
6.	Data collection and sharing duties on providers of relevant services....	446
(a)	Data on reports of actual or suspected abuse or neglect of at-risk adults.....	446
(b)	Data on application of proposed safeguarding legislation.....	447

CHAPTER 1

THE NEED FOR A REGULATORY FRAMEWORK FOR ADULT SAFEGUARDING

Table of Contents

1. Introduction	69
(a) Impetus for this project.....	70
(b) The Commission’s consultations and work process.....	71
2. Current legal and policy provision for adult safeguarding in Ireland.....	72
(a) Existing legislation relevant to adult safeguarding	72
(b) Existing and proposed policy relevant to adult safeguarding	75
(i) <i>The HSE’s National Policy and Procedures, National Safeguarding Office, and Safeguarding and Protection Teams.....</i>	<i>75</i>
(ii) <i>Proposed sectoral adult safeguarding policy for the health and social care sector.....</i>	<i>77</i>
(iii) <i>Other policies relevant to adult safeguarding</i>	<i>77</i>
(c) The use of the inherent jurisdiction in relation to adult safeguarding matters	78
(i) <i>The use of the inherent jurisdiction of the High Court</i>	<i>79</i>
(ii) <i>The use of the inherent jurisdiction to detain individuals following commencement of the Assisted Decision-Making (Capacity) Act 2015..</i>	<i>82</i>
(iii) <i>The use of the inherent jurisdiction in England and Wales.....</i>	<i>85</i>
(iv) <i>Conclusions regarding the use of the inherent jurisdiction in Ireland in the absence of a statutory framework for adult safeguarding</i>	<i>87</i>
3. Adult safeguarding legislative frameworks in other jurisdictions	89
(a) Scotland.....	90
(b) England.....	91
(c) Wales	91
(d) Australia and Canada – table overview	93
4. Conclusions regarding the need for adult safeguarding legislation, capacity-building and culture change.....	93
(a) The need for adult safeguarding legislation	93
(b) The need for capacity-building and culture change.....	96
5. Who is the legislation intended to support and protect from harm?.....	98
6. Adult safeguarding and the need for a comprehensive legislative framework for social care	100

(a)	Introduction – what is social care?	100
(b)	The current framework for the provision of social care in Ireland	101
	(i) <i>Existing and proposed law and policy in Ireland</i>	101
	(ii) <i>No overarching framework for social care in Ireland</i>	103
(c)	Relevant social care frameworks in other jurisdictions.....	106
	(i) <i>England</i>	106
	(ii) <i>Wales</i>	109
	(iii) <i>Northern Ireland</i>	111
(d)	Conclusions regarding adult safeguarding and the need for a comprehensive legislation framework for social care	113
7.	The scope of the Commission’s Report	114
(a)	A cross-sectoral legislative framework.....	115
	(i) <i>Sectors and settings within the scope of this Report</i>	115
	(ii) <i>Exclusion of safeguarding concerns in prisons or Garda custody from the scope of this Report</i>	115
	(iii) <i>Conclusions on the need for a cross-sectoral framework</i>	120
(b)	The boundary between law and policy	120

1. Introduction

- [1.1] In this Report, the Law Reform Commission (“the Commission”) makes recommendations on a statutory and a regulatory framework for adult safeguarding. As is explained in detail in Chapter 2, the Commission defines “safeguarding” as measures that are, or may be, put in place to:
- (a) promote the health, safety and welfare of adults at risk of harm;
 - (b) minimise the risk of harm to adults at risk of harm; and
 - (c) support adults at risk of harm to protect themselves from harm.¹
- [1.2] The Commission defines an “adult at risk of harm” as a person who is not a child and, by reason of their physical or mental condition or other particular personal characteristic or family or life circumstance (whether permanent or otherwise), needs support to protect themselves from harm at a particular time.² The Commission shortens this to “at-risk adult” throughout the Report.
- [1.3] Adult safeguarding is a continuum, which encompasses a range of measures across many different sectors and areas of law and society. The continuum ranges from the empowerment of individuals and preventative steps, through to the use of soft skills to “check in” with individuals, and up to more interventionist actions, including the active provision of services and taking of protective measures. Some adult safeguarding measures will entail direct interaction by professionals with adults who are, or may be, adults at risk of harm. Other adult safeguarding measures will not entail direct contact, and may be more focused, for example, on issues of preventative policies and procedures, and the role of effective governance in preventing safeguarding issues from arising. All of these actions are important, and the Commission’s broad definitions of “safeguarding” and “adult at risk of harm” reflect the need to consider adult safeguarding holistically and comprehensively in order to achieve meaningful reform.
- [1.4] Against this backdrop, when the Commission discusses adult safeguarding legislation, it is referring to cross-sectoral civil legislation which establishes robust statutory and regulatory frameworks for adult safeguarding and provides for various powers, duties and obligations for those who interact with adults who may be at-risk adults. It is necessary in such a regulatory framework for social-work led adult safeguarding services to be monitored and regulated. However, regulation and oversight are only part of the picture, and the legislation is intended to be comprehensive and cross-sectoral in scope, recognising that adult

¹ See further on the Commission’s definition of safeguarding in Chapter 2.

² See further on the Commission’s definition of adult at risk of harm in Chapter 2.

safeguarding is a continuum and that it is not limited to particular settings, sectors, services or professions. The proposed legislation thus includes powers, duties and obligations for a range of organisations and individuals. The Commission's recommendations are set out in relevant chapters of this Report and are reflected in the Adult Safeguarding Bill 2024, which is appended to this Report.

- [1.5] In addition to new cross-sectoral legislation, the Commission's regulatory framework also encompasses targeted amendments to existing primary and secondary legislation to strengthen the current position in Ireland where necessary, for example to expand the regulatory remit of relevant bodies.
- [1.6] The majority of this Report recommends changes to civil law. However, the Commission also considered whether any reform of the criminal law is required to keep at-risk adults safe. It makes a number of recommendations in this regard, including the introduction of new criminal offences, which are discussed in Chapter 19 and reflected in the Commission's Criminal Law (Adult Safeguarding) Bill 2024, which is appended to this Report.

(a) Impetus for this project

- [1.7] As discussed in the Commission's Issues Paper³ and the background section of this Report, this project developed from a suggestion by the Joint Oireachtas Committee on Health and the then Minister for Health in 2017 that adult safeguarding be included in the Commission's Fifth Programme of Law Reform.⁴
- [1.8] Since the publication of the Commission's Issues Paper, there have been a number of positive measures and an overall increase in the awareness of adult safeguarding in Ireland. However, there is still a lack of legislation and regulation in this area, and significant gaps and shortcomings remain. Sadly, research and media reports reveal a high rate of abuse, neglect and ill-treatment of at-risk adults in Ireland, and numerous safeguarding failings.⁵ The urgency for this work has become even more apparent since publication of the Commission's Issues Paper⁶ and calls for adult safeguarding legislation have only increased since

³ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019).

⁴ This was on foot of debates concerning the Adult Safeguarding Bill 2017.

⁵ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) pages 6 – 9; Background to this Report discussing examples of incidents in Ireland which involved failures to appropriately recognise and address adult safeguarding concerns.

⁶ See, for example: Jackie McIlroy, *Adult Safeguarding Review: Professional Advice to the CEO, The Health Service Executive* (HSE 2023); National Independent Review Panel, *Independent Review of the Management of Brandon: The National Independent Review Panel – Brandon Report for Publication* (November 2021) <<https://www.hse.ie/eng/services/publications/the->

then.⁷ The introduction of adult safeguarding legislation was supported by almost all of the consultees who responded to the Commission's Issues Paper and who have engaged with the Commission throughout this project.

(b) The Commission's consultations and work process

- [1.9] The Commission published an Issues Paper on A Regulatory Framework for Adult Safeguarding in January 2020, as part of its Fifth Programme of Law Reform.⁸ The Issues Paper contained 11 overarching issues on which the Commission sought views. The Commission received submissions in response to its Issues Paper and commenced work on this Report. Given the wide scope of this project, this took some time. In addition, other important matters that were not specifically addressed in the Issues Paper were raised throughout the Commission's consultations with consultees. The adult safeguarding landscape also developed over this period, with policy, legislative and caselaw developments relevant to the Commission's work. The Commission endeavoured to take account of these developments in developing its report, but there are a number of legislative changes, reports and policy developments in flux at the time of writing.
- [1.10] As a result of consultee submissions and developments, the scope of this Report is wider than the scope of the Issues Paper, and in some places the Report addresses matters that were not raised in the Issues Paper. For example, this Report addresses serious incident reviews and the regulation of professionals and occupational groups. Where relevant, the Commission has updated the material discussed in the Issues Paper, taking account of the submissions received as well as case law, policy and legislative developments that have arisen since the Issues Paper was published in early 2020.
- [1.11] Throughout this Report, the Commission often outlines the general views of consultees, or a number of them, without naming them or citing specific submissions received in response to the Issues Paper. At other times, however, it cites specific submissions that it received from consultees. In most cases, this is

[national-independent-review-panel-brandon-report-for-publication.pdf](#)> (accessed on 5 April 2024).

⁷ See, for example: HSE National Safeguarding Office, *Annual Report 2022* (2023) at pages 9 and 64; Irish Association of Social Workers, *IASW Response to Public Consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (IASW 2024) <https://iasw.ie/download/1238/IASW%20Submission%20to%20DOH%20re.%20Adult%20safeguarding_02.04.24.pdf> (accessed on 4 April 2024); Safeguarding Ireland, *Identifying Risks, Sharing Responsibilities* (Safeguarding Ireland 2022); Age Action, "Statement Responding to Reports of the Findings of the National Independent Review Panel (NIRP) into allegations of abuse at a HSE run Nursing Home" (Age Action 22 June 2023) <<https://www.ageaction.ie/news/2023/06/22/statement-responding-reports-findings-national-independent-review-panel-nirp>> (accessed on 5 April 2024).

⁸ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019).

done only where those consultees published their response to the Commission's Issues Paper, so their response is publicly available, usually on the relevant consultee's website. Although only published submissions are typically cited and attributed to specific consultees in this Report, it should be stressed that every submission and every consultee view expressed to the Commission was taken into account in the development of this Report. All of the consultees who responded to the Issues Paper and engaged with the Commission over the course of its lengthy consultation process greatly assisted the Commission in developing its recommendations. The Commission is very grateful to all those who took the time to engage with it over the course of this law reform project.

2. Current legal and policy provision for adult safeguarding in Ireland

- [1.12] As set out above, this Report proposes new cross-sectoral adult safeguarding legislation, as well as amendments to existing primary and secondary legislation, which would establish a robust statutory and regulatory framework for adult safeguarding in Ireland. These changes are needed in light of the gaps that currently exist in Irish law and policy. Although there is some existing legislation and policy that is relevant to adult safeguarding, significant gaps remain. In the absence of explicit statutory powers with clear thresholds and safeguards, social workers and other professionals often have to resort to more interventionist steps to keep at-risk adults safe from harm by applying for orders granted pursuant to the High Court's inherent jurisdiction.

(a) Existing legislation relevant to adult safeguarding

- [1.13] Currently, there is a limited amount of legislation in Ireland which is relevant to adult safeguarding. As mentioned in the background section,⁹ most of the provisions of the Assisted Decision-Making (Capacity) Act 2015 (the "2015 Act") commenced on or before 26 April 2023. The 2015 Act is relevant in this context. Since its commencement, a tiered system of decision support arrangements has become available to individuals who may require them. The Director of the Decision Support Service ("DSS") has responsibility for supervising a range of statutory codes of practice concerning decision-making,¹⁰ and for regulating and registering decision support arrangements. The 2015 Act sets out an important rights-based framework and principles such as the presumption of capacity and a functional approach to capacity,¹¹ which promote empowerment and will assist

⁹ See the Background to this Report.

¹⁰ Section 103(2) of the Assisted Decision-Making (Capacity) Act 2015.

¹¹ This means that a person's capacity should be assessed "on the basis of his or her ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by him or her in the context of the available choices at the time". See section 3 of the Assisted Decision-Making (Capacity) Act 2015.

at-risk adults in many cases. However, not every at-risk adult will lack decision-making capacity, nor does the 2015 Act comprehensively deal with matters that may arise where a person’s decision-making capacity is in question. The interaction between the 2015 Act and the Commission’s proposed adult safeguarding legislation is addressed in more detail below and at relevant points throughout the Report.

- [1.14] The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 is also relevant for adult safeguarding purposes. This Act makes it an offence for a person to withhold information about certain offences that they know or believe have been committed against a “vulnerable person”.¹² It is a relatively narrow piece of legislation. In Chapter 9, the Commission recommends amendments to the 2012 Act that will strengthen the law in this area. It also makes recommendations about requiring “mandated persons” to report a wider range of incidents involving at-risk adults, that are not limited to criminal offences. It also recommends that the new criminal offences proposed by the Commission in Chapter 19 and set out in its Criminal Law (Adult Safeguarding) Bill 2024 be included in Schedule 2 as offences for the purposes of withholding information.
- [1.15] The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 are also relevant to adult safeguarding. These Acts provide a statutory basis for the “vetting” or checking of individuals who carry out certain work, including work “a necessary and regular part of which consists mainly of the person having access to, or contact with, vulnerable persons” as defined under the Act.¹³ The process of vetting prevents some harm to at-risk adults, but gaps remain. For example, the provision regarding mandatory re-vetting of persons has not yet been commenced.¹⁴ In Chapter 18, the Commission discusses the gaps in the vetting process and recommends that a system of mandatory re-vetting should be introduced in Ireland.
- [1.16] There is also regulatory legislation in Ireland that is relevant to adult safeguarding. For example, the Health Act 2007 (the “2007 Act”) established the Health Information and Quality Authority (“HIQA”), which aims to “promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public”.¹⁵ HIQA includes the Office of the Chief Inspector of Social Services, and is responsible for regulating certain social care services, including residential centres for people with disabilities and older

¹² The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 is discussed in more detail in Chapter 9.

¹³ Schedule 1, Part 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012. “Vulnerable person” is defined in section 2(1) of the Act.

¹⁴ Section 20 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

¹⁵ Section 7 of the Health Act 2007.

people, for example nursing homes. The Chief Inspector has powers of registration, inspection and enforcement for this purpose. However, these powers are limited to “designated centres” under the 2007 Act,¹⁶ and so do not cover inspections or enforcement in acute hospitals or many private premises, for example. Regulations under the 2007 Act provide further detail as to matters of regulation, particularly in relation to the provision of care and support, and some of these are of relevance to safeguarding.¹⁷

- [1.17] The Mental Health Acts 2001 to 2018 provide for the Mental Health Commission (“MHC”), which aims to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres under the Mental Health Act 2001.¹⁸ The MHC regulates “approved centres”, and has powers of inspection for this purpose.¹⁹ This legislation also allows for the detention of individuals in “approved centres”, where the person is suffering from a mental disorder as defined.²⁰ Although there may be some at-risk adults who are detained pursuant to this legislation, the majority of at-risk adults do not suffer from a mental disorder and therefore are not subject to orders under the 2001 Act.
- [1.18] Other bodies that are, or will be, involved in, or relevant to, adult safeguarding include the Department of Health, the Health Service Executive (“HSE”), the Central Bank of Ireland, the Department of Social Protection, the Garda Síochána, the Domestic, Sexual and Gender-Based Violence Agency (or “Cuan”),²¹ and the Policing and Community Safety Authority.²² All of the Government Departments, statutory agencies and other bodies that are most relevant to adult safeguarding in Ireland are discussed in Chapter 6.
- [1.19] None of the legislation identified above is aimed solely at safeguarding at-risk adults, or at establishing an overarching framework for adult safeguarding in Ireland. In the absence of such specific legislation, there are a number of gaps. Some of these are currently filled by guidelines, policy and operational measures.

¹⁶ As defined in section 2(1) of the Health Act 2007.

¹⁷ We discuss these Regulations in more detail in Chapters 7 and 8.

¹⁸ Section 33 of the Mental Health Act 2001.

¹⁹ The regulation of approved centres is discussed in more detail in Chapter 7.

²⁰ Part 2 of the Mental Health Act 2001.

²¹ The legal name of the Agency is An Ghníomhaireacht um Foréigean Baile, Gnéasach agus Inscnebhunaithe. This agency was established on 1 January 2024. See section 5(1) of the Domestic, Sexual and Gender-Based Violence Agency Act 2023 and the Domestic, Sexual and Gender-Based Violence Agency Act 2023 (Establishment Day) Order 2023 (SI No 668 of 2023), art 2.

²² This will be established once the Policing, Security and Community Safety Act 2024 is commenced.

These measures are also limited, in that they apply only to certain individuals and settings.

(b) Existing and proposed policy relevant to adult safeguarding

(i) The HSE's National Policy and Procedures, National Safeguarding Office, and Safeguarding and Protection Teams

- [1.20] Following the establishment of the Social Care Division of the HSE in mid-2013, the HSE launched the HSE's Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures in 2014 (the "HSE's National Policy and Procedures").²³ The HSE's National Policy and Procedures define a "vulnerable person" as "an adult who may be restricted in capacity to guard himself/herself against harm or exploitation or to report such harm or exploitation".²⁴ It sets out the approach to be taken to reports or concerns arising in respect of such "vulnerable persons". However, the HSE's National Policy and Procedures only apply to HSE managed or funded disability services and older people's services, and to reports or allegations of harm in respect of adults living in the community who have disabilities or are over the age of 65.
- [1.21] As discussed in the background section, this policy is currently being reviewed and updated.²⁵ There have been calls to place the HSE's National Policy and Procedures on a statutory footing, in order for it to have "teeth" and to ensure that it is fully implemented.²⁶ In 2023, adult safeguarding expert, Jackie McIlroy, was requested to conduct an independent review in the aftermath of the 'Emily'

²³ HSE, National Safeguarding Office Report (2017) at page 7 <<https://safeguardingireland.org/wp-content/uploads/2018/10/the-national-safeguarding-office-report-2017.pdf>> accessed on 9 March 2024. The remit of the National Policy and Procedures is discussed in Chapter 5.

²⁴ HSE, *Safeguarding Vulnerable People at Risk of Abuse – National Policy and Procedures* (2014) at page 4 <<https://assets.hse.ie/media/documents/ncr/personsatriskofabuse.pdf>> accessed on 9 April 2024. It states that "[t]his may arise as a result of physical or intellectual impairment and risk of abuse may be influenced by both context and individual circumstances".

²⁵ A draft updated policy was published in 2019: HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (HSE June 2019). It appears there were concerns about implementation and so work is ongoing, with the 2014 National Policy and Procedures remaining in place for the foreseeable future: Reilly, "New HSE adult safeguarding policy in stasis" *Medical Independent* (7 February 2022) <<https://www.medicalindependent.ie/in-the-news/latest-news/new-hse-adult-safeguarding-policy-in-stasis/>> accessed on 28 March 2024; Reilly, "Where next for adult safeguarding in the HSE?" *Medical Independent* (3 June 2022) <<https://www.medicalindependent.ie/in-the-news/news-features/where-next-for-adult-safeguarding-in-the-hse/>> accessed on 28 March 2024.

²⁶ Áras Attracta Swinford Review Group, *Time for action – Priority actions arising from national consultation* (July 2016) at page 4 <<https://www.hse.ie/eng/services/publications/disability/aasrgtimeforaction.pdf> <<https://www.hse.ie/eng/services/news/media/pressrel/arasattractaindependentreview.html>> accessed on 27 February 2024.

case.²⁷ The second stage of her work involved conducting a high-level review of HSE safeguarding policies and procedures and providing the HSE Chief Executive Officer with options for the future of safeguarding in Ireland.²⁸ It is expected that this will be published soon. This may inform revisions to the HSE's National Policy and Procedures. Updating of the National Policy and Procedures will also be informed by the responses to the Government's Policy Proposals on Adult Safeguarding in the Health and Social Care Sector, discussed below.

[1.22] The HSE National Safeguarding Office ("NSO") was established in 2015.²⁹ It aims to support the consistent implementation of the HSE's National Policy and Procedures, and provide leadership oversight and coordination for aspects of policy and practice in relation to safeguarding of "vulnerable persons".³⁰

[1.23] The HSE also established nine Safeguarding and Protection Teams ("SPTs") in each Community Health Organisation in 2015. As mentioned in the background section, the HSE is currently undergoing a restructuring under which the Community Health Organisations will be transformed into six health regions.³¹ This change will likely result in regional SPTs being established in place of the SPTs in each Community Health Organisation. SPTs are managed and led by principal social workers and are staffed by qualified social workers.³² SPTs have responsibility for assessing and managing community safeguarding referrals,³³ primarily concerning persons with a disability or who are over the age of 65.³⁴ The main focus of SPTs is to coordinate consistent responses to concerns of abuse and neglect.³⁵ They also collect and collate data.³⁶

²⁷ Discussed in the Background to this Report.

²⁸ Jackie McIlroy, *Adult Safeguarding Review: Professional Advice to the CEO, The Health Service Executive* (HSE 2023) at para 1.3.

²⁹ HSE, National Safeguarding Office Annual Report (2022) at page 7.

³⁰ HSE, National Safeguarding Office Report (2022) at page 13.

³¹ "HSE health regions will commence on 1 March 2024" HSE Staff News (20 December 2023) <<https://healthservice.hse.ie/staff/news/staff-news-listing-page/hse-health-regions-will-commence-on-1-march-2024/>> accessed on 8 April 2024.

³² HSE, National Safeguarding Office Annual Report (2022) at page 7.

³³ HSE, National Safeguarding Office Annual Report (2022) at page 7. Safeguarding concerns arising in relation to persons in receipt of services from the HSE or a HSE-funded agency are managed by a Designated Officer within the organisation who liaises with the SPTs in the management of the concern: HSE National Safeguarding Office, *2016 Safeguarding Data Report*, at page 2.

³⁴ HSE National Safeguarding Office, *2016 Safeguarding Data Report*, at page 2.

³⁵ HSE, National Safeguarding Office Report (2017) at page 10.

³⁶ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 25.

[1.24] The HSE’s National Policy and Procedures, NSO, and SPTs are discussed in more detail throughout this Report, where relevant. All of these currently operate on a policy or administrative basis only, without any statutory underpinning, and are very limited in the settings and services they apply to. Notably, the NSO and the SPTs do not have statutory powers to enable them to carry out their functions.

(ii) Proposed sectoral adult safeguarding policy for the health and social care sector

[1.25] In the final stages of drafting this Report, the Department of Health launched a public consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (the “Policy Proposals”).³⁷ These Policy Proposals encompass high-level suggestions for the reform of adult safeguarding across the health and social care sector. For example, they propose that there would continue to be a national-level Safeguarding Office in the HSE referred to as the “Sectoral Adult Safeguarding Office”, but that it would have an expanded remit spanning all public, voluntary and private healthcare and social care services.³⁸ The Commission refers to the Policy Proposals in relevant chapters of this Report. Although the Commission’s Report and the Policy Proposals were developed separately, by different organisations and with different remits, they align at various points. The Commission welcomes these points of apparent alignment, and hopes that this Report will inform the Government as it continues to develop the adult safeguarding policy for the health and social care sector – in addition to any further cross-sectoral policy or adult safeguarding legislation.

(iii) Other policies relevant to adult safeguarding

[1.26] As discussed in the Commission’s Issues Paper³⁹ and the background to this Report,⁴⁰ other policies relevant to adult safeguarding include Safeguarding Ireland and HIQA’s Guidance on a Human Rights-based Approach in Health and Social Care Services,⁴¹ and HIQA and the Mental Health Commission’s National

³⁷ These Policy Proposals were prepared by the Department of Health. Government of Ireland, *Public Consultation – Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf#page=null>> accessed on 14 March 2024.

³⁸ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 15.

³⁹ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) page 5.

⁴⁰ See the Background to this Report.

⁴¹ Safeguarding Ireland and HIQA, *Guidance on a Human Rights-based Approach in Health and Social Care Services* (Safeguarding Ireland and HIQA 2019).

Standards for Adult Safeguarding.⁴² There are also adult safeguarding requirements in other standards such as the Interim Standards for day services for adults with disabilities,⁴³ and National Standards for accommodation offered to people in the protection process.⁴⁴ These are discussed further in Chapter 7, and the Commission has taken account of these policies and standards, where relevant, throughout the Report.

(c) The use of the inherent jurisdiction in relation to adult safeguarding matters

- [1.27] Outside of the criminal, public health and mental health contexts, there is no legislation under which preventative, interventionist and protective measures can be taken in relation to individuals in Ireland. In the absence of such provisions, orders are frequently sought pursuant to the inherent jurisdiction of the High Court. One example of this is in the context of orders for detention of individuals. The wardship jurisdiction, which was provided for under section 9 of the Courts (Supplemental Provisions) Act 1961 and the Lunacy Regulation (Ireland) Act 1871,⁴⁵ previously allowed for the detention of persons lacking capacity in Ireland.⁴⁶ However, following the commencement of the Assisted Decision-Making (Capacity) Act 2015, it is no longer possible for individuals to be made wards of court, and this statutory jurisdiction is now being phased out. The 2015 Act now governs matters regarding persons who lack capacity, but it does not provide a power of detention. This legal gap is currently filled using the inherent jurisdiction of the High Court, and more recently using the broader protective jurisdiction provided for under section 9 of the 1961 Act.⁴⁷

⁴² HIQA and the MHC, *National Standards for Adult Safeguarding* (HIQA and the MHC 2019). These are discussed in more detail in Chapter 7.

⁴³ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015). These are discussed in more detail in Chapter 7.

⁴⁴ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019). These are discussed in more detail in Chapter 7.

⁴⁵ Section 9 of the 1961 Act vested the wardship jurisdiction in the High Court, while the 1871 Act regulated certain aspects of wardship: *AC v Cork University Hospital* [2019] IESC 73 at para 25.

⁴⁶ This statutory wardship jurisdiction may be viewed as an element of the broader *parens patriae* jurisdiction: Donnelly, "Inherent Jurisdiction and Inherent Powers of Irish Courts" (2009) *Judicial Studies Institute Journal* 122 at pages 133 – 134; *Re a Ward of Court (No 2)* [1996] 2 IR 79 at pages 102 – 107. See also *Health Service Executive v AJ* [2024] IEHC 166, discussed further below at section 2(c)(ii).

⁴⁷ The use of the inherent jurisdiction following commencement of the 2015 Act is discussed in more detail in section 2(c)(ii) below. The Government is currently working on the Protection of Liberty Safeguards Bill, which would establish a general framework for care arrangements that involve a period of detention, reducing the need to resort to the inherent jurisdiction of

[1.28] As is explained below, the use of the inherent jurisdiction to fill the legislative gaps that currently exist is undesirable. The position would be greatly improved by the provision of a statutory framework allowing for measures such as powers of access to, and removal and transfer of, at-risk adults, in addition to no-contact orders. Such measures would allow for the assessment of the health, safety and welfare of at-risk adults, and mitigation of the risks to same.⁴⁸

(i) *The use of the inherent jurisdiction of the High Court*

[1.29] The inherent jurisdiction is a difficult concept to define. It was described in a recent Supreme Court decision as an “ill-defined and unregulated territory”.⁴⁹ Nevertheless, the inherent jurisdiction has been and continues to be used by the Irish High Court, often to grant orders in respect of individuals who may fall within the definition of an “at-risk adult”. This Chapter explains the use of the inherent jurisdiction for that purpose, and the interaction of this jurisdiction with statutory regimes. As mentioned above, the use of the inherent jurisdiction for this purpose has increased as the wardship jurisdiction is no longer available.

[1.30] At a general level, the inherent jurisdiction refers to the range of implied powers exercisable by judges of a superior court to make decisions in the interests of justice where no statutory regime exists.⁵⁰ In *G McG v DW*,⁵¹ Murray J stated that the inherent jurisdiction, by its very nature, “only arises in the absence of the express”.⁵² In Ireland, only the High Court has inherent jurisdiction.⁵³ The source of its inherent jurisdiction is Article 34.3.1° of the Constitution, which provides for “a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal”.⁵⁴ The inherent

the High Court (or section 9 of the Courts (Supplemental Provisions) Act 1961) for this purpose.

⁴⁸ Such powers are discussed in more detail in Chapters 10, 11, 12 and 13.

⁴⁹ *In the matter of JJ* [2021] IESC 1 at para 242, [2022] 3 IR 1 at para 421 (McKechnie J).

⁵⁰ Pritchard-Jones, “‘Palm Tree Justice’: The Inherent Jurisdiction in Welfare Cases” (2023) *Modern Law Review* 1 at page 3; Donnelly, “Inherent Jurisdiction and Inherent Powers of Irish Courts” (2009) *Judicial Studies Institute Journal* 122 at page 122; Gulati and others, “The Inherent Jurisdiction of the Irish High Court: Interface with Psychiatry” (2020) 69 *International Journal of Law and Psychiatry* at page 9 < <https://cora.ucc.ie/server/api/core/bitstreams/0d0ae9a4-1f37-4fd6-9b5d-c6f9ed30ce6a/content>> accessed on 9 April 2024.

⁵¹ *G McG v DW (No 2)* [2000] 4 IR 1.

⁵² *G McG v DW (No 2)* [2000] 4 IR 1 at page 27. The precise interaction of the inherent jurisdiction with statutory provisions or other legal sources is discussed below.

⁵³ Donnelly, “Inherent Jurisdiction and Inherent Powers of Irish Courts” (2009) *Judicial Studies Institute Journal* 122 at page 126.

⁵⁴ As recently noted by O’Connor J in *In the Matter of the Assisted Decision-Making (Capacity) Act 2015, as amended, and In the Matter of Joan Doe* [2023] IECC 10 at para 6.1: “an

jurisdiction has been used by the High Court in exceptional circumstances to protect and vindicate the fundamental constitutional rights of children and certain categories of adults.

[1.31] For example, the inherent jurisdiction has been used to make various orders regarding individuals who lack decision-making capacity but fall outside of legislative regimes regarding mental health, capacity and wardship.⁵⁵ However, this is not the only context in which the inherent jurisdiction may be used. In *Governor of X Prison v P McD*,⁵⁶ Baker J held that even adults with decision-making capacity may invoke the High Court's inherent jurisdiction "in the protection of their constitutional and other rights".⁵⁷

[1.32] It is clear that the inherent jurisdiction can be used to fill a legislative lacuna. In *HSE v J O'B*,⁵⁸ Birmingham J made the orders sought, stating that:

"where an adult lacks capacity and where there is a legislative lacuna so that the adult's best interests cannot be served without intervention by the Court, I am satisfied that the Court has jurisdiction ... to intervene".⁵⁹

[1.33] However, the inherent jurisdiction must be used sparingly, and it cannot be used to bypass express statutory provisions.⁶⁰ The courts have stated that the inherent jurisdiction should only be exercised "in rare and exceptional cases".⁶¹ In *JJ*, McKechnie J described the use of the inherent jurisdiction as a process "which calls for the utmost caution as one should always strive to identify an express constitutional, statutory or other legal basis for the exercise of the power, whatever it might be".⁶²

application [for an order detaining a person who lacks decision-making capacity] can be made under the inherent jurisdiction of the High Court. Specifically Article 34.3 vests the High Court with 'full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal'."

⁵⁵ (The wardship regime was relevant in cases pre-dating the commencement of the Assisted Decision-Making (Capacity) Act 2015, and remains relevant on a transitional basis.)

⁵⁶ *Governor of X Prison v P McD* [2015] IEHC 259.

⁵⁷ *Governor of X Prison v P McD* [2015] IEHC 259 at para 45.

⁵⁸ *Health Service Executive v J O'B* [2011] IEHC 73, [2011] 1 IR 794.

⁵⁹ *Health Service Executive v J O'B* [2011] IEHC 73, [2011] 1 IR 794 at para 25, relying in particular on *DG v The Eastern Health Board* [1997] 3 IR 511.

⁶⁰ *Health Service Executive v JB (No 2)* [2016] IEHC 575 at para 93 (O'Hanlon J), in the context of detention of a person with a personality disorder.

⁶¹ *Health Service Executive v VE* unreported, 26 July 2012 (Feeney J). See also *DG v The Eastern Health Board* [1997] 3 IR 511 at page 524 (Hamilton CJ).

⁶² *In the matter of JJ* [2021] IESC 1 at para 242, [2022] 3 IR 1 at para 421.

[1.34] This need for restraint, particularly where another legal basis exists for a decision, was stressed by Murray J in *G McG v DW*,⁶³ as follows:

“Where the jurisdiction of the courts is expressly and completely delineated by statute law it must, at least as a general rule, exclude the exercise by the courts of some other or more extensive jurisdiction of an implied or inherent nature. To hold otherwise would undermine the normative value of the law and create uncertainty concerning the scope of judicial function and finality of court orders. It may indeed be otherwise where a fundamental principle of constitutional stature is invoked against a statutory or regulatory measure determining jurisdiction”⁶⁴

[1.35] In *In the matter of FD*,⁶⁵ Laffoy J relied on *G McG* to hold that the High Court cannot exercise its inherent jurisdiction where there is an existing statutory regime and no fundamental constitutional principle requires that the inherent jurisdiction be exercised.⁶⁶

[1.36] The principles outlined above were reiterated by the Supreme Court in *HSE v AM*.⁶⁷ MacMenamin J commented on the continuing existence of the inherent jurisdiction, noting that it has been used by the High Court to fill identified legislative lacunae.⁶⁸ The judge stressed that the inherent jurisdiction should be used “only in exceptional cases”,⁶⁹ as “a ‘backstop’” in the absence of express statutory provision⁷⁰ and not “as a first port of call, when, by legislation, the Oireachtas has spoken on the matter”.⁷¹ MacMenamin J concluded that there:

will occasionally be times when the requirements of constitutional vindication do not fit into any neat statutory category and where it may be necessary to resort to inherent jurisdiction. But this only

⁶³ *G McG v DW (No 2)* [2000] 4 IR 1.

⁶⁴ *G McG v DW (No 2)* [2000] 4 IR 1 at page 27.

⁶⁵ *In the matter of FD* [2015] IESC 83, [2015] 1 IR 741.

⁶⁶ *In the matter of FD* [2015] IESC 83 at para 32, [2015] 1 IR 74 at para 32. In *HSE v AM* [2019] IESC 3 at para 77, [2019] 2 IR 115 at para 78, MacMenamin J commented that in *FD*, the Supreme Court showed no intention “of either diminishing or eliminating the powers of inherent jurisdiction when fundamental constitutional principles were at stake”.

⁶⁷ *HSE v AM* [2019] IESC 3, [2019] 2 IR 115.

⁶⁸ *HSE v AM* [2019] IESC 3 at para 75, [2019] 2 IR 115 at para 76.

⁶⁹ *HSE v AM* [2019] IESC 3 at para 89, [2019] 2 IR 115 at 90 (MacMenamin J).

⁷⁰ *HSE v AM* [2019] IESC 3 at para 91, [2019] 2 IR 115 at 92 (MacMenamin J).

⁷¹ *HSE v AM* [2019] IESC 3 at para 89, [2019] 2 IR 115 at 90 (MacMenamin J).

can arise where fundamental constitutional rights are in issue, and if statute law does not provide a remedy.⁷²

(ii) The use of the inherent jurisdiction to detain individuals following commencement of the Assisted Decision-Making (Capacity) Act 2015

[1.37] Almost all provisions of the Assisted Decision-Making (Capacity) Act 2015 were commenced on 26 April 2023.⁷³ Section 4(5) of the 2015 Act expressly provides for the survival of the inherent jurisdiction of the High Court to make orders for the care, treatment or detention of persons lacking capacity.⁷⁴ Before the commencement of the 2015 Act, it was possible to detain wards of court pursuant to the wardship powers of the High Court. The wardship jurisdiction was provided for under section 9 of the Courts (Supplemental Provisions) Act 1961 and the Lunacy Regulation (Ireland) Act 1871. Now that the 2015 Act has replaced wardship (and existing wards are being discharged from wardship),⁷⁵ the inherent jurisdiction is being used extensively to detain individuals and make orders that previously would have been made pursuant to the wardship powers.⁷⁶ More recently, a broader jurisdiction under section 9 of the Courts (Supplemental Provisions) Act 1961 has been identified as a basis for such applications.

[1.38] Hyland J in *In the Matter of KK*⁷⁷ held that the power of the wardship court to make new detention orders in respect of existing wards (who are not subject to a detention order at the time of the 2015 Act coming into force)⁷⁸ did not survive the commencement of the 2015 Act. However, such orders “can, in principle, be

⁷² *HSE v AM* [2019] IESC 3 at para 104, [2019] 2 IR 115 at 105 (MacMenamin J). The Judge went on to comment that “[i]n the case of minors at risk, experience in the High Court in the last two decades illustrates that, in a sense, the ‘exception’ became the rule, and inherent jurisdiction became a first, rather than a last, resort.”

⁷³ Some were commenced on various dates before this, starting with a small number of provisions on 17 October 2016.

⁷⁴ This section was inserted by the Assisted Decision-Making (Capacity) (Amendment) Act 2022. In *In the Matter of the Assisted Decision-Making (Capacity) Act 2015, as amended, and In the Matter of Joan Doe* [2023] IECC 10, O’Connor J noted that the 2015 Act “does not confer on the Circuit Court a jurisdiction for making orders in relation to the detention of persons who lack capacity. Presently such an application can be made under the inherent jurisdiction of the High Court”. In *HSE v MC (A Ward of Court)* [2024] IEHC 47 at para 18, Barniville P noted that section 4(5) of the 2015 Act explicitly recognises the “existence and continued relevance” of the inherent jurisdiction.

⁷⁵ See, for example, *In Re A Ward: General Solicitor (LM)* [2024] IEHC 151; *In Re A Ward: General Solicitor (MW)* [2024] IEHC 158; *In Re A Ward: General Solicitor (MC)* [2024] IEHC 152.

⁷⁶ On the interaction between the wardship jurisdiction and the 2015 Act, and the continued relevance of the inherent jurisdiction, see *In the Matter of KK* [2023] IEHC 306.

⁷⁷ *In the Matter of KK* [2023] IEHC 306.

⁷⁸ The courts retain jurisdiction to continue existing orders, including detention orders, in respect of a ward – see *HSE v MC (A Ward of Court)* [2024] IEHC 47.

made under the inherent jurisdiction of the High Court”.⁷⁹ She held that the inherent jurisdiction can be used to achieve the constitutional imperative to protect and vindicate the personal rights of citizens who lack capacity.⁸⁰

[1.39] In *In the Matter of KK (No 2)*, Hyland J refused to hear the inherent jurisdiction application within the context of wardship proceedings. However, she considered it “appropriate to specify the types of proofs that are likely to be required in any such application” for detention of an individual lacking capacity which is made via the inherent jurisdiction procedural route (rather than in wardship proceedings).⁸¹ The proofs required were:

- Capacity must be assessed functionally and it must be decision-specific;⁸²
- The circumstances in which detention might be considered necessary to defend and vindicate the individual’s constitutional rights must be considered;⁸³
- Detention should be “the least restrictive and most proportionate way of vindicating the constitutional rights requiring protection”.⁸⁴

[1.40] Hyland J also highlighted safeguards that a court should put in place when exercising its inherent jurisdiction to grant a detention order.⁸⁵ First, medical evidence as to the capacity of the person and the necessity of the measures proposed is required.⁸⁶ Secondly, such medical evidence should be “generally ... from at least two separate sources”.⁸⁷ Thirdly, the court must undertake regular

⁷⁹ *In the Matter of KK* [2023] IEHC 306 at para 2. Hyland J noted (at para 15) that before the commencement of the 2015 Act, “detention orders made by the Wardship Court were made pursuant to the jurisdiction enjoyed by that Court” under section 9 of the Courts (Supplemental Provisions) Act 1961. At para 108, Hyland J described this provision as “a statutory manifestation of the constitutional imperative to defend and vindicate the personal rights of incapacitated citizens”. Part 10 of the ADMCA 2015, which provides for a three-year transitional period to end existing wardship, has changed the jurisdiction under section 9 “so as to remove the entitlement to make a fresh detention order in respect of an existing ward”.

⁸⁰ Article 40.3.2° of the Irish Constitution; See also *In the matter of KK* [2023] IEHC 306 at para 109.

⁸¹ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 4.

⁸² *In the Matter of KK (No 2)* [2023] IEHC 565 at para 24.

⁸³ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 30.

⁸⁴ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 36.

⁸⁵ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 38.

⁸⁶ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 39.

⁸⁷ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 41. Hyland J went on to note at para 43 “that there may be circumstances (such as particularly urgent cases) where that general requirement cannot be met or may be dispensed with by the Court”.

reviews of the detention where a person is detained pursuant to the inherent jurisdiction.⁸⁸ Finally, the relevant person should be represented and their voice “should be heard loud and clear in any such application”.⁸⁹ In this regard, Hyland J stated that:

An application to detain under inherent jurisdiction is not an application under the [Assisted Decision-Making (Capacity) Act 2015] and not subject to the regime prescribed by the [2015 Act]; but nonetheless ... the principles that inform the [2015 Act] may appropriately be taken into account when considering what is required to defend and vindicate a person’s constitutional rights.⁹⁰

[1.41] *KK* is currently under appeal, and at the time of writing is listed for hearing by the Court of Appeal.

[1.42] More recently, in the case of *Health Service Executive v AJ*,⁹¹ Dignam J held that the court’s jurisdiction under section 9 of the Courts (Supplemental Provisions) Act 1961 is a broad, protective jurisdiction that encompassed the wardship jurisdiction but is not limited to it. As a result, the Court held that it “does in fact have a standalone power under section 9 to make a detention order even where the person has not been made (or it is not intended that he be made) a ward of court”.⁹² Dignam J noted that this broader protective jurisdiction is underpinned by the Constitution, and “is a statutory means by which the Court may exercise its functions to vindicate constitutional rights”.⁹³

[1.43] Dignam J’s judgment in this case is *ex tempore* (given at the time of the hearing), and is expressly said throughout to be subject to a future case with full argument.⁹⁴ However, it is notable because the judge suggested that:

Interpreting section 9 as conferring a jurisdiction to make protective Orders outside of a formal wardship process in order to

⁸⁸ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 44. Hyland J went on to note that “[m]edical evidence may not be required from two different sources where there is an application to renew detention, as opposed to detain for the first time”.

⁸⁹ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 46.

⁹⁰ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 54.

⁹¹ *Health Service Executive v AJ* [2024] IEHC 166.

⁹² *Health Service Executive v AJ* [2024] IEHC 166 at para 32 (Dignam J). The case of *KK* was distinguished (at para 47) because it involved an existing ward, with Dignam J stating that “[t]he proper comparator is in fact a person who might be detained under the Court’s inherent jurisdiction”.

⁹³ *Health Service Executive v AJ* [2024] IEHC 166 at para 42 (Dignam J).

⁹⁴ *Health Service Executive v AJ* [2024] IEHC 166 at para 6 (Dignam J). This is because the parties involved agreed on the key points, so the court did not have the benefit of alternate or opposing argument.

vindicate constitutional rights may mean that the area in which the Court's inherent jurisdiction may have to invoked or even can be invoked is smaller. It may even mean that the scope of the section 9 jurisdiction where it applies is the same as the Court's inherent jurisdiction.⁹⁵

- [1.44] It thus appears that, following commencement of the 2015 Act, orders to detain certain individuals may be sought under both the inherent jurisdiction of the High Court, and section 9 of the 1961 Act.

(iii) The use of the inherent jurisdiction in England and Wales

- [1.45] Similarly to the approach in Ireland, the High Court of England and Wales has exercised its inherent jurisdiction "in cases where vulnerable adults have required protection"⁹⁶ or where there appears to be a threat to their welfare. Prior to the commencement of the Mental Capacity Act 2005, the inherent jurisdiction was used by the High Court of England and Wales for decisions involving adults lacking capacity.⁹⁷ Since the commencement of that Act, the inherent jurisdiction has retained a role.⁹⁸ It is used to fill gaps left by the fact that the Mental Capacity Act 2005 only applies to individuals who lack capacity within the meaning of that Act.⁹⁹
- [1.46] The use of the inherent jurisdiction in England and Wales has evolved from the position adopted in *Re F (Mental Patient: Sterilisation)*.¹⁰⁰ In that case, it was held

⁹⁵ *Health Service Executive v AJ* [2024] IEHC 166 at para 45 (Dignam J).

⁹⁶ Gulati and others, "The Inherent Jurisdiction of the Irish High Court: Interface with Psychiatry" (2020) 69 *International Journal of Law and Psychiatry* at page 6 < <https://cora.ucc.ie/server/api/core/bitstreams/0d0ae9a4-1f37-4fd6-9b5d-c6f9ed30ce6a/content>> accessed on 9 April 2024.

⁹⁷ Pritchard-Jones, "'Palm Tree Justice': The Inherent Jurisdiction in Adult Welfare Cases" (2023) *Modern Law Review* 1 at page 1.

⁹⁸ Pritchard-Jones, "'Palm Tree Justice': The Inherent Jurisdiction in Adult Welfare Cases" (2023) *Modern Law Review* 1 at page 1.

⁹⁹ 39 Essex Chambers, "Guidance Note: Using the Inherent Jurisdiction in Relation to Adults" (October 2022) < <https://www.39essex.com/sites/default/files/Mental-Capacity-Guidance-Note-Inherent-Jurisdiction-October-2022.pdf>> accessed on 9 April 2024. See also, *A NHS Trust v Dr A* [2013] EWCOP 2442 per Baker J.

¹⁰⁰ *Re F (Mental Patient: Sterilisation)* [1990] 2 AC 1; [1989] 2 WLR 1025.

that the *parens patriae* jurisdiction in relation to adults without capacity no longer existed.¹⁰¹ No adult could be taken into wardship in England and Wales.¹⁰²

- [1.47] However, over time, the use of the inherent jurisdiction in adult welfare cases was revived. Prior to the commencement of the Mental Capacity Act 2005, in *Re SA*,¹⁰³ Munby J considered whether the court could use its inherent jurisdiction to protect vulnerable adults, even where that adult has capacity to make his or her own decisions.¹⁰⁴ Munby J held that the inherent jurisdiction “extends to a wider class of vulnerable adults” than those with mental incapacity.¹⁰⁵ He held that:

A vulnerable adult who does not suffer from any kind of mental incapacity may nonetheless be entitled to the protection of the inherent jurisdiction if he is, or is reasonably believed to be, incapacitated from making the relevant decision by reason of such things as constraint, coercion, undue influence or other vitiating factors.¹⁰⁶

- [1.48] Following the commencement of the Mental Capacity Act 2005, in *DL v A Local Authority*,¹⁰⁷ the Court of Appeal of England and Wales considered whether the High Court’s inherent jurisdiction could apply to cases concerning “vulnerable adults” that fall outside the scope of the 2005 Act. Kay LJ identified a spectrum: at one end are those people who lack capacity and benefit from the protections of the Mental Capacity Act 2005.¹⁰⁸ At the other end of the spectrum are people with capacity without any vulnerabilities, who can protect themselves “against unscrupulous manipulation” by obtaining injunctions if necessary.¹⁰⁹ This case concerned people falling between these two categories. With no recourse to either of these remedies, it would be unfortunate if “they were to be beyond the

¹⁰¹ Munby, “Whither the Inherent Jurisdiction? How Did We Get Here? Where Are We Now? Where Are We Going?” (2020) *Court of Protection Bar Association Conference* at page 13 <https://www.cpba.org.uk/wp-content/uploads/2020/12/2020COPBA.pdf> accessed on 9 April 2024.

¹⁰² However, the majority of the House of Lords held that the common law doctrine of necessity could be used to declare medical treatment lawful. In order to be necessary, it must be in the patient’s best interests.

¹⁰³ *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam).

¹⁰⁴ *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam) at para 2.

¹⁰⁵ *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam) at para 76.

¹⁰⁶ *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam) at para 79.

¹⁰⁷ *DL v A Local Authority* [2012] EWCA Civ 253.

¹⁰⁸ *DL v A Local Authority* [2012] EWCA Civ 253 at para 79.

¹⁰⁹ *DL v A Local Authority* [2012] EWCA Civ 253 at para 79.

reach of judicial protection”.¹¹⁰ The court confirmed that the inherent jurisdiction survived the commencement of the Mental Capacity Act 2005.¹¹¹

- [1.49] As in Ireland, the inherent jurisdiction should only be used in the absence of, or where there is a clear gap in, legislation – as stated by Cobb J, “where statute provides a route, that statute is used”.¹¹² The inherent jurisdiction should not be used to “reverse the outcome under a statutory scheme, which deals with the very situation in issue, on the basis that the court disagrees with the statutory outcome”.¹¹³
- [1.50] Although it is settled that the inherent jurisdiction can be used for certain cases involving “vulnerable” or incapacitous adults falling outside of the Mental Health Act 2005, the precise boundaries of the inherent jurisdiction in England and Wales are unclear. Commentators have criticised this ambiguity and argued for the introduction of a statutory framework, which would:

offer substantive protection for adults facing abuse or neglect, but also ... ensure there is accountability for anything done by professionals, clarity for adults as to what their rights are, and a clear framework for how anything done under the legislation could be challenged.¹¹⁴

(iv) Conclusions regarding the use of the inherent jurisdiction in Ireland in the absence of a statutory framework for adult safeguarding

- [1.51] The main advantages of the Irish High Court’s inherent jurisdiction lie in its flexibility. As it is only used rarely, it provides “a broad safety net for exceptional cases”.¹¹⁵ It would be a difficult task to define the category of persons to whom the inherent jurisdiction applies. For example, it includes individuals lacking capacity who require assessment and intervention – as there is no statutory basis for members of the Garda Síochána or health and social care professionals to:

¹¹⁰ *DL v A Local Authority* [2012] EWCA Civ 253 at para 79.

¹¹¹ More recently, in *Mazhar v Birmingham Community Healthcare Foundation NHS Trust* [2020] EWCA Civ 1377 at para 30, Baker LJ stated that “[i]t is now clearly established that the inherent jurisdiction of the High Court for the protection of vulnerable and incapacitated adults remains available notwithstanding the implementation of the Mental Capacity Act 2005.”

¹¹² *A Local Authority v CD* [2019] EWHC 2943 (Fam) at para 34.

¹¹³ *JK v A Local Health Board* [2019] EWHC 67 (Fam) at para 57 (Leiven J).

¹¹⁴ Pritchard-Jones, “‘Palm Tree Justice’: The Inherent Jurisdiction in Adult Welfare Cases” (2023) *Modern Law Review* 1 at page 31.

¹¹⁵ Dowd, “‘Orders for Involuntary Treatment, Care and Detention’: The Interaction of the Assisted Decision-Making (Capacity) Act 2015 and the High Court’s Inherent Jurisdiction” (2022) 28(2) *Medico-Legal Journal of Ireland* 48.

- enter premises for the purposes of assessing the health, safety or welfare of at-risk adults;
- move adults to another setting, such as a community residential centre or acute hospital; or
- detain adults for any period of time.

[1.52] In some cases, the category of persons to whom the inherent jurisdiction applies includes individuals falling outside the scope of a statutory scheme for incapacity but who are subject to some other “vulnerability”.¹¹⁶ The flexibility of the inherent jurisdiction may be thus more appropriate to defend and vindicate the rights of all of these individuals,¹¹⁷ providing protection for those who need it but cannot avail of existing statutory mechanisms.

[1.53] However, the inherent jurisdiction also has significant limitations. While this “safety net” is useful, there is a great need for “precision, clarity and certainty”, given the seriousness of the matters at hand.¹¹⁸ Relying on a statutory framework instead of the inherent jurisdiction would avoid the current “potential for over subjectivity” and ensure greater “transparency, democratic oversight and legal certainty”.¹¹⁹ Unlike the inherent jurisdiction, a statutory framework allows for clear thresholds and safeguards, ensuring that the rights of those who may be subject to an order are appropriately, and consistently, weighed and considered.¹²⁰ Only a statutory framework can establish clear standards and thresholds for intervention by reference to which decisions can be assessed and, if necessary, appealed. There is a strong constitutional interest in requiring that potentially very intrusive powers should be conferred, and delimited, by the

¹¹⁶ *DL v A Local Authority* [2012] EWCA Civ 253 at para 64 (McFarlane LJ).

¹¹⁷ *DL v A Local Authority* [2012] EWCA Civ 253 at para 64 (McFarlane LJ).

¹¹⁸ Dowd, “Orders for Involuntary Treatment, Care and Detention’: The Interaction of the Assisted Decision-Making (Capacity) Act 2014 and the High Court’s Inherent Jurisdiction” (2022) 28(2) *Medico-Legal Journal of Ireland* 48. See also, Ruck Keene, “Briefing on Gaps in the Protection of Vulnerable Adults – Proposals for a Vulnerable Adults Bill” (2017) at para 11 < <https://www.mentalcapacitylawandpolicy.org.uk/wp-content/uploads/2018/04/Briefing-on-gaps-in-the-protection-of-vulnerable-adults.pdf>> accessed 9 April 2024.

¹¹⁹ *In The Matter of KK (No 2)* [2023] IEHC 565 (Hyland J) at paras 18 – 21, citing Dowd, “Orders for Involuntary Treatment, Care and Detention’: The Interaction of the Assisted Decision-Making (Capacity) Act 2014 and the High Court’s Inherent Jurisdiction” (2022) 28(2) *Medico-Legal Journal of Ireland* 48.

¹²⁰ Pritchard-Jones, “Palm Tree Justice’: The Inherent Jurisdiction in Adult Welfare Cases” (2023) *Modern Law Review* 1 at pages 24 – 25 and 32, discussing the safeguards and principles under the Mental Health Act 2005 and comparative lack thereof under the inherent jurisdiction in England and Wales.

Oireachtas. The use of the inherent jurisdiction to detain individuals also poses problems in light of Article 5 of the European Convention on Human Rights.¹²¹

- [1.54] Practically, a statutory framework would also provide greater certainty for relevant professionals in the administration of the care and treatment of persons who are subject to orders currently provided under the inherent jurisdiction.¹²² The inherent jurisdiction also necessarily involves recourse to the High Court, which can be a costly and cumbersome process, particularly in comparison to other courts such as the District Court.
- [1.55] The lack of any statutory framework for detention has been a subject of particular concern and has attracted criticism in judicial decisions. With the Assisted Decision-Making (Capacity) Act 2015, the Government could have provided a statutory framework for detention orders, and detailed their relevant safeguards.¹²³ Hyland J's decision in *In the Matter of KK (No 2)* noted that the absence of legislation providing for the detention of persons lacking capacity means that it falls to the courts "to identify the circumstances in which [the] inherent jurisdiction should be invoked in order to detain such people".¹²⁴ Clear guidance has been called for.¹²⁵ The Government is currently working on a Protection of Liberty Safeguards Bill which, once finalised and adopted, would provide such a framework. This Bill is discussed in more detail in Chapter 12.

3. Adult safeguarding legislative frameworks in other jurisdictions

- [1.56] Throughout this Report, the Commission discusses adult safeguarding legislative frameworks in other jurisdictions for comparative purposes to identify useful and informative aspects for its proposed adult safeguarding framework. It hopes that the wealth of comparative material in the Report, which informed the Commission's recommendations, will be of assistance to the Government and

¹²¹ Article 5 of the ECHR requires, among other things, that any detention of an individual must have a basis in domestic law, and the domestic law must be sufficiently ascertainable and precise – see Chapter 4.

¹²² *Health Service Executive v VF* [2014] IEHC 628 (McDermott J); *In The Matter of KK (No 2)* [2023] IEHC 565 (Hyland J).

¹²³ Dowd, "'Orders for Involuntary Treatment, Care and Detention': The Interaction of the Assisted Decision-Making (Capacity) Act 2014 and the High Court's Inherent Jurisdiction" (2022) 28(2) *Medico-Legal Journal of Ireland* 48.

¹²⁴ *In the Matter of KK (No 2)* [2023] IEHC 565 at para 18. Hyland J stressed the need for a legislative framework for detention as an alternative to the use of the inherent jurisdiction.

¹²⁵ Gulati and others, "The Inherent Jurisdiction of the Irish High Court: Interface with Psychiatry" (2020) 69 *International Journal of Law and Psychiatry* at page 13 < <https://cora.ucc.ie/server/api/core/bitstreams/0d0ae9a4-1f37-4fd6-9b5d-c6f9ed30ce6a/content>> accessed on 9 April 2024.

policymakers in the future when examining how to proceed with adult safeguarding legislation.

(a) Scotland

[1.57] The Adult Support and Protection (Scotland) Act 2007 is designed to protect “adults at risk” from harm. For the purposes of the Act, “adults at risk” are defined as adults who:

- (a) are unable to safeguard their own well-being, property, rights or other interests,
- (b) are at risk of harm, and
- (c) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.¹²⁶

[1.58] The Act requires councils and a range of public bodies to work together to support and protect adults who are unable to safeguard themselves, their property and their rights.¹²⁷ For example, councils are required to make inquiries about a person’s well-being, property or financial affairs if they know or believe that (1) the person is an adult at risk, and (2) that they might need to intervene in order to protect the person’s well-being, property, or financial affairs.¹²⁸ The Commission refers to various provisions of the Adult Support and Protection (Scotland) Act 2007 and associated statutory guidance and regulations throughout this Report, and discusses the role of councils and Adult Protection Committees in Chapter 6.

[1.59] Scotland also has legislation on capacity,¹²⁹ mental health,¹³⁰ social work,¹³¹ community care and health,¹³² and regulation of care,¹³³ which are all relevant to adult safeguarding.

¹²⁶ Section 3 of the Adult Support and Protection (Scotland) Act 2007.

¹²⁷ Director- General Health and Social Care (Scotland), Adult support and protection < [https://www.gov.scot/policies/social-care/adult-support-and-protection/#:~:text=The%20Adult%20Support%20and%20Protection%20\(Scotland\)%20Act%202007%20set%20up,who%20may%20be%20at%20risk.>](https://www.gov.scot/policies/social-care/adult-support-and-protection/#:~:text=The%20Adult%20Support%20and%20Protection%20(Scotland)%20Act%202007%20set%20up,who%20may%20be%20at%20risk.>) accessed 4 April 2024.

¹²⁸ Section 4 of the Adult Support and Protection (Scotland) Act 2007.

¹²⁹ Adults with Incapacity (Scotland) Act 2000.

¹³⁰ Mental Health (Care and Treatment) (Scotland) Act 2003.

¹³¹ Social Work (Scotland) Act 1968.

¹³² Community Care and Health (Scotland) Act 2002.

¹³³ Regulation of Care (Scotland) Act 2000.

(b) England

- [1.60] The Care Act 2014 sets out a clear legal framework for how local authorities and others should protect adults at risk of abuse or neglect. It places an obligation on local authorities to ensure that adults receive the care and support they require,¹³⁴ by conducting assessments of care and support needs,¹³⁵ and taking action to meet any needs identified.¹³⁶ It is considered to be both adult safeguarding legislation and social care legislation, which recognises that identifying care and support needs at an early stage and intervening promptly, can prevent such needs escalating to safeguarding concerns.
- [1.61] The Care Act 2014 also places obligations on local authorities to conduct enquiries to determine whether it needs to take action in respect of an adult with care and support needs who may be experiencing or at risk of experiencing abuse and neglect.¹³⁷ This is discussed in depth in Chapter 5 of this Report. The Care Act 2014 also provides for the establishment of Safeguarding Adults Boards and the carrying out of safeguarding adults reviews which are discussed in Chapter 17.
- [1.62] England and Wales also have legislation on capacity,¹³⁸ mental health,¹³⁹ preventing unsuitable people working with “vulnerable” adults,¹⁴⁰ and deprivation of liberty safeguards.¹⁴¹

(c) Wales

- [1.63] In Wales, the Social Services and Well-being (Wales) Act 2014 operates as both social care legislation and adult safeguarding legislation. Part 7 of the Act contains provisions related to safeguarding, many of which are discussed throughout this Report. As discussed in Chapter 5, the local authority must make

¹³⁴ The Care Act 2014 also places obligations on local authorities to meet the support needs of carers. See sections 10 and 20 of the Care Act 2014 (England) in particular.

¹³⁵ Section 9 of the Care Act 2014 (England).

¹³⁶ Sections 18 and 19 of the Care Act 2014 (England).

¹³⁷ Section 42 of the Care Act 2014 (England).

¹³⁸ Mental Capacity Act 2005 (England and Wales).

¹³⁹ Mental Health Act 1983 (England and Wales).

¹⁴⁰ Safeguarding Vulnerable Groups Act 2006 (England and Wales).

¹⁴¹ Mental Capacity Act 2005 (England and Wales). See amendments that will be made by the Mental Capacity (Amendment) Act 2019 (England and Wales) once it is commenced. It is proposed to replace Deprivation of Liberty Safeguards (“DoLS”) with Liberty Protection Safeguards (“LPS”). This follows the recommendations in the Law Commission, *Mental Capacity and Deprivation of Liberty* (Law Com No 372). However, see letter from Minister of State for Care, “Delay to the implementation of the Liberty Protection Safeguards” (5 April 2023) < <https://committees.parliament.uk/publications/39330/documents/193093/default/>> accessed 4 April 2024.

enquiries where it suspects that a person in its area is an at-risk adult, to determine whether any action is required.¹⁴² Safeguarding Adult Boards and adult practice reviews are discussed in Chapter 17.

- [1.64] Other legislation relevant to adult safeguarding that applies to Wales is discussed above in paragraph 1.62.

¹⁴² Section 126 of the Social Services and Well-being (Wales) Act 2014.

(d) Australia and Canada – table overview

Jurisdiction	Legislation	Type of legislation
Australia (Federal)	Aged Care Quality and Safety Commission Act 2018 National Disability Insurance Scheme Act 2013	Complaints and quality monitoring of aged care services and disability services
South Australia (Australia)	Ageing and Adult Safeguarding Act 1995	Adult Safeguarding
Queensland (Australia)	Public Guardian Act 2014	General – Investigate abuse – Only for people who lack capacity
Victoria (Australia)	Guardianship and Administration Act 2019	General – Investigate abuse – Only for people who lack capacity
New South Wales (Australia)	Ageing and Disability Act 2019	Adult Safeguarding
Nova Scotia (Canada)	Adult Protection Act 1989	Adult Safeguarding
Newfoundland and Labrador (Canada)	Adult Protection Act 2021	Adult Safeguarding
British Columbia (Canada)	Adult Guardianship Act 1996	Adult Safeguarding
New Brunswick (Canada)	Family Services Act 1980	Adult Safeguarding
Manitoba (Canada)	Adults Living with an Intellectual Disability Act	Adult Safeguarding – Only for adults with an intellectual disability
	Protection of Persons in Care Act	Adult Safeguarding – Only care homes, hospitals and health facilities

4. Conclusions regarding the need for adult safeguarding legislation, capacity-building and culture change

(a) The need for adult safeguarding legislation

[1.65] Adult safeguarding legislation is urgently needed in Ireland, to address the gaps and shortcomings in the current legal and policy framework and to provide for a

robust, practical and rights-based framework in this area. Introducing such legislation would:

- fill the existing gaps, as outlined in this Chapter;
- strengthen the legal provisions that are available to minimise harm to at-risk adults;
- ensure greater compliance with, and vindication of, the rights of individuals as protected under the Constitution, European Convention on Human Rights, and the United Nations Convention on the Rights of Persons with Disabilities;¹⁴³ and
- bring Ireland into line with many other jurisdictions around the world which have introduced adult safeguarding legislation.

[1.66] Introducing a comprehensive legislative framework for adult safeguarding would have many concrete benefits, some of which are outlined below.

[1.67] First, providing for a comprehensive, cross-sectoral legislative framework as opposed to many different sector-specific pieces of legislation recognises and reflects the fact that adult safeguarding is a continuum and is not the exclusive concern of particular settings, sectors, services or professions. Throughout this project, a number of consultees have stressed to the Commission that “adult safeguarding is everyone’s business”, and so relevant powers, duties and obligations should apply to a wide range of individuals and organisations. In particular, it was stressed that adult safeguarding legislation should apply beyond the health and social care sector. However, the Commission is also aware of the concern that if something is “everyone’s business”, it may end up being “nobody’s business”, with a lack of clear and centralised accountability and responsibility for safeguarding, and a pathway for referral of issues that may arise.¹⁴⁴ For this reason, throughout this Report the Commission recommends duties on specified bodies and services, and mandated persons, to recognise that certain organisations, professionals and role-holders have specific adult safeguarding duties. It also recommends the establishment of a Safeguarding Body which would have centralised functions and responsibilities to provide social-work led adult safeguarding services – this would involve receiving and responding to reports of abuse or neglect of at-risk adults.¹⁴⁵ In this way, the Commission’s recommendations are intended to create clear responsibilities

¹⁴³ The Commission discusses these rights in more detail in Chapter 4.

¹⁴⁴ See, for example, Irish Association of Social Workers, *IASW Response to Public Consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (IASW 2024) at page 6
<https://iasw.ie/download/1238/IASW%20Submission%20to%20DOH%20re.%20Adult%20Safeguarding_02.04.24.pdf> accessed on 4 April 2024.

¹⁴⁵ See Chapter 5 and Chapter 6.

across sectors and services, ensuring that adult safeguarding truly is everyone's business.

- [1.68] Secondly, providing for a comprehensive legislative framework would facilitate cooperation, collaboration and information-sharing between different Government departments, agencies, bodies and services. These aspects of joined-up working are critical to ensure that adult safeguarding measures work effectively in practice, and they are less easily achieved under narrower, sectoral legislation. The benefits of cooperation and information-sharing are discussed in Chapters 15 and 16, respectively. Chapter 20 also discusses the need for a whole-of-Government approach, to effectively implement the Commission's proposed legislative framework.
- [1.69] Thirdly, as discussed in the Issues Paper and the background section of this Report,¹⁴⁶ the introduction of a comprehensive legislative framework for adult safeguarding would provide legal certainty and ensure greater empowerment of, and supports for, at-risk adults in Ireland. It would equally provide greater clarity for the friends and family members of at-risk adults and others who may work with, care for, or otherwise interact with at-risk adults as to what safeguarding means, what responsibilities people have, and what supports are available.
- [1.70] Fourthly, the establishment of a legislative framework encompassing powers, duties and obligations for a range of organisations and individuals, and regulatory powers to set and enforce adult safeguarding standards across settings, would appropriately place the focus on proactive practice rather than reactive practice. The existence of a rights-based legislative framework encompassing these matters would help to ensure a necessary shift towards positive, preventative action rather than the reactionary approach that has characterised adult safeguarding in Ireland to date.¹⁴⁷ The proposed legislative framework would assist in ensuring that the capacity of at-risk adults is maximised and that all individuals are empowered to participate as fully as possible in decisions that affect them and in society as a whole. This shift from a narrative of abuse and vulnerability to a narrative of capacity and empowerment is a critical advantage of introducing comprehensive adult safeguarding legislation. This point is related to the third advantage outlined above – a preventative, rights-based framework is not something that can be achieved by one agency or body in isolation. The existence of a comprehensive legislative framework would facilitate coordination of the relevant powers and roles of existing bodies, agencies and services with a remit related to adult safeguarding, and facilitate cooperation between them to ensure a cross-sectoral, preventative approach.

¹⁴⁶ See the Background to this Report.

¹⁴⁷ See the Background to this Report.

- [1.71] Fifthly, there are significant benefits to providing for matters on a legislative basis, rather than relying on policy or operational measures. Legal powers, duties and obligations are much stronger and more effective than policy and operational measures. Failure to adhere to statutory standards can lead to sanctions – for example by HIQA in the context of regulation of residential centres for people with disabilities and residential centres for older people.¹⁴⁸ Similarly, having legal powers to enter premises would significantly improve the current position, whereby the HSE’s SPTs have no statutory powers to enter any premises for adult safeguarding purposes, and so can be blocked from entering.¹⁴⁹
- [1.72] Sixthly, there are significant benefits to providing for matters on a legislative basis, rather than relying on the inherent jurisdiction of the High Court for particularly serious individual cases. These benefits are discussed above at section 2(c)(iv).
- [1.73] For all of these reasons, and in light of the gaps discussed above and the provision of adult safeguarding legislation in other jurisdictions, the Commission recommends that adult safeguarding legislation should be introduced in Ireland.

R. 1.1 The Commission recommends that adult safeguarding legislation should be introduced in Ireland.

(b) The need for capacity-building and culture change

- [1.74] For all of these reasons, introducing comprehensive adult safeguarding legislation in Ireland would be a significant and welcome change. However, the Commission is mindful that legislation is not a panacea, and that statutory provisions can only achieve so much. Any changes to the law concerning adult safeguarding will need to be supported by awareness-raising, capacity-building and concrete plans for implementation of the legislative framework. Throughout the Commission’s consultations, consultees stressed the need for adequate resources to carry out adult safeguarding effectively, and the need for culture change across organisations and settings.
- [1.75] The need for capacity-building, resourcing and investment in adult safeguarding has been repeatedly stressed by the HSE NSO in its annual reports, in light of current backlogs, waiting lists and vacancies, and in the context of the proposed expansion of the HSE’s National Policy and Procedures beyond its current

¹⁴⁸ See the Health Act 2007.

¹⁴⁹ The Commission makes recommendations regarding powers of entry to relevant premises, and places including private dwellings, in Chapters 10 and 11.

remit.¹⁵⁰ These matters will become even more critical in the context of implementing the Commission’s recommendations, which broaden the scope of adult safeguarding significantly. Capacity-building, resourcing and investment will also be necessary to ensure a multidisciplinary approach to adult safeguarding, which the Commission believes is integral to ensuring effective safeguarding in practice.

- [1.76] Matters such as appropriate funding, increased resourcing and recruitment to support those carrying out duties and functions and providing services related to adult safeguarding are beyond the scope of the Commission’s work. So too are the detail of operational matters such as training, awareness-raising and good governance practice, but these will all be necessary aspects of the effective implementation of the proposed legislative framework.
- [1.77] For example, implementation of the framework will need to be supported by policies, procedures and training for individuals who interact with and provide services to adults, who may be at-risk adults. This would include individuals within the health and social care sector but would be broader than that sector alone, encompassing individuals across Government Departments, public service bodies, and services – including individuals working in the private sector and particularly within “the providers of essential services such as financial services and utilities”.¹⁵¹ All of these individuals will need to be made aware of their duties and obligations in relation to adult safeguarding. This will ensure that adult safeguarding is “everyone’s business”.
- [1.78] Increased awareness is related to another key change that is needed in Ireland – a culture change in relation to adult safeguarding across all sectors and services. Over the course of this project, many consultees stressed to the Commission the importance of culture in adult safeguarding. It has been noted that “[a]dult safeguarding is not a separate entity, it sits within the context of culture, leadership, environment and quality of care”.¹⁵² The HSE NSO has similarly acknowledged that “[a] positive safeguarding culture is a key building block in the prevention work involved in safeguarding. The culture of an organisation can

¹⁵⁰ HSE National Safeguarding Office, *Annual Report 2018* (2019) at pages 39 – 40; HSE National Safeguarding Office, *Annual Report 2019* (2020) at pages 37 – 39; HSE National Safeguarding Office, *Annual Report 2022* (2023) at pages 8 – 9. See, similarly, Irish Association of Social Workers, *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at page 14.

¹⁵¹ Safeguarding Ireland – Opening Statement: Disability Matters Committee (21 February 2024) <https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_disability_matters/submissions/2024/2024-02-21_opening-statement-patricia-rickard-clarke-chairperson-et-al-safeguarding-ireland_en.pdf> accessed on 27 February 2024.

¹⁵² McIlroy, *Adult Safeguarding Review: Professional Advice to the CEO of the Health Service Executive* (August 2023) at page 3.

be a highly valuable asset which supports an individual's human rights [and] life choices".¹⁵³

- [1.79] Safeguarding Ireland recently stated that "[a] culture that is dismissive of certain forms of abuse, that trivialises others and that plays down the human and legal rights of adults at risk, persists in Ireland".¹⁵⁴ In order for meaningful change to occur, a significant culture change is required. The process of changing organisational culture takes time, and requires both "top down" and "bottom up" approaches.¹⁵⁵ The Commission hopes that the legislative framework as set out in this Report will prompt the necessary initiatives for change, but it is mindful that this can take time.
- [1.80] Thus, although the Commission is firmly of the view that comprehensive legislation regarding adult safeguarding should be introduced in Ireland, it acknowledges the limits of legislation. Implementation of the Commission's recommendations would be a welcome change in Ireland, but adult safeguarding legislation will not be a panacea.

5. Who is the legislation intended to support and protect from harm?

- [1.81] As outlined in section 1 above, the cross-sectoral legislation proposed in this Report aims to safeguard certain categories of adults who need support to protect themselves from harm at a particular time. In Chapter 2, the Commission discusses its definition of "adult at risk of harm", which is shortened to "at-risk adult" throughout this Report. Whenever the term "at-risk adult" is used, the Commission is referring to the category of individuals as identified and defined in Chapter 2.¹⁵⁶
- [1.82] In parts of this Report, there are references to "adults in need of protection", "vulnerable adults", "adults at risk" or similar terms. These are used only where the Commission is quoting or referring to the use of those terms in legislation,

¹⁵³ HSE National Safeguarding Office, *Adult Safeguarding Practice Guidance: Prevention and Creating a Safeguarding Culture* at page 12 < <https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/prevention.pdf> > accessed on 4 April 2024.

¹⁵⁴ Safeguarding Ireland, *Identifying Risks, Sharing Responsibilities* (Safeguarding Ireland 2022) at page 24.

¹⁵⁵ Áras Attracta Swinford Review Group, *Time for action – Priority actions arising from national consultation* (July 2016) at page 10 < <https://www.hse.ie/eng/services/publications/disability/aasrgtimeforaction.pdf> < <https://www.hse.ie/eng/services/news/media/pressrel/arasattractaindependentreview.html> > accessed on 27 February 2024.

¹⁵⁶ The Commission uses a narrower, more specific category of "relevant persons" for the purposes of its recommendations regarding changes to the criminal law. This is discussed in more detail in Chapter 19.

draft legislation or other materials. This arises in particular when discussing comparative law. As set out above, many jurisdictions have adult safeguarding laws and some use different terms and definitions to that proposed by the Commission.

- [1.83] Some of the references and recommendations in this Report may refer to “adults” more generally, or adults who may be or may become at-risk adults. This is because some recommendations may extend more broadly than just adult safeguarding and at-risk adults as defined. There are some recommendations that cannot accurately refer exclusively to “at-risk adults”. For example, in Chapter 7, the Commission makes recommendations about certain service providers carrying out documented risk assessments in relation to adults using their services. This recommendation is not limited to “at-risk adults” because those using the services may not currently fall within that category, but they may become “at-risk adults” at a particular point in time – and this is a possibility that service providers should be aware of, and monitor. This flexibility is necessary to acknowledge the preventative ability of adult safeguarding to minimise risk to adults who otherwise may become at-risk adults, for example, by conducting risk assessments to identify and mitigate the risk of harm to adults availing of services.
- [1.84] At various points in this Report, the Commission refers to relevant legislation in Ireland such as the Assisted Decision-Making (Capacity) Act 2015. The 2015 Act provides for a rights-based framework for individuals who may lack capacity to make certain decisions at a particular time. It will be useful for many at-risk adults in different contexts. The Commission has had close regard to the 2015 Act in developing its recommendations. In particular, the 2015 Act enshrines the presumption of decision-making capacity in law, which is an important principle for the purposes of adult safeguarding. However, not all at-risk adults will lack decision-making capacity on certain matters or require supports under the 2015 Act. Equally, not all adults who lack decision-making capacity in respect of one or more matters will be at-risk adults. The Commission thus refers to the 2015 Act at relevant points throughout this Report, but it is mindful that this Report is not targeted at the same category of individuals as the Commission’s proposed adult safeguarding legislation, albeit that some individuals may at times fall within the remit of both pieces of legislation.
- [1.85] Similarly, the provisions of the Mental Health Acts 2001 to 2018 may be relevant for some at-risk adults – and indeed it is likely that many adults detained in an “approved centre” under the legislation are at-risk adults. Equally, however, the majority of at-risk adults do not suffer from a mental disorder as defined and so will fall outside the scope of mental health legislation. The Commission thus refers to this legislation at relevant points throughout this Report, but is mindful of the differences in scope.

- [1.86] In Chapter 20, the Commission discusses the interaction between adult safeguarding legislation and existing and future legislation in more detail.

6. Adult safeguarding and the need for a comprehensive legislative framework for social care

(a) Introduction – what is social care?

- [1.87] Social care involves the planning and provision of services and supports to individuals who need them. This may include, for example, the provision of “Meals on Wheels”, personal assistance, home care and home support, nursing care or residential services.¹⁵⁷ When the Commission discusses “social care”, the term also encompasses delivery mechanisms and processes such as eligibility assessments and personal budgets.
- [1.88] Social care is relevant to adult safeguarding because the provision of social care to adults may empower them to keep themselves safe from harm and avoid them becoming at-risk adults at a particular point in time, as well as avoiding the need for more interventionist or protective measures under adult safeguarding legislation. For example, it may be the case that if sufficient support, including an appropriate home care package, is provided to an adult they can continue to live at home safely. However, in the absence of social care being provided to them, the adult may not be able to meet their own needs or to protect themselves from harm becoming an at-risk adult, and less empowering approaches may be the only option available. For example, where care and support needs are not met and escalate to very serious safeguarding situations, an order might be sought under the inherent jurisdiction of the High Court to access an adult and require that they be removed for medical assessment or care, as there are no statutory powers for SPTs or the HSE NSO to intervene.¹⁵⁸ (Previously, the wardship

¹⁵⁷ Care and support can cover a broad range of activities that promote a person’s wellbeing and support them to live independent lives. It includes personal care (assistance washing and dressing) and personalised support (helping people engage in work and training and supporting them to socialise). See Department of Health and Social Care (England), *People at the Heart of Care: adult social care reform* (2022) at page 8

<<https://www.gov.uk/government/publications/people-at-the-heart-of-care-adult-social-care-reform-white-paper/people-at-the-heart-of-care-adult-social-care-reform>> accessed 4 April 2024.

¹⁵⁸ See the case study in Irish Association of Social Workers, *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at page 32. See also Holland, “‘No justice, no closure’: Widow speaks out on treatment of husband who died of sepsis after head wound not properly addressed” (Irish Times, 5 June 2023) available at: <<https://www.irishtimes.com/health/2023/06/05/widow-of-man-who-died-weeks-after-being-admitted-to-hospital-from-nursing-home-says-hse-report-delivers-no-justice-no-accountability-and-no-closure/>> accessed on 8 April 2024: “Mrs Bartley-Meehan understood her husband and could calm and care for him, but was unable to do so at home without support, she says.”

jurisdiction may have been resorted to in such a case.)¹⁵⁹ Similarly, where care and support needs are not being met in the community, the adult may have to move to a residential setting or nursing home – which may be very far away from their home and community. Age Action has stated that “many people living in nursing homes are there because they cannot be supported to live independently at home” due to inadequate home care provision.¹⁶⁰ The HSE NSO has also noted that “[h]ome support (including home help and meals-on-wheels) often plays an important role in ongoing safeguarding plans”.¹⁶¹ The HSE’s SPTs have highlighted “the lack of availability of adequate home support hours as a challenge to safeguarding [at-risk] adults”.¹⁶²

[1.89] While, in some respects, social care is outside the scope of this Report, the Commission considers that social care and adult safeguarding are closely linked and cannot be examined in isolation. With that in mind, the Commission believes that it is important to set out the views of consultees and other stakeholders on the linkages between the two. It also outlines the current framework for the provision of social care in Ireland, as well as the position in other jurisdictions on social care.

(b) The current framework for the provision of social care in Ireland

(i) Existing and proposed law and policy in Ireland

[1.90] Currently, there is limited law and policy relevant to social care in Ireland.

[1.91] The Health and Social Care Professionals Act 2005 (the “2005 Act”) provides for the regulation of a range of health and social care professionals.¹⁶³ Social care work is a designated profession under the 2005 Act,¹⁶⁴ and has very recently become subject to regulation by CORU, which comprises of the Health and Social Care Professionals Council and the registration boards for each of the professions designated in the 2005 Act.¹⁶⁵ On 30 November 2023, the Social Care Workers

¹⁵⁹ See the case study in Irish Association of Social Workers, *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at page 32.

¹⁶⁰ Age Action, Older People Living in Nursing Homes Being Put At Risk By Rental Scheme <<https://www.ageaction.ie/news/2023/03/23/older-people-living-nursing-homes-being-put-risk-rental-scheme>> accessed 5 April 2024.

¹⁶¹ HSE National Safeguarding Office, *Annual Report 2019* (2020) at page 39.

¹⁶² HSE National Safeguarding Office, *Annual Report 2019* (2020) at page 39.

¹⁶³ At the time of writing, the professions regulated under the Health and Social Care Professionals Act 2005 are dietitians, dispensing opticians, medical scientists, occupational therapists, optometrists, physical therapists, physiotherapists, podiatrists/chiropractors, radiographers, radiation therapists, social workers and speech and language therapists.

¹⁶⁴ Section 4(1)(j) of the Health and Social Care Professionals Act 2005.

¹⁶⁵ CORU, Frequently Asked Questions – General <<https://coru.ie/public-protection/frequently-asked-questions/>> accessed on 9 April 2024.

Register opened.¹⁶⁶ A transitional period has now commenced, during which those who seek to use the title of social care worker can apply to register with CORU. Social care workers work directly with clients to meet their physical, social and emotional needs.¹⁶⁷ The regulation of professionals is discussed in more detail in Chapter 18.

- [1.92] The Health Information and Quality Authority (“HIQA”) plays an important role in regulating certain health and social care services. In particular, residential centres for people with disabilities and residential centres for older people are subject to standard-setting and inspections by HIQA under the Health Act 2007.¹⁶⁸ Detailed regulations under the Health Act 2007 set out various duties on providers of those services.¹⁶⁹ Similarly, “approved centres” under the Mental Health Act 2001 are subject to standard-setting and inspections by the Mental Health Commission (“MHC”). Again, regulations under the Mental Health Act 2001 set out various duties on providers of relevant services.¹⁷⁰ The regulation of these services is addressed in more detail in Chapter 7. It should be noted that the regulatory remit of HIQA and the MHC does not cover all health and social care services.
- [1.93] The Nursing Homes Support Scheme Act 2009 provides for the Nursing Home Support Scheme, also known as “Fair Deal”. This Scheme provides financial support for individuals in long-term nursing home care. It involves a care needs assessment,¹⁷¹ and a financial assessment of the individual.¹⁷² The care needs assessment is used to determine whether the individual needs long-term nursing home care. If they do, the financial assessment is used to calculate how much the individual will be required to contribute towards the cost of their long-term nursing home care.¹⁷³ The Fair Deal scheme covers bed and board, but does not include additional matters such as therapies, activities or hairdressing. It does not apply to other kinds of care or services, such as respite, convalescent or day services.

¹⁶⁶ CORU, “Social Care Workers to be regulated as new statutory register opens” <<https://www.coru.ie/news/news-for-the-public/social-care-workers-to-be-regulated-as-new-statutory-register-opens.html>> accessed on 9 April 2024.

¹⁶⁷ Social Care Ireland, *What is Social Care Work?* <<https://socialcareireland.ie/what-is-social-care-work/>> accessed on 9 April 2024.

¹⁶⁸ HIQA also regulates certain services for children, but these are outside of present scope.

¹⁶⁹ See the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

¹⁷⁰ See the Mental Health Act 2001 (Approved Centres) Regulations 2006.

¹⁷¹ Section 7 of the Nursing Homes Support Scheme Act 2009.

¹⁷² Section 10 of the Nursing Homes Support Scheme Act 2009.

¹⁷³ HSE, *Financial assessment: How much you pay towards care* (2022) <<https://www2.hse.ie/services/schemes-allowances/fair-deal-scheme/financial-assessment/>> accessed on 5 April 2024.

[1.94] The Government is currently working on legislation that would provide for the regulation of home support services, and has published and conducted a public consultation on the in this regard.¹⁷⁴ While this would regulate these services, it would not introduce a statutory entitlement to receive home support, or any obligation on the Government to provide such services. Despite many people having access to home support, often the hours of home support allocated are insufficient to meet the needs of the person, or to offer respite to family carers.¹⁷⁵

(ii) No overarching framework for social care in Ireland

[1.95] Although there are some laws that are relevant to social care in Ireland, as set out above, significant gaps remain. In particular, whilst the needs of applicants for long-term nursing home care are assessed under the 2009 Act, there is no legislation in Ireland imposing positive duties to assess the social care needs of particular individuals, or mandating the provision of social care services. HIQA have noted that currently “in Ireland, there is no overarching social care policy or legislation that outlines clearly what the State’s role is in the identification and addressing of the social care needs of its elderly and more vulnerable populations”.¹⁷⁶

[1.96] HIQA has stated that “[a] comprehensive legislative framework for our system of social care which addresses the rights of individuals, as well as how services are planned and funded, is needed”,¹⁷⁷ and has called for “consideration to be given for the development of a comprehensive, integrated social care policy that considers social care in its totality”.¹⁷⁸ Many others have similarly noted the need to shift towards a more expansive social care model, which encompasses but is broader than long-term nursing home care.

¹⁷⁴ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022).

¹⁷⁵ O’Regan, “Shortage of staff led to nearly three million HSE home care hours lost last year” Irish Independent (30 August 2023) < [¹⁷⁶ Health Information and Quality Authority, *The Need for Regulatory Reform: A summary of HIQA reports and publications examining the case for reforming the regulatory framework for social care services* \(February 2021\) at page 8 < <https://www.hiqa.ie/sites/default/files/2021-02/The-Need-for-Regulatory-Reform.pdf> > accessed on 5 April 2024.](https://www.independent.ie/irish-news/shortage-of-staff-led-to-nearly-three-million-hse-home-care-hours-lost-last-year/a194719569.html#:~:text=Nearly%20three%20million%20hours%20of,6%2C000%20people%20on%20waiting%20lists.> accessed 5 April 2024.</p>
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¹⁷⁷ Health Information and Quality Authority, *The Need for Regulatory Reform: A summary of HIQA reports and publications examining the case for reforming the regulatory framework for social care services* (February 2021) at page 8 < <https://www.hiqa.ie/sites/default/files/2021-02/The-Need-for-Regulatory-Reform.pdf> > accessed on 5 April 2024.

¹⁷⁸ Health Information and Quality Authority, *The Need for Regulatory Reform: A summary of HIQA reports and publications examining the case for reforming the regulatory framework for social care services* (February 2021) at page 6 < <https://www.hiqa.ie/sites/default/files/2021-02/The-Need-for-Regulatory-Reform.pdf> > accessed on 5 April 2024.

- [1.97] The Irish Association of Social Workers (IASW), in its 2022 Adult Safeguarding Position Paper noted that “unlike in the UK, there is no legislation in Ireland compelling the State to identify and respond to social care rights and needs (i.e., provision of home care/ carer support/ housing/ respite), which might eliminate the risk of abuse/neglect and support and adult to live their lives in accordance with their will and preferences”.¹⁷⁹ It commented that the current situation results in “almost random access to certain health and social care services” and this can be described as a “lottery” or access to services being “dependent on one’s postcode”.¹⁸⁰
- [1.98] The IASW stated in response to the Commission’s Issues Paper that additional legal measures to prevent abuse and neglect should include provisions such as: a duty to promote individual well-being, a duty to prevent needs for care and support, a duty to assess an adult’s needs for care and support; and a duty to meet needs for care and support.¹⁸¹ As noted above, such duties are in place in social care legislation in England¹⁸² and Wales.¹⁸³ The IASW stated that such a duty to promote individual well-being should be part of broadly similar social care legislation in which adult safeguarding should be an integral part.¹⁸⁴
- [1.99] Another consultee referred to obligations on local authorities in England and Wales to provide social care to those who need it in addition to obligations to make enquiries, investigate, conduct assessments and gather data on adult safeguarding issues. The consultee stated that this raises a point about the adequacy of Ireland’s social care legislation. The consultee submitted that this requires further examination due to a potential disconnect between imposing a statutory obligation on an adult safeguarding service to investigate safeguarding

¹⁷⁹ Irish Association of Social Workers, *Adult Safeguarding Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at page 12 < <https://www.iasw.ie/download/1076/IASW%20Adult%20Safeguarding%20Position%20Paper%202022%20%282%29.pdf>> accessed 5 April 2024.

¹⁸⁰ Irish Association of Social Workers, *Adult Safeguarding Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at page 12 < <https://www.iasw.ie/download/1076/IASW%20Adult%20Safeguarding%20Position%20Paper%202022%20%282%29.pdf>> accessed 5 April 2024.

¹⁸¹ Irish Association of Social Workers, *Subject: Issues Paper A Regulatory Framework for Adult Safeguarding* (IASW 2020) at page 8. Available at: < <https://iasw.ie/download/777/Issues%20Paper%20A%20Regulatory%20Framework%20for%20Adult%20Safeguarding%20-%202027.05.2020.pdf> > accessed 5 April 2024.

¹⁸² Care Act 2014 (England).

¹⁸³ Social Services and Well-being Act 2014.

¹⁸⁴ Irish Association of Social Workers, *Subject: Issues Paper A Regulatory Framework for Adult Safeguarding* (IASW 2020) at page 8. Available at: < <https://iasw.ie/download/777/Issues%20Paper%20A%20Regulatory%20Framework%20for%20Adult%20Safeguarding%20-%202027.05.2020.pdf> > accessed 4 April 2024.

concerns, without a corresponding statutory obligation to provide the necessary supports to mitigate or contribute to the mitigation of the identified risk.

[1.100] A recent Irish research study provides insights into experiences of Irish social workers involved in adult safeguarding casework. The research study, involving 14 interviews and two focus groups, found that a significant barrier to the actioning of safeguarding plans was the inability of social workers to access health and social care services to manage risk.¹⁸⁵ Research participants were unanimous in identifying access to health and social care services as a critical factor to achieving positive outcomes in safeguarding work.¹⁸⁶ The data revealed many situations in which there was an inability to access publicly funded home care supports, which were deemed to be essential to safeguarding plans.¹⁸⁷ This was found to be a particular issue in situations of unintentional neglect, where the person's will and preference are to remain living at home, but their care needs are such that their family no longer have the capacity or financial resources to meet their care needs, for example where hospital discharge care plans could not be resourced.¹⁸⁸ These issues with access to social care resources were highlighted by a social worker who participated in the research study:

[the] biggest issue I have in working in the area of safeguarding in the community is the lack of supports to offer as part of a safeguarding plan. It is easy to identify the risks and write up a plan of what might reduce the risk but the resources are not there to back this up – simple resources like access to daycare and respite to provide an outlet for the person, and to relieve the stress of carers.¹⁸⁹

¹⁸⁵ Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation" (2022) 52(6) *The British Journal of Social Work* 3688.

¹⁸⁶ Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation" (2022) 52(6) *The British Journal of Social Work* 3688.

¹⁸⁷ Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation" (2022) 52(6) *The British Journal of Social Work* 3688.

¹⁸⁸ Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation" (2022) 52(6) *The British Journal of Social Work* 3688.

¹⁸⁹ Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in

- [1.101] Research participants believed that without a legal obligation on a state agency to provide publicly-funded supportive services to keep an adult at risk safe, adult safeguarding legislation would be pointless. One participant stated that it would be premature to enact adult safeguarding legislation without a right to services, which would require a huge investment in services.¹⁹⁰
- [1.102] The majority of the research study's participants believed that legislation was required which would compel the HSE and other public bodies to provide for assessment, assistance, services and resources for early intervention and preventive safeguarding work as well as crisis response and longer-term interventions.¹⁹¹ The study's authors stated that this would enable social workers to intervene in the knowledge that safeguarding plans could be implemented, and that service provision would enhance the rights of the at-risk adult.¹⁹² Similar views were expressed by social workers who participated in the Commission's consultations as part of this project.

(c) Relevant social care frameworks in other jurisdictions

(i) England

- [1.103] The Care Act 2014 in England is primarily social care legislation but as mentioned above, it also includes provisions specifically related to "safeguarding adults at risk of abuse and neglect".¹⁹³ The Care Act 2014 was described by the Department of Health in England as representing "the most significant reform" of social care legislation in more than 60 years and as creating "a single, modern law that it makes it clear what kind of care people should expect".¹⁹⁴

the Absence of Adult Safeguarding Legislation" (2022) 52(6) *The British Journal of Social Work* 3688.

¹⁹⁰ Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation" (2022) 52(6) *The British Journal of Social Work* 3689.

¹⁹¹ Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation" (2022) 52(6) *The British Journal of Social Work* 3689.

¹⁹² Donnelly and O'Brien, *Falling Through the Cracks: The case for change. Key developments and next steps for Adult Safeguarding in Ireland* (UCD 2019) at page 30.

¹⁹³ Sections 42-47 of the Care Act 2014.

¹⁹⁴ Department of Health and Social Care (England), "Care Bill becomes Care Act 2014" (UK Government 15 May 2014) <<https://www.gov.uk/government/speeches/care-bill-becomes-care-act-2014#:~:text=The%20Care%20Act%20has%20created,to%20provide%20support%20to%20people.>> accessed 4 April 2024.

[1.104] The enactment of the Care Act 2014 was preceded by a report of the Law Commission of England and Wales (the “Law Commission”) on Adult Social Care,¹⁹⁵ which was published in 2011. In its 2008 scoping report, the Law Commission concluded that there was a need for a single modern piece of legislation which would allow service users, carers, service providers and others to understand whether (and, if so, what kind of) services can or should be provided.¹⁹⁶ It stated that “the provision of prevention and early intervention services is a key aspect of adult social care and should form a central element of the statute”.¹⁹⁷ The Law Commission noted that consultees made a distinction between safeguarding and adult protection – it stated that:

Whilst safeguarding relates to the prevention of abuse and has a broad focus that extends to all aspects of a person’s general welfare, adult protection refers to investigation and intervention where it is suspected that abuse may have occurred.¹⁹⁸

[1.105] The Law Commission mentioned that interventions such as befriending, employment advice and physical recreation “can support people to maintain their independence and well-being and reduce or delay the need for more targeted social care interventions”.¹⁹⁹

[1.106] The Care Act 2014 defines the general duty of local authorities under the Act as the promotion of individual wellbeing. The Act shifted the focus to meeting the care needs of the individual from a previous focus on local authorities to provide specific services (local authorities have responsibility for adult social care including safeguarding in England, Scotland and Wales).

[1.107] The 2014 Act includes provisions related to the following:

- preventing needs for care and support;

¹⁹⁵ Law Commission of England and Wales, *Adult Social Care* (Law Com No 326) (Law Commission of England and Wales 2011).

¹⁹⁶ Law Commission of England and Wales, *Adult Social Care Scoping Report* (2008) at para 5.5.

¹⁹⁷ The Law Commission, *Adult Social Care* (Law Com No 326 2011) at para 4.34.

¹⁹⁸ The Law Commission, *Adult Social Care* (Law Com No 326 2011) at para 9.2.

¹⁹⁹ The Law Commission, *Adult Social Care* (Law Com No 326 2011) at para 5.9; Department of Health, *Prioritising Need in the Context of Putting People First* (2010) at paragraphs 34 and 36
 <https://webarchive.nationalarchives.gov.uk/ukgwa/20130105053920/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113154>
 accessed 4 April 2024; See also Welsh Assembly Government, *Sustainable Social Services for Wales* (2011) at paragraph 3.22
 <<https://www.gov.wales/sites/default/files/publications/2019-06/sustainable-social-services-for-wales-a-framework-for-action.pdf>> accessed 4 April 2024.

- promotion of integration of care and support with health services;
- cooperation by local authorities and other agencies in relation to the exercise of relevant functions including their respective functions relating to adults with needs for care and support;
- how to meet needs for care;
- assessing needs for care and support;
- duties and powers to meet needs for care and support;
- care and support plans;
- eligibility for care and support;
- independent advocacy; and
- transitions for children to adult care and support services.

