



COIMISIÚN UM  
ATHCHÓIRIÚ AN DLÍ  
LAW REFORM  
COMMISSION

## SUMMARY OF RECOMMENDATIONS

# A REGULATORY FRAMEWORK FOR ADULT SAFEGUARDING

(LRC SOR 128 - 2024)

# SUMMARY OF RECOMMENDATIONS

[A.1] This appendix contains a summary of all of the recommendations made by the Commission in this Report.

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

- R. 1.1 The Commission recommends that** adult safeguarding legislation should be introduced in Ireland.
- R. 1.2 The Commission recommends that** the Government should consider whether it would be appropriate to introduce a comprehensive statutory framework for social care.

## Chapter 2: Defining Key Statutory Terms in Adult Safeguarding Legislation

- R. 2.1 The Commission recommends that** the term “adult at risk of harm” should be used in adult safeguarding legislation.
- R. 2.2 The Commission recommends that** “adult at risk of harm” should be defined in adult safeguarding legislation as:

“Adult at risk of harm” means an adult who by reason of their physical or mental condition or other particular personal characteristics or family or life circumstance (whether permanent or otherwise) needs support to protect himself or herself from harm at a particular time.

- R. 2.3 The Commission recommends that** “safeguarding” should be defined in adult safeguarding legislation as:

“Safeguarding” means measures that are, or may be, put in place to promote the health, safety and welfare of adults at risk of harm including to—

- (a) minimise the risk of harm to adults at risk of harm, and
- (b) support adults at risk of harm to protect themselves from harm at a particular time.

- R. 2.4 The Commission recommends that** “safeguarding plan” should be defined in adult safeguarding legislation as:

“Safeguarding plan” means a documentary record of the planned actions that have been identified to promote the health, safety and welfare of an adult at risk of harm, including to—

- (a) minimise the risk of harm to an adult at risk of harm, and
- (b) support an adult at risk of harm to protect himself or herself from harm at a particular time.

**R. 2.5 The Commission recommends that “capacity”** should be defined in adult safeguarding legislation as:

“Capacity” has the same meaning as it has in the Assisted Decision-Making (Capacity) Act 2015.

**R. 2.6 The Commission recommends that “harm”** should be defined in civil adult safeguarding legislation as:

“Harm” means—

- (a) assault, ill-treatment or neglect in a manner that affects, or is likely to affect, health, safety or welfare,
- (b) sexual abuse, or
- (c) loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

**R. 2.7 The Commission recommends that “reportable harm”** should be defined in adult safeguarding legislation as:

“Reportable harm” means—

- (a) assault, ill-treatment or neglect in a manner that seriously affects, or is likely to seriously affect, health, safety or welfare,
- (b) sexual abuse, or
- (c) serious loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

**R. 2.8 The Commission recommends that “reportable harm”** should be construed in adult safeguarding legislation as excluding “self-neglect” other than where a mandated person has—

- (a) assessed an adult who is reasonably believed to be an adult at risk of harm as lacking capacity, or
- (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.

**R. 2.9 The Commission recommends that** “harm” should be defined in criminal adult safeguarding legislation as:

“Harm” means—

- (a) harm to body or mind and includes pain and unconsciousness,
- (b) any injury or impairment of physical, mental, intellectual, emotional health or welfare, or
- (c) any form of property or financial loss.

**R. 2.10 The Commission recommends that** “serious harm” should be defined in criminal adult safeguarding legislation as:

“Serious harm” means 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.

**R. 2.11 The Commission recommends that** “neglect” should be defined in criminal adult safeguarding legislation as:

“Neglect”, in a manner likely to cause suffering or injury to health, or to seriously affect wellbeing, means—

- (a) a failure to adequately protect a relevant person<sup>1</sup> under a person’s care from preventable and foreseeable harm,

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<sup>1</sup> The Commission’s Criminal Law (Adult Safeguarding) Bill 2024 defines a “relevant person” as “a person, other than a child, whose ability to guard himself or herself against violence,

(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 a person being unable to provide such—

(i) protection from harm, or

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

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

**R. 2.12 The Commission recommends that “neglect” should be defined in civil adult safeguarding legislation as:**

“Neglect”, in a manner likely to cause suffering or injury to health, or to seriously affect wellbeing, means—

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

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

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

(i) protection from harm, or

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

to an adult under his or her care, fails to take steps to have it provided under the enactments relating to health, social welfare or housing.

**R. 2.13 The Commission recommends that “self-neglect” should be defined in adult safeguarding legislation as:**

“Self-neglect” means the inability, unwillingness or failure of an adult to meet his or her basic physical, emotional, social or psychological needs, which is likely to seriously affect his or her wellbeing.

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exploitation or abuse, whether physical, sexual or emotional, or neglect, by another person is significantly impaired through one, or more, of the following: (a) a physical disability, a physical frailty, an illness or an injury; (b) a disorder of the mind, whether as a result of mental illness or dementia; (c) an intellectual disability; (d) autism spectrum disorder”. The Commission’s Criminal Law (Adult Safeguarding) Bill 2024 defines a “child” as “a person who has not attained the age of 18 years”.

**R. 2.14 The Commission recommends that** statutory guidance should be provided in relation to the definition of “self-neglect” in adult safeguarding legislation, which should include guidance on:

- (a) safeguarding adults at risk of harm who are self-neglecting; and
- (b) engaging with, and offering optional supports to, adults who are self-neglecting and who have capacity to choose to self-neglect.

