



COIMISIÚN UM  
ATHCHÓIRIÚ AN DLÍ  
LAW REFORM  
COMMISSION

EXECUTIVE SUMMARY

A REGULATORY  
FRAMEWORK FOR ADULT  
SAFEGUARDING

(LRC ES 128 - 2024)

# EXECUTIVE SUMMARY - REPORT ON A REGULATORY FRAMEWORK FOR ADULT SAFEGUARDING

## CONTENTS

<b>Executive Summary - REPORT ON A REGULATORY FRAMEWORK FOR ADULT SAFEGUARDING .....</b>	<b>1</b>
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:
- (a) minimise the risk of harm to an adult at risk of harm;
  - (b) promote the health, safety and welfare of an adult at risk of harm; and
  - (c) 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"> <li>• receiving reports of actual or suspected harm;</li> <li>• 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);</li> <li>• developing safeguarding plans, where appropriate;</li> <li>• putting in place preventative measures;</li> <li>• data collection;</li> <li>• research;</li> <li>• training; and</li> <li>• public education/awareness raising.</li> </ul>	<ul style="list-style-type: none"> <li>• monitoring compliance by providers of relevant services with proposed duties to undertake a documented risk assessment and prepare an adult safeguarding statement <b>(multiple regulatory bodies)</b>;</li> <li>• 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 <b>(a single regulatory body or a partnership of multiple regulatory bodies)</b>; and</li> <li>• conducting serious incident reviews <b>(reviewing body to be determined by the Government; it may decide that existing regulators should carry out this function)</b>.</li> </ul>

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.



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.

The Commission's Access to Legislation work makes legislation more accessible online to the public. This includes the Legislation Directory (an electronically searchable index of amendments to Acts and statutory instruments), a selection of Revised Acts (Acts in their amended form rather than as enacted) and the Classified List of Legislation in Ireland (a list of Acts in force organised under 36 subject matter headings).