[1.108] The statutory guidance on the Care Act 2014 in England emphasises the importance of social care in ensuring safeguarding is preventative.²⁰⁰ It provides that safeguarding should engage the person who is the subject of safeguarding “in a conversation about how best to respond to their safeguarding situation in a way that enhances involvement, choice and control as well as improving quality of life, wellbeing and safety”.²⁰¹ It states that:

observant professionals and other staff making early, positive interventions with individuals and families can make a huge difference in their lives, preventing the deterioration of a situation or breakdown of a support network.²⁰²

[1.109] The Department of Health and Social Care in England, in its practice briefing for social workers – Revisiting Safeguarding Practice – notes that “social work can make a tangible difference to people’s lives by centring plans on the person’s

²⁰⁰ Department of Health and Social Care (England), *Statutory guidance: Care and support statutory guidance* (2023) at paragraph 2.4
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 4 April 2024.

²⁰¹ Department of Health and Social Care (England), *Statutory guidance: Care and support statutory guidance* (2023) at paragraph 14.15
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 4 April 2024.

²⁰² Department of Health and Social Care (England), *Statutory guidance: Care and support statutory guidance* (2023) at paragraph 14.66 <<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 4 April 2024.

needs and wishes and acting as a bridge across services and systems".²⁰³ The practice briefing provides that social workers should aim to focus on prevention and anticipate risks by ensuring long term planning and building a relationship with the individual.²⁰⁴ Social workers have the ability to build trust and understanding with the person they support, and this enables them to personalise safeguarding measures which can improve outcomes.²⁰⁵

[1.110] In a multi-agency policy and guidance document on adult safeguarding, developed by four Safeguarding Adults Boards (multi-agency boards), the following observations were made:

Critical to the vision in the Care Act 2014 is that the care and support system works to actively promote wellbeing and independence and does not just wait to respond when people reach a crisis point. It is vital that the care and support system intervenes early to support individuals, helps people retain or regain their skills and confidence, and prevents need, or delays deterioration wherever possible. This approach applies equally to adult safeguarding.²⁰⁶

(ii) *Wales*

[1.111] As with the Care Act 2014 in England, the Social Services and Well-being (Wales) Act 2014 was also introduced as a result of the Law Commission's Report on Adult Social Care. Welsh Ministers, local authorities and health boards are subject to duties under the Act. As outlined above, local authorities have responsibility for delivery of social care services in England, Wales and Scotland including delivery of adult social care services.

²⁰³ Department of Health and Social Care (England), *Revisiting safeguarding practice* (2022) at page 12 <<https://assets.publishing.service.gov.uk/media/62447decd3bf7f32a87729bc/revisiting-safeguarding-practice.pdf>> accessed 4 April 2024.

²⁰⁴ Department of Health and Social Care (England), *Revisiting safeguarding practice* (2022) at page 12 <<https://assets.publishing.service.gov.uk/media/62447decd3bf7f32a87729bc/revisiting-safeguarding-practice.pdf>> accessed 4 April 2024.

²⁰⁵ Department of Health and Social Care (England), *Revisiting safeguarding practice* (2022) at page 3 <<https://assets.publishing.service.gov.uk/media/62447decd3bf7f32a87729bc/revisiting-safeguarding-practice.pdf>> accessed 4 April 2024.

²⁰⁶ Hampshire Safeguarding Adults Board, Isle of Wight Safeguarding Adults Board, PSAB and SSAB, *4LSAB Multi-Agency Guidance on Prevention and Early Intervention in Adult Safeguarding* (2020) at page 3 <<https://www.hampshiresab.org.uk/wp-content/uploads/4LSAB-Guidance-on-Prevention-and-Early-Intervention-in-Adult-Safeguarding-June-2020.pdf>> accessed 4 April 2024.

[1.112] Similarly to the Care Act 2014, the Social Services and Well-being (Wales) Act 2014 places eligibility for social care and duties to provide social care services on a statutory basis. It provides for an overarching well-being duty, which requires local authorities and others exercising functions under the Act to seek to promote the well-being of people who need care and support, and carers who need support.²⁰⁷

[1.113] The provisions of the Act include provisions for the following:

- a duty on the Welsh Ministers to issue a statement of the well-being outcomes to be achieved;
- a duty on the Welsh Ministers to issue, and from time to time revise, a code to help to achieve the well-being outcomes specified in a statement of well-being outcomes (“**a code**”);
- a duty on local authorities, in exercising its functions under the Act, to act in accordance with any requirements imposed upon them by a code;
- a power for Welsh Ministers to do anything which they consider is likely to help a local authority comply with requirements imposed by a code;
- a duty on local authorities to assess whether an adult has needs for a care and support, and if the adult does, what those needs are (where it appears to a local authority that an adult may have needs for care and support);
- assessments of needs for care and support, support for carers and preventative services;
- plans following assessments of needs for care support, support for carers and preventative services;
- determination of eligibility for care and support and consideration of what should be done to meet the needs of an adult;
- a duty on local authorities to meet an adult’s needs for care and support if it is satisfied that specified conditions are met; and
- a power for local authorities to meet an adult’s needs for care and support.

[1.114] Under the Act, the criteria which must be met in order for the duty on a local authority to meet an adult’s needs for care and support include that:

- (a) the needs meet the eligibility criteria; or

²⁰⁷ Section 5 of the Social Services and Well-being (Wales) Act 2014.

- (b) the local authority considers it necessary to meet the needs in order to protect the adult from abuse or neglect or a risk of abuse or neglect.²⁰⁸

[1.115] It is particularly significant for adult safeguarding that local authorities are afforded discretion to meet an adult’s needs for care and support to protect the adult from abuse or neglect or a risk of abuse or neglect even where their needs do not meet the eligibility criteria. This discretion may be afforded in recognition of the fact that meeting needs for care and support is a core part of ensuring prevention of abuse or neglect with prevention being a key aspect of a continuum of adult safeguarding.

(iii) Northern Ireland

[1.116] Northern Ireland has developed proposals for an Adult Protection Bill following a public consultation, but they are still in the early stages of development so limited details are publicly available.²⁰⁹ One of the strategic priorities of the public consultation was a “renewed focus on prevention and early intervention to support people to achieve their own social wellbeing”.²¹⁰ It was suggested that prevention and early intervention could result in: people being independent for longer, a reduction in the likelihood of complex needs developing, and enabling people to promote their own wellbeing.²¹¹ It is intended that new statutory guidance will follow any future legislation and this will replace Northern Ireland’s Prevention and Protection in Partnership Policy 2015 (the “NI Policy”).²¹²

[1.117] The NI Policy provides that:

safeguarding interventions will aim to provide appropriate information, supportive responses and services which become increasingly more targeted and specialist as the risk of harm

²⁰⁸ Section 35 of the Social Services and Well-being (Wales) Act 2014.

²⁰⁹ Department of Health (Northern Ireland), *Adult Protection Bill – Draft Final Policy Proposals for Ministerial Consideration* (2021) < <https://www.health-ni.gov.uk/sites/default/files/consultations/health/adult%20protection%20bill-final%20policy%20proposals.pdf>> accessed 4 April 2024.

²¹⁰ Department of Health (Northern Ireland), *Reform of Adult Social Care Northern Ireland: Consultation Document* (2022) at page 54 < <https://www.health-ni.gov.uk/sites/default/files/consultations/health/doh-rasc-consultation-document.pdf>> accessed 4 April 2024.

²¹¹ Department of Health (Northern Ireland), *Reform of Adult Social Care Northern Ireland: Consultation Document* (2022) at paragraph 6.03 < <https://www.health-ni.gov.uk/sites/default/files/consultations/health/doh-rasc-consultation-document.pdf>> accessed 4 April 2024.

²¹² Department of Health (Northern Ireland), *Adult Protection Bill – Draft Final Policy Proposals for Ministerial Consideration* (2021) at page 9 < <https://www.health-ni.gov.uk/sites/default/files/consultations/health/adult%20protection%20bill-final%20policy%20proposals.pdf>> accessed 4 April 2024.

increases. Presenting safeguarding activity in this way is intended to reflect the importance of prevention and early intervention, both as a means of improving the safety and quality of life and outcomes for all adults and reducing the risks of incidents of harm and need for more intrusive protection interventions.²¹³

- [1.118] The Northern Ireland policy aims to prevent and reduce the risk of harm to adults, in addition to supporting their right to keep control over their lives and make informed decisions.²¹⁴ The policy emphasises that early intervention is key to prevent the escalation of the risk of harm, as providing help and support can “prevent problems reaching a point where a protection response becomes necessary”.²¹⁵ It speaks about the importance of assessing needs and conducting risk assessments where there are emerging safeguarding concerns. The NI Policy makes the distinction between “preventative safeguarding” and “protective safeguarding”. It states that “preventative safeguarding” consists of actions or measures like practical help, care, support and interventions that promote the safety, well-being and rights of at-risk adults, with the aim of reducing the chance of harm.²¹⁶ In contrast, “protective safeguarding” is targeted at adults who are in need of protection in circumstances where abuse, neglect or exploitation is suspected, has occurred, or is likely to occur.²¹⁷
- [1.119] In a review of existing legislation and policy in Northern Ireland, there were calls to introduce a “harmonising piece of legislation to consolidate and bring together all current legislation” that applies to adult social care.²¹⁸ The authors

²¹³ Department of Health, Social Services and Public Safety and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 18 <<https://www.health-ni.gov.uk/publications/adult-safeguarding-prevention-and-protection-partnership-key-documents>> accessed 4 April 2024.

²¹⁴ Department of Health, Social Services and Public Safety and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at pages 7 to 9 <<https://www.health-ni.gov.uk/publications/adult-safeguarding-prevention-and-protection-partnership-key-documents>> accessed 4 April 2024.

²¹⁵ Department of Health, Social Services and Public Safety and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 19 <<https://www.health-ni.gov.uk/publications/adult-safeguarding-prevention-and-protection-partnership-key-documents>> accessed 4 April 2024.

²¹⁶ Department of Health, Social Services and Public Safety & Department of Justice, *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 5 <<https://www.health-ni.gov.uk/publications/adult-safeguarding-prevention-and-protection-partnership-key-documents>> accessed 4 April 2024.

²¹⁷ Department of Health, Social Services and Public Safety & Department of Justice, *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 6 <<https://www.health-ni.gov.uk/publications/adult-safeguarding-prevention-and-protection-partnership-key-documents>> accessed 4 April 2024.

²¹⁸ Duffy, Basu, Davidson and Pearson, *Review of Legislation and Policy Guidance Relating to Adult Social Care in Northern Ireland* (2015) at page 9

suggest that introducing annual support visits (akin to those employed in Scandinavian countries) could be a way to address and respond to adult's social care needs.²¹⁹

(d) Conclusions regarding adult safeguarding and the need for a comprehensive legislation framework for social care

- [1.120] As mentioned above, the issue of social care – and specifically a legislative framework for the provision of social care in Ireland – is outside the scope of this Report. However, the Commission acknowledges the importance of social care for adult safeguarding purposes, and notes that the provision of social care may avoid both an individual adult becoming an at-risk adult, and the need for more interventionist or protective measures under adult safeguarding legislation. Social care is particularly relevant when viewing adult safeguarding through a preventative lens. This is evidently the position in neighbouring jurisdictions where social care and adult safeguarding are closely linked, and where social-work led adult safeguarding services are delivered by local authorities as part of broader adult social care services.
- [1.121] Effective social care has the ability to detect care and support needs at an early stage and intervene to prevent such needs from escalating into adult safeguarding concerns. It can prevent an adult becoming an at-risk adult, and support adults to keep themselves safe from harm. In relation to individuals who are at-risk adults, the provision of social care can be an appropriate support as part of safeguarding plans, and the availability of statutory social care supports for adults living in the community could assist the Safeguarding Body in implementing safeguarding plans.²²⁰ Indeed, if social-work led adult safeguarding services are considered part of adult social care as is the case in neighbouring jurisdictions, it could be said that the existing HSE SPTs are providing social care on a non-statutory basis.
- [1.122] In a similar way to the discussion of the limits of legislation in the adult safeguarding context above, the Commission is mindful that social care legislation would not be sufficient, in itself, to resolve the issues that currently

<<https://www.copni.org/media/1138/review-of-legislation-and-policy-guidance-relating-to-adult-social-care-in-ni.pdf>> accessed 5 April 2024.

²¹⁹ Duffy, Basu, Davidson and Pearson, *Review of Legislation and Policy Guidance Relating to Adult Social Care in Northern Ireland* (2015) at page 10
<<https://www.copni.org/media/1138/review-of-legislation-and-policy-guidance-relating-to-adult-social-care-in-ni.pdf>> accessed 5 April 2024.

²²⁰ The Safeguarding Body, and its powers, duties and functions, are discussed in more detail in Chapters 5 and 6.

arise.²²¹ In order to be effective, the introduction of social care legislation would need to be supported by adequate resourcing, capacity-building, and the active provision of the relevant services and supports provided for under the legislation. However, it remains the case that statutory provision for social care in addition to adult safeguarding legislation may assist social work-led adult safeguarding services in most effectively using their empowerment, relationship building and person-centred skills to minimise the risk of harm to at-risk adults and adults who potentially could become at-risk adults. The Commission therefore recommends that the Government should consider whether it would be appropriate to introduce a comprehensive statutory framework for social care.

R. 1.2 The Commission recommends that the Government should consider whether it would be appropriate to introduce a comprehensive statutory framework for social care.

7. The scope of the Commission's Report

- [1.123] This Report and the proposed legislation are cross-sectoral in nature. The Commission discusses the need for cross-sectoral legislation further in Chapter 20. The settings and sectors within the scope of this Report are outlined in section 7(a) below.
- [1.124] Throughout this Report, the Commission makes many recommendations for law reform in Ireland. At some points, the Commission does not make its own recommendation regarding a certain issue, but states that it is a matter for Government, or an issue that the Government should give further consideration to. The Commission is limited to making recommendations for law reform, and does not have the appropriate expertise or authority to make what are commonly referred to as "policy" decisions. This is explained in more detail in section 7(b) below.

²²¹ This is evidenced by commentary regarding the implementation of the Care Act 2014 in England. It has been noted that there has been an increase in requests for social care support, but a decline in the number of individuals receiving such support: Bottery and Mallorie, *Social Care 360* (The King's Fund, 2024) accessible at < <https://www.kingsfund.org.uk/insight-and-analysis/long-reads/social-care-360> > accessed on 9 April 2024. See also House of Commons Committee of Public Accounts, *Reforming adult social care in England – Twenty-Second Report of Session 2023–24* (House of Commons, 20 March 2024) accessible at < <https://committees.parliament.uk/publications/43918/documents/217743/default/> > accessed on 14 April 2024 and Allen, Sameen, Stevenson, Tallack and Alderwick, *Social care funding reform – Choices for the next government* (The Health Foundation, 23 January 2024) accessible at < <https://www.health.org.uk/publications/long-reads/social-care-funding-reform-in-england> > accessed on 9 April 2024.

(a) A cross-sectoral legislative framework*(i) Sectors and settings within the scope of this Report*

[1.125] The Commission's Report is cross-sectoral in focus. This means that the Commission's recommendations are not limited to one sector of law or policy, such as the health and social care sector. Instead, its recommendations cover more than one area of the law and more than one area of Government policy. In particular, the Commission's recommendations encompass adult safeguarding across at least five broadly-defined contexts:

- a) where adults are in receipt of health or social care services in the community, including disability services, home support and day services;
- b) where adults are in receipt of residential health or social care services such as residential care, community residential care, mental health residential services, and acute and primary care settings;
- c) where adults are in receipt of services other than health or social care services, including in the context of transport services such as minibuses or taxis, and residential accommodation services for:
 - i. adults experiencing homelessness;
 - ii. adults in the international protection process;
 - iii. victims of domestic, sexual or gender-based violence; or
 - iv. the purposes of providing substance misuse services.
- d) where adults are not in receipt of any services (including health or social care services), and are living in the community – including in the context of private dwellings and sporting or other community organisations, including religious groups and charity or voluntary groups;
- e) where adults are availing of financial services.

(ii) Exclusion of safeguarding concerns in prisons or Garda custody from the scope of this Report

[1.126] Adult safeguarding concerns may also arise in prisons or in Garda custody. There is likely to be a number of people satisfying the definition of "at-risk adult" in such settings at any given time – given the disempowering conditions of compulsory detention, individuals in prisons and Garda custody are likely to need support to protect themselves from harm. However, the Commission is of the view that adult safeguarding in prisons and in Garda custody should come within the remit of the relevant existing bodies, with scope for cooperation with the Safeguarding Body and the Probation Service in certain contexts, if considered appropriate.²²² For example, such cooperation would be appropriate where an

²²² In England, while section 76(8) of the Care Act 2014 provides that a Safeguarding Adult Board (SAB)'s objective under section 43(2) of the Act does not include helping and protecting adults who are detained in prison, it provides that a SAB may nonetheless

individual is being released from prison and may be an at-risk adult in the community upon release.

[1.127] The Commission has formed this view having reviewed the remit and powers of existing bodies. The Office of the Inspector of Prisons is a statutory body with responsibility for carrying out regular inspections of prisons in Ireland, and has statutory powers of entry and inspection for this purpose.²²³ Reports of inspections must address various matters including the conditions and general health and welfare of prisoners detained in the relevant prison, and compliance with national and international standards, including in particular, the prison rules.²²⁴ Whilst it is not a function of the Inspector to investigate or adjudicate on a complaint from an individual prisoner, they may examine the circumstances relating to the complaint where necessary for performing their functions.²²⁵

[1.128] The Prison Rules 2007 (as amended) provide for internal complaints procedures, under which prisoners may:

- request a meeting with the Governor of the relevant prison to discuss a complaint, request, or other matter;
- request to meet with the visiting committee;
- request to meet with an officer of the Minister for Justice.²²⁶

[1.129] However, these are limited in scope and do not provide for appeal mechanisms. The Office of the Inspector of Prisons has criticised the complaints procedure in Irish prisons, in particular its lack of transparency, fairness and appeal mechanisms.²²⁷

[1.130] The Government is currently working on an Inspection of Places of Detention Bill, which will allow Ireland to ratify the United Nations Optional Protocol to the

provide advice or assistance to any person for the purpose of helping and protecting such adults in its area where an adult has needs for care and support or is at risk of abuse or neglect. Para. 17.61 of the Care Act statutory guidance ("Care and support statutory guidance) states that prison and probation staff may approach a local authority for advice and assistance in individual cases although the local authority will not have the legal duty to lead enquiries in any custodial setting. See: <
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> (last accessed 5 April 2024).

²²³ Section 31(1) of the Prison Act 2007.

²²⁴ Section 32(2)(d) of the Prison Act 2007.

²²⁵ Section 31(6) of the Prison Act 2007.

²²⁶ See also Rules 57A and 57B of the Prison Rules 2007, as inserted by the Prison Rules (Amendment) 2013, which provide for the addressing of allegations by a prisoner that an act, which may constitute a criminal offence, has been committed.

²²⁷ Office of the Inspector of Prisons, *Annual Report 2021 (2022)* at pages 6 and 29<
<https://www.oip.ie/wp-content/uploads/2022/09/Office-of-the-Inspector-of-Prisons-Annual-Report-English.pdf>> accessed 30 January 2024

Convention against Torture (“OPCAT”).²²⁸ This legislation would rename the Inspector of Prisons and expand its remit to include all places of custody, including Garda stations, holding cells, and prisoner transport vehicles.²²⁹

- [1.131] In the context of Garda custody (such as where people are being temporarily held in Garda stations), the “Custody Regulations” require members of the Garda Síochána to “act with due respect for the personal rights of persons in custody and their dignity as human persons, and [to] have regard for the special needs of any of them who may be under a physical or mental disability”.²³⁰ There are a range of regulations regarding all persons in Garda custody, as well as additional regulations regarding detainees under 17 years. If a member in charge²³¹ suspects or knows a person to be “mentally handicapped”, the regulations regarding minors must be applied to the person.²³² The term “mentally handicapped” is not defined in the Regulations.
- [1.132] Risk assessments are carried out in relation to individuals in custody, on a policy basis in accordance with internal guidance of the Garda Síochána – specifically HQ Directive 48/18.²³³ However, risk assessments do not appear to be reviewed or updated, and there are no documented risk management plans.²³⁴
- [1.133] The Garda Síochána Inspectorate has found that awareness of the needs of potentially “vulnerable” adults in custody are less well understood than the needs of children.²³⁵ In 2021, the Garda Síochána Inspectorate published a report based

²²⁸ Department of Justice, ‘Minister for Justice publishes General Scheme of the Inspection of Places of Detention Bill’ (published 24 June 2022) <<https://www.gov.ie/en/press-release/470b9-minister-for-justice-publishes-general-scheme-of-the-inspection-of-places-of-detention-bill/>> accessed on 4 April 2024.

²²⁹ Head 6(1) of the Draft General Scheme: Inspection of Places of Detention Bill – June 2022 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/228123/94b395af-c07c-4233-969f-ae838db02569.pdf#page=null>> accessed on 5 April 2024.

²³⁰ Regulation 3(1) of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (SI No 119 of 1987).

²³¹ The member in charge is responsible for ensuring that the statutory duties imposed under the Criminal Justice Act 1984 and the Custody Regulations are carried out in respect of every person in custody at the relevant Garda station.

²³² Regulation 22(1) of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (SI No 119 of 1987).

²³³ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) at page 11.

²³⁴ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) at page XII.

²³⁵ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) at page XII.

on engagement with people in custody and other stakeholders, field work, data analysis, international visits and unannounced visits to garda stations. In its report, the Inspectorate concluded that “[i]dentifying and providing support for vulnerable adults was limited by the absence of a contemporary definition of vulnerability and the lack of training for [G]ardaí”.²³⁶ The Inspectorate made a number of recommendations. Of particular relevance to adult safeguarding, it recommended that:

- the Department of Justice establish a broader and more contemporary statutory definition of vulnerability;²³⁷
- the Garda Síochána continue to work in partnership with relevant experts to further develop guidance documents and provide training to help members to identify persons in custody who are vulnerable and to safeguard their rights;²³⁸
- the Department of Justice consider updating the legislation relating to the arrangements for providing support to children and vulnerable adults in custody. The updated legislation should:
 - Standardise the definition of the adult whose role is to assist or support children or vulnerable adults in custody;
 - Define the adult’s role and describe who can perform it; and
 - Set out the circumstances in which this adult is required.²³⁹
- the Department of Justice introduce a formal scheme consisting of suitably trained and vetted individuals who are available to support children and vulnerable adults in garda custody.²⁴⁰
- the Garda Síochána take action to improve the identification, assessment and management of risk in respect of every person in custody, which

²³⁶ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) at page XII.

²³⁷ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) Recommendation 14, at page XXIV.

²³⁸ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) Recommendation 15, at page XXIV.

²³⁹ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) Recommendation 16, at page XXV.

²⁴⁰ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) Recommendation 16, at page XXV.

should include ensuring that all identified risks and vulnerabilities associated with a person are flagged on PULSE.²⁴¹

[1.134] When the Policing, Security and Community Safety Act 2024 is commenced, it will establish the Policing and Community Safety Authority.²⁴² The statutory objective of the Policing and Community Safety Authority will be to oversee and assess in an independent and transparent manner the performance by the Garda Síochána of its function relating to policing services in order to support the effective provision and continuous improvement of such services to the benefit of the safety of the public.²⁴³ The functions of the Authority will include:

- (a) keeping under review the performance by the Garda Síochána of its function relating to policing services;
- (b) carrying out inspections; and
- (c) preparing reports of inspections and making such recommendations to the Garda Commissioner or the Minister as the Authority considers necessary;
- (d) monitoring and assessing the implementation by the Garda Síochána of recommendations arising from such inspections or from investigations, inspections, inquiries or reviews carried out by bodies other than the Authority, as the Authority considers appropriate or as may be requested by the Minister.

[1.135] Additionally, the Policing Ombudsman will replace the Garda Síochána Ombudsman Commission, and its functions will include addressing complaints of Garda misconduct, including any alleged misconduct related to Garda custody.

[1.136] In light of the Garda Síochána Inspectorate's recommendations, the ongoing work in relation to the Inspection of Places of Detention Bill, the functions of existing and soon-to-be-established bodies, and the distinct nature of and particular security concerns arising in relation to prisons and Garda custody, the Commission is of the view that primary responsibility for adult safeguarding in such settings should remain the responsibility of the relevant bodies in these areas.²⁴⁴ Safeguarding concerns arising in prisons or Garda custody are therefore

²⁴¹ Garda Síochána Inspectorate, *Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (July 2021) Recommendation 18, at page XXV.

²⁴² The legal name for the Policing and Community Safety Authority is An tÚdarás Póilíneachta agus Sábháilteachta Pobail.

²⁴³ Section 122 of the Policing, Security and Community Safety Act 2024.

²⁴⁴ This is similar to the approach in several other jurisdictions. For example, in England, section 76(8) of the Care Act 2014 provides that a Safeguarding Adult Board's objective under

excluded from the scope of this Report. However, the Report considers the role that the Garda Síochána play in adult safeguarding outside of Garda custody including through community policing and other Garda services.

(iii) Conclusions on the need for a cross-sectoral framework

[1.137] In the HSE’s National Service Plan, it states that the HSE believes that safeguarding operations should benefit all.²⁴⁵ It acknowledges that the current HSE National Policy and Procedures does not go far enough in that it only gives the HSE National Safeguarding Office and its SPTs operational remit for older person’s services and for services for people with disabilities, as well as taking community referrals.²⁴⁶ The Commission supports the view that safeguarding operations should benefit adults who are, or may be, at-risk adults across multiple sectors and settings regardless of whether they are in receipt of services or regardless of the type of services that they are receiving. Throughout this Report, the Commission therefore considers a range of sectors and settings in which safeguarding concerns may arise. Many of its recommendations are directed at state agencies and service providers across various sectors and Government departmental remits including health and social care; justice; disability and equality; finance; social protection; and housing.

(b) The boundary between law and policy

[1.138] The Commission’s statutory function is to keep the law under review and to undertake examinations and conduct research with a view to reforming the law and formulating proposals for law reform.²⁴⁷ The Commission’s role is limited to making recommendations concerning the development of the law. It is not a branch of Government, or a Government Department, and it cannot make “policy” decisions or recommendations.

[1.139] The boundary between law and policy is a question that all Law Commissions or law reform bodies have to grapple with – particularly when embarking on projects that are not strictly legal and are multi-disciplinary in nature.²⁴⁸ It is not

section 43(2) of the Act does not include helping and protecting adults who are detained in prison. Section 76(9) of the Act provides that provisions for safeguarding adult reviews in section 44 of the Act do not apply to any cases involving an adult in so far as the case relates to any period during which the adult was detained in prison.

²⁴⁵ Health Service Executive, *Our National Service Plan 2024* (HSE 2024) at page 75.

²⁴⁶ Health Service Executive, *Our National Service Plan 2024* (HSE 2024) at pages 74 to 75 <https://www.hse.ie/eng/services/publications/serviceplans/hse-national-service-plan-2024.pdf> accessed 5 April 2024

²⁴⁷ Section 4(1) of the Law Reform Commission Act 1975.

²⁴⁸ For example, the Law Commission of England and Wales has noted that “[p]olitical policy [...] is a matter for Government”, but “drawing a clear distinction between law reform, on the one hand, and political policy on the other is not always easy”, given the linkages and

possible to give due consideration to adult safeguarding in Ireland without engaging in some discussion about policy, particularly as there is limited legislation on the subject in this jurisdiction and the Commission is proposing an entirely new statutory framework for adult safeguarding. Where a matter raises complex and competing policy considerations that require consideration by Government, which the Commission believes is outside its remit, the Commission explains its rationale for not making a firm recommendation. It may outline a number of ways in which a matter could be addressed and in particular, where consultees have expressed views, the Commission sets out these views so that they can be given further consideration by Government and policymakers in the future.

possible overlap between the two: Law Commission of England and Wales, *Adult Social Care* (Law Com No 326) (Law Commission of England and Wales 2011) at page 4.

CHAPTER 2

DEFINING KEY STATUTORY TERMS FOR ADULT SAFEGUARDING LEGISLATION

Table of Contents

1.	Introduction	125
2.	Adults at risk of harm	126
	(a) The gradual and widespread movement from “vulnerable” to “at risk”	127
	(b) Conclusion	130
3.	Defining an “adult at risk of harm” in adult safeguarding legislation.....	131
	(a) A functional approach to define an “adult at risk of harm”	132
	(i) <i>Examples of relevant definitions</i>	132
	(ii) <i>Arguments in favour of the adoption of a functional approach to define an “adult at risk of harm”</i>	133
	(iii) <i>Arguments against the adoption of a functional approach to define an “adult at risk of harm”</i>	134
	(b) An approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances.....	134
	(i) <i>Examples of relevant definitions</i>	134
	(ii) <i>Arguments in favour of the adoption of an approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances</i>	136
	(iii) <i>Arguments against the adoption of an approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances</i>	137
	(c) A hybrid approach to define an “adult at risk of harm”	137
	(i) <i>Examples of relevant definitions</i>	138
	(d) Conclusion	139
4.	Safeguarding.....	140
	(a) Definitions of “safeguarding” in Ireland.....	140
	(b) Definitions of “safeguarding” in Northern Ireland, England and Scotland.....	141
	(c) Adult safeguarding and the promotion of welfare.....	142
	(d) Adult safeguarding and the promotion or protection of human rights	143
	(e) The adoption of a service-based approach to define “adult safeguarding”	143

(f)	Conclusion.....	144
5.	Safeguarding plan.....	145
(a)	Definitions of “safeguarding plan” in Ireland	145
(b)	Definitions of “safeguarding plan” in England, British Columbia, Newfoundland and Labrador	146
(c)	Conclusion.....	147
6.	Capacity	148
(a)	Decision-making capacity	148
(b)	Capacity and safeguarding	150
(c)	Conclusion.....	151
7.	Harm	151
(a)	Definitions of “harm” and “reportable harm” for civil aspects of adult safeguarding legislation.....	151
(i)	<i>Definitions of “harm” in Irish vetting and child safeguarding legislation.....</i>	<i>152</i>
(ii)	<i>Definitions of “harm” in Irish national standards and proposed policy for the health and social care sector</i>	<i>153</i>
(iii)	<i>Definitions of “harm” in Scotland and Queensland.....</i>	<i>153</i>
(iv)	<i>Proposed definition of “harm” for civil aspects of the statutory and regulatory framework on adult safeguarding in Ireland.....</i>	<i>155</i>
(v)	<i>Proposed definition of “reportable harm” for civil aspects of the statutory and regulatory framework on adult safeguarding in Ireland</i>	<i>156</i>
(b)	Definitions of “harm” and “serious harm” for criminal aspects of adult safeguarding legislation.....	158
(i)	<i>Definition of “harm” in existing criminal legislation in Ireland... 158</i>	
(ii)	<i>Proposed definition of “harm” for criminal aspects of the statutory and regulatory framework on adult safeguarding in Ireland.....</i>	<i>158</i>
(iii)	<i>Proposed definition of “serious harm” for criminal aspects of the statutory and regulatory framework on adult safeguarding in Ireland</i>	<i>159</i>
8.	Neglect and self-neglect	161
(a)	Definitions of “neglect” in Ireland.....	161
(b)	Definitions of “neglect” in England, Wales, British Columbia and Singapore.....	162
(c)	Proposed definition of “neglect” in adult safeguarding legislation	163
(d)	Definitions of “self-neglect” in Ireland, Singapore and Washington ..	164
(e)	Proposed definition of “self-neglect” in adult safeguarding legislation C.....	166
(f)	Provision of statutory guidance on “self-neglect”	168
9.	Conclusion.....	169

1. Introduction

- [2.1] The purpose of this Chapter is to explain the key terms in the Commission’s proposed statutory and regulatory framework on adult safeguarding in Ireland. It is essential that those who will be referring to adult safeguarding legislation in their work or daily lives, and those who will be directly affected by the legislation, know the key terms, understand what they mean and how they should be applied.
- [2.2] Many of the terms used have an ordinary and familiar meaning. However, there is still variation in their usage in the particular context of adult safeguarding. There is neither a universal approach to the societal challenge of adult safeguarding nor is there a uniform lexicon for describing adult safeguarding and legislating for it. This is because different bodies, such as the Health Information and Quality Authority (“HIQA”) and the Health Service Executive (“HSE”), have different roles and purposes, and use different definitions. In part, the lack of uniformity in adult safeguarding language stems from the differing pace of evolution of adult safeguarding in various jurisdictions. For example, “elder” abuse laws are long-established in North American jurisdictions but, conversely, there has been a move away from the use of a personal characteristic, such as age, as a signifier of inherent vulnerability in Ireland,¹ England² and Northern Ireland.³
- [2.3] Precision when drafting key terms to be contained in adult safeguarding legislation is essential because, unlike guidelines or policies which are of broad application for standard setting in service delivery, what is proposed in this Report is a detailed and comprehensive statutory and regulatory framework. The proposed adult safeguarding legislation necessarily involves some degree of interference with certain rights of adults in order to empower, support and vindicate certain other rights of adults, for example their right to autonomy and dignity.
- [2.4] The language used in adult safeguarding legislation must be sensitive to those whose rights it seeks to protect. The language must be clear and accessible to the public and to those to whom it directly applies. The legislation must provide

¹ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (2019) at page 15 <<https://www.hiqa.ie/sites/default/files/2019-12/National-Standards-for-Adult-Safeguarding.pdf>> accessed on 6 April 2024. See the definition of an “adult at risk”.

² Section 42 of the Care Act 2014 (England). See the criteria for determining whether an adult is “at risk”.

³ Department of Health (Northern Ireland), *Adult Protection Bill – Draft Final Policy Proposals for Ministerial Consideration* (July 2021) at page 1 <<https://www.health-ni.gov.uk/sites/default/files/consultations/health/adult%20protection%20bill-final%20policy%20proposals.pdf>> accessed on 6 April 2024. See the proposed statutory definition of an “adult at risk and in need of protection”.

clarity on the meaning of terms such as “harm”, “adult at risk of harm” and “safeguarding” in order to define roles and responsibilities in the adult safeguarding context.⁴ The legislation must also be workable for professionals and others who will invoke its provisions to safeguard the health, safety or welfare of adults at risk of harm in Ireland.

- [2.5] Consistency with other definitions in existing Irish policy and legislation is desirable to ensure clarity and consistency. However, it must be acknowledged that consistency is not always possible because societal and linguistic evolution in jurisdictions such as Ireland, England and Northern Ireland has resulted in a gradual move away from policy and legislation that uses the word “vulnerable”. Furthermore, it is important to note that the Commission’s proposed statutory and regulatory framework will perform multiple functions. For example, the term “harm” in a legislative provision criminalising abuse and neglect differs from the definition of “harm” in civil legislative provisions that lead to interventions or which trigger reporting obligations. Unfortunately, such complexity is unavoidable, and is addressed where it arises in this Report. This Chapter provides an overview of the key terms that the Commission believes should be used in a statutory and regulatory framework on adult safeguarding in Ireland.

2. Adults at risk of harm

- [2.6] At the outset, it is important to consider to whom is it proposed that the statutory and regulatory framework should apply. Without the requisite degree of precision, there is a risk that the scope of the legislation may be under-inclusive or over-inclusive. Failing to get the balance right risks paternalistic legislative overreach and the expenditure of finite resources.
- [2.7] As discussed in Chapter 1, adult safeguarding legislation is required to act as a gateway to the supports provided under the Assisted Decision-Making (Capacity) Act 2015 (“2015 Act”) and the Mental Health Act 2001, and to safeguard those who fall outside the provisions of those Acts, but who need support to protect themselves from harm at a particular time. The definition of an “adult at risk of harm” must therefore include those who have decision-making capacity, as defined in section 2(1) of the 2015 Act, but who may nevertheless need support to protect themselves from harm at a particular time.
- [2.8] In defining the term “adult at risk of harm”, upon which many of the legislative interventions are hinged, the Commission has focused on the adults in greatest

⁴ Commission for Social Care Inspection, *Raising Voices: Views on Safeguarding Adults* (2008) at page 7. The Commission for Social Care Inspection noted that the lack of such definitions contributes to a lack of clarity about roles and responsibilities. The Commission for Social Care Inspection was a non-departmental public body and the single, independent inspectorate for social care in England.

need of safeguarding in Ireland, without stigmatising, infantilising or ‘othering’ adults. The core objective of this law reform project is empowerment, and the key terms that the Commission proposes should be used in adult safeguarding legislation align with this core objective.

(a) The gradual and widespread movement from “vulnerable” to “at risk”

- [2.9] The terms “vulnerable person” and “adult at risk” are used in existing Irish legislation and policy. However, there has been a gradual and widespread move away from the use of “vulnerable” to describe adults in need of safeguarding in Ireland, England, Northern Ireland and other jurisdictions.
- [2.10] This linguistic shift is evidenced in the HSE’s policies and procedures. In 2014, the HSE’s Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures (“the HSE’s National Policy and Procedures”) originally referred to persons affected by its safeguarding policy as “vulnerable persons”.⁵ The HSE’s National Policy and Procedures provides guidelines for HSE and HSE-funded staff to follow in cases of suspected abuse or neglect of adults.⁶ Subsequently, the term “adults at risk of abuse” was proposed in a 2019 final draft revision of the HSE’s National Policy and Procedures (“2019 Final Draft Revision of the HSE’s National Policy and Procedures”).⁷ The 2019 Final Draft Revision of the HSE’s National Policy and Procedures stated that the change in terminology from “vulnerable persons” to “adults at risk of abuse” reflected a desire to avoid assumptions regarding inherent vulnerability and a desire to avoid stigmatising, infantilising or ‘othering’ particular groups of adults.⁸
- [2.11] The Commission is of the view that the move away from the use of “vulnerable” to describe adults in need of safeguarding is appropriate. The term “vulnerable” has been widely interpreted as incorrectly implying that it is a person’s

⁵ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (2014) <<https://assets.hse.ie/media/documents/ncr/personsatriskofabuse.pdf>> accessed on 6 April 2024.

⁶ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 6 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf#page=null>> accessed on 6 April 2024.

⁷ HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (2019) at page 8. This draft revised policy has yet to be approved for adoption by the HSE.

⁸ HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (2019) at page 8.

characteristics, or a weakness on their part, which results in them being abused or harmed.⁹

- [2.12] HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding, which were published in 2019, adopted the term “adult at risk”.¹⁰ In 2019, the Department of Health published a discussion paper on draft definitions for a national policy on safeguarding for the health sector (“2019 Discussion Paper”).¹¹ The Department proposed to use the term “adult at risk” to refer to those who will be affected by the policy.¹²
- [2.13] In January 2024, the Government of Ireland published Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (“Policy Proposals”).¹³ The Policy Proposals were prepared by the Department of Health. The Policy Proposals aim to provide a framework for enhancing and strengthening adult safeguarding in the health and social care sector in Ireland and to ensure that a culture of safeguarding is fostered ‘on the ground’ within every service.¹⁴ The Department of Health has opened a public consultation on the Policy Proposals and welcomes the views of all who use health and social care services, their families and friends, service providers, stakeholders and the public on how the health and social care system in Ireland should fulfil its adult safeguarding responsibilities.¹⁵ A report on the findings of the public consultation on the Policy Proposals will be prepared by the Institute of Public Health and will be published

⁹ Department of Health, Social Services and Public Safety (Northern Ireland) and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 5 <<https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/adult-safeguarding-policy.pdf>> accessed on 6 April 2024.

¹⁰ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (2019) at page 15.

¹¹ Department of Health, *Discussion Paper: Primary Definitions – National Policy on Safeguarding for the Health Sector* (2019) <<https://assets.gov.ie/10874/8ecfaf01af4b4d5b94d433351129f4ba.pdf>> accessed on 6 April 2024.

¹² Department of Health, *Discussion Paper: Primary Definitions – National Policy on Safeguarding for the Health Sector* (2019) at page 8.

¹³ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024).

¹⁴ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 2.

¹⁵ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 2.

in the future.¹⁶ After the report is published, detailed policy proposals and related implementation options will be submitted to the Government for decision¹⁷ and subject to Government approval, any legislation required to underpin the approved policy will then be prepared.¹⁸

[2.14] The term “adult at risk” or “at risk adult” is used in the Policy Proposals, which is defined as:

an adult (person aged 18 or over) who needs help to protect themselves or their interests at a particular time, whether due to personal characteristics or circumstances, and is at risk of being harmed by another party.¹⁹

[2.15] “Vulnerable adult” was the term used in England before the Care Act 2014 was introduced.²⁰ In Northern Ireland, safeguarding policy has moved away from the term “vulnerable” and now uses the term adult “at risk of harm” because the latter term places responsibility on the person who causes harm to an adult, or who puts an adult at risk of harm.²¹

[2.16] The term “vulnerable person” is used in existing legislation in Ireland, including in the titles of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 and the National Vetting Bureau (Children and Vulnerable Persons) Act 2012. The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 serves a particular purpose in the Irish criminal law context.²² Notwithstanding

¹⁶ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 2.

¹⁷ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 2.

¹⁸ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 2.

¹⁹ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 3.

²⁰ Norrie, Manthorpe, Martineau and Stevens, “The Potential Uses and Abuses of a Power of Entry for Social Workers in England: A Re-analysis of Responses to a Government Consultation” (2016) 18(5) *The Journal of Adult Protection* 256 at page 256.

²¹ Department of Health (Northern Ireland), *Social Services and Public Safety and Department of Justice (Northern Ireland), Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 5.

²² The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 provides, 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 such adults, in certain circumstances.

the foregoing, the Commission is satisfied that, while consistency in the usage of terms is desirable in Irish legislation, it would be inappropriate to use the term "vulnerable" in future adult safeguarding legislation.

- [2.17] In England and Wales, the Crown Prosecution Service advises in its Prosecution Guidance that prosecutors should, where possible, avoid using the term "vulnerable" and should avoid using such term in a way which may suggest that people with disabilities are inherently weak or dependent.²³ However, the Crown Prosecution Service acknowledges that due to the wording of certain provisions in English and Welsh legislation and sentencing guidelines, the use of the term "vulnerable" is sometimes unavoidable.²⁴ The use of the term "vulnerable" or "relevant person"²⁵ to describe adults at risk of harm in criminal legislation and in the criminal process is further discussed in Chapter 19.
- [2.18] The Commission is of the view that the term used to describe adults who will be affected by adult safeguarding legislation should be consistent with existing adult safeguarding policies in Ireland. Furthermore, the term adopted should avoid assumptions regarding inherent vulnerability and should avoid stigmatising, infantilising or 'othering' particular groups of adults. The vast majority of responses to the Commission's Issues Paper were in favour of a move away from the use of the term "vulnerable adult". Indeed, a recent example of Government adoption of the move from "vulnerable" to "at-risk" can be seen in the Policy Proposals wherein "vulnerable adult" is defined as a "term formerly used for adult at-risk/at-risk adult".²⁶

(b) Conclusion

- [2.19] Although inconsistent with previous legislative convention which has used the term "vulnerable adult", the Commission recommends that the term "adult at risk of harm" should be used in adult safeguarding legislation. The term "adult at risk of harm" is preferable to anachronistic and incorrect conceptions of people being

²³ Crown Prosecution Service, *Guidance on Special Measures* (29 August 2023) <<https://www.cps.gov.uk/legal-guidance/special-measures>> accessed on 6 April 2024.

²⁴ Crown Prosecution Service, *Guidance on Special Measures* (29 August 2023).

²⁵ The Commission defines "relevant person" in the Criminal Law (Adult Safeguarding) Bill 2024 as: "a person, other than a child, whose ability to guard himself or herself against violence, exploitation or abuse, whether physical, sexual or emotional, or against neglect by another person is significantly impaired through one, or more, of the following: (a) a physical disability, a physical frailty, an illness or an injury; (b) a disorder of the mind, whether as a result of mental illness or dementia; (c) an intellectual disability; (d) autism spectrum disorder".

²⁶ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 34.

'vulnerable' and is reflective of the fluctuating nature of an adult's risk of harm. By placing emphasis on pre-defined categories of 'vulnerability', there is a risk that the views of policy makers, practitioners and professionals may be blinded or coloured to the potential for harm to occur to certain adults who, whilst not conforming to such pre-defined categories of 'vulnerability', may nevertheless need support to protect themselves from harm at a particular time.

- [2.20] It is of fundamental importance that adult safeguarding legislation adopts the most appropriate term to describe adults to whom a statutory and regulatory framework on adult safeguarding should apply. The Commission is strongly of the view that the term adopted should avoid assumptions regarding inherent vulnerability and should avoid stigmatising, infantilising or 'othering' particular groups of adults. The term used should reflect the views of the majority of consultees who responded to the Issues Paper and should accord with existing adult safeguarding policies in Ireland. For the reasons outlined above, the Commission believes that the term "adult at risk of harm" should be used in adult safeguarding legislation.

R. 2.1 **The Commission recommends that** the term "adult at risk of harm" should be used in adult safeguarding legislation.

3. Defining an "adult at risk of harm" in adult safeguarding legislation

- [2.21] The various definitions of "vulnerable person", "vulnerable adult", "adult at risk" and "at risk adult" used in policy and legislation can, depending on the approach taken to define these terms, be generally divided into the following categories:
1. a functional approach, which determines whether an adult is at risk of harm based on whether they may need support to protect themselves from harm at a particular time;
 2. an approach based on specified personal characteristics or circumstances, which determines whether a person is at risk of harm based on specified personal characteristics or circumstances, for example age, disability, medical illness or personal circumstances; and
 3. a hybrid approach, which combines a functional approach and an approach based on specified personal characteristics or circumstances.

(a) A functional approach to define an “adult at risk of harm”

(i) Examples of relevant definitions

[2.22] HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding adopt a functional approach. “Adult at risk” is defined as:

a person who is aged 18 years or older who needs help to protect themselves from harm at a particular time. A distinction should be made between an adult who is unable to safeguard him or herself, and one who is deemed to have the skills, means or opportunity to keep him or herself safe, but chooses not to do so.²⁷

[2.23] The HSE’s Social Care Division, for the purposes of the HSE’s National Policy and Procedures, defines a “vulnerable person” as “an adult who may be restricted in capacity to guard himself/herself against harm or exploitation or to report such harm or exploitation”.²⁸ The Commission is of the view that in order for this definition of “vulnerable person” to be a truly functional definition, it requires amendment to recognise that capacity can fluctuate over time and a person’s capacity should be assessed at a particular point in time.

[2.24] The Adult Safeguarding Bill 2017 proposed to adopt the term “adult at risk”. Section 6 of the Bill proposed to define an “adult at risk” as “a person, who has attained the age of 18 years who is unable to take care of himself or herself, or is unable to protect him or herself from abuse or harm”. Similar to the definition of a “vulnerable person” in the HSE’s National Policy and Procedures, a temporal reference should be included in this definition of an “adult at risk” to recognise that capacity can fluctuate over time and a person’s capacity should be assessed at a particular point in time. Additionally, consultees who responded to the Issues Paper suggested that the term “unable to take care of himself or herself” may be problematic because the term “take care” is not defined in the Bill. The Commission is of the view that the term “unable to protect himself or herself” is more appropriate than “unable to take care of himself or herself”.

[2.25] In England an adult “at risk”, to whom a local authority owes a duty to make enquiries, is defined in the Care Act 2014 as a person who:

- (a) has needs for care and support (whether or not the [local] authority is meeting any of those needs);

²⁷ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (2019) at page 15.

²⁸ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (2014) at pages 3 to 5.

(b) is experiencing, or is at risk of, abuse or neglect; and

(c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.²⁹

[2.26] To satisfy the criteria in this definition, a person must have “needs for care and support”. However, the requirement for a person to have needs for care and support is under-inclusive because it is possible that a person who is capable of living independently, without the need for care and support, may still be at risk of abuse or harm at a particular time. For this definition of adult “at risk” to be a truly functional definition, it requires amendment to recognise that a person’s capacity and needs for care and support can fluctuate over time and a person’s capacity and needs for care and support should be assessed at a particular point in time.

(ii) Arguments in favour of the adoption of a functional approach to define an “adult at risk of harm”

[2.27] There are arguments to support the adoption of a functional approach to define an “adult at risk of harm” in adult safeguarding legislation. The first argument is that such an approach is broad and inclusive and ensures that any adult who is at risk of harm at a particular time comes within this definition of an “adult at risk of harm”. No specific medical illness, personal characteristics or family or life circumstances are required in order to come within this definition of an “adult at risk of harm”. A functional definition of an “adult at risk of harm” therefore facilitates the application of adult safeguarding legislation to a wide range of people, without reference to their personal characteristics or circumstances.

[2.28] The second argument in favour of the adoption of a functional approach to define an “adult at risk of harm” in adult safeguarding legislation is that such an approach does not stigmatise or ‘other’ certain groups of adults through the creation of incorrect assumptions that such adults are ‘at risk of harm’ merely because of their medical illness, disability, age or other personal characteristics or family or life circumstances. Several responses to the Issues Paper stated that applicable categories of adults should not be prescribed for the purposes of the definition of an “adult at risk of harm” in adult safeguarding legislation because every person can potentially find themselves at risk of harm at a particular time. One consultee stated that the definition of an “adult at risk of harm” should be functional and should not classify people according to specific personal characteristics, such as whether they have an intellectual disability.

²⁹ Section 42 of the Care Act 2014 (England).

(iii) Arguments against the adoption of a functional approach to define an “adult at risk of harm”

- [2.29] An argument against the adoption of a functional approach to define an “adult at risk of harm” in adult safeguarding legislation is that such an approach may give rise to a lack of certainty for those who seek to understand and apply adult safeguarding legislation. The Commission notes that consultees were divided on this issue. While many consultees supported the adoption of a functional approach to the definition of an “adult at risk of harm”, a majority of consultees stated that the absence of any defined categories, characteristics or circumstances of applicable persons may result in a lack of certainty as to whom the definition “adult at risk of harm” applies. Furthermore, consultees stated that if there were no defined categories, characteristics or circumstances of applicable persons, a considerable amount of time and resources may be expended on consideration of, and debate on, the appropriateness of a safeguarding intervention in respect of a particular adult at a particular time. Consultees also stated that a lack of certainty regarding to whom adult safeguarding legislation applies may result in a lack of clarity for professionals and practitioners and may affect the allocation of adult safeguarding resources.
- [2.30] A further argument against the adoption of a functional approach to define an “adult at risk of harm” is that there is a risk that such an approach may result in the formulation of a definition that is too broad. An absence of any defined categories, characteristics or circumstances of applicable persons may result in the adoption of an over-inclusive approach to the definition of an “adult at risk of harm”. This could lead to the making of interventions at particular times, and in respect of particular adults, which ought not to be made, and this could affect the rights of adults.

(b) An approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances*(i) Examples of relevant definitions*

- [2.31] An example of an approach based on specified personal characteristics or circumstances to define a particular term can be found in section 1(1) of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012, which defines a “vulnerable person” as:

a person (including, insofar as the offences specified at paragraph 8 of Schedule 2 [of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012] 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.

[2.32] The definition of “vulnerable person” in the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 also determines whether a person is at risk of harm based on specified personal characteristics or circumstances. Section 2 of the Act defines a “vulnerable person” as:

a person, other than a child who—

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

(b) has an intellectual disability,

(c) is suffering from a physical impairment, whether as a result of injury, illness or age, or

(d) has a physical disability,

which is of such a nature or degree—

(i) as to restrict the capacity of the person to guard himself or herself against harm by another person, or

(ii) that results in the person requiring assistance with the activities of daily living including dressing, eating, walking, washing and bathing.

[2.33] Section 3(1) of the Adult Support and Protection (Scotland) Act 2007 provides the following criteria that must be met for an adult to be defined as an “adult at risk”:

“Adults at risk” are adults who—

(a) are unable to safeguard their own well-being, property, rights or other interests,

(b) are at risk of harm, and

(c) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

[2.34] In South Australia, a “vulnerable adult” for the purposes of adult safeguarding legislation means “an adult person who, by reason of age, ill health, disability, social isolation, dependence on others or disadvantage, is vulnerable to abuse”.³⁰

(ii) Arguments in favour of the adoption of an approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances

[2.35] There are several arguments in favour of a definition of an “adult at risk of harm” that is based on specified personal characteristics or circumstances. The inclusion of references to personal characteristics or circumstances, such as age, disability, mental disorder, illness or physical or mental infirmity, may mitigate the risk of the adoption of an over-inclusive approach to the definition of an “adult at risk of harm”, which could result in interventions at particular times, and in respect of particular adults, which ought not to be made, and this could affect the rights of adults. Furthermore, the inclusion of specified personal characteristics or circumstances provides certainty for those who seek to determine whether a person comes within the definition of an “adult at risk of harm”.

[2.36] Many consultees who responded to the Issues Paper stated that the delineation of certain categories of adults, or the specification of certain characteristics or circumstances of adults, could assist in the provision of a shared understanding for bodies and persons whose functions or roles relate to safeguarding the safety, health or welfare of adults at risk of harm. One consultee stated that the adoption of an approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances would help to ensure that safeguarding efforts and resources are directed towards those who are in need of safeguarding services and supports at particular times. Moreover, it was stated that if such an approach was not adopted to define an “adult at risk of harm”, a considerable amount of time and resources may be expended on consideration of, and debate on, the appropriateness of a safeguarding intervention in respect of a particular adult at a particular time.

³⁰ Section 3 of the Ageing and Adult Safeguarding Act 1995 (South Australia).

- [2.37] All the social workers who, and social work services that, responded to the Issues Paper stated that a framework on adult safeguarding should clearly define the categories of adults who come within its scope. Similarly, a group that represents people with intellectual disabilities stated that a framework on adult safeguarding should define the categories of adults who come within its scope because people with disabilities need to understand adult safeguarding legislation and whether such laws apply to them.

(iii) Arguments against the adoption of an approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances

- [2.38] There are a number of arguments against the adoption of an approach to define an “adult at risk of harm” that is based on specified personal characteristics or circumstances. The first argument is that certain laws limit their definitions of the adults to whom such laws apply to those affected by disability, mental disorder, illness or physical or mental infirmity. This approach excludes certain people who are at risk of harm. For example, older people who do not have physical or mental infirmity and people with addiction or substance abuse issues but who do not have a diagnosis that fits within the definition of an “adult at risk” in the Adult Support and Protection (Scotland) Act 2007 are excluded from the definition of an “adult at risk” and are excluded from availing of supports and protections under the Act. The Commission acknowledges that the strength of this argument may vary depending on whether, or the degree to which, a particular law provides for the ability to amend its list of specified personal characteristics and circumstances which form part of its particular definition of the adults to whom such law applies.
- [2.39] A second argument is that definitions which identify certain adults by reference to specified personal characteristics or circumstances, such as disability, mental disorder, illness or physical or mental infirmity, may stigmatise certain adults through the creation of incorrect assumptions that such adults are ‘at risk of harm’ merely because they possess a specific personal characteristic or experience a specific life or family circumstance at a particular time. Moreover, such definitions may belie reality because, whilst it may be the case that an adult possesses a specific personal characteristic or experiences a specific life or family circumstance at a particular time, such adult may in fact not be ‘at risk of harm’ at that particular time.

(c) A hybrid approach to define an “adult at risk of harm”

- [2.40] The hybrid approach recognises that it is important to focus primarily on the harm being inflicted, or likely to be inflicted, on an individual, but also recognises that a person’s personal characteristics or circumstances may increase the likelihood that they may need support to protect themselves from harm at a particular time or may be targeted by an abuser. A hybrid definition is therefore

one that combines a functional approach with a reference to personal characteristics or circumstances. This approach to define an “adult at risk of harm” focuses on the harm perpetrated or likely to be perpetrated against an adult and recognises that the presence of particular personal characteristics or circumstances at a particular time may mean that the adult needs care and support to protect themselves from harm at that particular time.

(i) Examples of relevant definitions

[2.41] In its 2019 Discussion Paper, the Department of Health defined an “adult at risk” as:

a person who is aged 18 or over who needs help to protect themselves or their interests at a particular point in time, whether due to personal characteristics or circumstances, and is at risk of experiencing harm[/abuse] by another party. A distinction is made between an adult unable to safeguard themselves or their own interest at a particular point in time, and one who is deemed to have the skills, means, capacity and/or opportunity to safeguard themselves in a similar situation, but choose not to.³¹

[2.42] In its 2019 Final Draft Revision of the HSE’s National Policy and Procedures, the HSE proposed to define an “adult at risk of abuse” as:

a person over 18 years of age who is:

- (a) at risk of experiencing abuse, neglect, or exploitation by a third party; and
- (b) lacks mental or physical capacity to protect themselves from harm at this time in their lives.

[2.43] In contrast to its 2019 Final Draft Revision of the HSE’s National Policy and Procedures, the Policy Proposals do not use the term “adult at risk of abuse” but instead use the term “adult at risk” or “at risk adult”, which is defined as:

an adult (person aged 18 or over) who needs help to protect themselves or their interests at a particular time, whether due to

³¹ Department of Health, *Discussion Paper: Primary Definitions – National Policy on Safeguarding for the Health Sector* (2019) at page 8.

personal characteristics or circumstances, and is at risk of being harmed by another party.³²

(d) Conclusion

[2.44] Ensuring that there is certainty with respect to the definition of an “adult at risk of harm” in adult safeguarding legislation is of the utmost importance. Uncertainty may lead to difficulties in determining whether an adult is at risk of harm, which may result in underreporting or overreporting of suspected abuse or neglect. This could lead to a lack of interventions in certain cases or could lead to interventions at particular times, and in respect of particular adults, which ought not to be made, and this could affect the rights of adults. The Commission is of the view that the adoption of a hybrid approach to define an “adult at risk of harm” strikes an appropriate balance between the functional approach and an approach based on specified personal characteristics or circumstances. The hybrid approach recognises that it is important to focus on the harm being inflicted, or likely to be inflicted, on a person and that person’s personal characteristics or circumstances, which may increase the likelihood that they may need support to protect themselves from harm at a particular time, or may increase the likelihood that they may be targeted by an abuser. Accordingly, the Commission recommends that a hybrid approach should be adopted to define an “adult at risk of harm” in adult safeguarding legislation.

R. 2.2 **The Commission recommends that** “adult at risk of harm” should be defined in adult safeguarding legislation as:

“Adult at risk of harm” means an adult who by reason of their physical or mental condition or other particular personal characteristics or family or life circumstance (whether permanent or otherwise) needs support to protect himself or herself from harm at a particular time.

[2.45] The above definition draws on the functional approach to the definition of an “adult at risk” that was adopted in HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding and which contains the words “who needs help”. The Commission has changed the word “help” to “support” in its proposed definition of an “adult at risk of harm” to ensure that the definition aligns with the 2015 Act and the United Nations Convention on the Rights of Persons with Disabilities.

[2.46] The words “physical or mental condition or other particular personal characteristic or family or life circumstance (whether permanent or otherwise)” in

³² Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 3.

the proposed definition of an “adult at risk of harm” do not particularise physical or mental conditions or personal characteristics or circumstances. The omission of particulars is intended to recognise that the ability to protect oneself from harm at a particular time should be assessed functionally, and that the characteristics or circumstances of an adult should not result in their stigmatisation as an inherently vulnerable adult. The intentional broadness of these words affords a degree of flexibility to social workers and health professionals when assessing the personal characteristics and circumstances of each adult at a particular time.

- [2.47] The Commission believes that the statutory guidance to accompany adult safeguarding legislation, which is discussed and proposed in Chapter 19, should provide guidance on how the definition of an “adult at risk of harm” should be understood and applied.

4. Safeguarding

(a) Definitions of “safeguarding” in Ireland

- [2.48] HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding define “safeguarding” as:

measures that are put in place to reduce the risk of harm, promote and protect people’s human rights and their health and wellbeing, and empower people to protect themselves.³³

- [2.49] “Safeguarding” was not defined in the HSE’s National Policy and Procedures. However, in the 2019 Final Draft Revision of the HSE’s National Policy and Procedures, the HSE proposed to define “safeguarding” as “putting measures in place to promote peoples’ human rights and their health and wellbeing, and empowering them to protect themselves.”³⁴

- [2.50] The Adult Safeguarding Bill 2017 did not include a definition of “safeguarding”.

- [2.51] The Department of Health published a draft definition of “safeguarding” in its 2019 Discussion Paper, which is consistent with the definition of “safeguarding” in

³³ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (2019) at page 15.

³⁴ HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (2019) at page 12.

HIQA and the Mental Health Commission's National Standards for Adult Safeguarding.³⁵

[2.52] In the Policy Proposals, "adult safeguarding" is defined as:

putting measures in place to reduce the risk of abuse of adults at risk (formerly termed vulnerable adults); promote and protect their health, well-being and human rights; empower them to protect themselves; and allow them to live free from abuse, harm and neglect.³⁶

(b) Definitions of "safeguarding" in Northern Ireland, England and Scotland

[2.53] The adult safeguarding policy of the Department of Health, Social Services and Public Safety in Northern Ireland defines "preventative safeguarding" as:

a range of actions and measures such as practical help, care, support and interventions designed to promote the safety, well-being and rights of adults which reduce the likelihood of, or opportunities for, harm to occur.³⁷

[2.54] In addition, the policy defines "protective safeguarding" as being:

targeted at adults who are in need of protection, that is, when harm from abuse, exploitation or neglect is suspected, has occurred, or is likely to occur.³⁸

[2.55] The adult safeguarding policy of the Department of Health, Social Services and Public Safety in Northern Ireland states that this broad interpretation of "safeguarding" is used to encompass both activity that prevents the occurrence

³⁵ Department of Health, *Discussion Paper: Primary Definitions – National Policy on Safeguarding for the Health Sector* (2019) at page 12.

³⁶ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 3.

³⁷ Department of Health, Social Services and Public Safety (Northern Ireland) and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 5.

³⁸ Department of Health, Social Services and Public Safety (Northern Ireland) and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 6.

of harm and activity that protects adults in circumstances where harm has occurred or is likely to occur, unless action is taken.³⁹

[2.56] In England, guidance accompanying the Care Act 2014 explains that “safeguarding” in the Care Act 2014 means:

protecting an adult’s right to live in safety, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult’s wellbeing is promoted including, where appropriate, having regard to their views, wishes, feelings and beliefs in deciding on any action. This must recognise that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances.⁴⁰

[2.57] Although “safeguarding” is neither expressly defined in the Adult Support and Protection (Scotland) Act 2007 nor in the Social Services and Well-being (Wales) Act 2014, measures that constitute safeguarding are outlined therein. For example, the introductory text to the Adult Support and Protection (Scotland) Act 2007 states that the first aim of the legislation is “to make provision for the purposes of protecting adults from harm”. Based on this, “safeguarding” in Scotland can be taken to mean the provision of supports for the purposes of protecting adults from harm.

(c) Adult safeguarding and the promotion of welfare

[2.58] HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding, the adult safeguarding policy of the Department of Health, Social Services and Public Safety in Northern Ireland and the English guidance on the Care Act 2014 refer to the promotion of wellbeing in their definitions of “safeguarding” in relation to adults.⁴¹

³⁹ Department of Health, Social Services and Public Safety (Northern Ireland) and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 4.

⁴⁰ Department of Health and Social Care (England), *Care and Support Statutory Guidance* (28 March 2024) at para 14.7 <<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed on 6 April 2024.

⁴¹ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (2019) at page 8; Department of Health, Social Services and Public Safety (Northern Ireland) and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (2015) at page 5; Department of Health and Social Care (England), *Care and Support Statutory Guidance* (28 March 2024).

- [2.59] Consultees who responded to the Issues Paper supported the inclusion of “welfare” or “wellbeing” as an element of the definition of “safeguarding” in adult safeguarding legislation. One consultee stated that safeguarding should properly be considered as more than the protection of an adult from harm, and that the definition of “safeguarding” should contain measures to promote and protect the health and welfare or wellbeing of adults.

(d) Adult safeguarding and the promotion or protection of human rights

- [2.60] The promotion or protection of the human rights of adults at risk of harm is a common feature in several of the definitions of “safeguarding” which have been examined by the Commission, including the definition of “safeguarding” in HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding.⁴² There was considerable support among those who responded to the Issues Paper for the inclusion of the promotion or protection of human rights as an element of the definition of “safeguarding”, to acknowledge that safeguarding can be used to protect, vindicate and respect human rights, and to ensure that those who are safeguarded are treated with dignity.

(e) The adoption of a service-based approach to define “adult safeguarding”

- [2.61] In the Issues Paper, the Commission stated that “adult safeguarding” could possibly be defined as:

providing services and implementing principles and procedures to ensure, as far as is practicable, that an adult is safe from harm.⁴³

- [2.62] It should be noted that adult safeguarding may not involve the provision of services, whether on a permanent or temporary basis, but may involve a determination as to whether a risk assessment is required, or whether services or supports are required, to support an adult to protect themselves from harm at a particular time.

⁴² HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (2019) at page 15.

⁴³ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18 – 2019) at para 2.15
<<https://www.lawreform.ie/fileupload/Issues%20Papers/LRC%20IP%2018-2019%20A%20Regulatory%20Framework%20For%20Adult%20Safeguarding.pdf>> accessed on 6 April 2024.

[2.63] In England, the Care Act 2014 provides that there is a duty to make enquiries where a person meets the following criteria:

- (a) has needs for care and support (whether or not the [local] authority is meeting any of those needs);
- (b) is experiencing, or at risk of, abuse or neglect; and
- (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

[2.64] In contrast to the position in England, there is no comprehensive statutory framework for social care and no legal duty to provide services or to meet needs for care and support in Ireland. Accordingly, the Commission is of the view that the adoption of a service-based approach to define “adult safeguarding” may not be feasible at present in Ireland.

(f) Conclusion

[2.65] In accordance with the general principles considered in Chapter 3, the Commission is of the view that the definition of “safeguarding” should focus on the prevention of harm, the autonomy of adults, the reduction of risk of harm to adults, and the support or empowerment of adults in need of safeguarding to protect themselves from harm at a particular time. The Commission recommends that the definition of “safeguarding” in adult safeguarding legislation should expressly refer to:

- (a) the safety and welfare of adults in need of safeguarding;
- (b) the minimisation of the risk of harm; and
- (c) the support or empowerment of adults in need of safeguarding to protect themselves from harm at a particular time.

[2.66] As aforementioned, safeguarding does not necessarily involve the provision of services. Accordingly, the Commission is of the view that the definition of “safeguarding” in adult safeguarding legislation should not refer to the provision of services.

R. 2.3 **The Commission recommends that** “safeguarding” should be defined in adult safeguarding legislation as:

“Safeguarding” means measures that are, or may be, put in place to promote the health, safety and welfare of adults at risk of harm including to—

- (a) minimise the risk of harm to adults at risk of harm, and
- (b) support adults at risk of harm to protect themselves from harm at a particular time.

5. Safeguarding plan

(a) Definitions of “safeguarding plan” in Ireland

[2.67] The HSE’s National Policy and Procedures requires a safeguarding plan to be developed where a preliminary screening of a report determines that there are reasonable grounds for concern that an adult is at risk. A safeguarding plan outlines the planned actions that have been identified to address the needs of individuals and minimise the risk to individuals.⁴⁴ The HSE’s National Policy and Procedures states that a safeguarding plan should, depending on the individual situation, include:

- (a) positive actions to safeguard the person(s) from further abuse or neglect and to promote recovery; and
- (b) positive actions to prevent identified perpetrators from abusing or neglecting in the future.⁴⁵

[2.68] A safeguarding plan should also include consideration of the triggers or circumstances that would indicate an increase in the level of risk of abuse or neglect for an individual and how one should respond to such triggers or circumstances.⁴⁶

[2.69] In the Policy Proposals, an “individual adult safeguarding plan” is defined as “a plan that sets out the safeguarding needs of the at-risk adult concerned and the measures to be put in place to protect the person.”⁴⁷

⁴⁴ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (2014) at page 34.

⁴⁵ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (2014) at page 35.

⁴⁶ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (2014) at page 35.

⁴⁷ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 33.

(b) Definitions of “safeguarding plan” in England, British Columbia, Newfoundland and Labrador

- [2.70] In England, social care legislation provides for care and support plans, including a duty on local authorities to prepare a care and support plan where it is required to meet the care and support needs of an at-risk adult.⁴⁸ The related care and support statutory guidance provides specific guidance on focused safeguarding planning as part of the development of care and support plans. The guidance states that safeguarding planning involves joint discussion, decision taking and planning with the adult for their future safety and wellbeing.⁴⁹
- [2.71] In British Columbia, legislation provides for support and assistance plans which specify services needed by an adult, such as health care, accommodation, social, legal or financial services.⁵⁰
- [2.72] Adult protection legislation in Newfoundland and Labrador provides for safeguarding plans that are based on the provision of services (“service plans”). The Adult Protection Act 2021 in Newfoundland and Labrador provides that following an investigation, where a director of a regional health authority believes that an adult is an adult in need of protective intervention, the director must report that belief to the Provincial Director of Adults in Need of Protective Intervention and prepare a service plan for that adult based on criteria set by the minister appointed under the Executive Council Act of Newfoundland and Labrador to administer the Adult Protection Act 2021.⁵¹ The director may provide or arrange for support services consistent with the service plan. The Adult Protection Act 2021 provides that every service plan must be reviewed at least every 6 months, and the minister may make regulations prescribing the required components of a service plan.⁵²
- [2.73] Regulation 6 of the Adult Protection Regulations 2022 prescribes that a service plan shall include various descriptions, details and information relating to an adult who is, or may be, in need of protective intervention, including: (a) the adult’s demographic information; (b) a description of the adult’s needs; (c) details of the services and programs required to reduce the risk to, and to meet the care needs of, the adult; (d) a description of how the adult has been engaged in the

⁴⁸ Section 24(1) of the Care Act 2014 (England).

⁴⁹ Department of Health and Social Care (England), *Care and Support Statutory Guidance* (28 March 2024) at para 14.106.

⁵⁰ Sections 51(1)(g), 53, 54, 55 and 56(1) of the Adult Guardianship Act 1996 (British Columbia).

⁵¹ Section 23(3) of the Adult Protection Act 2021 (Newfoundland and Labrador) <<https://www.canlii.org/en/nl/laws/astat/snl-2021-c-a-4.02/latest/snl-2021-c-a-4.02.html>> accessed on 6 April 2024.

⁵² Sections 30(2) and 38(e) of the Adult Protection Act 2021 (Newfoundland and Labrador).

development of the service plan; (e) a description of how the adult's preferences and wishes have been incorporated into the service plan; (f) details of any interventions required to reduce the risk to, and meet the care needs of, the adult; (g) a description of the arrangements made, or being made, to recognise the importance of the adult's identity and cultural and community connections; and (h) a record of court dates and orders relating to the adult.⁵³

(c) Conclusion

- [2.74] As aforementioned, there is no comprehensive statutory framework for social care and no legal duty to provide services or to meet needs for care and support in Ireland. In the absence of same, a statutory definition of a “safeguarding plan” that is based on the provision of services would not be feasible at present in Ireland, notwithstanding that services may be available in a particular case and the planned actions in a particular case may include details regarding the provision of services.
- [2.75] The Commission is therefore of the view that the definition of a “safeguarding plan” in adult safeguarding legislation should be based on the identification of risks to an adult and the planned measures to address such risks. This approach to the definition of a “safeguarding plan” in adult safeguarding legislation accords with the definition of a “safeguarding plan” in the HSE’s National Policy and Procedures.⁵⁴

R. 2.4 **The Commission recommends that** “safeguarding plan” should be defined in adult safeguarding legislation as:

“Safeguarding plan” means a documentary record of the planned actions that have been identified to promote the health, safety and welfare of an adult at risk of harm, including to—

- (a) minimise the risk of harm to an adult at risk of harm, and
- (b) support an adult at risk of harm to protect himself or herself from harm at a particular time.

- [2.76] Furthermore, and having regard to the Adult Protection Act 2021 in Newfoundland and Labrador, the Commission believes that adult safeguarding legislation should permit the relevant Minister to make regulations or introduce statutory guidance to specify the requisite components of a “safeguarding plan”.

⁵³ Adult Protection Regulations 2022 (Regulation 84/22) (Newfoundland and Labrador) <<https://www.assembly.nl.ca/Legislation/sr/Regulations/rc220084.htm>> accessed on 6 April 2024.

⁵⁴ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (2014) at page 34.

6. Capacity

- [2.77] In response to the Issues Paper, a number of consultees stressed that it should be emphasised that “capacity”, insofar as it relates to adult safeguarding, may refer to decision-making capacity or other forms of capacity, including physical and health-related capacity. A consultee stated in response to the Issues Paper that it is important not to exclude adults from the definition of an “adult at risk of harm” merely because they lack a type of capacity that is not decision-making capacity. Other forms of capacity were specified by this consultee, for example physical capacity, health-related capacity, and financial capacity. It was stressed that if an adult lacks one or more of these other types of capacity, they may find themselves at risk of harm at a particular time, even though they have decision-making capacity at that particular time.
- [2.78] The Commission understands that adults who have decision-making capacity at a particular time may nevertheless be at risk of harm at a different time. This is reflected in the proposed definition of an “adult at risk of harm”. The Commission recognises that a person may be unable to protect themselves from harm at a particular time due to, for example, a physical disability, injury or health condition. When the Commission refers to “capacity” throughout this Report, the Commission means decision-making capacity as defined in section 2(1) of the 2015 Act. To avoid confusion in this Report, when reference is made to what may be considered physical capacity or health-related capacity, the Commission uses the language of ‘ability’.

(a) Decision-making capacity

- [2.79] It is essential that adult safeguarding legislation interacts seamlessly, insofar as possible, with existing legislation. In this regard, it is particularly important that adult safeguarding legislation and the 2015 Act are consistent. In particular, the definitions of “capacity” must be consistent. By way of recent example, such consistency can be found in the Policy Proposals wherein “capacity” is defined as:

decision-making capacity as defined in the [2015 Act]. In this context, capacity means a person’s ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by them in the context of the available choices at the time.⁵⁵

⁵⁵ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 32.

[2.80] "Capacity" is defined in section 2(1) of the 2015 Act as "decision-making capacity" and must be interpreted in accordance with section 3 of the 2015 Act which provides for the person's capacity to be functionally assessed.

[2.81] Section 3 of the 2015 Act provides for a person's capacity to be assessed on the basis of their ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by them in the context of the available choices at that time.⁵⁶ A person is defined as lacking the capacity to make a decision if they are unable:

- (a) to understand the information relevant to the decision;
- (b) to retain that information long enough to make a voluntary choice;
- (c) to use or weigh that information as part of the process of making the decision; or
- (d) to communicate their decision (whether by talking, writing, using sign language, assistive technology, or any other means) or, if the implementation of the decision requires the act of a third party, to communicate by any means with that third party.⁵⁷

[2.82] The 2015 Act also provides that a person is not to be regarded as unable to understand the information relevant to a decision if they are able to understand an explanation given to them in a way that is appropriate to their circumstances, whether using clear language, visual aids or any other means.⁵⁸

[2.83] The 2015 Act also provides that a person is not prevented from being regarded as having the capacity to make decisions in a number of circumstances. For example, the fact that a person:

- (a) is only able to retain the information relevant to a decision for a short period of time does not prevent them from being regarded as having the capacity to make the decision;⁵⁹

⁵⁶ Section 3(1) of the Assisted Decision-Making (Capacity) Act 2015.

⁵⁷ Section 3(2) of the Assisted Decision-Making (Capacity) Act 2015.

⁵⁸ Section 3(3) of the Assisted Decision-Making (Capacity) Act 2015.

⁵⁹ Section 3(4) of the Assisted Decision-Making (Capacity) Act 2015.

- (b) lacks capacity in respect of a decision on a particular matter at a particular time does not prevent them from being regarded as having capacity to make decisions on the same matter at another time;⁶⁰ and
- (c) lacks capacity in respect of a decision on a particular matter does not prevent them from being regarded as having capacity to make decisions on other matters.⁶¹

[2.84] The 2015 Act also provides that information relevant to a decision shall be construed as including information about the reasonably foreseeable consequences of (a) each of the available choices at the time the decision is made or (b) failing to make the decision.⁶²

[2.85] Section 8(4) of the 2015 Act states that a person shall not be presumed to lack capacity simply because they have made, or intended to make, an “unwise decision”. Consultees emphasised that this is particularly important in the context of adult safeguarding because a person should not be considered to lack decision-making capacity simply because they decided to refuse an intervention or decided to engage in risk-taking behaviour that other people thought was unwise. In recognition of this right, one of the guiding principles in the Commission’s proposed Adult Safeguarding Bill 2024 provides that an adult at risk of harm shall not be considered as unable to make a decision in respect of a matter merely by reason of making, having made, or being likely to make, an unwise decision.

(b) Capacity and safeguarding

[2.86] Consultees submitted that it is important that capacity is not conflated with safeguarding. Consultees stated that a person’s capacity at a particular time should not automatically determine whether or not they need to be safeguarded. A person with decision-making capacity at a particular time may need to be safeguarded in a particular circumstance. Likewise, a person who lacks capacity in relation to a particular matter may not require safeguarding at a particular time. Consultees stressed that the key consideration should be the risk of harm to an adult at a particular time. Consultees also emphasised the importance of applying a functional test to capacity to recognise that an adult with a physical or decision-making incapacity may be at risk of harm in some (but not all) situations,

⁶⁰ Section 3(5) of the Assisted Decision-Making (Capacity) Act 2015.

⁶¹ Section 3(6) of the Assisted Decision-Making (Capacity) Act 2015.

⁶² Section 3(7) of the Assisted Decision-Making (Capacity) Act 2015.

depending on the circumstances and context at a particular time. The application of a functional test to capacity accords with the 2015 Act.

(c) Conclusion

- [2.87] The Commission recognises that broad references to “capacity” may be interpreted as including various forms of capacity, such as decision-making capacity, physical capacity and health-related capacity. However, it is important to note that references to “capacity” and “capacitous” in this Report refer to decision-making capacity only. As aforementioned, when the Commission refers to what may be considered physical capacity or health-related capacity in this Report, the language of “ability” is used.
- [2.88] Moreover, the Commission believes that it is particularly important for the definition of “capacity” in adult safeguarding legislation to be consistent with the definition of “capacity” in the 2015 Act. As aforementioned, a recent example of such consistency can be found in the Policy Proposals wherein “capacity” is defined as “decision-making capacity as defined in the [2015 Act].”⁶³

R. 2.5 **The Commission recommends that** “capacity” should be defined in adult safeguarding legislation as:

“Capacity” has the same meaning as it has in the Assisted Decision-Making (Capacity) Act 2015.

7. Harm

- [2.89] In this Report, the Commission makes proposals for civil and criminal law reform as part of an interconnected adult safeguarding statutory and regulatory framework. The proposed civil law reforms have a preventative intervention focus. The proposed criminal law reforms have both a deterrent and a punitive purpose. In short, the civil law provisions and the criminal law provisions perform different functions, and it is therefore appropriate for there to be differences between the definitions of “harm” in the civil law provisions and the criminal law provisions.

(a) Definitions of “harm” and “reportable harm” for civil aspects of adult safeguarding legislation

- [2.90] Before setting out the definition recommended by the Commission in respect of its proposed civil law reforms on adult safeguarding, it is worthwhile examining definitions adopted in existing Irish law in relation to vetting (which has a

⁶³ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 32.

safeguarding purpose in respect of both children and “vulnerable” adults) and in relation to child safeguarding, before examining approaches to the definition of “harm” in existing Irish policy.

(i) Definitions of “harm” in Irish vetting and child safeguarding legislation

[2.91] “Harm” in relation to a person is defined in section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 as “exploitation or abuse, whether physical, sexual or emotional of the person”.

[2.92] “Harm” in relation to a child is defined in section 2 of the Children First Act 2015 as:

- (a) assault, ill-treatment or neglect of the child in a manner that seriously affects or is likely to seriously affect the child’s health, development or welfare, or
- (b) sexual abuse of the child,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

[2.93] A definition of “harm” in relation to an adult at risk was proposed in section 2 of the Adult Safeguarding Bill 2017. This definition is largely consistent with the definition of “harm” in relation to a child in section 2 of the Children First Act 2015, but with the addition of financial abuse as a distinct category of harm. “Harm” in relation to an “adult at risk” is defined in section 2 of the Adult Safeguarding Bill 2017 as:

- (a) assault, ill-treatment or neglect of the adult at risk in a manner that seriously affects or is likely to seriously affect the adult at risk’s health or welfare;
- (b) sexual abuse of the adult at risk,
- (c) financial abuse of the adult at risk;

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.⁶⁴

⁶⁴ Section 2 of the Adult Safeguarding Bill 2017. The term “adult at risk” is used in the Adult Safeguarding Bill 2017.

(ii) Definitions of “harm” in Irish national standards and proposed policy for the health and social care sector

[2.94] HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding define “harm” as:

the impact of abuse, exploitation or neglect on the person. Harm arises from any action, whether by a deliberate act or an omission, which may cause impairment of physical, intellectual, emotional or mental health and wellbeing.⁶⁵

[2.95] The 2019 Final Draft Revision of the HSE’s National Policy and Procedures proposed a definition of “harm” that is consistent with the definition set out in HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding.⁶⁶

[2.96] The Department of Health published a draft definition of “harm” in its 2019 Discussion Paper.⁶⁷ Similar to the HSE, the Department proposed to adopt the definition set out in HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding. In the Policy Proposals, “harm” is defined as “the adverse impact of abuse, including distress experienced by a person as a result of being abused”.⁶⁸ The reference in the definition of “harm” in the Policy Proposals to the “impact of abuse” aligns with the definition of “harm” in HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding, which refers to the “impact of abuse, exploitation or neglect on the person”.

(iii) Definitions of “harm” in Scotland and Queensland

[2.97] In Scotland, the Adult Support and Protection (Scotland) Act 2007 (“2007 Act”) provides that “harm” includes all harmful conduct and, in particular, includes:

- (a) conduct which causes physical harm,
- (b) conduct which causes psychological harm (for example: by causing fear, alarm or distress,)

⁶⁵ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (2019) at page 53.

⁶⁶ HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (2019) at page 11.

⁶⁷ Department of Health, *Discussion Paper: Primary Definitions – National Policy on Safeguarding for the Health Sector* (2019) at page 16.

⁶⁸ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at page 32.

- (c) unlawful conduct which appropriates or adversely affects property, rights or interests (for example: theft, fraud, embezzlement or extortion),
- (d) conduct which causes self-harm.⁶⁹

[2.98] "Physical harm", "psychological harm" and "self-harm" are not defined in the 2007 Act but the Code of Practice for the 2007 Act states that:

- (a) harm means all harm including self-harm and neglect;⁷⁰
- (b) section 53(1) of the 2007 Act sets out the main broad categories of harm that are included and this list is not exhaustive;⁷¹
- (c) in general terms, behaviours that constitute harm to a person can be physical, sexual, psychological, financial, or a combination of these;
- (d) harm can be accidental or intentional and can result from self-neglect or neglect by a carer or caused by self-harm and/or attempted suicide; and
- (e) domestic abuse, gender-based violence, forced marriage, human trafficking, stalking, hate crime and "mate crime" will, in general, also constitute harm.⁷² "Mate crime" is defined as "the befriending of vulnerable people for the purposes of taking advantage of, exploiting and/or abusing them."⁷³

[2.99] In the context of child abuse, the Queensland Family and Child Commission defines "abuse" as an action or inaction that causes injury, death, emotional harm or risk of harm, whereas "harm" is defined as the detrimental impact caused by the abuse.⁷⁴ These definitions could be applied to adult safeguarding.

⁶⁹ Section 53(1) of the Adult Support and Protection (Scotland) Act 2007.

⁷⁰ Scottish Government, *Adult Support and Protection (Scotland) Act 2007 - Code of Practice* (2014) at page 8.

⁷¹ Scottish Government, *Adult Support and Protection (Scotland) Act 2007 - Code of Practice* (2014) at page 15.

⁷² Scottish Government, *Adult Support and Protection (Scotland) Act 2007 - Code of Practice* (2014) at page 15.

⁷³ NHS Kent Community Health, *Adult Safeguarding Exploitation Factsheet v1.0* (2018) <https://www.kent.gov.uk/_data/assets/pdf_file/0006/96234/Adult-safeguarding-exploitation-factsheet.pdf> accessed on 6 April 2024.

⁷⁴ Queensland Family & Child Commission, *Information Kit on Child Protection for Professionals: About Child Abuse and Harms* (2017) at page 14.

(iv) Proposed definition of “harm” for civil aspects of the statutory and regulatory framework on adult safeguarding in Ireland

[2.100] The definition of “harm” adopted for the purposes of the civil provisions recommended in this Report would apply for the following purposes and functions:

- (a) to determine what is meant by “harm” within the definition of the term “adult at risk of harm”;
- (b) to clarify the threshold that would apply in respect of the duty on a provider of a relevant service to ensure, as far as practicable, that its services are managed and provided in such a way as to prevent harm to any adult, who is or may be an adult at risk of harm, while availing of the service;⁷⁵ and
- (c) to clarify the threshold that applies to the duty on a “mandated person”⁷⁶ who knows, believes or has reasonable grounds to suspect, on the basis of information that they have received, acquired or become aware of in the course of their employment or profession as a mandated person, that an adult at risk of harm has been harmed, is being harmed or is at risk of being harmed, to report that knowledge, belief or suspicion, as the case may be, as soon as practicable to the Safeguarding Body.⁷⁷

R. 2.6 **The Commission recommends that** “harm” should be defined in civil adult safeguarding legislation as:

“Harm” means—

- (a) assault, ill-treatment or neglect in a manner that affects, or is likely to affect, health, safety or welfare,
- (b) sexual abuse, or
- (c) loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

⁷⁵ Section 91(1) of the Adult Safeguarding Bill 2024.

⁷⁶ The classes of persons specified in Schedule 2 of the Commission’s Adult Safeguarding Bill 2024 are mandated persons for the purposes of the Bill.

⁷⁷ See Chapter 5, which discusses the Safeguarding Body and its functions, duties and powers. See also section 42 of the Adult Safeguarding Bill 2024.

[2.101] It is the Commission's view that a definition of "harm" based on the acts or omissions of a perpetrator could easily allow for the identification of people who are adults at risk of harm and could easily allow specified persons to identify whether the proposed duty to report has been triggered in specific circumstances. For example, it would be easier for a person subject to a duty to report to identify whether a person has been, is being or is likely to be assaulted or ill-treated than to accurately identify whether a person has suffered pain, injury or impairment. A person may witness or receive information about the witnessing of a harmful act or an omission, but bruises or other injuries are likely to be seen or witnessed by fewer people. Requiring the reporting of only the negative effects of acts or omissions such as pain, injuries or impairment rather than actions or omissions that could lead to such effects could result in the establishment of a threshold for a duty to report that is too high.

(v) Proposed definition of "reportable harm" for civil aspects of the statutory and regulatory framework on adult safeguarding in Ireland

[2.102] The Commission believes that the threshold of harm for the purposes of the mandated reporting proposals in Chapter 9 should be higher than the threshold contained in the definition of "harm". This would ensure that only harm meeting a certain higher threshold would be required to be reported. This would result in reporting being mandated in serious cases only and would ensure that the reporting threshold is not so low as to require all knowledge, beliefs or suspicions of harm, however minor, to be reported. As discussed further in Chapter 8, a low reporting threshold could result in overreporting, which could have significant negative impacts on resourcing.

[2.103] The Commission believes that the threshold of harm required to be reported should be termed "reportable harm". Similar to the definition of "harm", the definition of "reportable harm" should be defined by reference to relevant acts or omissions.

[2.104] The Commission is of the view that as well as containing a higher threshold than the definition of "harm", the definition of "reportable harm" should differ from the definition of "harm" by not expressly including 'self-neglect'. Omitting 'self-neglect' from the definition of "reportable harm" would prevent self-neglect from being subject to the proposed mandatory reporting duty in all circumstances. Instead, and as outlined below, the Commission recommends that a clause should be inserted in the civil legislative provisions on reporting to address the specific circumstances wherein self-neglect is required to be reported.

[2.105] The Commission recommends in Chapter 8 that the definition of “reportable harm” should be construed as excluding self-neglect other than where a “mandated person”⁷⁸ has:

- (a) assessed an adult who is reasonably believed to be an adult at risk of harm as lacking capacity; or
- (b) a belief, based on reasonable grounds, that the adult who is reasonably believed to be an adult at risk of harm lacks capacity,

to make personal care or welfare decisions at the particular point in time when the mandated person knows, believes or has reasonable grounds to suspect that the adult is self-neglecting.

[2.106] The exclusion of ‘self-neglect’ from the definition of “reportable harm” other than in the circumstances set out above would ensure the vindication of an adult’s rights to autonomy and self-determination. Vindication of those rights would be achieved by protecting an adult’s right to make decisions that other people might believe to be unwise in circumstances where the adult has capacity to make those decisions at a particular time.

R. 2.7 **The Commission recommends that** “reportable harm” should be defined in adult safeguarding legislation as:

“Reportable harm” means—

- (a) assault, ill-treatment or neglect in a manner that seriously affects, or is likely to seriously affect, health, safety or welfare,
- (b) sexual abuse, or
- (c) serious loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

R. 2.8 **The Commission recommends that** “reportable harm” should be construed in adult safeguarding legislation as excluding “self-neglect” other than where a mandated person has—

- (a) assessed an adult who is reasonably believed to be an adult at risk of harm as lacking capacity, or

⁷⁸ The classes of persons specified in Schedule 2 of the Commission’s Adult Safeguarding Bill 2024 are mandated persons for the purposes of the Bill.

(b) a belief, based on reasonable grounds, that the adult who is reasonably believed to be an adult at risk of harm lacks capacity, to make personal care or welfare decisions at the particular point in time when the mandated person knows, believes or has reasonable grounds to suspect that the adult is self-neglecting.

(b) Definitions of “harm” and “serious harm” for criminal aspects of adult safeguarding legislation

(i) Definition of “harm” in existing criminal legislation in Ireland

[2.107] The Non-Fatal Offences against the Person Act 1997 (“1997 Act”) provides long-standing definitions of “harm” and “serious harm” in the Irish criminal law context. As aforementioned, the functions performed by the proposed civil adult safeguarding legislation are broader than the proposed criminal adult safeguarding legislation, and therefore the civil provisions require a more expansive approach to the definition of “harm”. The Commission’s recommendations for criminal reform align more closely with the definition of “harm” in the 1997 Act because criminal law requires precision and specificity. The emphasis in the proposed criminal definition of “harm” is on the consequences of alleged abuse.

(ii) Proposed definition of “harm” for criminal aspects of the statutory and regulatory framework on adult safeguarding in Ireland

[2.108] In Chapter 19, the Commission recommends that new offences to target neglect, ill-treatment and coercive exploitation of adults at risk of harm should be introduced through criminal legislation that is separate to the proposed adult safeguarding legislation.

[2.109] In the Commission’s proposed Criminal Law (Adult Safeguarding) Bill 2024, references to “harm” are included in:

- (a) the definition of “neglect” for the purposes of the proposed offence of intentional or reckless abuse, neglect or ill-treatment; and
- (b) the definition of “serious harm” for the purposes of:
 - (i) the proposed offence of exposure of a relevant person to a risk of serious harm or sexual abuse; and
 - (ii) the prohibition on working with relevant persons.

- [2.110] “Harm” for the purposes of the proposed criminal offences must be defined based on the negative effects of the offending act, omission or circumstance or a series or combination of offending acts, omissions or circumstances.
- [2.111] The Commission therefore recommends that “harm” in criminal adult safeguarding legislation should be defined as the adverse effects that result from a single act, omission or circumstance or a series or combination of acts, omissions or circumstances.
- [2.112] There was significant support among consultees for the adoption in adult safeguarding legislation of the definition of “harm” in HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding. The Commission believes that the impacts of financial or property abuse should also be specified in the definition of “harm”.

R. 2.9 **The Commission recommends that** “harm” should be defined in criminal adult safeguarding legislation as:

“Harm” means—

- (a) harm to body or mind and includes pain and unconsciousness,
- (b) any injury or impairment of physical, mental, intellectual, emotional health or welfare, or
- (c) any form of property or financial loss.

[2.113] The Commission’s proposal defines “harm” based on the adverse effects that result from a single act, omission or circumstance or a series or combination of acts, omissions or circumstances. The proposed definition expands on the definition of “harm” in section 1 of the 1997 Act by including “any injury or impairment of physical, mental, intellectual, emotional health or welfare” and “any form of property or financial loss”. The proposed definition of “harm” is largely consistent with the definition of “harm” in HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding and with the policy definitions proposed by the HSE and the Department of Health. However, the proposed definition of “harm” more concisely places an emphasis on the negative effects of a single act, omission or circumstance or a series or combination of acts, omissions or circumstances.

(iii) Proposed definition of “serious harm” for criminal aspects of the statutory and regulatory framework on adult safeguarding in Ireland

[2.114] In Chapter 19, the Commission recommends that a new offence of exposure of a “relevant person” to risk of serious harm or sexual abuse should be introduced in

criminal adult safeguarding legislation.⁷⁹ Section 3(1) of the Commission’s proposed Criminal Law (Adult Safeguarding) Bill 2024 provides that a person who is a person in authority in relation to a relevant person or abuser or, otherwise has control of the care of a relevant person or abuser, or has control of the provision of care by the abuser, who intentionally or recklessly endangers a relevant person by:

- (a) causing or permitting any relevant person to be placed or left in a situation which creates a substantial risk to the relevant person of being a victim of “serious harm” or sexual abuse, or
- (b) failing to take reasonable steps to protect a relevant person from such a risk while knowing that the relevant person is in such a situation,

shall be guilty of an offence.

[2.115] Moreover, in section 7 of the proposed Criminal Law (Adult Safeguarding) Bill 2024, the Commission makes provision for a court to, where it is satisfied that it is necessary to do so to protect relevant persons from “serious harm” from an applicable offender, impose on the offender concerned, in respect of the commission of a relevant offence, a sentence, including a prohibition, which consists of—

- (a) the imposition of a sentence of imprisonment (whether in addition to the imposition of a fine or not), and
- (b) a stipulation that during a specified period (the “prohibition period”) commencing on the prohibition commencement date, the applicable offender shall be subject to the prohibition.

[2.116] The Commission is of the view that “serious harm” should contain a higher threshold than “harm”, and recommends that “serious harm” should be defined in criminal adult safeguarding legislation.

R. 2.10 The Commission recommends that “serious harm” should be defined in criminal adult safeguarding legislation as:

“Serious harm” means injury which—

⁷⁹ The Commission defines “relevant person” in the Criminal Law (Adult Safeguarding) Bill 2024 as: “a person, other than a child, whose ability to guard himself or herself against violence, exploitation or abuse, whether physical, sexual or emotional, or against neglect by another person is significantly impaired through one, or more, of the following: (a) a physical disability, a physical frailty, an illness or an injury; (b) a disorder of the mind, whether as a result of mental illness or dementia; (c) an intellectual disability; (d) autism spectrum disorder”.

- (a) creates a substantial risk of death,
- (b) is of a psychological nature which has a significant impact, or
- (c) causes permanent disfigurement, or loss or impairment of the mobility of the body as a whole, or of the function of any particular member or organ.

8. Neglect and self-neglect

[2.117] Abuse generally refers to deliberate harmful actions whereas neglect refers to omissions. Neglect is a form of abuse, which occurs when there is a failure to do something that should be done to meet one's own needs or the needs of another person. Forms of neglect include self-neglect, physical neglect, deprivation of needs neglect, medical neglect, emotional neglect and environmental neglect. This section addresses the meaning of "neglect" and "self-neglect" for the purposes of the proposed definitions of "harm" and "adult at risk of harm" in adult safeguarding legislation.