## Chapter 3: Guiding Principles Underpinning Adult Safeguarding Legislation

**R. 3.1 The Commission recommends that** the following principles should be adopted as the guiding principles to underpin adult safeguarding legislation in Ireland:

1. **A rights-based approach:** this means ensuring that the rights of at-risk adults are respected, including their rights to autonomy, respect, dignity, bodily integrity, privacy, control over financial affairs and property, non-discrimination, equal treatment in respect of access to basic goods and services, and respect for their beliefs and values.
2. **Empowerment and person-centredness:** this means:
  - (a) the presumption of decision-making capacity;
  - (b) the facilitation of supported decision-making, where requested or required;
  - (c) ensuring informed consent;
  - (d) respecting the right to autonomy and the right to full and effective participation in society;
  - (e) the realisation of the right to independent advocacy;
  - (f) ensuring respect for will and preferences;
  - (g) ensuring respect for the right to have risks and options explained; and
  - (h) ensuring respect for the right to be consulted at every step of an action or intervention under adult safeguarding legislation.
3. **Protection:** this means:

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

4. **Prevention:** this means:

- (a) proactive steps are taken to ensure that safeguarding actions or interventions are taken to prevent harm to at-risk adults;
- (b) support is provided to ensure the safety and dignity of at-risk adults and to promote the physical, mental and emotional wellbeing of at-risk adults; and
- (c) proactive measures are taken in relation to adult safeguarding legislation, including to ensure that:
  - (i) the Safeguarding Body and its authorised officers are provided with training regarding the legislation and the exercise of functions under the legislation;
  - (ii) the Safeguarding Body and its authorised officers who are engaged in exercising functions under the legislation to

prevent harm to at-risk adults are obliged and facilitated to complete training on these principles, as well as training on their specific roles, before exercising any functions under the legislation; and

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

5. **Proportionality:** this means ensuring that actions or interventions under adult safeguarding legislation:

- (a) are necessary, having regard to the circumstances of each at-risk adult;
- (b) are, insofar as possible, the least intrusive and restrictive of the freedom of an at-risk adult;
- (c) are proportionate to the level of risk presented to an at-risk adult;
- (d) are limited to the necessary duration;
- (e) adopt a trauma-informed approach; and
- (f) are monitored and evaluated regularly, in accordance with international best practice.

6. **Integration and cooperation:** this means that:

- (a) coordinated and cohesive responses should be taken, in accordance with adult safeguarding legislation, to recognise the potential for harm and to prevent harm to at-risk adults;
- (b) services should be integrated and coordinated, multidisciplinary responses to prevent and address adult safeguarding concerns should be taken in accordance with adult safeguarding legislation; and
- (c) national sectoral policies should be aligned with adult safeguarding legislation to ensure the consistency of practice, policy and legislation across sectors.

7. **Accountability:** this means ensuring:

- (a) accountability and transparency in adult safeguarding;



- (b) that the Safeguarding Body and its authorised officers who take actions or interventions under adult safeguarding legislation are accountable and answerable for their actions or interventions;
- (c) that services are transparent and it is clear how the providers of relevant services to at-risk adults respond to safeguarding concerns under adult safeguarding legislation; and
- (d) that proper procedures are implemented for risk management, ownership, information sharing and reporting.

## Chapter 4: A Rights-Based Adult Safeguarding Framework

**R. 4.1 The Commission recommends that** in deciding whether to grant any safeguarding order, whether a warrant for access to a relevant premises, a warrant for access to a place including a private dwelling, a removal and transfer order or any form of no-contact order, the legislation should provide that the court must adopt the least intrusive means possible to meet the objective of safeguarding and protecting the health, safety and welfare of the at-risk adult in the particular circumstances.

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

**R. 5.1 The Commission recommends that** adult safeguarding legislation should provide for the establishment of a Safeguarding Body with a primary statutory function to promote the health, safety and welfare of adults who need support to protect themselves from harm at a particular time.

**R. 5.2 The Commission recommends that** the proposed adult safeguarding legislation should provide for a duty on the Safeguarding Body to receive reports from persons who know, believe or suspect that an adult at risk of harm has been harmed, is being harmed or is at risk of being harmed.

**R. 5.3 The Commission recommends that** the proposed adult safeguarding legislation should provide for a duty on the Safeguarding Body to take whatever action it deems necessary to safeguard an at-risk adult where it believes, based on reasonable grounds, that there is a risk to the health, safety or welfare of the at-risk adult. Such actions may include one or more of the following—

- (a) an intervention under Part 6 of the Adult Safeguarding Bill 2024 where the relevant criteria, as set out in that Part, are met;

- (b) making a report to a professional regulatory body where a member of the relevant profession is a person believed to pose a risk to the health, safety or welfare of an at-risk adult;
- (c) making a report to the Director of the Decision Support Service in accordance with the functions of the Director under the Assisted Decision-Making (Capacity) Act 2015;
- (d) making an application to the Circuit Court under Part 5 of the Assisted Decision-Making (Capacity) Act 2015;
- (e) preparing a safeguarding plan in respect of a particular at-risk adult in specific circumstances;
- (f) cooperating with other agencies to develop a safeguarding plan or take any other actions which the Safeguarding Body considers appropriate, to safeguard an at-risk adult; or
- (g) sharing information with another relevant body pursuant to Part 11 of the Adult Safeguarding Bill 2024.

**R. 5.4 The Commission recommends that** adult safeguarding legislation should provide for the Safeguarding Body to have all such powers as are necessary or expedient for, or incidental to, the performance of its functions, which may include the making of such enquiries as it considers appropriate. This would allow the Safeguarding Body to make enquiries for the purposes of exercising its primary function to promote the health, safety and welfare of at-risk adults.

**R. 5.5 The Commission recommends that** adult safeguarding legislation should provide for a statutory power of the Safeguarding Body to prepare a safeguarding plan or cooperate with other agencies in the preparation of a safeguarding plan where the Safeguarding Body: (a) believes that the development of such a plan is necessary; and (b) determines that it would not be more appropriate for a provider of a relevant service to independently prepare a safeguarding plan.

**R. 5.6 The Commission recommends that** the Safeguarding Body should have a statutory function to provide training, information and guidance to publicly and privately funded providers of relevant services and their staff, mandated persons and any other appropriate persons, as determined by the Safeguarding Body or designated by a relevant Minister.

**R. 5.7 The Commission recommends that** the Safeguarding Body should have a statutory function to provide information to the public in relation to its primary

function to promote the health, safety and welfare of adults who need support to protect themselves from harm.

**R. 5.8 The Commission recommends that** the Safeguarding Body should have statutory functions to

(a) collect, evaluate and publish data; and

(b) undertake or commission research or collaborate in research

related to its primary statutory function to promote the health, safety and welfare of at-risk adults who need support to protect themselves from harm.