(a) Definitions of "neglect" in Ireland

[2.118] "Neglect and acts of omissions" are defined in the HSE's National Policy and Procedures as:

neglect and acts of omission include ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life such as medication, adequate nutrition and heating.⁸⁰

[2.119] "Neglect" is defined in HIQA and the Mental Health Commission's National Standards for Adult Safeguarding as:

whenever a person withholds, or fails to provide, appropriate and adequate care and support which is required by another person. It may be through a lack of knowledge or awareness, or through a failure to take reasonable action given the information and facts available to them at the time.⁸¹

[2.120] The proposed definition of "neglect" in the HSE's 2019 Final Draft Revision of the HSE's National Policy and Procedures is consistent with the definition of "neglect"

⁸⁰ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse: National Policy and Procedures* (2014) at page 60.

⁸¹ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (2019) at page 54.

in HIQA and the Mental Health Commission's National Standards for Adult Safeguarding.

- [2.121] The Department of Health published a draft definition of "neglect" in its 2019 Final Draft Revision of the HSE's National Policy and Procedures.⁸² Although the Policy Proposals use the term 'neglect' in the definitions of "abuse types", "adult safeguarding" and "safeguarding concern", such term is not defined therein.⁸³
- [2.122] Section 2 of the Adult Safeguarding Bill 2017 proposed to define "neglect" as meaning "to deprive an adult of adequate food, warmth, clothing, hygiene, supervision, safety or medical care". This definition accords with the definition of "neglect" in relation to children in the Children First Act 2015.⁸⁴ A definition of actions deemed to constitute neglect of a child in the context of cruelty to children is provided in section 246 of the Children Act 2001 ("2001 Act"). Section 246(5) of the 2001 Act provides that a person shall be deemed to have neglected a child in a manner likely to cause the child unnecessary suffering or injury to their health or seriously to affect their wellbeing if the person:
- (a) fails to provide adequate food, clothing, heating, medical aid or accommodation for the child; or
 - (b) being unable to provide such food, clothing, heating, medical aid or accommodation, fails to take steps to have it provided under the enactments relating to health, social welfare or housing.

(b) Definitions of "neglect" in England, Wales, British Columbia and Singapore

- [2.123] The statutory guidance to the Care Act 2014 in England defines "neglect" in the same manner as in the HSE's National Policy and Procedures.⁸⁵
- [2.124] In Wales, the Social Services and Well-being (Wales) Act 2014 defines "neglect" as a failure to meet a person's basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person's well-being, for

⁸² Department of Health, *Discussion Paper: Primary Definitions – National Policy on Safeguarding for the Health Sector* (2019) at page 24.

⁸³ Government of Ireland, Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (Department of Health January 2024) at pages 31 and 34.

⁸⁴ Section 2 of the Children First Act 2015.

⁸⁵ Department of Health and Social Care (England), *Care and Support Statutory Guidance* (28 March 2024) at para 14.17.

example, an impairment of the person's health or, in the case of a child, an impairment of the child's development.⁸⁶

[2.125] "Neglect" is defined in the Adult Guardianship Act 1996 of British Columbia as:

any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult's financial affairs, and includes self-neglect.⁸⁷

[2.126] Section 2(1) of the Vulnerable Adults Act 2018 in Singapore defines "neglect", in relation to an individual, as:

the lack of provision to the individual of essential care (such as but not limited to food, clothing, medical aid, lodging and other necessities of life), to the extent of causing or being reasonably likely to cause personal injury or physical pain to, or injury to the mental or physical health of, the individual.⁸⁸

(c) Proposed definition of "neglect" in adult safeguarding legislation

[2.127] The Commission recognises that "neglect" can be a form of abuse and therefore should be defined for the purposes of adult safeguarding legislation.

R. 2.11 **The Commission recommends that** "neglect" should be defined in criminal adult safeguarding legislation as:

"Neglect", in a manner likely to cause suffering or injury to health, or to seriously affect wellbeing, means—

(a) a failure to adequately protect a relevant person⁸⁹ under a person's care from preventable and foreseeable harm,

⁸⁶ Section 197(1) of Social Services and Well-being (Wales) Act 2014.

⁸⁷ Section 1 of the Adult Guardianship Act 1996 (British Columbia).

⁸⁸ Vulnerable Adults Act 2018 (Singapore) <<https://sso.agc.gov.sg/Act/VAA2018>> accessed on 6 April 2024.

⁸⁹ The Commission's Criminal Law (Adult Safeguarding) Bill 2024 defines a "relevant person" as "a person, other than a child, whose ability to guard himself or herself against violence, exploitation or abuse, whether physical, sexual or emotional, or against neglect by another person is significantly impaired through one, or more, of the following: (a) a physical disability, a physical frailty, an illness or an injury; (b) a disorder of the mind, whether as a result of mental illness or dementia; (c) an intellectual disability; (d) autism spectrum disorder". The Criminal Law (Adult Safeguarding) Bill 2024 also defines "child" as "a person who has not attained the age of 18 years".

(b) a failure to provide adequate food, clothing, heating or medical aid for a relevant person under a person’s care, or

(c) in the case of a person being unable to provide such—

(i) protection from harm, or

(ii) food, clothing, heating or medical aid,

to a relevant person under his or her care, a failure to take steps to have each provided under the enactments relating to health, social welfare or housing.

R. 2.12 **The Commission recommends that** “neglect” should be defined in civil adult safeguarding legislation as:

“Neglect”, in a manner likely to cause suffering or injury to health, or to seriously affect wellbeing, means—

(a) a failure to adequately protect an adult under a person’s care from preventable and foreseeable harm,

(b) a failure to provide adequate food, clothing, heating or medical aid for an adult under a person’s care, or

(c) in the case of a person being unable to provide such—

(i) protection from harm, or

(ii) food, clothing, heating or medical aid,

to an adult under his or her care, a failure to take steps to have each provided under the enactments relating to health, social welfare or housing.

(d) Definitions of “self-neglect” in Ireland, Singapore and Washington

[2.128] “Self-neglect” is defined in the HSE’s National Policy and Procedures as “an inability or unwillingness to provide for oneself”.⁹⁰ The HSE further defines “self-neglect” as:

(a) the inability or unwillingness to provide for oneself the goods and services needed to live safely and independently;

⁹⁰ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse: National Policy and Procedures* (2014) at page 8.

- (b) a vulnerable person's profound inattention to health or hygiene, stemming from an inability, unwillingness, or both, to access potentially remediating services;
- (c) the result of an adult's inability, due to physical and/or mental impairments or diminished capacity, to perform essential self-care tasks;
- (d) the failure to provide for oneself the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain; and
- (e) a spectrum of behaviours defined as the failure to:
 - (i) engage in self-care acts that adequately regulate independent living; or
 - (ii) to take actions to prevent conditions or situations that adversely affect the health and safety of oneself or others.⁹¹

[2.129] Section 2(1) of the Vulnerable Adults Act 2018 in Singapore defines "self-neglect", in relation to an individual, as:

the failure of the individual to perform essential tasks of daily living (such as but not limited to eating, dressing and seeking medical aid) to care for himself or herself, resulting in the individual:

- (a) living in grossly unsanitary or hazardous conditions;
- (b) suffering from malnutrition or dehydration; or
- (c) suffering from an untreated physical or mental illness or injury.

[2.130] The Revised Code of the State of Washington defines "self-neglect" as:

the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services

⁹¹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse: National Policy and Procedures* (2014) at pages 44 and 45.

through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.⁹²

[2.131] Self-neglect is often considered separately from neglect. The HSE's National Policy and Procedures and the 2019 Final Draft Revision of the HSE's National Policy and Procedures exclude self-neglect from the definition of "abuse" and instead designate a separate policy to apply to self-neglect.⁹³ The Commission therefore believes that it is important to consider whether any definition of "neglect" in adult safeguarding legislation should include self-neglect.

(e) Proposed definition of "self-neglect" in adult safeguarding legislation

[2.132] The Commission considers that self-neglect should be considered separately to other forms of neglect because it is unique in the sense that it involves a person neglecting his or her own needs. Self-neglect has been specifically included in the proposed definition of "harm" in adult safeguarding legislation. Excluding self-neglect from the definition of "harm" would mean that an adult who is self-neglecting and who lacks capacity to make decisions about their safety, health or welfare would be excluded from the definition of an "adult at risk of harm". Adults who lack decision-making capacity must be empowered and facilitated to avail of the supports under the 2015 Act in order to vindicate their rights. The inclusion of adults who are self-neglecting and who lack decision-making capacity within the scope of adult safeguarding legislation means that the legislation can act as a gateway for people to access the supports under the 2015 Act.

[2.133] As further discussed in Chapter 9, the inclusion of a reference to self-neglect in the definition of "neglect" or in the interpretation of "neglect" as including "self-neglect" would result in all knowledge, beliefs or suspicions of self-neglect being captured by the mandated reporting requirements in Chapter 8, provided the applicable threshold is met. In summary, this would require mandated persons to, as soon as practicable, report all knowledge, beliefs or suspicions of self-neglect of an adult who is reasonably believed to be an adult at risk of harm in all cases, unless a clause was provided in legislation to exclude reporting of self-neglect in

⁹² Revised Code of the State of Washington, Title 74, Chapter 74.34, Section 73.34.020 (19) <<https://app.leg.wa.gov/RCW/default.aspx?cite=74.34.020>> accessed on 6 April 2024.

⁹³ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse: National Policy and Procedures* (2014) at page 8; HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (2019) at page 10.

some circumstances. Additionally, the construction of the proposed definition of “neglect” in adult safeguarding legislation is focused on omissions to:

- (a) adequately protect an adult under a person’s care from preventable and foreseeable harm;
- (b) provide adequate food, clothing, heating or medical aid to an adult under a person’s care; and
- (c) take steps to have food, clothing, heating, medical aid or protection from harm to an adult under a person’s care under the enactments relating to health, social welfare or housing.

[2.134] The above omissions referenced in the definition of “neglect” are focused on omissions by a “person” who is providing “care”. It stands to reason that such omissions cannot reasonably be construed as including self-neglect. The Commission believes that “neglect” should not be construed as including “self-neglect”.

[2.135] A statutory definition of “self-neglect” is required in the proposed adult safeguarding legislation because the draft civil statutory provisions for mandated reporting include an express reference to “self-neglect” when explaining how “reportable harm” must be construed. The definition of “harm” also explicitly includes a reference to “self-neglect”. Adults at risk of harm, who do not have capacity to make decisions about their welfare, including whether to neglect their own welfare, may need safeguarding.

[2.136] In Chapter 9, the Commission makes the following recommendation in the context of its civil law proposals regarding mandated reporting:

“Reportable harm” shall be construed as excluding “self-neglect” other than where a mandated person has:

- (a) assessed an adult who is reasonably believed to be an adult at risk of harm as lacking capacity; or
- (b) a belief, based on reasonable grounds, that the adult who is reasonably believed to be an adult at risk of harm lacks capacity,

to make personal care or welfare decisions at the particular point in time when the mandated person knows, believes or has reasonable grounds to suspect that the adult is self-neglecting.

[2.137] The Commission recommends that “self-neglect” should be defined in adult safeguarding legislation as:

“Self-neglect’ means the inability, unwillingness or failure of an adult to meet his or her basic physical, emotional, social or psychological needs, which is likely to seriously affect his or her wellbeing.”

[2.138] This definition is largely consistent with the definition of “self-neglect” in the HSE’s National Policy and Procedures. “Seriously affect” is used in the proposed definition because the Commission considers that the threshold for “self-neglect” should be higher than merely affecting an adult’s wellbeing. Most people make decisions that impair their wellbeing, for example, when they decide to smoke, eat unhealthily or not exercise regularly. To constitute “self-neglect”, the bar needs to be set higher than merely affecting an adult’s wellbeing. For this reason, the proposed definition includes the words “seriously affect”.

[2.139] Where there are concerns regarding a person’s capacity to make decisions regarding their self-care, the person’s capacity should be assessed in accordance with the 2015 Act. In line with the 2015 Act, adult safeguarding legislation must recognise that people have a right to make unwise decisions about their lives. As aforementioned, and in recognition of this right, one of the guiding principles in the Commission’s proposed Adult Safeguarding Bill 2024 provides that an adult at risk of harm shall not be considered as unable to make a decision in respect of a matter merely by reason of making, having made, or being likely to make, an unwise decision. Therefore, a person who chooses to self-neglect and who has capacity to make decisions regarding their self-care is excluded from the proposed definition of an “adult at risk of harm” in adult safeguarding legislation.

(f) Provision of statutory guidance on “self-neglect”

[2.140] The Commission also believes that statutory guidance should be provided in relation to “self-neglect”, which should include guidance on:

- (a) safeguarding adults at risk of harm who are self-neglecting; and
- (b) engaging with, and offering optional supports to, adults who are self-neglecting and who have capacity to choose to self-neglect.

R. 2.13 **The Commission recommends that** “self-neglect” should be defined in adult safeguarding legislation as:

“Self-neglect” means the inability, unwillingness or failure of an adult to meet his or her basic physical, emotional, social or psychological needs, which is likely to seriously affect his or her wellbeing.

- R. 2.14 **The Commission recommends that** statutory guidance should be provided in relation to the definition of “self-neglect” in adult safeguarding legislation, which should include guidance on:
- (a) safeguarding adults at risk of harm who are self-neglecting; and
 - (b) engaging with, and offering optional supports to, adults who are self-neglecting and who have capacity to choose to self-neglect.

9. Conclusion

- [2.141] The Commission recognises the importance of ensuring consistency, insofar as possible, between the definitions of key terms in adult safeguarding legislation and the definitions of relevant terms in existing Irish legislation and policy.
- [2.142] Several consultees stated that in order to ensure consistency and clarity, the definitions of key terms in adult safeguarding legislation should accord with the HSE’s National Policy and Procedures, the HSE’s 2019 Final Draft Revision of the HSE’s National Policy and Procedures and HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding. There was broad support for many of the definitions in HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding and the HSE’s 2019 Final Draft Revision of the HSE’s National Policy and Procedures. As aforementioned, the Department of Health has set out draft definitions for the proposed policy on adult safeguarding in the health and social care sector in the 2019 Discussion Paper. Draft definitions have also been included in the Policy Proposals. Many of these definitions are consistent with HIQA and the Mental Health Commission’s National Standards for Adult Safeguarding.
- [2.143] Given that definitions in the HSE’s National Policy and Procedures, the 2019 Final Draft Revision of the HSE’s National Policy and Procedures, the National Standards for Adult Safeguarding, the 2019 Discussion Paper and the Policy Proposals differ in some respects, it is not possible to ensure absolute consistency with all of these definitions in the recommendations made in this Chapter. However, insofar as possible, the Commission reflects appropriate and relevant elements of existing definitions in its recommendations. Moreover, the Commission is mindful of the need to ensure that statutory definitions are clear and precise, in particular because these definitions may be used in the future to interpret safeguarding duties and to determine whether particular acts, omissions or circumstances constitute an offence under adult safeguarding legislation.

CHAPTER 3

GUIDING PRINCIPLES UNDERPINNING ADULT SAFEGUARDING LEGISLATION

Table of Contents

1.	Introduction	171
2.	Values and principles underpinning adult safeguarding practice in Ireland, England, Scotland and Wales	172
3.	Guiding principles to underpin adult safeguarding legislation in Ireland	176
	(a) A rights-based approach	178
	(b) Empowerment and person-centredness	178
	(c) Protection	180
	(d) Prevention.....	180
	(e) Proportionality	181
	(f) Integration and cooperation	182
	(g) Accountability	182
4.	Conclusions and recommendations.....	183

1. Introduction

- [3.1] The inclusion of guiding principles in legislation is important because guiding principles outline the values according to which a statutory function should be exercised under legislation. The inclusion of guiding principles in legislation helps to ensure that certain principles are considered at a foundational level. In its Issues Paper on a Regulatory Framework for Adult Safeguarding (“Issues Paper”), the Commission proposed a number of guiding principles to underpin adult safeguarding legislation and sought consultees’ views on these proposed principles.¹ This Chapter outlines the Commission’s recommendations on the inclusion of guiding principles in adult safeguarding legislation and references, where appropriate, consultees’ views on the proposed principles.
- [3.2] In this Chapter, the Commission recommends that the seven guiding principles outlined in section 3 below should be adopted as the guiding principles to underpin adult safeguarding legislation in Ireland.
- [3.3] The Commission is of the view that these principles:
- (a) reflect the views of consultees and accord with the Assisted Decision-Making (Capacity) 2015 Act and the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”); and
 - (b) are consistent with:
 - (i) the National Standards for Adult Safeguarding (the “National Standards”) published by the Health Information and Quality Authority (“HIQA”) and the Mental Health Commission (“MHC”);²
 - (ii) the Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures (the “HSE’s National Policy and Procedures”) published by the Health Service Executive (the “HSE”);³

¹ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.14
<<https://www.lawreform.ie/fileupload/Issues%20Papers/LRC%20IP%2018-2019%20A%20Regulatory%20Framework%20For%20Adult%20Safeguarding.pdf>> accessed on 18 March 2024.

² HIQA and the MHC, *National Standards for Adult Safeguarding* (2019)
<<https://www.hiqa.ie/sites/default/files/2019-12/National-Standards-for-Adult-Safeguarding.pdf>> accessed on 14 March 2024.

³ HSE, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE Social Care Division 2014)

- (iii) the Discussion Paper: Underlying Principles – National Policy on Adult Safeguarding for the Health Sector published by the Department of Health (the “Department of Health’s Discussion Paper”);⁴ and
- (iv) the Government’s Policy Proposals on Adult Safeguarding in the Health and Social Care Sector which were prepared by the Department of Health and published on 31 January 2024 (the “Policy Proposals”).⁵

[3.4] The Commission has taken into account the National Standards, the HSE’s National Policy and Procedures, the Department of Health’s Discussion Paper and the Government’s Policy Proposals in the development of:

- (a) the seven guiding principles contained in section 3 below; and
- (b) the recommendations contained in this Report.

[3.5] Furthermore, the seven guiding principles contained in section 3 below were taken into account in the development of the guiding principles contained in the Commission’s Adult Safeguarding Bill 2024.

2. Values and principles underpinning adult safeguarding practice in Ireland, England, Scotland and Wales

[3.6] In the Issues Paper, the Commission discussed its previous recommendations regarding statutory guiding principles to underpin decision-making capacity legislation which are contained in its Report on Vulnerable Adults and the Law.⁶ The Commission also discussed the principles underpinning existing relevant legislation and policy in Ireland, which include:

<<https://assets.hse.ie/media/documents/ncr/personsatriskofabuse.pdf>> accessed on 14 March 2024.

⁴ Department of Health, *Discussion Paper: Underlying Principles - National Policy on Adult Safeguarding for the Health Sector* (2019) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/71260/6a9cec1bd7994d83ac39541e46101897.pdf#page=null>> accessed on 14 March 2024.

⁵ Department of Health, *Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (2024) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf#page=null>> accessed on 14 March 2024.

⁶ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.2; Law Reform Commission, *Report on Vulnerable Adults and the Law* (LRC 83-2006) at para 2.93.

- (a) the guiding principles contained in section 8 of the Assisted Decision-Making (Capacity) Act 2015;⁷ and
- (b) the principles identified in the HSE's National Policy and Procedures.⁸

- [3.7] The HSE's National Policy and Procedures is currently under review. In the 2019 final draft revision of the HSE's National Policy and Procedures, which has not yet been formally adopted, the HSE proposed to adopt the principles contained in its National Policy and Procedures, with the addition of two principles.⁹
- [3.8] In the Issues Paper, the Commission examined the key principles underpinning the National Standards.¹⁰ The National Standards stipulate that these principles should be reflected in how health and social care services deliver care and support to people using their services.¹¹
- [3.9] Furthermore, the Commission considered section 4(3) of the Mental Health Act 2001 and the rights that must be considered when making a decision under the Act concerning the care or treatment of a person.¹² The Commission also considered the principles proposed to underpin the Adult Safeguarding Bill 2017¹³ and referred to principles suggested by a representative of the HSE during an Oireachtas debate on the Adult Safeguarding Bill 2017.¹⁴

⁷ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.3.

⁸ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.4; HSE, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE Social Care Division 2014) at pages 13-19.

⁹ HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (2019) at pages 18-19.

¹⁰ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.6; HIQA and the MHC, *National Standards for Adult Safeguarding* (2019) at pages 9-10.

¹¹ HIQA and the MHC, *National Standards for Adult Safeguarding* (2019) at page 9.

¹² Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.9.

¹³ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.7; Seanad Debates 5 April 2017 vol 251 no 5.

¹⁴ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.8; Pat Healy (National Director of the Social Care Division, HSE), Joint Committee on Health Debate Adult Safeguarding: Discussion (4 October 2017).

[3.10] In determining its recommendations, the Commission considered the underlying principles for a national policy on adult safeguarding for the health sector which are contained in the Department of Health's Discussion Paper.¹⁵

[3.11] In the final stages of preparing this Report, the Policy Proposals were published by the Government.¹⁶ In the Policy Proposals, the Government stated that the following six principles are the core principles that underpin its policy proposals:

1. **Person-centredness:** staff and volunteers in health and social care services must respect the autonomy of each individual adult at risk, placing them at the heart of any safeguarding and other decisions about themselves and respecting their will and preferences, values and beliefs.
2. **Empowerment:** adults at risk must be empowered and equipped by staff and volunteers in health and social care services to understand abuse and harm, minimise risk, make their own decisions and remain in control of their lives, through measures such as education, training, awareness raising (in accessible formats) and access to advocacy services.
3. **Support for rights:** staff and volunteers in health and social care services must respect and support adults' human and constitutional rights. An adult at risk may not be treated less favourably in a similar circumstance than a person who is not considered at risk.
4. **Proportionality:** all interventions in a person's affairs must be demonstrated to provide a genuine benefit to that person that could not realistically be provided without intervention. The intervention that is the least intrusive or restrictive in the circumstances should be pursued insofar as is practicable.
5. **Partnership:** a partnership approach with the people who use the services of the Department of Health supports the principle of person-

¹⁵ Department of Health, *Discussion Paper: Underlying Principles - National Policy on Adult Safeguarding for the Health Sector* (2019); Department of Health, *Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (2024) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf#page=null>> accessed on 14 March 2024.

¹⁶ Department of Health, Minister Butler opens public consultation on adult safeguarding in the health and social sector (31 January 2024) <<https://www.gov.ie/en/press-release/7bd0a-minister-butler-opens-public-consultation-on-adult-safeguarding-in-the-health-and-social-care-sector/>> accessed on 18 March 2024.

centredness by requiring services to involve the adult at risk in decisions which affect their lives.

6. **Accountability:** services must be accountable and transparent in all aspects of safeguarding adults at risk in their care. Clarity on roles and responsibilities and having clear and transparent written processes and procedures will support this.¹⁷

[3.12] Four of the Government's principles which underpin the Policy Proposals, namely empowerment, support for rights, proportionality and accountability, were previously proposed by the Commission in its Issues Paper as potential principles to underpin adult safeguarding legislation.¹⁸

[3.13] In the Issues Paper, the Commission also outlined the principles underpinning social care legislation and adult safeguarding legislation in England, Scotland and Wales. In particular, the Commission considered:

- (a) the principles underpinning the Care Act 2014 in England;¹⁹
- (b) the guiding principles in sections 1 and 2 of the Adult Support and Protection (Scotland) Act 2007;²⁰ and
- (c) the "overarching duties" in section 6 of the Social Services and Well-being Wales (Act) 2014.²¹

[3.14] Many of these principles are consistent with the principles contained in existing safeguarding policies and standards in Ireland.

¹⁷ Department of Health, *Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (2024) at page 11.

¹⁸ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.14.

¹⁹ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.10; Department of Health and Social Care (England), *Care and Support Statutory Guidance* (2022) at paras 1.2–1.14.

²⁰ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at paras 1.11–1.12; Scottish Government, *Adult Support and Protection (Scotland) Act 2007: Code of Practice* (2014) at page 10.

²¹ Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.13; Sections 6(2) and (3) of the Social Services and Well-being Wales (Act) 2014.

3. Guiding principles to underpin adult safeguarding legislation in Ireland

[3.15] In the Issues Paper, the Commission proposed the following seven guiding principles to underpin adult safeguarding legislation:

1. **Human rights:** ensure that the rights of an individual are respected, including the rights to dignity, bodily integrity, privacy and respect for culture and beliefs;
2. **Empowerment:** presumption of decision-making capacity, informed consent, and the right to participation and independent advocacy;
3. **Protection:** provision of support and care to ensure safety and dignity, and to promote individual physical, mental and emotional wellbeing;
4. **Prevention:** taking proactive steps to ensure that safeguarding actions or interventions are taken to prevent the occurrence of abuse or neglect;
5. **Proportionality:** ensuring that the exercise of functions under adult safeguarding legislation are: (i) necessary, having regard to the circumstances of the individual; (ii) the least intrusive and restrictive of an individual's freedom as possible; and (iii) proportionate to the level of risk presented to the individual;
6. **Integration and cooperation:** coordinated and cohesive responses to ensure effective safeguarding for all individuals on a local level; and
7. **Accountability:** accountability and transparency in adult safeguarding.²²

[3.16] The majority of consultees' responses to the Issues Paper agreed with the guiding principles proposed by the Commission. Consultees suggested that these guiding principles were appropriate to underpin adult safeguarding legislation and broadly reflected international human rights provisions. In support of the inclusion of guiding principles in adult safeguarding legislation, consultees emphasised the importance of outlining the spirit of the legislation at the outset in order to enhance the implementation of the legislation.

[3.17] However, some consultees stated that while keeping adults safe from harm is paramount in adult safeguarding, the term 'protection', and the inclusion of a

²² Law Reform Commission, *Issues Paper on a Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 1.14.

guiding principle of protection, could be viewed by some as the adoption of both a paternalistic approach and a paternalistic principle, which is more common in jurisdictions that adopt a ‘best interests’ approach to adult safeguarding rather than a rights-based approach that is based on autonomy and respect for the will and preferences of adults. A small number of consultees were concerned that a focus on protection in adult safeguarding legislation may lead to the unnecessary and disproportionate use of restrictive practices. Consultees also noted that the principle of protection has the potential to diminish an adult’s freedom to take risks and may undermine their will and preferences if other adults perceive the risk differently, and has the potential to narrow the focus of those responsible for safeguarding adults.²³

[3.18] The Commission acknowledges these concerns, which were raised by a small number of consultees who responded to the Issues Paper. However, having carefully considered the views of all consultees and further considered the principle of protection, the Commission is of the view that safeguarding is a broad continuum of activity, which ranges from empowerment, prevention and early action or intervention to risk assessment, management, investigation and protective action or intervention.²⁴ This continuum has been recognised by the Department of Health, Social Services and Public Safety in Northern Ireland and the Department of Justice in Northern Ireland.²⁵ In recognition of, and in order to give effect to, this continuum of safeguarding from prevention to protection, the Commission is of the view that a guiding principle of protection should be included in adult safeguarding legislation to protect at-risk adults from harm.

[3.19] Having carefully considered consultees’ views in response to the Issues Paper, the Commission recommends that adult safeguarding legislation in Ireland should be underpinned by the following seven guiding principles:

1. a rights-based approach;
2. empowerment and person-centredness;
3. protection;

²³ The principle of protection also has the potential to diminish an adult’s entitlement to make what others may regard as an unwise decision. See sections 8(4) and 83(2)(a) of the Assisted Decision-Making (Capacity) Act 2015.

²⁴ Department of Health, Social Services and Public Safety (Northern Ireland) and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (July 2015) at pages 18 to 21 <<https://www.rqia.org.uk/RQIA/files/ad/addb8d4d-7a71-4393-be47-1b4a1b3696b1.pdf>> accessed on 18 March 2024.

²⁵ Department of Health, Social Services and Public Safety (Northern Ireland) and Department of Justice (Northern Ireland), *Adult Safeguarding: Prevention and Protection in Partnership* (July 2015) at pages 18 to 21.

4. prevention;
5. proportionality;
6. integration and cooperation; and
7. accountability.

[3.20] These guiding principles are discussed below.

(a) A rights-based approach

[3.21] A rights-based approach means ensuring that the rights of at-risk adults are respected, including their rights to autonomy, respect, dignity, bodily integrity, privacy, control over financial affairs and property, non-discrimination, equal treatment in respect of access to basic goods and services, and respect for their beliefs and values.²⁶

[3.22] Control over financial affairs and property has been included in the rights-based approach principle to reflect consultees' submissions on actual or suspected financial abuse of at-risk adults in Ireland.²⁷ In order to implement consultees' feedback, the principle has been amended to make specific reference to non-discrimination, equal treatment in respect of access to basic goods and services, and the rights of at-risk adults to autonomy and respect.

(b) Empowerment and person-centredness

[3.23] The principle of empowerment and person-centredness means:

- (a) the presumption of decision-making capacity;
- (b) the facilitation of supported decision-making, where requested or required;
- (c) ensuring informed consent;
- (d) respecting the right to autonomy and the right to full and effective participation in society;

²⁶ See Chapter 4, which outlines the Commission's proposal for a rights-based framework for adult safeguarding in Ireland.

²⁷ Financial abuse is discussed in Chapter 14.

- (e) the realisation of the right to independent advocacy;
- (f) ensuring respect for will and preferences;
- (g) ensuring respect for the right to have risks and options explained; and
- (h) ensuring respect for the right to be consulted at every step of an action or intervention under adult safeguarding legislation.

- [3.24] A reference to the right to autonomy has been expressly included in the empowerment and person-centredness principle in order to reflect the values in the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”). Respect for the will and preferences of at-risk adults has also been explicitly referenced in the empowerment and person-centredness principle in order to align with the Assisted Decision-Making (Capacity) Act 2015. The facilitation of supported decision-making has also been included in the empowerment and person-centredness principle.
- [3.25] A small number of responses to the Issues Paper expressed a preference for the right to independent advocacy to be addressed separately from the principle of empowerment and person-centredness. This approach was taken by the HSE in its National Policy and Procedures.²⁸ Independent advocacy means advocacy support that is provided by an organisation that is free from conflict of interest and is independent of family members and service providers.²⁹ The Commission believes that independent advocacy should be a core aspect of how the principle of empowerment and person-centredness is realised and should therefore not be addressed separately from the principle of empowerment and person-centredness.
- [3.26] In the Policy Proposals, the Government proposes the principles of empowerment and person-centredness as separate and distinct principles which, along with four other principles, underpin its policy proposals which are currently subject to public consultation.³⁰ However, in this Chapter, the Commission proposes empowerment and person-centredness as a single principle which,

²⁸ HSE, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE Social Care Division 2014) at page 16.

²⁹ The Commission makes specific recommendations with respect to the statutory provision of independent advocacy in Chapter 8.

³⁰ Department of Health, *Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (2024) at page 11.

along with six other principles, should underpin adult safeguarding legislation in Ireland.

(c) Protection

[3.27] The principle of protection means:

- (a) responding effectively to actual or suspected abuse or safeguarding concerns in relation to at-risk adults;³¹
- (b) protective steps are taken to ensure that safeguarding actions or interventions are taken to protect at-risk adults from harm;
- (c) support is provided to protect the safety and dignity of at-risk adults and to protect the physical, mental and emotional wellbeing of at-risk adults; and
- (d) protective measures are taken in relation to adult safeguarding legislation, including to ensure that:
 - (i) the Safeguarding Body³² and its authorised officers are provided with training regarding the legislation and the exercise of functions under the legislation;
 - (ii) the Safeguarding Body and its authorised officers who are engaged in exercising functions under the legislation to protect at-risk adults from harm are obliged and facilitated to complete training on these principles, as well as training on their specific roles, before exercising any functions under the legislation; and
 - (iii) adequate mentoring and supervision of authorised officers is provided.

(d) Prevention

[3.28] The principle of prevention means:

- (a) proactive steps are taken to ensure that safeguarding actions or interventions are taken to prevent harm to at-risk adults;
- (b) support is provided to ensure safety and dignity and to promote individual physical, mental and emotional wellbeing; and

³¹ Department of Health, *Public Consultation: Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (2024)* at page 10.

³² The functions, duties and powers of the Safeguarding Body are discussed in Chapter 5.

- (c) proactive measures are taken in relation to adult safeguarding legislation, including to ensure that:
 - (i) the Safeguarding Body and its authorised officers are provided with training regarding the legislation and the exercise of functions under the legislation;
 - (ii) the Safeguarding Body and its authorised officers who are engaged in exercising functions under the legislation to prevent harm to at-risk adults are obliged and facilitated to complete training on these principles, as well as training on their specific roles, before exercising any functions under the legislation; and
 - (iii) adequate mentoring and supervision of authorised officers is provided.

(e) Proportionality

[3.29] Having considered consultees' responses to the Issues Paper, the meaning of the proposed principle of proportionality has been expanded by the Commission. Additional aspects of the principle include:

- (a) a limit on the duration of an action or intervention;
- (b) a reference to the need to take a trauma-informed approach to any actions or interventions to prevent, insofar as possible, the traumatisation or re-traumatisation of an at-risk adult; and
- (c) a reference to the need to ensure that all actions or interventions under adult safeguarding legislation are monitored and evaluated regularly in accordance with international best practice.

[3.30] Taking into account the above, the principle of proportionality means ensuring that actions or interventions under adult safeguarding legislation:

- (a) are necessary, having regard to the circumstances of each at-risk adult;
- (b) are, insofar as possible, the least intrusive and restrictive of the freedom of an at-risk adult;
- (c) are proportionate to the level of risk presented to an at-risk adult;
- (d) are limited to the necessary duration;

- (e) adopt a trauma-informed approach; and
- (f) are monitored and evaluated regularly, in accordance with international best practice.

(f) Integration and cooperation

[3.31] The principle of integration and cooperation means that:

- (a) coordinated and cohesive responses should be taken, in accordance with adult safeguarding legislation, to recognise the potential for harm and to prevent harm to at-risk adults;
- (b) services should be integrated and coordinated, multidisciplinary responses to prevent and address adult safeguarding concerns should be taken in accordance with adult safeguarding legislation; and
- (c) national sectoral policies should be aligned with adult safeguarding legislation to ensure the consistency of practice, policy and legislation across sectors.

(g) Accountability

[3.32] The principle of accountability means ensuring:

- (a) accountability and transparency in adult safeguarding;
- (b) that the Safeguarding Body and its authorised officers who take actions or interventions under adult safeguarding legislation are accountable and answerable for their actions or interventions;
- (c) that services are transparent and it is clear how the providers of relevant services to at-risk adults³³ respond to safeguarding concerns under adult safeguarding legislation; and
- (d) that proper procedures are implemented for risk management, ownership, information sharing and reporting.

³³ See Schedule 1 to the Adult Safeguarding Bill 2024.

4. Conclusions and recommendations

- [3.33] Having regard to the principles underpinning existing legislation and policy in Ireland, the principles underpinning legislation in other jurisdictions and consultees' views in response to the Issues Paper, the Commission believes that it is appropriate to include guiding principles in proposed adult safeguarding legislation to ensure that the legislation is rights-based at a foundational level.
- [3.34] It is essential that any values and principles underpinning adult safeguarding legislation are determined in advance to allow them to be considered in the drafting of legislation. This will ensure that the legislation is truly underpinned by the relevant values and principles. Consultees stressed the importance of the guiding principles not being viewed in isolation; each principle should anchor the core provisions of adult safeguarding legislation to ensure that at-risk adults are placed at the centre of adult safeguarding actions and interventions under the legislation.
- [3.35] The Commission recommends that the principles outlined in section 3 of this Chapter should be adopted as the guiding principles to underpin adult safeguarding legislation in Ireland. The Commission is of the view that these principles are consistent with the National Standards, the HSE's National Policy and Procedures, the Department of Health's Discussion Paper, and the Policy Proposals.
- [3.36] The principles contained in section 3 above were taken into account in the development of the guiding principles contained in the Commission's Adult Safeguarding Bill 2024. The Commission has included guiding principles in its Adult Safeguarding Bill 2024 in order to guide the Safeguarding Body and its authorised officers in the exercise of any functions under the Adult Safeguarding Bill 2024.

R 3.1 **The Commission recommends that** the following principles should be adopted as the guiding principles to underpin adult safeguarding legislation in Ireland:

(1) A rights-based approach: this means ensuring that the rights of at-risk adults are respected, including their rights to autonomy, respect, dignity, bodily integrity, privacy, control over financial affairs and property, non-discrimination, equal treatment in respect of access to basic goods and services, and respect for their beliefs and values.

(2) Empowerment and person-centredness: this means:

(a) the presumption of decision-making capacity;

(b) the facilitation of supported decision-making, where requested or required;

- (c) ensuring informed consent;
- (d) respecting the right to autonomy and the right to full and effective participation in society;
- (e) the realisation of the right to independent advocacy;
- (f) ensuring respect for will and preferences;
- (g) ensuring respect for the right to have risks and options explained;
and
- (h) ensuring respect for the right to be consulted at every step of an action or intervention under adult safeguarding legislation.

(3) Protection: this means:

- (a) responding effectively to actual or suspected abuse or safeguarding concerns in relation to at-risk adults;
- (b) protective steps are taken to ensure that safeguarding actions or interventions are taken to protect at-risk adults from harm;
- (c) support is provided to protect the safety and dignity of at-risk adults and to protect the physical, mental and emotional wellbeing of at-risk adults; and
- (d) protective measures are taken in relation to adult safeguarding legislation, including to ensure that:
 - (i) the Safeguarding Body and its authorised officers are provided with training regarding the legislation and the exercise of functions under the legislation;
 - (ii) the Safeguarding Body and its authorised officers who are engaged in exercising functions under the legislation to protect at-risk adults from harm are obliged and facilitated to complete training on these principles, as well as training on their specific roles, before exercising any functions under the legislation; and
 - (iii) adequate mentoring and supervision of authorised officers is provided.

(4) Prevention: this means:

- (a) proactive steps are taken to ensure that safeguarding actions or interventions are taken to prevent harm to at-risk adults;
- (b) support is provided to ensure the safety and dignity of at-risk adults and to promote the physical, mental and emotional wellbeing of at-risk adults; and

(c) proactive measures are taken in relation to adult safeguarding legislation, including to ensure that:

- (i) the Safeguarding Body and its authorised officers are provided with training regarding the legislation and the exercise of functions under the legislation;
- (ii) the Safeguarding Body and its authorised officers who are engaged in exercising functions under the legislation to prevent harm to at-risk adults are obliged and facilitated to complete training on these principles, as well as training on their specific roles, before exercising any functions under the legislation; and
- (iii) adequate mentoring and supervision of authorised officers is provided.

(5) Proportionality: this means ensuring that actions or interventions under adult safeguarding legislation:

- (a) are necessary, having regard to the circumstances of each at-risk adult;
- (b) are, insofar as possible, the least intrusive and restrictive of the freedom of an at-risk adult;
- (c) are proportionate to the level of risk presented to an at-risk adult;
- (d) are limited to the necessary duration;
- (e) adopt a trauma-informed approach; and
- (f) are monitored and evaluated regularly, in accordance with international best practice.

(6) Integration and cooperation: this means that:

- (a) coordinated and cohesive responses should be taken, in accordance with adult safeguarding legislation, to recognise the potential for harm and to prevent harm to at-risk adults;
- (b) services should be integrated and coordinated, multidisciplinary responses to prevent and address adult safeguarding concerns should be taken in accordance with adult safeguarding legislation; and
- (c) national sectoral policies should be aligned with adult safeguarding legislation to ensure the consistency of practice, policy and legislation across sectors.

(7) Accountability: this means ensuring:

- (a) accountability and transparency in adult safeguarding;

- (b) that the Safeguarding Body and its authorised officers who take actions or interventions under adult safeguarding legislation are accountable and answerable for their actions or interventions;
- (c) that services are transparent and it is clear how the providers of relevant services to at-risk adults respond to safeguarding concerns under adult safeguarding legislation; and
- (d) that proper procedures are implemented for risk management, ownership, information sharing and reporting.

CHAPTER 4

A RIGHTS-BASED ADULT SAFEGUARDING FRAMEWORK

Table of Contents

1.	The Relevance of Individual Rights Throughout this Report.....	189
	(a) Interventions Proposed in Chapters 10, 11, 12 and 13.....	189
2.	Constitutional Rights of At-Risk Adults and Third Parties.....	191
	(a) The right to life.....	192
	(b) The right to personal liberty.....	194
	(c) The right to privacy.....	195
	(d) The right to bodily integrity.....	196
	(e) The right to autonomy.....	197
	(f) The right to dignity.....	198
	(g) The right to the protection of the person.....	199
	(h) The inviolability of the dwelling.....	200
	(i) The guarantee of equality before the law.....	202
	(j) The rights of the family.....	203
	(k) The freedom to associate.....	205
	(l) The right to private property.....	206
	(m) The rights to work and to earn a livelihood.....	206
	(n) The right to one’s good name.....	207
	(o) The right to fair procedures.....	208
3.	Framework for Analysing the Limitation of Constitutional Rights.....	209
	(a) Proportionality Analysis.....	209
	(b) Interferences with Particular Rights.....	212
	(c) Rationality Analysis.....	213
4.	Additional Protection under the European Convention on Human Rights	214
	(a) The right to life.....	214
	(b) The right to respect for private and family life.....	215
	(c) Protection of property.....	216
	(d) The right to liberty and security.....	217
	(e) Prohibition of torture and inhuman or degrading treatment or punishment.....	219
5.	United Nations Convention on the Rights of Persons with Disabilities..	221

6. Conclusions and Recommendations221

1. The Relevance of Individual Rights Throughout this Report

[4.1] Throughout this Report, the Commission’s aim is to develop a rights-based framework for adult safeguarding. This Chapter sets out the relevant rights that must be considered in that context. The Commission has analysed these rights in developing its proposed framework for adult safeguarding and the individual recommendations throughout this Report, such as those regarding financial abuse in Chapter 14 and reporting models in Chapter 9. However, the most significant rights implications arise in the context of the interventions proposed in Chapters 10, 11, 12 and 13. These are set out below.

(a) Interventions Proposed in Chapters 10, 11, 12 and 13

[4.2] In Chapters 10, 11, 12 and 13 of this Report, the Commission proposes a range of statutory interventions that appropriately qualified persons may undertake in the context of adult safeguarding. The proposed interventions are a range of statutory powers and orders which may have significant implications for at-risk adults, their families and, in some cases, other third parties. The interventions aim to vindicate the rights of at-risk adults, but they may also interfere with the rights of at-risk adults and third parties. This is discussed in more detail below.

[4.3] Chapter 10 proposes a power of access to “relevant premises”, which are certain premises other than those which are private dwellings.¹ This power should be exercisable by an authorised officer of the Safeguarding Body without a warrant. The proposed provisions would allow for an authorised officer of the Safeguarding Body to be accompanied by a member of the Garda Síochána in specified circumstances and for reasonable force to be used subject to the issuing of a warrant by the District Court. Authorised officers would also have inspection and information-gathering powers, to assist them in assessing the health, safety or welfare of an at-risk adult or at-risk adults on a relevant premises. However, the provisions would not allow for entry to any part of a relevant premises which is used as a private dwelling by a service provider or member of staff. Such premises would be accessible only with the consent of the occupier, or in accordance with a warrant or other legal power of entry.

[4.4] Chapter 11 proposes a power of access to at-risk adults in places including private dwellings where the relevant threshold is met (including a reasonable belief of a risk to the health, safety or welfare of an at-risk adult, and that access to the at-risk adult cannot be gained by less intrusive means). The power of

¹ “Relevant premises” is defined in full in Chapter 10.

access to at-risk adults in places including private dwellings would be exercised on foot of a warrant issued by the District Court, which would allow for the use of reasonable force to enter the dwelling. The Chapter also proposes a warrantless power of access that may be exercised by a member of the Garda Síochána in urgent cases, where the relevant threshold is met (including a reasonable belief of an immediate risk to the life and limb of the adult, and that the risk is so immediate that access must be gained before there would be time to apply to the District Court for a warrant).

- [4.5] Chapter 12 proposes a power to remove and transfer an at-risk adult to a designated health or social care facility or other suitable place pursuant to an order issued by the District Court. Such an order could be made where the relevant threshold is met (including a reasonable belief of a serious and immediate risk to the health, safety or welfare of an at-risk adult, and that removal is necessary to assess such risk as this cannot be done in the place where the at-risk adult presently is. Both the power of access proposed in Chapter 11 and removal and transfer order proposed in Chapter 12 would facilitate the private interview and medical assessment of the at-risk adult. However, in light of the rights discussed in this Chapter, the Commission recommends that the at-risk adult may refuse to answer any question or to be medically examined.
- [4.6] Chapter 13 contains two key proposals: an extension of the applicability of certain provisions of the Domestic Violence Act 2018 to a wider range of relationships involving at-risk adults, and a new adult safeguarding no-contact order which may be granted on a full, interim or emergency basis. In relation to the no-contact order, there would be an obligation to ascertain, insofar as is practicable, the wishes of the at-risk adult before any order is sought or granted. The court would be obliged to consider these views in making any order. If the at-risk adult actively opposes the making of the no-contact order, only an emergency no-contact order, valid for a very short period, could be granted. Additional requirements would apply before such an order could be granted.
- [4.7] These proposed interventions have significant implications for the rights of at-risk adults and the rights of third parties. Third parties in this context means individuals who are not at-risk adults, but may be impacted by the interventions proposed in this Report, including for example, family members of the at-risk adult, or other individuals with whom the at-risk adult lives or interacts. In some instances, these individuals may be indirectly impacted by an order – for example, where an at-risk adult lives in a third party's dwelling and that dwelling is accessed in order to interview the at-risk adult. In other cases, a third party may be a source of harm or abuse towards an at-risk adult, and so they may become directly subject to an intervention such as a no-contact order. In the Commission's view, the significant rights implications raised by the proposed interventions merit thorough analysis in this standalone Chapter.

- [4.8] The Chapter focuses on the rights protected under the Constitution, with a shorter analysis of the rights protected under the European Convention on Human Rights (“ECHR”). This approach reflects the view expressed by the Supreme Court in 2020 that the Constitution remains undoubtedly “the principal source for the protection of rights in Ireland”.² Although the Supreme Court has held that a litigant is free, in principle, to elect between the Constitution and the ECHR in terms of priority of emphasis and argument and to choose the arguments which they consider best advance their case,³ it is clear that the Constitution is the primary, and more powerful, source of fundamental rights in Ireland.⁴ In *McD v L*, the Supreme Court observed that the ECHR does not have direct effect in Irish law and can only be relied upon to the extent specified in the European Convention on Human Rights Act 2003.⁵ The Supreme Court has also recently held in separate cases that the practice of placing exclusive reliance on ECHR provisions when a constitutional provision is directly on point or pertinent to the issues raised or advanced is unsatisfactory and undesirable.⁶

2. Constitutional Rights of At-Risk Adults and Third Parties

- [4.9] Interventions of the kind proposed have the potential to both vindicate and interfere with the constitutional rights of at-risk adults and third parties. This section offers an overview of the constitutional rights that are potentially engaged by these interventions, and that underpin the Commission’s recommendations throughout the Report.
- [4.10] At the outset, it should be noted that the Constitution gives rise to both positive and negative obligations on the part of the State. On the one hand, the Constitution places a positive duty on the State to vindicate the personal rights of individuals. The Supreme Court recently had regard to the “Article 40.3.1 guarantee, ... that the State’s laws will respect, and, as far as practicable, defend

² *Gorry v Minister for Justice and Equality* [2020] IESC 55 (McKechnie J) at para 209.

³ *Clare County Council v McDonagh* [2022] IESC 2 (Hogan J) at para 54, [2022] 1 ILRM 353 (Hogan J) at para 371; *Middelkamp v Minister for Justice and Equality and Others* [2023] IESC 2 (Hogan J) at para 17.

⁴ *Carmody v Minister for Justice* [2009] IESC 71; *Gorry v Minister for Justice and Equality* [2020] IESC 55. See also *O’Meara v Minister for Social Protection* [2024] IESC 1, at para 46, where O’Donnell CJ notes that “a declaration of incompatibility with the Convention would be a less effective remedy for the appellants” than a finding of unconstitutionality.

⁵ *McD v L* [2009] IESC 81, [2010] 2 IR 199.

⁶ *Clare County Council v McDonagh* [2022] IESC 2 (Hogan J) at para 55, [2022] 1 ILRM 353 (Hogan J) at page 371; *Middelkamp v Minister for Justice and Equality and Others* [2023] IESC 2 (Hogan J) at para 17.

and vindicate the personal rights of citizens”.⁷ That guarantee means that the State may be said to have a “fundamental duty” to protect the rights to life, bodily integrity, privacy and autonomy of children.⁸ Similarly, the courts have noted the State’s constitutional obligation to vindicate the rights of adults in certain cases.⁹ In the Commission’s view, the State has a fundamental constitutional duty to vindicate the rights of at-risk adults. On the other hand, the Constitution requires the State to avoid unduly interfering with the rights of individuals. The development of policy and legislation often involves striking a balance between vindicating certain rights or interests without unduly or disproportionately interfering with others.¹⁰ The interventions proposed in this Report are intended to reflect such a balance, providing a means by which the State may fulfil its fundamental duty to at-risk adults to vindicate their rights, whilst ensuring that the rights of both at-risk adults and third parties are not unduly interfered with.

(a) The right to life

- [4.11] The right to life is the pre-eminent personal right respected by Article 40.3.2° of the Constitution, and “necessitates the highest degree of protection by the courts”.¹¹ The Supreme Court recently commented that “[i]t is almost trite to say that it is one of the most important rights, for without life many other rights are incapable of being enjoyed”.¹² In light of this, there is an obligation on the State and its organs to act positively to protect the right.¹³
- [4.12] Because the right to life is of the “most profound importance”, it carries “very great weight in any balancing exercise”.¹⁴ In *DPP v Delaney*, a member of the

⁷ *CW v Minister for Justice* [2023] IESC 22 O’Donnell CJ and O’Malley J at para 230.

⁸ *CW v Minister for Justice* [2023] IESC 22 O’Donnell CJ and O’Malley J at para 160.

⁹ See, for example, *Health Service Executive v JB (No 2)* [2016] IEHC 575 at para 115 (O’Hanlon J).

¹⁰ See, for example, *CW v Minister for Justice* [2023] IESC 22 in which the Supreme Court concluded that the statutory provision at issue – section 3(5) of the Criminal Law (Sexual Offences) Act 2006 as amended – was an undue interference with the fair trial rights of an accused under Article 38 of the Constitution.

¹¹ *Rogers v Sunday World Newspapers Limited & Others* [2016] IECA 296 (Ryan P) at para 28.

¹² *Fox v Minister for Justice and Equality* [2021] IESC 61 (Clarke CJ) at para 12.5.

¹³ *Governor of X Prison v P McD* [2015] IEHC 259 (Baker J) at para 48.

¹⁴ *In re M (Adult Patient)* [2011] EWHC 2443 (Fam) (Baker J) at para 222, cited in *In the matter of JM (a Ward of Court): The Health Service Executive v JM* [2017] IEHC 399, [2018] 1 IR 688 (Kelly P) at para 89. In *The People (DPP) v Shaw* [1982] IR 1, the Supreme Court held that a

Garda Síochána entered a flat, believing they had a common law power to do so on the basis of the safety of individuals inside the flat. It was later argued that entry breached the accused's right to the inviolability of their dwelling under Article 40.5. The Supreme Court held that provided the member of the Garda Síochána acted in good faith, they were entitled to enter the dwelling "because the safeguarding of life and limb must be more important than the inviolability of the dwelling of a citizen, especially when it is under attack in any event".¹⁵

- [4.13] Save in exceptional circumstances, the nature of the right to life and its importance imposes a strong presumption in favour of taking all steps capable of preserving it.¹⁶ The Commission has considered the "strong presumption"¹⁷ in favour of taking steps that will protect life when considering the circumstances in which the proposed adult safeguarding interventions may be appropriate and indeed necessary. Where an apparent danger to the life or limb of an at-risk adult exists, the presumption in favour of protecting life will carry significant weight. In some circumstances, for example, the need to vindicate the right to life of the at-risk adult may be an overwhelmingly superior interest to the vindication of the right to liberty or the inviolability of the dwelling.
- [4.14] The right to life is also closely linked to other rights such as the right to the protection of the person and the right to bodily integrity. These are discussed below.

hierarchy of constitutional rights exists and approved the Garda Síochána's actions in ranking the right to life of the victim higher than the accused's right to personal liberty. The concept of a hierarchy of constitutional rights was disapproved by the Supreme Court in *Gilchrist v Sunday Newspapers Ltd* [2017] IESC 18, [2017] 2 IR 284 at para 37, with O'Donnell J preferring a harmonious approach.

¹⁵ *DPP v Michael Delaney* [1997] 3 IR 453 (O'Flaherty J) at page 460. In the High Court, Morris J had held that, "[i]f the garda came to the conclusion that a human life on the premises was in danger, then he [was] required to give priority to that constitutional right to life over and above all other constitutional rights": *DPP v Delaney* [1996] 3 IR 556 (Morris J) at page 563. The Court of Appeal recently held that *Delaney* "is authority for the proposition that the Gardaí have a power to enter a dwelling at common law in order to protect the life or lives of persons within the dwelling, the constitutional right to life prevailing in the hierarchy of rights": *In the Matter of Section 2 of the Summary Jurisdiction Act 1857, as Extended by Section 51 of the Courts (Supplemental Provisions) Act 1961; DPP v O'Brien* [2021] IECA 290 (Kennedy J) at para 31. (This reference to a hierarchy of rights may be doubtful in light of the earlier decision of *Gilchrist v Sunday Newspapers Ltd* [2017] IESC 18, [2017] 2 IR 284.)

¹⁶ *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79 at para 123; It was noted in *In the Matter of CF* [2023] IEHC 321 at para 185(xi) that the presumption that the right to life should be vindicated is a rebuttable presumption.

¹⁷ *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79 (Hamilton CJ) at page 123; See also *R (Burke) v General Medical Council* [2005] QB 424 at para 213(o), cited in *In the matter of JM (a Ward of Court): The Health Service Executive v JM* [2017] IEHC 399, [2018] 1 IR 688 (Kelly P) at para 89.

(b) The right to personal liberty

- [4.15] Article 40.4.1° of the Constitution contains a right to personal liberty, stating that “[n]o citizen shall be deprived of his personal liberty save in accordance with law.” As was recently noted by the Supreme Court, “[d]eprivation of liberty’ is not a particularly complex concept”.¹⁸ The Supreme Court has stated that “[i]n considering whether ... circumstances involve deprivation of liberty, the starting point must be the concrete situation of the individuals concerned”, and regard must be had “to a range of criteria, including the type, duration, effects and manner of implementation of the ... [relevant] order”.¹⁹ Most of the cases regarding this right have arisen in the context of arrest, imprisonment and committal under health legislation. Deprivation of personal liberty may also give rise to the tort of false imprisonment.²⁰
- [4.16] The right to personal liberty is qualified – the text makes clear that a person may be deprived of their liberty if that deprivation is in accordance with law. The interventions proposed in this Report seek to strike a balance between the need to protect the constitutional right to personal liberty of an at-risk adult or a third party on the one hand and the effective protection of an at-risk adult on the other. The case law which has followed the enactment of the Mental Health Act 2001 has endeavoured to strike this difficult balance in a mental health context. As Hogan J noted in *SO v Clinical Director of the Adelaide and Meath Hospital of Tallaght*:

If the courts veer in the direction of the paternalistic protection of the patient, important safeguards might suffer erosion over time to the point whereby the effective protection of the rules of law might be compromised. Yet, if on the other hand, the courts maintain an ultrazealous attitude to questions of legality and insist on punctilious adherence to every statutory formality, this might lead to the annulment of otherwise perfectly sound admission

¹⁸ *AC v Cork University Hospital* [2019] IESC 73 (O’Malley J) at para 330.

¹⁹ *S McG v Child and Family Agency* [2017] IESC 9; [2017] 1 IR 1 (MacMenamin J) at para 39, in the context of an Article 40.4.2° inquiry regarding an interim care order granted by the District Court under section 17 of the Child Care Act 1991.

²⁰ This has been judicially described as the unlawful and total restraint of the personal liberty of another, whether by constraining them or compelling them to go to a particular place or confining them in a prison, police station or private place or by detaining them against their will in a public place: *Dullaghan v Hillen* [1957] Ir Jur Rep 10 (Fawsitt J) at page 15; endorsed in *GE v Commissioner of An Garda Síochána & Others* [2022] IESC 51 (Hogan J) at para 27.

decisions, sometimes perhaps years after the original decision has been taken.²¹

- [4.17] The Commission has kept this balance in mind in developing its proposed interventions and the necessary thresholds and safeguards that accompany them. It has also considered the interaction of the right to liberty with the right to fair procedures. For example, the Court of Appeal's decision in *AB*²² requires adequate safeguards so as to vindicate the right to personal liberty. It must be possible to secure an independent review of the decision to grant or extend an order interfering with personal liberty, within a reasonable period of time.²³ The Commission has carefully considered what would be a reasonable period of validity for the proposed interventions, and has provided safeguards such as the potential for an at-risk adult to leave any place to which they are brought on foot of a removal and transfer order.

(c) The right to privacy

- [4.18] A right to privacy was recognised as an unenumerated or implied right protected by Article 40.3.1° of the Constitution in *Kennedy v Ireland*,²⁴ where it was described as one of the most fundamental personal rights of the citizen which flow from the Christian and democratic nature of the State.²⁵ However, as is discussed further below, a number of recent decisions, including the decision of the Supreme Court in *Simpson v Governor of Mountjoy Prison*,²⁶ suggest that the express terms of Article 40.3, and in particular the reference to the protection of "the person" in Article 40.3.2°, provide a textual basis for certain rights which were previously regarded as unenumerated rights, including rights to privacy and autonomy.

²¹ *SO v Clinical Director of the Adelaide and Meath Hospital of Tallaght* [2013] IEHC 132 (Hogan J) at para 1.

²² *AB v The Clinical Director of St Loman's Hospital & Others* [2018] IECA 123 (Hogan J).

²³ *AB v The Clinical Director of St Loman's Hospital & Others* [2018] IECA 123 (Hogan J) at para 117. Hogan J noted that Mr B should be entitled to seek an independent review within a "reasonable time" or "timely period" but did not specify what this would be.

²⁴ *Kennedy v Ireland* [1987] IR 587. Such rights were conventionally referred to as unenumerated rights, but more recently they have been described as "derived rights": *Friends of the Irish Environment v The Government of Ireland* [2020] IESC 49 (Clarke CJ).

²⁵ The Supreme Court subsequently had "no doubt" that the plaintiffs enjoyed "a constitutional right to privacy": *Haughey v Moriarty* [1999] 3 IR 1 (Hamilton CJ) at page 58.

²⁶ *Simpson v Governor of Mountjoy Prison* [2019] IESC 81, [2020] 3 IR 113.

- [4.19] The nature of the right to privacy is, in essence, “the right to be let alone”.²⁷ The right is intended to ensure the dignity and freedom of an individual in a sovereign, independent and democratic society.²⁸ Such dignity and freedom of an individual cannot be ensured if their right to privacy is “deliberately, consciously and unjustifiably” intruded upon and interfered with.²⁹
- [4.20] However, the right to privacy is qualified³⁰ and its exercise may be restricted by the constitutional rights of others, the requirements of the common good and the requirements of public order and morality.³¹ In certain circumstances, for example to safeguard an at-risk adult, the exigencies of the common good may require and indeed justify interference with the right to privacy.³² The Commission has carefully considered the particular circumstances in which that could occur in the adult safeguarding context. For example, the public interest that an order be granted to safeguard an at-risk adult may outweigh the public interest in upholding the right to privacy of the at-risk adult or a third party.
- [4.21] Any interference with the right to privacy must be proportionate, as discussed below.

(d) The right to bodily integrity

- [4.22] The right to bodily integrity is another unenumerated right protected by Article 40.3.1° of the Constitution.³³ This right is potentially engaged by the proposed interventions in two ways.
- [4.23] On the one hand, the proposed interventions have the potential to vindicate this right. Abuse of an at-risk adult can be seen as a violation of their right to bodily integrity, and the proposed interventions may allow such abuse to be brought to light and dealt with.

²⁷ *Kennedy v Ireland* [1987] IR 587, citing Justice Brandeis of the Supreme Court of the United States.

²⁸ *Kennedy v Ireland* [1987] IR 587 (Hamilton P) at page 593.

²⁹ *Kennedy v Ireland* [1987] IR 587 (Hamilton P) at page 593.

³⁰ *Herrity v Associated Newspapers (Ireland) Limited* [2008] IEHC 249 (Dunne J) at para 54, [2009] 1 IR 316 (Dunne J) at pages 336 – 337. Article 40.3 qualifies the personal rights contained therein by the use of the words “as far as practicable”.

³¹ *Kennedy v Ireland* [1987] IR 587. The Supreme Court has noted that “[j]ust as [the] public interest in defeating wrong doing may outweigh the public interest in the maintenance of confidentiality, the exigencies of the common good may outweigh the constitutional right to privacy”: *Haughey v Moriarty* [1998] IESC 17, [1999] 3 IR 1 (Hamilton CJ) at page 58.

³² *Kennedy v Ireland* [1987] IR 587; *Haughey v Moriarty* [1998] IESC 17, [1999] 3 IR 1.

³³ *Ryan v Attorney General* [1965] IR 294.

- [4.24] In *NK v SK*, Hogan J acknowledged that in a family law context, there are many circumstances where a removal order is “necessary, inevitable and constitutionally justifiable, not least to protect the personal safety and integrity of the other spouse and children”.³⁴ Although this comment was made in a family law context, it is arguable, given that individuals who are at-risk or require care exist in both a family law context and an adult safeguarding context, that there may conceivably be circumstances where the proposed interventions are necessary, inevitable and constitutionally justifiable in an adult safeguarding context, in particular to protect the personal safety and integrity of an at-risk adult. The Commission has carefully considered the circumstances in which that may be the case.
- [4.25] On the other hand, the proposed interventions may interfere with the right to bodily integrity, for example where an at-risk adult is removed from their home against their wishes. The High Court has recognised that long periods spent by an individual in a hospital may negatively impact upon that individual’s right to bodily integrity.³⁵ The Commission has carefully considered this when setting out safeguards, thresholds and time limits for the proposed interventions.

(e) The right to autonomy

- [4.26] The right to autonomy is also an unenumerated right protected by Article 40.3.1° of the Constitution.³⁶ As with bodily integrity, this right is potentially engaged by the interventions in two ways.
- [4.27] On the one hand, the proposed interventions may vindicate this right. The interventions are intended to ensure that the wishes of the at-risk adult are respected and that any coercion is identified and combatted, vindicating the at-risk adult’s right to autonomy. The Commission has carefully considered the importance of this right in setting out its proposed interventions. For example, where there are serious concerns that an at-risk adult is experiencing coercion which is preventing them from making an application for a particular order of their own accord, it may be necessary to allow for an application for an order without the explicit consent of the at-risk adult.
- [4.28] On the other hand, the proposed interventions may interfere with the right to autonomy, for example where the granting of an order is against the wishes of an

³⁴ *NK v SK* [2017] IECA 1 (Hogan J) at para 64.

³⁵ Noting that “for obvious reasons, long periods of detention in hospital ... impact negatively upon [the] right to bodily integrity ...”: *In the Matter of a Health Service Executive v Ms A* [2021] IEHC 836 (Hyland J) at para 59.

³⁶ *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79; *O’Donnell v South Dublin County Council* [2015] IESC 28.

at-risk adult. The Commission has been cognisant of this, and of the importance of the related right to self-determination.³⁷

- [4.29] Although the State has an obligation to protect life, as is discussed above, the courts have held that this is not an absolute obligation and it may in certain circumstances have to give way to a freely expressed decision of an adult competent to make a choice to renounce that right.³⁸ In this respect, the right of autonomy or self-determination may in some cases prevail over the duty of the State to preserve the right to life.³⁹ The Commission has had regard to this fact in proposing the interventions, and to the well-established principle that capacitous individuals are entitled to make choices that might be considered unwise, foolish or irrational by others.⁴⁰ Individuals lacking capacity also retain the benefit of constitutional rights, including the right to autonomy, although they may not be able to exercise their rights in the same way as a capacitous individual.⁴¹ In the following Chapters, the Commission emphasises the importance of ascertaining the at-risk adult's wishes and only allowing for certain orders to be granted against the at-risk adult's wishes in limited circumstances, for example where it is reasonably believed that the at-risk adult's opposition is generated by the undue influence of a third party.

(f) The right to dignity

- [4.30] Another unenumerated right, closely related to the rights discussed above, is the right to dignity. This encompasses a right to be treated with dignity,⁴² "a right to live with dignity and a right to die with dignity".⁴³
- [4.31] The proposed interventions may engage the right to dignity in two principal ways. On the one hand, the proposed interventions may vindicate this right. An

³⁷ In *Governor of X Prison v P McD* [2015] IEHC 259, Baker J held that the right to self-determination is derived from the right to life.

³⁸ *Fleming v Ireland* [2013] IESC 19; *Governor of X Prison v P McD* [2015] IEHC 259.

³⁹ *Governor of X Prison v P McD* [2015] IEHC 259 (Baker J) at para 115.

⁴⁰ *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79; *Fitzpatrick v FK* [2008] IEHC 104; *Governor of X Prison v P McD* [2015] IEHC 259.

⁴¹ *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79; *In the Matter of CF* [2023] IEHC 321.

⁴² *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79 (Denham J) at page 163.

⁴³ *In the Matter of CF* [2023] IEHC 321 (Barniville P) at para 176. The right to dignity was referred to in *MX v Health Service Executive* [2012] 3 IR 254 at para 52 as part of a range of "personal capacity rights", comprising "the Article 40.3 values of self-determination, bodily integrity, privacy, autonomy and dignity, all unenumerated, but identified in case law, as well as the explicit right to equality before the law, as identified in, and qualified by, Article 40.1".

at-risk adult may be living in circumstances of abuse and neglect that constitute an interference with their right to live with dignity. The proposed interventions may allow this situation to be addressed, and so for the right to dignity to be vindicated.

- [4.32] On the other hand, the proposed interventions may interfere with the right to dignity, for example where they are exercised without the consent of the at-risk adult. In *Re a Ward of Court*, Denham J held that “[a]s long as a person is alive they have [a] right [to dignity]”, and that “the dignity of a person is progressively diminished by increasingly invasive medicine”.⁴⁴ The Commission has had close regard to these principles and to the qualified right to dignity in developing the proposed interventions.

(g) The right to the protection of the person

- [4.33] The right to the protection of the person is explicitly protected by Article 40.3.2° of the Constitution. The scope of this right is not entirely clear. However, a number of recent decisions suggest that the right encompasses the physical, mental and emotional wellbeing of the individual,⁴⁵ and may provide a textual foundation for certain rights which have been viewed as unenumerated rights under Article 40.3.1°, such as bodily integrity, privacy, autonomy and dignity. For example, Hogan J commented in *Kinsella* that “[b]y solemnly committing the State to protecting the person, Article 40.3.2° protects not simply the integrity of the human body, but also the integrity of the human mind and personality”.⁴⁶ The Divisional High Court in *Fleming v Ireland* stated that the right to personal autonomy “lies at the core of the protection of the person by Article 40.3.2”.⁴⁷
- [4.34] The Supreme Court has adopted this expansive view of the right. In *Simpson v Governor of Mountjoy Prison*,⁴⁸ MacMenamin J identified the rights to privacy and autonomy, as well as the value of dignity, as attributes of personhood and included within the right to protection of the person.⁴⁹ O’Donnell J noted the

⁴⁴ *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79 (Denham J) at page 163.

⁴⁵ Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* 5th ed (Bloomsbury Professional 2018) at para 7.3.45, referring to a number of judgments by Hogan J.

⁴⁶ *Kinsella v Governor of Mountjoy Prison* [2011] IEHC 235 at para 9.

⁴⁷ *Fleming v Ireland* [2013] IEHC 2, [2013] 2 ILRM 9 at para 52.

⁴⁸ *Simpson v Governor of Mountjoy Prison* [2019] IESC 81, [2020] 3 IR 113.

⁴⁹ *Simpson v Governor of Mountjoy Prison* [2019] IESC 81 (MacMenamin J) at para 93. MacMenamin J, at para 89, suggested that the protection of the person involved “the ideas

development of this right,⁵⁰ and stated that it extends beyond physical intrusion, to protect “the personal space and psychological well-being of the individual”.⁵¹ The Commission has considered the potential for both vindication and interference with this right, in a similar way to the rights of bodily integrity, autonomy and dignity, discussed above.

(h) The inviolability of the dwelling

[4.35] Article 40.5 of the Constitution safeguards the inviolability of the dwelling, reflecting the importance of the safety and security of an individual’s private dwelling.⁵² The essence of the guarantee is to provide a degree of privacy and autonomy for the occupier.⁵³ The courts have observed that the inviolability of the dwelling is necessary for the enjoyment of other constitutional rights and values,⁵⁴ and have held that the Article 40.5 guarantee is “enjoyed by all who reside in the dwelling and not simply by those who have legal title to that property”.⁵⁵ Article 40.5 has been judicially recognised as one of the most important, clear and unqualified protections given by the Constitution to the citizen.⁵⁶ The Supreme Court has also recognised Article 40.5 as going further

of individual privacy and dignity, [and] the respect due to each individual by virtue of his or her status as a human being”. The judge also held at the same para that “[b]y virtue of personhood, each individual has an intrinsic worth which is to be respected and protected by others and by the State”.

⁵⁰ *Simpson v Governor of Mountjoy Prison* [2019] IESC 81 (O’Donnell J) at para 9.

⁵¹ *Simpson v Governor of Mountjoy Prison* [2019] IESC 81 (O’Donnell J) at para 10. This case was recently cited in *Minister for Justice & Equality v Damji* [2022] IESC 27, with MacMenamin J commenting at para 87 that the constitutional obligation in the prison context was limited “to provid[ing] medical treatment which would be as good as reasonably possible, in all the circumstances of the case”.

⁵² *The People (Director of Public Prosecutions) v Barnes* [2006] IECCA 165, [2007] 3 IR 130. In *Sullivan v Boylan and Others* [2012] IEHC 389 at para 24 Hogan J noted that “[t]he Irish language text of Article 40.5 (“Is slán do gach saoránach a ionad cónaithe ...”) captures and expresses the essence of the English language word (“inviolability”) by stressing the concepts of safety and security of the dwelling”.

⁵³ *MK (Albania) v Minister for Justice and Equality* [2022] IESC 48 (Hogan J) at para 13. In *Sullivan v Boylan (No 2)* [2013] IEHC 104 at para 27 Hogan J noted that “the rights of the residents of a dwelling to security, protection against all-comers and privacy ... are all necessary features of the inviolability of the dwelling”.

⁵⁴ *The People (Director of Public Prosecutions) v Barnes* [2006] IECCA 165; *The People (Director of Public Prosecutions) v O’Brien* [2012] IECCA 68.

⁵⁵ *Sullivan v Boylan (No 2)* [2013] IEHC 104 (Hogan J) at para 27.

⁵⁶ *DPP v Dunne* [1994] 2 IR 537 (Carney J) at page 540; applied in *Damache v DPP & Others* [2012] IESC 11, [2012] 2 IR 266 (Denham J) at para 44.

than the more modestly expressed guarantee to “respect” the home found in Article 8(1) of the ECHR.⁵⁷

- [4.36] Article 40.5 of the Constitution is not confined to criminal law or procedure.⁵⁸ Consideration of the application of Article 40.5 in the adult safeguarding context is thus as relevant as its application in the context of criminal entry and search powers. It is also important to note that the guarantee in Article 40.5 is “not against forcible entry only”.⁵⁹ Rather, the dwelling of every citizen is inviolable “except to the extent that entry is permitted by law which may permit forcible entry”.⁶⁰
- [4.37] The right under Article 40.5 is not absolute, although the courts have made it clear that it should not be set aside easily.⁶¹ To protect the inviolability of the dwelling, members of the Garda Síochána may generally only enter a dwelling with a warrant, under a specific statutory authority, or by invitation or permission of the owner which may be express or implied.⁶²
- [4.38] The guarantee also generates specific procedural safeguards. In *Damache v DPP*, the Supreme Court held that the constitutional right to the inviolability of the dwelling was such that the issuance of a warrant to search a dwelling must respect fundamental principles, including the involvement of an independent decision-maker to impartially assess the conflicting interests of the State and the individual.⁶³ The Court recognised, however, that there may be exceptions to these fundamental principles, “for example when there is an urgent matter”.⁶⁴

⁵⁷ *Clare County Council v McDonagh* [2022] IESC 2, [2022] 1 ILRM 353; *Middelkamp v Minister for Justice and Equality and Others* [2023] IESC 2.

⁵⁸ *Meath County Council v Murray* [2017] IESC 25, [2018] 1 IR 189 (McKechnie J) at para 120. However, the decision stresses at para 119 that the expansion of Article 40.5’s influence “should be case driven and individually worked out”.

⁵⁹ *The People (Attorney General) v Hogan* (1972) 1 Frewen 360 at page 362; applied in *Damache v DPP & Others* [2012] IESC 11, [2012] 2 IR 266 (Denham CJ) at para 43.

⁶⁰ *The People (Attorney General) v Hogan* (1972) 1 Frewen 360 at page 362, applied in *Damache v DPP & Others* [2012] IESC 11, [2012] 2 IR 266 (Denham CJ) at para 43.

⁶¹ Law Reform Commission, *Draft Report on A Regulatory Framework for Adult Safeguarding* Chapter 13 at paragraph 13.5.

⁶² Coen, *Garda Powers: Law and Practice* (Clarus Press 2014) at paragraph 8-04. This is subject, however, to the right to life – see *DPP v Delaney* [1996] 3 IR 556, [1997] 3 IR 453 discussed above at para 4.12.

⁶³ *Damache v DPP & Others* [2012] IESC 11, [2012] 2 IR 266. Such a person should be satisfied on receiving sworn information that there are reasonable grounds for a search warrant (as emphasised at para 36).

⁶⁴ *Damache v DPP & Others* [2012] IESC 11 at para 47.

- [4.39] The Supreme Court also found that it is best practice to keep a record of the basis upon which a search warrant is granted.⁶⁵ The High Court has recognised “notice, foreseeability and independent determination” of the objective necessity of taking a particular course of action as “key values” in the very essence of the protection of the inviolability of the dwelling.⁶⁶ The Commission has considered these principles in developing safeguards for the proposed interventions – for example, the need for judicial oversight in most cases to determine whether a particular order is necessary. Providing that particular powers are only exercisable on foot of a warrant which is obtained from an independent decision-maker and is used only for the purpose for which it is granted are important protections in this context, as recently reiterated by the Supreme Court.⁶⁷
- [4.40] Although the Oireachtas may permissibly interfere with the constitutional right to inviolability of the dwelling, such interferences must be proportionate.⁶⁸ This is explained at section 3(a) below.

(i) The guarantee of equality before the law

- [4.41] Article 40.1 of the Constitution provides that:

All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

- [4.42] The equality guarantee does not require the State to treat all citizens equally in all circumstances – indeed, to interpret the guarantee in this way would defeat its objectives.⁶⁹ Rather, the equality guarantee distinguishes between lawful and

⁶⁵ *Damache v DPP & Others* [2012] IESC 11 at para 58.

⁶⁶ *Irish Life and Permanent PLC v Duff* [2013] IEHC 43 (Hogan J) at para 44.

⁶⁷ *The People (DPP) v Behan* [2022] IESC 23; *The People (DPP) v Quirke* [2023] IESC 5; *Corcoran v The Commissioner of An Garda Síochána and the Director of Public Prosecutions* [2023] IESC 15. In the older case of *Re Employment Equality Bill 1996* [1997] IESC 6; [1997] 2 IR 321, the Supreme Court was satisfied that provisions conferring powers of entry to premises were reasonably necessary to carry out investigations to enforce the Bill’s provisions, and as the provisions authorised forcible entry of a dwelling only where a court issued a search warrant on the basis of sworn evidence, they were not contrary to Article 40.5.

⁶⁸ *Damache v DPP & Others* [2012] IESC 11, [2012] 2 IR 266 (Denham J) at para 52.

⁶⁹ *Re Employment Equality Bill 1996* [1997] IESC 6; [1997] 2 IR 321. In *O’Meara v Minister for Social Protection* [2024] IESC 1 at para 14, O’Donnell CJ stated that “[t]he concept of equality involves not only treating like cases alike, and unlike cases unlike, but also that where a differentiation is made, that it is made and justified by reference to the manner in which the comparators are unlike”.

unlawful distinctions, and “provides protection against discrimination that is based on arbitrary, capricious or irrational considerations”.⁷⁰

- [4.43] In proposing a bespoke statutory regime for at-risk adults, a distinction is drawn between them and other individuals who fall outside of the regime. This distinction is not drawn on grounds of age or disability, but rather is a broader and context-specific category of individuals who may be in need of support to protect themselves from harm at a particular time. In developing a bespoke legal regime for at-risk adults, the Commission has had due regard to the equality guarantee. The Commission is of the view that there is a legitimate reason for treating at-risk adults differently from other persons in certain contexts, namely to ensure that the increased risk of harm is addressed and the rights of at-risk adults are vindicated.

(j) The rights of the family

- [4.44] Article 41.1 of the Constitution provides that:

1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

- [4.45] Article 41.3.1° provides that “[t]he State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack”.

- [4.46] The “family” which is protected by Article 41 of the Constitution is traditionally defined as the marital family,⁷¹ and protection is generally not extended to wider

⁷⁰ *Donnelly v Minister for Social Protection* [2022] IESC 31 (O’Malley J) at para 188. See also *O’Meara v Minister for Social Protection* [2024] IESC 1.

⁷¹ *The State (Nicolaou) v An Bord Uchtála* [1966] IR 567; *McD v L* [2009] IESC 81, [2010] 2 IR 199. In *O’Meara v Minister for Social Protection* [2024] IESC 1, a majority of the Supreme Court did not find it necessary or appropriate to overrule the statement in *Nicolaou* that the Article 41 Family is limited to a family based on marriage. However, O’Donnell CJ expressed the view at para 146 that the limited definition was not “attractive or admirable or one that is well suited to a contemporary society”. He also noted at para 94 that non-marital families receive “substantial constitutional status and protection” under other Articles of the Constitution.

family members such as grandparents or adult siblings.⁷² A referendum held in March 2024, which proposed an extension of the definition of the family in Article 41 of the Constitution,⁷³ was not approved by the people of Ireland.⁷⁴ These rights appear to be owed to the family as a unit or institution, as opposed to personal rights which are held by individuals.⁷⁵ Article 41's protection of the family has been described as a "recognition of an area within which the institution of the Family, primarily and presumptively, is in control, and within which the State cannot interfere".⁷⁶ This means that the State cannot normally "make decisions for the Family on what might be described, loosely, as family matters".⁷⁷

- [4.47] The interventions proposed in this Report may vindicate family rights. For example, where a third party is prohibiting an at-risk adult from having contact with their family members, a no-contact order against that individual could address the situation, allowing family members to once again associate with one another.
- [4.48] On the other hand, the interventions may interfere with family rights. For example, where an at-risk adult is living with their spouse and a removal and transfer order is granted, the family rights of the marital couple are interfered

⁷² *RX v Minister for Justice, Equality and Law Reform* [2010] IEHC 446 contemplated this wider definition, but in *OO v Minister for Justice and Law Reform* [2015] IESC 26 at para 26 it was held that "as one moves away from the nuclear family, to grandparents, to grandchildren, to uncles and aunts and thence to cousins of varying degrees, as a matter of moral imperative, the constitutional guarantee is either inapplicable or substantially recedes".

⁷³ Department of the Taoiseach, *Government approves proposals for referendums on family and care* (7 December 2023) < <https://www.gov.ie/en/press-release/c9193-government-approves-proposals-for-referendums-on-family-and-care/> > accessed on 31 January 2024.

⁷⁴ McMorrow, "Resounding defeat for Family referendum as 67.7% vote No" *RTÉ* (9 March 2024) < <https://www.rte.ie/news/ireland/2024/0309/1436882-referendum/> > accessed 9 March 2024.

⁷⁵ *L v L* [1992] 2 IR 77 (Finlay CJ) at page 108; *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79 (Denham J) at page 164, noting that the case involved "[t]he personal rights of the ward. Article 41, on the other hand, has to do with the institution of the family"; *O'Meara v Minister for Social Protection* [2024] IESC 1 at paras 99, 102 and 126.

⁷⁶ *Gorry v Minister for Justice and Equality* [2020] IESC 55 (O'Donnell J) at para 20.

⁷⁷ *Gorry v Minister for Justice and Equality* [2020] IESC 55 (O'Donnell J) at para 20. Similarly, at para 25, any decision which fundamentally affects the lives of a family "demands close scrutiny and requires justification under the Constitution". See also *In Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79, and Denham J's views at page 164.

with. There may be a constitutional right to cohabit with one's spouse,⁷⁸ which would clearly be engaged here.

- [4.49] Although Article 41 contains strong wording, the constitutional rights of the family are not absolute.⁷⁹ It has been held that:

the exercise by the Family, of its imprescriptible and inalienable right to integrity as a unit group, can be severely and validly restricted by the State when, for example, its laws permit a father to be banned from a family home or allows for the imprisonment of both parents of young children.⁸⁰

- [4.50] The Commission has carefully considered the impact of the proposed interventions on the rights of families under Article 41 of the Constitution, and the circumstances in which such interference would be proportionate.

(k) The freedom to associate

- [4.51] Article 40.6.1° provides that "[t]he State guarantees liberty for the exercise of the following rights, subject to public order and morality: ... iii. The right of the citizens to form associations and unions". The caselaw concerning this right has primarily focused on trade unions and political parties. However, the right is arguably engaged whenever the State interferes with the ability of individuals to associate with others. In the context of this Report, the right may be engaged by proposed interventions that would allow for the prohibition of interaction between two individuals without the consent of one or both of them.⁸¹

- [4.52] However, this right is expressly qualified in two ways: the exercise of the right is "subject to public order and morality", and laws "may be enacted for the regulation and control in the public interest of the exercise of the ... right". These

⁷⁸ In *Gorry v Minister for Justice and Equality* [2020] IESC 55 McKechnie J held that the right of a married couple to cohabit is protected by Article 41.1.1°, although noting at para 177 that Irish citizens do not have "a *prima facie* right, even a non-absolute one, to reside in the State with a non-national spouse". O'Donnell J disagreed that there is a right to cohabit, although the fact of cohabitation is "something the State is required to have regard to in its decision making and to respect": para 62.

⁷⁹ In *Gorry v Minister for Justice and Equality* [2020] IESC 55 at para 21, O'Donnell J stated that "the freedom of the Family, for example, within areas which might clearly be considered a family matter, such as decisions on the education of children, in the broadest sense, is not absolute". See also family rights yielding to immigration policy: *OO v Minister for Justice and Law Reform* [2015] IESC 26 (Charleton J) at para 26; *Pok Sun Shum v Ireland* [1986] ILRM 593.

⁸⁰ *Murray v Ireland* [1985] IR 532 (Costello J) at page 538, cited in *Gorry v Minister for Justice and Equality* [2020] IESC 55 (McKechnie J) at para 131.

⁸¹ See Chapter 13.

are broad qualifications, although any restriction must be proportionate, as is discussed below. The Commission has had regard to the qualified nature of this right in developing the proposals contained in Chapter 13.

(l) The right to private property

- [4.53] Article 40.3.2° of the Constitution provides that “[t]he State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the ... property rights of every citizen”. Property rights are also protected under Article 43. As with other rights, the private property rights protected by the Constitution are not absolute.⁸²
- [4.54] In the context of this Report, the property rights of an at-risk adult are arguably engaged whenever they experience financial abuse, a term which encompasses every form of theft and fraud. The Commission’s recommendations in Chapter 14 aim to address financial abuse and so assist in vindicating the private property rights of at-risk adults.
- [4.55] However, some of these recommendations may also interfere with the private property rights of at-risk adults. For example, the power of regulated financial service providers to suspend a banking transaction, if introduced in Ireland, may interfere, albeit temporarily, with the private property rights of an at-risk adult. In particular, it may interfere with their right to use and dispose of their monetary property. However, given the qualified nature of private property rights, a power to suspend may be a permissible interference with an at-risk adult’s right to property in light of the exigency of the common good, namely safeguarding at-risk customers from actual or suspected financial abuse. The Commission has carefully considered the private property rights of individuals, particularly of at-risk adults, in developing its proposals in Chapter 14.

(m) The rights to work and to earn a livelihood

- [4.56] The rights to work and to earn a livelihood have been recognised as unenumerated rights protected by Article 40.3.1°. These rights are relatively narrow in scope. For example, the Supreme Court has described the right to work as the “freedom to seek work which ... implies a negative obligation not to prevent the person from seeking or obtaining employment, at least without substantial justification”.⁸³ Similarly, these rights do not encompass an

⁸² Article 43.2 explicitly recognises that private property rights “ought ... to be regulated by the principles of social justice” and so allows the State to limit the exercise of such rights “with a view to reconciling their exercise with the exigencies of the common good”. See, for example, *Dellway Investments Ltd v National Assets Management Agency* [2011] 4 IR 1.

⁸³ *NVH v Minister for Justice and Equality* [2017] IESC 35; [2018] 1 IR 246 (O’Donnell J) at para 12. The Supreme Court in this case held that the right extends to non-citizens.

unqualified right to any particular livelihood or to employment by a particular employer.⁸⁴

- [4.57] In the context of this Report, the rights to work and to earn a livelihood may be engaged where an individual is prevented from working as a health care assistant or health care support assistant,⁸⁵ where an individual is temporarily prohibited from engaging in relevant work or activities on foot of a criminal conviction,⁸⁶ or where it is alleged that an individual has been involved in abusing or harming an at-risk adult in a manner which impacts their professional reputation.⁸⁷ However, the rights to work and to earn a livelihood are not absolute, and may be permissibly interfered with if such interference is proportionate.⁸⁸ The Commission has considered the qualified nature of these rights in developing its recommendations.

(n) The right to one’s good name

- [4.58] Article 40.3.2° of the Constitution explicitly protects the right to one’s good name. The protection of this right in the Constitution recognises the “damage that can be done to a citizen even in a situation where he or she is not subjected to legal penalties, to loss of liberty or property, or to physical injury”.⁸⁹ The tort of defamation is often used to vindicate the right to one’s good name. Similarly, where the State is involved in making determinations or findings impugning an individual’s good name or reputation, there must be an opportunity for the individual to defend and vindicate their right to a good name.⁹⁰
- [4.59] In the context of this Report, the right to one’s good name is engaged where it is alleged that an individual has been involved in abusing or harming an at-risk

⁸⁴ *Attorney General v Paperlink Ltd* [1984] ILRM 373; *Greally v Minister for Education (No 2)* [1999] IEHC 212; [1999] 1 IR 1.

⁸⁵ For further information on health care assistants and health care support assistants and recommendations on their regulation, see Chapter 18 (Regulation of Professionals and Occupational Groups) at sections 2(b)(i) and 5(a).

⁸⁶ The implications of the granting of a post-conviction prohibition order on an individual’s right to earn a livelihood guaranteed by Article 40.3.1° of the Constitution is discussed in Chapter 18 (Regulation of Professionals and Occupational Groups).

⁸⁷ See Chapter 9.

⁸⁸ *Cox v Ireland* [1992] 2 IR 503.

⁸⁹ *Maguire v Ardagh* [2002] IESC 21; [2002] 1 IR 385 (McGuinness J) at page 619.

⁹⁰ *In re Haughey* [1971] IR 217; *Shatter v Guerin* [2019] IESC 9; [2021] 2 IR 415. In this regard the right is closely linked with the right to fair procedures, discussed below. The appropriate procedures are context-specific, and “[t]here is no rule that before any statement is made which is critical of an individual, and which may be thought to reflect on their good name, he or she must be afforded a hearing and an opportunity to make representations”: *Shatter v Guerin* [2019] IESC 9; [2021] 2 IR 415 (O’Donnell J) at para 45.

adult.⁹¹ However, as with other rights, the right to one's good name is not absolute. For example, the right does not protect a person from an adverse disciplinary report provided that appropriate procedures are followed,⁹² nor does it entitle an individual to anonymity in court proceedings.⁹³

[4.60] The Commission has carefully considered the extent of the right to one's good name in developing its recommendations, particularly those regarding reporting models.

(o) The right to fair procedures

[4.61] Article 40.3 of the Constitution contains a right to fair procedures.⁹⁴ While this is not an equivalent right to the substantive rights discussed above, the right to fair procedures provides a number of important procedural safeguards to individuals. These can assist in vindicating other rights, as is discussed above in the context of the right to personal liberty.

[4.62] Fair procedures encompasses a right to a decision by an impartial decision-maker.⁹⁵ It also requires that before making any order, the person(s) likely to be affected by the order should be given notice of the intention to make the order and be afforded the opportunity to make representations with regard to the order. Recent cases have stressed that the constitutional right to fair procedures requires that any relevant information is made available to both sides.⁹⁶ The Commission has considered these principles in developing the proposed interventions.

[4.63] However, as with other personal rights under Article 40.3, the right to fair procedures is not absolute and may be limited in certain circumstances. The High

⁹¹ See Chapter 9. See also Chapter 5, discussing the power of the Safeguarding Body to respond to allegations of harm or abuse of at-risk adults.

⁹² *M v Medical Council* [1984] IR 485.

⁹³ *Re Ansbacher (Cayman) Ltd* [2002] IEHC 27; [2002] 2 IR 517. This conclusion was reached in light of the importance of Article 34.1's requirement that justice be administered in public.

⁹⁴ As the High Court recently observed in *Buttimer v Oak Fuel Supermarket Limited* [2023] IEHC 126 (Dignam J) at para 78, "[t]he right to fair procedures comes from the individual's constitutional rights."

⁹⁵ *Bula Ltd v Tara Mines (No 6)* [2000] 4 IR 412 (McGuinness J) at pages 508 – 509.

⁹⁶ *AC v Cork University Hospital* [2019] IESC 73, [2020] 2 IR 38; *AP v Minister for Justice and Equality* [2019] IESC 47 (Clarke CJ) at para 4.22, [2019] 3 IR 317 (Clarke CJ) at para 41; *DK v PIK* [2022] IECA 54 (Collins J) at para 56. The Supreme Court has also noted in the area of public law decision-making that affected persons are entitled to be heard and "will ordinarily be entitled to be informed of any material, evidence or issues which it might be said could adversely impact on their interests in the decision-making process": *State (Williams) v Army Pensions Board* [1998] IR 308.

Court commented in *MG* that there may be particular situations where the right to fair procedures may have to be delayed “where urgent action is required”.⁹⁷

- [4.64] The Commission has had regard to the qualified nature of Article 40.3.1° and the High Court’s decision in *MG* when considering whether there may be exceptional circumstances – such as a legitimate fear of illness or injury to an at-risk adult if prior notice is given – where it may be legally permissible for the right to fair procedures of an at-risk adult or a third party to be delayed, for example until after an order has been exercised to safeguard the at-risk adult.

3. Framework for Analysing the Limitation of Constitutional Rights

- [4.65] The importance of these constitutional rights cannot be overstated.⁹⁸ However, as is mentioned above, it must be appreciated that these rights are not absolute.⁹⁹ In certain circumstances, constitutional rights may be legitimately limited or interfered with. In particular, constitutional rights may be limited by reference to the common good, and to the constitutional rights of others.¹⁰⁰ This section outlines the way in which such limitation may be validly done.

(a) Proportionality Analysis

- [4.66] Where the text does not provide for a specific test for the limitation of a constitutional right,¹⁰¹ limitations of personal rights are analysed by reference to the proportionality framework as set out by Costello J in *Heaney v Ireland*:¹⁰²

In considering whether a restriction on the exercise of rights is permitted by the Constitution the courts in this country and

⁹⁷ *MG (Suing by his Mother and Next Friend JG) v The Director of Oberstown Children Detention Centre & Others* [2019] IEHC 275 (Simons J) at para 47.

⁹⁸ *DPP v Roche, Roche, & Freeman* [2019] IECA 317 (Kennedy J) at para 79, in relation to the constitutional protection of Article 40.5.

⁹⁹ *Ryan v Attorney General* [1965] IR 294 (Kenny J) at page 312; *Murray v Ireland* [1985] IR 532 (Costello J) at page 538.

¹⁰⁰ Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* 5th ed (Bloomsbury Professional 2018) at para 7.1.44.

¹⁰¹ *O’Doherty v Minister for Health* [2022] IESC 32; [2022] 1 ILRM 421 (O’Donnell CJ) at para 57. See also *Donnelly v Minister for Social Protection* [2022] IESC 31 and section 3(b) below.

¹⁰² *Heaney v Ireland* [1994] 3 IR 593; affirmed by the Supreme Court in [1996] 1 IR 580 and explicitly endorsed in *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 IR 321. The development of proportionality is discussed in *O’Doherty v Minister for Health* [2022] IESC 32; [2022] 1 ILRM 421 (O’Donnell CJ) at paras 50 – 52. See also Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* 5th ed (Bloomsbury Professional 2018) from para 7.1.46.

elsewhere have found it helpful to apply the test of proportionality, a test which contains the notions of minimal restraint on the exercise of protected rights and the exigencies of the common good in a democratic society. ... The objective of the impugned provision must be of sufficient importance to warrant overriding a constitutionally protected right. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionality test. They must:

(a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations;

(b) impair the right as little as possible, and

(c) be such that their effects on rights are proportional to the objective.¹⁰³

[4.67] Proportionality has been described by the Supreme Court as “as a tool for providing some ... precision and transparency for the process by which invalid legislative impairments of constitutional rights are differentiated from constitutionally permissible interferences”.¹⁰⁴ It is a general analytical framework for assessing whether a particular interference with a constitutional right is permissible. However, the Supreme Court has also stressed that proportionality is not a “mathematical formula” and its application “in the case of any given right must take account of the particular constitutional text”.¹⁰⁵ This is because the various rights are qualified in different ways, as is noted in section (b) below. The Supreme Court has stated that applying the proportionality framework requires judgements to be made “on the value to be attributed to the right involved, the assessment of the degree of interference and the value of the objective”.¹⁰⁶ Such matters are not “capable of objective measurement on a single scale”, and “[t]here remain areas on which decision-makers may reasonably disagree”.¹⁰⁷ The Supreme Court has also stressed that although a form of proportionality analysis is used by Canadian courts and the European Court of Human Rights, this does not mean that Irish law does, or should, proceed in the same way. The Court

¹⁰³ *Heaney v Ireland* [1994] 3 IR 593 (Costello J) at page 607.

¹⁰⁴ *O’Doherty v Minister for Health* [2022] IESC 32; [2022] 1 ILRM 421 (O’Donnell CJ) at para 49.

¹⁰⁵ *O’Doherty v Minister for Health* [2022] IESC 32; [2022] 1 ILRM 421 (O’Donnell CJ) at para 57.

¹⁰⁶ *O’Doherty v Minister for Health* [2022] IESC 32; [2022] 1 ILRM 421 (O’Donnell CJ) at para 57.

¹⁰⁷ *O’Doherty v Minister for Health* [2022] IESC 32; [2022] 1 ILRM 421 (O’Donnell CJ) at para 57.

advised being aware of the legal background of comparative decisions, and the points of similarity and important distinction from Irish law and practice.¹⁰⁸

- [4.68] Commentators have also noted that the proportionality test has been variably applied by Irish courts.¹⁰⁹ With these caveats, the proportionality framework remains important in assessing the constitutionality of interferences with rights.
- [4.69] Noting that there are varying formulations of the proportionality test, the Commission adopts the test as set down in *Heaney*, which may be summarised as follows:
- (1) Whether the objective of the impugned provision is of sufficient importance to warrant overriding a constitutionally protected right, and whether it relates to concerns pressing and substantial in a free and democratic society; and
 - (2) Whether the means chosen:
 - (a) are rationally connected to the objective and not arbitrary, unfair or based on irrational considerations;
 - (b) impair the right as little as possible; and
 - (c) are such that their effects on rights are proportional to the objective.