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

**R. 6.1 The Commission recommends that** a designated Safeguarding Body should be established, as a statutory social work-led adult safeguarding body with the statutory functions and duties recommended in Chapter 5.

**R. 6.2 The Commission recommends that** the functions, duties and powers of the Safeguarding Body proposed in Chapter 5 and recommendations applying to Safeguarding Body in this Report should apply regardless of whether the Government decides to establish the Safeguarding Body as a new independent statutory adult safeguarding body or as a statutory adult safeguarding office within an existing agency. Any recommendations in this Report which apply to the Safeguarding Body shall apply to it regardless of its organisational structure.

**R. 6.3 The Commission recommends that** if the Government decides that it cannot, or should not, make a decision regarding the appropriate organisational structure in the short term, the Safeguarding Body should be established as a statutory office within the HSE on an interim basis - unless the Government decides that it should be so established on a permanent basis. If established, the statutory National Adult Safeguarding Office, should be conferred with the statutory powers and functions recommended in this Report until the Government determines whether the Safeguarding Body should be established as a new independent organisation or within an existing organisation, and if so, which organisation.

**R. 6.4 The Commission recommends that** if established, the Safeguarding Body as the National Adult Safeguarding Office within the HSE should, insofar as is practicable, operate independently from the HSE Social Care Division in the performance of its functions.

**R. 6.5 The Commission recommends that** an existing regulator or a joint inspection model comprised of multiple existing regulators should have functions to regulate social work-led adult safeguarding services provided by the Safeguarding Body. The Commission believes that should be achieved by:

- (a) extending the existing functions of HIQA in relation to setting standards and inspecting compliance with standards to include the regulation of social work-led adult safeguarding services; or
- (b) the conferring of relevant functions on multiple regulatory bodies to be designated and/or established by the Government to form a joint inspection model, which could be led by one regulator such as HIQA in recognition of HIQA's experience in inspecting child social care services.

## **Chapter 7: Imposing Safeguarding Duties on Certain Service Providers**

**R. 7.1 The Commission recommends that** all the safeguarding duties proposed in this Chapter should apply to providers of a "relevant service" and that a relevant service should be defined as "any work or activity which is carried out by a person or organisation, a necessary and regular part of which consists mainly of a person or organisation having access to, or contact with, adults, or adults who are, may be or may become adults at risk of harm".

**R. 7.2 The Commission recommends that** relevant services should include:

- (a) a "designated centre" within the meaning of section 2(1) of the Health Act 2007, insofar as it relates to an institution where residential services are provided to older people or to adults with disabilities;
- (b) a service that provides care to adults in private dwellings;
- (c) a service that provides day services to adults with disabilities;
- (d) a service that provides day services to older people;
- (e) a service that provides personal assistance to adults with disabilities;
- (f) a hospital, hospice, health care centre or other centre which receives, treats or otherwise provides physical services to adults;

- (g) a service that receives, treats or provides mental health services to adults including approved centres under the Mental Health Act 2001;
- (h) a reception or accommodation centre which provides residential accommodation services to adults in the international protection process 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.

**R. 7.3 The Commission recommends that** the list of relevant services outlined in recommendation 7.2 above should be prescribed in a schedule to adult safeguarding legislation, as some of the duties proposed in this Chapter will be provided for in adult safeguarding legislation.

**R. 7.4 The Commission recommends that** adult safeguarding legislation should also enable the relevant Minister to prescribe additional services as “relevant services” for the purposes of the safeguarding duties in adult safeguarding legislation.

**R. 7.5 The Commission recommends that** the Government should carefully consider whether relevant services, which are not currently subject to statutory regulatory regimes including statutory inspections, should be brought within such regulatory regimes.

**R. 7.6 The Commission recommends that** adult safeguarding legislation should introduce a duty on a provider of a relevant service to ensure, as far as reasonably practicable, that its services are organised, managed and provided in such a way as to prevent harm to any adult who is, may be or may become, an at-risk adult while availing of the service.

**R. 7.7 The Commission recommends that** a duty on providers of relevant services to undertake and document a risk assessment and to prepare an adult safeguarding statement should be introduced in adult safeguarding legislation. These should take the form of:

- (a) a documented general risk assessment of the relevant service to identify any risks arising in the provision of the service to adults, or adults who are, may be or may become at-risk adults;
- (b) a general adult safeguarding statement that identifies the policies, procedures and measures in place to minimise the risks identified and prevent harm to all adults availing of services.

**R. 7.8 The Commission recommends that** a person or entity engaged in the provision of relevant services immediately prior to the commencement of the provision of the proposed adult safeguarding legislation should be required to undertake a documented risk assessment and prepare an adult safeguarding statement no later than 3 months from the date of commencement of the relevant provisions of the proposed legislation. Where a person or entity proposes to operate as a provider of relevant services, the person or entity should be required, within 3 months of the commencement of the relevant service, to carry out a documented risk assessment and prepare an adult safeguarding statement.

**R. 7.9 The Commission recommends that** an adult safeguarding statement should specify the policies, procedures and measures that the provider of a relevant service has in place:

- (a) to manage any risk identified as a result of the risk assessment;
- (b) to set out how to proceed where a member of staff is the subject of an investigation (however described) in respect of any act, omission or circumstances in respect of an adult availing of the relevant service;
- (c) for the selection or recruitment of any person as a member of staff of the provider of a relevant service with regard to that person's suitability to work with adults who may be at-risk adults or who may be "vulnerable persons" within the meaning of section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012;

- (d) for the provision of information and, where necessary, instruction and training, to members of staff of the provider of a relevant service in relation to the identification of the occurrence of harm;
- (e) for reviewing and updating care plans or personal plans including updating existing plans to include safeguarding plans, where there are concerns that an adult is at risk of harm while availing of the relevant service;
- (f) for preparing and reviewing safeguarding plans, where there are concerns that an adult is at risk of harm while availing of the relevant service;
- (g) for reporting to the Safeguarding Body by the provider of a relevant service or a member of staff of the provider (whether a mandated person or otherwise) in accordance with the proposed adult safeguarding legislation including any guidelines issued by the Minister;
- (h) for maintaining a list of the persons (if any) in the relevant service who are mandated persons in accordance with the proposed reporting requirement in adult safeguarding legislation; and
- (i) for appointing a relevant person (an adult safeguarding officer) to be the first point of contact in respect of the provider of a relevant service's duty to undertake and document a risk assessment and prepare an adult safeguarding statement.