[4.70] Applying the first requirement of the *Heaney* test, the Commission is of the view that the objective of safeguarding and protecting the personal safety and welfare of an at-risk adult is, as a matter of principle, of sufficient importance to warrant overriding a constitutionally protected right and does relate to concerns that are pressing and substantial in a free and democratic society. The Commission notes, however, that notwithstanding this general observation, this requirement must be satisfied in the context of the application of the proportionality test to each individual interference with constitutional rights.

[4.71] Turning to the latter part of the *Heaney* test, the Commission observes that the requirements in respect of the "means" adopted are highly relevant to the safeguarding context. As detailed elsewhere in this Report, safeguarding activities

¹⁰⁸ *O'Doherty v Minister for Health* [2022] IESC 32; [2022] 1 ILRM 421 (O'Donnell CJ) at para 55. This was important in the context of argument about the correct approach to the burden of proof. The Court also, at para 61, warned against a "mix-and-match" approach involving "ad hoc adoption of principles from the jurisprudence of other countries".

¹⁰⁹ Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* 5th ed (Bloomsbury Professional 2018) at paras 7.1.79 to 7.1.80.

entail a broad range of measures that must be tailored to the particular risk in question.

- [4.72] The Commission has noted this while developing its proposed interventions, in particular when developing safeguards (such as thresholds, time limits and judicial oversight) to ensure that the powers are used only when it is necessary and proportionate in the particular circumstances. The Commission has also kept the proportionality framework in mind in proposing a “least intrusive means” principle for courts to consider when assessing what kind of intervention or order to grant, if any.

(b) Interferences with Particular Rights

- [4.73] Different constitutional rights are qualified by different textual language. For example, personal liberty can be interfered with “in accordance with law”. The meaning of this phrase has shifted over time, but appears to encompass both formal requirements and factual conditions.¹¹⁰ The dwelling, though “inviolable”, may be forcibly entered “in accordance with law”. The many personal rights protected by Article 40.3 are to be defended and vindicated by the State only “as far as practicable”. These textual differences between rights may modify how a particular interference is analysed. There may also be past decisions regarding interferences with the particular right under scrutiny, which will be much more relevant than decisions regarding interferences with other rights. The Commission has had regard to the constitutional text in assessing the extent of each right and the circumstances in which each right may be qualified.
- [4.74] Potential interferences with the equality guarantee under Article 40.1 require distinct analysis.¹¹¹ In *Donnelly v Minister for Social Protection*,¹¹² the Supreme Court noted that the *Heaney* test is used to analyse the lawfulness of interferences with substantive constitutional rights.¹¹³ However, this was held to be an inappropriate test for equality challenges under Article 40.1.¹¹⁴ Instead, when faced with an equality challenge, the court will examine whether the distinction challenged is “irrational, arbitrary, capricious or not reasonably

¹¹⁰ Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* 5th ed (Bloomsbury Professional 2018) at paras 7.4.18 and 7.4.26.

¹¹¹ The appropriate test in this context has varied over time. Unique issues also arise in relation to this right, such as the need to identify an appropriate comparator.

¹¹² *Donnelly v Minister for Social Protection* [2022] IESC 31.

¹¹³ *Donnelly v Minister for Social Protection* [2022] IESC 31 (O'Malley J) at para 164.

¹¹⁴ *Donnelly v Minister for Social Protection* [2022] IESC 31 (O'Malley J) at para 171.

capable, when objectively viewed in the light of the social function involved, of supporting the selection or classification complained of”.¹¹⁵

- [4.75] In developing its recommendations, the Commission has considered these principles, and in particular the State’s ability to have “due regard” to differences of physical and moral capacity, and of social function.

(c) Rationality Analysis

- [4.76] As is discussed above, proportionality analysis is the established framework for assessing interferences with constitutional rights. However, in some cases involving the balancing of two constitutional rights by the legislature, the courts have applied a different standard, as set out by Finlay CJ in *Tuohy v Courtney*:

[I]n a challenge to the constitutional validity of any statute in the enactment of which the Oireachtas has been engaged in such a balancing function, the role of the courts is not to impose their view of the correct or desirable balance in substitution for the view of the legislature as displayed in their legislation but rather to determine from an objective stance whether the balance contained in the impugned legislation is so contrary to reason and fairness as to constitute an unjust attack on some individual's constitutional rights.¹¹⁶

- [4.77] This rationality test is more deferential to the views of the legislature. In other words, “[t]he scales are tilted in favour of the validity of the limitation [on rights]”.¹¹⁷ This analysis has been used to assess legislative provisions which balance conflicting constitutional rights.¹¹⁸ The Supreme Court recently confirmed that “the *Tuohy v Courtney* rationality test ... may be applicable (in at least some cases) where the issue concerns a legislative choice as to the balancing of the rights of private individuals”.¹¹⁹ However, it is not frequently used, and the precise circumstances in which the courts will apply the rationality standard are somewhat unclear.

¹¹⁵ *O’Meara v Minister for Social Protection* [2024] IESC 1 (O’Donnell CJ) at para 21, citing *Donnelly v Minister for Social Protection* [2022] IESC 31.

¹¹⁶ *Tuohy v Courtney* [1994] 3 IR 1 at page 47.

¹¹⁷ Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* 5th ed (Bloomsbury Professional 2018) para 7.1.85.

¹¹⁸ *Re Article 26 and the Regulation of Information (Services outside the State for Termination of Pregnancies) Bill 1995* [1995] 1 IR 1; *Iarnród Éireann v Ireland* [1996] 3 IR 321.

¹¹⁹ *CW v Minister for Justice* [2023] IESC 22 (O’Donnell CJ and O’Malley J) at para 229. The judges also noted that rationality plays a part in the proportionality test.

[4.78] In this Report, the range of interventions which the Commission proposes involve providing for compulsory statutory powers the exercise of which may have significant implications for at-risk adults, their families and, in some cases, other third parties. While the Commission’s proposals are intended to reflect an appropriate balance between different – and potentially conflicting – constitutional rights and interests, they cannot properly be characterised as merely involving the balancing of purely private rights and interests. Adult safeguarding also involves consideration of the public interest and the appropriate limits for State intervention in the lives of its citizens. Having regard to these considerations, the Commission considers that it is appropriate that the Report proceeds on the basis that legislative interferences with rights must pass a proportionality test, which is the more rigorous and commonly applied standard of review for interferences with constitutional rights. This general analysis will be applied, in particular, to each of the proposed interventions in Chapters 10, 11, 12 and 13.

4. Additional Protection under the European Convention on Human Rights

[4.79] Many of the rights outlined above are also protected under the European Convention on Human Rights (“ECHR”). The scope and content of these rights may differ from their counterparts in the Constitution, and in some cases the ECHR may provide wider protection for rights than the Irish Constitution.

[4.80] However, these rights are also qualified.¹²⁰ The ECHR allows for proportionate and legitimate restrictions on rights. The Commission has considered the potential engagement of rights under the ECHR in developing its proposed interventions.

(a) The right to life

[4.81] Article 2(1) of the ECHR provides that “[e]veryone’s right to life shall be protected by law”. This is a fundamental right that cannot be derogated from in times of war or public emergency. It places both a positive obligation on states to protect the right to life, and a negative obligation on states not to interfere with the right.

[4.82] In *LCB v UK*, the European Court of Human Rights (“ECtHR”) held that the first sentence of Article 2(1) establishes a positive obligation on states to take

¹²⁰ This is clear in the text of many of the rights, such as Article 8(2): “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

“appropriate steps to safeguard the lives of those within their jurisdiction”.¹²¹ This obligation may entail both preventative measures and subsequent inquiries where someone has died. For example, it includes in appropriate circumstances “a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual”.¹²²

(b) The right to respect for private and family life

- [4.83] Article 8(1) of the ECHR provides that “[e]veryone has the right to respect for his private and family life, his home and his correspondence”. The ECtHR has taken an expansive approach to defining the rights and interests which are protected under this Article.¹²³ For example, the definition of “home” is a question of fact and is not dependent on a person’s status as legal owner of the premises.¹²⁴ Unlike family rights under the Constitution, Article 8’s protection of family life extends to non-marital, “de facto” families.¹²⁵
- [4.84] As with Article 2, Article 8 gives rise to both positive and negative obligations on the part of states. *X and Y v Netherlands* demonstrates that the positive obligations may include ensuring that the right to respect for private life is protected in the context of private relationships between individuals.¹²⁶ In *X and Y*, a sexual assault was found to be capable of infringing private life as the concept encompasses “the physical and moral integrity of the person”.¹²⁷ The ECtHR has also noted “the particular vulnerability of victims of domestic violence and the need for active State involvement in their protection”.¹²⁸

¹²¹ *LCB v UK* (1998) 27 EHRR 212 at para 36.

¹²² *Opuz v Turkey* (2010) 50 EHRR 28 at para 128.

¹²³ *Harris, O’Boyle, and Warbrick: Law of the European Convention on Human Rights* 3rd ed (Oxford University Press 2014) at page 522.

¹²⁴ *Dublin City Council v Gallagher* [2008] IEHC 354 at para 48; *Buckley v United Kingdom* (1996) 23 EHRR 101; *McCann v United Kingdom* App no 19009/04 (ECtHR 13 August 2008).

¹²⁵ In *Gorry v Minister for Justice and Equality* [2020] IESC 55 at para 27 O’Donnell J noted that Article 8 provides “a lower but broader level of protection since it will cover both married and unmarried families, whereas the Constitution provides a higher but narrower level of protection limited only to marital families”. See section 2(j) above. As is noted there, a referendum held in March 2024, which proposed that the definition of the family in Article 41 of the Constitution should be extended beyond the marital family, was not approved by the people of Ireland.

¹²⁶ *X and Y v Netherlands* (1986) 8 EHRR 235.

¹²⁷ *X and Y v Netherlands* (1986) 8 EHRR 235 at para 22.

¹²⁸ *Hajduová v Slovakia* [2010] ECHR 1908 at para 41. The Court commented at para 46 that “[u]nder Article 8 the States have a duty to protect the physical and moral integrity of an individual from other persons”.

- [4.85] The negative obligation requires the state to refrain from interfering with the right to private and family life. However, this right is explicitly qualified by Article 8(2):

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- [4.86] This provision allows for a wide range of permissible interferences with the rights protected by Article 8, provided that the three cumulative conditions are satisfied – the interference must be in accordance with (or prescribed by) law, pursue a legitimate aim, and be necessary in a democratic society in pursuit of that aim. The ECtHR has held that an interference will fulfil the third requirement “if it answers a ‘pressing social need’ and, in particular, if it is proportionate to the legitimate aim pursued”.¹²⁹ The existence of procedural safeguards is a “crucial consideration” in assessing the proportionality of an interference with Article 8 rights.¹³⁰

(c) Protection of property

- [4.87] The right to respect for the home is protected under Article 8(1), as discussed above. Private property is protected under Article 1 of the First Protocol:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

¹²⁹ *Connors v United Kingdom* (2005) 40 EHRR 9 at para 81; *Dublin City Council v Gallagher* [2008] IEHC 354 at para 53.

¹³⁰ *Connors v United Kingdom* (2005) 40 EHRR 9 at para 92.

[4.88] This Article offers a wide latitude for states to interfere with the protected right. The text distinguishes between a deprivation of property and a control of use of property, although the ECtHR will generally apply the same test to both. It will ask whether a “fair balance” has been struck between the public interest claimed by the State and the burden on the individual who is impacted by the relevant measure.¹³¹

(d) The right to liberty and security

[4.89] Article 5(1) of the ECHR provides for a “right to liberty and security of person”. The text states that no one shall be deprived of their liberty, apart from in specified cases and in accordance with a procedure prescribed by law. This is followed by an exhaustive list of circumstances in which a deprivation of liberty may be permissible. Analysing a potential interference with Article 5 involves asking:

1. Has there been a deprivation of liberty?¹³²
2. If there has been a deprivation of liberty, can that deprivation be justified by reference to the list set out in Article 5(1)(a) – (f)?

[4.90] First, in determining whether there has been a deprivation of liberty, “the starting point must be [the individual’s] concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question”.¹³³ Deprivation of liberty involves both an objective element – “confinement in a particular restricted space for a not negligible length of time”, and a subjective element – the absence of valid consent.¹³⁴ Valid consent is wider than capacity. Even where a person is not capacitous, they may understand the situation and wish to leave it.¹³⁵ The ECtHR has stressed the importance of considering the detainee’s views.

¹³¹ *Harris, O’Boyle, and Warbrick: Law of the European Convention on Human Rights* 3rd ed (Oxford University Press 2014) at page 887.

¹³² Alternatively, there may have been a mere restriction on freedom of movement, to which Article 2 of the Fourth Protocol applies. This right can be interfered with on a wider range of grounds than Article 5, provided such interferences are in accordance with law and in compliance with the proportionality principle.

¹³³ *Guzzardi v Italy* (1980) 3 EHRR 333 at para 92, cited in *AC v Cork University Hospital* [2019] IESC 73 (O’Malley J) at para 265; [2020] 2 IR 38 at para 269.

¹³⁴ *AC v Cork University Hospital* [2019] IESC 73 (O’Malley J) at para 265; [2020] 2 IR 38 at para 269. In *HM v Switzerland* (2002) 38 EHRR 314, there was no deprivation of liberty, as the detainee had agreed to stay in the nursing home.

¹³⁵ *AC v Cork University Hospital* [2019] IESC 73 (O’Malley J) at para 265; [2020] 2 IR 38 at para 269.

- [4.91] Secondly, if there has been a deprivation of liberty, the court will consider whether it can be justified by reference to the exhaustive list. In order to be permissible, any detention must be lawful. This means that it must have a basis in domestic law; the domestic law must be sufficiently ascertainable and certain;¹³⁶ and the detention must be for one of the prescribed grounds and not be arbitrary.
- [4.92] Article 5(1)(e) allows for the “lawful detention of persons for the prevention of the spreading of infectious disease, of persons of unsound mind, alcoholics or drug addicts or vagrants”. Such persons “may be deprived of their liberty either in order to be given medical treatment or because of considerations dictated by social policy, or on both medical and social grounds”.¹³⁷ The Convention allows for such deprivation because of public safety concerns, but also because such individuals’ own interests may necessitate their detention.¹³⁸ The ECtHR applies a necessity test to detention under this sub-paragraph. Detention will only be lawful “where other, less severe, measures have been considered and found to be insufficient to safeguard the individual or public interest [involved]”.¹³⁹ The detention must be warranted on the facts of the case, and must comply with the following criteria:
- (a) Prior to detention, the detainee must be reliably shown by objective medical expertise to be of unsound mind (unless emergency detention is required);
 - (b) The individual’s mental disorder must be of a kind or degree warranting compulsory confinement, i.e. the deprivation of liberty must be shown to have been necessary in the circumstances;
 - (c) The mental disorder, verified by objective medical evidence, must persist throughout the period of detention.¹⁴⁰
- [4.93] Such requirements are necessary to avoid the detention being arbitrary, although the ECtHR has suggested that these criteria may not be strictly applied in

¹³⁶ The ECtHR has repeatedly stressed the need for the law to be clearly defined and foreseeable in its application. (See, for example, *Enhorn v Sweden* (2005) 41 EHRR 30 at para 36.) This emphasis on precision and foreseeability has been recognised by the Supreme Court in *AM v Health Service Executive* [2019] IESC 3 at para 102.

¹³⁷ *Enhorn v Sweden* (2005) 41 EHRR 30 at para 43.

¹³⁸ *Enhorn v Sweden* (2005) 41 EHRR 30 at para 43.

¹³⁹ *Varbanov v Bulgaria* [2000] ECHR 457 at para 46.

¹⁴⁰ *Winterwerp v The Netherlands* [1979] 2 EHRR 387; *Stanev v Bulgaria* (2012) 55 EHRR 22 at para 145.

emergency cases.¹⁴¹ There must also be clear procedural rules and safeguards regulating the initiation and continuation of detention,¹⁴² such as periodic review.

[4.94] Finally, there must be some relationship between the ground of detention relied upon and the place and conditions of detention,¹⁴³ so detention of a person of unsound mind should be in a hospital, clinic or other appropriate setting.¹⁴⁴

[4.95] Article 5(4) states that any individual who is detained must be entitled to challenge the lawfulness of their detention by bringing proceedings before a court.

(e) Prohibition of torture and inhuman or degrading treatment or punishment

[4.96] Although bodily integrity and autonomy are not explicitly mentioned in the text of the Convention, Article 3 provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment”. This protects similar interests to the constitutional rights to bodily integrity, autonomy and protection of the person. To fall within the scope of Article 3, “ill-treatment must attain a minimum level of severity”.¹⁴⁵ The assessment of this “is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim”.¹⁴⁶

[4.97] The State has a positive duty to protect against such ill-treatment. This duty is twofold: it requires the State to set up an appropriate legislative and regulatory framework and to take preventive, operational measures to protect individuals from being subjected to torture or inhuman or degrading treatment, including ill-treatment administered by private individuals of which the authorities are, or

¹⁴¹ *Winterwerp v The Netherlands* [1979] 2 EHRR 387 at para 39: “except in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of ‘unsound mind’”; *SR v Netherlands*, Application no. 13837/07: at para 32: “[i]t may be acceptable, in urgent cases ... that [a medical] opinion be obtained immediately after the person is first placed in detention.”; *MH v United Kingdom* [2013] ECHR 1008 at para 77: “an initial period of detention may be authorised by an administrative authority as an emergency measure provided that it is of short duration and the individual is able to bring judicial proceedings ‘speedily’ to challenge the lawfulness of any such detention including, where appropriate, its lawful justification as an emergency measure”.

¹⁴² As stressed in *HL v United Kingdom* (2005) 40 EHRR 32 and *AM v Health Service Executive* [2019] IESC 3 at para 102.

¹⁴³ *Saadi v UK* (2008) 47 EHRR 17 at para 69.

¹⁴⁴ *Enhorn v Sweden* (2005) 41 EHRR 30 at para 42.

¹⁴⁵ *A v United Kingdom* (1999) 27 EHRR 611 at para 20.

¹⁴⁶ *A v United Kingdom* (1999) 27 EHRR 611 at para 20.

ought to be, aware.¹⁴⁷ The ECtHR has held that “[c]hildren and other vulnerable individuals, in particular, are entitled to State protection, [including] in the form of effective deterrence, against such serious breaches of personal integrity”.¹⁴⁸ The ECtHR has suggested that such “vulnerable” persons may include asylum seekers,¹⁴⁹ domestic violence victims,¹⁵⁰ “elderly persons”,¹⁵¹ and adults with physical and mental disabilities.¹⁵² In the Commission’s view, at-risk adults would also fall within this category of persons entitled to particular protection under Article 3 of the ECHR.

[4.98] There is also a negative obligation on the state to refrain from interfering with the right.¹⁵³ In contrast to other rights under the ECHR, Article 3 is expressed in absolute terms.¹⁵⁴

[4.99] The Commission has carefully considered each of the ECHR rights that are potentially engaged in developing its recommendations. Although the Constitution remains the principal source for the protection of rights in Ireland, the ECHR provides important protection for individuals, and may be relied on to the extent allowed by the European Convention on Human Rights Act 2003. A

¹⁴⁷ *X and Others v Bulgaria* [GC] 2021 at paras 178 and 181; *A v United Kingdom* (1999) 27 EHRR 611 at para 22. It also extends to conducting effective investigations of ill-treatment.

¹⁴⁸ *A v United Kingdom* (1999) 27 EHRR 611 at para 22. See also *Z v United Kingdom* (GC) (Application no. 29392/95) at paras 69 – 75, in which the local authority breached Article 3 in failing to provide “effective protection” to the applicant children “from serious, long-term neglect and abuse” by their parents.

¹⁴⁹ *Khlaifia v Italy* (GC) (Application no. 16483/12) (2016) at para 194.

¹⁵⁰ *Opuz v Turkey* (2010) 50 EHRR 28 at paras 159 – 160; *Talpis v Italy* App no 41237/14 (ECtHR 2 March 2017) at para 99.

¹⁵¹ *Khlaifia v Italy* (GC) (Application no. 16483/12) (2016) at para 194. See also *Irina Smirnova v Ukraine* App no 1870/05 (ECtHR 13 October 2016) regarding “a retired single woman”.

¹⁵² *Dorđević v Croatia* App no 41526/10 (ECtHR 24 July 2012) at paras 137 – 150.

¹⁵³ *Selcuk and Asker v Turkey* App no 12/1997/796/998-999 (ECtHR 24 April 1998) at paras 72 – 80. The applicant’s “age and infirmity” was noted in the context of finding a violation of Article 3.

¹⁵⁴ *Dorđević v Croatia* App no 41526/10 (ECtHR 24 July 2012) at para 137, noting that Article 3 “is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention”. See also Michael K. Addo and Nicholas Grief, “Does Article 3 of The European Convention on Human Rights Enshrine Absolute Rights?” (1998) 9 *European Journal of International Law* 510; Harris, O’Boyle and Warbrick, *Law of the European Convention on Human Rights* 5th ed (Oxford University Press 2023) at page 242, although noting that “there are recognized exceptions to the absolute nature of Article 3”.

number of recent Supreme Court decisions have discussed the interaction between these important sources of fundamental rights.¹⁵⁵

5. United Nations Convention on the Rights of Persons with Disabilities

[4.100] Although not all at-risk adults are persons with disabilities, and not all persons with disabilities are at-risk adults, rights under the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”) are also relevant to adult safeguarding. The UNCRPD aims to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.¹⁵⁶ It protects many rights similar to those discussed above, including equality and non-discrimination,¹⁵⁷ the right to life,¹⁵⁸ the right to liberty and security of person,¹⁵⁹ and freedom from exploitation, violence and abuse.¹⁶⁰ Ireland ratified the UNCRPD in 2018. The Commission carefully considered the UNCRPD in developing its recommendations throughout the Report.¹⁶¹

6. Conclusions and Recommendations

[4.101] The rights set out in this Chapter underpin the Commission’s proposed regulatory framework for adult safeguarding, which is outlined throughout this Report. The Commission is conscious that the interventions proposed in Chapters 10, 11, 12 and 13 have particularly significant implications for the constitutional and ECHR rights of at-risk adults and third parties. These implications are addressed in more detail in the relevant Chapters. In particular, the Commission recommends that safeguards are provided in the context of each intervention to ensure that any interference with rights is legitimate and proportionate.

¹⁵⁵ *Simpson v Governor of Mountjoy Prison* [2019] IESC 81, [2020] 3 IR 113; *Fox v Minister for Justice and Equality* [2021] IESC 61, [2021] 2 ILRM 225; *Clare County Council v McDonagh* [2022] IESC 2, [2022] 1 ILRM 353; *MK (Albania) v Minister for Justice & Equality* [2022] IESC 48, and *Middelkamp v Minister for Justice and Equality* [2023] IESC 2.

¹⁵⁶ Article 1 of the United Nations Convention on the Rights of Persons with Disabilities.

¹⁵⁷ Article 5 of the United Nations Convention on the Rights of Persons with Disabilities.

¹⁵⁸ Article 10 of the United Nations Convention on the Rights of Persons with Disabilities.

¹⁵⁹ Article 14 of the United Nations Convention on the Rights of Persons with Disabilities.

¹⁶⁰ Article 16 of the United Nations Convention on the Rights of Persons with Disabilities.

¹⁶¹ See, for example, discussion of Article 16 of the UNCRPD in Chapter 6, Organisational and Regulatory Structures, at para 6.1.

- [4.102] However, in light of the importance of the rights outlined in this Chapter, the Commission is also of the view that a general, overarching obligation should be placed on courts when deciding whether to grant any of the orders proposed in Chapters 10, 11, 12 and 13. The Commission thus recommends that in determining whether to grant an order, a court must be satisfied that no less intrusive measure would achieve the intended objective of safeguarding and protecting the health, safety and welfare of the at-risk adult in the particular case.
- [4.103] Specifically, in deciding whether to make any safeguarding order, whether a warrant for access to a relevant premises, a warrant for access to a place including a private dwelling, a removal and transfer order, or any form of no-contact order, adult safeguarding legislation should provide that the court must adopt the least intrusive means possible to meet the objective of safeguarding and protecting the health, safety and welfare of the at-risk adult in the particular circumstances. In making this assessment, the court should consider the impact of granting the order on the at-risk adult and, where relevant, the family unit. The Commission believes that this is a necessary overarching safeguard, so as to ensure that any interference with rights is proportionate.
- [4.104] This obligation is in addition to the general principle of proportionality that the Commission recommends should underpin the proposed adult safeguarding legislation.¹⁶² Alongside other general principles such as a rights-based approach, empowerment and person-centredness, and accountability, the principle of proportionality will act as an additional safeguard to ensure that rights are interfered with only when absolutely necessary, and in the most minimal way possible to achieve the intended aim. For example, when exercising its functions under the proposed adult safeguarding legislation the Safeguarding Body will be required to have regard to the principle of proportionality, and to ensure that any measures or actions it takes are a proportionate interference with the rights of at-risk adults and third parties.¹⁶³

¹⁶² The general principles underpinning adult safeguarding legislation are discussed in Chapter 4.

¹⁶³ See also Chapter 6 in relation to the functions, duties and powers of the Safeguarding Body.

R. 4.1 **The Commission recommends that** in deciding whether to grant any safeguarding order, whether a warrant for access to a relevant premises, a warrant for access to a place including a private dwelling, a removal and transfer order or any form of no-contact order, the legislation should provide that the court must adopt the least intrusive means possible to meet the objective of safeguarding and protecting the health, safety and welfare of the at-risk adult in the particular circumstances.

CHAPTER 5

A SAFEGUARDING BODY: FUNCTIONS, DUTIES AND POWERS

Table of Contents

A Safeguarding Body: Functions, Duties and Powers.....	225
1. Introduction	227
2. A primary statutory function of the Safeguarding Body.....	228
(a) Existing relevant statutory functions of public bodies.....	228
(b) Non-statutory functions of the Health Service Executive National Safeguarding Office	233
(i) <i>Role of the HSE National Safeguarding Office</i>	233
(ii) <i>Role of the HSE Safeguarding and Protection Teams</i>	234
(c) The need for a statutory body to have an adult safeguarding function as its primary statutory function	234
3. A duty the Safeguarding Body to receive reports and information about actual or suspected harm of at-risk adults.....	236
4. A duty on the Safeguarding Body to take actions to safeguard at-risk adults and powers of the Safeguarding Body in relation to its primary function	237
(a) The HSE’s National Policy and Procedures and the need for statutory provisions.....	240
(b) Adult safeguarding functions, duties and powers to respond to reports or abuse or neglect in other jurisdictions.....	243
(i) <i>Scotland</i>	243
(ii) <i>Wales</i>	246
(iii) <i>England</i>	248
(iv) <i>Northern Ireland</i>	251
(v) <i>Australia (Federal)</i>	251
(vi) <i>South Australia (Australia)</i>	254
(vii) <i>Queensland (Australia)</i>	259
(viii) <i>Victoria (Australia)</i>	261
(ix) <i>New South Wales (Australia)</i>	262
(x) <i>Nova Scotia (Canada)</i>	264
(xi) <i>Newfoundland and Labrador (Canada)</i>	266

(xii)	<i>British Columbia (Canada)</i>	269
(xiii)	<i>New Brunswick (Canada)</i>	272
(xiv)	<i>Manitoba (Canada)</i>	273
(c)	The Child and Family Agency and issues posed by the lack of a statutory power to undertake investigations.....	276
(d)	A statutory duty of the Safeguarding Body to take action where it deems action necessary to safeguard an at-risk adult and associated powers to take action.....	277
(e)	A power to make enquiries in relation to the performance of the Safeguarding Body’s functions.....	279
5.	A statutory power to prepare a safeguarding plan	283
(a)	Existing statutory requirements to prepare a care plan or personal plan	284
(b)	Current policy provisions for preparation of safeguarding plans by the HSE Safeguarding and Protection Teams	284
(c)	The need for a statutory power to prepare a safeguarding plan	286
6.	Provision of training and information	290
(a)	Existing non-statutory functions of the HSE National Safeguarding Office to provide education and training.....	291
(b)	A statutory function of the Safeguarding Body to provide training and information.....	291
7.	Research and data functions of the Safeguarding Body	292
(a)	Data and research functions in relation to reports or allegations of harm of at-risk adults.....	292
(b)	Data on the implementation of the proposed adult safeguarding legislation.....	295
(c)	Need for statutory research and data collection functions of the Safeguarding Body.....	295

1. Introduction

- [5.1] Many organisations and services in Ireland have responsibilities for safeguarding at-risk adults including the HSE, the Garda Síochána and public and private health and social care services.¹ However, as there is no adult safeguarding legislation in Ireland, there is no single lead public body with statutory functions related to adult safeguarding or with statutory functions and powers to receive and respond to reports or allegations of abuse or neglect of at-risk adults where there are no allegations of criminality. Adult safeguarding is addressed in policies and procedures including in the HSE’s Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures (the “HSE’s National Policy and Procedures”). However, the HSE’s National Policy and Procedures apply only to HSE managed or funded disability or older people’s services and referrals to the HSE Safeguarding and Protection Teams (SPTs) regarding older people or people with disabilities in the community. There is currently no national sectoral or cross-sectoral policy for adult safeguarding.
- [5.2] In comparison, in other jurisdictions, adult safeguarding legislation and social care legislation provide for duties on certain persons and organisations including duties to make enquiries where there are reports or concerns of abuse or neglect of an at-risk adult. In other jurisdictions, lead public bodies have responsibility for adult safeguarding and relevant statutory functions, duties and powers to enable them to fulfil their responsibility.
- [5.3] The Commission’s view, informed by extensive consultation and research, is that many of the existing functions of the HSE Safeguarding and Protection Teams (“SPTs”) and the HSE National Safeguarding Office need to be placed on a statutory footing. The Commission believes that those functions should be conferred on a statutory lead public body for adult safeguarding, a “Safeguarding Body”, which could be a new body, or which could be established within an existing body. The Commission believes that the Safeguarding Body should provide social work-led adult safeguarding services similar to the existing functions of the HSE SPTs but with a broader remit and statutory underpinning of functions and powers. The Commission does not envisage the Safeguarding Body having regulatory functions – it envisages it having adult safeguarding process functions to receive, assess and respond to reports or allegations of harm of at-risk adults and to engage in research, data collection, training, information-sharing and public awareness campaigns related to adult safeguarding. Chapter 6 discusses the establishment of a Safeguarding Body, which is a lead public body for adult safeguarding, and analyses how it would be structured organisationally, and how it would interact with existing organisations including relevant

¹ See the Background section to this Report for an overview of the relevant functions of existing statutory bodies.

regulators. This chapter will examine the introduction in adult safeguarding legislation of:

- a primary statutory function of the Safeguarding Body to promote the health, safety and welfare of at-risk adults (section 2);
- a function of the Safeguarding Body to receive reports and information about actual or suspected harm of at-risk adults (section 3);
- a duty on the Safeguarding Body to take action to safeguard an adult who it believes needs support to protect themselves from harm where it reasonably believes that there is a risk to the health, safety or welfare of the adult (section 4);
- a statutory power of Safeguarding Body to prepare a safeguarding plan or cooperate with other agencies in the preparation of a safeguarding plan in certain circumstances (section 5);
- statutory functions of the Safeguarding Body related to training and information (section 6); and
- statutory functions of the Safeguarding Body related to research and data (section 7).

2. A primary statutory function of the Safeguarding Body

[5.4] The lack of a lead statutory body for adult safeguarding with statutory functions to prevent harm to at-risk adults and to receive and respond to reports or allegations of abuse or neglect is an issue that was frequently raised by consultees in the course of the Commission’s work on this Report. For the purposes of this Report, the Commission is adopting the term “Safeguarding Body” to refer to a proposed public body with statutory functions to prevent harm to at-risk adults. It is proposed that the Safeguarding Body would provide social work-led adult safeguarding services similar to the existing services provided by the HSE SPTs but with a broader remit. Options for the organisational structure of the Safeguarding Body are discussed in Chapter 6. This chapter is focused on the statutory functions, duties and powers of the Safeguarding Body and this section discusses a proposed primary statutory function of the Safeguarding Body to promote the health, safety and welfare of at-risk adults.

(a) Existing relevant statutory functions of public bodies

[5.5] Several existing statutory bodies have functions related to keeping people safe; to providing health and social care services; and to providing services to adults in difficult circumstances, who may include at-risk adults. It is important to have regard to these in considering whether any new statutory functions of, or duties on, existing bodies are required or whether it is necessary to establish a new body with relevant statutory functions.

- [5.6] The HSE's central functions are to manage and deliver, or arrange to be delivered on its behalf, health and personal social services.² In undertaking this function, it must integrate the delivery of health and personal social services and facilitate the education and training of relevant persons insofar as it enables the HSE to perform its functions.³
- [5.7] The statutory object of HIQA is to promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public.⁴ In addition to furthering its statutory object to the extent practicable, the functions of HIQA are to set safety and quality standards in relation to the services that it regulates including residential centres for older people and residential centres for adults with disabilities.⁵ HIQA is also charged with monitoring compliance with those standards⁶ and undertaking investigations in accordance with the relevant section of the Health Act 2007.⁷ Its additional functions include reviewing and making recommendations in respect of the services it regulates⁸ and operating accreditation programmes in respect of the services and granting accreditation to any services meeting standards set or recognised by HIQA.⁹
- [5.8] The principal functions of the Mental Health Commission are to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres under the Mental Health Act 2001.¹⁰
- [5.9] The Director of the Decision Support Service has a range of functions related to the operation of the Assisted Decision-Making (Capacity) Act 2015.¹¹ These functions include the promotion of awareness relating to the exercise of capacity by persons who require or may shortly require assistance in exercising their capacity.¹² The Director also has functions to provide information to relevant

² Section 7(4) of the Health Act 2004.

³ Sections 7(4)(a) and 7(4)(b) of the Health Act 2004.

⁴ Section 7 of the Health Act 2007.

⁵ Section 8(1)(b) of the Health Act 2007.

⁶ Section 8(1)(c) of the Health Act 2007.

⁷ Section 8(1)(d) of the Health Act 2007.

⁸ Section 8(1)(e) of the Health Act 2007.

⁹ Section 8(1)(f) of the Health Act 2007.

¹⁰ Section 33 of the Mental Health Act 2001.

¹¹ Section 95 of the Assisted Decision-Making (Capacity) Act 2015.

¹² Section 95(1)(a) of the Assisted Decision-Making (Capacity) Act 2015.

persons in relation to their options under this Act for exercising their capacity.¹³ Additionally, the Director has functions to provide information to persons appointed to provide decision-making supports in relation to the performance of their statutory functions¹⁴ and to supervise compliance by decision-making assistants, co-decision-makers, decision-making representatives and attorneys in the performance of their functions.¹⁵ The Director's additional functions include, among others, the provision of information and guidance to organisations and bodies in the State in relation to their interaction with relevant persons and persons appointed to provide decision-making supports under the Act.¹⁶

[5.10] The functions of the Garda Síochána include providing policing and security, including vetting, services for the State with a number of objectives,¹⁷ which include protecting life and property,¹⁸ vindicating the human rights of each individual¹⁹ and preventing crime.²⁰ Section 9 of the Policing, Security and Community Safety Act 2024, when commenced, will expand the objectives of the Garda Síochána, in providing policing services and security services, to include the objective of "preventing harm to individuals, in particular individuals who are vulnerable or at risk".²¹

[5.11] The functions of the DSGBV Agency (Cuan)²² include:

- (a) planning, coordinating and monitoring the development of refuge accommodation for victims of domestic, sexual or gender-based violence;
- (b) providing support to service providers, including financial assistance, for the provision by them of—
 - (i) services delivered in refuge accommodation and other services for victims and persons at risk of domestic, sexual or gender-based violence, and

¹³ Section 95(1)(c) of the Assisted Decision-Making (Capacity) Act 2015.

¹⁴ Section 95(1)(d) of the Assisted Decision-Making (Capacity) Act 2015.

¹⁵ Section 95(1)(e) of the Assisted Decision-Making (Capacity) Act 2015.

¹⁶ Section 95(1)(f) of the Assisted Decision-Making (Capacity) Act 2015.

¹⁷ Section 7(1) of the Garda Síochána Act 2005.

¹⁸ Section 7(1)(b) of the Garda Síochána Act 2005.

¹⁹ Section 7(1)(c) of the Garda Síochána Act 2005.

²⁰ Section 7(1)(e) of the Garda Síochána Act 2005.

²¹ Section 9(1)(f) of the Policing, Security and Community Safety Act 2024. Definitions of "vulnerable, in relation to an individual" and "at risk, in relation to an individual" are included in section 2 of the Act.

²² The legal name for the DSGBV Agency is An Ghníomhaireacht um Fhoréigean Baile, Gnéasach agus Inscnebhunaithe.

- (ii) programmes with the purpose of preventing, and reducing the incidence of, such violence;
 - (c) preparing, and submitting for the approval of the Minister, standards for the provision of the services and programmes referred to above.
 - (d) monitoring adherence by service providers to the standards referred to above;
 - (e) compiling and publishing information regarding the availability of the refuge accommodation and the services and programmes referred to above;
 - (f) developing and implementing public campaigns, and providing advice or support in relation to the development of public campaigns by public service bodies and other persons, for the purposes of—
 - (i) increasing awareness of domestic, sexual and gender-based violence and the associated risk factors, and
 - (ii) reducing the incidence of such forms of violence.²³
- [5.12] Once the Policing, Security and Community Safety Act 2024 (the "2024 Act") is commenced, it will establish the Policing and Community Safety Authority (the "Authority").²⁴ The statutory objective of the Authority is to oversee and assess in an independent and transparent manner the performance by the Garda Síochána of its function relating to policing services in order to support the effective provision and continuous improvement of such services to the benefit of the safety of the public.²⁵ The functions of the Authority include:
- (a) keeping under review the performance by the Garda Síochána of its function relating to policing services;
 - (b) carrying out inspections;
 - (c) preparing reports of inspections and making such recommendations to the Garda Commissioner or the Minister as the Authority considers necessary;
 - (d) monitoring and assessing the implementation by the Garda Síochána of recommendations arising from such inspections or from investigations, inspections, inquiries or reviews carried out by bodies other than the Authority, as the Authority considers appropriate or as may be requested by the Minister;

²³ Section 6 of the Domestic, Sexual and Gender-Based Violence Agency Act 2023.

²⁴ The legal name for Policing and Community Safety Authority is An tÚdarás Póilíneachta agus Sábháilteachta Pobail.

²⁵ Section 122 of the Policing, Security and Community Safety Act 2024.

- (e) promoting professional policing standards (including human rights standards) and the continuous improvement of policing having regard to best international practice;
- (f) promoting inter-agency collaboration and community engagement to improve community safety; and
- (g) undertaking or commissioning research regarding matters relating to policing services which the Authority believes may—
 - (i) promote improvements in standards of policing services and public awareness of such services,
 - (ii) promote improvements in inter-agency collaboration and community engagement to improve community safety, or
 - (iii) contribute to a reduction in the number of complaints against members of garda personnel or the Garda Síochána in relation to policing services,and make recommendations to the Garda Commissioner and the Minister arising from such research.²⁶

[5.13] Once commenced, the 2024 Act will also provide for duties on public service bodies. These are defined in the Act,²⁷ with provision for the Minister to designate further bodies.²⁸ Public service bodies will be required, in performing their functions, to “take all reasonable steps to improve community safety, including through the prevention of crime and through the prevention of harm to individuals, in particular those who are vulnerable or at risk”.²⁹ They will also be required to “cooperate with each other, as appropriate, in the performance of their functions for the purposes of improving community safety, including through the prevention of crime and through the prevention of harm to individuals, in particular those who are vulnerable or at risk”.³⁰ Such cooperation includes the sharing of documents and information, including personal data, in accordance with law and to the extent that is necessary and proportionate for the purpose of the performance of the stated functions.

²⁶ Section 122 of the Policing, Security and Community Safety Act 2024.

²⁷ Section 103 of the Policing, Security and Community Safety Act 2024. It includes the Child and Family Agency, the Garda Síochána, the Health Service Executive, the Irish Prison Service, and a local authority, amongst others.

²⁸ Section 104 of the Policing, Security and Community Safety Act 2024.

²⁹ Section 118(1) of the Policing, Security and Community Safety Act 2024.

³⁰ Section 118(3) of the Policing, Security and Community Safety Act 2024.

(b) Non-statutory functions of the Health Service Executive National Safeguarding Office

- [5.14] The HSE’s National Policy and Procedures applies to adult safeguarding in HSE managed or funded disability and older people’s services. It also applies to adult safeguarding “concerns” arising in the community where the “concern” relates to an adult who is an older person over the age of 65 or who has a disability.
- [5.15] In implementing its National Policy and Procedures, in 2015 the HSE set up the National Safeguarding Office and nine Safeguarding and Protection Teams (“SPTs”), one in each Community Health Organisation (“CHO”).³¹

(i) Role of the HSE National Safeguarding Office

- [5.16] The HSE National Safeguarding Office was established in the HSE’s Community Operations,³² and is now within the HSE Quality and Patient Safety Community Healthcare.³³ Its functions include:
- (a) implementing the HSE service plan objectives in relation to adult safeguarding;³⁴
 - (b) collecting, collating and monitoring data and reporting data in relation to notifications and referrals to SPTs of alleged abuse of at-risk adults, which is considered at various levels to improve service delivery;³⁵
 - (c) publishing an annual report which is inclusive of data and trends on safeguarding concerns of “vulnerable persons”;³⁶
 - (d) contributing to public awareness campaigns related to adult safeguarding;³⁷
 - (e) commissioning research to establish best practices in promoting the welfare and protection of “vulnerable persons” from abuse;³⁸

³¹ The HSE began transitioning to a structure of health regions from 2024. See discussion in the background section of this Report.

³² Health Service Executive, *National Safeguarding Office Report* (HSE 2017) at page 4; Health Service Executive, *National Safeguarding Office Report* (HSE 2018) at page 13.

³³ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 13.

³⁴ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 13.

³⁵ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at pages 8 and 13.

³⁶ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 13.

³⁷ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 13.

³⁸ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 13.

- (f) acting as a resource of information for HSE staff, HSE funded agencies and other relevant organisations on adult safeguarding matters;³⁹ and
- (g) supporting the development of education and practice support measures to deliver service improvement.⁴⁰

(ii) Role of the HSE Safeguarding and Protection Teams

- [5.17] The HSE SPT in each of the HSE's CHOs⁴¹ are managed and led by a Principal Social Worker and are staffed by qualified social workers. The SPTs have responsibility for receiving, assessing and managing community safeguarding referrals.⁴² Additionally, the SPTs provide a range of safeguarding functions including quality assurance, oversight and advisory support to HSE managed and funded services for older people and people with disabilities.⁴³ The SPTs also directly assess and manage complex cases and collect and collate data.⁴⁴
- [5.18] The oversight function is of particular importance in monitoring the standards of individual preliminary screenings and safeguarding plans completed by service providers where there are safeguarding concerns about a service user.⁴⁵ The service provider retains responsibility for the safety of the at-risk adult; responsibility for safeguarding the at-risk service user does not transfer to the SPT.⁴⁶ The HSE funds services under sections 38 and 39 of the Health Act 2004; the HSE service agreements with funded agencies contain an obligation on funded service providers to evidence compliance with the HSE's adult safeguarding policy.⁴⁷

(c) The need for a statutory body to have an adult safeguarding function as its primary statutory function

- [5.19] There is no statutory body with specific functions to prevent harm of at-risk adults and a remit to receive reports of actual and suspected abuse or neglect of individual at-risk adults and to screen reports or make enquiries with a view to taking action to respond to such concerns. The relevant role of the Garda

³⁹ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 13.

⁴⁰ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 8.

⁴¹ CHOs are transitioning to health regions, for further discussion on this see background section of this Report.

⁴² HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 7.

⁴³ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 7.

⁴⁴ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 25.

⁴⁵ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 7.

⁴⁶ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 7.

⁴⁷ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 7.

Síochána is limited to investigating allegations of criminality and its proposed expanded role will be limited to preventing harm to at-risk or “vulnerable” persons in the context of policing and security services. The HSE National Safeguarding Office undertakes relevant functions but lacks a statutory basis for doing so, and it is limited in scope as it applies only in certain settings. Consultees and various reports⁴⁸ have called for the establishment of a body with a remit centred on safeguarding at-risk adults. The Commission believes that it is necessary for a Safeguarding Body to have a primary statutory function to safeguard at-risk adults. The Commission therefore recommends that adult safeguarding legislation should provide for the establishment of a Safeguarding Body with a primary statutory function to promote the health, safety and welfare of adults who need support to protect themselves from harm at a particular time. This would include minimising the risk of harm to at-risk adults and supporting at-risk adults to protect themselves from harm.

- [5.20] The Commission also believes that the Safeguarding Body should have additional statutory functions to enable it to fulfil its primary function including a function to cooperate with other organisations, which is discussed in Chapter 15, and functions related to provision of information and training, and conducting research, which are discussed later in this chapter. Further, the Commission believes that the Safeguarding Body should have the statutory powers and duties proposed later in this Report⁴⁹ to enable it to fulfil its primary function.

⁴⁸ See, for example, Irish Association of Social Workers, *Position Paper on Adult Safeguarding Legislation, Policy and Practice* (IASW 2022) <https://www.iasw.ie/download/1076/IASW%20Adult%20Safeguarding%20Position%20Paper%202022%20%282%29.pdf> accessed 14 April 2024 and Safeguarding Ireland, “Safeguarding Ireland presents ‘safeguarding roadmap’ to the Oireachtas” (23 February 2024) < [⁴⁹ These include the powers to: enter and inspect relevant premises as defined \(including hospitals, approved centres, and privately-run nursing homes\) for the purposes of assessing the health, safety or welfare of at-risk adults; apply for and execute warrants for access to at-risk adults in places including private dwellings; apply for and assist in executing removal and transfer orders in respect of at-risk adults; apply for orders under the Domestic Violence Act 2018 pursuant to the Commission’s proposed amendments, and apply for new adult safeguarding no-contact orders. These powers are discussed in Chapters 10, 11, 12 and 13, and entail strict thresholds to be met before they can be used. The Commission also proposes that it have the power to request the assistance of mandated persons in the exercise of its functions. This is discussed in Chapter 9.](https://safeguardingireland.org/safeguarding-ireland-presents-safeguarding-roadmap-to-the-oireachtas/#:~:text=Safeguarding%20Ireland%20presents%20%27safeguarding%20roadmap%27%20to%20the%20Oireachtas,-February%2023%2C%202024&text=Safeguarding%20Ireland%20has%20presented%20a,Oireachtas%20Committee%20on%20Disability%20Matters.>” accessed 14 April 2024.</p>
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R. 5.1 The Commission recommends that adult safeguarding legislation should provide for the establishment of a Safeguarding Body with a primary statutory function to promote the health, safety and welfare of adults who need support to protect themselves from harm at a particular time.

3. A duty the Safeguarding Body to receive reports and information about actual or suspected harm of at-risk adults

[5.21] Currently, the HSE SPTs have a policy-based function to receive reports of actual or suspected harm of at-risk adults related to adults in HSE operated or funded disability or older people's services, adults with disabilities living in the community and people over 65 living in the community.⁵⁰ This is in line with the limited application of the HSE's National Policy and Procedures.⁵¹

[5.22] Unlike the existing limited remit of the HSE SPTs, the proposed role of the Safeguarding Body's social work-led adult safeguarding services would extend to reports and information about actual or suspected harm across all services and sectors with the exception of the criminal justice system including incidents arising in prisons or Garda custody.⁵² In Chapter 9, the Commission recommends that proposed adult safeguarding legislation should provide for a duty on mandated persons to report knowledge, beliefs or suspicions of harm to at-risk adults above a certain threshold to the Safeguarding Body. It follows that the Safeguarding Body would therefore have a duty to receive reports from mandated persons. Non-mandated persons should also be entitled to make reports to the proposed Safeguarding Body, but they are not required to do so by law. The Safeguarding Body may also acquire information about actual or suspected harm through staff directly observing signs or symptoms of abuse or neglect; disclosure by an at-risk adult; anonymous reports; and information received as part of a complaints process.⁵³

⁵⁰ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 25.

⁵¹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 6.

⁵² See the discussion in section 7 of Chapter 1.

⁵³ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 28.

R. 5.2 The Commission recommends that the proposed adult safeguarding legislation should provide for a duty on the Safeguarding Body to receive reports from persons who know, believe or suspect that an adult at risk of harm has been harmed, is being harmed or is at risk of being harmed.

4. A duty on the Safeguarding Body to take actions to safeguard at-risk adults and powers of the Safeguarding Body in relation to its primary function

- [5.23] No agency has a dedicated statutory function to prevent harm to at-risk adults, and to respond to allegations of abuse and neglect specifically in relation to individual at-risk adults including where the criminal threshold has not been met. As set out above, the HSE SPTs, which are staffed by social workers, have existing policy-based functions to screen, assess, investigate and respond to reports or allegations of harm to at-risk adults in limited circumstances. The existing non-statutory functions of the HSE SPTs and the limited application of the HSE's National Policy and Procedures are discussed further below.
- [5.24] It is necessary for the Commission to consider whether adult safeguarding legislation should also provide for statutory responses of the Safeguarding Body to reports of actual or suspected harm. Many consultees who responded to the Commission's Issues Paper emphasised the need for adequate responses to reports of actual or suspected harm with some consultees referring to the need for provision for a mandatory response.⁵⁴ One consultee warned of the risk of a culture of "reporting but not acting" as well as developing and focusing resources on reporting frameworks at the expense of abuse prevention or intervention.⁵⁵ Some social workers, dementia advisors and advocates with experience of adult safeguarding, who were consulted as part of a 2019 Irish research study, believed that there is a need for a mandatory response requirement which has a legislative underpinning.⁵⁶ A 2018 Irish research report found that a lack of mandatory response processes can lead to inadequate systems of reports and stated that if

⁵⁴ Seanad Éireann Debates 29 March 2021 vol 275 no 6 at page 502 <<https://data.oireachtas.ie/ie/oireachtas/debateRecord/seanad/2021-03-29/debate/mul@/main.pdf>> accessed 14 April 2024.

⁵⁵ Department of Health, *Law Reform Commission Issues Paper - A Regulatory Framework for Adult Safeguarding: A response from the Department of Health* (DOH 2020) at pages 28 to 29 <<https://assets.gov.ie/83566/8594f084-fe09-4e55-80a9-ccb2eac1075cd.pdf>> accessed 14 April 2024.

⁵⁶ Donnelly and O'Brien, *Falling Through the Cracks: The case for change. Key developments and next steps for Adult Safeguarding in Ireland* (UCD 2019) at page 30.

reporting is to provide benefit to the at-risk adult that would not otherwise have been achieved, a mandatory response would be critical.⁵⁷

- [5.25] As discussed in further detail below, responses to reports of actual or suspected harm of at-risk adults in other jurisdictions include making enquiries; conducting investigations; determining whether an at-risk adult needs support and assistance to protect themselves from harm; providing care or support; making referrals to appropriate organisations or services; and coordinating responses to reports by State bodies, other persons and other organisations. Consultation by the South Australia Law Reform Institute (“SALRI”) found that the mandatory response function of the statutory Adult Safeguarding Unit (“ASU”), established in South Australia by the Ageing and Adult Safeguarding Act 1995,⁵⁸ inspires confidence in the community that a report they make will be duly heard and given proper consideration.⁵⁹ SALRI expressed the view that a mandatory assessment is the optimal response to a report as it is necessary to evaluate the substance of a report and determine which organisation would be best placed to deal with the situation, or what action should be taken by the ASU once the assessment is concluded.⁶⁰ In a 2022 Canadian study, research participants who were in favour of legislative provision for a mandatory response maintained that what is important is the quality and promptness of the response to a report and the action to be taken.⁶¹
- [5.26] Researchers have found that the investigation of, and intervention into, the alleged abuse of at-risk adults has become a dominant feature of social work in Ireland.⁶² Various consultees have highlighted the need for an organisation to have statutory powers to make enquiries or to investigate reports or allegations of harm of at-risk adults in all settings. Safeguarding Ireland has called for the establishment of an independent safeguarding body with a role to include

⁵⁷ Donnelly and O’Brien, *Speaking Up About Adult Harm: Options for Policy and Practice in the Irish Context* (UCD 2018), at pages 5 and 8. It was also stated that a duty on multiple agencies to co-operate would be critical – cooperation is discussed in Chapter 15 of this Report.

⁵⁸ See sections 13-15 of the Ageing and Adult Safeguarding Act 1995 (South Australia).

⁵⁹ South Australia Law Reform Institute, *‘Autonomy and Safeguarding are not Mutually Inconsistent’: A Review of the Operation of the Ageing and Adult Safeguarding Act 1995 (SA)* (SALRI 2022) at pages 145 to 146.

⁶⁰ South Australia Law Reform Institute, *‘Autonomy and Safeguarding are not Mutually Inconsistent’: A Review of the Operation of the Ageing and Adult Safeguarding Act 1995 (SA)* (SALRI 2022) at page 146.

⁶¹ Beaulieu, *Enhancement of Canadian Data on the Abuse of Older Persons: An exploratory study* (Department of Justice of Canada 2022) at page 60
<https://cnpea.ca/images/enhancementofdatacollection_beaulieureport_eng.pdf>
accessed 14 April 2024.

⁶² Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 8.

receiving and investigating safeguarding complaints regarding individuals; overseeing the investigation of complaints where a person is living in the community and is not in receipt of any care services; and overseeing the investigation of complaints of various types of abuse, including financial and social welfare income abuse and human trafficking.⁶³ In 2017, the Joint Oireachtas Committee on Health acknowledged the urgent need for adult safeguarding legislation and recommended that notifications of abuse are rapidly investigated and comprehensively reported upon thereafter.⁶⁴

- [5.27] A literature review of adult safeguarding legislation in other jurisdictions commissioned by the HSE and published in 2017 found that the focus on an enquiry as a first step in some other jurisdictions enables the client to tell their story (or subjective experience) and give their consent for any intervention.⁶⁵ The review found that enquiries are also important in ascertaining the views of other organisations, professionals and services involved with an at-risk adult, which can avoid unnecessary formal investigation intruding into at-risk adults' lives.⁶⁶ It noted arguments that this tends to support the rights of individuals and can prevent what may be unnecessary use of state power to investigate, enter a premises, assess an at-risk adult and remove an adult to a place of safety.⁶⁷
- [5.28] As part of possible responses to reports or information about actual or suspected harm of at-risk adults received by the Safeguarding Body, it is important to consider whether it is necessary for the Safeguarding Body to have a statutory duty to respond to reports of actual or suspected abuse or neglect of at-risk adults, which could include a power to make enquiries in relation to the Safeguarding Body's function to promote the health, safety and welfare of at-risk adults.

⁶³ Safeguarding Ireland, "Safeguarding Ireland presents 'safeguarding roadmap' to the Oireachtas" (23 February 2024) <<https://safeguardingireland.org/safeguarding-ireland-presents-safeguarding-roadmap-to-the-oireachtas/#:~:text=Safeguarding%20Ireland%20presents%20%27safeguarding%20roadmap%27%20to%20the%20Oireachtas,-February%2023%2C%202024&text=Safeguarding%20Ireland%20has%20presented%20a,Oireachtas%20Committee%20on%20Disability%20Matters.>> accessed 14 April 2024.

⁶⁴ Joint Oireachtas Committee on Health, *Report on Adult Safeguarding* (Houses of the Oireachtas 2017) at pages 7 and 9 <https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_health/reports/2017/2017-12-13_report-adult-safeguarding_en.pdf> accessed 14 April 2024.

⁶⁵ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 165.

⁶⁶ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 165.

⁶⁷ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 165.

(a) The HSE's National Policy and Procedures and the need for statutory provisions

[5.29] To inform the discussion of the proposed statutory provisions for responses of the Safeguarding Body to reports of actual or suspected harm of at-risk adults, this subsection outlines the current policy provisions for the responses of the HSE SPTs to such reports. The HSE's National Policy and Procedures set out the procedures for responding to reports, "concerns" or allegations of abuse arising in the community and in HSE managed or funded disability services and older people's services.⁶⁸ Privately funded services such as private nursing homes and HSE managed or funded services other than disability and older people's services are therefore excluded from the scope of the HSE's National Policy and Procedures.

[5.30] The HSE's National Policy and Procedures provides for the following responses to reports:

- preliminary screenings;
- addressing of immediate safety issues;
- safeguarding plans;
- local informal processes including training;
- assessments or inquiries (as part of a safeguarding plan following a preliminary screening, where deemed necessary);⁶⁹
- assessment and management of a case by the local SPT directly;⁷⁰ and
- professional assessments.⁷¹

[5.31] Where concerns arise in a relevant service setting, the HSE's National Policy and Procedures state that responsibility for ensuring that a preliminary screening is undertaken rests with the service manager of the relevant HSE managed or funded service in which the safeguarding concern arises.⁷² Where a concern arises in respect of a person living in the community and a concern comes to the

⁶⁸ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 27.

⁶⁹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at pages 30, 33 and 38 to 39.

⁷⁰ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at pages 33 and 9.

⁷¹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 39.

⁷² Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at pages 30 and 31.

attention of a HSE managed or funded service such as a primary care health centre, the line manager in the relevant centre or service may carry out a preliminary screening or they may seek the support of the local SPT who can undertake or assist with the screening.⁷³ In certain circumstances, where a concern arises in respect of an adult who is in receipt of HSE managed or funded services, the HSE Head of Social Care in each Community Healthcare Organisation may decide that the matter should be assessed and managed by the local SPT.⁷⁴ Such limited circumstances may include the existence of a possible or perceived conflict of interest for the service manager.⁷⁵ Where a concern about a person living in the community is reported directly to the local HSE Safeguarding and Protection Team, it will undertake a preliminary screening.⁷⁶

- [5.32] The HSE's National Policy and Procedures set out that where reasonable grounds for concern have been established, there are several options in terms of taking further investigative measures.⁷⁷ These are: a local informal process; an internal or independent inquiry; or assessment and management of the matter by the local Safeguarding and Protection Team.⁷⁸
- [5.33] Reports received by the Safeguarding Body in respect of people living in the community who are not in receipt of services would be appropriately screened by the Safeguarding Body and if necessary, the Safeguarding Body would make enquiries to ascertain whether a victim or alleged victim is an at-risk adult who needs support to protect themselves from harm. It is appropriate that cross-sectoral adult safeguarding policy would allow for providers of relevant services to conduct preliminary screenings, local informal processes or internal inquiries in respect of reports about issues arising in those services. Where a report was received by the proposed Safeguarding Body (from a mandated person, for example) and following a screening, the Safeguarding Body believed that the report could appropriately be assessed and a response managed by the service provider, the Safeguarding Body could be permitted by cross-sectoral adult safeguarding policy to refer the matter for management by the provider of the

⁷³ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

⁷⁴ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 39.

⁷⁵ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 39.

⁷⁶ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

⁷⁷ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 38.

⁷⁸ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 38.

relevant service in which the report arose. The HSE's current National Policy and Procedures provides that HSE managed or funded services must notify the local SPT regarding the outcome of any preliminary screening or a report, allegation or concern and that the SPT must be informed of the outcome of any assessment or inquiry deemed necessary following a preliminary screening.⁷⁹ A service manager must also submit any safeguarding plan or plans for other necessary safeguarding measures to the local SPT for approval.⁸⁰ Any future cross-sectoral national adult safeguarding policy or statutory guidance introduced by the lead Department in consultation with the Safeguarding Body could provide for the Safeguarding Body to have similar roles in respect of investigations being carried out by a provider of a relevant service particularly where a report about the allegation or incident has been made to the Safeguarding Body.

[5.34] As set out above, the HSE's current National Policy and Procedures provides for the local SPT to directly assess and manage a report arising in a service where the service manager would have a conflict of interest in assessing and managing the report. It is important that the cross-sectoral adult safeguarding policy would allow for the Safeguarding Body to directly make enquiries in certain circumstances including where a provider of a relevant service or the service manager may have a conflict of interest.

[5.35] Providing for a continued role in cross-sectoral adult safeguarding policy for providers of relevant services to make enquiries or investigate allegations or incidents would prevent a disproportionate burden being placed on the Safeguarding Body's social work-led adult safeguarding services and would ensure that their resources are directed at the most appropriate cases. It could also allow for more timely intervention and service improvement at a local level.⁸¹ It is important that any future cross-sectoral national adult safeguarding policy providing for investigations to be undertaken at a service level would extend to all relevant services providing services to adults, who may include who are, may be, or may become at-risk adults, whether publicly or privately funded. The application of the HSE's National Policy and Procedures to only HSE managed or funded disability and older people's services and to referrals involving older people or people with disabilities in the community can result in inconsistent practices in undertaking preliminary screenings at a service level. Involvement of, or advice from, the proposed Safeguarding Body may be required where reasonable grounds for concern have been established in services not currently covered by the HSE's National Policy and Procedures such as private nursing

⁷⁹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

⁸⁰ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

⁸¹ See discussion in section 4 of Chapter 1.

homes. Consistent screening practices across publicly and privately funded services would therefore assist with facilitating efficient and timely involvement of the Safeguarding Body.

- [5.36] Where the SPTs currently undertake such preliminary screenings and assess and manage reports or allegations, they do so in the absence of statutory powers. Many consultees have called for a statutory body to have such functions and powers to receive and respond to reports of actual or suspected harm of at-risk adults are on a statutory basis.

(b) Adult safeguarding functions, duties and powers to respond to reports or abuse or neglect in other jurisdictions

- [5.37] In other jurisdictions examined by the Commission, legislation provides for public bodies including local authorities to respond to reports of actual or suspected abuse or neglect of at-risk adults. Such mandatory responses are provided for in legislation by the inclusion of statutory functions or duties on public bodies with statutory powers often provided to enable public bodies to fulfil their functions or duties.

(i) Scotland

- [5.38] The Adult Support and Protection (Scotland) Act 2007 places responsibility for adult safeguarding on the local council where the person lives. Section 4 of the Act establishes a duty on a council to “make inquiries about a person’s well-being, property or financial affairs if it knows or believes” that the person is an “adult at risk”, and it might need to intervene in order to protect the person’s well-being, property or financial affairs by using one of its powers under the Act or otherwise.
- [5.39] The Act also contains provisions regarding investigations. Section 7 provides that a council officer may enter any place for the purpose of conducting inquiries under section 4 to ascertain whether it needs to take action to protect an adult at risk of harm.⁸² Council officers and any person accompanying them have the power to interview in private any adult found in a place that it has entered.⁸³ They

⁸² Section 7(1) of the Adult Support and Protection (Scotland) Act 2007. See also section 36 of the Act which contains supplementary provisions on visits. It states that council officers must visit at reasonable times only and they must state the object of their visit and produce evidence of their authorisation. A refusal to permit a council officer or any person accompanying them to carry out a visit which is not authorised by a warrant of entry is not an offence under section 49(1) of the Act.

⁸³ Section 8(1) of the Adult Support and Protection (Scotland) Act 2007. The adult is not required to answer any questions and they must be informed of that before the interview commences. This power to interview applies regardless of whether the sheriff has granted an assessment order authorising the council officer to take the person elsewhere to allow an interview to be conducted.

also have the power to conduct a private medical examination of an adult at risk if they are a health professional.⁸⁴

[5.40] To help with their investigation, council officers may require “any person holding health, financial, or other records relating to an individual whom the officer knows or believes to be an adult at risk to give the records, or copies of them, to the officer”.⁸⁵ They can make this request during a visit or at any other time. If the request is made outside of the visit, it must be made in writing.⁸⁶ Any records provided can be inspected by the officer or any other person considered appropriate by the officer having regard to the contents of the records.⁸⁷ The purpose of examining the records to enable or assist the council to decide whether it needs to take action to protect an adult at risk from harm, by utilising any of its powers under the Act or otherwise. Only health professionals are permitted to inspect health records, however, others are permitted to examine them to determine whether they are health records.⁸⁸

[5.41] The council can apply for warrants of entry,⁸⁹ assessment orders,⁹⁰ removal orders,⁹¹ banning orders,⁹² and can take steps to protect an adult at risk’s property.⁹³ The Adult Support and Protection (Scotland) Act 2007: Code of Practice (the “Code of Practice”) provides that:

[t]he Act does not formalise a distinction between inquiries and investigations. Rather, an inquiry is the overarching process within which the investigatory powers set out in the Act (for instance the examination of records under section 10 of the Act) may be utilised to enable the council to fulfil its obligation to conduct inquiries. Initial information

⁸⁴ Section 9(1) of the Adult Support and Protection (Scotland) Act 2007. A person has a right to refuse to be examined, and they must be informed of this fact. Again, the power applies regardless of whether the sheriff has granted an assessment order authorising the council officer to take the person somewhere else to enable a medical examination being carried out.

⁸⁵ Section 10(1) of the Adult Support and Protection (Scotland) Act 2007.

⁸⁶ Section 10(3) of the Adult Support and Protection (Scotland) Act 2007.

⁸⁷ Section 10(4) of the Adult Support and Protection (Scotland) Act 2007.

⁸⁸ Section 10(5) of the Adult Support and Protection (Scotland) Act 2007.

⁸⁹ Section 38 of the Adult Support and Protection (Scotland) Act 2007.

⁹⁰ Section 11 of the Adult Support and Protection (Scotland) Act 2007.

⁹¹ Section 14 of the Adult Support and Protection (Scotland) Act 2007.

⁹² Sections 19 and 22 of the Adult Support and Protection (Scotland) Act 2007. The council can apply for a banning order if it is satisfied that the criteria for granting a banning order are met, nobody else is likely to apply for a banning order, and there are no other proceedings to eject or ban the person concerned from a particular place.

⁹³ Section 18 of the Adult Support and Protection (Scotland) Act 2007.

gathering may determine whether further action is required under ASP processes.⁹⁴

- [5.42] The Code of Practice provides that where inquiries indicate that a criminal offence may have been committed against an adult, it should be reported to the police “at the earliest opportunity”.⁹⁵ It states that while the police investigation should not be compromised and evidence needs to be preserved and uncontaminated, this does not absolve the council of its responsibility to take immediate action to protect the adult at risk. However, the council should consult the police about any proposed action.⁹⁶
- [5.43] Where the council determines that it does not need to use its powers under the Adult Support and Protection (Scotland) Act 2007 to protect an adult at risk, it may still consider other legislation, local procedures, and services that may assist the adult at risk, depending on the circumstances. This may include “practical support, health, social work and social care support provided on a single or multi-agency basis”.⁹⁷
- [5.44] The Code of Practice also refers to large scale investigations, which are not specifically provided for in the Act, but occur frequently in practice.⁹⁸ These investigations typically involve public bodies, agencies and office-holders co-operating with one another to protect adults at risk of harm. For example, it may involve the Care Inspectorate, the NHS and the police working alongside the council to protect service users in a care home, hospital or other facility.⁹⁹ Those in receipt of services may be at risk due to another service user, a member of staff or a failure in management of the facility. Large scale investigations are particularly useful where:
- (a) an adult protection referral is received in relation to two or more adults within the same care setting or service;

⁹⁴ Scottish Government, *Adult Support and Protection (Scotland) Act 2007: Code of Practice* (2022) at page 45.

⁹⁵ Scottish Government, *Adult Support and Protection (Scotland) Act 2007: Code of Practice* (2022) at page 47.

⁹⁶ Scottish Government, *Adult Support and Protection (Scotland) Act 2007: Code of Practice* (2022) at page 47.

⁹⁷ Scottish Government, *Adult Support and Protection (Scotland) Act 2007: Code of Practice* (2022) at page 50.

⁹⁸ Scottish Government, *Adult Support and Protection (Scotland) Act 2007: Code of Practice* (2022) at page 65. There is no nationally agreed definition of what constitutes a large scale investigation.

⁹⁹ Scottish Government, *Adult Support and Protection (Scotland) Act 2007: Code of Practice* (2022) at pages 65 to 67. It may also include the service provider, GPS, the Office of the Public Guardian, the Mental Welfare Commission, Health Care Improvement Scotland and other community partnerships.

- (b) where institutional harm is suspected;
- (c) where more than one perpetrator is believed to have caused harm;
or
- (d) there are significant concerns about the quality and safety of care within a service.¹⁰⁰

[5.45] A review of adult protection cases in parts of Scotland noted the outcomes of the implementation of the Adult Support and Protection (Scotland) Act 2007, which included that the practitioners found the powers to investigate, request medical examination and access records particularly useful in assisting with identifying whether harm is being experienced and to provide evidence for possible criminal convictions.¹⁰¹

(ii) Wales

[5.46] The Social Services and Well-being (Wales) Act 2014 places a duty on local authorities to assess the needs of an adult who “may have needs for care and support”.¹⁰² There is also a requirement on the local authority to assess whether a carer who may have needs for support requires supports or is likely to have such needs in the future.¹⁰³ Section 126 of the Act provides that if a local authority has reasonable cause to suspect that a person in its area is an adult at-risk, it must (1) make or initiate the making of whatever enquiries it thinks necessary “to enable it to decide whether any action should be taken” under the Act or otherwise and if so, what action is required and by whom and (2) decide whether any such action should be taken.¹⁰⁴ Where an enquiry has been made by a local authority under

¹⁰⁰ Scottish Government, *Adult Support and Protection (Scotland) Act 2007: Code of Practice* (2022) at page 66.

¹⁰¹ Mackay and Notman, “Adult Support and Protection (Scotland) Act 2007: Reflections on Developing Practice and Present Day Challenges.” (2017) 19(4) *The Journal of Adult Protection* 187 at page 194; Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at pages 131 to 132.

¹⁰² Section 19 of the Social Services and Well-being (Wales) Act 2014. The local authority must ascertain the outcomes the adult wishes to achieve in day-to-day life, assess whether and to what degree care and support, preventative services or information, advice or assistance should be provided to achieve these outcomes and assess whether other matters could contribute to the achievement of those objectives. If an adult refuses a needs assessment, the duty does not apply, unless the local authority is satisfied that the adult lacks capacity to refuse to have the assessment or the local authority suspects that the adult is experiencing or at risk of experiencing abuse or neglect.

¹⁰³ Section 24 of the Social Services and Well-being (Wales) Act 2014.

¹⁰⁴ Section 126(2) of the Social Services and Well-being (Wales) Act 2014. There is a duty on relevant partners, including the police, local health boards, and the NHS trust, to notify the local authority where it has reasonable cause to suspect that a person is an at-risk adult and appears to be within the authority’s area. See section 128 of the Social Services and Well-being (Wales) Act 2014.

section 126(2) of the Act, the conclusion of the enquiry must be recorded in the adult's care and support plan.¹⁰⁵

- [5.47] Authorised officers of the local authority can apply to a justice of the peace for an adult protection and support order in relation to a person living in its local area. An adult protection and support order enables the authorised officer to speak in private with the person suspected of being an adult at risk, ascertain whether they are making decisions freely and assess whether the person is an adult at risk and what actions, if any, need to be taken.¹⁰⁶ It permits them to enter premises for these purposes.¹⁰⁷ However, they no longer have the power to remove persons in need of care and attention from a home to hospitals or another facility, which was permitted under section 47 of the National Assistance Act 1948.¹⁰⁸ It appears that this section was rarely used in practice.¹⁰⁹ The adult protection and support order does not include powers of removal or barring.¹¹⁰ The deputy minister defended this approach in the National Assembly's Health and Social Care Committee and stated:

[t]here is an important balance here concerning how we approach the issue of possible abuse of an adult. We have to respect an adult's right to take a risk, especially where there is competence, and that issue is exceedingly important. On the other hand, we need the wherewithal to be

¹⁰⁵ Welsh Government, *Social Services and Well-being (Wales) Act 2014 – Part 4 Code of Practice (Meeting Needs)* (2015) at para 87.

¹⁰⁶ Section 127(2) of the Social Services and Well-being (Wales) Act 2014. The record must include whether the person is or is not at risk and what action should be taken and by whom. If a care and support assessment was refused and therefore no care and support plan was developed, the findings of enquiries should be recorded in the individual case record.

¹⁰⁷ Section 127(3) of the Social Services and Well-being (Wales) Act 2014.

¹⁰⁸ Section 129 of the Social Services and Well-being (Wales) Act 2014. This section provides that section 47 of the National Assistance Act 1948 (which enables local authorities to apply for a court order to remove persons in need of care and attention from home to hospitals or other places) ceases to apply to persons in Wales. A Law Commission report concluded that section 47 could not "be made compliant with the European Convention on Human Rights without substantial reform" and recommended its repeal as it could not be amended "without creating a completely new compulsory safeguarding order". See Law Commission (England and Wales), *Adult Social Care* (Law Com No 326- 2011) at pages 122 to 130; Department of Health (England and Wales), *Reforming the law for adult care and support – The Government's response to Law Commission report 326 on adult social care* (Department of Health 2012) at pages 35 and 39.

¹⁰⁹ Law Commission (England and Wales), *Adult Social Care* (Law Com No 326- 2011) at page 127.

¹¹⁰ Williams, "Adult safeguarding in Wales: one step in the right direction" (2017) 19(4) *The Journal of Adult Protection* 175 at page 181; Preston-Shoot, "Paternalism or proportionality? Experiences and outcomes of the Adult Support and Protection (Scotland) Act 2007" (2014) 16(1) *The Journal of Adult Protection* 5 at pages 5 to 6.

able to speak to an adult in private if there is a suspicion of abuse, and without a third-party present.¹¹¹

(iii) England

[5.48] Section 42 of the Care Act 2014 requires each local authority to make enquiries (or cause enquiries to be made)¹¹² if it has reasonable cause to suspect that an adult in its area:

- (a) has needs for care and support (whether or not the authority is meeting those needs),
- (b) is experiencing, or is at risk of abuse or neglect, and
- (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.¹¹³

[5.49] The local authority is required to make whatever enquiries (or cause them to be made) it thinks necessary to ascertain whether any action should be taken in respect of the adult's case and if so, what action and by whom.¹¹⁴ Safeguarding enquiries are defined in the statutory guidance on the Care Act 2014 as "the action taken or instigated by the local authority in response to a concern that abuse or neglect may be taking place".¹¹⁵ The local authority may conduct more informal inquiries prior to initiating a formal enquiry under section 42 of the Care Act 2014 such as having a conversation with an adult, or if they lack capacity or

¹¹¹ National Assembly for Wales Health and Social Care Committee, Social services and well-being (Wales) bill: stage 1 committee report < [http://www.assembly.wales/Laid%20Documents/CR-LD9418-Health%20and%20Social%20Care%20Committee%20Stage%201%20Committee%20Report,%20Social%20Services%20and%20Well-being%20\(Wales\)-18072013-248230/cr-ld9418-e-English.pdf](http://www.assembly.wales/Laid%20Documents/CR-LD9418-Health%20and%20Social%20Care%20Committee%20Stage%201%20Committee%20Report,%20Social%20Services%20and%20Well-being%20(Wales)-18072013-248230/cr-ld9418-e-English.pdf)> accessed 14 April 2024.

¹¹² The local authority is the Safeguarding Body for conducting enquiries, however, in some cases, it may be preferable for someone else to undertake the enquiry. For example, a social worker, GP, public health nurse or other worker who is known to the adult may conduct an enquiry following a request from the local authority. The statutory guidance on the Care Act 2014 notes that the local authority "retains the responsibility for ensuring that the enquiry is referred to the right place and is acted upon" and it must assure itself that the enquiry undertaken satisfies its duty under section 42 to decide what action if any, is required to help and protect the adult, and to ensure that action is taken. See Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 5 October 2023) at para 14.100 <<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024.

¹¹³ Section 42(1) of the Care Act 2014 (England).

¹¹⁴ Section 42(2) of the Care Act 2014 (England).

¹¹⁵ Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 28 March 2024) <<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024 at para 14.77.

- may have difficulty understanding the enquiry with their representative or advocate.¹¹⁶
- [5.50] The statutory guidance emphasises that the purpose of the enquiry is “to decide whether or not the local authority or another organisation, or person, should do something to help and protect the adult”.¹¹⁷ It provides that while the local authority has the lead role to make enquiries, if there are suspicions of criminal activity, the police need to be involved at the earliest opportunity.¹¹⁸
- [5.51] The safety and well-being of the adult at risk is the first priority of the local authority when conducting enquiry.¹¹⁹ The objectives of an enquiry into abuse or neglect are to:
- (a) establish facts;
 - (b) ascertain the adult’s views and wishes;
 - (c) assess the needs of the adult for protection, support and redress and how they might be met;
 - (d) protect from the abuse and neglect, in accordance with the wishes of the adult;
 - (e) make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect;
 - (f) enable the adult to achieve resolution and recovery.¹²⁰
- [5.52] The statutory guidance provides that safeguarding enquiries may result in:

¹¹⁶ Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 28 March 2024) at para 14.77
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024 .

¹¹⁷ Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 28 March 2024) at para 14.78
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024 .

¹¹⁸ Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 28 March 2024) at para 14.83
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024 .

¹¹⁹ Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 28 March 2024) at para 14.95
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024.

¹²⁰ Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 28 March 2024) at para 14.94
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024 .

the provision of care and support (under either section 18 or 19 of the Care Act), or the provision of preventative services (under section 2) or information or advice (under section 4). In the majority of cases the response will involve other agencies, for example, a safeguarding enquiry may result in referrals to the police, a change of accommodation, or action by the CQC [Care Quality Commission].¹²¹

- [5.53] It is up to the local authority to determine whether any further action is required following an enquiry and it must assess whether the outcome of the enquiry undertaken by someone else is satisfactory or appropriate.¹²²
- [5.54] In a literature review commissioned by the HSE and published in 2017, a comparative discussion of safeguarding legislation in England notes that the preferred terminology for processes aimed at establishing whether an adult is at risk of harm and needs support to protect themselves is “enquiries”, as noted above in the discussion of the Care Act 2014.¹²³ It notes that this is because “enquiries” is perceived as emphasising the need for discussion, reflection and a process that gives importance to the subjective experience of the individual as well as the views of the professional and the objective “facts”.¹²⁴ The literature review found that the term “investigation” was considered to have negative associations with criminal, disciplinary and clinical investigations.¹²⁵ The “enquiries” approach adopted was found to have been intended to be more empowering and to avoid the assumption that external solutions and mechanisms are always necessary to safeguard an adult.¹²⁶ The review also found that the framing of the duty should ensure that it could be discharged through a range of pathways or different routes.¹²⁷ For example, a local authority in England

¹²¹ Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 28 March 2024) at para 6.56
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024.

¹²² Department of Health and Social Care (United Kingdom), *Care and support statutory guidance* (Updated 28 March 2024) at para 14.110
<<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>> accessed 14 April 2024.

¹²³ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 55.

¹²⁴ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 55.

¹²⁵ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 55.

¹²⁶ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 55.

¹²⁷ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 55.

could undertake enquiries, refer the matter to the appropriate agency or initiate a multi-agency investigation.¹²⁸

(iv) Northern Ireland

- [5.55] The draft proposals for an Adult Protection Bill in Northern Ireland place a statutory duty on HSC Trusts, the Police Service of Northern Ireland (“PSNI”), the HSC Board, Public Health Agency, the Regulation and Quality Improvement Authority (“RQIA”) and service providers commissioned or contracted by the HSC Trust, to report any cases where they believe there is “reasonable cause to suspect that an adult meets the criteria of “an adult at risk and in need of protection” to the relevant HSC Trust.¹²⁹ This in effect will impose reporting obligations on these organisations and service providers.
- [5.56] The draft proposals also propose placing a corresponding statutory duty on HSC Trusts to “make follow up enquiries into all cases where someone who is suspected of being ‘an adult at risk and in need of protection’ is brought to its attention”.¹³⁰ It is also intended to introduce powers of entry to interview an adult at-risk, and assessment orders, removal orders and banning orders.¹³¹
- [5.57] It remains to be seen how the statutory duty on the HSC Trust to make follow-up enquiries will be fleshed out in the draft Adult Protection Bill, if it is pursued, and whether the outcome of any such enquiry will be limited to deciding whether to seek orders permitting entry, assessment, removal and banning.

(v) Australia (Federal)

- [5.58] In its Elder Abuse – A National Legal Response report, the Australian Law Reform Commission (the “ALRC”) made a number of recommendations in relation to safeguarding at-risk adults.¹³² Its overall recommendation in the adult

¹²⁸ Donnelly and others, *Adult Safeguarding Legislation and Policy Rapid Realist Literature Review* (HSE 2017) at page 55.

¹²⁹ Department of Health (Northern Ireland), *Adult Protection Bill – Draft Final Policy Proposals for Ministerial Consideration* (2021) at page 3 <<https://www.health-ni.gov.uk/sites/default/files/consultations/health/adult%20protection%20bill-final%20policy%20proposals.pdf>> accessed 14 April 2024.

¹³⁰ Department of Health (Northern Ireland), *Adult Protection Bill – Draft Final Policy Proposals for Ministerial Consideration* (2021) at page 3 <<https://www.health-ni.gov.uk/sites/default/files/consultations/health/adult%20protection%20bill-final%20policy%20proposals.pdf>> accessed 14 April 2024.

¹³¹ Department of Health (Northern Ireland), *Adult Protection Bill – Draft Final Policy Proposals for Ministerial Consideration* (2021) at page 3 <<https://www.health-ni.gov.uk/sites/default/files/consultations/health/adult%20protection%20bill-final%20policy%20proposals.pdf>> accessed 14 April 2024.

¹³² Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017). At risk adults are defined as adults who (a) need care and support;

safeguarding context is that adult safeguarding laws should be enacted in each state and territory and that these laws should give “adult safeguarding agencies the role of safeguarding and supporting ‘at-risk adults’”.¹³³ The report does not suggest that adult safeguarding agencies need to be new agencies, instead, the adult safeguarding function could be assigned to existing state and territory agencies such as public advocates or government departments.¹³⁴

[5.59] The ALRC recommended that adult safeguarding agencies should have a “statutory duty to make inquiries where they have reasonable grounds to suspect that a person is an ‘at-risk adult’”, and the first step in any inquiry should be to make contact with the at-risk adult.¹³⁵ The ALRC considered that adult safeguarding agencies should be permitted to investigate “either upon receipt of a complaint or referral or on its own motion”.¹³⁶

[5.60] The ALRC recommended that the consent of the at-risk adult must be secured before an adult safeguarding agency investigates or takes other action in response to concerns of abuse or neglect.¹³⁷ This recognises the adult’s autonomy and the need to take account of their wishes and right to make decisions about their own life. However, the ALRC states that consent should not be required:

- (a) in serious cases of physical abuse, sexual abuse or neglect; or
- (b) if the safeguarding agency cannot contact the adult, despite extensive efforts to do so; or

(b) are being abused or neglected, or are at risk of abuse or neglect; and (c) cannot protect themselves from the abuse. See Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 375.

¹³³ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 377.

¹³⁴ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 384. Public advocates roles were typically limited to safeguarding people whose decision-making capacity is affected. The Australian Law Reform Commission contended that states and territories may wish to extend their existing functions to other adults who have decision-making capacity but may still be at-risk of experiencing abuse. Some stakeholders were against giving safeguarding functions to public advocates as they considered the work to be different, and that doing so may run the risk that more adults would be taken into guardianship than is strictly necessary.

¹³⁵ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 386.

¹³⁶ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 387.

¹³⁷ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 392.

- (c) if the adult lacks the legal capacity to give consent, in the circumstances.¹³⁸

[5.61] The ALRC's report outlines the actions that adult safeguarding laws should permit the adult safeguarding agency to take where it has reasonable grounds to conclude that a person is an at-risk adult.¹³⁹ It recommends that the adult safeguarding agency may take the following actions, with the adult's consent (except in limited circumstances outside above):

- (a) coordinate legal, medical and other services for the adult;
- (b) meet with relevant government agencies and other bodies and professionals to prepare a plan to stop the abuse and support the adult;
- (c) report the abuse to the police;
- (d) apply for a court order in relation to the person thought to be committing the abuse (for example, a violence intervention order);
or
- (e) decide to take no further action.¹⁴⁰

[5.62] In simple cases, all that may be required is that the at-risk adult is put in contact with a doctor to have a medical examination, or a lawyer to discuss financial affairs. In more complex cases, a safeguarding plan may be required involving the cooperation and input of multiple government agencies and service providers. Where this is the case, the ALRC considers that the adult safeguarding agency should have responsibility for coordinating this work.¹⁴¹

[5.63] The ALRC did not recommend that adult safeguarding agencies should have the power to remove at-risk adults from their home without their consent, even if the agency can otherwise act without the person's consent. The rationale for this was

¹³⁸ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 392. For an analysis of its rationale for including each of the paragraphs see discussion at pages 397 to 402.

¹³⁹ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 392. For an analysis of its rationale for including each of the paragraphs see discussion at pages 402 to 406.

¹⁴⁰ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at pages 402 to 403. The ALRC state that adult safeguarding legislation "need not prescribe specific responses to specific scenarios" as what is required will depend on the particular circumstances, and also the consent and preference of the at-risk adult in some cases. However, it notes that legislation might need to be more prescriptive about the actions that may be taken in circumstances where the consent of the at-risk adult is not required.

¹⁴¹ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 403.

that to permit such action may be considered “overly intrusive and paternalistic”.¹⁴²

- [5.64] The ALRC does recommend that some coercive powers be conferred on adult safeguarding agencies including coercive information-gathering powers, such as a power to require a person to answer questions and produce documents.¹⁴³ These powers can only be exercised where the adult safeguarding agency has reasonable grounds to suspect that there is “serious abuse” of an at-risk adult, and it may only exercise such powers “to the extent necessary to safeguard and support the at-risk adult”.¹⁴⁴ The ALRC recommended that these limitations be placed on the power to gather information following concerns expressed by stakeholders.¹⁴⁵ It noted that:

Safeguarding agencies should exercise coercive powers cautiously and reluctantly, and only for the purpose of safeguarding and supporting the at-risk adult. It is not proposed that the safeguarding agency be a quasi-criminal investigation body. Where possible, safeguarding and support should be provided without forcing family members and carers to answer questions.¹⁴⁶

- [5.65] The ALRC considers that the purpose of these powers should be to enable the adult safeguarding agency to perform its functions effectively and to enable it to determine whether it needs to take appropriate action to stop the abuse of, and support, the at-risk adult.¹⁴⁷

(vi) South Australia (Australia)

- [5.66] The Ageing and Adult Safeguarding Act 1995 was amended in 2018 to provide for the establishment of an Adult Safeguarding Unit (the “ASU”) within the Department of the Minister for Health and Wellbeing.¹⁴⁸ The ASU is located in the

¹⁴² Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 406.

¹⁴³ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 407.

¹⁴⁴ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 407.

¹⁴⁵ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at pages 408 to 409.

¹⁴⁶ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 409.

¹⁴⁷ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report* (ALRC Report 131–2017) at page 407.

¹⁴⁸ Section 13(1) of the Ageing and Adult Safeguarding Act 1995 (SA).

Office for Ageing Well, also established under the Act, within the Department.¹⁴⁹ The ASU consists of the Director of the Office for the Ageing Well and other public service employees appointed or assigned to assist the Director.¹⁵⁰ Initially the ASU responded to concerns of abuse in relation to adults vulnerable to abuse aged 65 years and over, and 50 years and over for Aboriginal or Torres Strait Islander people. Their remit was extended to adults living with disabilities on 1 October 2020, and to any adult who may be vulnerable on 1 October 2022.¹⁵¹

[5.67] Section 15 of the Ageing and Adult Safeguarding Act 1995 outlines the functions of the ASU, which include, but are not limited to, the following:

- (a) to receive reports relating to the suspected abuse of vulnerable adults;
- (b) to assess reports relating to the suspected abuse of vulnerable adults;
- (c) to investigate reports relating to the suspected abuse of vulnerable adults;
- (d) to coordinate responses to reports relating to the suspected abuse of a vulnerable adult with State authorities and other persons and bodies;
- (e) to refer reports relating to the suspected abuse of a vulnerable adult to appropriate persons or bodies; and
- (f) to follow up on reports that have been assessed or investigated where it is appropriate to do so.¹⁵²

[5.68] Authorised officers of the ASU have certain powers that they can exercise in the course of an investigation (permitted under section 26 of the Act, discussed further below) in respect of a vulnerable adult who is, or is suspected of being, at risk of serious abuse.¹⁵³ Authorised officers have powers to enter, remain on and

¹⁴⁹ Government of South Australia, SA Health, Adult Safeguarding Unit <<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/department+for+health+and+wellbeing/office+for+ageing+well/adult+safeguarding+unit/adult+safeguarding+unit>> accessed 14 April 2024.

¹⁵⁰ Section 14 of Ageing and Adult Safeguarding Act 1995 (SA).

¹⁵¹ Government of South Australia, SA Health, Adult Safeguarding Unit <<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/department+for+health+and+wellbeing/office+for+ageing+well/adult+safeguarding+unit/adult+safeguarding+unit>> accessed 14 April 2024.

¹⁵² Section 15(1)(d) to (i) of the Ageing and Adult Safeguarding Act 1995 (SA). Other functions include to collect data on matters relating to abuse of vulnerable adults, to advise Ministers, State Authorities and others on matters related to abuse of vulnerable adults on a systemic level and to prepare and publish reports on such issues.

¹⁵³ Sections 18 and 19 of the Ageing and Adult Safeguarding Act 1995 (SA).

inspect any premise, place, vehicle or vessel and they may use reasonable force¹⁵⁴ to effect such entry.¹⁵⁵ Authorised officers also have the following powers when conducting an investigation:

- (a) require any person (whether on a particular premises or otherwise) who has possession of books of account or any other records relevant to a vulnerable adult to produce those books of account or records for inspection;
- (b) examine, copy or take extracts from such books of account or records;
- (c) remove and retain such books of account or records for so long as is reasonably necessary for the purpose of making a copy of the book of account or record;
- (d) take photographs, films, audio, video or other recordings;
- (e) require any person who is in a position to provide information relating to a vulnerable adult to answer any question put by the authorised officer on that subject;
- (f) require any such person to state their full name, address and date of birth;
- (g) give such directions as may be reasonably required in connection with the exercise of a power conferred by a preceding paragraph or otherwise for a purpose related to the administration, operation or enforcement of this Act.¹⁵⁶

[5.69] Section 22 of the Ageing and Adult Safeguarding Act 1995 permits a person to report a suspicion that a vulnerable adult is at risk of abuse to the ASU.¹⁵⁷ Unlike in some jurisdictions, there is no requirement to report abuse or suspicions of abuse. Section 23(1) of the Act requires the Director of the ASU to cause each report made under the Act to be assessed in accordance with any requirements set out in regulations.¹⁵⁸ Upon the completion of an assessment, the Director must cause at least one of the following actions to be taken:

¹⁵⁴ Authorised officers may only use reasonable force if it obtains a warrant or if there are reasonable grounds to believe that the delay that would be caused by obtaining the warrant would “significantly increase the risk of harm, or further harm, being caused to a vulnerable adult”, entry has been refused or cannot be gained, and the Director of the ASU approved the use of force to obtain entry. See section 19(2) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁵⁵ Section 19(1)(a), (b), (c) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁵⁶ Section 19(1)(d) to (j) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁵⁷ Section 22(1) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁵⁸ The Ageing and Adult Safeguarding Regulations 2019 (SA) do not contain any additional requirements in relation to assessments.

- (a) an investigation into the matter must be carried out under section 26;
- (b) the matter must be referred to an appropriate State authority or other person or body under section 25;
- (c) if the Director is satisfied that—
 - (i) the matter has previously been dealt with under this or any other Act and there is no reason to reexamine the matter; or
 - (ii) the matter is trivial, vexatious or frivolous; or
 - (iii) there is good reason why no action should be taken in respect of the matter,the Director may decline to take further action.¹⁵⁹

[5.70] The Director is required to keep a record of each action taken and the reasons for the action in respect of each report of abuse or suspected abuse made under the Act, and include statistical information on any actions taken in its annual report.¹⁶⁰ The Director has the power to require a specified person or body to produce a written statement of information about a specified matter, or answer specified questions within a specified time period and in a specified form.¹⁶¹

[5.71] The consent of the vulnerable adult about whom the report or notification was made is required in order for the ASU to take action in respect of the report.¹⁶² Consent is not required for an assessment of a report in accordance with section 23 of the Act.¹⁶³ The ASU can take action without first obtaining the consent of a vulnerable adult, if the action is authorised by a court order under the Act.¹⁶⁴ The ASU is permitted to take action without first obtaining the consent of the vulnerable adult where the Director approves the taking of the action and where:

- (a) the vulnerable adult's life or physical safety is at immediate risk; or
- (b) the risk of abuse to which the report relates consists of an allegation that a serious criminal offence has been, or is likely to be, committed against the vulnerable person; or

¹⁵⁹ Section 23(3) of the Ageing and Adult Safeguarding Act 1995 (SA). This subsection also provides that the actions the Director may take are not limited to those actions explicitly listed within the subsection.

¹⁶⁰ Section 23(4) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁶¹ Section 23(6) of the Ageing and Adult Safeguarding Act 1995 (SA). Failure to cooperate can result in a fine with a maximum penalty of \$10'000.

¹⁶² Section 24(1) of the Ageing and Adult Safeguarding Act 1995 (SA). The consent may be obtained orally or in writing, and it must comply with any requirements determined by the Director. See regulation 8(2) of Ageing and Adult Safeguarding Regulation 2019 (SA).

¹⁶³ Section 24(2) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁶⁴ Section 24(3) of the Ageing and Adult Safeguarding Act 1995 (SA).

- (c) the vulnerable adult has impaired decision-making capacity in respect of a decision to consent to action of the relevant kind being taken; or
- (d) the Adult Safeguarding Unit has not, after reasonable inquiries, been able to contact the vulnerable adult; or
- (e) in any other circumstances declared by the regulations to be included in the ambit of this paragraph.¹⁶⁵

[5.72] The Director has the power to refer matters to a State authority other than the ASU, or a specified person or body other than a State authority, where it determines, following an assessment, that it would be more appropriate that the matter or a particular aspect of the matter, be dealt with elsewhere.¹⁶⁶ The legislation provides that the matter can be referred to more than one or a combination of State authorities, bodies or persons and that the ASU may take action in relation to a matter even where it has referred a matter on.¹⁶⁷

[5.73] The section provides that the matter must be deal with “within a reasonable timeframe, having regard to the need to ensure that vulnerable adults are protected from abuse”.¹⁶⁸ In addition, a person or body to whom a matter is referred must provide a report on the matter to the Director of the ASU, as soon as is reasonably practicable after dealing with the matter, in order to provide an update on the outcome of the referral and any actions taken in respect of the matter.¹⁶⁹ A State authority to whom a matter is referred, must provide a report in relation to the matter if required by the Director.¹⁷⁰

[5.74] In respect of referrals, the Ageing and Adult Safeguarding Regulations 2019 provide that a State authority, body, or person to whom a referral is made by the Director, may refuse the referral on one or more of the following grounds:

- (a) lack of resources or capacity to accept the referral at the relevant time;
- (b) the referral is inappropriate having regard to the services provided by the State authority, body, or person;

¹⁶⁵ Section 24(4) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁶⁶ Section 25(1) of the Ageing and Adult Safeguarding Act 1995 (SA). A referral must be made by notice in writing (which may include by electronic means). See regulation 9(1) of the Ageing and Adult Safeguarding Regulations 2019 (SA).

¹⁶⁷ Section 25(2) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁶⁸ Section 25(3) of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁶⁹ Section 25(4) of the Ageing and Adult Safeguarding Act 1995 (SA). The Director may decide to exempt a specified person or body or a specified class of persons or bodies from the requirement to provide a report in relation to a matter under section 25(4) of the Act. See regulation 9(6) of the Ageing and Adult Safeguarding Regulations 2019 (SA).

¹⁷⁰ Regulation 9(4) of the Ageing and Adult Safeguarding Regulations 2019 (SA).