**R. 7.10 The Commission recommends that** a provider of a relevant service should be required to:

- (a) make records of its risk assessment and a copy of its adult safeguarding statement available to adults availing of the service and members of staff of the relevant service and, on request, to:
  - (i) HIQA, the Mental Health Commission or any other relevant regulatory body; and
  - (ii) any other person.
- (b) display the adult safeguarding statement or an updated adult safeguarding statement (which should be required to be undertaken at intervals of not less than once every 24 months) in a prominent position within the relevant service where it is clearly visible.

**R. 7.11 The Commission recommends that** HIQA should oversee compliance with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement by a "designated centre" within the meaning of

section 2 of the Health Act 2007, in so far as it relates to an institution wherein residential services are provided to older people or to adults with disabilities.

- R. 7.12 The Commission recommends that** HIQA should oversee compliance with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement by services providing permanent residential accommodation services to people in the international protection process managed by, or under contract to, the Department of Children, Equality, Disability, Integration and Youth.
- R. 7.13 The Commission recommends that** the Mental Health Commission should oversee compliance with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement in respect of services regulated under the Mental Health Act 2001.
- R. 7.14 The Commission recommends that** any expansion of HIQA's remit to include the regulation of home support providers should include monitoring compliance with the duty to undertake and document a risk assessment and to prepare an adult safeguarding statement.
- R. 7.15 The Commission recommends that** compliance by the Garda Síochána with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement should be overseen by the Policing and Community Safety Authority, when established.
- R. 7.16 The Commission recommends that** compliance by refuge accommodation services for victims of domestic, sexual or gender-based violence with the proposed duties to undertake and document a risk assessment and to prepare an adult safeguarding statement should be overseen by the Domestic, Sexual and Gender-Based Violence Agency (Cuan).
- R. 7.17 The Commission recommends that** a 2-stage procedure involving a warning notice and a non-compliance notice should be introduced in adult safeguarding legislation to address failures by a provider of a relevant service to furnish the relevant authority with records of the provider's risk assessment or a copy of the provider's adult safeguarding statement.
- R. 7.18 The Commission recommends that** where, pursuant to a request by HIQA, the Mental Health Commission, the Policing and Community Safety Authority, the Domestic, Sexual and Gender-Based Violence Agency ("Cuan") (which are considered "relevant authorities"), a provider of a relevant service fails to furnish the relevant authority with records of its risk assessment or a copy of its adult safeguarding statement, the relevant authority should be empowered to take relevant measures to address non-compliance. These measures should include the serving of a warning notice in writing on a provider to—



- (a) inform the provider of a failure to furnish records of a risk assessment or an adult safeguarding statement;
- (b) require the provider, within such period as may be specified in the notice, to furnish the relevant authority with records of its risk assessment or a copy of its adult safeguarding statement; and
- (c) inform the provider that failure to furnish the relevant authority with the records of its risk assessment or its adult safeguarding statement within the time specified in the notice may result in the provider being served with a non-compliance notice.

**R. 7.19 The Commission recommends that** a provider of a relevant service who is served with a warning notice may, within 14 days of the receipt of the notice, make representations in writing to the relevant authority in respect of the proposed non-compliance notice. The relevant authority should then have regard to any representations made to it in assessing whether to proceed with the service of the non-compliance notice.

**R. 7.20 The Commission recommends that** a legislative provision should be introduced to provide for a relevant authority to serve a non-compliance notice on a provider of a relevant service who fails to furnish the relevant authority with records of its risk assessment and a copy of its an adult safeguarding statement within the period specified in the warning notice.

**R. 7.21 The Commission recommends that** the non-compliance notice should inform the provider of a relevant service of the date on which the non-compliance notice comes into effect (which should be 21 days from the date of service of the non-compliance notice unless an appeal is brought by the provider) and the option for the provider of a relevant service to appeal the non-compliance notice to the District Court within 21 days of the date of service of the non-compliance notice.

**R. 7.22 The Commission recommends that** the proposed adult safeguarding legislation should include the following provision to provide for the conferral of jurisdiction on the District Court:

“The jurisdiction conferred on the District Court under this section shall be exercised by a judge of the District Court for the time being assigned to the District Court district in which the person on whom the non-compliance notice is served ordinarily resides or carries on any profession, business or occupation.”

**R. 7.23 The Commission recommends that** each relevant authority should establish and maintain a register of non-compliance notices (a “register of non-compliance”) in respect of the relevant services it monitors and oversees. It should enter the particulars of a non-compliance notice on

the register of non-compliance as soon as the non-compliance notice in respect of a particular provider of a relevant service comes into effect.

**R. 7.24 The Commission recommends that** the relevant authority should be permitted to remove an entry on the non-compliance register once it receives the records of the provider's risk assessment or a copy of the provider's adult safeguarding statement to which the entry relates, or it is satisfied that a risk assessment or an adult-safeguarding statement is no longer required.

**R. 7.25 The Commission recommends that** the provider of the relevant service in respect of whom an entry onto the non-compliance register was made should be permitted to apply to the relevant authority to have the entry removed at any time.

**R. 7.26 The Commission recommends that** the introduction of the proposed duties on providers of relevant services to undertake and document a risk assessment and to prepare an adult safeguarding statement shall not be taken to confer on any natural or legal person a right in law that such person would not otherwise have to require a provider of a relevant service to take any steps referred to in the relevant provisions of the adult safeguarding legislation or to seek damages for any failure or delay by the provider of the relevant service to take such steps.

**R. 7.27 The Commission recommends that** the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013), the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013) and the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006) should be amended to include a requirement to update a care plan or personal plan to incorporate a safeguarding plan, where a resident is identified as being at risk of harm. The amendments to the regulations should also provide that where a safeguarding plan has been incorporated into a care plan or personal plan, providers of a relevant service are required to undertake an initial review no later than six months, and a subsequent review no later than twelve months, from the date of the update of the care plan or personal plan to assess whether progress has been made to adequately safeguard the resident.