- (c) the Director, after consultation with the State authority, body or person agrees to the refusal.¹⁷¹

[5.75] This does not displace or affect any statutory duty that the State authority, body or person may have in respect of a referred matter.¹⁷² Section 26 of the Ageing and Adult Safeguarding Act 1995 provides that the Director of the ASU may “cause an investigation into the circumstances of a vulnerable adult to be carried out”:

- (a) if a report is made under section 22 and the Director suspects on reasonable grounds that the vulnerable adult may be at risk of abuse; or
- (b) in any other circumstances that the Director thinks appropriate.¹⁷³

[5.76] It is in the context of investigations carried out in accordance with section 26 that authorised officers can exercise certain powers conferred on them by section 19 of the Act. The Director is permitted to refer matters that raise the possibility of professional misconduct or unprofessional conduct to the relevant regulatory body for that profession.¹⁷⁴ The Director can also make a complaint on behalf of a vulnerable adult or class of vulnerable adult to (1) the Ombudsman in respect of an administration act falling within its remit or (2) the Health and Community Services Complaints Commissioner in respect of a ground referred to in section 25 of the Health and Community Services Complaints Act 2004.¹⁷⁵

(vii) Queensland (Australia)

[5.77] In Queensland, the Public Guardian has the power to investigate allegations of neglect, exploitation, and abuse or inappropriate or inadequate decision-making arrangements where an adult does not have the capacity to make decisions.¹⁷⁶ The Public Guardian or their delegate has a number of coercive information-gathering powers under the Act including, for example, the power to require a

¹⁷¹ Regulation 9(2) of the Ageing and Adult Safeguarding Regulations 2019 (SA). A State authority, body or person must in a manner and form determined by the Director and within the period specified by the Director (not exceeding 5 business days) indicate whether or not they will refuse the referral. See regulation 9(3) of the Ageing and Adult Safeguarding Regulations 2019 (SA).

¹⁷² Regulation 9(2) of the Ageing and Adult Safeguarding Regulations 2019 (SA).

¹⁷³ Section 26(1) of the Ageing and Adult Safeguarding Act 1995 (SA). Section 26(2) of the Act provides that an investigation by the ASU must be carried out in accordance with any requirements set out in regulations. The Ageing and Adult Safeguarding Regulations 2019 (SA) does not specify any requirements.

¹⁷⁴ Section 27 of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁷⁵ Section 28 of the Ageing and Adult Safeguarding Act 1995 (SA).

¹⁷⁶ Section 19 of the Public Guardian Act 2014 (QLD).

person to give it information,¹⁷⁷ and the power to require a person to meet the Public Guardian and answer their questions.¹⁷⁸ There are also offences for obstructing or improperly influencing an investigation and the public guardian can request a court order where there are issues with compliance.¹⁷⁹

[5.78] In 2022, the Public Advocate published an Adult Safeguarding in Queensland report.¹⁸⁰ In order to address the gaps in the current adult safeguarding system in Queensland, it recommended that an adult safeguarding agency should be established in Queensland with the ability to receive and investigate reports of suspected abuse, neglect and exploitation of at-risk adults.¹⁸¹ This is in accordance with the Australian Law Reform Commission's recommendations. The Public Advocate believes that the adult safeguarding agency should be permitted to conduct an investigation on its own motion or following a complaint or allegation.¹⁸² It concurred with the ALRC recommendations regarding consent, and the need for coercive information-gathering powers to be exercised where there is a reasonable suspicion of serious abuse.¹⁸³ It also agreed with the ALRC's recommendations regarding the actions the adult safeguarding agency should be permitted to take.¹⁸⁴

¹⁷⁷ Sections 21, 22 and 23 of the Public Guardian Act 2014 (QLD).

¹⁷⁸ Section 25 of the Public Guardian Act 2014 (QLD). The Public Guardian may decide to require the person to take an oath and verify written statements by oath.

¹⁷⁹ Sections 26, 27 and 30 of the Public Guardian Act 2014 (QLD).

¹⁸⁰ The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022). The Public Advocate's role is distinct from the role of the Public Guardian. The Public Advocate works on behalf of adults with impaired decision-making capacity to promote and protect their rights, encourage the development of services and programmes and promotes, monitors and reviews services provided to them. It is focused on examining legislation, policies, programmes and services from a systemic lens, whereas the Public Guardian works directly for individuals and can investigate individual complaints or allegations. See the Public Advocate, *The role of different guardianship agencies in Queensland* <<https://www.justice.qld.gov.au/public-advocate/about-the-public-advocate/what-the-public-advocate-does/role-of-different-guardianship-system-agencies#:~:text=Unlike%20the%20Public%20Guardian%20or,investigate%20individual%20complaints%20or%20allegations.>> accessed 14 April 2024.

¹⁸¹ The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022) at pages 9 and 11. The report outlines the various options for who this adult safeguarding body might be (see pages 29 to 37) and ultimately the report identifies a preference for the option of establishing a new independent Adult Safeguarding Commissioner.

¹⁸² The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022) at page 11.

¹⁸³ The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022) at pages 11 and 40.

¹⁸⁴ The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022) at pages 40 to 41.

- [5.79] The government's response to the recommendations in the Public Advocate's report has not yet been published, but the government is considering the recommendations and whether any changes are required.¹⁸⁵

(viii) *Victoria (Australia)*

- [5.80] The Public Advocate for Victoria also recently published a report on adult safeguarding laws and practice.¹⁸⁶ The report noted that:

there is no agency able to investigate the safety and wellbeing of at-risk adults who cannot access the services they need; who are experiencing abuse, neglect or exploitation that does not meet a criminal threshold; or who otherwise fall through the cracks between the maze of services and regulation in an environment that is continuously evolving.¹⁸⁷

- [5.81] The Public Advocate explained how his office frequently gets calls from members of the public looking to "report" that an at-risk adult is being abused by someone in the community. However, unless the person concerned has a cognitive disability, the Public Advocate has no "powers to deal with these reports, nor in many cases is there an agency to which the [Office of the Public Advocate] can refer the caller".¹⁸⁸

- [5.82] In the report, the Public Advocate recommends that adult safeguarding legislation should be introduced "to establish a new, specialist adult safeguarding function, preferably within an existing agency such as the Office of the Public Advocate".¹⁸⁹ It suggests that the legislation should:

enable the agency to receive and assess reports of abuse, neglect and exploitation of at-risk adults via a well-resourced and publicised

¹⁸⁵ Queensland Cabinet and Ministerial Directory, Attorney-General welcomes report focused on protection vulnerable adults <<https://statements.qld.gov.au/statements/96761>> accessed 14 April 2024.

¹⁸⁶ Office of the Public Advocate (Victoria), *Line of Sight: Refocusing Victoria's adult safeguarding laws and practices* (2022). The Public Advocate's main role is to promote the rights and interests of people with disabilities and to act as a guardian of last resort, when appointed to do so by the Civil and Administrative Tribunal. They also have an advocacy and investigatory role.

¹⁸⁷ Office of the Public Advocate (Victoria), *Line of Sight: Refocusing Victoria's adult safeguarding laws and practices* (2022) at page 9.

¹⁸⁸ Office of the Public Advocate (Victoria), *Line of Sight: Refocusing Victoria's adult safeguarding laws and practices* (2022) at page 9.

¹⁸⁹ Office of the Public Advocate (Victoria), *Line of Sight: Refocusing Victoria's adult safeguarding laws and practices* (2022) at page 15.

helpline; undertake investigations; and make and coordinate referrals to other agencies.¹⁹⁰

[5.83] Further on in the report, the Public Advocate makes specific recommendations on how the Guardianship and Administration Act 2019 should be amended to strengthen the functions of the Public Advocate to enable it to investigate abuse, neglect or exploitation of people with impaired decision-making ability due to disabilities and to give it coercive powers to compel people to answer questions and produce documents.¹⁹¹ The Victoria Law Reform Commission made similar recommendations in 2012, but these are yet to be implemented.¹⁹²

(ix) New South Wales (Australia)

[5.84] In 2019, the Ageing and Disability Commission was established in New South Wales. Under the Ageing and Disability Commissioner Act 2019, the functions of the Commissioner include, among other functions, the following:

- (a) to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations;
- (b) to take further action, following an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult, that the Commissioner considers necessary to protect the

¹⁹⁰ Office of the Public Advocate (Victoria), *Line of Sight: Refocusing Victoria's adult safeguarding laws and practices* (2022) at page 15.

¹⁹¹ Office of the Public Advocate (Victoria), *Line of Sight: Refocusing Victoria's adult safeguarding laws and practices* (2022) at pages 17 and 62. It suggests that the Public Advocate should also be permitted to receive complaints in respect of the misuse of powers by private individuals and organisations appointed to decision-making roles. It believes that the Public Advocate should be able to investigate on their own motion, and that they should have certain coercive information-gathering powers. It also recommends that it should be an offence to not comply with these powers when requested to do so, and that the Public Advocate should be able to make an application to the Civil and Administrative Tribunal or Magistrates Court if they believe a person with impaired decision-making ability due to a disability is being abused, exploited or neglected. Currently, under the 2019 Act the Public Advocate only has powers to "investigate any complaint or allegation that a person is under inappropriate guardianship, is being exploited or abused or is in need of guardianship". See section 16(1)(g) of the Guardianship and Administration Act 2019 (Victoria). This is despite one of the functions of the Public Advocate being to "protect persons with a disability from abuse, neglect and exploitation". See section 15(b) of the Guardianship and Administration Act 2019 (Victoria).

¹⁹² Victorian Law Reform Commission, *Guardianship Final Report 24* (2012).

adult from abuse, neglect and exploitation, including by making an application to a court or tribunal in respect of the adult.¹⁹³

- [5.85] The Ageing and Disability Commissioner does not investigate the conduct of paid service providers for older people or adults with disabilities. Instead, it investigates the conduct of family members, and other informal supports or members of the community where there are concerns about abuse.¹⁹⁴ The Aged Care Quality and Safety Commission and the NDIS Quality and Safeguards Commission have functions in relation to regulation of aged care services and NDIS disability services on a federal level, and related complaints and quality monitoring functions.¹⁹⁵
- [5.86] The Ageing and Disability Commissioner has powers to require any person to attend a meeting and produce documents. It also has powers to apply for a search warrant if they have “reasonable grounds for believing that there is or on any premises an adult with a disability or an older adult who is subject to, or at risk of, serious abuse, neglect or exploitation.”¹⁹⁶ The warrant permits the Commissioner or a member of their staff to enter the premises and take a number of actions, including examining and inspecting documents, taking photographs, audio or recordings, copying or taking notes from documents, and take possession of and remove documents.¹⁹⁷
- [5.87] The Ageing and Disability Commissioner is required to refer matters to the Aged Care Quality and Safety Commission, the NDIS Quality and Safeguards Commission, the NSW Police or the Director of Public Prosecution, where it is more appropriate for either of these organisations to conduct investigations.
- [5.88] The Commissioner also has the power to conduct a public enquiry, if the Commissioner believes it is in the public interest, having regard to:

- (a) the seriousness of the allegation of abuse, neglect or exploitation, and

¹⁹³ Section 12(1)(a) and (b) of the Ageing and Disability Commissioner Act 2019 (NSW).

¹⁹⁴ Ageing and Disability Commission, What we do < <https://www.ageingdisabilitycommission.nsw.gov.au/about-us/what-we-do.html> > accessed 4 April 2024. It has been noted that the Ageing and Disability Commissioner “filled a critical gap in dealing with allegations of abuse, neglect and exploitation of people with disability and the elderly in home and community settings that was not previously addressed by other complaint and investigative bodies in NSW”. See Alan Cameron AO, *Report of the Independent Statutory Review of the Ageing and Disability Commissioner Act 2019* (2023) at page 9 <<https://apo.org.au/node/320856>> accessed 4 April 2024.

¹⁹⁵ Aged Care Quality and Safety Commission Act 2018 (Australia); National Disability Insurance Scheme Act 2013 (Australia).

¹⁹⁶ Section 17 of the Ageing and Disability Commissioner Act 2019 (NSW).

¹⁹⁷ Section 17(2) of the Ageing and Disability Commissioner Act 2019 (NSW).

- (b) the wishes of any person with disability or older adult to whom the report relates, and
- (c) the privacy of the persons who will be affected by a public inquiry.¹⁹⁸

(x) *Nova Scotia (Canada)*

[5.89] In Nova Scotia, the Adult Protection Act 1989 provides that any person who has information that indicates that an adult is in need of protection shall report the information to the Minister for Health and Wellness.¹⁹⁹ Section 6 of the Act provides that where the Minister receives a report that a person is an adult in need of protection, they shall:

- (a) make inquiries with respect to the matter; and
- (b) if he finds there are reasonable and probable grounds to believe the adult is in need of protection, cause an assessment to be made.²⁰⁰

[5.90] The Minister may, where it is considered appropriate, ask a qualified medical practitioner to “assess the adult, the care and attention the adult is receiving, and whether the adult has been abused”.²⁰¹ If the Minister is satisfied that a person is an adult in need of protection after an assessment takes place, they should assist the person in obtaining services that will “enhance the ability of the person to care and fend adequately for himself or will protect the person from abuse or neglect”, where the person is willing to accept such assistance.²⁰²

[5.91] In circumstances where the adult concerned refuses to consent to the assessment, or a family member or person caring for or controlling the adult interferes with or obstruct the assessment, the Minister has the power to apply to the court for an order authorising entry into any building or place “for the purpose of making the assessment”.²⁰³ The court may grant the order once it is satisfied that there are “reasonable and probable grounds to believe that the person who is being assessed is an adult in need of protection”.²⁰⁴

[5.92] After an assessment takes place, the Minister can apply to the court for an order declaring the person to be an adult in need of protection, and where necessary, seek to obtain a protective intervention order. This application can only be made where the Minister is satisfied that there are “reasonable and probable grounds

¹⁹⁸ Section 19 of the Ageing and Disability Commissioner Act 2019 (NSW).

¹⁹⁹ Section 5 of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

²⁰⁰ Section 6 of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

²⁰¹ Section 6 of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

²⁰² Section 7 of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

²⁰³ Section 8(2) of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

²⁰⁴ Section 8(3) of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

to believe a person is an adult in need of protection”.²⁰⁵ Protective intervention orders under the Nova Scotia legislation are discussed in detail in Chapters 10, 11, 12 and 13 of this Report. The Minister can also authorise the immediate removal of a person “for the protection of the person and the preservation of their life” where after an assessment, the Minister is satisfied that there are reasonable and probable grounds to believe that:

- (a) the life of the person is in danger;
- (b) the person is an adult in need of protection; and
- (c) the person is not mentally competent to decide whether or not to accept the assistance of the Minister or is refusing the assistance by reason of duress.²⁰⁶

[5.93] Where the Minister authorises an immediate removal, it must within 5 days of the removal apply for a court order declaring that the person is an adult in need of protection, unless the adult is returned before that date.²⁰⁷

[5.94] The Adult Protection Policy Manual outlines in more detail how assessments and adult safeguarding interventions should be made under the Act.²⁰⁸ It also discusses when referrals should be made to the police or for services and how applications can be made for court orders as a last resort. It emphasises that:

interventions by a government agency can only be justified in situations of significant risk. Therefore, adults in need of protection must be living at an extremely high or high level of risk; which means their life is at risk if left in a situation of self-neglect and if they are experiencing serious psychological or physical harm as a result of abuse or neglect at the hands of others.²⁰⁹

[5.95] Prior to the assessment stage, the Adult Protection worker, on behalf of the Minister, must conduct an intake and inquiry and establish whether there are reasonable and probable grounds that an individual is an adult in need of

²⁰⁵ Section 9 of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

²⁰⁶ Section 10 of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

²⁰⁷ Section 10(1) of the Adult Protection Act, RSNS 1989, c 2 (Nova Scotia).

²⁰⁸ Department of Health and Wellness (Nova Scotia), *Adult Protection Policy Manual* (last reviewed 10 October 2022) < <https://novascotia.ca/dhw/ccs/documents/Adult-Protection-Policy-Manual.pdf> > accessed 14 April 2024. See pages 21, 22, 86 to 91 in particular regarding assessments.

²⁰⁹ Department of Health and Wellness (Nova Scotia), *Adult Protection Policy Manual* (last reviewed 10 October 2022) at page 86 < <https://novascotia.ca/dhw/ccs/documents/Adult-Protection-Policy-Manual.pdf> > accessed 14 April 2024.

protection.²¹⁰ The assessment allows the Adult Protection worker to determine whether or not it needs to apply for a court order, refer to other services or the police, or implement a care plan.²¹¹

(xi) Newfoundland and Labrador (Canada)

- [5.96] Under the Adult Protection Act 2021, any person who “reasonably believes” that an adult in need of protective intervention is required to report that information (along with the name and address of the adult, where known) to the Provincial Director of Adults in Need of Protective Intervention,²¹² a director, a social worker or a police officer.²¹³
- [5.97] Section 13 of the Adult Protection Act 2021 requires a director to complete an evaluation, with the consent of the adult who is or may be in need of protective intervention, where the director receives a report, or reasonably believes that a person may be in need of protective intervention.²¹⁴ An evaluation must be commenced no later than 5 days after receiving a report, and completed no later than 10 days after receiving a report.²¹⁵
- [5.98] Following completion of an evaluation, the director is required to direct that an investigation be completed, where the director believes, on reasonable grounds, that the adult is or may be an adult in need of protective intervention.²¹⁶ Where the director is satisfied that there are no reasonable grounds to believe that the adult is in need of protective intervention, it may still refer that adult to health care, social, legal or other services which may help the adult, where

²¹⁰ Department of Health and Wellness (Nova Scotia), *Adult Protection Policy Manual* (last reviewed 10 October 2022) at page 87 <<https://novascotia.ca/dhw/ccs/documents/Adult-Protection-Policy-Manual.pdf>> accessed 14 April 2024.

²¹¹ Department of Health and Wellness (Nova Scotia), *Adult Protection Policy Manual* (last reviewed 10 October 2022) <<https://novascotia.ca/dhw/ccs/documents/Adult-Protection-Policy-Manual.pdf>> accessed 14 April 2024.

²¹² See section 9 of the of the Adult Protection Act 2021 (Newfoundland and Labrador) which sets out that the Provincial Director will (a) establish province-wide policies, programs, standards respecting adults in need of protective intervention; (b) evaluation and monitor adherence to the established policies, programs and standards; and (c) perform those functions and duties imposed by a court in an order made under the authority of this Act. The Provincial Director may require a director to exercise and performs duties under this Act. See section 9(2), (3) and (4) and section 10 of the Adult Protection Act 2021 (Newfoundland and Labrador). The Provincial Health Authority can appoint directors to exercise its powers and perform its duties, and the director may designate a social worker as an acting director where they are unable to act or absent. A director is required to make a report to the Provincial Director, where requested, on the exercise of its duties.

²¹³ Section 12(1) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²¹⁴ Section 13(1) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²¹⁵ Section 13(2) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²¹⁶ Section 14(1) of the Adult Protection Act 2021 (Newfoundland and Labrador).

appropriate.²¹⁷ The legislation requires that the person acting as an investigator must be a social worker, and that they act for and in the name of the director or provincial director.²¹⁸

[5.99] Section 16 of the Act sets out the powers of the investigator. It provides that where a director requires that an investigation should be conducted, people must cooperate with that investigation, and the investigator should make reasonable efforts to interview the adult who is the subject of the investigation.²¹⁹ Section 16(3) permits the investigator to:

- (a) communicate with and assess the adult who is or may be an adult in need of protective intervention;
- (b) request that the adult participate in a capacity assessment;
- (c) require a person to provide information or produce records, documents or other things in that person's possession or control which, in the opinion of the person completing the investigation, may be relevant to it;
- (d) solicit, accept and review reports and information from health care providers, persons who or agencies that have provided services to the adult who is the subject of the investigation, or a person who manages the adult's financial affairs, business or other assets;
- (e) interview anyone who may have information which would be relevant to the investigation; and
- (f) require the production of medical or other records respecting the adult who is the subject of the investigation.²²⁰

[5.100] Directors or investigators may be granted, upon request, a warrant from a court, permitting entry onto lands or premises where the judge is satisfied that the director or investigator has been denied entry onto lands or obstructed from entering on lands or believes on reasonable grounds that they will be denied or obstructed and:

- (a) there are reasonable grounds to believe that the adult who is the subject of the investigation is or may be an adult in need of protective intervention;
- (b) there are reasonable grounds to believe that entry onto the lands or premises is necessary to assess the adult who is the subject of the

²¹⁷ Section 14(2) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²¹⁸ Section 15(1) and (2) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²¹⁹ Section 16(6) of the Adult Protection Act 2021 (Newfoundland and Labrador) provides that an adult who is the subject of an investigation "may refuse to participate in an interview or undergo an assessment under this section, unless ordered to do so under section 20" by a court.

²²⁰ Section 16(3) of the Adult Protection Act 2021 (Newfoundland and Labrador).

investigation or access, copy or remove documents necessary for the investigation.²²¹

[5.101] Directors can also apply for a court order requiring a person to provide information or produce records, documents or other things referred to in section 16 of the Act.²²² It can also apply for various temporary orders including orders to permit medical or capacity assessments and residency and supervisory orders,²²³ which are discussed further in Chapters 10, 11 and 12 of this Report. A director can also apply for a temporary order permitting a financial evaluation of an adult who may be in need of protective intervention's real and personal property "to ensure the protection of an adult's property and assets".²²⁴

[5.102] The Adult Protection Act 2021 provides that once an investigation is complete, the investigator must submit an investigation report to the director within 30 days after the direction to complete the investigation is made, unless there is an extension.²²⁵ If the director believes that an adult is an adult in need of protective intervention following an investigation, the director must report that belief to the provincial director and prepare a service plan for that adult. The director may also refer the matter to the police or provide or arrange support services consistent with the service plan its prepared.²²⁶

[5.103] If the Provincial Director receives a report from a director indicating that an adult is believed to be an adult in need of protective intervention, they may apply to the court seeking a declaration that the adult is in need of protective intervention.²²⁷ A capacity assessment is required following an application to the court. A court may order that an adult lacks capacity with respect of one or more of their affairs and is an adult in need of protective intervention.²²⁸ It can also make an order that:

- (a) the adult be placed under the supervision of the Provincial Director or director,
- (b) the adult should reside in a place identified by the Provincial Director,

²²¹ Section 17 of the Adult Protection Act 2021 (Newfoundland and Labrador).

²²² Section 19 of the Adult Protection Act 2021 (Newfoundland and Labrador).

²²³ Section 20 of the Adult Protection Act 2021 (Newfoundland and Labrador).

²²⁴ Section 21 of the Adult Protection Act 2021 (Newfoundland and Labrador).

²²⁵ Section 23(1) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²²⁶ Section 23(3) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²²⁷ Section 24(1) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²²⁸ Section 25(1) of the Adult Protection Act 2021 (Newfoundland and Labrador).

- (c) the Provincial Director, director or other person is authorised to make decisions on behalf of the adult in respect of one or more affairs in which they lack capacity.²²⁹

[5.104] The court may also order that a person “who is found to be a source of neglect or abuse to the adult in need of protective intervention” ceases to live in and stays away from the residence where the adult lives, does not visit or communicate with the adult, ceases all contact or association with the adult, or limits their contact, association or communication with the adult.²³⁰

[5.105] The Act also provides for emergency intervention where it is necessary to remove an adult from a place or premise, or where it is necessary to intervene to prevent or contain loss or damage to an adult’s real or personal property.²³¹

(xii) British Columbia (Canada)

[5.106] In British Columbia, section 47 of the Adult Guardianship Act 1996 provides that a designated agency must determine if an adult needs support and assistance if it receives a report or has reason to believe that an adult is being abused or neglected.²³² A designated agency is an organisation or institution chosen to be responsible for taking actions under Part 3 of the Adult Guardianship Act. The legislation does not specify who these are, and instead, gives the Public Guardian and Trustee the power to choose designated agencies through regulation.²³³ Often, they are health authorities within British Columbia, and Providence Health Care Society, and Community Living British Columbia are also included.²³⁴

[5.107] Where a designated agency determines that an adult does not need support and assistance, it should not take further action, and should advise the Public Guardian and Trustee.²³⁵ If it determines that the adult does need support and assistance, it may do one or more of the following:

²²⁹ Section 25(2) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²³⁰ Section 25(9) of the Adult Protection Act 2021 (Newfoundland and Labrador).

²³¹ Sections 26 and 27 of the Adult Protection Act 2021 (Newfoundland and Labrador).

²³² Section 47(1) of the Adult Guardianship Act 1996 (BC). It also must make this determination if it receives a report that the adult’s representative, guardian or monitor has been hindered from visiting or speaking with the adult.

²³³ Health Justice (British Columbia), *A Guide to Part 3 of the BC Adult Guardianship Act* (2023) <https://static1.squarespace.com/static/5e34ed207332cf46d561c2da/t/648b6196d7d59f3b21a1a5e8/1686856090761/FINAL_2023_JUN_GuidetoPart3BCAGA_opt.pdf> accessed 14 April 2024.

²³⁴ Health Justice (British Columbia), *A Guide to Part 3 of the BC Adult Guardianship Act* (2023) <https://static1.squarespace.com/static/5e34ed207332cf46d561c2da/t/648b6196d7d59f3b21a1a5e8/1686856090761/FINAL_2023_JUN_GuidetoPart3BCAGA_opt.pdf> accessed 14 April 2024.

²³⁵ Section 47(2) of the Adult Guardianship Act 1996 (BC).

- (a) refer the adult to available health care, social, legal, accommodation or other services;
- (b) assist the adult in obtaining those services;
- (c) inform the Public Guardian and Trustee;
- (d) investigate to determine if the adult is abused or neglected and is unable, for any of the reasons mentioned in section 44, to seek support and assistance.²³⁶

[5.108] The provisions on the power to investigate require a designated agency to make every reasonable effort to interview the adult.²³⁷ A designated agency may also interview the adult's spouse, family, friends or anyone else who may be able to assist with the investigation.²³⁸ It may also obtain any information it requires, including a report from health care providers, any agency providing health or social care services to an adult and any person who manages the adult's financial affairs.²³⁹ The designated agency may also apply to the court for an order permitting entry onto premises in order to interview an adult, where it is necessary and where entry by consent has been denied.²⁴⁰

[5.109] The Act also requires a designated agency to make a report to the police where it has reason to believe that a criminal offence has been committed against an adult about whom a report was made.²⁴¹

[5.110] Following an investigation, a designated agency may decide to take one or more of the following actions:

- (a) take no further action;
- (b) refer the adult to available health care, social, legal, accommodation or other services;
- (c) report the case to the Public Guardian and Trustee or another agency;
- (e) apply to the court for an interim order requiring a person
 - (i) to stop residing at and stay away from the premises where the adult lives, unless the person is the owner or lessee of the premises,

²³⁶ Section 47(3) of the Adult Guardianship Act 1996 (BC). These reasons include: physical restraint; a physical handicap that limits their ability to seek help or an illness, disease, injury or other condition that affects their ability to make decisions about abuse or neglect.

²³⁷ Section 48(1) of the Adult Guardianship Act 1996 (BC).

²³⁸ Section 48(2)(a) of the Adult Guardianship Act 1996 (BC).

²³⁹ Section 48(2)(b) of the Adult Guardianship Act 1996 (BC).

²⁴⁰ Section 49(1) of the Adult Guardianship Act 1996 (BC). The court may grant the order where it has reason to believe that the adult is abused or neglected or is for any reason mentioned in section 44 of the Act, unable to seek support and assistance.

²⁴¹ Section 50 of the Adult Guardianship Act 1996 (BC).

- (ii) not to visit, communicate with, harass or interfere with the adult,
- (iii) not to have any contact or association with the adult or the adult's financial affairs, or
- (iv) to comply with any other restriction of relations with the adult,

for a period of up to 90 days.

- (f) apply to the court for an order under Part 7 of the Family Law Act for the support of the adult;²⁴²
- (g) prepare a support and assistance plan that specifies any services needed by the adult, including health care, accommodation, social, legal or financial services.²⁴³

[5.111] The Act provides that a designated agency must involve the adult “to the greatest extent possible” in decisions about how to seek support and assistance and how to provide the support and assistance necessary to prevent abuse or neglect in the future.²⁴⁴ A designated agency also has powers to apply for support and assistance orders. The legislation permits a person from a designated agency to enter without a court order or warrant, remove an adult and take them to a safe place, provide the adult with emergency health care, inform the Public Guardian and Trustee that the adult’s financial affairs need immediate protection, or take any other emergency measure necessary.²⁴⁵

[5.112] It can only take these actions without the adult’s agreement, if the adult is “apparently abused or neglected”, the adult is apparently incapable of giving or refusing consent and it is necessary to act without delay, in the opinion of the person from the designated agency, to:

- (a) preserve the adult’s life,
- (b) prevent serious physical or mental harm to the adult, or
- (c) protect the adult's property from significant damage or loss.²⁴⁶

²⁴² These relate spousal and child support orders.

²⁴³ Section 51(1) of the Adult Guardianship Act 1996 (BC).

²⁴⁴ Section 52 of the Adult Guardianship Act 1996 (BC).

²⁴⁵ Section 59(2) of the Adult Guardianship Act 1996 (BC).

²⁴⁶ Section 59(1) of the Adult Guardianship Act 1996 (BC).

(xiii) *New Brunswick (Canada)*

[5.113] The Family Services Act 1980 provides that where the Minister has reason to believe that a person is a neglected adult,²⁴⁷ or an abused adult,²⁴⁸ they must cause an investigation to be conducted.²⁴⁹ The Minister may also request and authorise a medical practitioner to “examine and report on the physical and mental condition of the person and the care and attention he is receiving”.²⁵⁰ Where the Minister conducts an investigation, they must take steps they consider necessary to determine if the security of a person is in danger as described in section 37.1(1).²⁵¹

[5.114] Where a family member or other person who cares for an adult interferes with or obstructs the carrying out of an investigation, the court, on application of the Minister, can issue a warrant authorising an investigation, which also authorises the Minister or a designated person to enter (by force if required) any building or place to carry out an investigation.²⁵² The court can make such an order after it makes enquiries and is satisfied that it is “reasonable and proper that the investigation be made”.²⁵³

[5.115] The Minister can also apply to the court for a warrant authorising the removal of an offending person from the premises where a neglected or abused adult

²⁴⁷ A neglected adult is defined as an adult who is a disabled person, elderly person, or person prescribed by regulation who is “incapable of caring properly for himself by reason of physical or mental infirmity and is not receiving proper care and attention” or who “refuses, delays or is unable to make provision for his proper care or attention. See section 34(1) of the Family Services Act 1980 (New Brunswick).

²⁴⁸ An abused adult is defined as an adult who is a disabled person, elderly person, or person prescribed by regulation and is a victim or is in danger of being a victim of physical or sexual abuse, mental cruelty or any combination of these categories. See section 34(2) of the Family Services Act 1980 (New Brunswick).

²⁴⁹ Section 35(1) of the Family Services Act 1980 (New Brunswick).

²⁵⁰ Section 35(1) of the Family Services Act 1980 (New Brunswick).

²⁵¹ Sections 35(2.1) and 37.1(1) of the Family Services Act 1980 (New Brunswick). A person’s security may be in danger when: the person is without adequate care or supervision; the person is living in unfit or improper circumstances; the person is in the care of someone who is unable or unwilling to provide adequate care or supervision of the person; he person is in the care of someone whose conduct endangers the life, health or emotional well-being of the person; the person is physically or sexually abused, physically or emotionally neglected, sexually exploited, including sexual exploitation through pornography or in danger of such treatment; the person is living in a situation where there is severe domestic violence; the person is in the care of someone who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the person or refuses to permit such care or treatment to be supplied to the person; or the person by his or her behaviour, condition, environment or association, is likely to injure himself or herself or others.

²⁵² Section 35(3) of the Family Services Act 1980 (New Brunswick).

²⁵³ Section 35(3) of the Family Services Act 1980 (New Brunswick).

resides.²⁵⁴ There is a requirement under the Act for any person exercising authority to consider the wishes of the neglected or abused adult, where they can be expressed and where the adult is capable of understanding the nature of any choice.²⁵⁵

[5.116] Notably, section 36.2 of the Act provides that the Minister may make a “finding” that a person has endangered the security of another person, after completing an investigation, if the Minister has determined that the security of a person is in danger. The Minister may take any of the following actions where it is satisfied that a person is a neglected or abused adult after an investigation:

- (a) provide social services to the person, or
- (b) refer the matter to
 - (i) a community social services agency,
 - (ii) another government department or government agency,
 - (iii) a law enforcement agency with jurisdiction in the matter,
 - (iv) regional health authority as defined in the Regional Health Authorities Act or other institution, or
 - (v) any other appropriate service.²⁵⁶

[5.117] The Minister may also apply for an order under section 39(1),²⁵⁷ or where the security of a person may be in danger, put the person under protective care and proceed under section 37.1.²⁵⁸

(xiv) *Manitoba (Canada)*

[5.118] There are investigation provisions under the Adults Living with an Intellectual Disability Act in Manitoba. An adult living with an intellectual disability is defined under the Act as an adult living with an intellectual disability “who needs assistance to meet their basic needs with regard to personal care or management

²⁵⁴ Section 36 of the Family Services Act 1980 (New Brunswick). They can do this if they have reason to believe that a person is a neglected or abused person because of the presence of the other person. They can also seek a warrant to detain a person, if necessary, pending an application for an order under section 39 of the same Act.

²⁵⁵ Section 36.1(1) of the Family Services Act 1980 (New Brunswick).

²⁵⁶ Section 37(1) of the Family Services Act 1980 (New Brunswick).

²⁵⁷ The court can make an order, where it appears in the best interest of a neglected or abused adult to do so and the person is mentally incompetent, to direct that a person be placed under the supervision of the Minister, or to remove another person from a home who is a danger to the person, or make a protective intervention order requiring someone to cease to reside in a resident, refrain from contacting or associating with a person, or to pay support in accordance with the Family Law Act (New Brunswick).

²⁵⁸ Section 37(1.1) of the Family Services Act 1980 (New Brunswick). Section 37.1 outlines the circumstances in which a Minister may put a person under protective care.

of their property”.²⁵⁹ Under the Act, where the executive director receives a report or believes on reasonable grounds that an adult living with an intellectual disability is or is likely to be abused or neglected, they should investigate.²⁶⁰ They are obligated to take reasonable steps to inform the relevant adult that a report has been made and an investigation will be conducted and to attempt, “to the fullest practical extent” to involve the adult in the investigation and determine and accommodate their wishes.²⁶¹

[5.119] The Act outlines the powers of the executive director in conducting an investigation and provides that the executive director may:

- (a) communicate with and visit the adult living with an intellectual disability and may enter any place at any reasonable time for this purpose;
- (b) require any person to provide any information, including personal information as defined in The Freedom of Information and Protection of Privacy Act and personal health information as defined in The Personal Health Information Act, or produce any record, paper or other thing in his or her custody or under his or her control which, in the opinion of the executive director, may be relevant to the investigation; and
- (c) solicit, accept and review reports and information which in the opinion of the executive director, may be relevant to the investigation.²⁶²

[5.120] Following an investigation, if the executive director believes that an adult living with an intellectual disability is or is likely to be abused or neglected, they may take “such action to protect the adult as the executive director considers appropriate” including one or more of the following actions:

- (a) providing or arranging for support services for the adult in accordance with Part 2;
- (b) requesting an investigation by a law enforcement agency with jurisdiction respecting the matter;
- (c) taking emergency intervention action under section 26;

²⁵⁹ Section 1(1) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

²⁶⁰ Section 22(1) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba). The executive director is someone appointed under section 7 of the Act by the Minister to exercise some or all of the powers and duties of an executive director under the Act, respond to inquiries for support services, respond to inquiries in relation to protection of adults living with an intellectual disability and emergency intervention actions, and perform other duties required by the Minister. Under section 8 of the Act the executive director can authorise another person in writing to perform any of their duties.

²⁶¹ Section 22(1.1) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

²⁶² Section 22(2) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

- (d) applying for the appointment of a substitute decision maker under subsection 47(1) or 82(1);
- (e) applying for an emergency appointment of a substitute decision maker, or for suspension or variation of an appointment, on an emergency basis under Division 6 of Part 4;
- (f) applying for termination of the appointment of a substitute decision maker, replacement of a substitute decision maker or variation of an appointment under Division 7 of Part 4.²⁶³

[5.121] In other words, the outcome of the investigation will determine what other powers under the Act the executive director should exercise. Once an investigation has been concluded, the executive director must take reasonable steps to inform the adult living with an intellectual disability and any other person who is required to be notified of the findings of the investigation and any protective actions that will be taken.²⁶⁴

[5.122] Where the executive director believes on reasonable grounds that a person has abused or neglected an adult living with an intellectual disability or has failed to report information regarding the abuse or neglect of such an adult, they may report the matter to the body or person "that governs the professional status of the person or certifies, licences, or otherwise authorizes or permits the person to carry on his or her work or occupation".²⁶⁵ Any body or person who receives a notification of this kind must investigate the matter to determine whether any professional status review or disciplinary action should be pursued against the person.²⁶⁶ After it completes an investigation, it must notify the executive director of its determination, its rationale for making the determination and the results of any professional status review or disciplinary proceedings.²⁶⁷

[5.123] The executive director is also permitted to make a report to an employer,²⁶⁸ or to the adult abuse registry committee after concluding their investigation. The executive director is empowered to take emergency intervention action necessary to protect an adult living with an intellectual disability there is "immediate danger

²⁶³ Section 25(1) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

²⁶⁴ Section 25(2) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

²⁶⁵ Section 25.1(1) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

²⁶⁶ Section 25.1(2)(a) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

²⁶⁷ Section 25.1(2)(b) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

²⁶⁸ Sections 25.2 and 25.3(1) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

of death or serious harm or deterioration to the physical or mental health of the adult". This includes the power to remove an adult to safety.²⁶⁹

(c) The Child and Family Agency and issues posed by the lack of a statutory power to undertake investigations

[5.124] In considering statutory provisions for the Safeguarding Body to respond to reports of actual or suspected harm of at-risk adults, the Commission had regard to case law relating to the Child and Family Agency's implied powers of investigation under section 3 of the Child Care Act 1991 and also to internal procedures of the Child and Family Agency. While the Commission concludes that the case law relating to the Child Care Act 1991 is not relevant for the purposes of the proposed powers of the Safeguarding Body, the Commission believes that it is important to briefly explain the position.

[5.125] The Child and Family Agency has a statutory function under the Child Care Act 1991 to promote the welfare of children who are not receiving adequate care and attention.²⁷⁰ Judgments of the courts have interpreted section 3 of the Child Care Act 1991 as providing a basis for the Child and Family Agency to conduct an investigation of a person who is the subject of an abuse or neglect allegation in order for the Agency to take action to protect children, other than the child identified as not receiving adequate care and attention, who may be at risk from the person who is the subject of an abuse allegation.²⁷¹ This is not expressly provided for in the statute. While a broad interpretation of section 3 was identified in *M.Q. v. Gleeson*,²⁷² later judgments stressed that a clearer statutory basis for investigations would provide clarity and certainty as to process.²⁷³

[5.126] In the absence of an express statutory basis for the investigations undertaken by the Child and Family Agency, such actions have been undertaken in accordance with internal procedures, known as the Child and Family Agency's Child Abuse Substantiation Procedure (which came into effect in June 2022).²⁷⁴ The purpose of the Child Abuse Substantiation Procedure is to set out how investigative work should be undertaken to determine whether an allegation of abuse or neglect is substantiated. While section 3 of the Child Care Act 1991 is currently used as the statutory basis for the Child and Family Agency to assess allegations of abuse, the Department of Children, Equality, Disability, Integration and Youth is proposing

²⁶⁹ Section 26(1) of the Adults Living with Intellectual Disability Act, CCSM c A6.1 (Manitoba).

²⁷⁰ Section 3 of the Child Care Act 1991.

²⁷¹ See, for example: *D.M. v Child and Family Agency* [2022] IEHC 716.

²⁷² *M.Q. v. Gleeson* [1997] IEHC 26, [1998] 4 IR. 85 at page 100, at para 94.

²⁷³ See *C.D. v. Child and Family Agency* [2020] IEHC 452 at paragraph 17; *D.M. v Child and Family Agency* [2022] IEHC 716 at paragraph 66.

²⁷⁴ Child and Family Agency, *Child Abuse Substantiation Procedure [CASPP]* (CFA 2022).

to “reorient” section 3 of the Act by substituting it and locating amendments to provide for an express authority of the Child and Family Agency to receive and assess reports of harm in the Children First Act 2015.²⁷⁵ The Department also proposes in the Heads and General Scheme of draft amending legislation to insert a new section into the Children First Act 2015 to provide for the authority of the Child and Family Agency to assess reports from non-mandated persons and members of the public.²⁷⁶ The intended effect of these provisions is to place current practice, as set out in the Child and Family Agency’s Child Abuse Substantiation Procedure, on a statutory footing.²⁷⁷

[5.127] The Commission believes that the case law in relation to section 3 of the Child Care Act 1991 is not directly relevant to the proposed functions of the Safeguarding Body as the Commission considers the context to be different. The Commission believes the context of child abuse requires making specific findings, which may have a significant impact on both the children and adults involved including removing children from their families. In the context of safeguarding at-risk adults, there are no parental rights that are required to be balanced with the rights of at-risk adults unlike the position in relation to children. The Commission is therefore of the view that no such abuse substantiation procedure or statutory standalone powers of investigation are required in respect of actual or suspected harm of at-risk adults. Instead, the Commission believes that what is required is a process for the Safeguarding Body to establish whether an adult is an at-risk adult and whether any action needs to be taken to safeguard an at-risk adult from harm.

(d) A statutory duty of the Safeguarding Body to take action where it deems action necessary to safeguard an at-risk adult and associated powers to take action

[5.128] The Commission has carefully considered the existing policy provisions for responses to reports of actual or suspected harm of at-risk adults, views of consultees and provisions for statutory responses to reports in other jurisdictions. The Commission believes that the proposed adult safeguarding legislation should require the Safeguarding Body to take whatever action it deems necessary to safeguard an at-risk adult where it reasonably believes that there is a risk to the

²⁷⁵ See the explanatory note to Head 6 of the Heads and General Scheme of the Child Care (Amendment) Bill 2023 <<https://assets.gov.ie/254561/1b92fe3a-97b6-46e2-8db2-87f21b813db7.pdf>> accessed 15 April 2024.

²⁷⁶ See Head 44 of the Heads and General Scheme of the Child Care (Amendment) Bill 2023 <<https://assets.gov.ie/254561/1b92fe3a-97b6-46e2-8db2-87f21b813db7.pdf>> accessed 15 April 2024. DCEDIY considers that assessing reports from mandated persons is also expressly provided for by section 16 of the Children First Act 2015.

²⁷⁷ See the explanatory note to Head 44 of the Heads and General Scheme of the Child Care (Amendment) Bill 2023 <<https://assets.gov.ie/254561/1b92fe3a-97b6-46e2-8db2-87f21b813db7.pdf>> accessed 15 April 2024.

at-risk adult's health, safety or welfare. This would provide for a mandatory response by the Safeguarding Body but would afford the Safeguarding Body flexibility in how it satisfies the duty to take action to safeguard an at-risk adult by:

- (a) allowing it to determine what action it deems necessary; and
- (b) setting out a non-exhaustive list of actions, which could be taken, or interventions, which could be made, in proposed legislation.

[5.129] This would leave room for professional judgement as to the appropriateness of a safeguarding response with regard to the particular circumstances, including the will and preferences of the at-risk adult.

[5.130] The Commission believes that proposed adult safeguarding legislation should provide for a duty on the Safeguarding Body to take whatever action it deems necessary to safeguard an at-risk adult where it believes, based on reasonable grounds, that there is a risk to the health, safety or welfare of the at-risk adult. Such actions may include one or more of the following:

- (a) make an intervention under Part 6 of the Adult Safeguarding Bill 2024 where the relevant criteria, as set out in that Part, are met;²⁷⁸
- (b) make a report to a professional regulatory body where a member of the relevant profession is a person believed to pose a risk to the health, safety or welfare of an at-risk adult;
- (c) make a report to the Director of the Decision Support Service in accordance with the functions of the Director under the Assisted Decision-Making (Capacity) Act 2015;
- (d) make an application to the Circuit Court under Part 5 of the Assisted Decision-Making (Capacity) Act 2015;
- (e) prepare a safeguarding plan in respect of a particular at-risk adult in specific circumstances;
- (f) cooperate with other agencies to develop a safeguarding plan or take any other actions which the Safeguarding Body considers appropriate, to safeguard an at-risk adult; or
- (g) share information with another relevant body pursuant to Part 11 of the Adult Safeguarding Bill 2024.

[5.131] In Chapter 15, the Commission discusses a statutory function of the Safeguarding Body to cooperate with other agencies and persons and recommends that adult safeguarding legislation should provide for the Safeguarding Body to cooperate with any person or body that it considers appropriate in relation to any matter connected to its statutory functions. Cooperation with other bodies could

²⁷⁸ These interventions are discussed in this Report in Chapters 10, 11, 12 and 13.

therefore form part of the Safeguarding Body's response to a report of actual or suspected harm.

- R. 5.3 The Commission recommends that** the proposed adult safeguarding legislation should provide for a duty on the Safeguarding Body to take whatever action it deems necessary to safeguard an at-risk adult where it believes, based on reasonable grounds, that there is a risk to the health, safety or welfare of the at-risk adult. Such actions may include one or more of the following—
- (a) an intervention under Part 6 of the Adult Safeguarding Bill 2024 where the relevant criteria, as set out in that Part, are met;
 - (b) making a report to a professional regulatory body where a member of the relevant profession is a person believed to pose a risk to the health, safety or welfare of an at-risk adult;
 - (c) making a report to the Director of the Decision Support Service in accordance with the functions of the Director under the Assisted Decision-Making (Capacity) Act 2015;
 - (d) making an application to the Circuit Court under Part 5 of the Assisted Decision-Making (Capacity) Act 2015;
 - (e) preparing a safeguarding plan in respect of a particular at-risk adult in specific circumstances;
 - (f) cooperating with other agencies to develop a safeguarding plan or take any other actions which the Safeguarding Body considers appropriate, to safeguard an at-risk adult; or
 - (g) sharing information with another relevant body pursuant to Part 11 of the Adult Safeguarding Bill 2024.

(e) A power to make enquiries in relation to the performance of the Safeguarding Body's functions

[5.132] While allegations of offences involving the abuse or neglect of at-risk adults are investigated by the Garda Síochána, the Safeguarding Body will also have a role in responding to reports or allegations in order to safeguard at-risk adults including where allegations do not meet the criminal threshold, or in circumstances where the criminality or otherwise of an allegation has not yet been definitively determined. The HSE's "Adult Safeguarding Practice Guidance: Liaison with An Garda Síochána" lists a number of points for staff to remember during engagement with the Garda Síochána including that the HSE or agency funded by the HSE conducts its own investigation of a report or allegation in

parallel with any criminal investigation.²⁷⁹ Unlike the existing limited remit of the HSE SPTs (as discussed above), the proposed role of the Safeguarding Body would extend to reports and information about actual or suspected harm across public and private services and across multiple sectors including accommodation centres for people seeking international protection and emergency accommodation centres for people experiencing homelessness, for example.

[5.133] While the Commission proposes the introduction of a duty on the Safeguarding Body to take whatever action it deems necessary to safeguard an at-risk adult where it reasonably believes that there is a risk to the at-risk adult's health, safety or welfare, the Commission has also considered whether the proposed adult safeguarding legislation should provide for an express statutory power of the Safeguarding Body to conduct screenings and make enquiries. As discussed above, screenings or preliminary screenings are the initial process taken by the HSE under its 2014 National Policy and Procedures. All reports of actual or suspected abuse or neglect are subject to a preliminary screening to determine whether further actions such as inquiries, assessments or investigations are required. A screening is important to ensure that resources are most effectively directed and used only where required.

[5.134] The Commission does not believe that it is necessary to specifically provide for the social work-led adult safeguarding services of the Safeguarding Body to conduct such screenings on a statutory basis. The Commission is of the view that the Safeguarding Body could conduct such screenings on a policy or procedural basis. However, the Commission believes that such screenings could be captured by the duty and associated powers to take whatever action that the Safeguarding Body deems necessary to safeguard an at-risk adult. The Commission is of the view that the proposed duty and associated power to take whatever action the Safeguarding Body deems necessary could also encompass making enquiries to establish whether an adult is an at-risk adult and whether actions need to be taken to safeguarding an at-risk adult. However, the Commission believes that it would be appropriate for the Safeguarding Body to have all powers that are necessary for the performance of its functions, which may include the making of such enquiries as it considers appropriate. This would ensure that there is legislative clarity regarding the ability of the Safeguarding Body to make enquiries to establish whether it needs to exercise its functions and related powers to promote the health, safety and welfare of at-risk adults.

[5.135] As also captured by the duty and associated powers to take whatever action the Safeguarding Body deems necessary to safeguard an at-risk adult, the

²⁷⁹ Health Service Executive, *Adult Safeguarding Practice Guidance: Liaison with An Garda Síochána* <<https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/liaisongardai.pdf>> accessed 16 April 2024

Commission recommends later in this Report that the Safeguarding Body (or authorised officers of the Safeguarding Body’s social work-led adult safeguarding services) should be permitted by adult safeguarding legislation to make safeguarding interventions or take actions including:

- entering and inspecting “relevant premises”, which includes nursing homes and residential centres for adults with disabilities among others, for the purposes of assessing the health, safety or welfare of at-risk adults;
- applying for and executing warrants for access to at-risk adults in places including private dwellings;
- applying for removal and transfer orders in respect of at-risk adults, and assisting members of the Garda Síochána in executing such orders;
- applying for orders under the Domestic Violence Act 2018 in respect of at-risk adults;
- applying for adult safeguarding no-contact orders (including interim and emergency adult safeguarding no-contact orders); and

[5.136] Such powers are discussed in Chapters 10, 11, 12 and 13, and would require strict thresholds to be met before they may be exercised. The powers would in some cases be exercised in partnership with the Garda Síochána. The Commission also proposes in Chapters 15 and 16 that the Safeguarding Body should be subject to cooperate with certain public service bodies, and service providers and a duty to share information in certain circumstances. The receipt of a report or information by the Safeguarding Body or the making of an enquiry by the Safeguarding Body may lead to the making of an intervention under the proposed adult safeguarding legislation. An example of where an enquiry by the Safeguarding Body may give rise to a safeguarding intervention is where the Safeguarding Body, on foot of an enquiry, makes an application for a no-contact order under the proposed adult safeguarding legislation, as proposed in Chapter 13. Further examples include where a report or allegation has:

- not met the criminal threshold or cannot be proven beyond a reasonable doubt but the Safeguarding Body considers it necessary to make enquiries to determine whether an at-risk adult or at-risk adults need(s) to be safeguarded from an identified staff member, fellow resident or another adult availing of a service;
- been referred to the Garda Síochána but the Safeguarding Body considers it necessary to make enquiries to determine whether a safeguarding plan or other safety measures are required to safeguard the at-risk adult(s) from an identified staff member, fellow resident or another adult availing of a service while a criminal investigation is ongoing;

- been screened but enquiries have not yet been made by the Safeguarding Body and the screening has resulted in a bona fide concern under section 19(1) of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012, which the Safeguarding Body needs to notify to the Garda National Vetting Bureau;
- been screened or enquired about by the Safeguarding Body leading to a reasonable belief that a person is posing a risk to the health, safety or welfare of an at-risk adult and the Safeguarding Body wishes to inform the employer or a professional regulatory body of the person believed to be posing a risk.

[5.137] It is to be hoped that the Commission's recommendations to introduce new criminal offences, set out in Chapter 19, will allow for a greater role for the Garda Síochána in investigating serious adult safeguarding allegations than has previously been the case. Interagency cooperation between organisations such as the Garda Síochána and the Safeguarding Body is discussed in detail in Chapter 15. Nevertheless, in order to avoid difficulties and debates as to the ability of the Safeguarding Body to make enquiries in the course of exercising its functions, the Commission believes that proposed adult safeguarding legislation should confer a power on the Safeguarding Body to make enquiries in relation to the exercise of its functions including its primary function to promote the health, safety and welfare of at-risk adults. This would provide clarity on the scope of the powers of the Safeguarding Body in relation to the exercise of its primary function. The Commission recommends that adult safeguarding legislation should provide for the Safeguarding Body to have all such powers as are necessary or expedient for, or incidental to, the performance of its functions, which may include the making of such enquiries as it considers appropriate. This would allow the Safeguarding Body to make enquiries for the purposes of exercising its primary function to promote the health, safety and welfare of at-risk adults.

[5.138] Where it becomes apparent that the adult safeguarding concerns reported to the Safeguarding Body or under screening or enquiry by the Safeguarding Body involve potential criminality, the matter should be referred to the Garda Síochána.

R. 5.4 **The Commission recommends that** adult safeguarding legislation should provide for the Safeguarding Body to have all such powers as are necessary or expedient for, or incidental to, the performance of its functions, which may include the making of such enquiries as it considers appropriate. This would allow the Safeguarding Body to make enquiries for the purposes of exercising its primary function to promote the health, safety and welfare of at-risk adults.

5. A statutory power to prepare a safeguarding plan

- [5.139] Preparing a safeguarding plan is one of the range of actions, which the Commission recommends that the Safeguarding Body should be empowered to take, as set out above. The Commission believes that the Safeguarding Body should be empowered to prepare a safeguarding plan, in appropriate cases, in fulfilment of its duty to take action where it deems it necessary for action to be taken to safeguard an adult who it believes needs support to protect themselves from harm. While the Commission proposes to provide for a power of the Safeguarding Body to prepare safeguarding plans, it understands that service providers would continue to have responsibility for preparing safeguarding plans where at-risk adults are in receipt of services such as where they are living in a residential centre for older people. Therefore, the Commission envisages a limited role of the Safeguarding Body in respect of preparing safeguarding plans. This section outlines the circumstances where the Commission believes that a power for the Safeguarding Body to prepare a safeguarding plan is required.
- [5.140] Safeguarding plans are distinct from safeguarding statements. Safeguarding statements, which are discussed in Chapter 7, relate to the safeguarding of at-risk adults generally in the context of provision of services whereas safeguarding plans are specific to safeguarding individual at-risk adults. A person can have a safeguarding plan regardless of whether they are in receipt of a particular type of service and this includes people living independently in the community, who may have safeguarding needs to support them to protect themselves from harm.
- [5.141] Safeguarding plans are also distinct from care plans and personal plans, which are discussed in detail in Chapter 7. Safeguarding plan may be prepared where there are reasonable grounds for safeguarding concerns including indicators that an adult may need support to protect themselves from harm or where there has been attempted abuse or actual abuse or neglect of an adult resulting in the adult being identified as an at-risk adult. Safeguarding plans are also discussed in detail in Chapter 7.
- [5.142] It is important to note that a safeguarding plan should be implemented only with the consent of the relevant at-risk adult where the at-risk adult has capacity to make decisions about their welfare. Where a person does not have capacity to make such decisions, part of the safeguarding plan could involve the appointment of a decision-making assistant, co-decision-maker or decision-making representative under the Assisted Decision-Making (Capacity) Act 2015.
- [5.143] If there are safeguarding concerns about a person living in the community who has capacity to make decisions about their welfare but who is believed to be at risk of harm from others or from self-neglect, a safeguarding plan may involve the local HSE SPT or staff of the Safeguarding Body (where different) checking in with the person at specified intervals and making repeated offers to assist with accessing supports or services, as appropriate. No supports or services would be provided without the consent of the person.

[5.144] A power to prepare a safeguarding plan could enable the Safeguarding Body to prepare of a safeguarding plan or cooperate with other agencies in the preparation of a safeguarding plan.

(a) Existing statutory requirements to prepare a care plan or personal plan

[5.145] There are no existing statutory provisions for a care plan where at-risk adults are resident in the community but have care needs to support them to live independently or to protect themselves from harm.²⁸⁰ However, there are existing statutory duties on providers of certain services to have a care plan or personal plan in place for service users. There are also non-statutory standards that contain expectations in relation to the preparation of care plans, personal plans or equivalent plans. These requirements are discussed in further detail in Chapter 7, which discusses safeguarding duties on providers of relevant services.

[5.146] The existing policy or administrative requirements for the HSE SPTs and HSE funded or managed services for older people and people with disabilities to prepare safeguarding plans are discussed in the following subsection. As set out above, the Commission outlines the current policy provisions for preparing safeguarding plans to provide clarity on the expected limited role of the Safeguarding Body in respect of safeguarding plans.

(b) Current policy provisions for preparation of safeguarding plans by the HSE Safeguarding and Protection Teams

[5.147] There is no statutory requirement on the HSE SPTs to prepare a safeguarding plan where preliminary screenings or investigations of reports or allegations find that there are reasonable grounds to believe that an adult is at risk of harm. However, the SPTs have a policy responsibility to prepare a safeguarding plan in respect of:

- adults aged over 65 years or adults with disabilities who are living in the community and not in receipt of HSE funded or managed services for older people or people with disabilities; and
- in limited cases, adults aged over 65 years or adults with disabilities who are in receipt of HSE funded or managed services for older people or people with disabilities such as where the Service Manager has a conflict of interest in relation to the preparation of a safeguarding plan for a particular adult or adults.

²⁸⁰ Safeguarding Ireland, *Identifying RISKS, Sharing RESPONSIBILITIES: The Case for a Comprehensive Approach to Safeguarding Vulnerable Adults* (2022) at page 45.

- [5.148] Where a safeguarding concern arises in a service managed or funded by the HSE, safeguarding remains the responsibility of the service provider and does not transfer to the relevant SPT. The SPTs may provide oversight and advisory support to the service provider in taking safeguarding measures such as putting in place a safeguarding plan.
- [5.149] The HSE's National Policy and Procedures sets out a procedure for preparing safeguarding plans where a preliminary screening of a report regarding a safeguarding concern determines that reasonable grounds for concern exist.²⁸¹ Where concerns arise in a service setting, the HSE policy and procedures document states that responsibility for ensuring that a safeguarding plan is developed rests with the service manager of the relevant HSE managed or funded service in which the safeguarding concern arises.²⁸² Where a concern arises in a HSE managed or funded service such as a residential centre for people with disabilities, the Designated Officer in the relevant centre or service carries out a preliminary screening and reports the findings to the service manager.²⁸³ The outcome of the preliminary screening must be notified to the HSE SPT and actions after this point agreed with the HSE.²⁸⁴ If the outcome of a preliminary screening is that there are reasonable grounds for concern, a safeguarding plan must be developed to address the concerns.²⁸⁵ Responsibility to ensure that a safeguarding plan is developed rests with the service manager²⁸⁶ who must appoint a safeguarding plan co-ordinator.²⁸⁷ In certain circumstances, the HSE Head of Social Care in each Community Healthcare Organisation may decide that the matter should be assessed and managed by the local SPT.²⁸⁸ Such limited

²⁸¹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 34.

²⁸² Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at pages 30 and 34.

²⁸³ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

²⁸⁴ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

²⁸⁵ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at pages 30 and 34.

²⁸⁶ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 34.

²⁸⁷ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 35.

²⁸⁸ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 39.

circumstances may include the existence of a possible or perceived conflict of interest for the service manager.²⁸⁹

[5.150] Where a concern about a person living in the community is brought directly to the attention of the local HSE SPT, it will undertake a preliminary screening and where necessary, develop a safeguarding plan.²⁹⁰ However, a concern about a person living in the community may also be formed by a HSE staff member in a HSE community service such as a primary care nurse.²⁹¹ In such a situation, the line manager of the primary care service may ensure that the preliminary screening is undertaken and all necessary actions are taken.²⁹² The HSE's National Policy and Procedures provides that the outcome of any assessment or inquiry that, where necessary, follows a primary screening of a report of a concern must be reviewed by the relevant SPT.²⁹³ Where a concern has arisen in respect of person living in the community who is receiving services in the community from a HSE operated or funded service, the line manager rather than the SPT may ensure that a safeguarding plan is prepared.

[5.151] A safeguarding plan prepared by a service provider must also be approved by the relevant HSE SPT where an assessment or inquiry was deemed necessary at preliminary screening stage.²⁹⁴

(c) The need for a statutory power to prepare a safeguarding plan

[5.152] In many cases, where an at-risk adult is in receipt of relevant services, as discussed in Chapter 7, such as certain residential services, it would be most appropriate for a safeguarding plan to be prepared by the provider of the relevant service. However, the regional social work-led adult safeguarding services provided by Safeguarding Body could appropriately have responsibility for preparing safeguarding plans in relation to:

- at-risk adults living in the community; and

²⁸⁹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 39.

²⁹⁰ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

²⁹¹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 27.

²⁹² Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 27.

²⁹³ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

²⁹⁴ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 30.

- at-risk adults who are in receipt of relevant services in limited cases such as where the service manager has a conflict of interest in relation to the preparation of a safeguarding plan for a particular adult or adults or where risks to an at-risk adult living in the community do not arise in relation to the relevant service they are receiving (the risk may be external to the particular service, for example, the risk may not arise in a day service, it could be posed by a family member when the at-risk adult is at home).

[5.153] The statutory powers of the Safeguarding Body should therefore enable it to prepare safeguarding plans or cooperate with other organisations or services in the preparation of safeguarding plans, where appropriate.

[5.154] Documenting planned safeguarding actions through the preparation of a safeguarding plan is an important step in responding to abuse or neglect of at-risk adults and in preventing further abuse or neglect. The Commission therefore recommends that adult safeguarding legislation should provide for a power of the Safeguarding Body to prepare a safeguarding plan or cooperate with other organisations, services or professionals in the preparation of a safeguarding plan where the Safeguarding Body:

- (a) believes that the development of such a plan is necessary; and
- (b) determines that it would not be more appropriate for a provider of a relevant service to independently prepare a safeguarding plan.

[5.155] As duties on providers of relevant services to prepare safeguarding plans are discussed in Chapter 7, the Commission has considered whether there should be a statutory duty on the Safeguarding Body (rather than a statutory power) to prepare a safeguarding plan where an at-risk adult is resident in the community and has safeguarding needs. Including such a duty in adult safeguarding legislation would require the identification of a threshold above which the Safeguarding Body would be required to prepare a safeguarding plan. The Commission is mindful that a degree of flexibility would be required to allow the Safeguarding Body to exercise professional judgment and to take account of the will and preferences of the at-risk adult in deciding whether to prepare a safeguarding plan. The Commission therefore believes that policy guidance developed by the lead Department should set out the circumstances in which the Safeguarding Body should prepare a safeguarding plan. The proposed power of the Safeguarding Body in adult safeguarding legislation would therefore allow it to prepare a safeguarding plan or cooperate with other organisations or services in preparing a safeguarding plan in accordance with the policy guidance.

[5.156] The value of a power to prepare a safeguarding plan in appropriate cases, where there is an absence of a corresponding duty to implement a safeguarding plan including providing for care and support needs, must be considered. Some consultees who responded to the Commission's Issues Paper highlighted the

need for statutory provisions to assess and meet the social care needs of adults. Social workers who participated in an Irish research study conducted in 2019 stated that adult safeguarding legislation would be pointless without a legal obligation on the HSE to provide supportive services to keep an at-risk adult safe.²⁹⁵ The Commission is mindful that there is only so much that can be achieved by the preparation of a safeguarding plan without a corresponding requirement for the Safeguarding Body to implement such a plan. The implementation of a safeguarding plan may involve actions by service providers, the Safeguarding Body and other bodies. In Chapter 15, the Commission recommends that adult safeguarding legislation should impose a statutory duty to cooperate on the Safeguarding Body, designated public service bodies (where their functions relate to safeguarding the health, safety and welfare of at-risk adults) and providers of a relevant service (where there is a risk to the health, safety or welfare of an at-risk adult). This is discussed in detail in Chapter 15.

[5.157] These statutory duties would require public service bodies and providers of relevant services to cooperate with the Safeguarding Body for the purpose of the performance of a function of the Safeguarding Body. As the Safeguarding Body's power to prepare a safeguarding plan relates to its primary function to promote the health, safety and welfare of at-risk adults, public service bodies and providers of relevant services would be required by the proposed duties to cooperate with the Safeguarding Body in the preparation of a safeguarding plan.

[5.158] Actions that could be directly taken by the Safeguarding Body to implement a safeguarding plan may include:

- facilitating access to independent advocacy;
- assisting people to access necessary services;
- making referrals to HSE social care services or other service providers;
- making applications for no-contact orders or assisting at-risk adults to make such application themselves; or
- making other applications to the courts, as appropriate.

[5.159] However, some safeguarding plans may require the provision of home support services, for example.²⁹⁶ The Safeguarding Body itself would not have control

²⁹⁵ Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation" *British Journal of Social Work* (2022) 52 3677 at page 3689.

²⁹⁶ HSE National Safeguarding Office, *Annual Report 2019* (2020) at page 39; Donnelly and O'Brien, "Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and

over eligibility for social care support such as home support services, or the adequacy of the social care support provided, even where access is granted. While access to social care services such as professional home support services would not be required to implement all safeguarding plans, such services may be required to support some people to protect themselves from harm and therefore to implement safeguarding plans in respect of those persons. As the Safeguarding Body would not control eligibility for, or access to, such services, it would be inappropriate to provide for a duty on the Safeguarding Body to implement all safeguarding plans.

[5.160] However, the Commission believes that there would be value in providing for a power of the Safeguarding Body to prepare a safeguarding plan even in the absence of a corresponding duty to implement a safeguarding plan, as some measures that could be taken to implement a safeguarding plan would be within the control of the Safeguarding Body, as set out above, and would not involve the provision of social care services.²⁹⁷

R. 5.5 The Commission recommends that adult safeguarding legislation should provide for a statutory power of the Safeguarding Body to prepare a safeguarding plan or cooperate with other agencies in the preparation of a safeguarding plan where the Safeguarding Body: (a) believes that the development of such a plan is necessary; and (b) determines that it would not be more appropriate for a provider of a relevant service to independently prepare a safeguarding plan.

[5.161] A duty of the Safeguarding Body to implement a safeguarding plan could derive from its statutory function to prevent harm. Such a duty would likely extend only to the extent to which implementing a safeguarding plan is within the control of the Safeguarding Body. As set out above, a duty to implement a safeguarding plan could include facilitating adults to access independent advocacy, making referrals to other services including HSE social care services or voluntary service providers, supporting the adults with applications for services, making applications for no-contact orders or supporting adults to make such applications themselves. The Commission therefore believes that a limited duty on the Safeguarding Body to implement a care plan may be derived from a statutory function of the Safeguarding Body to prevent harm.

Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation" (2022) 52(6) The British Journal of Social Work 3677 at page 3688.

²⁹⁷ The implementation of safeguarding plans in this way could be taken into consideration by the relevant regulator or joint inspection model in inspecting the services of the Safeguarding Body. Regulation of social work-led safeguarding services is discussed in Chapter 6.

[5.162] As set out above, the Commission believes that it would be outside of the scope of this Report to recommend the introduction of a statutory duty on the Safeguarding Body to implement safeguarding plans in circumstances where implementation of safeguarding plans may require the provision of social care services, such as home support services, which would not be within the control of the Safeguarding Body. Even where social care legislation is in place, the duties and powers to assess and meet care and supports needs in legislation in England²⁹⁸ and Wales²⁹⁹ are not absolute and the relevant legislation includes provisions in respect of financial eligibility requirements for relevant social care services.³⁰⁰ The Commission believes that placing financial eligibility criteria for social care services on a statutory basis would require careful analysis by the Department of Health and, to the extent that it has responsibility for the provision of such services to adults with disabilities, the Department of Children, Equality, Disability, Integration and Youth. The Commission believes that any such statutory provisions for assessing and meeting care and support needs and corresponding provisions for financial eligibility would be more appropriately situated in social care legislation rather than adult safeguarding legislation, if the Government decides to introduce comprehensive social care legislation.

6. Provision of training and information

[5.163] The need for requirements to ensure that staff members of relevant services receive adequate training in relation to adult safeguarding was raised by many consultees in response to the Commission's Issues Paper. The views of consultees related to adult safeguarding training specifically rather than to general existing training requirements under the Safety, Health and Welfare at Work Act 2005, for example.³⁰¹ This is discussed in detail in Chapter 7.

[5.164] Several consultees also submitted that a lead statutory organisation such as the Safeguarding Body should have a statutory role in the development of adult safeguarding training, codes of conduct and practice guidance aimed at supporting and educating service providers and their staff on best practice in relation to adult safeguarding.³⁰²

²⁹⁸ Sections 9 and 10 and 18-19 of the Care Act 2014 (England).

²⁹⁹ Sections 35 and 36 of the Social Services and Well-being (Wales) Act 2014.

³⁰⁰ Sections 13, 14 to 17, 31 to 36 and 69 to 71 of the Care Act 2014 and sections 32, 50 and 59 to 73 of the Social Services and Well-being (Wales) Act 2014.

³⁰¹ Sections 8(2)(g) and 10 of the Safety, Health and Welfare at Work Act 2005.

³⁰² See for example: Safeguarding Ireland, *Identifying RISK, Sharing RESPONSIBILITIES: The Case for a Comprehensive Approach to Safeguarding Vulnerable Adults* (Safeguarding Ireland 2022) at pages 9 and 206; Health Information and Quality Authority, *Law Reform Commission Issues Paper 'A Regulatory Framework for Adult Safeguarding': Response by the Health Information and Quality Authority (HIQA)* (HIQA 2020) at page 19

[5.165] It is hoped that the provision of training and information would increase awareness of adult safeguarding across sectors and services, and in turn increase identification of adult safeguarding issues and risks and raise levels of reporting, leading to improved outcomes for at-risk adults and prevention of further or future harm. The HSE National Safeguarding Office has noted “a clear association between increased awareness raising training ... and increased reporting of service related safeguarding concerns”.³⁰³

(a) Existing non-statutory functions of the HSE National Safeguarding Office to provide education and training

[5.166] The HSE National Safeguarding Office currently fulfils a training function on a non-statutory basis. The HSE National Safeguarding Office delivers two main adult safeguarding training programmes. The first is a safeguarding adults eLearning programme targeted at all staff of HSE managed and funded health and social care services, and the second is a follow-up programme for designated officers of relevant services and others with a responsibility for responding to concerns of adult abuse within HSE managed and funded services.³⁰⁴ These are discussed further in Chapter 7. The HSE National Safeguarding Office also provides a toolkit to promote safeguarding learning within services in addition to the minimum required training.³⁰⁵ The HSE National Safeguarding Office also organises seminars, webinars and other development events and collaborates with other bodies to promote safeguarding learning.³⁰⁶

(b) A statutory function of the Safeguarding Body to provide training and information

[5.167] The Commission believes that the Safeguarding Body should have a statutory function to provide training, information and guidance to publicly and privately funded providers of relevant services and their staff, mandated persons and any other appropriate persons, as determined by the Safeguarding Body or designated by a relevant Minister. Such training or guidance may include joint training initiatives and joint guidance developed and delivered in conjunction with organisations including the Garda Síochána or regulatory bodies. The Commission also believes that the Safeguarding Body should have a statutory function to provide information to the public in relation to its primary function to promote the health, safety and welfare of adults who need support to protect

<<https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf>> accessed 15 April 2024.

³⁰³ HSE National Safeguarding Office, *2016 Safeguarding Data Report*, at page 4.

³⁰⁴ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 43.

³⁰⁵ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at page 43.

³⁰⁶ HSE National Safeguarding Office, *Annual Report 2022 (2023)* at pages 43 to 53.

themselves from harm, or on such other matters as the relevant Government Minister may request.

[5.168] Such functions would allow the Safeguarding Body to further its primary function of promoting the health, safety and welfare of adults who need support to protect themselves from harm.

R. 5.6 The Commission recommends that the Safeguarding Body should have a statutory function to provide training, information and guidance to publicly and privately funded providers of relevant services and their staff, mandated persons and any other appropriate persons, as determined by the Safeguarding Body or designated by a relevant Minister.

R. 5.7 The Commission recommends that the Safeguarding Body should have a statutory function to provide information to the public in relation to its primary function to promote the health, safety and welfare of adults who need support to protect themselves from harm.

7. Research and data functions of the Safeguarding Body

(a) Data and research functions in relation to reports or allegations of harm of at-risk adults

[5.169] Collecting comprehensive data on harm of at-risk adults and publishing adult safeguarding data is important as it increases awareness of adult safeguarding concerns in society and informs health and social care professionals, service providers, services across various sectors, regulators, Gardaí and other relevant authorities about the level of safeguarding concerns in their area, emerging trends and persistent challenges. Several consultees who responded to the Commission's Issues Paper expressed concerns regarding the lack of complete data sets in relation to reports of abuse or neglect of at-risk adults.

[5.170] The HSE National Safeguarding Office currently has non-statutory functions to collect and collate data it receives from notifications and referrals to SPTs regarding allegations of abuse and neglect. It publishes this data in its Annual Report.³⁰⁷ Consultees referred to the limitations of the application of the HSE's National Policy and Procedures³⁰⁸ to only HSE managed or funded older people's services and disability services and community referrals relating to people with

³⁰⁷ Health Service Executive, *National Safeguarding Office Annual Report 2022* (HSE 2022) < <https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/national-safeguarding-office-annual-report-20221.pdf> > accessed 15 April 2024.

³⁰⁸ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014).

disabilities and people aged over 65.³⁰⁹ Only HSE operated or funded older people’s services and disability services are required to report adult safeguarding incidents or “concerns” to the HSE. Most of the data reported to the HSE National Safeguarding Office and included in its annual statistical evaluations therefore relates to those services, and some relate to community referrals. Other services including privately funded services such as private nursing homes can report incidents or concerns on a voluntary basis.

[5.171] The HSE National Safeguarding Office has acknowledged the limited remit of its data, noting that SPTs primarily manage cases and concerns arising within the social care division. In a 2016 report, the HSE stated that “[i]n the context of the wider health service these figures only represent a portion of all of the safeguarding concerns experienced by vulnerable adults in Irish society that are being managed by the other divisions such as acutes, primary care and mental health services”.³¹⁰

[5.172] The HSE’s National Policy and Procedures is currently under revision with a revised policy set to apply a wider range of services. The Government’s planned adult safeguarding policy for the health and social care sectors is also due to apply to all publicly and privately funded health and social care services.³¹¹ A requirement for reporting of data to the Safeguarding Body by publicly and privately funded relevant services, which provide services to adults, who may include at-risk adults, across all sectors would allow the Safeguarding Body to produce and publish a more complete data set. This would allow for more comprehensive analysis of reports or allegations of harm of at-risk adults across various sectors beyond the health and social care sector and a more accurate national picture of harm of at-risk adults.

[5.173] The Irish Association of Social Workers stated in a 2022 position paper that there is a lack of quality data on adult safeguarding trends and that it routinely seeks information via Freedom of Information requests or use of parliamentary

³⁰⁹ Donnelly and O’Brien, “Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation” *British Journal of Social Work* (2022) 52 3677 at page 3679; Safeguarding Ireland, *Identifying RISKS, Sharing RESPONSIBILITIES: The Case for a Comprehensive Approach to Safeguarding Vulnerable Adults* (Safeguarding Ireland 2022) at page 202.

³¹⁰ HSE National Safeguarding Office, *2016 Safeguarding Data Report* (HSE 2016) at page 3. See also Health Service Executive, *National Safeguarding Office Annual Report 2018* (HSE 2018) at page 40, noting that figures are “a partial picture” of abuse of at-risk adults in Ireland and Health Service Executive, *National Safeguarding Office Report* (HSE 2022) at page 34: “[t]hese statistics do not reflect the overall safeguarding activity either within the health services or within society as a whole”.

³¹¹ The Policy Proposals were prepared by the Department of Health. Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024).

questions to source information about both the abuse of adults and responses to it in Ireland.³¹² A 2019 report found that existing safeguarding statistics are under-reporting safeguarding activities and current levels of abuse.³¹³ The report found that mental health social workers reported that currently there are no statistics gathered relating to the safeguarding cases they investigate and are responsible for.³¹⁴ Currently the gaps in data sets mean that stakeholders often rely on the results of research polls commissioned by bodies such as Safeguarding Ireland.³¹⁵

[5.174] In Chapter 9, the Commission recommends the introduction of a duty on mandated persons to report knowledge, beliefs or suspicions of reportable harm to the Safeguarding Body. The introduction of such a duty in adult safeguarding legislation would allow the Safeguarding Body to collect data on reports by mandated persons working with at-risk adults across all sectors, not just the health or social care sector. Incidents of harm below the threshold of “reportable harm” recommended in Chapter 9 may also be reported to the Safeguarding Body and non-mandated persons may also report to the Safeguarding Body – although neither of these are proposed requirements in this Report.

[5.175] Requirements on a wider range of services to report notifiable incidents to relevant regulatory bodies could assist the Safeguarding Body with collecting data and producing a more comprehensive data set. Additionally, a statutory basis for the Safeguarding Body to:

- collect, evaluate and publish data; and
- undertake or commission, or collaborate in, research

would assist with ensuring that the Safeguarding Body has a strong basis on which to collaborate with other organisations in collecting and evaluating data and in research to ensure that existing gaps in data on harm of at-risk adults are addressed. Production of data sets could be done in cooperation with regulators

³¹² Irish Association of Social Workers, *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at page 8.

³¹³ Donnelly and O’Brien, *Falling Through the Cracks: The case for change. Key developments and next steps for Adult Safeguarding in Ireland* (UCD 2019) at page 25.

³¹⁴ Donnelly and O’Brien, *Falling Through the Cracks: The case for change. Key developments and next steps for Adult Safeguarding in Ireland* (UCD 2019) at page 25.

³¹⁵ See for example, Safeguarding Ireland, *Summary of RED C Public Awareness research findings 2017-2022* (Safeguarding Ireland 2022) <<https://safeguardingireland.org/wp-content/uploads/2022/12/6516-Safeguarding-REDC-FINAL-blue.pdf>> accessed 15 April 2024; Safeguarding Ireland, *Summary of RED C Public Awareness research findings 2017 – 2021* (Safeguarding Ireland 2021) <<https://safeguardingireland.org/wp-content/uploads/2021/06/Safeguarding-Ireland-RED-C-Public-Awareness-Research-Summary.pdf>> accessed 15 April 2024; Devane, “Fewer than 20% people who experience adult abuse report it, survey shows” *Irish Examiner* (11 November 2022) <<https://www.irishexaminer.com/news/arid-41004230.html>> accessed 15 April 2024.

who receive reports on safeguarding incidents to avoid duplication in services reporting to the relevant regulatory bodies and to the Safeguarding Body. Regulatory bodies could cooperate with each other and with the Safeguarding Body to produce comprehensive datasets taking into account that there may be duplication in reporting in some instances. The Commission's recommendations in relation to multi-agency cooperation and information sharing in Chapters 15 and 16 should facilitate such cooperation and data-sharing.

(b) Data on the implementation of the proposed adult safeguarding legislation

[5.176] In addition to accurate and comprehensive data on harm of at-risk adults, it will be important that sufficient data is collected regarding the application of the proposed adult safeguarding legislation following its implementation. Stakeholders in Scotland have referred to issues with data collection and gaps in data collection as barriers to accurately assessing the effectiveness of safeguarding legislation in Scotland since its introduction in 2007.³¹⁶ A statutory function of the Safeguarding Body to collect, maintain and publish data and statutory functions related to research would ensure that the Safeguarding Body collects data and undertakes or commissions research in relation to its exercise of functions under the proposed legislation.

(c) Need for statutory research and data collection functions of the Safeguarding Body

[5.177] The collection and maintenance of accurate data and the completion of research allows for the identification of patterns or trends in relation to particular safeguarding issues of concern and the identification of any regional disparities. This would allow the Safeguarding Body to assess resourcing needs in terms of screening reports and could inform resourcing decisions. Data and research could also be used for information and awareness campaigns.

[5.178] It is common for public bodies to have statutory functions to undertake or commission research or collaborate with other organisations in research related to the public bodies' primary functions. Other public bodies including the Health Service Executive have such functions related to their primary functions.³¹⁷ One of the functions of the Child and Family Agency is to undertake or commission research into matters related to a number of its primary functions including

³¹⁶ Adult Support and Protection (Scotland) Act 2007. Stewart, "The implementation of Adult Support and Protection (Scotland) Act (2007) (PhD, University of Glasgow 2016) pages 133 and 134 <<https://theses.gla.ac.uk/7083/1/2016StewartPhd.pdf>> accessed 15 April 2024; Musselbrook, *Adult Support and Protection Everyone's Business* (Iriss 2023) at pages 14 and 16; Scottish Government, *Adult Support and Protection Improvement Plan 2019-2022* (2019) at page 12.

³¹⁷ Section 7(6) of the Health Act 2004.

supporting and promoting the development, welfare and protection of children.³¹⁸

[5.179] In reflection of the existing relevant activity of the HSE National Safeguarding Office and the benefits of research and data functions in promoting effective adult safeguarding, the Commission recommends that the Safeguarding Body should have statutory functions to:

- collect and evaluate data; and
- undertake or commission research or collaborate in research

related to its statutory function to promote the health, safety and welfare of at-risk adults who need support to protect themselves from harm.

R. 5.8 The Commission recommends that the Safeguarding Body should have statutory functions to

- (a) collect, evaluate and publish data; and
- (b) undertake or commission research or collaborate in research

related to its primary statutory function to promote the health, safety and welfare of at-risk adults who need support to protect themselves from harm.

³¹⁸ Section 8(1)(f) of the Child and Family Agency Act 2013.

CHAPTER 6

ORGANISATIONAL AND REGULATORY STRUCTURES: A SAFEGUARDING BODY AND POWERS OF VARIOUS REGULATORY BODIES

Table of Contents

1.	Introduction	301
2.	Organisational and regulatory structures in other jurisdictions	303
	(a) Scotland.....	303
	(b) Wales.....	306
	(c) England.....	307
	(d) Australia.....	308
	(i) <i>South Australia</i>	308
	(ii) <i>New South Wales</i>	308
	(iii) <i>Queensland</i>	309
	(iv) <i>Victoria</i>	311
	(e) Canada.....	311
	(i) <i>Manitoba</i>	311
3.	Introduction to possible organisational and regulatory models and powers	312
	(a) Perspectives of consultees	313
	(b) Institute of Public Administration Report.....	315
	(c) Relevant legal and policy considerations.....	316
	(i) <i>United Nations Convention on the Rights of Persons with Disabilities</i>	316
	(ii) <i>"Better regulation" principles</i>	321
	(iii) <i>National agency rationalisation policy</i>	322
4.	A Safeguarding Body as a social work-led adult safeguarding agency .	323
	(a) Functions and powers.....	324
	(b) Cross-sectoral remit of the Safeguarding Body.....	324
	(c) The establishment of the Safeguarding Body within the HSE:.....	326
	(i) <i>Arguments in support of the Safeguarding Body being established within the HSE</i>	326
	(ii) <i>Arguments against the Safeguarding Body being established within the HSE</i>	328

(iii)	<i>The proposed cross-sectoral remit of the Safeguarding Body if established within the HSE.....</i>	330
(iv)	<i>Conclusions on the establishment of the Safeguarding Body within the HSE.....</i>	333
(d)	Establishment of the Safeguarding Body within an existing agency other than the HSE.....	334
(i)	<i>HIQA.....</i>	334
(ii)	<i>The Child and Family Agency.....</i>	335
(iii)	<i>Mental Health Commission.....</i>	336
(iv)	<i>Conclusions on establishment of the Safeguarding Body within an existing agency other than the HSE.....</i>	338
(e)	Establishment of a new independent Safeguarding Body.....	339
(i)	<i>Advantages of establishing the Safeguarding Body as a new independent agency.....</i>	340
(ii)	<i>Disadvantages of establishing the Safeguarding Body as an independent agency.....</i>	341
(iii)	<i>Conclusions on establishing the Safeguarding Body as an independent agency.....</i>	343
(f)	Establishing a multi-agency safeguarding structure or safeguarding partnership model.....	344
(i)	<i>Advantages of a multi-agency safeguarding structure or partnership model.....</i>	345
(ii)	<i>Disadvantages of a multi-agency safeguarding structure or partnership model.....</i>	345
(iii)	<i>Conclusions on the establishment of a multi-agency safeguarding structure or multi-agency partnership model.....</i>	345
5.	Adult safeguarding regulatory functions.....	346
(a)	Functions and powers.....	346
(b)	Setting standards for adult safeguarding to apply across sectors.....	347
(c)	Regulation of social work-led adult safeguarding services.....	350
(i)	<i>Current practice: social work-led adult safeguarding services in Ireland.....</i>	350
(ii)	<i>Regulation of child social care services in Ireland.....</i>	351
(iii)	<i>Regulation of social work-led adult safeguarding services in other jurisdictions.....</i>	352
(iv)	<i>Need for regulation of social work-led adult safeguarding services</i> <i>355</i>	
(d)	Adult safeguarding reviews being conducted by a regulator.....	356
(e)	Coordination of the relevant regulatory powers of existing organisations including HIQA, the Mental Health Commission and the Central Bank.....	359
(f)	Powers to direct the HSE and other statutory and non-statutory bodies to take unspecified actions to safeguard at-risk adults.....	359

(g) Conclusions on the need for a regulatory body or for existing regulatory bodies to be conferred with additional regulatory functions...	360
6. Regional adult safeguarding structures.....	361
(a) Regional social work-led adult safeguarding services	362
(b) Regional multi-agency adult safeguarding structures	362
(c) Conclusions on regional adult safeguarding structures.....	363
7. Proposals: Organisational and regulatory models and powers.....	364
(a) Proposed model: a Safeguarding Body for adult safeguarding and conferral of regulatory functions	365
(i) <i>A Safeguarding Body</i>	365
(ii) <i>Conferral of regulatory functions</i>	365
(b) Appropriate agency to act as the Safeguarding Body	366
(c) Regulation of social work-led adult safeguarding services.....	369

1. Introduction

- [6.1] This chapter discusses the statutory functions and powers of existing bodies in Ireland relevant to adult safeguarding and identifies gaps in the law. It examines both social work-led adult safeguarding services functions, and adult safeguarding regulatory functions.
- [6.2] At the outset, it is important to note that there is no overarching body in Ireland with statutory responsibility for adult safeguarding – at social work-led service provision or regulatory level. At present, social work-led adult safeguarding services functions are carried out by the HSE’s National Safeguarding Office (“NSO”) and its local Safeguarding and Protection Teams (“SPTs”) in accordance with the HSE’s 2014 Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures in 2014 (the “HSE’s National Policy and Procedures”).¹ These functions are performed in the absence of any statutory powers to safeguard at-risk adults.
- [6.3] In relation to existing regulatory functions, HIQA and the Mental Health Commission play a role in overseeing compliance with certain adult safeguarding obligations in residential centres for older people, residential centres for adults with disabilities, and in approved centres.² However, as discussed in Chapter 7, there are gaps in regulatory functions relating to adult safeguarding, which could be addressed by conferring additional functions on existing regulatory bodies.
- [6.4] The objective of this Chapter is to set out the possible organisational and regulatory models for adult safeguarding. This chapter examines the following organisational and regulatory models for adult safeguarding:
- (a) a statutory social work-led adult safeguarding agency – a “Safeguarding Body”; and
 - (b) an adult safeguarding regulatory body.
- [6.5] There were varying views among consultees and stakeholders on whether there needs to be an adult safeguarding statutory body which would be:
- (a) a provider of social work-led adult safeguarding services including receiving and responding to reports of actual or suspected abuse or neglect of at-risk adults, or

¹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures* (HSE 2014).

² Approved centres under the Mental Health Act 2001.

- (b) a regulator of services in respect of adult safeguarding duties of providers of those services.

[6.6] While consultees had varying views on the functions of a proposed adult safeguarding statutory body, most consultees submitted that there is a need for a statutory body with statutory functions and powers to receive and respond to reports of actual or suspected abuse or neglect of at-risk adults. Some consultees viewed those functions and powers as social work-led adult safeguarding service functions while others viewed them as regulatory functions. The Commission believes that receiving and determining appropriate safeguarding responses to reports of actual or suspected abuse or neglect of at-risk adults are not purely investigative functions that can be carried out by a regulatory body. The Commission believes that these are functions that should be carried out as part of social work-led adult safeguarding services, which prioritise relationship-building, empowerment and supports. The Commission therefore believes that a social work-led adult safeguarding body - a Safeguarding Body - should have responsibility for receiving and responding to reports of actual or suspected abuse or neglect arising in all sectors. The Commission is of the view that the Safeguarding Body should not have regulatory functions, and that additional functions should instead be conferred on existing regulatory bodies. Accordingly, the Commission separately examines:

- the establishment of a Safeguarding Body as a social work-led adult safeguarding statutory body in section 4 of this Chapter; and
- adult safeguarding regulatory functions in section 5 of this Chapter.

[6.7] Section 4 discusses the appropriate structure for the establishment of the Safeguarding Body. The Government is best placed to determine the appropriate structure for the Safeguarding Body, including whether it should be a new independent agency. This determination requires weighing up extensive and competing policy considerations, which are beyond the remit and expertise of the Commission, as they are not strictly law reform matters. These policy considerations include for example: value for money evaluations; resource-management; organisational structures and accountability; agency rationalisation; funding and departmental governance; transition management; risk management; effectiveness; integration with existing structures and services and independence and perceptions of independence. Ultimately, the decision about whether to establish a new independent agency is a decision that will be made by the Government. For that reason, the Commission has opted to outline all the options proposed by consultees in detail to inform any future Government consideration of adult safeguarding structures.

[6.8] In section 5, the Commission discusses whether there is a need for a new adult safeguarding regulatory body. As mentioned above, the Commission believes that the Safeguarding Body should not have regulatory functions. In section 5, the Commission also outlines its view that it would be unnecessary to establish a

new adult safeguarding regulatory body, as it could result in extensive duplication and overlap of regulatory functions given the remit of existing regulators, particularly in the health and social care sector. However, the Government may decide to establish a new body to conduct adult safeguarding reviews, as discussed in Chapter 17.

2. Organisational and regulatory structures in other jurisdictions

- [6.9] The structures of organisations that provide safeguarding services and the structures that regulate those safeguarding services vary from jurisdiction to jurisdiction. The Commission has considered relevant structures in a number of other jurisdictions in seeking to identify what structures could be adopted in Ireland. However, the Commission is mindful that while lessons may be drawn from other jurisdictions, certain structures may not be viable in the Irish context due to key differences in systems such as that adult social care, which includes social work-led adult safeguarding services in some other jurisdictions, is delivered through local authorities in those jurisdictions.
- [6.10] The Commission discusses comparative research on the regulation of social work-led safeguarding services in section 5(c).

(a) Scotland

- [6.11] Currently, local authorities in Scotland have responsibility for the delivery of adult social care services including adult safeguarding social care services (known as “adult support and protection” in Scotland). Local authorities work together with Police Scotland in partnership to deliver effective safeguarding services.
- [6.12] In Scotland, bodies work in partnerships to receive reports of adult protection concerns, to screen the reports and, where necessary, to investigate the reports to determine if any actions are required to protect, support, involve and consult at-risk adults, and to be responsible and accountable for the implementation of these actions.³ These partnerships are known as adult support and protection partnerships (ASP partnerships). The core partners are the local authority, Police Scotland and the relevant Health Board, and can also include Adult Protection Committees, voluntary organisations, the Fire and Rescue Service and local Trading Standards offices.⁴

³ Care Inspectorate (Scotland), Healthcare Improvement Scotland and HM Inspectorate of Constabulary in Scotland, *Definition of Adult Protection Partnership* < https://www.careinspectorate.com/images/Adult_Support_and_Protection/New_links/1_Definition_of_adult_protection_partnership.pdf> accessed on 16 April 2024.

⁴ Care Inspectorate (Scotland), Healthcare Improvement Scotland and HM Inspectorate of Constabulary in Scotland, *Definition of Adult Protection Partnership* <

- [6.13] ASP partnerships are subject to inspection. Joint inspections ensure that at-risk adults are supported and protected by existing ASP arrangements.⁵ Inspections are carried out by the Care Inspectorate (Scotland), working jointly with His Majesty's Inspectorate of Constabulary in Scotland (HMICS) and Health Improvement Scotland ("HIS").⁶ The Care Inspectorate (Scotland) is a scrutiny body that can inspect any social service, and the planning, organisation or coordination of any social service.⁷ The Care Inspectorate (Scotland) is the lead agency, but HMICS and HIS have lead responsibility for police and health issues respectively within the joint inspection framework.⁸ HIS is under a duty to improve the quality of health care in Scotland, and can therefore inspect any service provided under the health service.⁹ HMICS is an independent scrutiny body that makes enquiries about matters relating to Police Scotland.¹⁰
- [6.14] When examining an ASP partnership in Scotland, the Care Inspectorate (Scotland), HIS and HMICS:
- (a) review the policies, procedures and practices of the ASP partnership;
 - (b) examine referral handling, screening, investigation and management of adult protection concerns;
 - (c) examine how effective and collaborative the partnership's actions have been in securing sustained safety, protection and support for at-risk adults; and

https://www.careinspectorate.com/images/Adult_Support_and_Protection/New_links/1_Definition_of_adult_protection_partnership.pdf> accessed on 16 April 2024.

- ⁵ Care Inspectorate (Scotland), Joint Inspections of adult support and protection <<https://www.careinspectorate.com/index.php/strategic-scrutiny-and-assurance/inspections-overview/9-professional/6643-joint-inspections-of-adult-support-and-protection-ssaa>> accessed on 16 April 2024.
- ⁶ These bodies are undertaking this duty under section 115 of the Public Services (Reform) Act 2010. See also Care Inspectorate (Scotland), Health Improvement Scotland and HM Inspectorate of Constabulary in Scotland, *Joint Inspection of Adult Support and Protection Partnership Briefing* (2022) at page 7.
- ⁷ Section 53(1) of the Public Services Reform (Scotland) Act 2010.
- ⁸ Care Inspectorate (Scotland), Healthcare Improvement Scotland and HM Inspectorate of Constabulary in Scotland, *Joint Inspection of Adult Support and Protection (ASP) Phase 1: Frequently Asked Questions (FAQs)* (ASP-0220-002 2020) at page 2.
- ⁹ Sections 10A(1)(b) and 10I of the National Health Service (Scotland) Act 1978.
- ¹⁰ Section 74(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 8).

(d) assess the leadership and governance of ASP in the partnership area.¹¹

- [6.15] However, the Scottish Government has proposed the establishment of a National Care Service and has introduced the National Care Service (Scotland) Bill.¹² At the time of writing, the Bill was at Stage 2 before the Scottish Ministers.¹³ The Scottish Government believes that establishing the National Care Service is necessary “to deliver the consistency and quality of care and support across Scotland that people deserve”.¹⁴ The National Care Service would ensure that Scottish Ministers are accountable for social care and social work support, and ensure consistency in the provision of services and standards of care across the country in every local authority.¹⁵ As noted above, local authorities are currently responsible for social work and social care support in their area. Under new proposals, the local authority will still employ social workers.¹⁶ Initially, it was proposed that social work functions would be transferred to the National Care Service, or regional care boards set up to deliver services on its behalf. Instead, following further consultation with local councils, it was agreed that overall legal accountability will be shared between Scottish Government, the NHS and local government.¹⁷
- [6.16] The proposal to establish the National Care Service came in response to the proposals of the Independent Review of Adult Social Care, published in 2021, which recommended that the Scottish Government establish a National Care

¹¹ Care Inspectorate, Healthcare Improvement Scotland and HM Inspectorate of Constabulary in Scotland, *Joint Inspection of Adult Support and Protection (ASP) Phase 1: Frequently Asked Questions (FAQs)* (ASP-0220-002 2020) at page 2.

¹² National Care Service (Scotland) Bill <<https://www.parliament.scot/bills-and-laws/bills/national-care-service-scotland-bill>> accessed on 16 April 2024; Director-General Health and Social Care (Scotland), Social care <<https://www.gov.scot/policies/social-care/national-care-service/>> accessed on 16 April 2024 and Scottish Government, *National Care Service (Scotland) Bill Policy Memorandum* (Scottish Government 2022) <<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/national-care-service-scotland-bill/introduced/policy-memorandum-accessible.pdf>> accessed on 16 April 2024.

¹³ The Bill passed the first stage on the 29 February 2024.

¹⁴ Scottish Government, *National Care Service Statement of Benefits* (Scottish Government 2022) at page 1.

¹⁵ Scottish Government, *National Care Service Statement of Benefits* (Scottish Government 2022) at page 8.

¹⁶ Samuel, “Council would still employ social workers under proposed National Care Service for Scotland” *Community Care* (12 July 2023) <<https://www.communitycare.co.uk/2023/07/12/councils-would-still-employ-social-workers-under-proposed-national-care-service-for-scotland/>> accessed on 16 April 2024; Scottish Government, Partnership on National Care Services <<https://www.gov.scot/news/partnership-on-national-care-service/>> accessed 16 April 2024.

¹⁷ Scottish Government, Partnership on National Care Services <<https://www.gov.scot/news/partnership-on-national-care-service/>> accessed 16 April 2024.

Service for adult social care services.¹⁸ Scotland's Health Secretary confirmed at the end of 2023 that the establishment of the National Care Service would be delayed by three years, as the Scottish government needs more time to work out logistics with councils.¹⁹ COLSA, a Scottish local government representative organisation, has expressed significant concerns on National Care Service plans as local councils want to continue to play a central role in the delivery of, and accountability for, social care.²⁰ They are concerned that reform would result in less funding for local care and social work services.

- [6.17] As discussed in Chapter 17, each council must establish an Adult Protection Committee in its area, consisting of multi-agency partners including for example, representatives from the council, the Care Inspectorate (Scotland), the chief constable of the Police Service of Scotland and the relevant Health Board.²¹ Adult Protection Committees have been "statutorily assigned the lead role for overseeing cooperation and communication between agencies to promote appropriate support and protection for adults at risk of harm".²² They monitor and review what is happening locally to safeguard adults.²³

(b) Wales

- [6.18] Local authorities in Wales have statutory responsibility for planning and commissioning social care in Wales.²⁴ For example, local authorities are required to prepare care and support plans, or support plans, where it assesses an adult's care and support needs and determines that the criteria have been met for it to

¹⁸ Scottish Government, Adult social care: independent review (Scottish Government 2021) <<https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>> accessed on 10 March 2024. The initial plan was to introduce the National Care Service by the end of the 2026 parliamentary term. It has now been pushed back to 2028-2029.

¹⁹ BBC, "Scotland's National Care Service delayed by three years" *BBC* (14 December 2023) <<https://www.bbc.com/news/uk-scotland-67714086>> accessed 16 April 2024.

²⁰ COSLA, "Significant concerns on National Care Service plans – says Councils" <<https://www.cosla.gov.uk/news/2024/significant-concerns-on-national-care-service-plans-say-councils>> accessed 16 April 2024. See also Scottish Government, Partnership on National Care Services <<https://www.gov.scot/news/partnership-on-national-care-service/>> accessed 16 April 2024.

²¹ Section 42 of the Adult Support and Protection (Scotland) Act 2007.

²² Social Care and National Care Service Development, *Adult Support and Protection (Scotland) Act 2007: guidance for Adult Protection Committees* (SCNCSD 2022) at page 5. See section 42 of the Adult Support and Protection (Scotland) Act 2007 for an outline of their statutory functions.

²³ Director-General Health and Social Care, Social care – Adult support and protection <[https://www.gov.scot/policies/social-care/adult-support-and-protection/#:~:text=The%20Adult%20Support%20and%20Protection%20\(Scotland\)%20Act%202007%20set%20up,who%20may%20be%20at%20risk.>](https://www.gov.scot/policies/social-care/adult-support-and-protection/#:~:text=The%20Adult%20Support%20and%20Protection%20(Scotland)%20Act%202007%20set%20up,who%20may%20be%20at%20risk.>) accessed on 16 April 2024.

²⁴ Social Services and Well-Being (Wales) Act 2014.

meet the adult's needs.²⁵ Local authorities are also required to respond to a report about an adult who is at risk of abuse and neglect.²⁶

- [6.19] As discussed in Chapter 17, each local authority in Wales must establish a Safeguarding Adults Board, a multi-agency board including representatives from the local authority, the chief officer for the police area, the local Health Board and the local NHS Trust.²⁷ Safeguarding Adults Boards have statutory responsibility to ensure there are effective inter-agency procedures in place for addressing safeguarding concerns, and monitoring and evaluating the effectiveness of those procedures.²⁸
- [6.20] The Social Services and Well-being (Wales) Act 2014 also established the National Independent Safeguarding Board to oversee the work of regional Safeguarding Adults Boards, provide support and advice to them in carrying out their functions, and report on and make recommendations on their effectiveness to the Welsh Ministers.²⁹

(c) England

- [6.21] Under the Care Act 2014, local authorities have responsibility for adult social care and safeguarding adults at risk of abuse or neglect, including the making of enquiries where it is known or suspected that an adult with care and support needs may be at risk of abuse or neglect.³⁰ Local authorities in England are also required to establish Safeguarding Adults Boards, and their objective is to "help and protect adults in its area" who may have care and support needs, or are experiencing, or at risk of experiencing abuse or neglect, meaning they are unable to protect themselves against abuse or harm, or the risk of it.³¹ As outlined in Chapter 17, these are inter-agency Boards that include representatives

²⁵ See sections 14, 34, 36, 54 of the Social Services and Well-being (Wales) Act 2014.

²⁶ Wales Safeguarding Procedures, Responding to a report: overview of task and process <<https://safeguarding.wales/en/adu-i/adu-i-a3pt1/a3pt1-p2/>> accessed on 16 April 2024. See also section 126 of the Social Services and Well-being (Wales) Act 2014.

²⁷ Section 134 of the Social Services and Well-being (Wales) Act 2014. The legislation also provides for the establishment of Safeguarding Children Boards, and often the Safeguarding Board Area will have a joint Board covering both children and adults.

²⁸ Welsh Government, *Social Services and Well-being (Wales) Act 2014 – Working Together to Safeguard People: Volume 6 – Handling Individual Cases to Protect Adults at Risk* (Welsh Government 2019) at page 13. See also the Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015 and the Safeguarding Boards (General) (Wales) Regulations 2015.

²⁹ Section 132 of the Social Services and Well-being (Wales) Act 2014. See also, National Independent Safeguarding Board Wales, About the Board <<https://safeguardingboard.wales/about-the-board/>> accessed on 16 April 2024.

³⁰ See in particular, sections 8, 9, 18, 19, 24, 25, and 42 of the Care Act 2014 (England).

³¹ Sections 42 and 43 of the Care Act 2014.

from the local authority, integrated care boards, and the chief officer of the police, among others.

(d) Australia

(i) South Australia

- [6.22] The Adult Safeguarding Unit in the Office for Ageing Well was established in 2019 by the Office for the Ageing (Adult Safeguarding) Amendment Act 2018, which amended the Ageing and Adult Safeguarding Act 1995. It is responsible for responding to reports of abuse or mistreatment of any adult who may be vulnerable.³² Initially in 2019 its remit only covered adults aged 65 and over and Aboriginal and Torres Strait Islanders aged 50 and over who may be vulnerable. In 2020, its remit was extended to people with disabilities and on 1 October 2022, it expanded further to respond to reports of abuse or mistreatment of any adult who may be vulnerable.³³
- [6.23] The Adult Safeguarding Unit receives, assesses, and investigates reports related to suspected abuse and coordinates responses with other agencies and refers reports to appropriate bodies, where required.³⁴ Its functions also include: to collate data on abuse; advise government on systemic matters; and prepare and publish reports relating to vulnerable adults at a systemic level.³⁵ It does not appear to have a specific serious incident response role.

(ii) New South Wales

- [6.24] The Ageing and Disability Commissioner was established in New South Wales in 2019. The Commissioner is responsible for dealing with allegations of abuse, neglect and exploitation of adults with a disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative. It also has the power, following an investigation into an allegation of abuse, neglect or exploitation of an adult with a disability or older adult, to take further action that the Commissioner considers necessary to protect the adult

³² Government of South Australia, Adult Safeguarding Unit
<<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/department+for+health+and+wellbeing/office+for+ageing+well/adult+safeguarding+unit/adult+safeguarding+unit>> accessed on 3 July 2023.

³³ Government of South Australia, SA Health, Adult Safeguarding Unit
<<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/department+for+health+and+wellbeing/office+for+ageing+well/adult+safeguarding+unit/adult+safeguarding+unit>> accessed on 16 April 2024.

³⁴ Section 15(1)(d), (e), (f), (g), (h) of the Ageing and Adult Safeguarding Act 1995 (SA).

³⁵ Section 15(1)(j), (k), (l) of the Ageing and Adult Safeguarding Act 1995 (SA).

from abuse, neglect and exploitation, including by making an application to a court or tribunal in respect of the adult.³⁶

- [6.25] The Commissioner also has the power to investigate complaints made in relation to family members or informal supports in the community.³⁷ It is required to refer matters to other agencies such as the National Disability Insurance Scheme Quality and Safeguards Commission and the Aged Care Quality and Safety Commission, where a complaint is more suited to their remit.³⁸ It was noted in an Independent Review of the Ageing and Disability Commissioner Act 2019, that the Ageing and Disability Commissioner “filled a critical gap in dealing with allegations of abuse, neglect and exploitation of people with disability and the elderly in home and community settings that was not previously addressed by other complaint and investigative bodies in NSW”.³⁹
- [6.26] The Commissioner also has the power to conduct a public enquiry, if the Commissioner believes it is in the public interest, having regard to:
- (a) the seriousness of the allegation of abuse, neglect or exploitation;
 - (b) the wishes of any person with a disability or older adult to whom the report relates; and
 - (c) the privacy of the persons who will be affected by a public inquiry.⁴⁰

(iii) Queensland

- [6.27] In Queensland, the Public Guardian has the power to investigate allegations of neglect, exploitation, and abuse or inappropriate or inadequate decision-making

³⁶ Section 12(1)(a) and (b) of the Ageing and Disability Commissioner Act 2019 (NSW).

³⁷ Ageing and Disability Commissioner Act 2019 (NSW). See also Ageing and Disability Commission, What we do <<https://ageingdisabilitycommission.nsw.gov.au/about-us/what-we-do.html>> accessed on 16 April 2024.

³⁸ Section 13(8) of the Ageing and Disability Commissioner Act 2019 (NSW). The Commissioner is also required to refer reports to the Commissioner of Police or the Director of Public Prosecutions if it believes that some or all of the report may provide evidence that a criminal offence has been committed. See section 13(9) of the Act. These are mandated requirements, which have been criticised for requiring the Commissioner to act against the wishes of the adult in some cases, and also creating duplication of effort. The independent review recommended that the duty to refer be made discretionary, as in line with other jurisdictions. See Alan Cameron AO, *Report of the Independent Statutory Review of the Ageing and Disability Commissioner Act 2019* (2023) at page 9 <<https://www.parliament.nsw.gov.au/la/papers/Pages/taled-paper-details.aspx?pk=84417&houseCode=la>> accessed on 16 April 2024.

³⁹ Alan Cameron AO, *Report of the Independent Statutory Review of the Ageing and Disability Commissioner Act 2019* (2023) <<https://www.parliament.nsw.gov.au/la/papers/Pages/taled-paper-details.aspx?pk=84417&houseCode=la>> accessed on 16 April 2024.

⁴⁰ Section 19 of the Ageing and Disability Commissioner Act 2019 (NSW).

arrangements where an adult does not have the capacity to make decisions.⁴¹ Its powers are outlined in more detail in Chapter 5.

- [6.28] A separate body, the Public Advocate works on behalf of adults with impaired decision-making capacity to promote and protect their rights, encourage the development of services and programmes and promote, monitor and review services provided to them. It is focused on examining legislation, policies, programs and services from a systemic lens, whereas the Public Guardian works directly in respect of individuals and can investigate individual complaints or allegations.⁴² In 2022, the Public Advocate published an Adult Safeguarding in Queensland report.⁴³ In order to address the gaps in the current adult safeguarding system in Queensland, it recommended that an adult safeguarding agency should be established in with the ability to receive and investigate reports of suspected abuse, neglect and exploitation of at-risk adults.⁴⁴
- [6.29] The Public Advocate believes that the adult safeguarding agency should be permitted to conduct an investigation on its own motion or following a complaint or allegation.⁴⁵ It concurred with the Australian Law Reform Commission (“ALRC”) recommendations regarding consent, and the need for coercive information-gathering powers to be exercised where there is a reasonable suspicion of serious abuse.⁴⁶ It also agreed with the ALRC’s recommendations regarding the actions the adult safeguarding agency should be permitted to take.⁴⁷

⁴¹ Section 19 of the Public Guardian Act 2014 (QLD).

⁴² See the Public Advocate (Queensland), *The role of different guardianship agencies in Queensland* < <[⁴³ The Public Advocate \(Queensland\), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* \(2022\).](https://www.justice.qld.gov.au/public-advocate/about-the-public-advocate/what-the-public-advocate-does/role-of-different-guardianship-system-agencies#:~:text=The%20Office%20of%20the%20Public,with%20impaired%20decision%2Dmaking%20capacity.> accessed on 16 April 2024.</p>
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⁴⁴ The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022) at pages 9 and 11. The report outlines the various options for who this adult safeguarding body might be, see pages 29 to 37 in particular. Ultimately the report identifies a preference for the option of establishing a new independent Adult Safeguarding Commissioner.

⁴⁵ The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022) at page 11.

⁴⁶ The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022) at pages 11 and 40.

⁴⁷ The Public Advocate (Queensland), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations* (2022) at pages 40 to 41.

- [6.30] The government’s response to the recommendations in the Public Advocate’s report has not yet been published, but the government is considering the recommendations and whether any changes are required.⁴⁸

(iv) Victoria

- [6.31] In August 2022, the Office of the Public Advocate in Victoria completed a report on adult safeguarding laws and practices. The purpose of the project was to identify ways in which the safeguarding of at-risk adults could be improved in the jurisdiction.⁴⁹ The summary of the report’s findings state that Victoria has a “patchwork of agencies with specific roles, functions and powers” that focus on regulating specific services or providers but that do not have the powers required to adequately protect and promote the rights of at-risk adults. The summary goes on to state that the “array of regulators and services is complex and difficult to navigate” with no “central point” for concerns about abuse, neglect or exploitation. The report includes an appendix of issues to be considered in the implementation of adult safeguarding legislation.⁵⁰ Described as the “cornerstone recommendation” of the report, the Office of the Public Advocate recommends that the Victorian Government establish a new specialist adult safeguarding function within an existing agency.

(e) Canada

(i) Manitoba

- [6.32] There are provisions under the Adults Living with an Intellectual Disability Act in Manitoba which allow for the investigation of reports of actual or suspected harm, as outlined in detail in Chapter 5. The Protection for Persons in Care Office (“PPCO”) is a statutory body responsible for receiving and investigating allegations of abuse and neglect in health-care facilities.⁵¹ In 2023, the Manitoba Minister for Justice announced that they will be disbanding the PPCO and replacing it with a new independent investigations office that will report directly to the legislature as opposed to a government department.⁵² This follows a

⁴⁸ Queensland Cabinet and Ministerial Directory, Attorney-General welcomes report focused on protection vulnerable adults <<https://statements.qld.gov.au/statements/96761>> accessed on 16 April 2024.

⁴⁹ Office of the Public Advocate (Victoria), *Line of sight: Refocussing Victoria’s adult safeguarding laws and practices* (2022) at page 9.

⁵⁰ Office of the Public Advocate (Victoria), *Line of sight: Refocussing Victoria’s adult safeguarding laws and practices* (2022) at page 9.

⁵¹ The Protection for Persons in Care Act, CCSM c P144 (Manitoba).

⁵² Manitoba Government, “Manitoba Government Responds to Office of the Auditor General Reports, Announces New Independent Office of the Legislative Assembly” (26 July 2023) <<https://news.gov.mb.ca/news/index.html?item=60083>> accessed on 16 April 2024.

highly critical report by the Auditor General which identified that serious systemic issues existed in the office.⁵³ These included that:

- the PPCO is concluding “unfounded for abuse” in cases in which caregivers were physically or sexually assaulting victims;
- victims are waiting up to three years for investigations to start; and
- the PPCO is not publicly reporting statistics on investigations.⁵⁴

[6.33] Criticism had previously been raised about the PPCO’s high threshold for what constitutes “abuse”.⁵⁵ The new independent office is intended to provide greater accountability and transparency to members of the public, with full powers of investigation and reporting.⁵⁶ An examination of past files handled by the PPCO was also announced.⁵⁷

3. Introduction to possible organisational and regulatory models and powers

[6.34] The Commission had regard to the views of consultees, relevant international law, regulatory principles and Government policy in seeking to identify the appropriate organisational and regulatory models for adult safeguarding including whether social work-led adult safeguarding services need to be placed on a statutory basis and whether any additional regulatory functions or bodies are required.

⁵³ Auditor General Manitoba, *Investigation of the Protection for Persons in Care Office (PPCO)* (2023) <https://www.oag.mb.ca/files/ugd/b32b68_c893144af80d4590a2220ae1ced4b461.pdf> accessed on 16 April 2024.

⁵⁴ Auditor General Manitoba, *Investigation of the Protection for Persons in Care Office (PPCO)* (2023) <https://www.oag.mb.ca/files/ugd/b32b68_c893144af80d4590a2220ae1ced4b461.pdf> accessed on 16 April 2024.

⁵⁵ Froese, “Manitoba to disband office created to protect seniors in care following scathing report” *CBC News* (26 July 2023) <<https://www.cbc.ca/news/canada/manitoba/manitoba-auditor-general-protection-persons-in-care-abuse-neglect-1.6918311>> accessed on 16 April 2024.

⁵⁶ Manitoba Government, “Manitoba Government Responds to Office of the Auditor General Reports, Announces New Independent Office of the Legislative Assembly” (26 July 2023) <<https://news.gov.mb.ca/news/index.html?item=60083>> accessed on 16 April 2024.

⁵⁷ Manitoba Government, “Manitoba Government Responds to Office of the Auditor General Reports, Announces New Independent Office of the Legislative Assembly” (26 July 2023) <<https://news.gov.mb.ca/news/index.html?item=60083>> accessed on 16 April 2024.

- [6.35] In addition to analysis of the functions of relevant existing organisations in Ireland⁵⁸ and comparative research on structures in other jurisdictions, the Commission considered the following:
- (a) the views of consultees and stakeholders expressed in: responses to the Commission's Issues Paper; consultative meetings held during the development of this Report; reports and other publications of the consultees and stakeholders; and relevant conference and event contributions;
 - (b) regulatory models proposed by the Institute of Public Administration in a report commissioned to inform a Private Member's Bill, the Adult Safeguarding Bill 2017;
 - (c) relevant legal and policy considerations including:
 - (i) Article 16.3 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD);
 - (ii) the "Better Regulation" principles; and
 - (iii) the Government's national agency rationalisation policy.

[6.36] These considerations are discussed in further detail below.

(a) Perspectives of consultees

- [6.37] Consultees and stakeholders expressed varied views on the organisational and regulatory models that they believe need to be in place to ensure effective adult safeguarding in Ireland. The most common views were as follows:
- (a) a belief that there is a need for the HSE SPTs and the NSO to be placed on a statutory footing with additional functions to be conferred on existing regulators;
 - (b) a belief that there is a need for the HSE SPTs and the NSO to be given statutory powers alongside the establishment of an adult safeguarding regulator within an existing health or social care regulatory body;
 - (c) a belief that there is a need for a new independent cross-sectoral social work-led adult safeguarding body with statutory functions similar to the existing non-statutory functions of the HSE SPTs and the NSO with existing regulatory functions conferred on existing regulators;

⁵⁸ The functions of relevant existing organisations are discussed in the Background section to this Report.

- (d) a belief that there is a need for a new independent cross-sectoral social work-led adult safeguarding agency with statutory functions similar to the existing non-statutory functions of the HSE SPTs and the NSO in addition to regulatory functions including functions to hold existing agencies such as the HSE and regulatory bodies to account;
- (e) a belief that there is a need for a social work-led adult safeguarding agency with regulatory functions to be established within an existing health or social care regulatory body; and
- (f) a belief that there is a need for social work-led adult safeguarding functions to move from the HSE to the Child and Family Agency ("CFA") to form a whole-of-life safeguarding agency with oversight of the CFA's functions and oversight of services for adults by existing regulatory bodies.

[6.38] A small but significant number of stakeholders proposed the establishment of a new independent agency, which would have several functions, alongside the continued provision of social work-led adult safeguarding services by the HSE. The relevant consultees proposed the following functions of a new independent agency:

- (a) receiving and investigating reports of actual or suspected abuse or neglect of adults arising in all settings;
- (b) monitoring performance of the HSE's SPTs;
- (c) reviewing serious incidents; and
- (d) setting adult safeguarding standards and carrying out statutory inspections across all sectors to ensure compliance with standards.

[6.39] A single agency holding all the above functions would result in the agency being both the organisation that:

- (a) receives and responds to reports of actual or suspected abuse; and
- (b) regulates whether reports of actual or suspected abuse have been appropriately addressed.

[6.40] The above two functions would conflict with one another. This would likely result in duplication of services, disjointed provision of safeguarding, inefficiencies and confusion. Additionally, the Commission believes that receiving and determining appropriate safeguarding responses to reports of actual or suspected abuse or neglect of at-risk adults are not purely investigative functions that can be carried out by a regulatory body.

[6.41] The Commission believes that these are functions that should be carried out as part of social work-led adult safeguarding services, which prioritise relationship-

building and supports. The Commission therefore believes that a social work-led adult safeguarding body - a Safeguarding Body - should have responsibility for receiving and responding to, reports of actual or suspected abuse or neglect arising in all sectors. The Commission is of the view that to avoid any conflict of functions, the Safeguarding Body should not have regulatory functions, and that additional functions should instead be conferred on existing regulatory bodies. Accordingly, the Commission therefore separately examines:

- (a) the establishment of a Safeguarding Body as a social work-led adult safeguarding statutory body (discussed in section 4 below); and
- (b) the conferral of adult safeguarding regulatory functions on existing regulators (discussed in section 5 below).

[6.42] The views of stakeholders on specific options for organisational and regulatory models will be discussed in the analysis of each option below.

(b) Institute of Public Administration Report

[6.43] The model proposed in the Adult Safeguarding Bill 2017, a Private Members' Bill, was the establishment of a National Adult Safeguarding Authority that would have both social work-led adult safeguarding services functions and safeguarding regulatory functions. In 2017, one of the sponsors of the Adult Safeguarding Bill 2017 commissioned the Institute of Public Administration ("IPA") to prepare a discussion paper examining the institutional and governance options in respect of the establishment of the proposed National Adult Safeguarding Authority ("Cosáint"), in particular to:

- (a) explore how the National Adult Safeguarding Authority might be established, including the advantages and disadvantages of a range of institutional and governance options; and
- (b) provide an overview of other organisational issues relevant to the establishment of the National Adult Safeguarding Authority.⁵⁹

[6.44] The IPA's discussion paper examined the following institutional and governance options for the proposed National Adult Safeguarding Authority:

- (a) establishment of an independent agency under the auspices of a government department;
- (b) establishment of the Authority as an executive office of a government department;

⁵⁹ Institute of Public Administration, *Discussion Paper – The establishment of Cosáint, the National Adult Safeguarding Authority* (IPA 2017) at page 2.

- (c) incorporation into the HSE; and
- (d) incorporation into an existing agency.⁶⁰

[6.45] The Commission outlined the options considered in the IPA’s discussion paper in the Issues Paper and sought views of consultees. In light of analysis of responses to the Commission’s Issues Paper, this Chapter does not discuss the option of establishing an adult safeguarding body as an executive office of a Government department. There was very low support for this option among consultees. Many consultees considered that it would be an inappropriate organisational model, as the body would not have the requisite level of independence from central Government and would also be too far removed from provision of services to adults across multiple sectors. The other three options examined by the IPA, as listed above, are considered in the following sections of this Chapter in addition to other models proposed by consultees.

(c) Relevant legal and policy considerations

[6.46] In considering the appropriate organisational and regulatory structures to govern adult safeguarding in Ireland, consideration must be given to relevant legal and policy instruments including national policy and international law.

(i) United Nations Convention on the Rights of Persons with Disabilities

[6.47] The United Nations Convention of the Rights of Persons with Disabilities (“UNCRPD”) was ratified by Ireland in 2018. Article 16.3 requires that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.⁶¹ The Commission recognises that not all adults with disabilities are at-risk adults and that not all at-risk adults have disabilities.

[6.48] However, some adults with disabilities may be at-risk adults or at risk of becoming an at-risk adult and therefore require safeguarding. For this reason, it is relevant to consider the safeguarding of adults with disabilities and Article 16.3 UNCRPD in the context of this Report.

[6.49] While Article 16.3 provides that all facilities and programmes designed to serve persons with disabilities must be effectively monitored by independent authorities, the UN Committee on the Rights of Persons with Disabilities has not yet issued guidance to facilitate the interpretation of this requirement.⁶² The

⁶⁰ Institute of Public Administration, *Discussion Paper – The establishment of Cosáint, the National Adult Safeguarding Authority* (IPA 2017) at page 3.

⁶¹ Article 16.3 of the United Nations Convention on the Rights of Persons with Disabilities.

⁶² Laing, “Preventing violence, exploitation and abuse of persons with mental disabilities: Exploring the monitoring implications of Article 16 of the United Nations Convention on the

outputs of the Committee are also of limited assistance in seeking to interpret the requirement. Academic analysis has sought to analyse the likely meaning of “facilities and programmes designed to serve persons with disabilities”⁶³; “monitored”⁶⁴ and “independent authorities”.⁶⁵

[6.50] In the Irish context, facilities and programmes which are designed specifically for persons with disabilities could logically be taken to be captured by Article 16.3 although other facilities and programmes, which cater for wider cohorts could also be captured. In the case of adults with disabilities, such facilities and programmes would include, among others:

- residential centres for persons with disabilities;
- day services for adults with disabilities; and
- personal assistance services for adults with disabilities.

[6.51] For the purposes of this Report, it is appropriate to identify:

- (a) whether the independent inspection of facilities and programmes designed to serve adults with disabilities, such as the inspection of residential centres for persons with disabilities by HIQA under the Health Act 2007, is sufficient to satisfy the Article 16.3 requirement for effective monitoring by an independent authority;

Rights of Persons with Disabilities” (2017) 53 International Journal of Law and Psychiatry 27 at page 31.

⁶³ Laing, “Preventing violence, exploitation and abuse of persons with mental disabilities: Exploring the monitoring implications of Article 16 of the United Nations Convention on the Rights of Persons with Disabilities” (2017) 53 International Journal of Law and Psychiatry 27 at pages 29 and 32; Keeling, “Article 16: Freedom from Exploitation, Violence and Abuse” in Ilias Bantekas and others (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) at page 488; Shulze, “Monitoring the Convention’s Implementation” in Maya Sabatello and Marianne Schulze (eds), *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2013) at page 28; Bartlett and Schulze, “Urgently awaiting implementation: The right to be free from exploitation, violence and abuse in Article 16 of the Convention on the Rights of Persons with Disabilities (CRPD)” (2017) International Journal of Law and Psychiatry 2 at page 5; Lewis and Campbell, “Violence and abuse against people with disabilities: A comparison of the approaches of the European Court of Human Rights and the United Nations Committee on the Rights of Persons with Disabilities” (2017) International Journal of Law and Psychiatry 45 at page 13. See also, Office of the High Commissioner on Human Rights, *Article 16: Illustrative indicators on freedom from violence, exploitation and abuse* (OHCHR 2020) at page 5.

⁶⁴ Kakoullis, “Monitoring Mechanisms Designed to Serve Persons with Intellectual Disabilities: Exploring the Implementation of Article 16 CRPD in Cyprus” (2019) 15 International Journal of Law in Context 33 at page 35.

⁶⁵ Kakoullis, “Monitoring Mechanisms Designed to Serve Persons with Intellectual Disabilities: Exploring the Implementation of Article 16 CRPD in Cyprus” (2019) 15 International Journal of Law in Context 33 at page 35.

- (b) whether reports of actual or suspected abuse or neglect of individual at-risk adults within facilities or programmes designed to serve persons with disabilities (by staff, other adults availing of services or visitors to the service) must also be assessed and responded to by an independent authority to meet the Article 16.3 requirement for effective monitoring by an independent authority; or
- (c) whether the social work-led adult safeguarding services (such as the HSE SPTs) that receive and respond to abuse or neglect of individual at-risk adults, including some adults with disabilities whether they are adults in receipt of services or not, must be subject to standard-setting and inspection by an independent regulator to satisfy the Article 16.3 requirement for effective monitoring by an independent authority. Such services would be established to serve at-risk adults, who include or may include some adults with disabilities, rather than to serve adults with disabilities specifically.

[6.52] In relation to **point (a)** above, it is important to note that day services for adults with disabilities are not currently subject to standard-setting and inspections by an independent monitoring authority such as HIQA. Instead, they are subject to non-statutory interim standards set by the HSE. The also operates and funds day services and so is not independent of those services, as discussed in Chapter 7. Personal assistance services for adults with disabilities are also not currently subject to independent regulation but the Government has plans to introduce legislation to provide for the regulation of personal assistance and home support services by HIQA, as discussed in the Background Section of this Report and Chapter 7. The Commission recommends in Chapter 7 that the Government gives careful consideration to the introduction of statutory standard-setting and inspection regimes for services not currently subject to statutory standard-setting and inspection regimes, including day services for adults with disabilities.

[6.53] In relation to **point (b)** above, the Commission has carefully reviewed existing literature on Article 16.3 in attempting to assess whether reports of actual or suspected abuse or neglect of individual at-risk adults within facilities or programmes designed to serve persons with disabilities (by staff, other adults availing of the service or visitors to the service) must also be assessed and responded to by an independent authority to meet the Article 16.3 requirement for effective monitoring by an independent authority. The analysis in the existing literature is limited and not particularly detailed on the meaning of “effectively monitored”. However, some of the literature refers to: monitoring as involving

standard-setting;⁶⁶ preventative monitoring;⁶⁷ proactive monitoring;⁶⁸ and monitoring as involving inspections,⁶⁹ which would all be more in line with the type of functions undertaken by regulatory bodies. In its 2016 concluding observations on Uruguay, the UN Committee on the Rights of Persons with Disabilities (“the CRPD”) urged the State party to set up an independent monitoring mechanism “to record, inspect and monitor conditions” in all centres where persons with disabilities live.⁷⁰ Recording, inspecting and monitoring conditions are also in line with inspection functions of regulatory bodies such as HIQA and the Mental Health Commission. There are references to the aim of preventing institutional abuse through monitoring in existing literature on Article 16.3⁷¹ but no references to assessing and responding to reports of actual or suspected abuse or neglect of individual at-risk adults separately to any regulation or monitoring of a residential centre or service.

- [6.54] Effectively addressing reports of actual or suspected abuse or neglect of individual at-risk adults in a facility for adults with disabilities is an important part of preventing further abuse or neglect and therefore in line with the aim of Article 16.3. However, on the basis of a literal interpretation of the wording of Article 16.3; and relevant concluding observations of the CRPD in the absence of CRPD guidance, the Commission understands that the functions of the Safeguarding Body would not involve monitoring of facilities or programmes designed to serve persons with disabilities. In the absence of guidance on Article 16.3 from the

⁶⁶ Kakoullis, “Monitoring Mechanisms Designed to Serve Persons with Intellectual Disabilities: Exploring the Implementation of Article 16 CRPD in Cyprus” (2019) 15 *International Journal of Law in Context* 33 at page 47.

⁶⁷ Schulze, “Human rights principles in developing and updating policies and laws on mental health” (2016), 3, *Global Mental Health*, e10 1 at page 5; Kakoullis, “Monitoring Mechanisms Designed to Serve Persons with Intellectual Disabilities: Exploring the Implementation of Article 16 CRPD in Cyprus” (2019) 15 *International Journal of Law in Context* 33 at pages 35, 46 and 47.

⁶⁸ McSherry, “Regulating seclusion and restraint in health care settings: The promise of the Convention on the Rights of Persons with Disabilities” (2017) 53 *International Journal of Law and Psychiatry* 39 at page 43.

⁶⁹ Lewis and Campbell, “Violence and abuse against people with disabilities: A comparison of the approaches of the European Court of Human Rights and the United Nations Committee on the Rights of Persons with Disabilities” (2017) 53 *International Journal of Law and Psychiatry* 45 at pages 57 to 58; Laing, “Preventing violence, exploitation and abuse of persons with mental disabilities: Exploring the monitoring implications of Article 16 of the United Nations Convention on the Rights of Persons with Disabilities” 53 (2017) *International Journal of Law and Psychiatry* 27 at page 37.

⁷⁰ United Nations Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Uruguay (30 September 2016) UN Doc CRPD/C/URY/CO/1 para 42.

⁷¹ Kakoullis, “Monitoring Mechanisms Designed to Serve Persons with Intellectual Disabilities: Exploring the Implementation of Article 16 CRPD in Cyprus” (2019) 15 *International Law Journal in Context* 33 at page 46.

CRPD, the Commission is of the view that the role of the HSE SPTs or similar services of the proposed Safeguarding Body to advise facilities or services, including residential centres, on appropriate safeguarding responses to reports is not proactive and continuous monitoring for the purposes of Article 16.3. It is proposed that the Safeguarding Body would not have responsibility for:

- (a) setting standards for, or proactively or routinely visiting or inspecting services for adults, who may include at-risk adults; or
- (b) sanctioning any facilities, programmes or other services if an at-risk adult has not been effectively safeguarded within those services.

[6.55] The Commission is therefore of the view that in the absence of CRPD guidance on Article 16.3, a literal interpretation suggests that the functions of the Safeguarding Body, which the Commission proposes in Chapter 5, would not be Article 16.3 functions.

[6.56] It is also important to remember that facilities and programmes have responsibility for conducting their own local-level investigations or assessments of actual or suspected abuse or neglect⁷² in addition to independent monitoring by regulatory bodies. These local-level responses to reports of actual or suspected abuse or neglect would continue alongside the establishment of the Safeguarding Body with the Safeguarding Body providing advice and oversight to a facility or service or taking a more direct role if the service manager has a conflict of interest, for example. The intended role of the Safeguarding Body is the provision of social work-led adult safeguarding services rather than a monitoring role. In the absence of CRPD guidance and on the basis of a literal interpretation of Article 16.3, there is nothing to suggest that a funding relationship between a body in which the Government may decide to establish the Safeguarding Body (such as the HSE) and providers of services would be in breach of the Article 16.3 requirement. However, such a funding relationship may have other disadvantages including actual or perceived impartiality.

[6.57] In respect of residential centres for persons with disabilities, the Commission's understanding is that the Article 16.3 requirement for effective monitoring by an independent authority is already satisfied by HIQA's remit and if the Government introduces a form of standard-setting and inspection of day service for adults with disabilities by an independent authority such as HIQA rather than by the

⁷² See for example, regulation 8(3) and (4) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013); regulation 8(3), (4), and (5) of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulation 2013 (SI No 367 of 2013); section 32(2)(d) and (3) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006). See also Health Service Executive, *Incident Management Framework* (HSE 2018) and Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures* (HSE 2014).

HSE, the Article 16.3 requirement would also be met in respect of day services. In summary, the Commission's view is that Article 16.3 UNCRPD does not appear to require that a body such as the proposed Safeguarding Body, which would receive and respond to reports of actual or suspected abuse or neglect of at-risk adults, would need to be established independently of an organisation that funds facilities and programmes for persons with disabilities such as the HSE. This is because the Commission does not intend that the Safeguarding Body would have a monitoring role for the purposes of Article 16.3. This view has been formed on the basis of a literal interpretation of the wording of Article 16.3; and relevant concluding observations of the CRPD in the absence of CRPD guidance and is subject to further clarity being provided by any future guidance that may be published by the CRPD.

- [6.58] **Point (c)** above relates to whether the social work-led adult safeguarding services, which receive and respond to reports of actual or suspected harm of individual at-risk adults, must be subject to inspection by an independent regulator to satisfy the Article 16.3 requirement for effective monitoring by an independent authority. Such services would be established to serve at-risk adults, who include or may include some adults with disabilities, rather than to serve adults with disabilities specifically. Social work-led adult safeguarding services are currently provided by the HSE SPTs and the Commission proposes that such services would be provided by the Safeguarding Body. Section 5(c) below discusses independent standard-setting and inspection of social work-led adult safeguarding services.

(ii) *"Better regulation" principles*

- [6.59] Any regulatory reform should be informed by national policies on better regulation. Recent development of national policies on regulatory reform have been informed by a number of international reviews of regulatory reform in Ireland and the European Union's better regulation agenda.
- [6.60] In 2001, the Report on Regulatory Reform in Ireland was published by the Organisation for Economic Co-operation and Development (OECD). Following this, the Government published a white paper in 2004 entitled "Regulating Better".⁷³ The white paper set out six principles of good regulation, which originated from the OECD. The six principles are: necessity, effectiveness, proportionality, transparency, accountability, and consistency. The Government's commitment to the six principles was re-affirmed in its 2013 policy statement,

⁷³ Government of Ireland, *Regulating Better: A Government White Paper setting out six principles of Better Regulation* (Government of Ireland 2004) <<https://www.gov.ie/en/publication/2083d0-better-regulation-archive/>> accessed on 16 April 2024.

“Regulating for a Better Future”.⁷⁴ The Commission had regard to the “better regulation” principles when considering the most appropriate regulatory structures for adult safeguarding and particularly whether a new adult safeguarding regulator is necessary or whether additional regulatory powers could be effectively conferred on existing regulatory bodies.

(iii) National agency rationalisation policy

[6.61] The Government set out its guiding principles on agency rationalisation and reform in its 2014 Report on the Implementation of the Agency.⁷⁵ The principles are, in summary:

- (a) **Citizen focus:** proposals should respect and enhance the relationship between citizen and state;
- (b) **Policy formulation:** Government departments are, and should be, the primary locus of public policy formulation, evaluation and analysis;
- (c) **Clear democratic and/or cost benefit:** Restructuring bodies should have a clear benefit in terms of cost savings, service delivery benefits;
- (d) **Specialist bodies:** A separate body may be required if specialist skills are required or where independence in the performance of functions requires functional separation from government departments;
- (e) **Streamlining:** decisions should be cognisant of duplication, overlapping, similarities and potential synergies;
- (f) **Service sharing:** even where bodies should remain separate, the possibility of sharing services and or ‘back office’ functions, with either their parent department or other bodies should be explored;
- (g) **Agency life cycle:** ongoing review of existing agencies to assess if they are still required;
- (h) **Performance focus:** appropriate performance management and governance; and

⁷⁴ Government of Ireland, *Regulating for a Better Future: A Government Policy Statement on Sectoral Economic Regulation* (Government of Ireland 2013) <http://web.archive.org/web/20190208174434/https://www.taoiseach.gov.ie/eng/Publications/Publications_2013/Policy_Statement_on_Economic_Regulation_20131.pdf> accessed on 16 April 2024.

⁷⁵ Department of Public Expenditure and Reform, *A Report on the Implementation of the Agency Rationalisation Programme* (DPER 2014).

- (i) **Respect for staff interests:** A reference to commitments on staff redeployments and staff interests, as set out in public service agreements.⁷⁶

[6.62] The Commission considered the Government's agency rationalisation policy in examining the possible organisational and regulatory models for adult safeguarding.

4. A Safeguarding Body as a social work-led adult safeguarding agency

[6.63] Social work-led adult safeguarding services are currently provided by the HSE through the SPTs, as set out above. However, it is clear from consultees that there are significant issues arising from the lack of statutory powers for members of the SPTs; the lack of an organisation with a statutory function to safeguard at-risk adults; and the lack of statutory powers to allow social workers and other safeguarding officers to effectively safeguard adults. The HSE NSO itself has repeatedly stressed the need for primary legislation "to support and enhance the HSE's ability to respond to safeguarding concerns" and to strengthen the capacity and authority of agencies to safeguard at-risk adults.⁷⁷

[6.64] In the Commission's Issues Paper, the Commission discussed the factors that would need to be considered in determining the model for the establishment of a statutory adult safeguarding agency. These factors included the Government's commitment to agency rationalisation; efficiency in terms of the lead-in time required to establish a new agency; matters of governance and matters of principle including independence and avoidance or reduction of conflicts of interest; and resourcing. In the following subsections, the Commission outlines the proposed functions, powers and cross-sectoral remit of the Safeguarding Body before examining the various organisational structures through which the Safeguarding Body could be established.

[6.65] At the outset of this Chapter, the Commission outlined its conclusion that the Government is best placed to determine the appropriate structure for the Safeguarding Body, including whether it should be a new independent body. In this section, the Commission outlines the various organisational structures available and the extensive and competing policy considerations involved in determining which structure would be appropriate for the Safeguarding Body. The Commission concludes that such determinations are beyond the remit and expertise of the Commission, as they are not strictly law reform matters. However, the Commission hopes that outlining the various options in terms of

⁷⁶ Institute of Public Administration, *Discussion Paper – The establishment of Cosáint, the National Adult Safeguarding Authority* (IPA 2017) at page 3.

⁷⁷ Health Service Executive, *National Safeguarding Office Report* (HSE 2022) at pages 9 and 64.

organisational structures and the consultees' views on these would be of assistance to the Government's in considering the most appropriate structure for the Safeguarding Body. The governance models or organisational structures considered in this section are drawn from proposals by consultees and models examined in the report published by the IPA, as mentioned in the previous section. This section examines the establishment of the Safeguarding Body as a:

- statutory office within the HSE (section 4(c));
- statutory office within an existing agency other than the HSE (subsection 4(d));
- new independent statutory agency (subsection 4(e)); and
- statutory multi-agency structure or multi-agency partnership model (subsection 4(f)).

(a) Functions and powers

[6.66] The Commission discusses the proposed statutory functions and powers of the Safeguarding Body in Chapters 5, 9, 10, 11, 12, 13, 15 and 16. These include a primary statutory function to promote the health, safety and welfare of at-risk adults and duties to receive, and take actions to respond to, reports of actual or suspected harm of at-risk adults.

(b) Cross-sectoral remit of the Safeguarding Body

[6.67] Currently, the HSE's SPTs provide social work-led adult safeguarding services in accordance with the HSE's National Policy and Procedures.⁷⁸ The HSE's National Policy and Procedures applies only to HSE managed and funded older people's services and disability services, and to reports of actual or suspected harm of adults with disabilities or older people aged over 65 who are living in the community. The HSE's SPTs have no role in relation to reports of concerns arising in other HSE services including mental health and acute care sectors. The HSE's SPTs also have no role in respect of concerns arising in private health or social care facilities including private nursing homes. Practice in accepting reports from financial service providers varies across the HSE's SPTs.

[6.68] Consultees have spoken strongly about the need for a Safeguarding Body for adult safeguarding, which would have statutory functions to safeguard adults and make enquiries in response to reports of actual or suspected abuse or neglect, regardless of the service or sector in which a concern of abuse or neglect has arisen. Consultees submitted that the limited remit of the HSE SPTs has resulted in silos developing. The HSE SPTs are not trained or resourced to take on cases of

⁷⁸ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014).

financial abuse, so practice varies regionally. If the Safeguarding Body were to have a cross-sectoral remit, it would receive reports from centres for people experiencing homelessness, services providing accommodation to people in the international protection process and refuge accommodation for victims of domestic, sexual or gender-based violence. The Commission believes that it would be appropriate for the Safeguarding Body to have a cross-sectoral remit. This would allow the Safeguarding Body to exercise its functions, duties and powers across the three broadly-defined contexts set out below.

- [6.69] The Commission is of the view that reports or concerns of actual or suspected abuse or neglect of at-risk adults may arise in at least three broadly-defined contexts:
- a) In the context of health or social care services, such as disability services, older people services, mental health services, and acute and primary care settings.
 - b) Where adults are in receipt of services other than health or social care services, such as in the context of residential accommodation services for:
 - i. adults experiencing homelessness;
 - ii. adults in the international protection process;
 - iii. victims of domestic, sexual or gender-based violence; or
 - iv. the purposes of providing substance misuse services.
 - c) Where adults are not in receipt of health, social care or refuge services, such as in private dwellings, in the course of financial transactions or in sporting or other community organisations, including religious groups.
- [6.70] As discussed in Chapter 1, reports or concerns of actual or suspected abuse or neglect of adults who are believed to be at-risk adults may arise in settings other than those listed above, such as in prisons and other forms of custody, including being held in a Garda station or Garda vehicle. For the reasons discussed in Chapter 1, the Commission is of the view that safeguarding concerns arising in such contexts are appropriately dealt with under existing regulatory frameworks, with scope for cooperation with the Safeguarding Body where appropriate, such as where an at-risk adult is transitioning from that context or setting to the community.
- [6.71] This means that reports of actual or suspected harm of adults who are believed to be at-risk adults in prisons should continue to be addressed by the Irish Prison Service and the Office of the Inspector of Prisons. Reports of actual or suspected harm of adults who are believed to be at-risk adults in Garda custody should continue to be addressed by the Garda Síochána Ombudsman Commission

("GSOC"), and once it is established, the Office of the Police Ombudsman or Fiosrú.⁷⁹

[6.72] In summary, the Commission believes that the Safeguarding Body should have responsibility for receiving and responding to reports or allegations of actual or suspected abuse arising in all settings other than prisons and Garda custody – whether through directly receiving reports, making enquiries or responding to reports, or by advising on service-level assessments and responses relating to actual or suspected harm of at-risk adults. This is what the Commission means when it refers to the Safeguarding Body having "cross-sectoral" responsibility for adult safeguarding.

(c) The establishment of the Safeguarding Body within the HSE:

[6.73] The HSE has significant experience in providing social work-led adult safeguarding services, and in providing elder abuse services prior to the establishment of the HSE NSO and the SPTs. Formally establishing the Safeguarding Body within the HSE could involve providing a statutory basis for the NSO or establishing the Safeguarding Body as a new National Adult Safeguarding Office within the HSE in adult safeguarding legislation, in addition to providing for powers for authorised officers of the Safeguarding Body as established within the HSE. This would mean that members of the HSE SPTs would be "authorised officers" for the purposes of adult safeguarding legislation, and would be empowered to take the actions proposed throughout this Report where the relevant thresholds are met, such as exercising powers of entry and applying to court for removal and transfer orders and no-contact orders. This approach would involve a relatively low level of transition management, as the SPTs are already involved in adult safeguarding on a daily basis, albeit without a statutory basis for their work. The SPTs, as authorised officers, would be given additional powers, and a strengthened basis for their current work, with associated training and resourcing requirements but no structural upheaval or changes would be required.

(i) Arguments in support of the Safeguarding Body being established within the HSE

[6.74] Some consultees submitted arguments in support of the Safeguarding Body being established within the HSE. These arguments include the following:

⁷⁹ The legal name of the Ombudsman is Oifig an Ombudsman Póilíneachta. Section 170(1) of the Policing, Security and Community Safety Act 2024, which has not yet commenced at the time of writing, states that on and after the date of the coming into operation of section 170, the Garda Síochána Ombudsman Commission established by section 64 of the Garda Síochána Act 2005 shall continue in being and shall be known as Fiosrú – Oifig an Ombudsman Póilíneachta (the Office of the Police Ombudsman).

- (a) a reduced lead-in time for establishing the new statutory framework for safeguarding as the structures are already in place within the HSE;
- (b) the need for expertise and responsiveness;
- (c) the desirability of situating safeguarding services within a body that could also provide social care services such as home support services;
- (d) the avoidance of the likely disruption of moving the HSE's SPTs to another agency;
- (e) the avoidance of issues that might arise from the need for a new adult safeguarding agency to liaise and share information with the HSE; and
- (f) the economic cost would be lower as certain structures and administrative supports are already available within the HSE.

[6.75] The continued provision of social work-led safeguarding services by the HSE albeit with an extended remit would likely be the most economically advantageous option by a considerable margin, as existing structures, facilities and staff could remain in place. A possible advantage of situating the Safeguarding Body within the HSE is that it could provide social work-led adult safeguarding services alongside possibly easier cooperation with other functions of the HSE in terms of access to social care services such as home support services, which may be required to implement safeguarding plans.

[6.76] The Department of Children, Equality, Disability, Integration and Youth ("DCEDIY") and the Child and Family Agency ("CFA"), in their response to the Issues Paper,⁸⁰ suggested that the best way forward for adult safeguarding would be to build on the existing adult safeguarding structures. The consultees acknowledged that the HSE does not have any statutory functions relating to adult safeguarding. However, they submitted that the HSE's National Policy and Procedures notes that the Social Care Division of the HSE is committed to policy and practices, which promote the welfare of "vulnerable persons" and safeguard "vulnerable persons" from abuse. DCEDIY and the CFA stated that this commitment is amply demonstrated by the national-level and regional structures established by the

⁸⁰ In Chapter 1, the Commission stated that in most cases, the Commission cites specific submissions that it received from consultees only where those consultees published their response to the Commission's Issues Paper. This is where a consultee's response is publicly available, usually on the relevant consultee's website. However, the Commission has named the Department of Children, Equality, Disability, Integration and Youth and the Child and Family Agency in Chapter 6 to explain the views of a Government Department and statutory agency, which would be impacted by the proposed structure, particularly if the Safeguarding Body were to be established within the Child and Family Agency, as discussed below.

HSE as well as the investment in training of HSE staff and staff of funded services. The consultees suggested that the Department of Health could take the opportunity to place some or all of the HSE's adult safeguarding role on a statutory footing, which the consultees stated would seem entirely in keeping with the objective of the HSE, as set out in section 7 of the Health Act 2004, to "use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public".⁸¹ The two consultees noted that expanding the remit of the HSE's SPTs to encompass responsibility for receiving reports or allegations of harm of at-risk adults from services in any sector would necessarily involve a preparatory phase, including recruitment of additional staff. However, the two public bodies submitted that they are strongly of the view that this approach is far preferable to alternative structure options including the option of establishing functions for social work-led adult safeguarding services within the Child and Family Agency specifically, from the point of view of making best use of resources and also of ensuring a quality service for at-risk adults.

[6.77] The two consultees also highlighted that the majority of referrals regarding at-risk adults arise in the health and social care sector, and that the responses required very often involve the provision of health or social care services to at-risk adults. Establishing the Safeguarding Body within the HSE would allow the Safeguarding Body to effectively provide a multi-disciplinary response to adult safeguarding concerns, involving professionals such as public health nurses, occupational therapists, home care workers, and linking to clinical disability and mental health community services. The two consultees viewed this as a significant advantage of this model.

(ii) Arguments against the Safeguarding Body being established within the HSE

[6.78] Some consultees put forward arguments against the Safeguarding Body being established within the HSE. These include:

- (a) The importance of actual and perceived independence of functions and lack of conflicts of interest;
- (b) consultees' concerns about the existing culture of the HSE;⁸²

⁸¹ Section 7(1) of the Health Act 2004.

⁸² See, for example: Irish Association of Social Workers, *Adult Safeguarding Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at pages 13, 15 and 24 <<https://www.iasw.ie/download/1076/IASW%20Adult%20Safeguarding%20Position%20Paper%202022%20%282%29.pdf>> accessed 16 April 2024.

- (c) the need to provide a central contact point for adult safeguarding;⁸³
- (d) the need to allow for branding and easier awareness-building of the Safeguarding Body; and
- (e) the need for a cross-sectoral, societal approach to adult safeguarding, as some consultees believe that this would not be possible within the HSE, as discussed further below.

[6.79] In relation to actual or perceived conflicts of interest, there was considerable opposition from consultees to the establishment of a lead adult safeguarding agency (a "Safeguarding Body") within the HSE. As set out above, the HSE commissions and funds services under sections 38 and 39 of the Health Act 2004. Many stakeholders strongly submitted that the HSE acting as both a funder of services and the agency that receives and responds to reports of actual or suspected abuse or neglect of at-risk adults arising in those funded services poses conflict of interest issues. They argued that these issues should be addressed by conferring lead responsibility for safeguarding at-risk adults including responding to reports of actual or suspected abuse on another agency – either a new independent statutory agency or another existing statutory agency.

[6.80] The Irish Association of Social Workers (IASW) has stated that it disagrees with lead responsibility for adult safeguarding being held by the HSE.⁸⁴ It stated that from a governance perspective, "difficulties arise whereby an agency is both a provider and regulator of services creating the potential for a conflict of interest and competing loyalties".⁸⁵ It added:

Even with a radical restructuring, HSE-led safeguarding can be compromised in carrying out an oversight or investigative role on services they ultimately fund and are responsible for. The need for a separate body where independence in the performance of its functions is therefore deemed to be appropriate.⁸⁶

⁸³ Consultees raised similar points to a point made in a 2022 report by the Office of the Public Advocate in Victoria, Australia. The summary of the report's findings stated that the "array of regulators and services is complex and difficult to navigate" with no "central point" for concerns about abuse, neglect or exploitation. See: Office of the Public Advocate (Victoria), *Line of sight: Refocussing Victoria's adult safeguarding laws and practices* (2022) at page 9

⁸⁴ Irish Association of Social Workers, *IASW Response to Public Consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (IASW 2024) at page 6.

⁸⁵ Irish Association of Social Workers, *IASW Response to Public Consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (IASW 2024) at page 6.

⁸⁶ Irish Association of Social Workers, *IASW Response to Public Consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (IASW 2024) at page 6.

[6.81] However, some stakeholders submitted that any risk posed by the continued provision of social work-led adult safeguarding services by the HSE could be mitigated. The Department of Children, Equality, Disability, Integration and Youth provided an example of the commissioning of services by the Child and Family Agency under section 56 of the Child and Family Agency Act 2013. While the Child and Family Agency is the funder of services, its remit also requires it to investigate child protection or welfare referrals arising in services that it funds. Potential conflicts of interest are mitigated through the Child and Family Agency's policies and procedures and through HIQA's regulation of the Child and Family Agency's social care services including its child protection and welfare services. The ability of the Child and Family Agency to avoid conflicts of interest while having similar dual roles suggests that potential conflicts of interest arising from the HSE acting as the funder of services and the recipient of and respondent to reports arising in those services could be mitigated through policies and procedures and through regulation of the social work-led adult safeguarding services by an appropriate regulatory body such as HIQA or through a joint inspection model involving bodies such as HIQA and the Mental Health Commission.

(iii) The proposed cross-sectoral remit of the Safeguarding Body if established within the HSE

[6.82] As set out above, the HSE's National Policy and Procedures extends only to HSE managed or funded older people's services and disability services, and to reports or allegations of harm in respect of adults living in the community who have disabilities or are over the age of 65. The HSE's National Policy and Procedures is currently being revised, with plans to extend its scope, and the remit of the SPTs, to all HSE operated and funded health and social care services (in addition to concerns raised in relation to adults who are not in receipt of formal health or social care services).⁸⁷ Although a draft updated policy was published in 2019,⁸⁸ work on the development of a revised policy has not yet been completed, with the 2014 National Policy and Procedures remaining in place for the foreseeable future.⁸⁹

⁸⁷ HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (HSE June 2019) at page 16.

⁸⁸ HSE National Safeguarding Office, *Final Draft HSE Adult Safeguarding Policy* (HSE June 2019).

⁸⁹ Reilly, "New HSE adult safeguarding policy in stasis" *Medical Independent* (7 February 2022) <<https://www.medicalindependent.ie/in-the-news/latest-news/new-hse-adult-safeguarding-policy-in-stasis/>> accessed on 16 March 2024; Reilly, "Where next for adult safeguarding in the HSE?" *Medical Independent* (3 June 2022) <<https://www.medicalindependent.ie/in-the-news/news-features/where-next-for-adult-safeguarding-in-the-hse/>> accessed on 16 April 2024.

- [6.83] If the proposed revisions are implemented, the expansion of remit would improve the current position in relation to adult safeguarding in Ireland. However, it is possible that the remit of SPTs would remain limited to public and publicly-funded health and social care services. The Government’s Policy Proposals, prepared by the Department of Health, which propose a new Sectoral Adult Safeguarding Office, are intended to apply across public, voluntary and private health and social care services.⁹⁰ This would be an improvement for adult safeguarding but because these are sector-specific proposals, they would not apply beyond the health and social care sector.
- [6.84] There are varying views about whether it would be appropriate for the HSE to have responsibility for adult safeguarding beyond referrals from the health and social care sector and community referrals. Some consultees believe that because the HSE has responsibility for health and social care, its remit should therefore be confined to safeguarding concerns arising in the health and social care sector and community referrals. The Department of Health stated that assignment of a central role for adult safeguarding to the health sector would carry a number of substantial risks.⁹¹ However, some consultees expressed the view that adult safeguarding social work-led services are a form of social care and that the HSE could therefore have responsibility for adult safeguarding concerns arising in services outside of the health and social care sectors. Such services would include accommodation centres for people experiencing homelessness, accommodation centres for people in the international protection process and refuge accommodation services for victims of domestic, sexual or gender-based violence. This would be in line with the approach taken in some other jurisdictions where adult safeguarding responses are viewed as a form of adult social care and are the responsibility of the state entities that have responsibility for adult social care regardless of whether adults are in receipt of health or social care services.
- [6.85] The HSE’s National Service Plan 2024 states:

The safeguarding of adults at risk of abuse is a priority for the HSE. Since 2015, the National Safeguarding Office and regional Safeguarding Protection Teams have been in place, operating the 2014 policy – the HSE’s first Safeguarding Policy. At the time of its development, this policy was designed for operation in Social Care and so has an operational remit for older persons’ services and

⁹⁰ Government of Ireland, *Public Consultation – Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf#page=null>> accessed on 16 April 2024.

⁹¹ Department of Health, *Law Reform Commission Issues Paper – A Regulatory Framework for Adult Safeguarding: A Response from the Department of Health* (2020) at pages 20 to 21.

services for people with a disability as well as taking community referrals. **This is not enough; the HSE believe that safeguarding operations should be of benefit to all.**⁹² (emphasised added)

- [6.86] This statement of the view of the HSE that safeguarding operations should be of benefit to all does not indicate that they should only be of benefit to those in receipt of health or social care services or those living in the community who are not in receipt of any services. It does not exclude the possibility that the remit of the HSE SPTs could be extended to capture safeguarding referrals or reports from services other than health and social care services such as residential centres for people experiencing homelessness and residential centres for people in the international protection process. The Commission notes views expressed by the CEO of the HSE at a Safeguarding Ireland event in November 2023.⁹³ Having noted that the HSE SPTs deal with people who are not HSE-service users, the CEO stated that the HSE is the most appropriate agency to deal with adult safeguarding concerns, as the HSE has the greatest access to “vulnerable” people.⁹⁴ He added that the HSE must also accept responsibility for this and that until the HSE accepts this responsibility, its safeguarding efforts will “come up short”. The HSE National Service Plan 2024 and recently expressed views of the HSE CEO suggests that there are views that the HSE's safeguarding operations should benefit those who are not HSE service-users although it is unclear whether that broader remit could include receiving adult safeguarding referrals or reports from services and settings across all sectors.
- [6.87] The lack of a formal remit of the HSE SPTs in relation to financial abuse was an issue raised by many consultees. The proposed changes in the 2019 draft revised HSE National Policy and Procedures and the Government's Policy Proposals would not significantly strengthen powers in relation to financial abuse, one of the most common forms of abuse of at-risk adults.⁹⁵ Currently, the SPTs have no formal remit to receive and respond to reports or allegations of financial abuse. Anecdotally, the practice in respect of financial abuse cases differs regionally with some SPTs responding to cases of financial abuse including cooperation with regulated financial service providers. A cross-sectoral remit to respond to reports of all types of actual or suspected abuse could address gaps in relation to

⁹² Health Service Executive, *Our National Service Plan 2024* (2024), at pages 74 to 75 <<https://www.hse.ie/eng/services/publications/serviceplans/hse-national-service-plan-2024.pdf>> accessed on 16 April 2024.

⁹³ Speech by Mr Bernard Gloster, CEO of the Health Service Executive, at Safeguarding Ireland's National Adult Safeguarding Day event, 14 November 2023, ESB Head Office, Dublin 2.

⁹⁴ Speech by Mr Bernard Gloster, CEO of the Health Service Executive, at Safeguarding Ireland's National Adult Safeguarding Day event, 14 November 2023, ESB Head Office, Dublin 2.

⁹⁵ See Chapter 14 of this Report for discussion of financial abuse.

financial abuse where the criminal threshold has not been established, and a referral has not been taken on by the Garda Síochána.

- [6.88] There are potential advantages to one statutory agency having cross-sectoral responsibility for social work-led adult safeguarding services including screening reports of financial abuse to establish whether referrals might meet the criminal threshold and can be referred to the Garda Síochána. For example, where an at-risk adult experiences periods of homelessness and uses homeless services, the same statutory adult safeguarding agency would engage with them while they are living in residential accommodation in the community and during their periods of homelessness. This may assist with ensuring continuity in adult safeguarding supports, and with ensuring that people receive appropriate supports based on their needs rather than falling through the gaps as they transition to and from homelessness and between services. A statutory agency with a cross-sectoral remit could therefore prevent silos from developing and assist with appropriately safeguarding at-risk adults.
- [6.89] There remains a policy question about whether the Government believes that it would be appropriate for the HSE to have such a cross-sectoral remit, and that is a policy decision that would appropriately be made by the Government.

(iv) Conclusions on the establishment of the Safeguarding Body within the HSE

- [6.90] As stated above, the Commission is of the view that the decision as to the appropriate structure of the proposed Safeguarding Body is ultimately a matter for Government. However, through its work, the Commission has identified a number of arguments in support of establishing the Safeguarding Body within the HSE. These include a significantly reduced lead-in time, lower economic costs, and minimal disruption to existing structures. Establishing the Safeguarding Body within the HSE would allow it to utilise and build on existing procedures and expertise in adult safeguarding. There would also be benefits in minimising the number of agencies or bodies that are required to cooperate and share information, and having safeguarding services situated in a body that can provide other health and social care services through other Offices and Divisions of the HSE.
- [6.91] The Commission has also identified a number of arguments against establishing the Safeguarding Body within the HSE, as outlined above. Many consultees stressed these to the Commission throughout its consultations on this project. Actual or perceived conflicts of interest arising from establishing the Safeguarding Body within the HSE were of particular concern for consultees. However, such actual or perceived conflicts of interest may be somewhat mitigated by the Commission's recommendation, outlined below, that social work-led adult safeguarding services provided by the Safeguarding Body should be subject to statutory standard-setting and inspection by an independent regulator.

[6.92] The Commission believes that it is a matter for the Government to determine the organisational structure for the Safeguarding Body including whether the Safeguarding Body could appropriately be established within the HSE on a longer-term basis. The Government would be well placed to consider the need to mitigate any potential conflicts of interest and whether it would be appropriate for the Safeguarding Body, if established as a statutory office of the HSE, to have a cross-sectoral remit. However, the Commission is of the view that safeguarding practice needs to be improved with statutory powers for social work-led safeguarding services in the short term. The Commission believes that if the Government decides that it cannot, or should not, make a decision about the organisational structure of the Safeguarding Body in the short term, the establishment of the Safeguarding Body within the HSE on a statutory basis would be an appropriate interim approach. This would ensure that social work-led safeguarding services are given statutory underpinning in the short term while the Government is deciding whether to establish the Safeguarding Body as a new independent agency, within another existing statutory agency other than the HSE or within the HSE on a permanent basis. The Safeguarding Body could take the form of a statutory National Adult Safeguarding Office within the HSE, with statutory underpinning and conferral of all the powers recommended in this Report.

(d) Establishment of the Safeguarding Body within an existing agency other than the HSE

[6.93] The transfer of social work-led adult safeguarding services from the HSE to a new lead adult safeguarding agency (a "Safeguarding Body") to be established within another existing organisation, other than the HSE, was an option that received mixed views from consultees. Some consultees submitted that consideration would need to be given to alignment in the overall strategic priorities, vision and mission, and values of the proposed agency with those of the existing organisations. The organisations proposed were HIQA, the Mental Health Commission and the Child and Family Agency.

(i) HIQA

[6.94] There was significant opposition by consultees to the transfer of social work-led safeguarding services currently provided by the SPTs from the HSE to HIQA. This opposition was primarily motivated by the fact that HIQA is a services-only regulator with no remit to investigate safeguarding reports concerning individual persons or provide safeguarding supports to individuals who have been abused or neglected. As discussed below at section 5(c), the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023, once commenced, will provide HIQA's

Chief Inspector of Social Services with powers to review a specified incident.⁹⁶ However, these incidents are clinical in nature, and are not adult safeguarding-specific.

[6.95] Having had regard to consultees' views (including the views of HIQA), HIQA's regulatory remit and existing expertise, and the fact that HIQA does not provide social work or social care services or supports to individuals, the Commission does not believe that the Safeguarding Body should be established within HIQA. As stated above, the Commission does not consider that the Safeguarding Body should have regulatory functions. Instead, it proposes that the Safeguarding Body should be a social work-led provider of adult safeguarding services. The Commission is of the view that it is more appropriate to expand HIQA's existing regulatory role to include the regulation of social work-led adult safeguarding services provided by the Safeguarding Body, in a similar way to HIQA's regulation of the Child and Family Agency's services in relation to children, than to amalgamate this regulatory body with the proposed Safeguarding Body. The proposed inspection of social work-led adult safeguarding services by HIQA, or through a joint inspection model involving HIQA, is discussed in more detail below in section 5(c).

(ii) The Child and Family Agency

[6.96] As outlined above, the statutory functions of the Child and Family Agency include:

- (a) supporting and promoting the development, welfare and protection of children;⁹⁷
- (b) supporting and encouraging the effective functioning of families;⁹⁸ and
- (c) maintaining and developing support services, including support services in local communities.⁹⁹

[6.97] A very small number of consultees supported the establishment of a social work-led adult safeguarding agency within the Child and Family Agency. The Department of Health submitted that the Child and Family Agency should be considered as a possible appropriate home for the new adult safeguarding body.¹⁰⁰ The Department stated that the experience of the Child and Family

⁹⁶ Section 41A of the Health Act 2007 as inserted by section 68 of the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 (not yet commenced).

⁹⁷ Section 8(1)(b) of the Child and Family Agency Act 2013.

⁹⁸ Section 8(1)(c) of the Child and Family Agency Act 2013.

⁹⁹ Section 8(1)(d) of the Child and Family Agency Act 2013.

¹⁰⁰ Department of Health, *Law Reform Commission Issues Paper – A Regulatory Framework for Adult Safeguarding: A Response from the Department of Health* (2020) at pages 17 to 18.

Agency might be of particular relevance, and there may be scope for an expansion of its existing safeguarding functions and structure to cover at-risk adults as well as children.¹⁰¹ It added that the advantages of an expansion of the Child and Family Agency's functions would be that it already has the most similar function of any existing body, is the largest social care agency in the country, and has the requisite experience for its new role, which would reduce start-up costs and lead-in time.¹⁰²

- [6.98] However, many stakeholders expressed concerns about the transfer of social work-led adult safeguarding services to the Child and Family Agency, citing the historical reasons behind the quite recent establishment of the Child and Family Agency and the reluctance to dilute its existing functions and progress in child safeguarding. The Department of Children, Equality, Disability, Integration and Youth submitted that it strongly rejects that there is scope for an expansion of the Child and Family Agency's functions to encompass at-risk adults, as well as children. It stated that this proposal is incompatible with the existing remit of the Child and Family Agency and extends beyond the current scope and expertise of the Department of Children, Equality, Disability, Integration and Youth. It added that this approach would not result in a quality service for at-risk adults and that it is preferable to build on the existing structures already in place in adult safeguarding.

(iii) Mental Health Commission

- [6.99] There was some support among consultees for the transfer of social work-led adult safeguarding services to a reconstituted Mental Health Commission. While HIQA stated that its preference would be for the establishment of the Safeguarding Body as an independent agency, it stated that if cost implications were to preclude that, it would suggest that the amalgamation of the Safeguarding Body with the Mental Health Commission could be a viable option, subject to some changes to the current remit of the Mental Health Commission. HIQA gave several reasons in support of this view.¹⁰³
- [6.100] First, HIQA stated that guidelines in respect of the merger of public bodies emphasise the importance of synergies from a customer or service delivery perspective. It also referred to the suggestion that where there are similar or

¹⁰¹ Department of Health, *Law Reform Commission Issues Paper – A Regulatory Framework for Adult Safeguarding: A Response from the Department of Health* (2020) at pages 17 to 18.

¹⁰² Department of Health, *Law Reform Commission Issues Paper – A Regulatory Framework for Adult Safeguarding: A Response from the Department of Health* (2020) at pages 17 to 18.

¹⁰³ Health Information and Quality Authority, *Law Reform Commission Issues Paper 'A Regulatory Framework for Adult Safeguarding' - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30
<<https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf>> accessed on 16 April 2024.

complementary services or functions, or indeed overlap, a merger can be desirable. HIQA added that it believes that the Mental Health Commission, since the establishment of the Decision Support Service, has a similar or complementary function to what is envisaged in a proposed national adult safeguarding agency.¹⁰⁴

- [6.101] Second, HIQA submitted that legislative reform in this area is likely to require consistency in the use of terms and interrelated provisions in adult safeguarding legislation and the Assisted-Decision Making (Capacity) Act 2015, particularly relating to capacity. HIQA stated that this further illustrates the parallel work of the Decision Support Service and that envisaged by a national adult safeguarding agency.¹⁰⁵
- [6.102] Third, HIQA stated that it is clear that the values and principles underpinning the work of the Decision Support Service are similar to those envisaged in the statutory framework for adult safeguarding— for example, human rights, empowerment, protection, prevention and proportionality. HIQA added that this would give rise to a natural synergy between the work of the Decision Support Service and the work of a national adult safeguarding agency.¹⁰⁶
- [6.103] HIQA added that it does not believe that the expansion of the Mental Health Commission’s functions in recent years should deter or be a reason for not further extending its remit to include the functions envisaged for a proposed national adult safeguarding agency.¹⁰⁷
- [6.104] HIQA’s submission also stated that HIQA recognises that extending the Mental Health Commission’s remit to include adult safeguarding may give rise to a tension or conflict with the work of the Office of the Inspector of Mental Health Services.¹⁰⁸ HIQA expressed its support for the Government’s report on the agency rationalisation process and its belief that consideration should be given to streamlining or rationalising the regulation and inspection of certain services for

¹⁰⁴ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

¹⁰⁵ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

¹⁰⁶ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

¹⁰⁷ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

¹⁰⁸ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

“vulnerable groups” in Ireland.¹⁰⁹ It stated that this would involve establishing the functions of the Office of the Inspector of Mental Health Services within HIQA.¹¹⁰ HIQA added that it acknowledges this merger would be an ambitious exercise; it would require legislative reform and give rise to several operational and governance considerations, amongst others. However, it submitted that an effective inspection framework is already in place within HIQA, which includes the Chief Inspector of Social Services, and this would reduce the challenges that would be faced by HIQA and the Mental Health Commission.¹¹¹

- [6.105] HIQA concluded that if this option were to be chosen, merging or restructuring these two regulators would have a clear and demonstrable benefit in terms of delivering greater democratic control over the regulation and inspection of certain types of services for “vulnerable groups” in Ireland and would lead to improved service delivery.¹¹²
- [6.106] However, consultees were not in agreement on this proposed restructuring of HIQA and the Mental Health Commission with strong differences in views on whether the functions of the Office of the Inspector of Mental Health Services could appropriately be situated within HIQA. There was a strong alternate view that significant progress has been made in mental health services since the establishment of the Mental Health Commission and that relocating the functions of the Office of the Inspector of Mental Health Services to HIQA would undermine that progress. It was emphasised by a consultee that mental health services are different to health services and social care services, and that establishing the functions of the Office of the Inspector of Mental Health Services within HIQA would be a disruptive and backward step.

(iv) Conclusions on establishment of the Safeguarding Body within an existing agency other than the HSE

- [6.107] The Commission does not believe that the Safeguarding Body should be established within HIQA, for the reasons set out above at section 4(d)(i). Rather, the Commission is of the view that the Safeguarding Body should be established

¹⁰⁹ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

¹¹⁰ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

¹¹¹ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

¹¹² Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority* (HIQA 2020) at pages 29 to 30.

as an independent statutory body or within another existing statutory body although the Commission believes that it would be most appropriate for the Government to determine the organisational structure of the Safeguarding Body.

[6.108] Similarly, whilst the Commission recognises the potential benefits of establishing the Safeguarding Body within the Child and Family Agency, it is persuaded by the arguments against doing so, as stressed by consultees and set out above at section 4(d)(ii). For example, consultees warned against diluting the Child and Family Agency's existing functions and progress in child safeguarding. While the Commission is not recommending the establishment of the Safeguarding Body within the Child and Family Agency, the Commission believes that if the Government decides to enact comprehensive child and adult social care legislation in the future, it should consider transferring social work-led adult safeguarding services to a new statutory whole-of-life social work or social care agency.

[6.109] The Commission understands that there could be safeguarding benefits to the following functions being established as separate offices of the same organisation:

- (a) the functions of the Office of the Director of the Decision Support Service;
- (b) the functions of the mental health tribunals;
- (c) the functions of a proposed Safeguarding Body to receive and respond to reports of actual or suspected abuse or neglect of individual at-risk adults; and
- (d) any tribunal type body with responsibility for assessing and approving longer term detentions of individual adults in designated health or social care facilities, which may be introduced in the future under the Government's proposed Health (Protection of Liberty Safeguards) Bill.

[6.110] Locating the offices with responsibility for the above functions within the same organisation could facilitate effective cooperation including information sharing between these offices in relation to safeguarding individual at-risk adults, where appropriate. However, this could involve the establishment of the Safeguarding Body within a reconstituted and renamed Mental Health Commission. There are strong differences in views among consultees about whether such a reconstitution would be appropriate. Such a reconstitution would involve policy considerations that are outside of the scope of this Report. The Commission's view is that the Government would be best placed to determine whether this option would be viable considering the complex policy considerations involved.

(e) Establishment of a new independent Safeguarding Body

[6.111] There was considerable support amongst consultees for the establishment of a new lead adult safeguarding agency (a "Safeguarding Body"), which would have

responsibility for receiving, and responding to, reports of suspected abuse or neglect arising in all settings in addition to other functions including research and data collection, education and training and public awareness.

- [6.112] On a practical level, this would likely involve the transfer of the HSE's SPTs from the HSE to a new independent safeguarding agency. Whilst the SPTs could, in theory, remain operational in the HSE alongside an independent Safeguarding Body, there are currently insufficient numbers of social workers to staff both the SPTs and the new independent agency. There are existing issues with the levels of staffing and resources across the HSE's SPTs,¹¹³ which would be significantly exacerbated by the attempted operation of the HSE SPTs and the Safeguarding Body concurrently. The staff of the Safeguarding Body would also need to have appropriate adult safeguarding experience, and the most relevantly experienced staff are currently based within the HSE. Consultees also noted that the roles of the existing SPTs within the HSE and the Safeguarding Body would overlap significantly, which could lead to confusion and duplication, rather than clarity and effective safeguarding practice. For these reasons, as the proposed Safeguarding Body would have a role to receive and respond to reports of actual or suspected abuse or neglect, it is possible that the establishment of a new independent Safeguarding Body would necessitate the transfer of the HSE's SPTs to the new Body, to act as its authorised officers under adult safeguarding legislation. The proposed cross-sectoral remit of the Safeguarding Body would include the community and services referrals captured by the current remit of the HSE SPTs and the intended remit of the Regional Adult Safeguarding and Protection Teams when the ongoing restructuring of the HSE has been completed.¹¹⁴

(i) Advantages of establishing the Safeguarding Body as a new independent agency

- [6.113] There was considerable support amongst consultees for the establishment of the Safeguarding Body as a new independent agency. Consultees submitted that the benefits of establishing the Safeguarding Body as an independent agency are that it would:

¹¹³ Reilly, "Where next for adult safeguarding in the HSE?" *Medical Independent* (3 June 2022) <<https://www.medicalindependent.ie/in-the-news/news-features/where-next-for-adult-safeguarding-in-the-hse/>> accessed on 16 April 2024.

¹¹⁴ As discussed in the Background section of this Report, the restructuring of the HSE began on the 1 March 2024 when the transition from Community Health Organisations to six new healthcare regions began. Community Health Organisations will be stood down in September 2024. See Health Service Executive, Regional Executive Officers for the 6 HSE Health Regions appointed <https://healthservice.hse.ie/staff/news/staff-news-listing-page/regional-executive-officers-for-the-6-hse-health-regions-appointed/> accessed 16 April 2024.

- (a) provide clarity for agencies, organisations and service providers as to the Safeguarding Body, its role and its existence as the central contact point for adult safeguarding;
- (b) ensure independence, expertise and responsiveness;
- (c) allow for a positive culture to develop and become embedded in the organisation;
- (d) allow for branding and easier awareness-building of the organisation;
- (e) allow for a cross-sectoral, societal approach to adult safeguarding to be adopted, which may not be possible within an existing sectoral statutory agency, as noted above;
- (f) be autonomous and independent in the exercise of its functions and powers;
- (g) avoid any conflicts of interest; and
- (h) allow for more coherent, straightforward processes for adult safeguarding.

(ii) Disadvantages of establishing the Safeguarding Body as an independent agency

[6.114] There was very little opposition among consultees to the establishment of a new independent adult safeguarding agency. The arguments against the establishment of the Safeguarding Body as an independent agency are:

- (a) increased lead-in time;
- (b) the likely disruption of moving the HSE's SPTs/Regional Adult Safeguarding and Protection Teams to a new agency;
- (c) the issues that might arise from the need for a new Safeguarding Body to liaise and share information with the HSE;
- (d) greater difficulty in linking up with services and the possible lack of integrated service delivery; and
- (e) possible cost implications.

[6.115] Establishing the Safeguarding Body as an independent agency and transferring the social work-led adult safeguarding services from the HSE to the new agency would have significant administrative and logistical implications, including the

secure migration of all existing data and information from the HSE to the new agency. This could take a long time.¹¹⁵

- [6.116] Concerns about the ability of an independent agency to link up services, and ensure integrated service delivery, have similarly arisen in the context of children’s services, particularly services for children with disabilities. The Child and Family Agency and the HSE have a Memorandum of Understanding, and an updated Joint Protocol for Interagency Collaboration which was implemented in 2020, to facilitate joint working and service delivery in this context.¹¹⁶ However, the Office of Children’s Ombudsman has identified that coordination between the two bodies remains an issue, and has highlighted the role of Government in effectively facilitating joint working.¹¹⁷ Others have stressed the need for consistent implementation of the Joint Protocol, along with a strengthened culture of collaboration, and effective communication and information-sharing between the Child and Family Agency and the HSE.¹¹⁸

¹¹⁵ This is evidenced by the time taken to migrate the Child and Family Agency’s data away from the HSE. See McQuinn, “Tusla in push to move data from HSE systems after cyberattack” *Irish Times* (12 June 2021) <<https://www.irishtimes.com/news/social-affairs/tusla-in-push-to-move-data-from-hse-systems-after-cyberattack-1.4592012>> accessed on 16 April 2024.

¹¹⁶ Health Service Executive and Child and Family Agency, *Joint Protocol for Interagency Collaboration Between the Health Service Executive and Tusla – Child and Family Agency to Promote the Best Interests of Children and Families* (HSE and CFA 2020) <<https://www.hse.ie/eng/services/list/4/disability/progressing-disability/pds-programme/documents/hse-tusla-2020-joint-protocol-for-interagency-collaboration-between-the-hse-and-tusla.pdf>> accessed on 16 April 2024. A joint protocol was in place before this, but issues around interagency working still arose – see Inclusion Ireland, *Submission to the Department of Children and Youth Affairs on the review of the Child Care Act 1991* (Inclusion Ireland 2018) at section 3.3 and Devaney, Kealy, Canavan and McGregor, *A review of international experiences in relation to the implementation of a statutory duty for interagency collaboration to ensure the protection and welfare of children* (2021) UNESCO Child and Family Research Centre, National University of Ireland Galway at pages 6 to 7.

¹¹⁷ Office of Children’s Ombudsman, *Unmet Needs: A report by the Ombudsman for Children’s Office on the challenges faced by children in Ireland who require an assessment of their needs* (Office of Children’s Ombudsman 2020) <https://www.oco.ie/app/uploads/2020/10/15438_OCO_Assessmnet_of_Need_Report_Interactive.pdf> accessed 16 April 2024.

¹¹⁸ Health Information and Quality Authority and Mental Health Commission, *Key considerations to inform the National Policy Framework for Children and Young People 2023-2028* (HIQA and MHC 2023) at pages 7 to 8 <<https://www.hiqa.ie/sites/default/files/2023-06/Key-considerations-to-inform-the-National-Policy-Framework-for-Children-and-Young-People-2023-2028.pdf>> accessed on 16 April 2024; RTÉ, “13 children in acute hospitals ‘beyond medical need’, HSE confirms” *RTÉ* (30 January 2024) <<https://www.rte.ie/news/ireland/2024/0120/1427694-jack-chambers-hse-tusla/>> accessed on 16 April 2024; *Y and X v The HSE* [2021] IEHC 803.

(iii) Conclusions on establishing the Safeguarding Body as an independent agency

- [6.117] While establishing the Safeguarding Body as an independent agency and transferring the social work-led adult safeguarding services from the HSE to a new agency would be costly and would take time, it would alleviate any concerns about actual or perceived conflicts of interest arising from the HSE acting as the both the funder of services and the recipient of and respondent to reports of actual or suspected abuse or neglect arising in those services.
- [6.118] In relation to integrated service delivery, the Safeguarding Body could draw on the experience of the Child and Family Agency's work with the HSE, for example to:
- (a) develop a formal protocol for joint working that clarifies respective roles and responsibilities;
 - (b) ensure the consistent implementation of such a protocol;
 - (c) learn from findings of bodies including HIQA, the Mental Health Commission and the Ombudsman for Children's Office in relation to inter-agency cooperation between the Child and Family Agency and the HSE;¹¹⁹ and
 - (d) develop a strong culture of collaboration between the Safeguarding Body and the HSE.
- [6.119] This would allow an independent Safeguarding Body to work closely with the HSE to facilitate the provision of services to at-risk adults. Concerns in this area would also be mitigated by the implementation of the Commission's recommendations regarding information-sharing,¹²⁰ multi-agency cooperation on a statutory basis,¹²¹ and a whole-of-Government approach to adult safeguarding.¹²² All of these recommendations are designed to ensure effective linkage across services and bodies, and to avoid silos and gaps arising.
- [6.120] It is worth noting that additional legal reforms would be needed if the Safeguarding Body were to be established as an independent organisation. For example, if a new independent statutory body were to have responsibility for adult safeguarding, the introduction of a legislative amendment would be required to prescribe the new agency as a scheduled organisation for the

¹¹⁹ Health Information and Quality Authority and Mental Health Commission, *Key considerations to inform the National Policy Framework for Children and Young People 2023-2028* (HIQA and MHC 2023) at pages 7 to 8; Office of Children's Ombudsman, *Unmet Needs: A report by the Ombudsman for Children's Office on the challenges faced by children in Ireland who require an assessment of their needs* (Office of Children's Ombudsman 2020).

¹²⁰ See Chapter 16 of this Report.

¹²¹ See Chapter 15 of this Report.

¹²² See Chapter 20 of this Report.

purposes of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016. However, such a reform would be a routine matter and would not act as a bar to establishing the Safeguarding Body as an independent agency.

- [6.121] The Commission is of the view, having carefully considered consultees' views and the arguments as set out above, that establishing the Safeguarding Body as a new independent agency could be a viable option for the organisational structure of the Safeguarding Body. However, it remains of the view that the decision as to such establishment is a matter for Government, having regard to the range of competing policy considerations involved.

(f) Establishing a multi-agency safeguarding structure or safeguarding partnership model

- [6.122] A small number of consultees suggested that relevant statutory agencies could work together to use their respective powers and expertise to respond to reports of actual or suspected harm of at-risk adults. Such a model could involve the establishment of a multi-agency structure or a multi-agency partnership model through formal agreement by the relevant agencies. Such a multi-agency model could involve cooperation between bodies such as the Garda Síochána, HSE, HIQA, the Mental Health Commission and the Department of Social Protection through a multi-agency approach such as the existing partnership model between the Garda Síochána and the Department of Social Protection. As set out in section 2(a), relevant agencies work together in partnerships in Scotland to receive and respond to reports of actual or suspected adult protection concerns. These partnerships are known as adult support and protection partnerships (ASP partnerships). The core partners in each local partnership are the local authority, Police Scotland and the relevant Health Board, and can also include Adult Protection Committees (APCs), voluntary organisations, the Fire and Rescue Service and local Trading Standards offices.¹²³ The ASP partnerships share expertise, skills and powers to determine if reports of actual or suspected harm need to be investigated and to decide if any actions are required to protect, support, involve and consult at-risk adults, and to be responsible and accountable for the implementation of these actions.¹²⁴ These ASP partnerships are inspected through a joint inspection model.¹²⁵

¹²³ Care Inspectorate, Healthcare Improvement Scotland and HM Inspectorate of Constabulary in Scotland, *Definition of Adult Protection Partnership* <https://www.careinspectorate.com/images/Adult_Support_and_Protection/New_links/1_Definition_of_adult_protection_partnership.pdf> accessed on 16 April 2024

¹²⁴ Care Inspectorate, Healthcare Improvement Scotland and HM Inspectorate of Constabulary in Scotland, *Definition of Adult Protection Partnership*.

¹²⁵ Care Inspectorate (Scotland), *Joint Inspections of adult support and protection* <<https://www.careinspectorate.com/index.php/strategic-scrutiny-and->

(i) Advantages of a multi-agency safeguarding structure or partnership model

- [6.123] The advantages of a multi-agency structure or partnership model would be:
- (a) staff from various agencies such as the HSE, HIQA, the Mental Health Commission, the Garda Síochána and the Department of Social Protection would have range of knowledge, expertise and skills;
 - (b) it could more effectively facilitate inter-agency cooperation due to the formal involvement of relevant statutory agencies; and
 - (c) it would not require the establishment of a new statutory body, as it could be established as a structure within an existing statutory agency involving the secondment of staff from the other relevant agencies or a partnership model could be established.

(ii) Disadvantages of a multi-agency safeguarding structure or partnership model

- [6.124] Possible disadvantages of establishing a multi-agency safeguarding structure or partnership model involving staff from various agencies including the HSE, the Garda Síochána and the Department of Social Protection would be that:
- (a) it may be complex to establish, as multiple Government departments have policy responsibility for the agencies involved; and
 - (b) such a multi-agency structure or partnership model could take some time to be established. As noted in the Issues Paper, issues that arise in relation to information sharing, and the related area of cooperation and collaboration between bodies, may need to be addressed through arrangements such as memoranda of understanding (“MoUs”), inter-agency protocols or through the enactment of primary or secondary legislation.¹²⁶

(iii) Conclusions on the establishment of a multi-agency safeguarding structure or multi-agency partnership model

- [6.125] While there would be clear advantages to the establishment of a multi-agency safeguarding structure or partnership model in terms of facilitating multi-agency cooperation and integrated safeguarding responses, the Commission believes

[assurance/inspections-overview/9-professional/6643-joint-inspections-of-adult-support-and-protection-ssaa](#)> accessed on 16 April 2024.

¹²⁶ Law Reform Commission, *Issues Paper on A Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019) at para 10.27.

that the establishment of a multi-agency structure or multi-agency partnership model is ultimately a matter for the Government to determine.

- [6.126] While the Commission is not making a recommendation on the establishment of a multi-agency structure or multi-agency partnership model, it recognises the value of effective multi-agency cooperation. The Commission believes that cooperation could be improved by the effective implementation of its recommendations on multi-agency cooperation in Chapter 15.

5. Adult safeguarding regulatory functions

- [6.127] Some consultees expressed support for the establishment of an adult safeguarding regulatory body which would oversee the services provided by the HSE's SPTs or the Safeguarding Body, if not the HSE, among other functions.
- [6.128] There were differing views among stakeholders about whether such a regulatory body is required and whether such a regulator should be established within an existing body or as a new independent regulatory body. There was support among stakeholders for a regulatory body to be established as a new independent body. There was support among a small number of consultees for the body to be multi-agency in nature. It was suggested that this could involve the independent body having a board comprised of representatives of relevant organisations including the Garda Síochána, HIQA, the Mental Health Commission and advocacy bodies, among others.
- [6.129] The Commission does not believe that there is a need for one specific adult safeguarding regulatory body. The Commission believes that additional functions could instead be conferred on existing regulatory bodies. As noted above, the Commission believes that the Safeguarding Body should not have regulatory functions. In this section, the Commission discusses its rationale for this belief, including that this could prevent duplication or overlap of work with existing regulatory bodies.

(a) Functions and powers

- [6.130] Some consultees stated that there is a need for a designated adult safeguarding regulatory body to have responsibility for the following:
- (a) setting standards for adult safeguarding to apply across sectors;
 - (b) regulation of social work-led adult safeguarding services provided by the HSE;
 - (c) conducting serious incident reviews where an at-risk adult has died or has been seriously injured in circumstances of suspected abuse or neglect;
 - (d) receiving complaints about the HSE's SPTs or other organisations with a responsibility to safeguard at-risk adults;

- (e) coordination of the relevant regulatory powers of existing organisations including HIQA, the Mental Health Commission and the Central Bank; and
- (f) powers to direct the HSE and other statutory and non-statutory bodies to take actions, which were not always specified, to safeguard at-risk adults.

[6.131] This section:

- (a) discusses the above regulatory and oversight functions; identifies those functions that are already fulfilled by existing regulatory bodies; and
- (b) identifies those regulatory functions that the Commission believes could be conferred as additional functions of existing regulatory bodies.

(b) Setting standards for adult safeguarding to apply across sectors

[6.132] Regulators in the health and social care sector such as HIQA and the Mental Health Commission have functions to set standards for the services they regulate. In terms of existing and new regulators outside the health and social care sector, the Domestic, Sexual and Gender-Based Violence Agency (“DSGBV Agency”) (“Cuan”), and the soon-to-be-established Policing and Community Safety Authority, will both have standard setting functions as part of their legislative remit.¹²⁷ The Central Bank of Ireland also sets standards through its Consumer Protection Code.¹²⁸

[6.133] One of HIQA’s statutory functions includes setting standards on safety and quality for health and social services, including services provided by the HSE, the Child and Family Agency and providers of older people and disability services.¹²⁹ It develops person-centred standards, based on evidence and international best practice.¹³⁰ HIQA has developed a number of national standards for health and social care services which set “high-level outcomes that describe how services can achieve safe, quality, person-centred care and support”.¹³¹ They aim to promote quality improvements in health and social care services, set expectations on what

¹²⁷ Section 6(1)(c)(d) and (e) of the Domestic, Sexual and Gender-Based Violence Agency Act 2023 and section 122(2)(i), (n)(i) of the Policing, Security and Community Safety Act 2024.

¹²⁸ Section 117 of the Central Bank Act 1989. Section 3.1 of the CPC provides that “where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate [them] in [their] dealings with the regulated entity”. See the overview of the remit of the Central Bank in the Background section of this Report.

¹²⁹ Section 8(1)(b) of the Health Act 2007.

¹³⁰ Health and Information Quality Authority, *Health and Social Care Standards Strategy 2022-2024* (HIQA 2022) at page 2.

¹³¹ Health and Information Quality Authority, *Health and Social Care Standards Strategy 2022-2024* (HIQA 2022) at page 3.

high quality care should look like and enable services to measure their performance against the standards and identify areas for improvement.¹³² These national standards include, among others, the:

- (a) National Standards for Residential Care Settings for Older People in Ireland;¹³³
- (b) National Standards for Residential Services for Children and Adults with Disabilities;¹³⁴
- (c) National Standards for Children’s Residential Centres;¹³⁵
- (d) National Standards for Special Care Units;¹³⁶ and
- (e) National Standards for the Protection and Welfare of Children;¹³⁷

[6.134] As noted throughout this report, the regulations for residential centres for older people and people with disabilities already contain regulations related to adult safeguarding.¹³⁸ For example, there are requirements on such residential centres to:

- (a) protect residents from all forms of abuse;
- (b) investigate incidents, allegations or suspicions of abuse and take appropriate action; and
- (c) ensure staff have training to safeguard residents and prevent, detect and respond to abuse;¹³⁹

[6.135] The existing roles of HIQA and its Chief Inspector of Social Services relate to inspecting specific types of services to ascertain compliance with care and support regulations and national standards. A core aspect of this work is

¹³² Health and Information Quality Authority, *Health and Social Care Standards Strategy 2022-2024* (HIQA 2022) at page 3.

¹³³ Health Information and Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016).

¹³⁴ Health Information and Quality Authority, *National Standards for Residential Services for Children and Adults with Disabilities* (HIQA 2013).

¹³⁵ Health Information and Quality Authority, *National Standards for Children’s Residential Centres* (HIQA 2018).

¹³⁶ Health Information Quality Authority, *National Standards for Special Care Units* (HIQA 2015).

¹³⁷ Health Information Quality Authority, *National Standards for the Protection and Welfare of Children* (HIQA 2012).

¹³⁸ See Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013); Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

¹³⁹ See in particular regulation 8 of Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013) and regulation 8 of Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013)

assessing the provision of care and support to adults who may be at-risk adults, a necessary part of which is adult safeguarding. If a separate regulator was to set standards for adult safeguarding in services regulated by HIQA, there would likely be an overlap of functions and duplication.

- [6.136] The Mental Health Commission's principal statutory function is to "promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services".¹⁴⁰ It is also empowered to make rules governing certain practices in mental health services, such as the use of bodily restraint and seclusion and electro-convulsive therapy.¹⁴¹ It has published Codes of Practice that detail best practice in particular areas including the admission, transfer and discharge to and from approved centres, and the use of physical restraint.¹⁴² The regulation on approved centres under the Mental Health Act 2001 requires registered proprietors to have arrangements in place in their risk management policy to protect children and "vulnerable" adults from abuse, and to identify, record, investigate and learn from incidents.¹⁴³
- [6.137] HIQA and the Mental Health Commission collaborated to produce the existing National Standards for Adult Safeguarding which aim to "promote a consistent approach to preventing and responding to harm".¹⁴⁴ Notably, HIQA and the Mental Health Commission state that the National Standards "support the development of a culture where safeguarding is embedded into practice rather than being viewed as a separate activity".¹⁴⁵ This supports the view that safeguarding is a fundamental component of the safe provision of care and support, and therefore, it would be unwise to extract safeguarding functions from the functions of existing regulators in the health and social care sector. It is also relevant to note that the Government's Policy Proposals on Adult Safeguarding in

¹⁴⁰ See section 33(1) and (2) of the Mental Health Act 2001.

¹⁴¹ Section 59(2) and section 69(2) of the Mental Health Act 2001; Mental Health Commission, *Rules Governing the Use of Electro-Convulsive Therapy* (MHC 2016); Mental Health Commission, *Rules Governing the Use of Seclusion* (MHC 2022); Mental Health Commission, *Rules Governing the Use of Mechanical Means of Bodily Restraint* (MHC 2022).

¹⁴² Mental Health Commission, *Code of Practice on Admission, Transfer and Discharge to and from an Approved Centre* (MHC 2009); Mental Health Commission, *Code of Practice on the Use of Physical Restraint* (MHC 2022).

¹⁴³ Regulation 32(2)(d) and (f) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006).