**R. 7.28 The Commission recommends that** personal support plans for service users availing of home support services (or any other equivalent plan that may be identified in future regulations) should incorporate a safeguarding plan where an adult is identified as being at risk of harm.

**R. 7.29 The Commission recommends that** regulation 26 of the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006) should be amended to require that staff of approved centres are provided with adult safeguarding training, including training on how to detect, prevent and respond to abuse.

**R. 7.30 The Commission recommends that** any future regulations that may be introduced for home support services should require that staff providing home support services are provided with adult safeguarding training, including training on how to detect, prevent and respond to abuse.

**R. 7.31 The Commission recommends that** the Taxi Regulation (Small Public Service Vehicle) Regulations 2015 (SI No 33 of 2015) should be amended to introduce a requirement on holders of licences to drive small public vehicles to undertake adult safeguarding training, including training on how to detect, prevent and respond to abuse, which should be provided by the National Transport Authority and the Garda Síochána in cooperation with the Safeguarding Body.

## Chapter 8: Independent Advocacy

**R. 8.1 The Commission recommends that** the Government should adopt a consistent approach to the provision of independent advocacy across all care settings.

**R. 8.2 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 (SI No 367 of 2013) should be amended to require designated centres for adults with disabilities to facilitate access to independent advocacy services for adults residing in those centres.

**R. 8.3 The Commission recommends that** the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006) should be amended to require approved centres to facilitate access to independent advocacy services for adults residing in those centres.

**R. 8.4 The Commissions recommends that** amendments to the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013) and the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 2006) should provide that where a resident wishes for an independent advocate to engage with a service provider for the purposes of making a complaint on behalf of the resident, the service provider must engage with the independent advocate.

- R. 8.5 The Commission 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.
- R. 8.6 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).
- R. 8.7 The Commission recommends that** the proposed duty should apply only where the Safeguarding Body is satisfied that there is no 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.
- R. 8.8 The Commission recommends that** if the Government considers the introduction of a comprehensive statutory framework for social care, as recommended in Chapter 1, the Government should also consider the introduction of a duty on the Health Service Executive to ensure access to independent advocacy in respect of the provision of social care services.
- R. 8.9 The Commission recommends that** the Government should consider whether a form of regulation of independent advocates or independent advocacy services is required.
- R. 8.10 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.

## Chapter 9: Reporting Models

**R. 9.1 The Commission recommends that** universal mandatory reporting in the adult safeguarding context should not be introduced in Ireland.

**R. 9.2 The Commission recommends that** the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 should be amended in Schedule 2 by the insertion of the following offences:

- (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;
- (c) the offence of intentional or reckless abuse, neglect or ill-treatment of a relevant person, as proposed by the Commission in the Criminal Law (Adult Safeguarding) Bill 2024;
- (d) the offence of exposure of a relevant person to a risk of serious harm or sexual abuse, as proposed by the Commission in the Criminal Law (Adult Safeguarding) Bill 2024;
- (e) the offence of coercive control of a relevant person, as proposed by the Commission in the Criminal Law (Adult Safeguarding) Bill 2024; and
- (f) the offence of coercive exploitation of a relevant person, as proposed by the Commission in the Criminal Law (Adult Safeguarding) Bill 2024.

**R. 9.3 The Commission recommends that** the following regulations should be amended to extend the list of notifiable incidents to include financial coercion, patterns of neglect, and psychological or emotional abuse:

- (a) the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (SI No 415 of 2013), regulation 31 and schedule 4, paragraph 7; and
- (b) the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI No 367 of 2013), regulation 31 and schedule 4, paragraph 10.

**R. 9.4 The Commission recommends that** the Mental Health Act 2001 (Approved Centres) Regulations 2006 (SI No 551 of 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 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.

**R. 9.5 The Commission recommends that** where a person listed in Schedule 2 (Mandated Persons) to the 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.

**R. 9.6 The Commission recommends that** the appropriate body for the receipt and assessment of reports is the Safeguarding Body.

**R. 9.7 The Commission recommends that** the following threshold should apply to the proposed requirement to report in adult safeguarding legislation:

Where a mandated person knows, believes or has reasonable grounds to suspect, on the basis of information that he or she has received, acquired or becomes aware of in the course of his or her employment or profession as a mandated person, that an adult at risk of harm:

- (a) has been harmed;
- (b) is being harmed; or

(c) is at risk of being harmed,

he or she shall, as soon as practicable, report that knowledge, belief or suspicion, as the case may be, to the Safeguarding Body.

**R. 9.8 The Commission recommends that** “reportable harm” should be defined in adult safeguarding legislation as:

“Reportable harm” means:

- (a) assault, ill-treatment or neglect in a manner that seriously affects, or is likely to seriously affect, health, safety or welfare;
- (b) sexual abuse; or
- (c) serious loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

**R. 9.9 The Commission recommends that** “reportable harm” should be construed in adult safeguarding legislation as excluding “self-neglect” other than where a mandated person has:

- (a) assessed an adult who is reasonably believed to be an adult at risk of harm as lacking capacity; or
- (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.

**R. 9.10 The Commission recommends that** adult safeguarding legislation should state that a mandated person should not be required to make a report to the Safeguarding Body in the following circumstance:

- (a) where the mandated person knows or is of the opinion, based on reasonable grounds, 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 his or her 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;

- (c) where the mandated person knows or is of the opinion, based on reasonable grounds, 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.

**R. 9.11 The Commission recommends that** a provision similar to section 14(4) of the Children First Act 2015, which avoids the need for duplicate reporting by mandated persons, should be included in adult safeguarding legislation.

**R. 9.12 The Commission recommends that** 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.

**R. 9.13 The Commission recommends that** members of the Garda Síochána should be prescribed as mandated persons for the purposes of the proposed duty to report in adult safeguarding legislation.

**R. 9.14 The Commission recommends that** 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 international protection (direct provision); and
- (f) an addiction or substance misuse service.

**R. 9.15 The Commission recommends that** 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.



**R. 9.16 The Commission recommends that** 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; and
- (b) other bodies and organisations offering services to adults, who may include adults at risk of harm.

**R. 9.17 The Commission recommends that** regular training should be provided to mandated persons for the purposes of the proposed duty to report in adult safeguarding legislation.

**R. 9.18 The Commission recommends that** a failure by a mandated person to report under adult safeguarding legislation should not result in the imposition of a criminal sanction.

**R. 9.19 The Commission recommends that** each code of professional conduct and ethics relevant to mandated persons who are registered medical, health or social care professionals should include provisions on reporting and compliance with relevant legal obligations that are uniform to all of the codes.

**R. 9.20 The Commission recommends that** 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 the Health Information and Quality Authority 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 Health Service Executive, 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 a breach of a duty to report to the National Vetting Bureau of the Garda Síochána.

**R. 9.21 The Commission recommends that** adult safeguarding legislation should provide that where the Safeguarding Body receives a report from a mandated

person, it should be permitted to take such steps as it considers necessary to exercise its functions under adult safeguarding legislation which may 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.

**R. 9.22 The Commission recommends that** 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.

**R. 9.23 The Commission recommends that** a system of permissive reporting in the adult safeguarding context should not be introduced on a statutory basis.

**R. 9.24 The Commission recommends that** 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**

**R. 10.1 The Commission recommends that** adult safeguarding legislation should provide for authorised officers of the Safeguarding Body to be conferred with a 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. This would take the form of a provision in adult safeguarding legislation allowing for an authorised officer of the Safeguarding Body to exercise powers of entry and inspection.

**R. 10.2 The Commission recommends that** “relevant premises” should be defined in adult safeguarding legislation as:

- (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 premises in which day services are provided to adults with disabilities;
- (c) a premises in which day services are provided to older adults;
- (d) any hospital, hospice, health care centre or other centre which receives, treats or otherwise provides physical or mental health services or social care services to adults including approved centres within the meaning of section 2(1) of the Mental Health Act 2001;
- (e) a premises in which a service provider provides a health or personal social service or services on behalf of the Health Service Executive or provides a service similar or ancillary to a service that the Health Service Executive may provide and in this regard, a "service provider" means a person who, or organisation that (i) enters into an arrangement under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the Health Service Executive; or (ii) receives assistance under section 39 of the Health Act 2004 to provide a service similar or ancillary to a service that the Health Service Executive may provide;
- (f) 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;
- (g) a centre which provides residential refuge accommodation services for victims of domestic, sexual or gender-based violence;
- (h) a centre which provides residential accommodation services for the purposes of providing substance misuse services; and
- (i) a centre which provides residential accommodation services to adults experiencing homelessness.

**R. 10.3 The Commission recommends that** adult safeguarding legislation should provide the relevant Minister with the power to prescribe by regulations any other premises as a "relevant premises" for the purposes of the proposed powers of entry and inspection.

**R. 10.4 The Commission recommends that** adult safeguarding legislation should provide for an authorised officer of the Safeguarding Body to exercise a power of entry to and inspection of a relevant premises without warrant, except any part of a relevant premises that is occupied as a dwelling.

**R. 10.5 The Commission recommends that** for the purposes of adult safeguarding legislation, "dwelling" should be defined as one or more of the following:

- (a) a building or structure (whether temporary or not) which is constructed or adapted for use as a residence and is being so used;

(b) a vehicle or vessel (whether mobile or not) which is constructed or adapted for use as a residence and is being so used, or

(c) a part of a:

(i) building or structure (whether temporary or not): or

(ii) a vehicle or vessel (whether mobile or not), which is constructed or adapted for use as a residence and is being so used,

and includes a self-contained part of a relevant premises which is constructed or adapted for use as a residence and is being so used by a service provider, or a member of staff of a service provider, but shall not include the room of a resident in a relevant premises.

**R. 10.6 The Commission recommends that** the room of a resident in a relevant premises should not be construed as a dwelling for the purposes of adult safeguarding legislation.

**R. 10.7 The Commission recommends that** any self-contained part of a relevant premises which is constructed or adapted for use as a residence and is being so used by a service provider or a member of staff of a service provider shall be construed as a dwelling for the purposes of adult safeguarding legislation.

**R. 10.8 The Commission recommends that,** in light of the constitutional protection afforded to the inviolability of the dwelling, an authorised officer of the Safeguarding Body should not be able to enter or inspect any part of a relevant premises that is occupied as a dwelling other than:

(a) with the consent of the occupier, or

(b) in accordance with a warrant or other legal power of entry.

**R. 10.9 The Commission recommends that** adult safeguarding legislation should provide for an authorised officer of the Safeguarding Body to make an application to the District Court for a warrant where the authorised officer (or any persons permitted to accompany them) has been prevented from entering a relevant premises, or has a belief, based on reasonable grounds, that there is a likelihood that they will be prevented from entering the relevant premises.

**R. 10.10 The Commission recommends that** adult safeguarding legislation should provide that, in the event that the next sitting of the District Court for the District Court area wherein the relevant premises is located is not due to be held within three days of the intended application for a warrant, an application for a warrant

may be made at a sitting of the District Court, which has been specially arranged, held within the said three days.

**R. 10.11 The Commission recommends that** the proposed power of entry to, and inspection of, a relevant premises should apply where an authorised officer of the Safeguarding Body has a belief, based on reasonable grounds, that:

- (a) there is an at-risk adult on the relevant premises;
- (b) there is a risk to the health, safety or welfare of the at-risk adult, that is caused by abuse, neglect or ill-treatment; and
- (c) access to the premises is necessary to assess the health, safety or welfare of the at-risk adult.

**R. 10.12 The Commission recommends that** the threshold to apply for a warrant for entry to, and inspection of, a relevant premises, other than any part of a relevant premises used as a dwelling, should be that an authorised officer of the Safeguarding Body has a belief, based on reasonable grounds, that:

- (a) there is an at-risk adult on the relevant premises;
- (b) there is a risk to the health, safety or welfare of the at-risk adult, that is caused by abuse, neglect or ill-treatment; and
- (c) a warrant for access to the relevant premises is necessary to assess the health, safety or welfare of the at-risk adult.