¹⁴⁴ Health Information and Quality Authority, Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019). HIQA and the Mental Health Commission also jointly produced the National Standards for the Conduct of Reviews of Patient Safety Incidents, and the National Standards for Care and Support of Children using Health and Social Care Services.

¹⁴⁵ Health Information and Quality Authority, Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA, MHC 2019) at page 29 <<https://www.hiqa.ie/reports-and-publications/standard/national-standards-adult-safeguarding>> accessed 29 March 2024.

the Health and Social Care Sector,¹⁴⁶ which the Department of Health recently consulted on, suggest that HIQA and the Mental Health Commission will “continue to be responsible for setting safeguarding and care quality standards” and “monitor compliance by regulated health and social care services with relevant regulations, and standards, including any new regulatory provisions arising from these policy proposals”.¹⁴⁷

- [6.138] The Commission believes that existing regulators in the health and social care sector have the relevant expertise on how adult safeguarding concerns arise in the services it regulates and monitors, and the necessary subject knowledge to be able to set clear expectations about best practices for adult safeguarding within these services. The same can be said for the Central Bank, and newly established or soon to be established regulators. It would not be desirable or efficient to remove standard setting functions in relation to adult safeguarding from sector specific regulators and bestow them on a new overarching regulator who would set adult safeguarding standards across all sectors, including those outside the health and social care sector. Doing so would create an overlap in regulatory functions, and result in duplication and potentially conflict among regulators on adult safeguarding issues within each service. While doing so may result in more consistency in terms of adult safeguarding standards across sectors, the Commission believes that it is preferable to eliminate duplication and fragmentation where possible to prevent too many regulators operating in the same space. In Chapter 7, the Commission recommends that existing regulatory bodies should be conferred with additional regulatory functions to monitor compliance with proposed adult safeguarding duties on providers of relevant services.

(c) Regulation of social work-led adult safeguarding services

(i) Current practice: social work-led adult safeguarding services in Ireland

- [6.139] The HSE’s SPTs are situated within each of the HSE’s Community Health Organisations¹⁴⁸ and provide Ireland’s dedicated social work-led adult

¹⁴⁶ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024).

¹⁴⁷ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 16.

¹⁴⁸ As discussed in the Background section to this Report, the restructuring of the HSE began on the 1 March 2024 when the transition from Community Health Organisations to six new healthcare regions began. Community Health Organisations will be stood down in September 2024. See Health Service Executive, Regional Executive Officers for the 6 HSE Health Regions appointed <https://healthservice.hse.ie/staff/news/staff-news-listing-page/regional-executive-officers-for-the-6-hse-health-regions-appointed/> accessed 9 April 2024.

safeguarding services. The HSE's SPTs operate according to the HSE's National Policy and Procedures,¹⁴⁹ but have no specific statutory basis. While the individual social workers who are members of the HSE's SPTs are subject to registration and professional regulation by the Health and Social Care Professionals Council ("CORU"), the social work-led adult safeguarding services provided by the SPTs are unregulated.

- [6.140] The lack of regulation of the services means that the only standards that are set for those services are internal standards set by the HSE itself. There is no independent monitoring of the services to assess safety and quality of the services and compliance with any relevant standards. There is no opportunity for SPTs to learn from, or be reassured by, independent inspection reports, which could serve to identify areas of good practice and highlight areas for improvement.

(ii) Regulation of child social care services in Ireland

- [6.141] In comparison, part of HIQA's remit is to promote safety and quality in some of the children's social care services in Ireland. HIQA's statutory functions include setting standards on safety and quality in relation to services provided by the Child and Family Agency in accordance with the Child Care Acts 1991 to 2013,¹⁵⁰ monitoring compliance with those standards and advising the relevant Government Ministers and the Child and Family Agency accordingly.¹⁵¹ HIQA may also undertake an investigation as to the safety, quality and standards of services in specified circumstances.¹⁵²
- [6.142] In fulfilling its functions, HIQA sets standards for, and inspects, some of the social care services that children access to determine if they are meeting national standards. HIQA inspects residential care centres run by the Child and Family Agency, special care units, foster care services as well as the children's detention campus. HIQA also inspects the Child and Family Agency's child protection and welfare services to measure their compliance with the relevant national standards¹⁵³ and national guidance.¹⁵⁴ Families who use child protection services often need support to make sure that children can be kept safe. HIQA visits child protection services to check if families are given the support that they need. As

¹⁴⁹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014).

¹⁵⁰ Section 8(1)(b)(i) of the Health Act 2007.

¹⁵¹ Section 8(1)(c) of the Health Act 2007.

¹⁵² Section 9(1) of the Health Act 2007.

¹⁵³ Health Information and Quality Authority, *National Standards for the Protection and Welfare of Children* (HIQA 2012).

¹⁵⁴ Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children* (2017).

part of these inspection visits, HIQA speaks to children, their parents and families, social workers and others who work with them to see if the children and families are receiving the service needed.¹⁵⁵

(iii) Regulation of social work-led adult safeguarding services in other jurisdictions

[6.143] In Scotland, England and Wales, local authorities have responsibility for providing social care services for adults including at-risk adults. This includes adult support and protection (or adult safeguarding) social care services within the local authority or local council's area.

a. Scotland

[6.144] The Care Inspectorate Scotland ("CIS") is the national regulatory body for all care services in Scotland. The CIS has a statutory duty to register all "care services", with support services included in that definition.¹⁵⁶ A "support service" is defined as a service provided, by reason of a person's vulnerability or need (other than vulnerability or need arising by reason only of that person being of a young age), to that person or to someone who cares for that person by a local authority, any person under arrangements made by a local authority, a health body, or any person if it includes personal care or personal support. The CIS and Healthcare Improvement Scotland monitor compliance with Scotland's Health and Social Care Standards and take them into account when conducting inspections and carrying out other quality assurance functions.¹⁵⁷

[6.145] In Scotland, the CIS leads joint inspections of adult support and protection services in collaboration with Healthcare Improvement Scotland ("HIS") and His Majesty's Inspectorate of Constabulary in Scotland ("HMICS").¹⁵⁸ Adult support and protection inspections aim to provide timely national assurance about

¹⁵⁵ See Health Information Quality Authority, *Areas we work in: Children's Services* <<https://www.hiqa.ie/areas-we-work/childrens-services#:~:text=Child%20Protection,-Families%20who%20use&text=We%20visit%20these%20services%20from,getting%20the%20service%20they%20need>> accessed on 16 April 2024.

¹⁵⁶ Section 47(1) of the Public Services Reform (Scotland) Act 2010.

¹⁵⁷ Scottish Government, *Health and Social Care Standards: my support, my life* (2017) <<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/06/health-social-care-standards-support-life/documents/health-social-care-standards-support-life/health-social-care-standards-support-life/govscot%3Adocument/health-social-care-standards-support-life.pdf>> accessed on 16 April 2024.

¹⁵⁸ For example, see Care Inspectorate, *Joint inspection of adult support and protection measures in Orkney* (11 April 2023) at page 4 <<https://www.careinspectorate.com/images/documents/7033/Orkney%20adult%20support%20and%20protection%20report.pdf>> accessed on 16 April 2024.

whether individual local partnership areas' adult support and protection key processes are effective.¹⁵⁹

[6.146] The CIS, HIS and HMICS define an "adult protection partnership" as a group of partners who, in accordance with the Adult Support and Protection (Scotland) Act 2007, work together, both operationally and strategically, to:

- (a) receive all reports or allegations of adult protection concerns;
- (b) determine which concerns require investigation and investigate them;
- (c) determine actions required to make sure that adults at risk of harm¹⁶⁰ are safe, protected supported, involved and consulted; and
- (d) take responsibility and are accountable for the implementation of these actions.

[6.147] According to the CIS, HIS and HMICS, the "core partners" of an adult protection partnership in Scotland are local authorities (which are required to discharge their duties under the Adult Support and Protection (Scotland) Act 2007 and related legislation), associated bodies (such as the Community Planning Partnership and the Chief Officers Group), Police Scotland (who pursue and bring to justice perpetrators of harm to adults at risk of harm), and the National Health Service ("NHS") Board (which includes associated bodies and relevant contractors such as general practitioners ("GPs")).¹⁶¹ Given that a "local authority" is a "core partner"¹⁶² in an adult protection partnership and is required to discharge its duties under the Adult Support and Protection (Scotland) Act 2007, local authority adult support and protection or adult safeguarding services are inspected as part of the joint inspections of relevant adult protection partnerships.

¹⁵⁹ For example, see Care Inspectorate, *Joint inspection of adult support and protection measures in Orkney* (11 April 2023) at page 4

<<https://www.careinspectorate.com/images/documents/7033/Orkney%20adult%20support%20and%20protection%20report.pdf>> accessed on 16 April 2024.

¹⁶⁰ Section 3(1)(a) to (c) of the Adult Support and Protection (Scotland) Act 2007 defines an "adult at risk" as an adult who is unable to safeguard their own well-being, property, rights or other interests, is at risk of harm, and because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than an adult who is not so affected. Section 3(2)(a) to (b) of the 2007 Act clarifies that an adult is an adult at risk of harm if another person's conduct is causing, or is likely to cause, the adult to be harmed or the adult is engaging, or is likely to engage, in conduct which causes, or is likely to cause, self-harm.

¹⁶¹ Care Inspectorate Website, Definition of Adult Protection Partnership <https://www.careinspectorate.com/images/Adult_Support_and_Protection/1_Definition_of_adult_protection_partnership.pdf> accessed on 16 April 2024.

¹⁶² Care Inspectorate Website, Definition of Adult Protection Partnership <https://www.careinspectorate.com/images/Adult_Support_and_Protection/1_Definition_of_adult_protection_partnership.pdf> accessed on 16 April 2024.

[6.148] If the CIS, HIS and HMICS request a partnership to prepare an improvement plan to address priority areas for improvement, the CIS (through its link inspector), HIS and HMICS will monitor progress in implementing the plan.¹⁶³

b. England

[6.149] The Care Quality Commission (“CQC”) is the independent regulator of health and adult social care in England. The CQC monitors, inspects and regulates services. The CQC carries out reviews and assessments of regulated activities, registered service providers,¹⁶⁴ and the exercise of “regulated care functions” by English local authorities.¹⁶⁵ “Regulated care functions” include functions under Part 1 of the Care Act 2014 relating to adult social care in England and include, for example, promoting an individual’s well-being,¹⁶⁶ preventing needs for care and support,¹⁶⁷ promoting integration of care and support with health services,¹⁶⁸ providing information and advice,¹⁶⁹ and promoting diversity and quality in the provision of services.¹⁷⁰

[6.150] The CQC can also carry out inspections of regulated activities, the provision of NHS care, the provision of adult social services, the exercise of functions by an English local authority, and the exercise of functions by an English NHS body. The CQC regulates and inspects mental health services provided to people under the Mental Health Act 1986. It also inspects home care agencies, mobile doctors and services over the phone, as well as community-based services including substance misuse services.¹⁷¹

c. Wales

[6.151] Care Inspectorate Wales (“CIW”) registers, inspects and takes action to improve the quality and safety of services in Wales. CIW carries out functions on behalf of Welsh Ministers to provide assurance on the quality and safety of services in Wales. CIW decides who can provide services, inspects regulated services and local authorities’ social services, and takes action to ensure services meet

¹⁶³ Care Inspectorate Website, Definition of Adult Protection Partnership <https://www.careinspectorate.com/images/Adult_Support_and_Protection/1_Definition_of_adult_protection_partnership.pdf> accessed on 16 April 2024.

¹⁶⁴ Section 46 of the Health and Social Care Act 2008 (England and Wales).

¹⁶⁵ Section 46A of the Health and Social Care Act 2008 (England and Wales).

¹⁶⁶ Section 1 of the Care Act 2014 (England).

¹⁶⁷ Section 2 of the Care Act 2014 (England).

¹⁶⁸ Section 3 of the Care Act 2014 (England).

¹⁶⁹ Section 4 of the Care Act 2014 (England).

¹⁷⁰ Section 5 of the Care Act 2014 (England).

¹⁷¹ Care Quality Commission, Services we regulate <<https://www.cqc.org.uk/what-we-do/services-we-regulate/services-we-regulate>> accessed 16 April 2024.

legislative and regulatory requirements. CIW regulates, among other services, adult services, for example care homes for adults, domiciliary support services, adult placement services and residential family centre services.¹⁷² CIW also reviews the performance of local authorities in delivering social services functions through inspection and performance evaluation activities.¹⁷³ CIW also reviews and inspects local authority adult social services and publishes local authority inspection and review reports.

d. Northern Ireland

[6.152] In Northern Ireland, adult safeguarding or adult protection social care services are situated within Health and Social Care Trusts overseen by the Health and Social Care Board.

[6.153] The Regulation and Quality Improvement Authority (“RQIA”) is the independent body responsible for monitoring and inspecting the availability and quality of health and social care services in Northern Ireland. Since 2002, health and social care organisations must fulfil a statutory duty of quality. The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 created a legal framework for raising the quality of health and social care services in Northern Ireland and extended regulation and quality improvement to a wider range of services. In April 2005, RQIA was established as a non-departmental public body. Since April 2009, RQIA operates pursuant to the Health and Social Care (Reform) Act (Northern Ireland) 2009. RQIA registers and inspects a wide range of health and social care services including nursing homes, residential care homes and domiciliary care agencies. RQIA also has a role in assuring the quality of services provided by the Health and Social Care (“HSC”) Board and HSC Trusts.

(iv) Need for regulation of social work-led adult safeguarding services

[6.154] An Irish research study, conducted in 2019, found that SPTs applied different criteria and thresholds in deciding whether to take on referrals of actual or suspected abuse or neglect. Practitioners were found to have different understandings or interpretations of what constitutes “abuse” or what constitutes a “vulnerable adult”.¹⁷⁴ Such differing standards could be addressed by standards being set for SPT teams and the Safeguarding Body providing adult safeguarding services – and compliance with such standards being monitored – by an

¹⁷² Regulation and Inspection of Social Care (Wales) Act 2016.

¹⁷³ Regulation and Inspection of Social Care (Wales) Act 2016.

¹⁷⁴ Donnelly and O’Brien, “Adult Safeguarding Legislation—The Key to Addressing Dualism of Agency and Structure? An Exploration of how Irish Social Workers Protect Adults at Risk in the Absence of Adult Safeguarding Legislation” (2022) 52 *British Journal of Social* 3677 at pages 3683 to 3684.

independent body such as HIQA. The Irish Association of Social Workers has cited the lack of a “quality assurance process” for the services provided by the HSE’s SPTS, and has called for the standardisation of practice and service provision in adult safeguarding across the different SPTs and for the remit of HIQA to be extended to include inspection of SPTs.¹⁷⁵

- [6.155] The application of differing standards across SPTs and geographical disparities in practice identified by consultees and in the literature highlight a concerning lack of regulation of social work-led adult safeguarding services. This results in an absence of opportunities for setting uniform safety and quality standards and monitoring compliance with those standards. The setting of standards by an independent body charged with monitoring compliance with those standards through inspections would allow for learning from inspection reports and improvement of services.
- [6.156] HIQA’s standard-setting and compliance-monitoring functions could reasonably be extended to include social work-led adult safeguarding services. This would mean that it would be responsible for inspecting social care services for children provided by the Child and Family Agency, and social work-led safeguarding services for at-risk adults provided by the Safeguarding Body and its authorised officers. Its experience in regulating social care services for children in this regard would support an easy transition to regulating social work-led adult safeguarding services for at-risk adults. However, the Safeguarding Body and its authorised officers would be providing cross-sectoral adult safeguarding services, and therefore, if HIQA had this responsibility, it would need to oversee actions taken by the Safeguarding Body and its authorised officers in settings outside of its regulatory remit, for example, in approved centres regulated by the Mental Health Commission, and other services, some of which may be regulated, and some may not. With that in mind, consideration should also be given to the possibility of a joint model, whereby depending on the service, HIQA cooperates with the relevant regulator (where one exists) to conduct inspections, with HIQA taking on a lead coordination role given its relevant expertise in inspecting the social care services for children provided by the Child and Family Agency. This is discussed further in section 7(d) below.

(d) Adult safeguarding reviews being conducted by a regulator

- [6.157] In Chapter 17, the Commission examines existing review mechanisms in Ireland, and recommends that adult safeguarding reviews should be introduced on a statutory basis to review very serious adult safeguarding incidents that meet the threshold for a mandatory review, identified by the Commission. The purpose of adult safeguarding reviews would be to learn from past failures and bring about

¹⁷⁵ Irish Association of Social Workers, *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (IASW 2022) at pages 13, 24 and 25.

improvements to adult safeguarding systems and practices to reduce the likelihood of incidents recurring. The Commission believes that these reviews can exist alongside standard incident reviews or inquiries by service providers or regulators, as standard incident reviews are more focused on identifying immediate actions that need to take place to safeguard a particular at-risk adult, or a particular group of at-risk adults, or to bring the service provider into compliance. In contrast, the objective of adult safeguarding reviews is to extract learning from past serious incidents to improve the quality and safety of services.

- [6.158] The Commission briefly outlines the options for the reviewing body in Chapter 17, which include:
- (a) giving the function to an existing body such as HIQA or the Mental Health Commission or their inspectors;
 - (b) setting up an independent body specifically to carry out these reviews;
 - (c) placing the National Independent Review Panel (“NIRP”) on a statutory footing and expanding its remit to all sectors; and
 - (d) giving the function to local or regional based multi-agency boards or committees comprising of key adult safeguarding partners.
- [6.159] As outlined in Chapter 17, HIQA and the Mental Health Commission already have review or investigatory functions, or the ability to report on issues arising in the exercise of their functions.¹⁷⁶ When the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 is commenced, certain service providers will be required to notify HIQA, the Chief Inspector of Social Services and the Mental Health Commission of specified incidents listed under the Act, in addition to any notification requirements under the Health Act 2007 and Mental Health Act 2001.¹⁷⁷ Once commenced, the Chief Inspector of Social Services will have powers to review a specified incident.¹⁷⁸ As outlined in Chapter 17, these incidents are more clinical in nature.
- [6.160] The Commission carefully considered whether the regulatory functions of HIQA, the Chief Inspector of Social Services, the Mental Health Commission and the Inspector of Mental Health Services should be expanded to include carrying out adult safeguarding reviews. Undoubtedly, these regulators have relevant expertise in their particular sector, and there may be some logic to aligning their

¹⁷⁶ Section 9 of the Health Act 2007; see also amendments that will be made to section 9 upon commencement of section 64 of the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023; sections 42, 51 and 55 of the Mental Health Act 2001.

¹⁷⁷ Sections 27, 28 and 29 of the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023.

¹⁷⁸ Section 41A of the Health Act 2007 as inserted by section 68 of the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 (not yet commenced).

existing review/investigatory/report functions with adult safeguarding reviews to ensure that there is no overlap or duplication. Currently, however, the functions of the regulators are focused on general service-wide issues as opposed to examining serious incidents affecting individual service users. Assigning a function to review very serious adult safeguarding incidents involving individual service users would be a marked departure from the existing remit of these regulators who are more focused on the overall service, and it would have broader implications for the regulators that would need to be carefully examined, especially in terms of resourcing, given the mandatory nature of the reviews.

- [6.161] As discussed in Chapter 17, the adult safeguarding reviews proposed by the Commission would apply to very serious adult safeguarding incidents that meet the threshold for a mandatory review in various sectors, not just the health and social care sector. Given the multiplicity of regulators across sectors, it would be difficult to assign the function to only one regulator as it inevitably would be required to consider matters beyond its usual regulatory lens.
- [6.162] Another option would be for each regulator to conduct adult safeguarding reviews arising from serious adult safeguarding incidents that meet the high threshold under its own regulatory remit. There are two difficulties with this option. Firstly, there are many unregulated services where at-risk adults may be availing of services, and there is no suitable regulator to conduct adult safeguarding reviews where serious adult safeguarding incidents occur within the service. Secondly, having multiple reviewing bodies would increase the likelihood of disparities in how adult safeguarding reviews are conducted and may result in partial learnings particular to each sector that cannot be universally applied across sectors.
- [6.163] The Commission considers that conducting adult safeguarding reviews is an oversight or regulatory function and as discussed in section 4, it does not believe that the Safeguarding Body should have regulatory functions. The Commission believes that it would be inappropriate for the Safeguarding Body to conduct adult safeguarding reviews, as it will provide adult safeguarding services, and its authorised officers will be responding directly to adult safeguarding concerns including allegations of abuse or neglect. It will not have regulatory functions. The Safeguarding Body would not have the required level of independence to be able to conduct adult safeguarding reviews of serious incidents to identify learnings, as the actions or inactions of it or its authorised officers may be the subject of the review, which presents a conflict of interest. Instead, its focus should be responding to safeguarding concerns including taking action to safeguard at-risk adults in conjunction with providers of relevant services, where required.
- [6.164] Ultimately, the Commission concludes in Chapter 17 that it is not best placed to determine who the reviewing body should be as it involves many considerations outside the scope of this project and beyond law reform. The Commission

believes that it would be appropriate for the Government to consider the options outlined in Chapter 17 and determine the most appropriate model.

(e) Coordination of the relevant regulatory powers of existing organisations including HIQA, the Mental Health Commission and the Central Bank

[6.165] As stated above, a small number of consultees suggested that there should be an independent safeguarding regulatory body, which would coordinate adult safeguarding regulatory responses across sectors. In the Issues Paper, the Commission noted that if additional regulatory powers were to be granted to existing bodies, an option could be to make explicit provision for the coordination of those powers amongst the bodies through the use of formal inter-agency protocols or agreements.¹⁷⁹ In Chapter 20, the Commission discusses the potential for an interdepartmental steering group to take on a coordinating role by overseeing the introduction and implementation of adult safeguarding legislation. This would include overseeing cooperation between the Safeguarding Body, and other relevant authorities such as the HSE, the Child and Family Agency, the Garda Síochána, the Decision Support Service, as well as regulators and oversight bodies such as HIQA, the Mental Health Commission, the DSGBV Agency (Cuan), the Policing and Community Safety Authority and others.

[6.166] Most of these authorities and bodies have a reporting relationship with the relevant departments who would be represented on the interdepartmental steering group, and as a result, the departments will be kept abreast of what actions are required from each of the authorities and bodies and can direct or request that they take specific actions so that progress can be made. Therefore, the Commission does not believe that there is a need for an independent regulator to carry out a coordination function.

(f) Powers to direct the HSE and other statutory and non-statutory bodies to take unspecified actions to safeguard at-risk adults.

[6.167] As stated above, a small number of consultees suggested that an independent adult safeguarding regulatory body should be established. A small number of consultees and stakeholders proposed that one of the functions of this regulatory body would be to direct the HSE and other statutory and non-statutory bodies to take actions to safeguard at-risk adults. Consultees did not specify what actions the regulatory body should be permitted to direct other bodies to take.

[6.168] In light of the reporting pathways of statutory, and indeed, certain non-statutory bodies, to Government departments, the Commission considers that it would be

¹⁷⁹ Law Reform Commission, Issues Paper on A Regulatory Framework for Adult Safeguarding (LRC IP 18-2019) at para 5.42.

more appropriate for any changes to the remit of other statutory bodies to be determined by the relevant Government departments, rather than by an adult safeguarding regulatory body. The interdepartmental steering group proposed by the Commission in Chapter 20 will ensure that the relevant Government departments would have a structured mechanism through which to oversee the implementation of adult safeguarding legislation, policy, procedures and practices. It would improve collaboration, communication, coordination and efficiency, enhance decision making processes and prompt a joined up, whole of Government approach to addressing complex adult safeguarding issues. This collaborative structure would ensure that departments provide strategic oversight and direction to all the relevant authorities, regulators and organisations operating in the adult safeguarding sphere.

(g) Conclusions on the need for a regulatory body or for existing regulatory bodies to be conferred with additional regulatory functions

- [6.169] There was significant support among consultees for a new independent adult safeguarding regulatory body. Consultees cited benefits of a new independent adult safeguarding regulatory body including that it would:
- (a) ensure independence, expertise and responsiveness;
 - (b) allow for a cross-sectoral, societal approach to adult safeguarding to be adopted; and
 - (c) be autonomous and independent in the exercise of its functions and powers.
- [6.170] Proponents for establishing a new independent adult safeguarding regulatory body suggested that such a body could have one or more of the following functions:
- (a) set standards for adult safeguarding;
 - (b) conduct serious incident reviews;
 - (c) regulate the provision of social work-led adult safeguarding services;
 - (d) coordinate with existing regulatory bodies across sectors; and
 - (e) direct relevant authorities including the HSE, regulators and others to take action.
- [6.171] As discussed above, the Commission recommends in Chapter 17 that adult safeguarding reviews of very serious incidents that meet the high threshold for a mandatory review should be introduced in Ireland on a statutory basis. It does not recommend what organisation should be the reviewing body, as such a decision would involve many policy considerations that the Government are better placed to assess. The Commission outlines above why it does not believe

that the Safeguarding Body should conduct adult safeguarding reviews. The function could reasonably be carried out by an existing regulator, or multiple regulators, but equally, as discussed in Chapter 17, the Government may prefer to set up a new independent body to conduct adult safeguarding reviews, or place the NIRP on a statutory basis.

- [6.172] As regards the need for a regulator to coordinate the relevant powers of multiple organisations to ensure effective safeguarding of adults, Chapter 20 addresses the need for a whole-of-government approach to adult safeguarding, and suggests that an interdepartmental steering group would be best placed to carry out this coordination function, as it will be comprised of relevant Government departments. The reporting relationship between Government Departments and the relevant organisations, bodies and regulators operating in sectors relevant to adult safeguarding should ensure that relevant actors are complying with adult safeguarding legislation, policy, procedures and guidance. Additionally, the Commission recommends in Chapter 15 that specified organisations – including the Safeguarding Body, certain public service bodies and providers of relevant services – should have a duty to cooperate for adult safeguarding purposes. Therefore, the Commission believes that a new independent adult safeguarding regulator is not required to coordinate adult safeguarding responses of organisations, bodies, regulators and service providers.
- [6.173] The Commission takes the view that the regulatory functions discussed above could be carried out by an existing regulator, as well as the interdepartmental steering group proposed in Chapter 20. Therefore, the Commission believes that the establishment of an independent adult safeguarding regulator is unnecessary. However, the Government may determine that it would be appropriate to establish an independent review body to conduct adult safeguarding reviews.

6. Regional adult safeguarding structures

- [6.174] Regional structures are structures involving multiple bodies or services acting on a more local level, as opposed to the existing national structures and proposed national Safeguarding Body discussed above. These structures could operate under the auspices of a national Safeguarding Body, or on an independent basis involving cooperation of local bodies and services without a centralised coordinating structure. Regional adult safeguarding structures may include:
- (a) regional social work-led adult safeguarding services, which are currently provided through the HSE's SPTs; and
 - (b) regional multi-agency structures, which promote cooperation of the social work-led adult safeguarding services with other agencies and organisations including the Garda Síochána; primary care and other health and social care services; providers of health and social care services; financial institutions and others.

(a) Regional social work-led adult safeguarding services

- [6.175] The functions of the HSE's SPTs are discussed earlier in the Report.¹⁸⁰ As discussed there, the Government's Policy Proposals on Adult Safeguarding in the Health and Social Care Sector envision a continued role for the HSE's SPTs in each health region, to be known as Regional Adult Safeguarding and Protection Teams.
- [6.176] If the Safeguarding Body were to be established within the HSE, the HSE's SPTs would continue to carry out their adult safeguarding work, on a regional basis. As discussed at section 4(e) above, it seems likely that if the Safeguarding Body were to be established as a new independent adult safeguarding agency, the regional SPTs would need to be transferred to the new Safeguarding Body, as the Safeguarding Body would need to provide social work-led safeguarding services on a regional level to receive and respond to reports of actual or suspected harm of at-risk adults. It appears likely that the existing HSE SPTs would need to transfer to any independent Safeguarding Body, which may be established by the Government, because there would be too many practical difficulties involved in the regional SPTs remaining operational in the HSE, alongside regional social work-led adult safeguarding teams or services with similar responsibilities within an independent Safeguarding Body.

(b) Regional multi-agency adult safeguarding structures

- [6.177] The existing multi-agency Safeguarding and Protection Committees, which have been established by the HSE within each HSE Community Healthcare Organisation, were outlined in the Issues Paper and are briefly discussed earlier in the Report.¹⁸¹ Regional multi-agency safeguarding structures that exist on a statutory basis in other jurisdictions, including Safeguarding Adults Boards in England¹⁸² and Wales¹⁸³ and Adult Protection Committees in Scotland,¹⁸⁴ have been discussed above.
- [6.178] There were mixed responses to the Commission's Issues Paper in relation to whether regional multi-agency adult safeguarding structures should be introduced in Ireland on a statutory basis, for example by placing the existing Safeguarding and Protection Committees on a statutory basis. Some consultees were in favour of statutory multi-agency structures to promote effective safeguarding and ensure multi-agency cooperation on a regional level. One consultee stated that there is a need for regional multi-agency adult

¹⁸⁰ See the Background to this Report and Chapter 5.

¹⁸¹ See the Background to this Report and Chapter 5.

¹⁸² Section 43(1) of the Care Act 2014 (England).

¹⁸³ Section 134 of the Social Services and Well-being (Wales) Act 2014.

¹⁸⁴ Section 42 of the Adult Support and Protection (Scotland) Act 2007.

safeguarding structures, on a statutory basis, which have processes to respond to the needs of at-risk adults. It added that such structures would enhance multi-agency cooperation through the development of regionalised networks which would offer the opportunity for collaboration and understanding at a local level.

- [6.179] However, other consultees submitted that statutory multi-agency structures are unnecessary or that regional structures are more appropriately dealt with as an operational matter.

(c) Conclusions on regional adult safeguarding structures

- [6.180] The Department of Health stated that it may be preferable to provide in legislation that any new safeguarding body would be afforded a degree of flexibility in respect of its internal structures, subject to the approval of the relevant Minister(s), perhaps by way of a provision whereby aspects of its organisational structure may be prescribed by Regulations.¹⁸⁵
- [6.181] The restructuring of the HSE began on the 1 March 2024 with the transition from Community Health Organisations to six new health regions.¹⁸⁶ Community Health Organisations will be stood down in September 2024. The Government’s Policy Proposals on Adult Safeguarding in the Health and Social Care Sector note that significant improvements and Government reforms will be required to ensure independence in HSE safeguarding structures.¹⁸⁷ A review of the HSE’s safeguarding structures and governance was recently undertaken by an independent expert, Jackie McIlroy, and, at the timing of writing, is expected to be published in the very near future. The Government’s Policy Proposals note:

Consideration of where to locate responsibility for the health and social care sector’s adult safeguarding operational services and structures will need to take account of broader cross-Government considerations on adult safeguarding. Recommendations from the Law Reform Commission in this regard are imminent.¹⁸⁸

- [6.182] The Commission agrees that it may be preferable to provide in legislation that the Safeguarding Body would be afforded a degree of flexibility in respect of its

¹⁸⁵ Department of Health, *Law Reform Commission Issues Paper – A Regulatory Framework for Adult Safeguarding: A Response from the Department of Health* (2020) at pages 21 – 22 < <https://assets.gov.ie/83566/8594f084-fe09-4e55-80a9-ccbeac1075cd.pdf> > accessed 29 March 2024.

¹⁸⁶ Health Service Executive, Staff – Regional Executive Officers for the 6 HSE Health Regions appointed < <https://healthservice.hse.ie/staff/news/staff-news-listing-page/regional-executive-officers-for-the-6-hse-health-regions-appointed/> > accessed 29 March 2024.

¹⁸⁷ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 14.

¹⁸⁸ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) at page 14.

internal structures, subject to the approval of the relevant Minister(s), such as by way of a provision whereby aspects of its organisational structure may be prescribed by Regulations.¹⁸⁹ Further, as this Report does not propose that regional multi-agency adult safeguarding structures should have statutory functions, the Commission believes that it is unnecessary to place regional structures such as the existing multi-agency Safeguarding and Protection Committees on a statutory basis. The Commission believes that the functions of the Safeguarding Body in adult safeguarding legislation should provide for it to deliver services, including regional services, in relation to its primary function to promote the health, safety and welfare of at-risk adults. The Commission is of the view that the Safeguarding Body should be afforded flexibility to determine the appropriate regional structures through which it would fulfil its primary function, and the Commission proposes that adult safeguarding legislation should not prescribe any details on the structure of the Safeguarding Body's services including regional services. Accordingly, the Commission proposes in its Adult Safeguarding Bill 2024 that the Safeguarding Body should have a function to maintain and develop services, including regional services, in relation to its function to promote the health, safety and welfare of at-risk adults.

7. Proposals: Organisational and regulatory models and powers

[6.183] Determining appropriate organisational and regulatory models involves complex policy and economic questions on which the Commission is not best placed to advise.¹⁹⁰ The Commission's recommendations are therefore based solely on:

- (a) alignment of statutory and non-statutory functions of existing organisations with proposed new functions;
- (b) the UNCRPD requirement that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities;
- (c) Government policy in respect of agency rationalisation;
- (d) the Better Regulation Principles; and
- (e) good governance principles such as addressing potential conflicts of interest.

¹⁸⁹ Department of Health, *Law Reform Commission Issues Paper – A Regulatory Framework for Adult Safeguarding: A Response from the Department of Health* (2020) at pages 21 – 22 < <https://assets.gov.ie/83566/8594f084-fe09-4e55-80a9-ccbeac1075cd.pdf> > accessed 29 March 2024.

¹⁹⁰ See section 7(b) of Chapter 1.

(a) Proposed model: a Safeguarding Body for adult safeguarding and conferral of regulatory functions

(i) A Safeguarding Body

[6.184] The Commission recommends that a single social work-led adult safeguarding agency – a Safeguarding Body – should be established, which should have the statutory functions, duties and powers set out in Chapter 5. The Commission believes that the functions of the proposed Safeguarding Body should be of a social work-led adult safeguarding services nature and that it should not have regulatory functions. The functions of the proposed Safeguarding Body would be considerably broader than the current remit of the existing social work-led adult safeguarding services delivered through the HSE’s SPTs. The Safeguarding Body’s remit would not be confined to the health and social care sectors. Instead, its remit would extend to public and private services across multiple sectors including accommodation centres for people experiencing homelessness; accommodation centres for international protection applicants; and refuge accommodation services for victims of domestic, sexual or gender-based violence.

[6.185] In summary, the Commission recommends that a designated Safeguarding Body for adult safeguarding should be established with the statutory functions and duties recommended in Chapter 5.

R. 6.1 The Commission recommends that a designated Safeguarding Body” should be established, as a statutory social work-led adult safeguarding body with the statutory functions and duties recommended in Chapter 5

(ii) Conferral of regulatory functions

[6.186] The Commission concludes in section 5(g) above that additional regulatory functions should be conferred on existing regulatory bodies. This is because the Commission seeks to:

- avoid significant overlap and duplication in the remits of existing regulatory bodies, and
- make best use of the expertise of existing regulatory bodies.

[6.187] The Commission is therefore not making a recommendation about the establishment of a new independent adult safeguarding regulatory body.

[6.188] In Chapter 7, the Commission recommends that existing regulatory bodies should be conferred with additional regulatory functions to monitor compliance with the proposed duties on providers of relevant services in adult safeguarding legislation to:

- prevent harm to any adult who is, may be or may become, an at-risk adult while availing of the service; and
- undertake a documented adult safeguarding risk assessment and prepare an adult safeguarding statement.

[6.189] As discussed above, the Commission recommends in Chapter 17 that adult safeguarding reviews of serious incidents should be carried out by a reviewing body with a view to improving the safety, quality and standards of adult safeguarding services. The Commission does not determine what organisation should be the reviewing body, as it believes that this is a matter for the Oireachtas and Government. As noted in section 5(d) of this Chapter, the Commission believes that it would be inappropriate for the Safeguarding Body to be designated as the reviewing body. Additionally, the Commission believes that the Safeguarding Body should not have regulatory functions, as set out above.

(b) Appropriate agency to act as the Safeguarding Body

[6.190] In terms of an appropriate agency to act as the Safeguarding Body, the primary options believed by the Commission to be potentially appropriate are the establishment of the Safeguarding Body:

- (a) as an independent statutory social work-led adult safeguarding agency; or
- (b) on a statutory footing within an existing statutory agency.

[6.191] The Commission is of the view that establishing the Safeguarding Body as an independent statutory agency or within an existing statutory agency are both potentially appropriate ways of establishing the Safeguarding Body, based on consultees' views and the considerations outlined above. The Commission recommends that the functions, duties and powers of the Safeguarding Body proposed in Chapter 5 and recommendations applying to Safeguarding Body in this Report should apply regardless of whether the Government decides to establish the Safeguarding Body as a new independent statutory adult safeguarding body or as a statutory adult safeguarding office within an existing agency. Any recommendations in this Report which apply to the Safeguarding Body shall apply to it regardless of its organisational structure.

[6.192] While establishing the Safeguarding Body as an independent statutory agency or within an existing statutory agency could both be viable options, the Commission ultimately believes that decisions regarding the appropriate structure for the Safeguarding Body are policy and economic matters. Such policy and economic considerations include resource-management (including, but not limited to, financial resources); organisational structure and accountability; transition management; risk management; effectiveness; independence; and perceptions of independence. These issues, in particular questions regarding how best to balance countervailing policy and economic considerations, are outside the

specific expertise and remit of the Commission and would be best considered by the Government. The Commission believes that the Government is therefore best placed to determine the appropriate organisational structure for the Safeguarding Body.

[6.193] The Commission believes that an interim solution would be required if the Government decides that it cannot, or should not, make a decision regarding the appropriate organisational structure for the Safeguarding Body in the short term. The Commission is of the view that improved adult safeguarding practice underpinned by a statutory framework is needed in the short term. Therefore, if the Government decides that it cannot, or should not, make a decision regarding the appropriate organisational structure in the short term, the Commission believes that the Safeguarding Body should be established as a statutory office within the HSE as an interim measure. If the Safeguarding Body is established as a statutory National Adult Safeguarding Office within the HSE, it should have the statutory functions and powers set out in Chapter 5. This would involve conferring the relevant staff of the existing HSE SPTs with the proposed functions and powers of authorised officers of the Safeguarding Body, as set out in Chapters 5, 10, 11, 12, 13, 15 and 16. The Commission is of the view that the establishment of the Safeguarding Body within the HSE would be facilitated by the statutory object of the HSE, as set out in section 7 of the Health Act 2004, to “...use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public”.¹⁹¹ The Commission believes that the statutory object of the HSE is sufficiently broad to encapsulate the proposed primary function of the Safeguarding Body to promote the health, safety and welfare of adults who need support to protect themselves from harm.

[6.194] The Commission believes that if the Safeguarding Body is established as a National Adult Safeguarding Office within the HSE, it should, insofar as is practicable, operate independently from the HSE Social Care Division in the performance of its functions. The Commission has therefore proposed in its Adult Safeguarding Bill 2024 that the director of the Safeguarding Body would report directly to the Chief Executive Officer of the HSE. The Commission believes that if the Government decides that it cannot, or should not, make a decision regarding the appropriate organisational structure for the Safeguarding Body in the short term, the Safeguarding Body established within the HSE as an interim measure should:

- (a) be responsible for the provision of social work-led adult safeguarding services through the Safeguarding and Protection Teams (“SPTs”) across the HSE Community Healthcare

¹⁹¹ Section 7(1) of the Health Act 2004.

Organisations, or through the future Regional Adult Safeguarding Protections Teams across the HSE health regions;¹⁹² and

(b) exercise the proposed statutory functions of the Safeguarding Body.

[6.195] As the Commission believes that the determination of the appropriate organisational structure for the Safeguarding Body is a decision that would most appropriately be made by the Government, the Commission has included two establishment options within its Adult Safeguarding Bill 2024. It has included a draft Part that could allow for the establishment of a new Safeguarding Body (as the National Adult Safeguarding Body), and a draft Part that could allow for the establishment of an interim Safeguarding Body as a National Adult Safeguarding Office within the HSE (unless the Government considers that the Safeguarding Body should be established within the HSE on a longer-term basis).¹⁹³

¹⁹² As discussed in the Background section of this Report, the restructuring of the HSE began on the 1 March 2024 when the transition from Community Health Organisations to six new healthcare regions began. Community Health Organisations will be stood down in September 2024. See Health Service Executive, Regional Executive Officers for the 6 HSE Health Regions appointed <https://healthservice.hse.ie/staff/news/staff-news-listing-page/regional-executive-officers-for-the-6-hse-health-regions-appointed/> accessed 9 April 2024.

¹⁹³ The Commission has included some placeholder provisions in these Parts of the Adult Safeguarding Bill 2024, which could be populated by the Government, if it makes a decision to adopt either organisational structure for the establishment of the Safeguarding Body.

- R. 6.2 The Commission recommends that** the functions, duties and powers of the Safeguarding Body proposed in Chapter 5 and recommendations applying to Safeguarding Body in this Report should apply regardless of whether the Government decides to establish the Safeguarding Body as a new independent statutory adult safeguarding body or as a statutory adult safeguarding office within an existing agency. Any recommendations in this Report which apply to the Safeguarding Body shall apply to it regardless of its organisational structure.
- R. 6.3 The Commission recommends that** if the Government decides that it cannot, or should not, make a decision regarding the appropriate organisational structure in the short term, the Safeguarding Body should be established as a statutory office within the HSE on an interim basis – unless the Government decides that it should be so established on a permanent basis. If established, the statutory “National Adult Safeguarding Office”, should be conferred with the statutory powers and functions recommended in this Report until the Government determines whether the Safeguarding Body should be established as a new independent organisation or within an existing organisation, and if so, which organisation.
- R. 6.4 The Commission recommends that** if established, the Safeguarding Body as the National Adult Safeguarding Office within the HSE should, insofar as is practicable, operate independently from the HSE Social Care Division in the performance of its functions.

(c) Regulation of social work-led adult safeguarding services

- [6.196] As noted above, social work-led adult safeguarding services are currently provided on a policy basis by the HSE’s SPTs. These services are not subject to regulation. The Commission believes that the social work-led adult safeguarding services provided by the proposed Safeguarding Body should be subject to independent standard-setting, monitoring and inspection by an independent regulator or by a joint inspection model involving multiple relevant regulatory bodies.
- [6.197] One option for the regulatory model for social work-led adult safeguarding services would be to extend HIQA’s statutory functions in relation to setting standards on safety and quality to include social work-led adult safeguarding services provided by the Safeguarding Body whether it is established within the HSE or as a new independent statutory body. This would build on HIQA’s experience of regulating child social care services, as discussed above.
- [6.198] However, as the authorised officers of the social work-led adult safeguarding services provided by the Safeguarding Body would have powers of access to at-risk adults in relevant premises, including designated centres under the Health Act 2007, approved centres under the Mental Health Act 2001 and other centres, it may be more appropriate for a number of regulators to participate in a joint

inspection model for the social work-led adult safeguarding services provided by the Safeguarding Body. Such a joint inspection model was suggested by one of the regulatory bodies in the course of the Commission's consultations, with reference to an existing successful joint inspection model. The joint inspection model could be led by HIQA given its relevant experience in respect of child social care services and involve cooperation with other regulators, as appropriate, or it could involve joint participation by appropriate regulatory bodies.

- R. 6.5** **The Commission recommends that** an existing regulator or a joint inspection model comprised of multiple existing regulators should have functions to regulate social work-led adult safeguarding services provided by the Safeguarding Body. The Commission believes that should be achieved by:
- (a) extending the existing functions of HIQA in relation to setting standards and inspecting compliance with standards to include the regulation of social work-led adult safeguarding services; or
 - (b) the conferring of relevant functions on multiple regulatory bodies to be designated and/or established by the Government to form a joint inspection model, which could be led by one regulator such as HIQA in recognition of HIQA's experience in inspecting child social care services.

CHAPTER 7 IMPOSING SAFEGUARDING DUTIES ON CERTAIN SERVICE PROVIDERS

Table of Contents

1.	Introduction	371
2.	Relevant services for the purpose of safeguarding duties	374
	(a) Proposed providers of a “relevant services”.....	374
	(b) Regulated and unregulated relevant services	378
3.	Safeguarding duties on providers of a relevant service in proposed adult safeguarding legislation.....	384
	(a) Existing adult safeguarding requirements on providers of relevant services and gaps identified	387
	(i) <i>The Health Act 2007, associated regulations and standards.....</i>	388
	(ii) <i>Mental Health Act 2001 and associated regulations.....</i>	390
	(iii) <i>National Standards for Adult Safeguarding (health and social care sectors)</i>	391
	(iv) <i>Home support services</i>	392
	(v) <i>Interim Standards for day services for adults with disabilities....</i>	394
	(vi) <i>National Standards for accommodation offered to people in the protection process</i>	395
	(vii) <i>National Quality Standards Framework for Homeless Services.</i>	400
	(viii) <i>Service providers that provide refuge accommodation services for victims of domestic, sexual or gender-based violence.....</i>	401
	(ix) <i>Relevant services who are charities</i>	403
	(x) <i>Safeguarding and HSE funding agreements</i>	404
	(b) A duty to prevent harm.....	405
	(c) A duty to undertake and document a risk assessment and prepare an adult safeguarding statement.....	406
	(i) <i>Components of an adult safeguarding statement.....</i>	407
	(ii) <i>Furnishing and publication of an adult safeguarding statement</i>	409
	(d) Proposed oversight bodies for the purposes of monitoring compliance with safeguarding duties in adult safeguarding legislation	411
	(e) Measures to address non-compliance with statutory safeguarding duties in adult safeguarding legislation.....	416
4.	A duty to prepare a safeguarding plan.....	421
	(a) Existing requirements to prepare a care plan or personal plan	424

(i)	<i>Mental Health Act 2001, the Health Act 2007 and associated regulations.....</i>	<i>424</i>
(ii)	<i>National Standards for Adult Safeguarding (health and social care sectors) and HIQA's National Standards.....</i>	<i>424</i>
(iii)	<i>Home support services.....</i>	<i>425</i>
(iv)	<i>Interim Standards for Day Services for Persons with Disabilities.....</i>	<i>426</i>
(v)	<i>National Standards for accommodation offered to people in the international protection process.....</i>	<i>427</i>
(vi)	<i>National Quality Standards Framework for Homeless Services.....</i>	<i>429</i>
(vii)	<i>Service providers that provide refuge accommodation services for victims of domestic, sexual or gender-based violence.....</i>	<i>430</i>
(b)	The need for a statutory requirement to prepare a safeguarding plan	430
(c)	A duty to prepare a safeguarding plan on relevant services where standards exist.....	433
5.	Provision of training and information.....	434
(a)	Duty on providers of a relevant service to ensure staff are provided with training and to provide information.....	434
(i)	<i>Health Act 2007, associated regulations and standards.....</i>	<i>434</i>
(ii)	<i>Mental Health Act 2001 and associated regulations.....</i>	<i>435</i>
(iii)	<i>National Standards for Adult Safeguarding.....</i>	<i>436</i>
(iv)	<i>Home support services.....</i>	<i>436</i>
(v)	<i>Interim Standards for day Services for adults with disabilities....</i>	<i>437</i>
(vi)	<i>National Standards (for accommodation offered to people in the international protection process).....</i>	<i>438</i>
(vii)	<i>National Quality Standards Framework for Homeless Services.....</i>	<i>438</i>
(viii)	<i>Relevant services who are charities.....</i>	<i>439</i>
(ix)	<i>Safeguarding and HSE Funding Agreements.....</i>	<i>440</i>
(x)	<i>A duty to provide adult safeguarding training and information.....</i>	<i>440</i>
(b)	Requirement on taxi drivers to undertake safeguarding training.....	443
6.	Data collection and sharing duties on providers of relevant services....	446
(a)	Data on reports of actual or suspected abuse or neglect of at-risk adults.....	446
(b)	Data on application of proposed safeguarding legislation.....	447

1. Introduction

- [7.1] Safeguarding duties involve positive obligations on persons, officeholders or organisations to take specific actions to promote the health, safety and welfare of at-risk adults. As there is no adult safeguarding legislation and no comprehensive statutory framework for social care in Ireland, there are limited statutory duties that require service providers to take positive actions to safeguard at-risk adults. There are no safeguarding duties that apply universally to all organisations who provide services to adults, including adults who are, may be, or may become at-risk adults.
- [7.2] Adult safeguarding is addressed in policies and procedures including in the HSE’s Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures (the “HSE’s National Policy and Procedures”);¹ however, the HSE’s National Policy and Procedures apply only to HSE managed or funded disability or older people’s services and referrals regarding older people or people with disabilities in the community. There is currently no national policy for adult safeguarding.² There are statutory duties that apply to certain types of services including approved centres under the Mental Health Act 2001, residential centres for older people and residential centres for people with disabilities under the Health Act 2007. However, the absence of cross-sectoral safeguarding duties that apply universally to all organisations in the provision of services to adults, who may include adults who are, may be, or may become at-risk adults, means that services are subject to different duties and standards. As discussed in section 2 of this Chapter, some services are regulated, while others are not regulated or subject to statutory duties or statutory inspections, monitoring or oversight.
- [7.3] This chapter will examine whether the following duties should be introduced on providers of relevant services:
- (1) a statutory duty to prevent harm to any adult, who is, may be, or may become an at-risk adult;
 - (2) a statutory duty to undertake and document a risk assessment and to prepare an adult safeguarding statement;

¹ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) <<https://assets.hse.ie/media/documents/ncr/personsatriskofabuse.pdf>> accessed 8 April 2024.

² There are policy proposals in development for the health and social care sector. These were prepared by the Department of Health. See Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024) <<https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf>> accessed 8 April 2024.

- (3) a duty to prepare a safeguarding plan;³
- (4) a duty to provide adult safeguarding training and information; and
- (5) a duty to collect and share adult safeguarding data with the Safeguarding Body.

[7.4] The first and second duties above are addressed in section 3 of this Chapter. The third duty is examined in section 4. The fourth duty is discussed in section 5, and the fifth duty is discussed in section 6. Before outlining the safeguarding duties, the Commission sets out the services to which it believes that the safeguarding duties proposed in this Chapter should apply.

2. Relevant services for the purpose of safeguarding duties

(a) Proposed providers of a “relevant services”

- [7.5] The Commission intends for its recommendations in this Report, and its proposed adult safeguarding legislation to be cross-sectoral and not unduly focused on the health and social care sector. For that reason, the Commission believes that safeguarding duties should apply to all relevant services where adults, including adults who are, may be, or may become at-risk adults, are availing of services. It considers it necessary to outline the services that it believes should be captured by the safeguarding duties outlined in this Chapter. It is not feasible to specify a list of relevant services that provide services to “at-risk adults” exclusively as the Commission’s proposed definition of “adult at risk of harm”, discussed in Chapter 2, is broad and not limited to specific characteristics or specific circumstances.
- [7.6] The Commission considers that the services identified in the list below are most likely to be providing services to adults who are, may be or may become at-risk adults. However, they will also provide services to adults generally, who cannot be said to be at-risk adults. The Commission is not concerned that the duties it proposes to place on such services will be excessive or unwarranted – as they are preventative in nature – and encourage the services to identify how they can minimise harm to at-risk adults and prevent other adults from becoming at-risk adults.⁴
- [7.7] The Commission outlines below what services should be considered “relevant services” for the purposes of **all** safeguarding duties proposed in this Chapter. These safeguarding duties are discussed below. Only some of the duties

³ This is a plan for an individual, as opposed to the service, or all adults availing of the service. It is developed when there are safeguarding concerns relating to an individual and measures need to be put in place to safeguard them, or other adults who they pose a risk to. Safeguarding plans are discussed further below in section 4 of this Chapter.

⁴ For further discussion on prevention and adult safeguarding, see Chapter 1.

proposed will be included in the proposed adult safeguarding legislation (see section 3 of this Chapter). For that reason, it believes that relevant services should be prescribed in a schedule to the proposed adult safeguarding legislation for the purposes of the safeguarding duties proposed in section 3.

[7.8] The Commission believes that “relevant services” should be defined as “any work or activity which is carried out by a person or organisation, a necessary and regular part of which consists mainly of a person or organisation having access to, or contact with, adults, or adults who are, may be or may become adults at risk of harm”. The Commission recommends that “relevant services” should include:

- (a) a “designated centre” within the meaning of section 2(1) of the Health Act 2007, insofar as it relates to an institution where residential services are provided to older people or to adults with disabilities;
- (b) a service that provides care to adults in private dwellings;
- (c) a service that provides day services to adults with disabilities;
- (d) a service that provides day services to older people;
- (e) a service that provides personal assistance to adults with disabilities;
- (f) a hospital, hospice, health care centre or other centre which receives, treats or otherwise provides physical services to adults;
- (g) a service that receives, treats or provides mental health services to adults including approved centres under the Mental Health Act 2001;
- (h) a reception or accommodation centre which provides residential accommodation services to adults in the international protection process managed by, or under contract to the Department of Children, Equality, Disability, Integration and Youth,
- (i) a centre which provides refuge accommodation services for victims of domestic, sexual or gender-based violence,
- (j) a centre which provides residential accommodation services for the purposes of providing substance misuse services,
- (k) a centre which provides residential accommodation services to adults experiencing homelessness,
- (l) a service that provides treatment (including assessment which may lead to treatment), therapy or counselling to an adult,
- (m) any work or activity as a driver of, or as an assistant to the driver, or as a conductor, or as a supervisor of adults using a vehicle which is being

hired or used only for the purpose of conveying adults to or from day services or respite services and related activities of such services,

- (n) any work or activity which is carried out by a member of the Garda Síochána, a necessary and regular part of which consists mainly of the person having access to, or contact with, adults who may be at risk of harm or “vulnerable persons” within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

[7.9] In Chapter 1, the Commission notes that safeguarding concerns arising in Garda custody are excluded from the scope of the report. However, the Commission recognises the role that the Garda Síochána play in adult safeguarding outside of Garda custody, including through community policing and other Garda services. For that reason, the Commission includes any work or activity carried out by the Garda Síochána which involves regularly engaging with adults who may be at-risk adults or “vulnerable persons” within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 as a relevant service for the purposes of safeguarding duties in this Chapter and in adult safeguarding legislation.

[7.10] As stated above, the relevant services on this list are intended to be subject to all safeguarding duties proposed in this Chapter regardless of whether the duty is included in adult safeguarding legislation. Given that some of the duties will be included in the proposed adult safeguarding legislation, the Commission takes the view that this list of relevant services should be prescribed in a schedule to adult safeguarding legislation. The Commission believes that adult safeguarding legislation should also enable the relevant Minister to prescribe additional services as “relevant services” for the purposes of the safeguarding duties in adult safeguarding legislation.

R. 7.1 The Commission recommends that all the safeguarding duties proposed in this Chapter should apply to providers of a “relevant service” and that a relevant service should be defined as “any work or activity which is carried out by a person or organisation, a necessary and regular part of which consists mainly of a person or organisation having access to, or contact with, adults, or adults who are, may be or may become adults at risk of harm”.

R. 7.2 The Commission recommends that relevant services should include:

- (a) a “designated centre” within the meaning of section 2(1) of the Health Act 2007, insofar as it relates to an institution where residential services are provided to older people or to adults with disabilities;
- (b) a service that provides care to adults in private dwellings;
- (c) a service that provides day services to adults with disabilities;
- (d) a service that provides day services to older people;

- (e) a service that provides personal assistance to adults with disabilities;
- (f) a hospital, hospice, health care centre or other centre which receives, treats or otherwise provides physical services to adults;
- (g) a service that receives, treats or provides mental health services to adults including approved centres under the Mental Health Act 2001;
- (h) a reception or accommodation centre which provides residential accommodation services to adults in the international protection process under contract to the Department of Children, Equality, Disability, Integration and Youth,
- (i) a centre which provides refuge accommodation services for victims of domestic, sexual or gender-based violence,
- (j) a centre which provides residential accommodation services for the purposes of providing substance misuse services,
- (k) a centre which provides residential accommodation services to adults experiencing homelessness,
- (l) a service that provides treatment (including assessment which may lead to treatment), therapy or counselling to an adult,
- (m) any work or activity as a driver of, or as an assistant to the driver, or as a conductor, or as a supervisor of adults using a vehicle which is being hired or used only for the purpose of conveying adults to or from day services or respite services and related activities of such services,
- (n) any work or activity which is carried out by a member of the Garda Síochána, a necessary and regular part of which consists mainly of the person having access to, or contact with, adults who may be at risk of harm or “vulnerable persons” within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

- R. 7.3** **The Commission recommends that** the list of relevant services outlined in recommendation 7.2 above should be prescribed in a schedule to adult safeguarding legislation, as some of the duties proposed in this Chapter will be provided for in adult safeguarding legislation.
- R. 7.4** **The Commission recommends that** adult safeguarding legislation should also enable the relevant Minister to prescribe additional services as “relevant services” for the purposes of the safeguarding duties in adult safeguarding legislation.

(b) Regulated and unregulated relevant services

- [7.11] The Commission is aware that some of the relevant services within the definition of a “relevant service” are regulated,⁵ and some are not. In terms of unregulated relevant services, there may be existing non-statutory standards that outline expectations of such services, but for the most part, there is no regulator or monitoring structure independent of the funder of services, which oversees compliance with these non-statutory standards. This poses problems when it comes to imposing safeguarding duties on unregulated providers of relevant services – as there is no mechanism in place to address non-compliance with the duties.
- [7.12] To illustrate which relevant services are regulated and which are not, the Commission includes the table below.

⁵ For example, residential centres for older people and adults with disabilities are regulated by HIQA in accordance with the Health Act 2007 and associated regulations that set standards on care and support. The Mental Health Commission also regulated “approved centres” under the Mental Health Act 2001 and monitors their compliance with associated regulations.

Type of relevant service	Regulated or not?	Relevant legislation/ regulation/ standards
A “designated centre” within the meaning of section 2(1) of the Health Act 2007, in so far as it relates to an institution at which residential services are provided to older people or to adults with disabilities	Regulated and inspected by HIQA	Health Act 2007; Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013; Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013
A service that provides care to adults in private dwellings	Not yet regulated, but advanced proposals for licensing system to be overseen by HIQA	Draft Regulations for Providers of Home Support Services. Broad definition of “home support”
A service that provides day services to adults with disabilities	Not yet regulated, but standards exist. Self-assessment. Awaiting “formal independent monitoring structure” (possibly HIQA)	Interim Standards for New Directions (day services for people with disabilities); Often section 38 and 39 bodies under Health Act 2004 – subject to service arrangements
A service that provides day services to older people	Not yet regulated, no standards	Often section 38 and 39 bodies under Health Act 2004 – subject to service arrangements

<p>A service that provides personal assistance to adults with disabilities</p>	<p>Not yet regulated, but advanced proposals for licensing system to be overseen by HIQA</p>	<p>Draft Regulations for Providers of Home Support Services. Broad definition of "home support" includes personal assistance</p>
<p>A hospital, hospice, health care centre or other centre which receives or otherwise provides physical services to adults</p>	<p>Not yet regulated but HIQA will set, and oversee standards and review incidents in future</p>	<p>Often section 38 and 39 bodies under Health Act 2004 – subject to service arrangements;</p> <p>Patient Safety (Notifiable Incidents and Open Disclosures) Act 2023</p>
<p>A service that receives, treats or provides mental health services to adults including approved centres under the Mental Health Act 2001</p>	<p>In patient mental health services, including approved centres and community mental health services are regulated and inspected by Mental Health Commission</p> <p>Other mental health services not regulated – such as day services, day hospitals and centres, home-based treatment teams and community mental health teams (but Inspector of MH services has a limited visiting, inspecting and reporting role for some MH services). No role to set standards.</p>	<p>Mental Health Act 2001; Mental Health Act 2001 (Approved Centres) Regulations 2006</p>
<p>A reception or accommodation centre which provides residential accommodation services to</p>	<p>Permanent centres regulated/ monitored by HIQA – monitor</p>	<p>National Standards for accommodation</p>

<p>adults in the international protection process managed by, or under contract to the Department of Children, Equality, Disability, Integration and Youth</p>	<p>compliance with non-statutory standards. Emergency/ temporary accommodation not regulated and standards do not apply</p>	<p>offered to people in protection process The European Communities (Reception Conditions) (Amendment) Regulations 2023 (SI No 649 of 2023) – HIQA monitors compliance with National Standards and conducts inspections</p>
<p>A centre which provides refuge accommodation services for victims of domestic, sexual or gender-based violence</p>	<p>Regulated and monitored by new DSGBV Agency (Cuan) – only recently established - no standards yet</p>	<p>Domestic, Sexual and Gender-Based Violence Agency Act 2023 – power to enter into arrangements with service providers and draft standards. Standards expected (see Third National Strategy on Domestic, Sexual and Gender Based Violence - 2024 Implementation Plan)</p>
<p>A centre which provides residential accommodation services for the purposes of providing substance misuse services</p>	<p>Not regulated – no standards</p>	
<p>A centre which provides residential accommodation services to adults experiencing homelessness</p>	<p>Not regulated – but standards exist – self assessment/ limited oversight by local authority to monitor service arrangements</p>	<p>National Quality Standards Framework for Homeless Services in Ireland; Housing Act 1988</p>

<p>A service that provides treatment (including assessment which may lead to treatment), therapy or counselling to an adult</p>	<p>Not regulated, no standards</p>	<p>Individual practitioners may deliver services in accordance with code of ethics of PSI or IACP</p>
<p>Any work or activity as a driver of, or as an assistant to the driver, or as a conductor, or as a supervisor of adults using a vehicle which is being hired or used only for the purpose of conveying adults to or from day services or respite services and related activities of such services.</p>	<p>Two bodies involved in the small public service vehicle licensing process: the Garda Síochána are the SPSV driver licensing authority (grant licences and assess vetting applicants' suitability) and the NTA is the regulator of SPSVs.</p> <p>Other drivers not regulated.</p>	<p>Taxi Regulation (Small Public Service Vehicle); Taxi Regulation Act 2003</p>
<p>Any work or activity carried out by a member of the Garda Síochána involves access to, or contact with, adults who may be at risk of harm or "vulnerable persons" within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012</p>	<p>Not regulated yet, will soon be regulated and inspected by Policing and Community Safety Authority</p>	<p>Policing, Security and Community Safety Act 2024</p>

[7.13] If services that are not currently regulated were subject to regulatory oversight by existing or new regulatory bodies, it would be more straightforward to determine appropriate oversight mechanisms for monitoring compliance with the proposed safeguarding duties (outlined below), as the relevant regulatory bodies could be conferred with responsibility for monitoring compliance with such duties as part of their inspection functions. It would also be easier to impose duties that are not contained in adult safeguarding legislation, as they could be added to any regulations that the provider of a relevant service must comply with. At present, it is much easier to impose safeguarding duties on services that are regulated by

HIQA and the Mental Health Commission as regulations exist outlining what is expected of such services, and there is an effective oversight mechanism in place as the regulators can oversee compliance.

- [7.14] It is outside the scope of this project for the Commission to recommend that unregulated relevant services should be brought within a statutory regulatory regime, as not all adults availing of these unregulated services are, or will be, at-risk adults. The Commission believes that broader regulatory matters should be determined by Government and examined as a whole, as opposed to in isolation with a view to the benefits it would have for adult safeguarding. Therefore, the Commission recommends that the Government should carefully consider whether relevant services, which are not currently subject to statutory regulatory regimes, including statutory inspections, should be brought within such regulatory regimes. This could be done by expanding the remit of existing regulators, or establishing new regulators.
- [7.15] The lack of regulation of some services does not preclude the Commission from recommending the imposition of safeguarding duties on these services – the Commission does not distinguish between unregulated and regulated relevant services for the purposes of safeguarding duties. To recommend the imposition of safeguarding duties only on regulated services would unduly limit the scope of the recommendations to the health and social care sector, more specifically, services regulated by HIQA or the Mental Health Commission. The Commission wants to ensure that all services that regularly come into contact with adults who are, may be or may become at-risk adults are covered by the safeguarding duties that it recommends in this Chapter.
- [7.16] The Commission sets out below, in discussing each of the duties, any existing legislation, regulations or non-statutory standards that apply to relevant services. The purpose of this is to demonstrate that many services already have duties akin to adult safeguarding duties in relation to adults availing of their services.
- [7.17] When it comes to unregulated relevant services, the Commission believes that the Government should carefully consider whether relevant services, which are not currently subject to statutory regulatory regimes, including statutory inspections, should be brought within such regulatory regimes, as set out above. However, even if the Government does decide to regulate these services, this may not happen for a long period of time. Where a relevant service is not regulated, and standards exist or will exist in the future, the relevant funding agencies or Government departments could consider updating or drafting existing or future standards to encompass the safeguarding duties proposed in this Chapter.

R. 7.5 **The Commission recommends that** the Government should carefully consider whether relevant services, which are not currently subject to statutory regulatory regimes including statutory inspections, should be brought within such regulatory regimes.

3. Safeguarding duties on providers of a relevant service in proposed adult safeguarding legislation

[7.18] This section will examine the need for statutory safeguarding duties on providers of relevant services to adults, including adults who are, may be or may become at-risk adults. These duties are:

- (a) a duty to prevent harm to any adult who is, may be, or may become an at-risk adult;
- (b) a duty to undertake and document a risk assessment and prepare an adult safeguarding statement.⁶

[7.19] The Commission believes that the duties outlined above should be contained in its proposed adult safeguarding legislation.⁷ The other safeguarding duties listed in the introduction will be discussed in section 4, 5 and 6 of the Chapter below – and will not be included in primary adult safeguarding legislation. Regulations for residential centres under the Health Act 2007 and Mental Health Act 2001 already contain requirements related to care plans and personal plans, which the Commission believes could be reasonably updated to incorporate safeguarding plans where there is a safeguarding concern. The regulations also contain provisions in relation to training. The Commission takes the view that it is preferable that the duties to prepare safeguarding plans, provide training and information, and collect and share data are more suitably placed in existing regulations. It recommends in section 2(b) of this Chapter that the Government should carefully consider regulating unregulated relevant services – and if this is done, these safeguarding duties could be placed on them through secondary legislation. While regulation is awaited, the relevant funding agencies or Government departments could consider updating or drafting standards to account for the safeguarding duties proposed in this Chapter.

[7.20] In relation to the provision of services, safeguarding measures should be preventative – as well as seeking to prevent abuse, neglect or ill-treatment of at-

⁶ An adult safeguarding statement would be different to a safeguarding plan which is discussed in section 4 of this Chapter. A safeguarding statement focuses on the service more generally and what needs to be done to safeguard adults availing of its service, it does not relate to individual adults availing of the service. The focus is to ensure the service is operated in a manner that minimises the risk of harm to adults, and promotes their health, safety and welfare.

⁷ These duties are similar to the duties placed on services in the Children First Act 2015.

risk adults, they should seek to prevent people becoming at-risk adults insofar as reasonably possible. This can be achieved by ensuring that services carry out risk assessments and have risk management policies in place to identify any risks posed by its service to adults availing of the service or staff. It can also be achieved by each service preparing and publishing an adult safeguarding statement, which sets out the policies, procedures and measures it has in place to safeguard at-risk adults and other adults and minimise any risks. The duties to undertake a documented risk assessment and prepare an adult safeguarding statement, along with the overarching duty to prevent harm, are discussed below.

[7.21] There are no duties that apply universally to all organisations in the provision of services to adults, including adults who are, may be or may become at-risk adults. Many consultees who responded to the Commission's Issues Paper stated that the provision of relevant services to adults and at-risk adults, such as care and support services, must be underpinned by a duty to safeguard, to prevent or to reduce the risk of harm and to promote the wellbeing of service users. In its submission in response to the Commission's Issues Paper, HIQA highlighted that its remit and powers do not extend to the inspection, investigation or assessment of complaints in home support services,⁸ day services, care services to people in group or sheltered living arrangements, accommodation services for people in the international protection process,⁹ homelessness services and substance misuse services.¹⁰ HIQA expressed its belief that safeguarding legislation should impose a duty to safeguard on providers of those services in addition to services regulated by HIQA and the Mental Health Commission.¹¹ HIQA strongly supported the introduction of a statutory duty on service providers to safeguard at-risk adults.¹² HIQA also supported the introduction of requirements to undertake an assessment of risk to adults availing of services and prepare a written statement (adult safeguarding statement) specifying the service being

⁸ Under the draft regulations for home support services outlined below, HIQA will have responsibility for overseeing licensing of home support services.

⁹ Since this submission, HIQA now monitors compliance with standards by permanent accommodation centres for international protection applicants.

¹⁰ Health Information and Quality Authority, *Law Reform Commission Issues Paper 'A Regulatory Framework for Adult Safeguarding' - Response by the Health Information and Quality Authority (HIQA)* (HIQA 2020), at page 15: < <https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf> > accessed 8 March 2024.

¹¹ Health Information and Quality Authority, *Law Reform Commission Issues Paper 'A Regulatory Framework for Adult Safeguarding' - Response by the Health Information and Quality Authority (HIQA)* (HIQA 2020), at page 15 < <https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf> > accessed 8 March 2024.

¹² Health Information and Quality Authority, *Law Reform Commission Issues Paper 'A Regulatory Framework for Adult Safeguarding' - Response by the Health Information and Quality Authority (HIQA)* (HIQA 2020), at page 15 < <https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf> > accessed 8 March 2024.

provided and the principles and procedures to be observed in the provision of services.¹³

- [7.22] Several consultees stated that the Commission should consider the approach to safeguarding adopted in the Children First Act 2015. Similar to the duty in section 10 of the Children First Act 2015, the consultees proposed that organisations providing services to adults, including adults who are, may be or may become at-risk adults, should have a statutory duty to ensure that adults availing of the service are safe from harm. Consultees also proposed that a similar provision to section 11 of the Children First Act 2015 should be introduced to require organisations in the provision of services to adults to undertake an assessment of risk to adults availing of the service and prepare a written “adult safeguarding statement” specifying the service(s) to be provided and the principles and procedures to be followed to minimise the risk to service users. One consultee suggested that the procedures in section 11(3) of the Children First Act 2015 provide a helpful road map of what could be considered by the Commission for inclusion in a service provider’s adult safeguarding statement. A list of the types of services to which the duties in the Children First Act 2015 apply is set out in a schedule to the Act.¹⁴ Measures to address non-compliance with a request to furnish a child safeguarding statement including the service of non-compliance notices are set out in the Act.¹⁵
- [7.23] The introduction of statutory duties aimed at preventing harm to adults, including adults who are, may be, or may become at-risk adults would ensure that all relevant services are subject to requirements to prevent harm regardless of whether they are publicly or privately funded. The duties to prevent harm; undertake and document a risk assessment; and prepare an adult safeguarding statement could also prevent a deterioration in care and support needs and the development of adult safeguarding concerns, therefore preventing adults from becoming at-risk adults.¹⁶

¹³ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority (HIQA)* (HIQA 2020), at page 15
<<https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf>> accessed 8 March 2024.

¹⁴ Schedule 1 of the Children First Act 2015.

¹⁵ Section 12 of the Children First Act 2015.

¹⁶ See for example Hampshire Safeguarding Adults Board, Isle of Wight Safeguarding Adults Board, PSAB and SSAB, *4LSAB Multi-Agency Guidance on Prevention and Early Intervention in Adult Safeguarding* (2020) at page 3. It makes observations on the Care Act 2014 in England where the importance of not waiting to respond “when people reach a crisis point” was discussed:

“It is vital that the care and support system intervenes early to support individuals, helps people retain or regain their skills and confidence, and prevents need, or

[7.24] Introducing duties on providers of relevant services would ensure that responsibility for adult safeguarding lies with providers of services to adults in the first instance. Many consultees emphasised the importance of service providers taking responsibility for safeguarding at service level to avoid all safeguarding matters having to be resolved or addressed externally, which would not be as effective in terms of changing processes within the service. Any duties introduced on providers of relevant services should be prevention-focused and aimed at preventing safeguarding issues from arising at a service-level. This would prevent harm to adults who are, may be, or may become at-risk adults and facilitate timely preventative intervention where there are indicators of risk. Preventative measures may also have the effect of reducing reports of actual or suspected abuse or harm to the Safeguarding Body thereby, reducing the resourcing needs to respond to reports. This could ensure that the Safeguarding Body is not overburdened and that its resources are directed to responding to reports in a timely manner. The Commission believes that the prevention of harm at a service level and the positive impacts of a corresponding reduction in reports to the Safeguarding Body are essential to ensure a comprehensive and effective adult safeguarding framework.

[7.25] This section outlines existing adult safeguarding requirements on providers of relevant services, and the substance of each duty and what it would entail.

(a) Existing adult safeguarding requirements on providers of relevant services and gaps identified

[7.26] Relevant services are subject to different existing requirements depending on how the relevant services are regulated and whether they are subject to statutory standard-setting and statutory inspection regimes. This subsection will discuss the existing requirements on different types of relevant services in order to assess any gaps and to inform the discussion of whether there is a need for statutory adult safeguarding duties, which would apply universally to all relevant services.

[7.27] Some types of services including residential centres for people with disabilities and residential centres for older people are subject to regulation in the form of standard-setting and inspections by HIQA under the Health Act 2007 while approved centres under the Mental Health Act 2001 are subject to similar standard-setting and inspections by the Mental Health Commission. These standards are set out in regulations under the Health Act 2007 and Mental Health Act 2001, and HIQA and the Mental Health Commission oversee compliance with the regulations. Other standards also exist that apply to services regulated by HIQA and the Mental Health Commission, such as the National Standards for

delays deterioration wherever possible. This approach applies equally to adult safeguarding.”

Adult Safeguarding discussed below.¹⁷ In comparison, other relevant services including day services for adults with disabilities and home support services are not currently subject to statutory standard-setting and inspection by an independent regulatory body. Instead, such services are subject to compliance with standards which are either self-assessed or enforced as part of funding agreements by funding bodies including the HSE. For example, day services are subject to standards set by the HSE, which directly provides or funds such day services, but are not subject to oversight by an independent regulator such as HIQA.¹⁸

(i) *The Health Act 2007, associated regulations and standards*

[7.28] Registered providers of residential centres for older people are required to take all reasonable steps to protect residents from abuse.¹⁹ Such reasonable steps include the provision of staff training in relation to the detection, prevention of and responses to abuse.²⁰ The person in charge of a residential centre for older people is required to investigate any incident or allegation of abuse.²¹ Where the person in charge is the subject of an allegation, the registered provider of the residential centre must investigate the matter or nominate a person, who in the opinion of the registered provider is a suitable person, to investigate the matter.²² The risk management policy of a registered provider for a residential centre for older people must set out the measures and actions in place to control specified risks. These include the risk of abuse; the risk of the unexplained absence of any resident; the risk of accidental injury to residents, visitors or staff; the risk of aggression and violence; and the risks of self-harm.²³ The risk management policy must also set out arrangements for the identification, recording, investigation and learning from serious incidents or adverse events

¹⁷ See also Health Information and Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016); Health Information and Quality Authority, *National Standards for Residential Services for Children and Adults with Disabilities* (HIQA 2013); Mental Health Commission, *National Standards for the Conduct of Reviews of Patient Safety Incidents* (MHC 2017).

¹⁸ The Interim Standards for day services for adults with disabilities mention that HIQA may assume responsibility for monitoring compliance with the Standards, but this has not occurred to date, despite the Interim Standards being published in 2015.

¹⁹ Regulation 8(1) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

²⁰ Regulation 8(2) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

²¹ Regulation 8(3) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

²² Regulation 8(4) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

²³ Regulation 26(1) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

involving residents.²⁴ The registered provider of a residential centre for older people must also ensure that there is a plan in place for responding to major incidents likely to cause death or injury, serious disruption to essential services or damage to property.²⁵

- [7.29] There are similar requirements in place in respect of residential centres for adults with disabilities. However, the regulations in respect of such centres also provide that the registered provider must ensure that each resident is assisted and supported to develop the knowledge, self-awareness, understanding and skills needed for self-care and protection.²⁶ The regulations also specify that the person in charge of a residential centre for adults with disabilities must take appropriate action where a resident is harmed or suffers abuse.²⁷
- [7.30] In addition to the regulations, HIQA has also produced National Standards for some of the services it regulates, including residential services for adults with disabilities²⁸ and residential care settings for older people.²⁹ These National Standards provide people living in residential care with a guide as to what they should expect from residential services, and they provide a framework for HIQA to assess whether residential services are providing “high-quality, safe and effective services and supports for the people who live there, in line with the requirements of the Health Act 2007 (as amended)”.³⁰
- [7.31] Standard 3.1 of the National Standards for Residential Care Settings for Older People provides that each resident should be safeguarded from abuse and

²⁴ Regulation 26(1)(d) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

²⁵ Regulation 26(2) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

²⁶ Regulation 8(1) of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

²⁷ Regulation 8(3) of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

²⁸ Health Information and Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016). These National Standards apply to residential services providing accommodation with care and support to older people.

²⁹ Health Information and Quality Authority, *National Standards for Residential Services for Children and Adults with Disabilities* (HIQA 2013). These National Standards apply to residential services providing accommodation with care and support to adults with disabilities.

³⁰ Health Information and Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016) at page 4; Health Information and Quality Authority, *National Standards for Residential Services for Children and Adults with Disabilities* (HIQA 2013) at pages 3 and 4.

neglect and their safety and welfare promoted.³¹ Standard 3.2 states that residential services should have “effective arrangements in place to manage risk and protect residents from the risk of harm”.³² This involves having arrangements in place to “identify, assess, mitigate, monitor and report” all risks to the safety of residents. It also involves systematically identifying aspects of service delivery that may be associated with a risk of harm to residents and putting measures in place to minimise such risks.³³ The National Standards for Residential Services for Adults with Disabilities provide that risk assessment and risk management policies and procedures should be put in place to address situations where safety may be compromised.³⁴ The approach of residential services to risk management should support responsible risk taking and capacity.³⁵

(ii) Mental Health Act 2001 and associated regulations

[7.32] The registered proprietors of approved centres under the Mental Health Act 2001 are required to ensure that the risk management policy of a centre sets out the procedures in place to control the risks of: residents being absent without leave; suicide and self-harm; assault; and accidental injury to residents or staff.³⁶ A risk management policy in such centres must also set out the arrangements for the identification, recording, investigation and learning from serious or untoward incidents or adverse events involving residents,³⁷ arrangements for responding to emergencies and the arrangements for the protection of vulnerable adults from abuse.³⁸ The risk management policy must also outline how the approved centre will identify and assess risks in the provision of its service.³⁹

[7.33] It can be seen that the regulations in respect of residential centres for older people and residential centres for adults with disabilities differ from regulations for approved centres under the Mental Health Act 2001 in respect of the level of

³¹ Health Information and Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016) at page 14.

³² Health Information and Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016) at page 14.

³³ Health Information and Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016) at page 49. Residential services for older people are also required to have a statement of purpose, which describes the services it provides and outlines the governance systems in place to ensure safe service delivery.

³⁴ Health Information and Quality Authority, *National Standards for Residential Services for Children and Adults with Disabilities* (HIQA 2013) at page 80.

³⁵ Health Information and Quality Authority, *National Standards for Residential Services for Children and Adults with Disabilities* (HIQA 2013) at page 80.

³⁶ Regulation 32(2)(c) of the Mental Health Act 2001 (Approved Centres Regulations 2006).

³⁷ Regulation 32(2)(d) of the Mental Health Act 2001 (Approved Centres Regulations 2006).

³⁸ Regulation 32(2)(f) of the Mental Health Act 2001 (Approved Centres Regulations 2006).

³⁹ Regulation 32(2)(a) of the Mental Health Act 2001 (Approved Centres Regulations 2006).

specific requirements for preventing, and responding to, abuse or harm of residents.⁴⁰ The regulations for approved centres under the Mental Health Act 2001 are significantly less detailed.

(iii) National Standards for Adult Safeguarding (health and social care sectors)

[7.34] HIQA and the Mental Health Commission published joint National Standards for Adult Safeguarding (the “National Standards”) in 2019 in furtherance of their statutory mandates to set or promote, encourage and foster the establishment of standards for certain health and social care services (in the case of HIQA) and mental health services (in the case of the Mental Health Commission). The National Standards were approved by the Minister for Health, placing a responsibility on all residential services for older people and people with disabilities and all publicly funded health and social care services to begin implementing these National Standards.⁴¹ As these standards were jointly developed and approved by the Mental Health Commission, all mental health services must also implement the standards.

[7.35] The National Standards include standards to provide effective care and support such as:

The service effectively plans and delivers care and support to reduce the risk of harm and promote each person’s rights, health and wellbeing.⁴²

[7.36] The National Standards also feature standards to provide safe care and support including:

The service strives to protect each person from the risk of harm and to promote their safety and welfare.⁴³

[7.37] Service providers are obliged to have an adult safeguarding policy in place which: “describes how the service minimises the risk of harm and abuse occurring, how it responds whenever harm or abuse is suspected or has occurred, and how it

⁴⁰ It should be noted that a reform of the Mental Health Act 2001 is expected in the foreseeable future. In the Government’s Legislative Programme for the Spring Session 2024, reform of the Mental Health Act was prioritised for drafting. The Heads of the Mental Health Bill were published in July 2021 and pre-legislative scrutiny of the Mental Health (Amendment) Bill took place in May 2022. With that in mind, it is likely that the regulations for approved centres will be overhauled in the near future.

⁴¹ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 12.

⁴² See Standard 2.1 in HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 27.

⁴³ See Standard 3.1 in HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 27.

escalates concerns, as appropriate”.⁴⁴ Service providers should also have risk management arrangements in place to identify and evaluate risks and take appropriate and timely action to manage safeguarding concerns and reduce the risk of harm.⁴⁵ Their statement of purpose should reflect the principles of safeguarding and set out how it will deliver the aims and objectives of the service.⁴⁶ Service providers must identify, respond to, manage and learn from safeguarding concerns and the resulting outcomes, and use this learning to review its policies and procedures to reduce the risk of harm to its service users.⁴⁷

- [7.38] It must be noted that the application of these standards is limited and does not extend, for example, to privately funded health and social care services (other than privately funded nursing homes), homeless services, domestic, sexual, and gender-based violence services or to accommodation services for people in the international protection process.

(iv) Home support services

- [7.39] At the time of writing, there is no statutory regulation of home support services in Ireland.⁴⁸ However the HSE, as a provider and commissioner of services, has oversight through the tendering and contractual process of publicly funded home support services.⁴⁹ As professional home support services are not yet regulated, there are no existing statutory requirements on providers of professional home support services. Home support services are provided directly

⁴⁴ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 39.

⁴⁵ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 40. Risk management is defined in the National Standards for Adult Safeguarding as the “systematic identification, evaluation and management of risk. It is a continual process that aims to reduce risk to an organisation and individuals.”

⁴⁶ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at pages 36 and 38. The statement of purpose sets out the “aims and objectives of the service, including how resources are aligned to deliver these aims and objectives. It also describes in detail the range, availability and scope of services provided by the overall service”. The principles of safeguarding outlined in the National Standards for Adult Safeguarding are: empowerment, rights, proportionality, prevention, partnership and accountability.

⁴⁷ HIQA and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 33.

⁴⁸ Sheehan and O’Sullivan, *Draft Regulations for Providers of Home Support Services: An Overview of the Findings of the Department of Health’s Public Consultation* (Institute of Public Health in Ireland January 2023) at page 6
<<https://www.publichealth.ie/sites/default/files/resources/Draft%20Regulations%20for%20Providers%20of%20Home%20Support%20Services%20%20An%20Overview%20of%20the%20Findings%20of%20the%20Departm.pdf>> accessed on 11 April 2024.

⁴⁹ Sheehan and O’Sullivan, *Draft Regulations for Providers of Home Support Services: An Overview of the Findings of the Department of Health’s Public Consultation* (Institute of Public Health in Ireland January 2023) at page 6.

by the HSE or by external providers commissioned by the HSE. External providers commissioned by the HSE to provide home support services must adhere to contractual obligations under funding agreements with the HSE. Individuals may also obtain services privately from home support providers.⁵⁰ However, the contractual obligations under the HSE's publicly funded home support service agreements do not apply with respect to the provision of private home support services.

- [7.40] The Government has published and conducted a public consultation on the Draft Regulations for Providers of Home Support Services (the "Draft Regulations"). The Draft Regulations put forward the minimum requirements that public, private and not-for-profit providers of home support services should be required to meet to obtain a licence to operate.⁵¹ If adopted, a home support service provider would be required to complete a home environment risk assessment before it begins providing a home support service to a service user.⁵² The Draft Regulations require the service provider to have appropriate policies and procedures in place to ensure the security, safety and protection of the service user and their home.⁵³ It should also put in place procedures to monitor and evaluate the risk of abuse of service users by a home support worker and it must have a safeguarding policy in place.⁵⁴
- [7.41] If the Draft Regulations are adopted in their current form, a provider of home support services would be required to maintain an up-to-date "Statement of Purpose" which sets out the aims, objectives, philosophy of care and parameters of the services provided and the intended service(s) that a user needs.⁵⁵ This would have to be publicly accessible on the service provider's website and made available to anyone who requests it.⁵⁶ It should be reviewed at least once a year,

⁵⁰ Sheehan and O'Sullivan, *Draft Regulations for Providers of Home Support Services: An Overview of the Findings of the Department of Health's Public Consultation* (Institute of Public Health in Ireland January 2023) at page 6.

⁵¹ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022).

⁵² Department of Health, *Draft Regulations for Providers of Home Support Services* (2022) at page 21.

⁵³ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022) at page 13.

⁵⁴ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022) at page 14.

⁵⁵ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022) at page 7; Sheehan and O'Sullivan, *Draft Regulations for Providers of Home Support Services: An Overview of the Findings of the Department of Health's Public Consultation* (Institute of Public Health in Ireland January 2023) at page 40.

⁵⁶ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022) at page 7.

and revised as necessary.⁵⁷ The Statement of Purpose should include among other requirements, the following:

- (a) the arrangements in place to deliver a safe and quality service;
- (b) the arrangements for safeguarding and promoting the health and well-being of service users;
- (c) the arrangements for the notification of reportable events;
- (d) policies and procedures in place related to risk management and safeguarding vulnerable adults from abuse.⁵⁸

(v) *Interim Standards for day services for adults with disabilities*

[7.42] The Interim Standards for day services for adults with disabilities (the “Interim Standards”) apply to services and supports for adults with disabilities that are funded by the HSE, whether they are operated by public, private or voluntary organisations.⁵⁹ They do not apply to:

- (a) mental health services, which are regulated by the Mental Health Commission;
- (b) residential services for adults and children with disabilities, which are regulated by HIQA;
- (c) personal assistant services;
- (d) home help / home care/ home support packages;
- (e) home help services;
- (f) mainstream and community services that a person may be supported by HSE funded services to access and attend.⁶⁰

⁵⁷ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022) at page 7.

⁵⁸ Department of Health, *Draft Regulations for Providers of Home Support Services* (2022) at pages 22 and 23.

⁵⁹ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 6.

⁶⁰ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 6.

[7.43] The Interim Standards provide that service providers must have risk assessment and management policies and procedures in place to comply with the HSE's National Policy and Procedures.⁶¹ It states that the purpose of risk assessment and management policies and procedures is to enable staff to "support people to manage situations where they may be vulnerable".⁶² The Interim Standards provide that the service provider's approach to risk management should support positive risk taking and encourage service users making informed decisions.⁶³

(vi) National Standards for accommodation offered to people in the protection process

[7.44] There are no statutory adult safeguarding requirements on accommodation service providers for people seeking or in receipt of international protection. There are statutory requirements on the Minister for Children, Equality, Disability, Integration and Youth in relation to "vulnerable" persons seeking international protection and their special reception needs.⁶⁴ These are discussed further below. As of the 9 January 2024, HIQA is responsible for monitoring compliance of permanent accommodation centres for people in the international protection process with the National Standards for accommodation offered to people in the protection process (the "National Standards").⁶⁵

[7.45] The National Standards were published by the Department of Justice in 2019, and came into operation in January 2021.⁶⁶ These standards apply to all service providers contracted by International Protection Accommodation Service to

⁶¹ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 51 See also, Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014).

⁶² Health Service Executive, *New Directions: Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 51.

⁶³ HSE, *HSE, New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 51.

⁶⁴ European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018).

⁶⁵ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019). The European Communities (Reception Conditions) (Amendment) Regulations 2023 (SI No 649 of 2023) amended the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018) to insert regulations 27A and 27D to empower HIQA to monitor compliance by service providers with the National Standards and conduct inspections of accommodation centres.

⁶⁶ Health Information and Quality Authority, *A Guide to the Monitoring of International Protection Accommodation Service Centres* (HIQA 2024) at page 2. Policy responsibility for international protection, integration and equality has since transferred to the Department of Children, Equality, Disability, Integration and Youth. See Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020 (SI No 436 of 2020).

operate and manage accommodation and reception centres.⁶⁷ Theme 8 of the National Standards relates to safeguarding and protection. Standard 8.1 provides that “the service provider protects residents from abuse and neglect and promotes their safety and welfare”.⁶⁸ The indicators of compliance with standard 8.1 include that the service provider:

- (a) has policies and procedures in place and they are implemented to ensure each resident is protected from harm and abuse;
- (b) has risk assessment and management policies and procedures are in place for dealing with situations where safety may be compromised;
- (c) deals with allegations of abuse or harm in an effective manner in line with its identified policies and procedures;
- (d) informs residents about how to ensure their safety and protection and ensures they are consulted on all policies and procedures regarding safeguarding and protection.⁶⁹

[7.46] Theme 10 of the National Standards requires service providers to identify, assess and respond to special reception needs.⁷⁰ A resident with a special reception need is defined as “a resident who has been assessed as vulnerable and in need of special guarantees to benefit from his or her entitlements and to comply with his or her obligations under the European Communities (Reception Conditions) Regulations 2018”.⁷¹ The standards under Theme 10 require service providers to:

- (a) ensure that any special reception needs notified to them by the Department of Children, Equality, Disability, Integration and Youth are incorporated into the provision

⁶⁷ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 2.

⁶⁸ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 55.

⁶⁹ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 57.

⁷⁰ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 62.

⁷¹ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at pages 14-15. See also the definition of “recipient with special reception needs” in regulation 2, the definition of “vulnerable person” in regulation 2(5) and the duties on the relevant Minister in respect of “vulnerable persons” in regulation 8 of the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018).

of accommodation and associated services for the resident;

- (b) enable staff to identify and respond to emerging and identified needs for residents;
- (c) have an established policy to identify, communicate and address existing and emerging special reception needs;
- (d) make available a dedicated Reception Officer, who is suitably trained to support all residents' especially those people with special reception needs both inside the accommodation centre and with outside agencies;⁷²
- (e) make additional measures available where a significant percentage of residents are deemed to be exceptionally vulnerable or in cases where a centre has been designated for exceptionally vulnerable international protection applicants.⁷³

[7.47] As stated above, HIQA was recently given responsibility to oversee compliance with the National Standards. The National Standards above do contain standards related to risk assessments and having policies and procedures in place to prevent abuse to residents, and address allegations of abuse or harm. However, there is no specific standard requiring service providers to prepare an adult safeguarding statement. If a requirement on relevant services to prepare an adult safeguarding statement is introduced in adult safeguarding legislation, consideration may be given to whether the indicators of compliance with standard 8.1 (the service provider protects residents from abuse and neglect and promotes their safety and welfare) could be updated to include an expectation that an adult safeguarding statement is prepared.⁷⁴

[7.48] The National Standards do not apply to emergency or temporary accommodations provided to international protection applicants, for example, in hotels or hostels.⁷⁵ Therefore, HIQA has no oversight over providers of

⁷² Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 66.

⁷³ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at pages 62, 63, 64, 66, 68.

⁷⁴ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 55.

⁷⁵ United Nations High Commissioner for Refugees, Written Submission to the Committee on Economic, Social and Cultural Rights 75th Session Ireland (12 February – 1 March 2024) at pages 1, 2, 4, 5, < <https://www.unhcr.org/ie/sites/en-ie/files/2024->

emergency or temporary accommodation services for people in the international protection process.⁷⁶ The Government may wish to consider extending the National Standards to temporary or emergency accommodation services, or introducing a specific set of standards or regulations that would apply to such services, or all accommodation services provided to international protection applicants or those in receipt of international protection.

- [7.49] The European Communities (Reception Conditions) Regulations 2018 places obligations on the Minister for Children, Equality, Disability, Integration and Youth in respect of “vulnerable persons” seeking international protection.⁷⁷ Within 30 days of a person indicating that they wish to make an application for international protection, the Minister must, assess whether a person has “special reception needs” and if so, the nature of those needs.⁷⁸ Where the Minister considers it necessary to do so, the Minister may also assess whether a person has “special receptions needs” and if so, the nature of those needs, at any later stage.⁷⁹ The regulations place obligations on the Minister for Health to ensure an applicant for international protection has access to certain types of healthcare.⁸⁰
- [7.50] The International Protection Accommodation Service (“IPAS”) published its Vulnerability Assessment Pilot Programme Policy in 2022 after extending the use of vulnerability assessments to all newly arrived international protection applicants in 2021.⁸¹ Applicants for international protection are asked to

[02/Ireland_UNHCR%20Public%20Submission%20for%20CESCR%2075th%20Session.pdf](https://www.gov.ie/en/publications-and-statements/publication/02/Ireland_UNHCR%20Public%20Submission%20for%20CESCR%2075th%20Session.pdf)> accessed 15 March 2024. The submission recommends that Ireland reduces its reliance on short-term and emergency accommodation, and in the interim, that it introduce “national standards with an accompanying independent inspectorate for short-term and emergency accommodation”. It notes that “emergency accommodation providers are not bound by the national standards, nor are they under the same contractual obligations as those who manage dedicated IPAS accommodation centres”.

⁷⁶ Health Information and Quality Authority, *Frequently Asked Questions (FAQs) HIQA monitoring and inspection of International Protection Accommodation Service Centres* (HIQA 2024) at page 2 <https://www.hiqa.ie/sites/default/files/2024-01/IPAS-FAQs.pdf> accessed 14 March 2024.

⁷⁷ Regulation 8 of the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018).

⁷⁸ Regulation 8(1) of the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018). IPAS generally requests that vulnerability questionnaires should be returned within 30 days.

⁷⁹ Regulation 8(1) of the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018). IPAS generally requests that vulnerability questionnaires should be returned within 30 days. This suggests that an assessment could be carried out if a person’s needs change or new information about their needs becomes available.

⁸⁰ Regulation 18 of the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018). IPAS generally requests that vulnerability questionnaires should be returned within 30 days.

⁸¹ International Protection Accommodation Services, *Vulnerability Assessment Pilot Programme Policy* (IPAS 2022).

complete a questionnaire to identify whether they have any special reception needs and this is reviewed by an Assessment Officer who may refer the matter for further assessment by an IPAS social worker.⁸² An applicant may be deemed vulnerable where they are:

- (a) a person with a disability;
- (b) an older person;
- (c) a pregnant woman;
- (d) a single parent of a minor;
- (e) a victim of human trafficking;
- (f) a person with a serious illness;
- (g) a person with a mental disorder;
- (h) a person who has been subjected to torture, rape or other form of serious psychological, physical or sexual violence.⁸³

[7.51] The Vulnerability Assessment Pilot Programme Policy provides that most special reception needs “can be addressed through the provision of advice and support and by signposting applicants to relevant information and services”.⁸⁴ Service providers are often required to assist the Minister in performing its functions. For example, the Minister is under a statutory obligation to ensure that recipients have access to healthcare.⁸⁵ According to the National Standards, the service provider should have arrangements in place to assist and facilitate residents accessing medical appointments and psycho-social services and supports, including access to childcare and transport.⁸⁶ Service providers also have a role in catering to existing and emerging special reception needs of “vulnerable” residents, which assists the Minister to comply with their obligations under the reception regulation discussed above. For example, the centre should notify the Department of Children, Equality, Disability, Integration and Youth if it is unable to accommodate the special reception needs of a resident, or if supports and services needed to accommodate those needs are not available in the locality

⁸² International Protection Accommodation Services, *Vulnerability Assessment Pilot Programme Policy* (IPAS 2022) at page 3.