In addition, the authorised officer (or any persons permitted to accompany them) must:

- (a) have been prevented; or
- (b) have a reasonable belief that there is a likelihood that they (or any persons permitted to accompany them) will be prevented,

from entering the relevant premises.

**R. 10.13 The Commission recommends that** the threshold for granting a warrant for entry to, and inspection of, a relevant premises, other than any part of a relevant premises used as a dwelling, should be that a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for believing that:

- (a) there is an at-risk adult on the relevant premises;
- (b) there is a risk to the health, safety or welfare of the at-risk adult, that is caused by abuse, neglect or ill-treatment;

- (c) a warrant for access to the relevant premises is necessary to assess the health, safety or welfare of the at-risk adult; and
- (d) an authorised officer (or any persons permitted to accompany them) has been prevented, or will be prevented, from entering the relevant premises.

**R. 10.14 The Commission recommends that** adult safeguarding legislation should allow authorised officers and appropriately qualified health or social care professionals to conduct a private interview with, and a preliminary medical examination of, an at-risk adult in a relevant premises.

**R. 10.15 The Commission recommends that** adult safeguarding legislation should require that, in advance of carrying out any interview or medical examination, an authorised officer or health or social care professional must explain to the at-risk adult that they may refuse to answer any question or to be medically examined.

**R. 10.16 The Commission recommends that** adult safeguarding legislation should require that the powers of interview and medical examination cannot be exercised if the at-risk adult objects.

**R. 10.17 The Commission recommends that** an authorised officer, in respect of assessing the health, safety or welfare of an at-risk adult on a relevant premises, should be permitted by legislation to:

- (a) inspect, take copies of or extracts from and remove from the relevant premises any documents or records (including personal records) relating to the health, safety or welfare of an at-risk adult,
- (b) inspect the operation of any computer and any associated apparatus or material which is or has been in use in connection with the records in question,
- (c) inspect any other item and remove it from the premises if an authorised officer considers it necessary or expedient for the purposes of assessing the health, safety or welfare of an at-risk adult,
- (d) interview in private any person—
  - (i) working at the premises concerned, or
  - (ii) who at any time was or is in receipt of a service at the premises and who consents to be interviewed, and
- (e) make any other examination into the state and management of the premises or the standard of any services provided to an at-risk adult, or at-risk adults, on the premises.

**R. 10.18 The Commission recommends that** an authorised officer, in respect of assessing the health, safety or welfare of an at-risk adult on a relevant premises, should be permitted by legislation to require any person who:

- (a) is in charge of the premises or of services provided at the premises, or
- (b) possesses or is in charge of any records held at the premises or in respect of any services provided at the premises, even if the records are held elsewhere,

to furnish the authorised officer with the information the authorised officer reasonably requires for the purposes of assessing the health, safety or welfare of an at-risk adult, and to make available to the authorised officer any document or record in the power or control of the person described in paragraph (a) or (b) above that, in the opinion of the authorised officer, is relevant to the assessment of the health, safety or welfare of an at-risk adult.

**R. 10.19 The Commission recommends that** an authorised officer, in respect of assessing the health, safety or welfare of an at-risk adult on a relevant premises, should be permitted by legislation to:

- (a) require a person who is in charge of the relevant premises or possesses or is in charge of any relevant documents or records to produce a document or record in a form which is legible and can be taken away,
- (b) require a person who is in charge of the relevant premises or possesses or is in charge of any relevant documents or records to provide an explanation of any—
  - (i) document or record inspected, or
  - (ii) information provided, or
  - (iii) other relevant matters.

**R. 10.20 The Commission recommends that** the power of entry to, and inspection of, a relevant premises should be conferred on an authorised officer of the Safeguarding Body.

**R. 10.21 The Commission recommends that** the proposed provisions in adult safeguarding legislation should allow for an authorised officer of the Safeguarding Body to be accompanied by a member of the Garda Síochána where the authorised officer is in possession of a warrant issued on the basis of an authorised officer (or any persons permitted to accompany them) having been prevented, or having a belief based on reasonable grounds that there was a likelihood that they would be prevented, from entering the premises.

- R. 10.22 The Commission recommends that** the proposed provisions in adult safeguarding legislation should permit an authorised officer to be accompanied by appropriately qualified health or social care professionals (such as GPs and public health nurses) or any other persons the authorised officer reasonably considers necessary or appropriate, such as a trusted friend or family member of the at-risk adult.
- R. 10.23 The Commission recommends that** adult safeguarding legislation should require that a notice in plain English be provided to the at-risk adult to whom access is sought, or whose assessment is intended, by the use of the warrant or power, explaining the nature of the warrant or power being exercised and the process involved.
- R. 10.24 The Commission recommends that** adult safeguarding legislation should provide that the relevant Minister may prescribe by regulations a standard notice setting out the form and content of the notice to be provided to the at-risk adult to whom access is sought, or whose assessment is intended, by the use of the warrant or power.
- R. 10.25 The Commission recommends that** when exercising a power of entry to a relevant premises, the authorised officer should, insofar as practicable, explain to the at-risk adult the nature and purpose of the power they are authorised to exercise. However, any failure to give such an explanation should not invalidate the exercise of the power.
- R. 10.26 The Commission recommends that** the adult safeguarding legislation should allow for the District Court to issue a warrant allowing for the use of reasonable force, if necessary, by an authorised officer or member of the Garda Síochána to gain access to a relevant premises (except any part of a relevant premises that is occupied as a dwelling).
- R. 10.27 The Commission recommends that** a warrant for entry to a relevant premises or any part thereof (other than any part of a relevant premises used as a dwelling) should expire 30 days after the date of issue of the warrant.
- R. 10.28 The Commission recommends that** a warrant should permit an authorised officer of the Safeguarding Body, accompanied by appropriately qualified health or social care professionals, any other persons the authorised officer reasonably considers necessary or appropriate, and by members of the Garda Síochána, as may be necessary, at any time or times, not later than 30 days of the date of issue of the warrant, on production of the warrant if requested, to enter the relevant premises or any part thereof (other than any part of the relevant premises used as a dwelling).