⁸³ International Protection Accommodation Services, *Vulnerability Assessment Pilot Programme Policy* (IPAS 2022) at page 4. See also section 58(1) of the International Protection Act 2015 and regulation 2(5) of the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018).

⁸⁴ International Protection Accommodation Services, *Vulnerability Assessment Pilot Programme Policy* (IPAS 2022) at page 5.

⁸⁵ Regulation 18 of the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018).

⁸⁶ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 59.

where the centre is located.⁸⁷ As mentioned previously, HIQA oversees compliance of permanent International Protection Accommodation Service accommodation service providers with their obligations under the National Standards.

(vii) National Quality Standards Framework for Homeless Services

[7.52] The National Quality Standards Framework for Homeless Services (the “National Quality Standards”) was developed and published by Dublin Region Homeless Executive in April 2019 on behalf of the Department of Housing, Planning and Local Government.⁸⁸ It outlines the responsibilities of homeless service providers who are in receipt of funding under section 10 of the Housing Act 1988.⁸⁹ These include statutory, voluntary and private service providers who provide services to single adults, couples, and families with dependent children.

[7.53] Theme 3 of the National Quality Standards focuses on the provision of safe services.⁹⁰ The first standard recognises the need to ensure service users are “safeguarded and protected from abuse and their safety and welfare is promoted”.⁹¹ Services must have policies and procedures in place to protect adults from abuse and neglect.⁹² Safety planning should occur where a person is at risk of domestic abuse, and they should be referred to specialised services, if appropriate. Service users with known histories of sexual offending should be assessed for risks to themselves and others before being placed within a homeless service.⁹³

⁸⁷ Department of Justice, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 64.

⁸⁸ Dublin Region Homeless Executive and the Department of Housing, *Planning and Local Government, National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019).

⁸⁹ Dublin Region Homeless Executive and the Department of Housing, *Planning and Local Government, National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 4. This is done through Service Level Agreements.

⁹⁰ Dublin Region Homeless Executive and the Department of Housing, *Planning and Local Government, National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 26.

⁹¹ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 27.

⁹² Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 27.

⁹³ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 27.

[7.54] The second standard in Theme 3 provides that services should “assess and manage risk to promote the safety of service users, staff and wider community”.⁹⁴ Service providers should have risk assessment and management policies and procedures involving service users in place to deal with situations where safety may be compromised.⁹⁵ As part of service providers’ duty of care to service users, they should assess and respond to any security, health and safety risks posed to service users.⁹⁶ This standard emphasises the need for health and safety training for staff, the need for incident management procedures and critical incident reviews, and procedures for safeguarding vulnerable adults.⁹⁷ The National Quality Standards emphasise the importance of identifying and managing the risks associated with substance misuse.⁹⁸

(viii) Service providers that provide refuge accommodation services for victims of domestic, sexual or gender-based violence

[7.55] The Child and Family Agency was previously responsible for the care and protection of victims of domestic, sexual or gender-based violence.⁹⁹ These functions have now been transferred to the Domestic, Sexual and Gender-Based Violence Agency (the “DSGBV Agency (Cuan)”) by the Domestic, Sexual and Gender-Based Violence Agency Act 2023 (the “2023 Act”).¹⁰⁰ The 2023 Act provides that all agreements entered into or actions taken by the Child and Family Agency which relate to care and support for victims of domestic, sexual or

⁹⁴ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 29.

⁹⁵ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 29.

⁹⁶ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 29.

⁹⁷ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 29.

⁹⁸ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 33.

⁹⁹ Section 8(3)(b) of the Child and Family Agency Act 2013.

¹⁰⁰ The legal name for the DSGBV Agency is An Ghníomhaireacht um Fhoréigean Baile, Gnásach agus Inscnebhunaithe. The 2023 Act also amends the Child and Family Agency Act 2013 to provide that all references to the Agency in the 2013 Act are to be construed as references to An Ghníomhaireacht um Fhoréigean Baile, Gnásach agus Inscnebhunaithe where the functions of the new agency are involved. See section 44 of the Domestic, Sexual and Gender-Based Violence Agency Act 2023.

gender-based violence will be carried on by the DSGBV Agency (Cuan) after its establishment day, which was the 1 January 2024.¹⁰¹

- [7.56] In February 2022, the Child and Family Agency published a Review of the Provision of Accommodation for Victims of Domestic Violence, which contains findings from a review of domestic violence accommodation initiated in 2019.¹⁰² The report provides that “it is evident that to support safe accommodation, specialist DV services are required to support victims and engage in: risk assessment, safety planning and care planning”.¹⁰³ The review calls for the introduction of standards for the provision of domestic violence accommodation.¹⁰⁴
- [7.57] Like the Child and Family Agency, the DSGBV Agency (Cuan) can enter into service agreements with service providers to provide for refuge accommodation and programmes which promote the prevention of domestic and gender-based violence.¹⁰⁵ It must make arrangements that it considers appropriate to monitor the provision of services or programmes by any service providers it enters into agreements with.¹⁰⁶ If requested to do so by the Minister for Justice, the new Agency is required by the 2023 Act to prepare and submit for the approval of the Minister, standards for the provision of the services in the pursuit of this function.¹⁰⁷ If these standards are introduced in the future, they could include requirements in relation to safeguarding, including risk assessments and policies and procedures to keep service users safe. The Minister for Justice recently published a targeted 2024 implementation plan for the Zero Tolerance Strategy, which includes commitments to produce a report on service standards development, implementation, assessment and monitoring.¹⁰⁸

¹⁰¹ Section 29 of the Domestic, Sexual and Gender-Based Violence Agency Act 2023.

¹⁰² Child and Family Agency, *Review of the Provision of Accommodation for Victims of Domestic Violence* (CFA 2022).

¹⁰³ Child and Family Agency, *Review of the Provision of Accommodation for Victims of Domestic Violence* (CFA 2022) at page 19.

¹⁰⁴ Child and Family Agency, *Review of the Provision of Accommodation for Victims of Domestic Violence* (CFA 2022) at pages 30 and 31.

¹⁰⁵ Section 40(1) of the Domestic, Sexual, and Gender-Based Violence Act 2023.

¹⁰⁶ Section 40(8)(b) of the Domestic, Sexual and Gender-Based Violence Act 2023. The Minister for Justice can also specify requirements in respect of the provision by service providers of services and programmes in accordance with section 40 of the 2023 Act.

¹⁰⁷ Section 6(1)(c) of the Domestic, Sexual and Gender-Based Violence Agency Act 2023.

¹⁰⁸ Department of Justice, *Third National Strategy on Domestic, Sexual and Gender Based Violence 2024 Implementation Plan* (DOJ 2024) <<https://assets.gov.ie/289239/8397af6a-eb2e-48d7-a0df-cf72c91d103b.pdf>> accessed 8 April 2024.

(ix) Relevant services who are charities

[7.58] The Charities Regulator published Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults) (the “Safeguarding Guidance”) in 2020.¹⁰⁹ Section 39(5) of the Charities Act 2009 outlines the requirements for an application for the Register of Charities, and this includes a requirement to:

specify the risk assessment procedures, safety checks and safeguards employed by the charitable organisation where its activities include working with vulnerable people (including the aged, children and young people, the sick [and the] disabled).¹¹⁰

[7.59] The Safeguarding Guidance outlines who the HSE’s National Policy and Procedures apply to, and states that all charities with responsibility for the provision of health and social care services to “vulnerable” persons (adults), and who come within the scope of the HSE’s National Policy and Procedures should ensure that “safeguarding policies and procedures and associated practices are in place and appropriate to the services provided”.¹¹¹

[7.60] In particular, the Safeguarding Guidance outlines what the HSE’s National Policy and Procedures requires in terms of risk assessments to minimise the likelihood of risk or its impacts.¹¹² The Safeguarding Guidance provides that the “aim of risk assessment and management is to prevent abuse occurring, to reduce the likelihood of it occurring and to minimise the impacts of abuse by responding effectively if it does occur”.¹¹³ It lists a number of factors that a charitable organisation should consider when conducting a risk assessment, including but not limited to the following:

- (a) the assessment and management of risk should promote independence, real choices and social inclusion of “vulnerable” persons;
- (b) risks change as circumstances change;
- (c) risks can be minimised but not eliminated;

¹⁰⁹ Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator 2020).

¹¹⁰ Section 39(5)(l) of the Charities Act 2009.

¹¹¹ Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator 2020) at pages 10 to 11.

¹¹² Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator 2020) at page 12.

¹¹³ Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator 2020) at page 12.

(d) identification of risk carries a duty to manage the identified risk.¹¹⁴

[7.61] The Safeguarding Guidance also contains a section on safeguards and safety checks. It notes that an application to be placed on the Charities Register under the Charities Act 2009 must specify the safety checks employed by the charity. It states that the Charities Regulator considers safety checks to “include the policy and procedures for safeguarding vulnerable persons at risk of abuse, which should be consistent with the HSE National Policy and Procedures (2014), or any updated version of the HSE policy”.¹¹⁵ For example, it must have procedures in place regarding preventative safeguarding approaches and responding to and reporting concerns or allegations of abuse.

(x) Safeguarding and HSE funding agreements

[7.62] The HSE has service arrangements in place with agencies to provide health and social care services under sections 38 and 39 of the Health Act 2004. The template for the relevant service arrangements under section 38 of the Health Act 2004 includes obligations on the service provider in the provision of services. Clause 7 sets out details on the obligations to be met by providers in respect of the provision of service user centred care.¹¹⁶ The obligations in respect of risk management include that providers must have in place policies and procedures for the prevention and management of all incidents including serious incidents.¹¹⁷ Identical obligations are included in the HSE service arrangement for agencies providing services under Section 39 of the Health Act 2004.¹¹⁸

[7.63] Specific schedules may be attached to these service level agreements where the provision of services relates to a specific care group.¹¹⁹ Most of these schedules require the service provider receiving funding to comply with national policies, procedures and standards. The schedule states that service providers providing services to older people and people with disabilities must comply with the HSE’s

¹¹⁴ Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator 2020) at page 12.

¹¹⁵ Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator 2020) at page 12.

¹¹⁶ Health Service Executive, *Section 38 Service Arrangement* (October 2022) at page 15.

¹¹⁷ Health Service Executive, *Section 38 Service Arrangement* (October 2022) at page 39, clause 23.1.

¹¹⁸ Health Service Executive, *Section 39 Service Arrangement* (October 2022) at pages 12, 16 and 39 (clauses 3.2(b)(vii), 7 and 23.1).

¹¹⁹ Health Service Executive, Section 38 Documentation <https://www.hse.ie/eng/services/publications/non-statutory-sector/section-38-documentation.html> accessed 8 March 2024; Health Service Executive, Section 39 Documentation <https://www.hse.ie/eng/services/publications/non-statutory-sector/section-39-documentation.html> accessed 8 March 2024.

National Policy and Procedures. The HSE's National Policy and Procedures are currently being revised and the revised policy, when finalised and implemented, will likely apply to all HSE funded and operated service providers.¹²⁰ Currently, the schedules related to older people and adults with disabilities provide that the HSE may request a service provider to furnish it with any internal policies and procedures in place to ensure quality and service standards and comply with national or local policies or codes of practices outlined in the schedules. It can also seek evidence that a service provider is complying with their obligations.

- [7.64] The obligations in the service arrangements are limited in detail in terms of preventing harm to adults who are in receipt of services and what the providers are required to do to prevent harm. These service arrangements apply only to agencies providing services under sections 38 and 39 of the Health Act 2004, as set out above.

(b) A duty to prevent harm

- [7.65] It is important that providers of relevant services ensure that services are provided in a safe way and that any risk of harm to adults availing of the service is managed and reduced. For this reason, the Commission recommends that adult safeguarding legislation should introduce a duty on a provider of a relevant service to ensure, as far as reasonably practicable, that its services are organised, managed and provided in such a way as to prevent harm to any adult who is, may be or may become, an at-risk adult while availing of the service.
- [7.66] This may include, having policies and procedures in place in relation to adult safeguarding, for example, complaints procedures, procedures for reporting abuse, and risk management processes. It may involve ensuring that policies and procedures are reviewed and updated regularly in line with best practice and learning from past adult safeguarding incidents to improve the quality and safety of services. It is important that safeguarding incidents and complaints by service users are responded to in a timely manner and addressed at a systemic level to reduce the risk of harm. The duty to prevent harm may also involve having a sufficient number of competent and qualified staff working at all times who have the skills and knowledge necessary to identify and manage risks to adults in receipt of services, and to intervene where difficulties arise that could escalate to safeguarding concerns. It would also be important to ensure that staff are supervised and mentored in a "safeguarding culture" and that safeguarding principles are at the core of service delivery to promote the health, safety and welfare of each service user.

¹²⁰ Currently it is restricted to HSE funded or operated services for older people and adults with disabilities.

R. 7.6 The Commission recommends that adult safeguarding legislation should introduce a duty on a provider of a relevant service to ensure, as far as reasonably practicable, that its services are organised, managed and provided in such a way as to prevent harm to any adult who is, may be or may become, an at-risk adult while availing of the service.

(c) A duty to undertake and document a risk assessment and prepare an adult safeguarding statement

[7.67] The Commission recommends that a duty on providers of relevant services to undertake and document a risk assessment and to prepare an adult safeguarding statement should be introduced in adult safeguarding legislation. These would take the form of:

- (a) a documented general risk assessment of the relevant service to identify any risks arising in the provision of the service to adults, or adults who are, may be, or may become at-risk adults; and
- (b) a general adult safeguarding statement that identifies the policies, procedures and measures in place to minimise the risks identified and prevent harm to adults availing of services.

[7.68] The risk assessment and adult safeguarding statement should be general in nature, they should not be specific or individualised to any one person. In contrast, safeguarding plans involve assessing the risk posed to or by a particular adult, and what can be done to minimise such risks. Safeguarding plans will be discussed below in section 4 of this Chapter. The Commission recommends that a person or entity engaged in the provision of relevant services immediately prior to the commencement of the provision of the proposed adult safeguarding legislation should be required to undertake a documented risk assessment and prepare an adult safeguarding statement no later than 3 months from the date of commencement of the relevant provisions of the proposed legislation. Where a person or entity proposes to operate as a provider of relevant services, the person or entity should be required, within 3 months of the commencement of the service, to carry out and document a risk assessment and prepare an adult safeguarding statement.

[7.69] In the final stages of drafting this Report, the Government launched its public consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (the "Policy Proposals").¹²¹ The Policy Proposals also recognise that

¹²¹ Government of Ireland, *Public Consultation – Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (Department of Health 2024).

health and social care services should ensure that they regularly conduct “Service Safeguarding Risk Evaluations” and publish “Adult Safeguarding Statements”.¹²²

[7.70] The Commission believes that a duty on providers of relevant services to undertake and document a risk assessment and to prepare an adult safeguarding statement should be introduced in adult safeguarding legislation. This would ensure that all relevant services comply with the same obligation despite significant variations in the type of services being provided. It would ensure a consistent approach in terms of the purpose and the objectives of risk assessments and adult safeguarding statements. Embedding these duties in cross-sectoral adult safeguarding legislation would mean that they would apply to a broad range of sectors, including services outside the health and social care sector.

R. 7.7 The Commission recommends that a duty on providers of relevant services to undertake and document a risk assessment and to prepare an adult safeguarding statement should be introduced in adult safeguarding legislation. These should take the form of:

- (a) a documented general risk assessment of the relevant service to identify any risks arising in the provision of the service to adults, or adults who are, may be or may become at-risk adults;
- (b) a general adult safeguarding statement that identifies the policies, procedures and measures in place to minimise the risks identified and prevent harm to all adults availing of services.

R. 7.8 The Commission recommends that a person or entity engaged in the provision of relevant services immediately prior to the commencement of the provision of the proposed adult safeguarding legislation should be required to undertake a documented risk assessment and prepare an adult safeguarding statement no later than 3 months from the date of commencement of the relevant provisions of the proposed legislation. Where a person or entity proposes to operate as a provider of relevant services, the person or entity should be required, within 3 months of the commencement of the relevant service, to carry out a documented risk assessment and prepare an adult safeguarding statement.

(i) Components of an adult safeguarding statement

[7.71] The Commission believes that an adult safeguarding statement should contain sufficient detail on the procedures that providers of relevant services should have in place to prevent, detect, report and manage adult safeguarding related risks. As mentioned earlier, in response to the Issues Paper, many consultees suggested

¹²² Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (DOH 2024) at page 22.

that an adult safeguarding statement could be modelled on similar requirements in relation to child safeguarding statements under the Children First Act 2015.

- [7.72] Making an adult safeguarding statement a statutory requirement would ensure that providers of a relevant service identify risks to adults availing of services and put policies and procedures in place to mitigate those risks. The Commission believes that adult safeguarding legislation should prescribe the components of an adult safeguarding statement to ensure that providers of a relevant service are clear about what the duty entails.
- [7.73] The Commission recommends that the adult safeguarding statement should specify the policies, procedures, and measures that the provider of a relevant service has in place in respect of the following:
- (a) to manage any risk identified as a result of a risk assessment;
 - (b) how to proceed where a member of staff is the subject of an investigation (however described) in respect of any act, omission or circumstances in respect of an adult availing of a relevant service;
 - (c) for the selection or recruitment of any person as a member of staff of the provider of a relevant service with regard to that person's suitability to work with adults who may be at-risk adults or who may be "vulnerable persons" within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012;¹²³
 - (d) for the provision of information and, where necessary, instruction and training, to members of staff of the provider of a relevant service in relation to the identification of the occurrence of harm;
 - (e) for reviewing and updating care plans or personal plans including updating existing plans with safeguarding plans, where there are concerns that an adult is at risk of harm while availing of the relevant service;
 - (f) for preparing and reviewing safeguarding plans, where there are concerns that an adult is at risk of harm while availing of the relevant service;
 - (g) for reporting to the Safeguarding Body by the provider of a relevant service or a member of staff of the provider (whether a mandated person or otherwise) in accordance with the proposed adult safeguarding legislation, including any guidelines issued by the Minister;
 - (h) for maintaining a list of the persons (if any) in the relevant service who are mandated persons in accordance with the proposed reporting requirement in adult safeguarding legislation, and
 - (i) for appointing a relevant person (an adult safeguarding officer) to be the first point of contact in respect of the provider of a relevant service's duty

¹²³ See the definition of "vulnerable person" in section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

to undertake and document a risk assessment and prepare an adult safeguarding statement.

R. 7.9 The Commission recommends that an adult safeguarding statement should specify the policies, procedures and measures that the provider of a relevant service has in place:

(a) to manage any risk identified as a result of the risk assessment;

(b) to set out how to proceed where a member of staff is the subject of an investigation (however described) in respect of any act, omission or circumstances in respect of an adult availing of the relevant service;

(c) for the selection or recruitment of any person as a member of staff of the provider of a relevant service with regard to that person's suitability to work with adults who may be at-risk adults or who may be "vulnerable persons" within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012;¹²⁴

(d) for the provision of information and, where necessary, instruction and training, to members of staff of the provider of a relevant service in relation to the identification of the occurrence of harm;

(e) for reviewing and updating care plans or personal plans including updating existing plans to include safeguarding plans, where there are concerns that an adult is at risk of harm while availing of the relevant service;

(f) for preparing and reviewing safeguarding plans, where there are concerns that an adult is at risk of harm while availing of the relevant service;

(g) for reporting to the Safeguarding Body by the provider of a relevant service or a member of staff of the provider (whether a mandated person or otherwise) in accordance with the proposed adult safeguarding legislation including any guidelines issued by the Minister;

(h) for maintaining a list of the persons (if any) in the relevant service who are mandated persons in accordance with the proposed reporting requirement in adult safeguarding legislation, and

(i) for appointing a relevant person (an adult safeguarding officer) to be the first point of contact in respect of the provider of a relevant service's duty to undertake and document a risk assessment and prepare an adult safeguarding statement.

(ii) Furnishing and publication of an adult safeguarding statement

[7.74] To aid transparency, if a provider of a relevant service is required to prepare an adult safeguarding statement, it should be made available to service users, staff

¹²⁴ See the definition of "vulnerable person" in section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

and to others, where requested. This would ensure that everyone is aware of the risks posed to adults availing of the service, and understands the policies, procedures and measures the provider of a relevant service has in place to minimise these risks and prevent harm. This would also ensure accountability on the ground at service-level, as adults in receipt of services, staff and others would be able to reference the adult safeguarding statement if they believe that a provider of a relevant service is not complying with its obligations, or certain policies and procedures that it has in place.

[7.75] The Children First Act 2015 requires a provider of a relevant service to furnish a copy of its child safeguarding statement to its members of staff and, on request, to the parent or the guardian of a child availing of the service, to the Child and Family Agency and to members of the public. The Commission believes that this is a useful requirement as it ensures that staff, parents, members of the public and the Child and Family Agency are aware of the measures put in place to safeguard children availing of the service.

[7.76] The Commission believes that a provider of a relevant service should be required to:

- (a) make records of its risk assessment and a copy of its adult safeguarding statement available to adults availing of the service and members of staff of the service and, on request, to:
 - (i) HIQA, the Mental Health Commission, or any other relevant regulatory body; and
 - (ii) any other person.
- (b) display the adult safeguarding statement or an updated adult safeguarding statement (following a review of the statement which should be required to be undertaken at least at intervals of not less than every 24 months) in a prominent position within the relevant service where it is clearly visible to members of the public who enter the relevant service.

R. 7.10 The Commission recommends that a provider of a relevant service should be required to:

(a) make records of its risk assessment and a copy of its adult safeguarding statement available to adults availing of the service and members of staff of the relevant service and, on request, to:

- (i) HIQA, the Mental Health Commission or any other relevant regulatory body; and
- (ii) any other person.

(b) display the adult safeguarding statement or an updated adult safeguarding statement (which should be required to be undertaken at intervals of not less than once every 24 months) in a prominent position within the relevant service where it is clearly visible.

(d) Proposed oversight bodies for the purposes of monitoring compliance with safeguarding duties in adult safeguarding legislation

- [7.77] In order to ensure that providers of relevant services comply with their duties to prevent harm, to undertake and document a risk assessment and to prepare an adult safeguarding statement in adult safeguarding legislation, there needs to be an oversight mechanism in place.
- [7.78] Compliance with the child safeguarding duties on providers of relevant services under the Children First Act 2015 is monitored by the Child and Family Agency. Some of the relevant services prescribed for the purposes of the duties to conduct a risk assessment; prepare and display a child safeguarding statement; and furnish a child safeguarding statement to the Child and Family Agency (on request) are regulated by HIQA under the Health Act 2007,¹²⁵ but many of the services are unregulated. HIQA does not have a role in monitoring compliance with the duties to prepare a child safeguarding statement, despite being the regulator of some children's social care services.
- [7.79] The Commission is of the view that if the compliance with the proposed duties to undertake and document a risk assessment and prepare an adult safeguarding statement was to be monitored by the Safeguarding Body, that would not make best use of the existing inspection functions and expertise of regulatory and inspection bodies including HIQA and the Mental Health Commission in respect of the relevant services that fall within the inspection functions of those bodies. The Commission also does not intend that the Safeguarding Body would have any such regulatory functions. If the Safeguarding Body were to be established within the HSE, it would be inappropriate for the Safeguarding Body within the HSE to have such functions in respect of services that the HSE directly provides or funds. While the Commission did not consult on this monitoring issue in its Issues Paper, a small number of consultees expressed the view that oversight of the duties in the Children First Act 2015 by the Child and Family Agency rather than by the regulatory bodies for any regulated relevant services, has resulted in the provisions failing to have a meaningful impact. It was suggested that oversight by regulatory bodies such as HIQA or the Mental Health Commission, where a

¹²⁵ See section 8(1)(b)(i) of the Health Act 2007; Health Information and Quality Authority, Children's Services <<https://www.hiqa.ie/areas-we-work/childrens-services>> accessed 7 March 2024 and Health Information and Quality Authority, *Overview report on the inspection and regulation of children's services – 2022* (HIQA 2023).

service is regulated, could result in such provisions in respect of adult safeguarding having “more teeth” as compliance with the duties would be assessed in the course of the regulator inspecting the service.

- [7.80] In its submission in response to the Commission’s Issues Paper, HIQA stated that it believes that a duty to safeguard or prevent harm (which it suggested could include a duty to prepare an adult safeguarding statement) should be reflected as the responsibility of the relevant service providers in the Health Act 2007, the Mental Health Act 2001 and any prospective legislation to regulate professional home support service providers.¹²⁶ The Commission believes that it would be appropriate for HIQA and the Mental Health Commission to monitor compliance with the relevant proposed duties in their inspections of the relevant services within their remits. The Commission therefore believes that HIQA should oversee compliance with the proposed duties by a “designated centre” within the meaning of section 2(1) of the Health Act 2007, in so far as it relates to an institution wherein residential services are provided to older people or to adults with disabilities. The Commission also believes that HIQA should oversee compliance with the proposed duties by services providing permanent residential accommodation services to people in the international protection process managed by, or under contract to the Department of Children, Equality, Disability, Integration and Youth.¹²⁷ The Commission believes that the Mental Health Commission should oversee compliance with the proposed duties in respect of services under the Mental Health Act 2001.

¹²⁶ Health Information and Quality Authority, *Law Reform Commission Issues Paper ‘A Regulatory Framework for Adult Safeguarding’ - Response by the Health Information and Quality Authority (HIQA)* (HIQA 2020), at page 16 <
<https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf>>
accessed 8 March 2024.

¹²⁷ As discussed above, since the 9 January 2024, HIQA has assumed responsibility for monitoring compliance of permanent accommodations centres for people in the international protection process with the 2019 National Standards for Accommodation Offered to People in the Protection Process. See European Communities (Reception Conditions) (Amendment) Regulations 2023 (SI No 649 of 2023), which amends the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018) to insert regulations 27A and 27D, which provides that HIQA will monitor compliance by service providers with the National Standards and conduct inspections.

- R. 7.11 The Commission recommends that** HIQA should oversee compliance with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement by a “designated centre” within the meaning of section 2 of the Health Act 2007, in so far as it relates to an institution wherein residential services are provided to older people or to adults with disabilities.
- R. 7.12 The Commission recommends that** HIQA should oversee compliance with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement by services providing permanent residential accommodation services to people in the international protection process managed by, or under contract to, the Department of Children, Equality, Disability, Integration and Youth.
- R. 7.13 The Commission recommends that** the Mental Health Commission should oversee compliance with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement in respect of services regulated under the Mental Health Act 2001.

[7.81] The Government intends to extend the regulatory functions of HIQA to include home support providers.¹²⁸ The Commission believes that any expansion of HIQA’s remit to such services should include monitoring compliance with the duties proposed above.

- R. 7.14 The Commission recommends that** any expansion of HIQA’s remit to include the regulation of home support providers should include monitoring compliance with the duty to undertake and document a risk assessment and to prepare an adult safeguarding statement.

[7.82] The Commission believes that compliance by the Garda Síochána with the proposed duties to undertake and document a risk assessment and prepare an adult safeguarding statement where their work or activities involves at-risk adults should be overseen by the Policing and Community Safety Authority when established.¹²⁹ The Policing and Community Safety Authority will have inspection functions in respect of the performance of the functions of the Garda Síochána when the Policing, Security and Community Safety Act 2023 is commenced.¹³⁰

¹²⁸ Department of Health, *Draft Regulations for Providers of Home Support Services – Public Consultation Document* (DOH 2022) at page 3.

¹²⁹ Sections 120 and 121 of the Policing, Security and Community Safety Act 2024. The Policing and Community Safety Authority) was not established at the date of writing.

¹³⁰ Section 122 of the Policing, Security and Community Safety Act 2024. This Act was signed into law on 7 February 2024. No sections of this Act were commenced at the date of writing.

R. 7.15 The Commission recommends that compliance by the Garda Síochána with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement should be overseen by the Policing and Community Safety Authority, when established.

[7.83] The Domestic, Sexual and Gender-Based Violence Agency Act 2023 established the Domestic, Sexual and Gender-Based Violence Agency (the “DSGBV Agency (Cuan)”) on the 1 January 2024.¹³¹ Its functions include, among others, the following:

(a) to plan, coordinate and monitor the development of refuge accommodation for victims of domestic, sexual or gender-based violence;

(b) to provide support to service providers, including financial assistance, for the provision by them of—

(i) services delivered in refuge accommodation and other services for victims and persons at risk of domestic, sexual or gender-based violence, and

(ii) programmes with the purpose of preventing, and reducing the incidence of, such violence;

(c) where so requested by the Minister, to prepare, and submit for the approval of the Minister, standards for the provision of the services referred to in paragraph (b)(i) and the programmes referred to in paragraph (b)(ii);

(d) to monitor adherence by service providers to the standards it prepares, as approved by the Minister.¹³²

[7.84] On the basis of the statutory functions of the DSGBV Agency (Cuan), the Commission believes that it should have responsibility for monitoring the compliance of refuge accommodation services for victims of domestic, sexual or gender-based violence with the duties proposed to undertake and document a risk assessment and to prepare an adult safeguarding statement.

¹³¹ Domestic, Sexual and Gender - Based Violence Agency Act 2023 (Establishment Day) Order 2023 (SI No 668 of 2023).

¹³² Section 6(1)(a) to 6(1)(d) of the Domestic, Sexual and Gender-Based Violence Agency Act 2023.

R. 7.16 The Commission recommends that compliance by refuge accommodation services for victims of domestic, sexual or gender-based violence with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement should be overseen by the Domestic, Sexual and Gender-Based Violence Agency (Cuan).

- [7.85] As regards the relevant services that are not subject to statutory inspections or statutory regulatory oversight by existing agencies or likely to be subject to statutory inspections in the foreseeable future, the Commission considered whether it would be appropriate for the Safeguarding Body to have the remit to oversee compliance with the proposed duties. As noted, the Child and Family Agency has oversight of compliance with the equivalent duties in the Children First Act 2015 despite also providing, commissioning and funding children’s services in addition to its functions to assess child protection and welfare concerns.
- [7.86] A small number of consultees submitted that if the Government decides that the Safeguarding Body should be established within the HSE, it would be ineffective if the Safeguarding Body was to have oversight of the proposed duties, as the HSE directly provides services to which the proposed duties would apply. One consultee also submitted that regardless of what body is designated as the Safeguarding Body, it may be inappropriate for the Safeguarding Body, which would have functions to promote the health, safety and welfare of at-risk adults and receive reports of actual or suspected abuse and neglect, to have oversight functions in respect of services, which could be viewed as regulatory functions.
- [7.87] If services, which are not currently subject to statutory inspection regimes, were subject to statutory inspection by existing or new regulatory bodies, it would be more straightforward to determine appropriate oversight mechanisms for monitoring compliance with the proposed duties, as the relevant regulatory bodies could be conferred with responsibility for monitoring compliance as part of its inspection functions. The Commission recommends in section 2(b) of this Chapter that the Government should carefully consider whether providers of relevant services, which are not currently subject to statutory regulatory regimes including statutory inspections, should be brought within such regulatory regimes. As discussed above, recommending the statutory regulation of services that are not subject to statutory inspection regimes is outside the scope of this project and is a matter for the Government to decide.
- [7.88] While the Government is determining whether to introduce such statutory regulatory regimes or as an alternative to new statutory inspection regimes, the Commission also discussed above whether compliance with the proposed duties by relevant services, which are not subject to statutory inspections or regulatory oversight, should be a requirement for providers of relevant services to receive or to continue to receive any public funding in relation to the provision of the relevant services. This would include, for example, funding under sections 38 and

39 of the Health Act 2004 or funding of accommodation services for people experiencing homelessness. This could involve applicable relevant services being required to furnish the funding agency or Government department with a documented adult safeguarding risk assessment and an adult safeguarding statement in advance of approval of funding. However, as outlined above, the Commission believes that it is a matter for the Government to determine whether providers of relevant services, which are not subject to statutory inspections or regulatory oversight, should be required to comply with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement in order to receive, or to continue to receive, any public funding in relation to the provision of relevant services.

(e) Measures to address non-compliance with statutory safeguarding duties in adult safeguarding legislation

- [7.89] The Commission believes that there must be measures in place to promote compliance with the proposed duties to undertake and document a risk assessment and prepare an adult safeguarding statement in adult safeguarding legislation. The measures to address non-compliance, which are discussed below, would be subject to oversight by the relevant regulatory bodies referred to as “relevant authorities” where relevant services are subject to statutory inspection regimes by independent regulatory bodies. As discussed, it is more difficult for the Commission to identify appropriate compliance measures or measures to address non-compliance where relevant services are not subject to existing statutory regulatory regimes. For that reason, the measures outlined below apply only to those services that are currently subject to a statutory inspection regime. The Commission believes that it would be more appropriate for the Government to determine measures for monitoring compliance and addressing non-compliance of unregulated relevant services with the proposed duties, as discussed above.

- [7.90] The non-compliance measures suggested below address failures to furnish a documented risk assessment and an adult safeguarding statement upon request from the relevant authority who is overseeing compliance with the statutory duties. If a provider of a relevant service does not furnish records of its risk assessment and its adult safeguarding statement in response to a request by the relevant authority, the relevant authority should be entitled to proceed on the basis that this failure to furnish suggests that the provider of a relevant service does not have a documented risk assessment or an adult safeguarding statement in place. The relevant authority should be permitted by legislation to address this non-compliance with the statutory duties to undertake and document a risk assessment and prepare an adult safeguarding statement.

- [7.91] The Commission believes that where, pursuant to a request by HIQA, the Mental Health Commission, the Policing and Community Safety Authority, the Domestic, Sexual and Gender-Based Violence Agency (Cuan) (which are considered

“relevant authorities”), a provider of a relevant service fails to furnish the relevant authority with records of its risk assessment or a copy of its adult safeguarding statement, the relevant authority should be empowered take relevant measures to address non-compliance. These measures should include the serving of a warning notice in writing on a provider to—

- (a) inform the provider of a failure to furnish records of a risk assessment or an adult safeguarding statement,
- (b) require the provider, within such period as may be specified in the notice, to furnish the relevant authority with records of its risk assessment or a copy of its adult safeguarding statement, and
- (c) inform the provider that failure to furnish the relevant authority with the records of its risk assessment or its adult safeguarding statement within the time specified in the notice may result in the provider being served with a non-compliance notice.

[7.92] Where a provider of a relevant service is served with a warning notice, it may, within 14 days of receipt of the notice make representations in writing to the relevant authority in respect of the proposed non-compliance notice. The Commission believes that the relevant authority should then have regard to any representations made to it in assessing whether to proceed with the service of the non-compliance notice. For example, the relevant authority may decide not to proceed with the non-compliance notice because in response to the warning notice, the provider of a relevant service commits to complying with the duties within a specified period. The relevant authority may postpone issuing a non-compliance notice in such circumstances as it waits to be furnished with the documented risk assessment and adult safeguarding statement.

[7.93] The Commission takes the view that adult safeguarding legislation should allow the relevant authority to serve a non-compliance notice on a provider of a relevant service who fails to furnish the relevant authority with records of its risk assessment or a copy of its adult safeguarding statement within the period specified in the warning notice. The non-compliance notice should inform the provider of a relevant service of the date on which the non-compliance notice would come into effect (which should be 21 days from the date of service of the non-compliance notice, unless an appeal is brought by the provider).

[7.94] The non-compliance notice should inform the provider of a relevant service of the option to appeal the non-compliance notice to the District Court within 21 days of the date of service of the non-compliance notice. Adult safeguarding legislation would need to bestow jurisdiction on the District Court to hear such appeals, and the relevant District Court judge should be the judge assigned to the District Court district in which the provider of a relevant service concerned on whom the non-compliance notice is served ordinarily resides or carries on any profession, business or occupation.

- [7.95] The Commission considered whether the Safeguarding Body should maintain a register of non-compliance for all providers of relevant services compiled based on data received from all relevant authorities. However, this would require a significant number of interagency notifications and coordination, and ultimately, the Commission believes that the resources of the Safeguarding Body should be directed towards responding to the reports of actual or suspected harm of at-risk adults, which it would receive. Instead, the Commission takes the view that each relevant authority should establish and maintain a register of non-compliance notices (a "register of non-compliance") in respect of the relevant services it monitors and oversees. It should enter the particulars of a non-compliance notice on the register of non-compliance as soon as the non-compliance notice in respect of a particular provider of a relevant service comes into effect.
- [7.96] The Commission believes that the relevant authority should be permitted to remove an entry on the non-compliance register once it receives records of the provider's risk assessment or a copy of the provider's adult safeguarding statement to which the entry relates, or if it is satisfied that a risk assessment or an adult-safeguarding statement is no longer required. This could be because the provider of a relevant service has ceased operations or is no longer providing a relevant service. The provider of the relevant service in respect of whom an entry onto the non-compliance register was made should be permitted to apply to the relevant authority to have the entry removed at any time.
- [7.97] The Commission believes that the introduction of the proposed duties on providers of relevant services to undertake and document a risk assessment and to prepare an adult safeguarding statement shall not be taken to confer on any natural or legal person a right in law that such person would not otherwise have to require a provider of a relevant service to take any steps referred to in the relevant provisions of the adult safeguarding legislation or to seek damages for any failure or delay by the provider of the relevant service to take such steps.
- [7.98] The Children First Act 2015 provides for a 3-stage procedure where a provider of a relevant service fails to furnish the relevant authority with a copy of the provider's child safeguarding statement.¹³³ The Commission believes that such a 3-stage procedure involving a notice (an initial notice), an advance notice and a non-compliance notice (with admittance onto a non-compliance register) is administratively complex. The Commission recognises that the aim of the procedure is likely to allow opportunities for service providers to become compliant before imposing a non-compliance notice. However, the Commission is concerned that an elaborate 3-stage procedure may result in a greater risk that non-compliance would go unaddressed because the complexity of the procedure may result with inadvertence failure to comply. Equally, there is less of an incentive for service providers to take action immediately in response to the first

¹³³ Sections 12 and 13 of the Children First Act 2015.

notice to bring themselves into compliance, as there are further steps before they are placed on the non-compliance register.

[7.99] The Commission believes that the two-stage procedure discussed above, comprised of a warning notice and a non-compliance notice, should be introduced to address failures by a provider of a relevant service to furnish the relevant authority with records of its risk assessment or a copy of its adult safeguarding statement. A 2-stage procedure would still afford a provider of a relevant service an opportunity to become compliant before being issued with a non-compliance notice. It would also permit the removal of a provider of a relevant service from the non-compliance register once it complies with its statutory safeguarding duties and furnishes the relevant documents to the relevant authority. While outside of the scope of this project, the Commission also believes that consideration should be given to simplifying the procedure in the Children First Act 2015 to address failures by relevant service providers to furnish the relevant authority with a copy of the provider’s child safeguarding statement.

R. 7.17 The Commission recommends that a 2-stage procedure involving a warning notice and a non-compliance notice should be introduced in adult safeguarding legislation to address failures by a provider of a relevant service to furnish the relevant authority with records of the provider’s risk assessment or a copy of the provider’s adult safeguarding statement.

R. 7.18 The Commission recommends that where, pursuant to a request by HIQA, the Mental Health Commission, the Policing and Community Safety Authority, the Domestic, Sexual and Gender-Based Violence Agency (“Cuan”) (which are considered “relevant authorities”), a provider of a relevant service fails to furnish the relevant authority with records of its risk assessment or a copy of its adult safeguarding statement, the relevant authority should be empowered to take relevant measures to address non-compliance. These measures should include the serving of a warning notice in writing on a provider to —

(a) inform the provider of a failure to furnish records of a risk assessment or an adult safeguarding statement,

(b) require the provider, within such period as may be specified in the notice, to furnish the relevant authority with records of its risk assessment or a copy of its adult safeguarding statement, and

(c) inform the provider that failure to furnish the relevant authority with the records of its risk assessment or its adult safeguarding statement within the time specified in the notice may result in the provider being served with a non-compliance notice.

R. 7.19 The Commission recommends that a provider of a relevant service who is served with a warning notice may, within 14 days of the receipt of the notice, make representations in writing to the relevant authority in respect of the proposed non-compliance notice. The relevant authority should then have regard to any representations made to it in assessing whether to proceed with the service of the non-compliance notice.

R. 7.20 The Commission recommends that a legislative provision should be introduced to provide for a relevant authority to serve a non-compliance notice on a provider of a relevant service who fails to furnish the relevant authority with records of its risk assessment and a copy of its an adult safeguarding statement within the period specified in the warning notice.

R. 7.21 The Commission recommends that the non-compliance notice should inform the provider of a relevant service of the date on which the non-compliance notice comes into effect (which should be 21 days from the date of service of the non-compliance notice unless an appeal is brought by the provider) and the option for the provider of a relevant service to appeal the non-compliance notice to the District Court within 21 days of the date of service of the non-compliance notice.

R. 7.22 The Commission recommends that the proposed adult safeguarding legislation should include the following provision to provide for the conferral of jurisdiction on the District Court:

“The jurisdiction conferred on the District Court under this section shall be exercised by a judge of the District Court for the time being assigned to the District Court district in which the person on whom the non-compliance notice is served ordinarily resides or carries on any profession, business or occupation.”

- R. 7.23 **The Commission recommends that** each relevant authority should establish and maintain a register of non-compliance notices (a “register of non-compliance”) in respect of the relevant services it monitors and oversees. It should enter the particulars of a non-compliance notice on the register of non-compliance as soon as the non-compliance notice in respect of a particular provider of a relevant service comes into effect.
- R. 7.24 **The Commission recommends that** the relevant authority should be permitted to remove an entry on the non-compliance register once it receives the records of the provider’s risk assessment or a copy of the provider’s adult safeguarding statement to which the entry relates, or it is satisfied that a risk assessment or an adult-safeguarding statement is no longer required.
- R. 7.25 **The Commission recommends that** the provider of the relevant service in respect of whom an entry onto the non-compliance register was made should be permitted to apply to the relevant authority to have the entry removed at any time.
- R. 7.26 **The Commission recommends that** the introduction of the proposed duties on providers of relevant services to undertake and document a risk assessment and to prepare an adult safeguarding statement shall not be taken to confer on any natural or legal person a right in law that such person would not otherwise have to require a provider of a relevant service to take any steps referred to in the relevant provisions of the adult safeguarding legislation or to seek damages for any failure or delay by the provider of the relevant service to take such steps.

4. A duty to prepare a safeguarding plan

[7.100] At present, there are statutory requirements to prepare care plans or personal plans for residents in residential centres for people with disabilities and older people and residents in approved centres. Such centres are covered by the Commission’s definition of a “relevant service”. There are also non-statutory requirements on certain providers of a relevant service to prepare care plans, personal plans or equivalent plans in standards and other policy documents. This section discusses whether a duty to prepare a safeguarding plan should be placed on providers of relevant services, and how this could be achieved. It explains the distinction between care plans, personal plans and safeguarding plans. This section only addresses the duty to prepare a safeguarding plan on providers of a relevant service. In Chapter 5, the Commission outlines the circumstances where it would be more appropriate for the Safeguarding Body to prepare a safeguarding plan, in cooperation with others, for example:

- (a) where the adult concerned is not availing of a relevant service, but the Safeguarding Body believes they are at risk of harm and safeguarding measures need to be put in place; or

- (b) where a relevant service cannot prepare a safeguarding plan for the adult concerned as there is a conflict of interest.

[7.101] Residents in approved centres under the Mental Health Act 2001 should each have an individual care plan.¹³⁴ An individual care plan is defined as a “documented set of goals developed, regularly reviewed and updated by the resident's multi-disciplinary team, so far as practicable in consultation with each resident”. The individual care plan should specify the treatment and care required (in accordance with best practice) and should identify necessary resources and specify appropriate goals for the resident. The individual care plan should be recorded in the one composite set of documentation.

[7.102] Individual care plans are also provided for in regulations under the Health Act 2007 that apply to the care and support of residents in residential centres for older people.¹³⁵ An individual care plan is defined as a plan developed for a resident following an assessment of their health, personal and social care needs when they are admitted to a residential centre for older people.¹³⁶ This should be done by the person in charge no later than 48 hours after the resident is admitted.¹³⁷ The individual care plan should be reviewed, and where necessary, revised after consultation with the resident and their family (where appropriate) at least every 4 months.¹³⁸

[7.103] A personal plan is another type of plan specific to an individual, which is provided for in the regulations under the Health Act 2007 applying to the care and support of residents in residential centres for persons with disabilities.¹³⁹ It reflects a resident's health, personal and social care needs, as assessed by an appropriate health care professional, and outlines the supports required to maximise a resident's personal development in accordance with their wishes.¹⁴⁰ A personal

¹³⁴ Regulation 3 of the Mental Health Act 2001 (Approved Centres Regulations 2006 (SI No 551 of 2006).

¹³⁵ Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

¹³⁶ Regulation 5(1) and (2) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

¹³⁷ Regulation 5(3) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

¹³⁸ Regulation 5(4) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013).

¹³⁹ Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

¹⁴⁰ Regulations 2, 5(1) and 5(4) of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

plan should be prepared no later than 28 days after a resident is admitted to a residential centre for people with disabilities.¹⁴¹ A personal plan must be reviewed annually or more frequently if there is a change in needs or circumstances of the person, and must be amended in accordance with any changes recommended following a review.¹⁴²

[7.104] In comparison, the HSE's National Policy and Procedures provides that a safeguarding plan may be prepared for an individual where there are reasonable grounds for safeguarding concerns,¹⁴³ including indicators that an adult may need support to protect themselves from harm or where there has been attempted abuse or actual abuse or neglect of an adult resulting in the adult being identified as an at-risk adult. A safeguarding plan outlines the planned actions that have been identified to address the needs and minimise the risk to individuals or groups of individuals.¹⁴⁴ A safeguarding plan includes, as relevant to the individual situation:

- (a) positive actions to safeguard the at-risk adult from further abuse or neglect and to promote recovery from harm or abuse experienced;
- (b) positive actions to prevent identified perpetrators from abusing or neglecting in the future; and
- (c) an outline of the triggers or circumstances that could indicate increasing levels of risk of abuse or neglect for the individual and plans to address any such triggers or circumstances.¹⁴⁵

[7.105] It is important to have regard to the distinction between care plans, personal plans and safeguarding plans in examining whether it would be appropriate to include a duty on providers of relevant services to prepare a safeguarding plan. It is possible that existing care plans or personal plans could be updated to

¹⁴¹ Regulation 5(4) of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

¹⁴² Regulations 5(6),5(7) and 5(8) of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

¹⁴³ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 34.

¹⁴⁴ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 34.

¹⁴⁵ Health Service Executive, *Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures* (HSE 2014) at page 35.

incorporate safeguarding plans, and regard should be given to existing care plans or personal plans in preparing a safeguarding plan.¹⁴⁶

(a) Existing requirements to prepare a care plan or personal plan

(i) Mental Health Act 2001, the Health Act 2007 and associated regulations.

[7.106] As discussed above, there are statutory requirement in regulations to have a care plan in place in respect of residents of approved centres under the Mental Health Act 2001 and residents in residential centres for older people under the Health Act 2007.¹⁴⁷ Requirements for individualised assessments and personal plans in respect of residents of residential centres for people with disabilities are also set out in regulations under the Health Act 2007.¹⁴⁸

(ii) National Standards for Adult Safeguarding (health and social care sectors) and HIQA's National Standards

[7.107] The National Standards for Adult Safeguarding apply to health and social care sectors and were jointly developed by HIQA and the Mental Health Commission.¹⁴⁹ Standard 2.1 provides that service providers should effectively plan and deliver care and support to reduce the risk of harm and promote each person's rights, health and wellbeing.¹⁵⁰ To comply with this standard, the service provider should "assess the individual care and support needs of each person, with maximum participation from the person".¹⁵¹ This should be done when the person first accesses the service and should be regularly reviewed and updated as appropriate. As part of this assessment, the service provider should identify and clearly document any potential risks and how they will be managed.¹⁵²

¹⁴⁶ Health Informational Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016) at page 29.

¹⁴⁷ Regulation 15 of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006).

¹⁴⁸ Regulation 5 of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 366 of 2013).

¹⁴⁹ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019).

¹⁵⁰ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 27.

¹⁵¹ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 27.

¹⁵² Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 27.

[7.108] HIQA's National Standards for Residential Care Settings for Older People include requirements in respect of care plans and ongoing assessments of needs.¹⁵³ Where abuse occurs, each resident should be supported to develop the knowledge, understanding and skills needed for their own self-care and protection, and individual safeguards should be put in place to assist them to do so.¹⁵⁴ The same standards are included in HIQA's National Standards for Residential Services for Adults with Disabilities.¹⁵⁵

(iii) Home support services

[7.109] As the provision of professional home support services is currently unregulated, there is no statutory requirement for professional home support service providers to prepare a care plan, personal plan or safeguarding plan for each adult in receipt of those services. However, as discussed earlier, Draft Regulations for Providers of Home Support Services (the "Draft Regulations") have been published and publicly consulted on.¹⁵⁶ If these regulations came into operation in their current form, a provider of Home Support Services would be required to ensure that:

- (a) a comprehensive assessment of the home support needs of the service user is carried out by a health professional;
- (b) a personal support plan is developed in consultation with the service user (and any others who are supporting them).¹⁵⁷

[7.110] The Draft Regulations specify that a personal support plan should set out in detail the services that the service provider will provide to meet the home support needs of the service user and it should identify any goals the service user wishes to achieve and any preferences they indicate.¹⁵⁸ The Draft Regulations propose that a copy of the personal support plan should be kept at the service user's

¹⁵³ Health Information Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016) at page 47.

¹⁵⁴ Health Information Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016) at page 47.

¹⁵⁵ Health Information Quality Authority, *National Standards for Residential Services for Adults with Disabilities* (HIQA 2013) at page 80.

¹⁵⁶ Department of Health, *Draft Regulations for Providers of Home Support Services Public Consultation Document* (DOH 2022).

¹⁵⁷ Department of Health, *Draft Regulations for Providers of Home Support Services Public Consultation Document* (DOH 2022) at page 9.

¹⁵⁸ Department of Health, *Draft Regulations for Providers of Home Support Services Public Consultation Document* (DOH 2022) at page 10.

home and it should be accessible to the home support worker and any other health professionals involved in their care.¹⁵⁹

(iv) Interim Standards for Day Services for Persons with Disabilities

[7.111] The first theme for the Interim Standards focuses on making services and supports individualised to each specific service user.¹⁶⁰ Standard 1.5 provides that each person should have a personal plan that includes “the services and supports to be provided to them to achieve a good quality of life and to realise their goals”.¹⁶¹ The Interim Standards also provide that services and supports should be “tailored on a person-by-person basis” reflecting the person’s needs, wishes, abilities and aspirations.¹⁶² Service providers should be creative and flexible in supporting service users to achieve their goals that have been outlined in their personal plan.¹⁶³ A planning team should be responsible for supporting the service user, developing the personal plan with them and overseeing the implementation of the plan.¹⁶⁴

[7.112] The service user’s personal plan should be formally reviewed at least once per year, but it may be reviewed more frequently if there is a change in needs or circumstances.¹⁶⁵ Any review should be done in collaboration with the service user. The purpose of this review is to evaluate the effectiveness of the plan, with a concentration on the progress and outcomes for the service user. This process should be recorded and the reasons for any changes to the plan should be noted.¹⁶⁶ The service user should be given a choice on whether to develop a personal plan or not.¹⁶⁷

¹⁵⁹ Department of Health, *Draft Regulations for Providers of Home Support Services Public Consultation Document* (DOH 2022) at page 10.

¹⁶⁰ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 17.

¹⁶¹ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 13.

¹⁶² HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 17.

¹⁶³ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 17.

¹⁶⁴ HSE, *New Direction: Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 24.

¹⁶⁵ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 24.

¹⁶⁶ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 24.

¹⁶⁷ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 25.

- [7.113] As part of the overarching personal plan, the Interim Standards also provide for person centred plans,¹⁶⁸ and personalised care and support plans.¹⁶⁹ For situations where concerns for a service user's safety arise, the service provider will implement a safeguarding plan as per the HSE's Safeguarding Policy and Procedures.¹⁷⁰
- [7.114] According to the Interim Standards, risk assessments and positive risk taking should "underpin the delivery of each person's person centred plan".¹⁷¹ Providing safe services and supports that encourage risk management in a positive way is one of the key principles of the Interim Standards.¹⁷² Risk assessments are carried out in collaboration with the service user and their family (where appropriate). Following such an assessment, service users are then provided with support that allows them to consider risks they may want to take and make informed choices about such risks.¹⁷³ The Interim Standards emphasise the need for service providers to follow the HSE's National Policy and Procedures. Where there are concerns for a person's safety, the Interim Standards provide that the service provider should prepare and implement a safeguarding plan.¹⁷⁴

(v) National Standards for accommodation offered to people in the international protection process

- [7.115] The National Standards for accommodation offered to people in the international protection process (the "National Standards") do not place obligations on service providers to prepare care plans or personal plans for all residents. However, if a resident has "special reception needs" as defined in the European Communities

¹⁶⁸ Person-centred planning focuses on what is important to the service user, from their own perspective. See HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 83.

¹⁶⁹ Personalised care and support plans focus on what is important to the service user and what support they need in order to stay healthy, safe and well. This category of plans covers a range of support plans that deal with a service user's everyday needs. For example, it may include a positive behaviour support plan. See HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 83.

¹⁷⁰ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 52.

¹⁷¹ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 24.

¹⁷² HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 5.

¹⁷³ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 38.

¹⁷⁴ HSE, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 52.

(Reception Conditions) Regulations 2018,¹⁷⁵ standard 10.1 provides that the service provider should ensure that their special reception needs “are incorporated into the provision of accommodation and associated services for the resident”.¹⁷⁶

[7.116] The service provider should have a “work plan” to support the requirements of residents with special reception needs, and this should be implemented, and subsequently evaluated and reviewed.¹⁷⁷ The assessment of the residents special reception needs should inform the allocation of room(s) within the centre, the delivery of supports and services within the centre and information and referral to relevant external supports and services.¹⁷⁸ Service providers are required to document the special reception needs of residents and store them confidentially.¹⁷⁹ Another standard requires service providers to have mechanisms in place to identify the special reception needs of residents, which become apparent after they begin residing at the centre.¹⁸⁰ Where an accommodation centre has a significant percentage of residents with special reception needs, additional expectations are placed on the service provider.¹⁸¹ For example, in such circumstances, the service provider should ensure that staff conduct ongoing comprehensive reviews of the residents’ needs “to determine their ongoing needs, outline the supports required and make appropriate referrals”.¹⁸² Providers of services, in which there are a significant number of residents with special reception needs, must also ensure that appropriate and proportionate safety and security measures and arrangements are in place.¹⁸³

¹⁷⁵ Regulations 2 and 8 of the European Communities (Reception Conditions) Regulations 2018 (SI No 230 of 2018).

¹⁷⁶ Department of Justice and Equality, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 62.

¹⁷⁷ Department of Justice and Equality, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 62.

¹⁷⁸ Department of Justice and Equality, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 62.

¹⁷⁹ Department of Justice and Equality, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 62.

¹⁸⁰ Department of Justice and Equality, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 64.

¹⁸¹ Department of Justice and Equality, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 68.

¹⁸² Department of Justice and Equality, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 68.

¹⁸³ Department of Justice and Equality, *National Standards (for accommodation offered to people in the protection process)* (2019) at page 68.

(vi) National Quality Standards Framework for Homeless Services

[7.117] The National Quality Standards Framework for Homeless Services (the “National Quality Standards”) requires that support plans for service users are developed, service users should be made aware of how information about this plan is stored, what the goals of the plan are, and that the views of the service users are applied in care and support plans.¹⁸⁴ Theme 2 places an emphasis on effective services to ensure that service users receive early and effective support.¹⁸⁵ An initial assessment should be carried out when a service user first attends the service and a risk assessment should be conducted to determine what level of support they required to ensure positive outcomes.¹⁸⁶ To comply, the service provider is required to offer the service user an assessment of housing and support needs, alongside a support plan.¹⁸⁷

[7.118] Support plans should address the broad range of needs of the service user.¹⁸⁸ Support plans should be continually reviewed and updated in line with the developing needs of the service user.¹⁸⁹ The support plan is defined as:

a course of actions agreed between the service user and the service(s) that outline the service user's goals and how these will be met. The support plan is developed on the basis of findings during the assessment process. It sets out timelines for the completion of goals and identifies clear areas of responsibility. The support plan is referred to as a 'care plan' within some services.¹⁹⁰

¹⁸⁴ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 19.

¹⁸⁵ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 20.

¹⁸⁶ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 22.

¹⁸⁷ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 20.

¹⁸⁸ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 22 and 23.

¹⁸⁹ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 22.

¹⁹⁰ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 14.

[7.119] Theme 3 requires homeless service providers to provide safe services and a safe environment for living. As part of this, service providers need to ensure service users are “safeguarded and protected from abuse and their safety and welfare is promoted”.¹⁹¹ Where a person is at risk of domestic abuse, safety planning should be carried out. Where service users have known histories of sexual offender, they should be assessed for risk to themselves and others before being placed within a homeless service.¹⁹² As part of each service provider’s duty of care to service users, they should assess and respond to any security, health and safety risks posed to service users, and they should have risk assessment and management policies and procedures in place to deal with situations where safety may be compromised.¹⁹³

(vii) Service providers that provide refuge accommodation services for victims of domestic, sexual or gender-based violence

[7.120] As discussed above in section 3(a), the DSGBV Agency (Cuan) was recently established by the Domestic, Sexual and Gender-Based Violence Agency Act 2023 (the “2023 Act”). The new agency is required by the 2023 Act to prepare and submit for the approval of the Minister for Justice standards for the provision of the services in the pursuit of this function.¹⁹⁴ If these standards are introduced in the future, they could include requirements on service providers to develop care plans, personal plans, support plans or safeguarding plans for service users who may be at-risk of harm. The need for safeguarding plans for adults using domestic, sexual and gender-based violence services is particular acute, given that most adults availing of such services are at risk of harm.

(b) The need for a statutory requirement to prepare a safeguarding plan

[7.121] As demonstrated above, most relevant services are required to work with service users to develop care plans, personal plans or an equivalent plan. The strength of this duty depends on whether it exists on a statutory or non-statutory basis. Certain providers of relevant services are also obliged to prepare a safeguarding plan in conjunction with the service user, for example providers of day services

¹⁹¹ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 27.

¹⁹² Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 27.

¹⁹³ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 29.

¹⁹⁴ Section 6(1)(c) of the Domestic, Sexual and Gender-Based Violence Agency Act 2023.

for people with disabilities must implement a safeguarding plan where there are concerns for a service user's safety.¹⁹⁵

- [7.122] The Commission believes that safeguarding plans should be put in place where a provider of a relevant service is concerned that there is a risk of harm to a particular adult availing the service, or a group of adults. It may also be put in place where an adult poses a risk to adults in the service and action is required to ensure the safety of all adults including adults who are adults who are, may be or may become at-risk adults, as well as staff working within the service. A safeguarding plan may outline the steps that should be taken to keep a particular adult or group of adults safe, or to minimise the risk of harm posed by one adult availing of a service to others. It may include modifications to how care and support services should be delivered and set out additional supports that may be required to keep adults availing of a service, including adults who are, may be, or may become at-risk adults safe.
- [7.123] In the late stages of finalising this Report, the Government published its Policy Proposals on Adult Safeguarding in the Health and Social Care Sector Public Consultation ("Policy Proposals"). The Policy Proposals provide that services should put individual service user safeguarding risk assessment and adult safeguarding plans in place where there are adult safeguarding concerns.¹⁹⁶ Individual safeguarding risk assessments should take place as part of all individual assessments for adults at risk, especially when first admitted to the service.
- [7.124] The Commission believes that residential centres for older people, residential centres for adults with disabilities and approved centres should prepare a safeguarding plan where an adult availing of its service is identified as being at risk of harm. Safeguarding plans can be incorporated into existing care plans or personal plans and implemented by the centres directly, removing the need for multiple plans. A safeguarding plan should be implemented only with the consent of the relevant at-risk adult where the at-risk adult has capacity to make decisions about their welfare. Where a person does not have capacity to make such decisions, part of the safeguarding plan could involve the appointment of a decision-making assistant, co-decision-maker or decision-making representative under the Assisted Decision-Making (Capacity) Act 2015.

¹⁹⁵ HSE, *New Directions: Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE, November 2015) at page 52.

¹⁹⁶ These Policy Proposals were prepared by the Department of Health, Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (DOH 2024) at page 22.

[7.125] Accordingly, the Commission recommends that the relevant regulations under the Health Act 2007 and Mental Health Act 2001¹⁹⁷ should be amended to include a requirement to update a care plan or personal plan to incorporate a safeguarding plan, where a resident is identified as being at risk of harm. The Commission recommends that the amendments to the regulations should also provide that where a safeguarding plan has been incorporated into a care plan or personal plan, providers of a relevant service are required to undertake an initial review no later than six months, and a subsequent review no later than twelve months, from the date. The implementation of such plans across a service could then be monitored and reviewed as part of inspections by HIQA or the Mental Health Commission, as relevant.

R. 7.27 The Commission recommends that the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013), the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013) and the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006) should be amended to include a requirement to update a care plan or personal plan to incorporate a safeguarding plan, where a resident is identified as being at risk of harm. The amendments to the regulations should also provide that where a safeguarding plan has been incorporated into a care plan or personal plan, providers of a relevant service are required to undertake an initial review no later than six months, and a subsequent review no later than twelve months, from the date of the update of the care plan or personal plan to assess whether progress has been made to adequately safeguard the resident.

[7.126] If other services such as home support services fall under the regulatory remit of HIQA in the future, the same obligations to prepare a safeguarding plan should be extended to such services or service providers. The Commission welcomes the Government's proposals to bring home support within regulation. The Draft Regulations for Providers of Home Support Services, published in 2022, contain a requirement on the service provider to develop a personal support plan with every service user.¹⁹⁸ The Commission recommends that personal support plans for service users availing of home support services (or any other equivalent plan that may be identified in future regulations) should incorporate a safeguarding plan where an adult is identified as being at risk of harm.

¹⁹⁷ Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013); Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013) and Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006).

¹⁹⁸ Department of Health, *Draft Regulations for Providers of Home Support Services Public Consultation Document* (DOH 2022) at page 9.

R. 7.28 The Commission recommends that personal support plans for service users availing of home support services (or any other equivalent plan that may be identified in future regulations) should incorporate a safeguarding plan where an adult is identified as being at risk of harm.

(c) A duty to prepare a safeguarding plan on relevant services where standards exist

- [7.127] Apart from services regulated by HIQA and the Mental Health Commission under the Health Act 2007, the Mental Health Act 2001 and associated regulations, many of the relevant services identified by the Commission in section 2(a) of this Chapter are not subject to statutory regulatory regimes. While secondary legislation expands HIQA's remit to monitoring compliance of providers of permanent accommodation to international protection applicants with the National Standards, the National Standards themselves do not have a statutory basis. The DSGBV Agency will likely produce standards for providers of DSGBV services, particularly accommodation services, and it will monitor compliance with any standards introduced.¹⁹⁹ The Commission considers that in drafting any future standards, consideration should be given to including the safeguarding duties proposed in this Chapter, including a duty to prepare a safeguarding plan.
- [7.128] Other relevant services, such as day services for adults with disabilities, and providers of homeless accommodation, have standards in place, but no independent regulatory oversight monitoring compliance. As discussed in section 4(a) of this Chapter, many of these non-statutory standards include requirements regarding care plans, personal plans or some equivalent, akin to the obligations placed on residential centres for older people and adults with disabilities, and approved centres under the Mental Health Act 2001. A smaller number of these standards require service providers to develop safeguarding plans in conjunction with the service user, where an adult is at risk of harm.
- [7.129] The Commission's position in respect of unregulated providers of relevant services is explained in section 2(a) of this Chapter. The Commission believes that the Government should carefully consider whether relevant services that are unregulated should be brought within a statutory regulatory regime. If this is done, regulations will likely include duties in respect of care plans, or personal plans, and could also include a duty to prepare a safeguarding plan where there are safeguarding concerns. The Commission appreciates that a regulatory regime would take some time to implement, even if the Government considers that such services should be brought within a statutory regulatory regime. As discussed in section 2(a), the Commission considers that in the meantime, relevant funding

¹⁹⁹ Department of Justice, *Third National Strategy on Domestic, Sexual and Gender Based Violence 2024 Implementation Plan* (DOJ 2024) <<https://assets.gov.ie/289239/8397af6a-eb2e-48d7-a0df-cf72c91d103b.pdf>> accessed 8 April 2024.

agencies or Government departments could consider updating or drafting existing or future standards to encompass the safeguarding duties proposed in this Chapter, which would include, in this case, a duty to prepare a safeguarding plan in certain circumstances.

5. Provision of training and information

[7.130] The need for requirements to ensure that staff members of services that have regular contact with adults who are, may be, or may become at-risk adults receive adequate adult safeguarding training was raised by many consultees in response to the Commission's Issues Paper. The views of consultees related to adult safeguarding training specifically rather than to general existing training requirements under the Safety, Health and Welfare at Work Act 2005, for example.²⁰⁰ Consultees also submitted that the Safeguarding Body should have a statutory role in the development of adult safeguarding training, codes of conduct and practice guidance aimed at supporting and educating service providers and their staff on best practice when it comes to adult safeguarding.

(a) Duty on providers of a relevant service to ensure staff are provided with training and to provide information

[7.131] There are a number of training requirements in addition to the education and certification requirements necessary to register as a relevant health and social professionals or to work as a health or social care assistant. The focus of this section is whether there should be a duty on a provider of a relevant service to ensure staff are provided with adult safeguarding training. It also considers what information a provider of a relevant service should be obliged to provide to staff.

(i) *Health Act 2007, associated regulations and standards*

[7.132] Registered providers of residential centres for older people and residential centres for adults with disabilities are required to ensure that staff receive training in relation to the detection, prevention of, and responses to abuse.²⁰¹ Persons in charge of residential centres for older people and residential centres for adults with disabilities must ensure that staff:

- have access to appropriate training;
- are appropriately supervised; and

²⁰⁰ Sections 8(2)(g) and 10 of the Safety, Health and Welfare at Work Act 2005.

²⁰¹ Regulation 8(2) of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013) and regulation 8(7) of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

- are informed of the Health Act 2007 and any regulations and standards made under it.²⁰²

[7.133] Additionally, copies of the following must be made available to staff of residential centres for older people and residential centres for adults with disabilities:

- the Health Act 2007 and any regulations made under it;
- standards set by HIQA under section 8 of the Health Act 2007 and approved by the Minister under section 10 of the Health Act 2007; and
- relevant guidance issued by statutory and professional bodies.²⁰³

[7.134] HIQA's National Standards for Residential Care Settings for Older People in Ireland place an expectation on services to ensure that all staff receive ongoing training in the "prevention, detection and reporting of abuse and their requirement to report abuse, as outlined in legislation and national policies".²⁰⁴ The National Standards for Residential Services for Adults with Disabilities also require that such training be provided.²⁰⁵

(ii) Mental Health Act 2001 and associated regulations

[7.135] Registered proprietors of approved centres under the Mental Health Act 2001 are required to ensure that staff have access to education and training to enable them to provide care and treatment in accordance with best contemporary practice.²⁰⁶ In contrast to the regulations made under the Health Act 2007, the regulations on approved centres do not specify that training must be provided to staff on the detection, prevention of, and responses to abuse. However, the National Standards for Adult Safeguarding discussed below, contain similar training requirements, and these standards apply to services regulated by the Mental Health Commission, including approved centres.

²⁰² Regulation 16 of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013) and regulation 16 of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

²⁰³ Regulation 16 of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013) and regulation 16 of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013).

²⁰⁴ Health Information Quality Authority, *National Standards for Residential Care Settings for Older People in Ireland* (HIQA 2016) at page 75.

²⁰⁵ Health Information Quality Authority, *National Standards for Residential Services for Adults with Disabilities* (HIQA 2013) at page 103.

²⁰⁶ Regulation 26(4) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006).

[7.136] Register proprietors are also required to ensure that staff are made aware of the provisions of the Mental Health Act 2001 and all the regulations and rules made under the Act to assist them in carrying out their roles.²⁰⁷ The register proprietor should make a copy of any rules or regulations made under the Mental Health Act 2001 available to all staff.²⁰⁸

(iii) National Standards for Adult Safeguarding

[7.137] As noted above, the National Standards for Adult Safeguarding (the “National Standards”) apply to all residential services for older people and people with disabilities, all mental health services, and more broadly to all publicly-funded health and social care services.²⁰⁹ One of the themes of the National Standards is that services should have a responsive workforce.²¹⁰ This means that all staff involved in providing care and support “should be trained and competent in safeguarding knowledge and skills, appropriate to their role”.²¹¹ The National Standards recognise that providing education and training to all staff allows them to “apply the necessary knowledge and skills to reduce the risk of harm and to promote each person’s rights, health and wellbeing”.²¹² Training should be an ongoing requirement to ensure that staff continuously develop and build on their adult safeguarding skills and knowledge. Staff should be trained in how to identify and assess risks to adults availing of services and put measures in place to minimise these risks.²¹³ Training should also include how to respond when a safeguarding concern arises.²¹⁴

(iv) Home support services

[7.138] The Draft Regulations for Providers of Home Support Services propose that service providers should provide home support workers with appropriate

²⁰⁷ Regulation 26(5) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006).

²⁰⁸ Regulation 26(6) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006).

²⁰⁹ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 12.

²¹⁰ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 42.

²¹¹ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 42. See also Standard 6.2 on page 45.

²¹² Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 42.

²¹³ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 45.

²¹⁴ Health Information and Quality Authority and the Mental Health Commission, *National Standards for Adult Safeguarding* (HIQA and MHC 2019) at page 42.

safeguarding training as part of their induction and ongoing refresher training.²¹⁵ As discussed above, a provider of a home support service would be required to maintain an up to date Statement of Purpose if the Draft Regulations were introduced, which includes arrangements and policies and procedures in place to ensure safe and quality service delivery, and safeguarding “vulnerable” adults from abuse. This would be available to staff as it would be publicly accessible.

(v) Interim Standards for day Services for adults with disabilities

- [7.139] One of the themes in the Interim Standards for day services for adults with disabilities is a responsive workforce.²¹⁶ It provides that all staff should receive specific training in protection of at-risk adults to ensure they are “equipped with the knowledge and skills to recognise the signs of abuse and/or neglect and the action(s) required to protect them from significant harm”.²¹⁷ Orientation and induction training should include a focus on ensuring the safety of people who use services.²¹⁸ There is a requirement that staff receive ongoing training “in the prevention, detection and reporting of abuse and their requirement to report abuse, as outlined in legislation and national policies”.²¹⁹
- [7.140] The Interim Standards also provide that there should be a written code of conduct for all staff, developed by the provider of day services in conjunction with people who use services and supports.²²⁰ Staff should understand their roles and responsibilities, and to enable them to do so, the provider of day services should ensure they are aware of policies and procedures in place that should be followed.²²¹ Staff should be provided with access to support and advice as well as regular supervision and support from experienced and qualified staff.²²²

²¹⁵ Department of Health, Draft Regulations for Providers of Home Support Services Public Consultation Document (DOH 2022) at pages 14 and 21.

²¹⁶ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 65.

²¹⁷ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 65.

²¹⁸ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 66.

²¹⁹ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 72.

²²⁰ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 67.

²²¹ Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 69.

²²² Health Service Executive, *New Directions Interim Standards for New Directions, Services and Supports for Adults with Disabilities* (HSE 2015) at page 69.

(vi) National Standards (for accommodation offered to people in the international protection process)

[7.141] The National Standards (for accommodation offered to people in the international protection process) places a big emphasis on the importance of training staff.²²³ Standard 2.4 provides that “continuous training is provided to staff to improve the service provided for all children and adults living in the centre”.²²⁴ Service providers must provide staff with training in many areas, including, but not limited to:

- preventing, detecting and reporting abuse;
- domestic, sexual and gender-based violence and harassment, including responding to and preventing female genital mutilation; and
- mental health awareness (including suicide prevention).²²⁵

[7.142] In accordance with Standard 10.2, staff should be given training to enable them to identify and respond to emerging and identified needs of residents.²²⁶ In particular, the Reception Officer must receive regular external specialised training to identify and respond to the special reception needs of residents.²²⁷ Where a centre has a significant percentage of residents who are deemed exceptionally “vulnerable” or in cases where a centre has been designated as a centre for exceptionally “vulnerable” international protection applicants, all staff must receive specialised training to meet the assessed needs of exceptionally at-risk residents.²²⁸ The National Standards also require that the service provider ensures that staff and managers understand their roles and responsibilities, and that they are aware of the policies and procedures to be followed at all times”.²²⁹

(vii) National Quality Standards Framework for Homeless Services

[7.143] The National Quality Standards Framework for Homeless Services (the “National Quality Standards”) outlines how service providers can ensure that they have a

²²³ Department of Justice and Equality, *National Standards (for accommodation to people in protection process)* (2019).

²²⁴ Department of Justice and Equality, *National Standards (for accommodation to people in protection process)* (2019) at page 28.

²²⁵ Department of Justice and Equality, *National Standards (for accommodation to people in protection process)* (2019) at pages 28 to 29.

²²⁶ Department of Justice and Equality, *National Standards (for accommodation to people in protection process)* (2019) at page 63.

²²⁷ Department of Justice and Equality, *National Standards (for accommodation to people in protection process)* (2019) at page 66.

²²⁸ Department of Justice and Equality, *National Standards (for accommodation to people in protection process)* (2019) at page 68.

²²⁹ Department of Justice and Equality, *National Standards (for accommodation to people in protection process)* (2019) at page 27.

“responsive workforce”.²³⁰ Not only do they need to be proficient in housing, but they also need to “respond to a range of other social, health and welfare needs in the course of their work with service users”.²³¹ This theme recognises that in order to provide safe and effective services, staff need to be trained, supported and developed.²³² Staff are required to engage in continuous training in core areas including risk management, needs assessment and support planning, care and case management, and managing challenging behaviour.²³³ The National Quality Standards provide that staff should be “trained and competent in the protection, safety and promotion of welfare of persons residing in their service”.²³⁴

[7.144] Another indicator of a responsive workforce is that staff understand and implement the written operational procedures and policies in place, and that they “demonstrate an awareness of their individual responsibility and know how to escalate risks, incidents, concerns and complaints to their line managers”.²³⁵ There should be a written code of conduct for all staff, volunteers and service users and a charter of rights for service users and staff.²³⁶

(viii) *Relevant services who are charities*

[7.145] As discussed earlier, the Charities Regulator published safeguarding guidance for charitable organisations working with “vulnerable persons”, who are adults, in 2020.²³⁷ This Safeguarding Guidance includes a requirement that charities have a

²³⁰ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, National Quality Standards Framework for Homeless Services in Ireland (DRHE and DHPLG 2019) at page 42.

²³¹ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 42.

²³² Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 42.

²³³ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 46.

²³⁴ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 27.

²³⁵ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 45.

²³⁶ Dublin Region Homeless Executive and the Department of Housing, Planning and Local Government, *National Quality Standards Framework for Homeless Services in Ireland* (DRHE and DHPLG 2019) at page 46.

²³⁷ Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator, 2020).

safeguarding policy and procedures document in place, which outlines the safeguarding awareness and training that its staff or volunteers should undertake.²³⁸

- [7.146] The Safeguarding Guidance emphasises the need for charities working with at-risk adults to be aware of their legal and regulatory obligations and that all staff working or volunteering with the charity “are cognisant of applicable safeguarding requirements, and have the necessary risk assessment procedures, safety checks and safeguards in place”.²³⁹

(ix) Safeguarding and HSE Funding Agreements

- [7.147] Schedules to service arrangements that are entered into by the HSE with service providers in accordance with section 38 and 39 of the Health Act 2004 generally require services to comply with the HSE National Policy and Procedures. Therefore, they are obligated to ensure that “all relevant staff receive adult safeguarding awareness training”.²⁴⁰

(x) A duty to provide adult safeguarding training and information

- [7.148] In 2022, the Irish Association of Social Workers (“IASW”) stated that it is noteworthy that despite repeated “scandals”, adult safeguarding training is not mandatory for the majority of HSE staff and unlike child protection, references to adult safeguarding knowledge are not made in a range of job competency requirements, even for senior managers working with high-risk groups.²⁴¹ The IASW recommended that adult safeguarding training must become a mandatory requirement for all HSE and HSE-funded staff.²⁴² In its submission in response to the Commission’s Issues Paper, HIQA stated that service providers should be legally required to ensure that any person employed or permitted to carry out adult safeguarding work for a service provider, or on its behalf, receives mandatory adult safeguarding training at appropriately identified intervals during

²³⁸ Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator, 2020) at page 13.

²³⁹ Charities Regulator, *Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)* (Charities Regulator, 2020) at page 5.

²⁴⁰ See for example, Health Service Executive, HSE Service Arrangement Section 38 Non-Acute Disability Schedules (revised November 2023) at page 10 <<https://www.hse.ie/eng/services/publications/non-statutory-sector/section-38-non-acute-disability-schedules-2024-revised-nov-2023.doc>> accessed 8 March 2024.

²⁴¹ Irish Association of Social Workers (IASW), *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (2022) at page 14.

²⁴² Irish Association of Social Workers (IASW), *Position Paper on Adult Safeguarding: Legislation, Policy and Practice* (2022) at page 24.

their work.²⁴³ HIQA specified that this training should be part of a continuing professional development programme.²⁴⁴

- [7.149] In recent years, the HSE's National Safeguarding Office has made efforts to formalise and improve adult safeguarding training. For example, it launched its Safeguarding Adults at risk of abuse eLearning programme on HSeLanD (the HSE's national online learning and developmental portal) in 2020.²⁴⁵ It also reconfigured its Designated Officer training programme from face to face training to a blended format in response to COVID-19.²⁴⁶ In 2022, it published a report into two studies on HSE adult safeguarding programmes (the "Learning to Safeguard report").²⁴⁷ The Learning to Safeguard report notes that when the Safeguarding Adults at Risk of Abuse eLearning programme was first launched in September 2020, there were 7000 completions within the first month, and by end of 2020, this number rose to 45,983.²⁴⁸ In 2021, there were 52'205 completions of the programme.²⁴⁹ An evaluation survey was sent to all staff who completed the eLearning programme, and the findings are included in the report, which suggest that there was high satisfaction with the eLearning content and respondents indicated that the training had "strong applicability to their role".²⁵⁰
- [7.150] There are statutory requirements on residential centres for older people and adults with disabilities in terms of training for staff. The Commission supports the

²⁴³ HIQA, *Law Reform Commission Issues Paper 'A Regulatory Framework for Adult Safeguarding' - Response by the Health Information and Quality Authority (HIQA)* (May 2020), at page 19, available at: < <https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf>>

²⁴⁴ HIQA, *Law Reform Commission Issues Paper 'A Regulatory Framework for Adult Safeguarding' - Response by the Health Information and Quality Authority (HIQA)* (May 2020), at page 19, available at: < <https://www.hiqa.ie/sites/default/files/2020-06/HIQA-Response-LRC-Issues-Paper.pdf>>

²⁴⁵ HSE and HSE National Safeguarding Office, *Learning to Safeguarding A report into two studies on HSE adult safeguarding training programmes* (NSO 2022).

²⁴⁶ HSE and HSE National Safeguarding Office, *Learning to Safeguarding A report into two studies on HSE adult safeguarding training programmes* (NSO 2022). The HSE National Policies and Procedures provide that services must appoint a designated officer whose role includes receiving concerns of abuse and responsible to concerns and complaints of abuse of "vulnerable" adults within HSE operated and funded services. Training was specifically developed to support designated officers in their role in 2015 and has been ongoing since then.

²⁴⁷ HSE and HSE National Safeguarding Office, *Learning to Safeguarding A report into two studies on HSE adult safeguarding training programmes* (NSO 2022).

²⁴⁸ HSE and HSE National Safeguarding Office, *Learning to Safeguarding A report into two studies on HSE adult safeguarding training programmes* (NSO 2022) at page 51.

²⁴⁹ HSE and HSE National Safeguarding Office, *Learning to Safeguarding A report into two studies on HSE adult safeguarding training programmes* (NSO 2022) at page 51.

²⁵⁰ HSE and HSE National Safeguarding Office, *Learning to Safeguarding A report into two studies on HSE adult safeguarding training programmes* (NSO 2022) at page 66.

requirements on residential centres for older people and residential centres for adults with disabilities to ensure that staff receive training in relation to the detection and prevention of, and responses to, abuse, as set out above. The Commission believes that a similar statutory requirement should apply to approved centres under the Mental Health Act 2001 and therefore recommends the amendment of regulation 26 of the Mental Health Act 2001 (Approved Centres) Regulations 2006 to require that staff are provided with adult safeguarding training, including training on how to detect, prevent and respond to abuse.

- [7.151] The Commission understands that the government intends to provide for the regulation of professional home support services providers in forthcoming secondary legislation. As discussed above, the Draft Regulations for Providers of Home Support Services contain requirements that home support workers receive safeguarding training. It is likely that similar to the regulations applying to residential centres for older people and residential centres for people with disabilities under the Health Act 2007, the proposed safeguarding training requirement would include training in relation to the detection and prevention of, and responses to, abuse. The Commission supports the inclusion of a requirement in the regulations under the proposed regulations that providers of home support services must provide home support workers with adult safeguarding training, which includes training on how to detect, prevent and respond to abuse.
- [7.152] Training requirements do exist for many unregulated relevant services in non-statutory standards, and relevant funding authorities and Government departments should consider whether any existing or future standards should be updated or drafted to include duties on providers of the relevant service to provide staff with adult safeguarding training, which includes training on how to detect, prevent and respond to abuse. The Commission recommends that Government should carefully consider bringing unregulated relevant services within a statutory regulatory regime – as it would make it easier to impose safeguarding duties on such providers and provide an independent oversight mechanism that can monitor compliance. This is discussed in section 2(b) of this Chapter.
- [7.153] The Commission also recommends above in section 3(c) that a provision should be introduced in adult safeguarding legislation to require providers of a relevant service to prepare an adult safeguarding statement. The Commission recommends that such adult safeguarding statements should outline the procedures of the service providers for the provision of information and, where necessary, instruction and training, to members of staff of the provider in relation to the identification of the occurrence of harm.

- [7.154] The Government’s Policy Proposals on Adult Safeguarding in the Health and Social Care Sector, which were published in the late stages of finalising this report, also make several references to training requirements.²⁵¹ The Policy Proposals suggest that all staff and volunteers within health and social care services “must be adequately trained to undertake the level of safeguarding duties appropriate to them, including recognition of signs of different types of abuse of adults at risk”.²⁵²
- [7.155] In Chapter 5, the Commission recommends that the Safeguarding Body should have a statutory function to provide training, information and guidance to publicly and privately funded providers of relevant services and their staff, mandated persons and any other appropriate persons.²⁵³ If this recommendation is accepted and implemented, providers of relevant services could meet the duties to ensure staff receive safeguarding training, by ensuring that they undertake any training developed by the Safeguarding Body. This would mean that HSE operated and funded service providers, private providers and providers of relevant services outside the health and social care sector would receive the same adult safeguarding training on how to detect, prevent and respond to abuse, which would assist with ensuring consistency in adult safeguarding practice across services and sectors.

- R. 7.29 The Commission recommends that** regulation 26 of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006) should be amended to require that staff of approved centres are provided with adult safeguarding training, including training on how to detect, prevent and respond to abuse.
- R. 7.30 The Commission recommends that** any future regulations that may be introduced for home support services should require that staff providing home support services are provided with adult safeguarding training, including training on how to detect, prevent and respond to abuse.

(b) Requirement on taxi drivers to undertake safeguarding training

- [7.156] The definition of “relevant services” discussed in section 2(a) of this Chapter includes the work of a driver of a vehicle, which could include a bus or a taxi, in specified circumstances: “any work or activity as a driver of, or as an assistant to the driver, or as a conductor, or as a supervisor of adults using a vehicle which is being hired or used only for the purpose of conveying adults to or from day services or respite services and related activities of such services”. Therefore, any

²⁵¹ Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (DOH 2024).

²⁵² Government of Ireland, *Public Consultation Policy Proposals on Adult Safeguarding in the Health and Social Care Sector* (DOH 2024) at page 21.

²⁵³ See recommendation 6.6.

driver or equivalent person who transports adults to or from day services, respite services or other similar services is required to undertake a risk assessment and prepare an adult safeguarding statement.

- [7.157] However, the Commission has identified a gap in respect of taxi drivers more generally as they may be in frequent contact with at-risk adults in their communities particularly those who may be unable to drive. For such at-risk adults, especially those who live alone or do not have a large support network, taxi drivers can become a source of companionship and assistance. Where health or social care services are not involved, they may be one of the few people to encounter at-risk adults on a regular basis. Therefore, it would be beneficial if taxi drivers were required to undertake adult safeguarding training as this would ensure that they provide a safe service to at-risk adults and that they understand how to respond to any safeguarding concerns that come to their attention.
- [7.158] In England and Wales, all taxi and private hire licensing authorities must provide safeguarding training and require taxi and private hire vehicle drivers to undertake safeguarding training.²⁵⁴ Licensed drivers are often seen as the “eyes and ears” in their localities, and for that reason, it makes sense to empower licensed drivers to spot safeguarding concerns and to report them to relevant authorities such as the police.²⁵⁵
- [7.159] There have been a small number of cases reported in the media involving financial abuse of older people by taxi drivers in Ireland.²⁵⁶ Although these cases are not representative of the vast majority of taxi drivers who are a huge asset to

²⁵⁴ Department for Transport (England and Wales), *Statutory taxi and private hire vehicle standards* (2020), available at: <<https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards/statutory-taxi-and-private-hire-vehicle-standards>> (last accessed 6 November 2023).

²⁵⁵ Safety as a Standard, Safeguarding For The Taxi Drivers and Those Vulnerable <<https://saas-org.co.uk/safeguarding-for-the-taxi-drivers-and-those-vulnerable/>> accessed 9 March 2024; AP News, “An alter Polish taxi driver averts a scam in which an elderly woman could have lost about \$36,000” *AP News* (12 March 2024) <<https://apnews.com/article/poland-money-scam-elderly-taxi-police-78165e71371c2d0468963a5fb5fa5090>> accessed 15 March 2024; ITV News, “Taxi driver saves 80-year-old woman from con artists on her way to get money from bank” *ITV News* (19 May 2022) <<https://www.itv.com/news/tyne-tees/2022-05-19/taxi-driver-saves-80-year-old-from-scammers-on-her-way-to-get-cash-from-the-bank>> accessed 15 March 2023; Zdanowicz, “A taxi driver saved an elderly woman from being scammed out of \$25,000” *CNN* (16 February 2020) <<https://edition.cnn.com/2020/02/16/us/taxi-driver-prevents-scam-trnd/index.html>> accessed 15 March 2024.

²⁵⁶ See for example, Managan, “Taxi driver abused friendship of elderly man and tried taking his home through disputed homemade will, judge says” *The Journal* (20 December 2021) <<https://www.thejournal.ie/taxi-driver-seamus-conroy-disput-ed-will-court-5636620-Dec2021/>> accessed 8 March 2024 and Brennan, “Taxi driver who stole €75k off elderly customer with dementia jailed for two years” *The Journal* (31 January 2019) <<https://www.thejournal.ie/taxi-driver-dementia-4470891-Jan2019/>> accessed 8 March 2024.

their communities, taxi drivers can have direct and regular contact with at-risk adults who are otherwise isolated and may become dependent on the service or assistance of a taxi driver over time. While there are positives to this in that taxi drivers may therefore be in a position to identify signs of abuse, exploitation or neglect and to assist with safeguarding at-risk adults, there is potential for a very small minority of taxi drivers to exploit at-risk adults who they come into contact with.²⁵⁷

[7.160] Transport for London has stated:

Taxi and private hire licensees, particularly licensed drivers, and individuals working for private hire operators and taxi booking platforms are in a unique position to identify and help take steps to prevent the abuse, exploitation or neglect of children and vulnerable adults. By understanding early warning signs and knowing what to do when there are concerns that a child or vulnerable adult is at risk, taxi and private hire licensees can play a significant role in preventing harm and abuse.²⁵⁸

[7.161] The Garda Síochána is the SPSV²⁵⁹ driver licensing authority in Ireland and it assesses the suitability of vetting applicants seeking SPSV driver licences, and grants and renews licences.²⁶⁰ The National Transport Authority is the taxi regulator and is responsible for administering the SPSV driver entry test, issuing SPSV driver identity and display cards on receipt of the license from the Garda Síochána and maintaining the SPSV register. The National Transport Authority maintains a database of links between each licensed SPSV and its current driver.²⁶¹ While drivers of other vehicles are not regulated outside of requirements to obtain a license, transport services such as commercial bus services may be regulated.²⁶²

²⁵⁷ See for example, Jones, "Taxi driver conned vulnerable disabled woman out of life savings" *Penarth Times* (13 June 2016) < <https://www.penarthtimes.co.uk/news/14552888.taxi-driver-conned-vulnerable-disabled-woman-out-of-life-savings/>> accessed 15 March 2024. In this case, the taxi driver knew the woman with disabilities for 14 years and she considered him a "kind and helpful" taxi driver who regularly picked her up to take her shopping. He took money from her by using her card, cheque book and transferring money out of her bank account.

²⁵⁸ Transport for London, Safeguarding awareness < <https://tfl.gov.uk/info-for/taxis-and-private-hire/safeguarding-awareness?cid=safeguarding>> accessed 8 March 2024.

²⁵⁹ This means small public service vehicle.

²⁶⁰ National Transport Authority, Driver licensing < <https://www.nationaltransport.ie/taxi/driver-licensing/>> accessed 11 April 2024.

²⁶¹ National Transport Authority, Driver licensing < <https://www.nationaltransport.ie/taxi/driver-licensing/>> accessed 11 April 2024.

²⁶² Public Transport Regulation Act 2009.

[7.162] The Commission believes that the Garda Síochána as the licensing authority for SPSVs, and the National Transport Authority, as the taxi regulator in Ireland should provide adult safeguarding training on the detection and prevention of, and responses to abuse and that the Taxi Regulation (Small Public Service Vehicle) Regulations 2015²⁶³ should be amended to introduce a requirement on holders of licences to drive small public vehicles to undertake adult safeguarding training, including training on how to detect, prevent and respond to abuse, which should be provided by the National Transport Authority and the Garda Síochána in cooperation with the Safeguarding Body.

R. 7.31 The Commission recommends that the Taxi Regulation (Small Public Service Vehicle) Regulations 2015 (SI No 33 of 2015) should be amended to introduce a requirement on holders of licences to drive small public vehicles to undertake adult safeguarding training, including training on how to detect, prevent and respond to abuse, which should be provided by the National Transport Authority and the Garda Síochána in cooperation with the Safeguarding Body.

6. Data collection and sharing duties on providers of relevant services

(a) Data on reports of actual or suspected abuse or neglect of at-risk adults

[7.163] In reflection of the existing relevant activity of the HSE National Safeguarding Office and the benefits of research and data functions in promoting adult effective safeguarding, the Commission recommends in Chapter 5 that the Safeguarding Body should have a statutory function to collect, evaluate and publish data and undertake, commission, or collaborate in, research related to its primary statutory function to promote the health, safety and welfare of adults who need support to protect themselves from harm. Undoubtedly, providers of a relevant service have a significant role to play in the collection of data on reports of actual or suspected abuse or neglect of at-risk adults as its staff are on the ground interacting with at-risk adults and their families daily, and therefore are best placed to identify signs of abuse and take action. In order for the data collected by the Safeguarding Body to be comprehensive and accurate, there is a need for timely, consistent and rigorous reporting of incidents by providers of a relevant service and their staff, including mandated persons.

[7.164] In Chapter 9, the Commission recommends the introduction of a duty on mandated persons to report knowledge, beliefs or suspicions of reportable harm to the Safeguarding Body. The introduction of such a duty in adult safeguarding legislation would allow the Safeguarding Body to collect data on reports by

²⁶³ Taxi Regulation (Small Public Service Vehicle) Regulations 2015 (SI No 33 of 2015).

mandated persons working with at-risk adults across all sectors. Incidents of harm below the threshold of “reportable harm” recommended in Chapter 9 may also be reported to the Safeguarding Body and non-mandated persons may also report to the Safeguarding Body – although neither of these are proposed requirements in this Report.

- [7.165] However, there may be harm below the threshold of “reportable harm” recommended in Chapter 9, which is not reported to the Safeguarding Body, but which is reported by a service provider to a relevant regulatory body. Such reports to regulatory bodies may be made in compliance with notifiable incident reporting requirements in relevant secondary legislation.²⁶⁴ Providers of a relevant service need to ensure that a safeguarding culture exists within its services, and that relevant staff are aware of their legal obligations in relation to mandated reporting, their obligations to report other notifiable incidents to regulators and that they do not fear repercussions internally for reporting or for complying with their obligations.
- [7.166] Regulatory bodies could cooperate with each other and with the Safeguarding Body to produce accurate datasets taking into account that there may be duplication in reporting in some instances. The Commission’s recommendations in relation to multi-agency cooperation and information sharing in Chapters 15 and 16 should facilitate such cooperation and data-sharing.

(b) Data on application of proposed safeguarding legislation

- [7.167] As discussed in Chapter 5, it will be important that sufficient data is collected regarding the application of the proposed adult safeguarding legislation following its implementation. Stakeholders in Scotland have referred to issues with data collection and gaps in data collection as barriers to accurately assessing the effectiveness of safeguarding legislation in Scotland since its introduction in 2007.²⁶⁵ The proposed function of the Safeguarding Body to collect, maintain and publish data will ensure that the Safeguarding Body collects data in relation to its exercise of functions under the proposed legislation (see Chapter 5).

²⁶⁴ See regulation 31 of the Health Act 2007 (care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013); regulation 31 of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013); regulation 32(3) of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006).

²⁶⁵ Adult Support and Protection (Scotland) Act 2007. Stewart, “The implementation of Adult Support and Protection (Scotland) Act (2007) (PhD, University of Glasgow 2016) <<https://theses.gla.ac.uk/7083/1/2016StewartPhd.pdf>> accessed 9 March 2024 at pages 133 and 134; Musselbrook, *Adult Support and Protection Everyone’s Business* (Iriss 2023) at pages 14 and 16; Scottish Government, *Adult Support and Protection Improvement Plan 2019-2022* (2019) at page 12.

[7.168] Additionally, the Commission recommends in Chapter 11 that where the proposed summary power of access is exercised, the member of the Garda Síochána exercising the power must record the usage of the power, including the reasons for exercising it. This record must be uploaded to the PULSE database.²⁶⁶ The Commission also recommends that the exercise of a summary power of access must be notified to the Safeguarding Body.²⁶⁷ Similarly, in Chapter 12, the Commission recommends that any application to court by a member of the Garda Síochána for a removal and transfer order must be notified to the Safeguarding Body as soon as is practicable.²⁶⁸ These notifications will assist with collating data and improving overall data sets, as the Safeguarding Body will be able to combine information from these notifications with its own data regarding the use of proposed interventions under adult safeguarding legislation.

²⁶⁶ See section 6(f) of Chapter 11.

²⁶⁷ See section 6(f) of Chapter 11.

²⁶⁸ See section 5(a)(ii) of Chapter 12.



The Law Reform Commission is an independent statutory body established by the Law Reform Commission Act 1975. The Commission's principal role is to keep the law under review and to make proposals for reform, in particular by recommending the enactment of legislation to clarify and modernise the law.

The Commission's law reform role is carried out primarily under a Programme of Law Reform. Its Fifth Programme of Law Reform was prepared by the Commission following broad consultation and discussion. In accordance with the 1975 Act it was approved by the Government in March 2019 and placed before both Houses of the Oireachtas. The Commission also works on specific matters referred to it by the Attorney General under the 1975 Act.

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