**R. 10.29 The Commission recommends that** adult safeguarding legislation should provide for an offence where a staff member, service provider or other person carrying out functions for and within a relevant premises:

- (a) refuses to allow an authorised officer of the Safeguarding Body or any person accompanying them to enter a relevant premises (other than any part of a relevant premises used as a dwelling) in accordance with the relevant section of the proposed adult safeguarding legislation or in accordance with a warrant for access to a relevant premises issued by a judge of the District Court, or
- (b) obstructs or impedes an authorised officer of the Safeguarding Body or any person accompanying them in the exercise of functions under the relevant section of the proposed adult safeguarding legislation or in accordance with a warrant for access to a relevant premises issued by a judge of the District Court; or
- (c) gives to an authorised officer of the Safeguarding Body or any person accompanying them who is exercising functions under the relevant section of the proposed adult safeguarding legislation or in accordance with a warrant for access to a relevant premises issued by the District Court information that the person giving the information knows, or should reasonably know, to be false or misleading.

**R. 10.30 The Commission recommends that** a person guilty of the proposed offence should be liable: (a) on summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months, or both, or (b) on conviction on indictment, to a fine not exceeding €70,000, or imprisonment for a term not exceeding 2 years, or both.

**R. 10.31 The Commission recommends that** the proposed offences of obstruction should not apply in relation to the at-risk adult whose assessment is intended using the powers of entry and inspection.

**R. 10.32 The Commission recommends that** in relation to any proceedings for a warrant to enter and inspect a relevant premises, it should be an offence for a person, other than an at-risk adult, to publish, distribute or broadcast any information likely to identify the at-risk adult or at-risk adults concerned, unless the court directs otherwise. (See the relevant section of the Commission's Adult Safeguarding Bill 2024 regarding the anonymity of adults at risk of harm and others.)

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

- R. 11.1 The Commission recommends that** adult safeguarding legislation should make provision for a new power of access to at-risk adults in places including private dwellings, for the purposes of assessing the health, safety or welfare of an at-risk adult.
- R. 11.2 The Commission recommends that** a power of access should be exercised on foot of a warrant issued by a judge of the District Court. The warrant should permit an authorised officer or a member of the Garda Síochána, or both, accompanied by appropriately qualified health or social care professionals and any other persons the authorised officer or member reasonably considers necessary or appropriate, to enter the place or any part thereof.
- R. 11.3 The Commission recommends that** a warrant for access should be valid for three days after the day it is issued.
- R. 11.4 The Commission recommends that** an application for a warrant should be capable of being made by either an authorised officer of the Safeguarding Body or a member of the Garda Síochána.
- R. 11.5 The Commission recommends that** in order to apply for a warrant for access, the authorised officer of the Safeguarding Body or member of the Garda Síochána must have a reasonable belief that:
- (a) an at-risk adult is present in the place;
  - (b) there is a risk to the health, safety or welfare of the at-risk adult;
  - (c) a warrant for access is necessary to assess the health, safety or welfare of the at-risk adult; and
  - (d) access to the at-risk adult cannot be gained by less intrusive means.
- R. 11.6 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.
- R. 11.7 The Commission recommends that** the proposed provisions in adult safeguarding legislation should allow for an authorised officer or member of the Garda Síochána to be accompanied by appropriately qualified health or social care professionals (such as GPs and public health nurses) or any other persons the authorised officer or member of the Garda Síochána reasonably considers necessary or appropriate, such as a trusted friend or family member of the at-risk adult when executing a warrant for access.

**R. 11.8 The Commission recommends that** adult safeguarding legislation should provide that, in the event that the next sitting of the District Court for the District Court area wherein the place is located is not due to be held within three days of the intended application for a warrant, an application for a warrant may be made at a sitting of the District Court, which has been specially arranged, held within the said three days.

**R. 11.9 The Commission recommends that** the threshold for the granting of a warrant for access should be that a judge of the District Court is satisfied that there are reasonable grounds for believing that:

- (a) an at-risk adult is present in the place;
- (b) there is a risk to the health, safety or welfare of the at-risk adult;
- (c) a warrant for access is necessary to assess the health, safety or welfare of the at-risk adult; and
- (d) access to the at-risk adult cannot be gained by less intrusive means.

**R. 11.10 The Commission recommends that** when making an application to the District Court for a warrant for access, the applicant should be required to give evidence that there are reasonable grounds for believing each of the matters specified in the threshold.

**R. 11.11 The Commission recommends that** an application for a warrant should be grounded on the sworn evidence of the person seeking the warrant, stating that reasonable efforts have been made in relation to the following and that such efforts have failed:

- (a) to seek consent to enter the place to gain access to the at-risk adult; and
- (b) to gain access to the at-risk adult outside of the place.

**R. 11.12 The Commission recommends that** adult safeguarding legislation should provide that a member of the Garda Síochána may enter a place, including a private dwelling, without a warrant where they have a reasonable belief that:

- (a) an at-risk adult is present in the place;
- (b) there is an immediate risk to the life and limb of the at-risk adult; and
- (c) the risk is so immediate that the place or the at-risk adult must be accessed so urgently that there would be insufficient time to apply to the District Court for a warrant for access.

This power is referred to in the Commission's recommendations as a "summary power of access".

- R. 11.13 The Commission recommends that** adult safeguarding legislation should permit a member of the Garda Síochána to be accompanied by an authorised officer, appropriately qualified health or social care professionals (such as GPs and public health nurses) or any other persons the member reasonably considers necessary or appropriate, such as a trusted friend or family member of the at-risk adult, when exercising a summary power of access.
- R. 11.14 The Commission recommends that** where a summary power of access is exercised, the member of the Garda Síochána exercising the power must notify the Safeguarding Body in writing as to the use of the power as soon as is practicable.
- R. 11.15 The Commission recommends that** where a summary power of access is exercised, the member of the Garda Síochána exercising the power must make an appropriate record of the usage of the power, including the reasons for exercising the power, and the record must be uploaded to the PULSE database.
- R. 11.16 The Commission recommends that** adult safeguarding legislation should require that a notice in plain English be provided to the at-risk adult whose assessment is intended upon execution of a warrant for access, explaining the nature of the warrant being exercised and the process involved.
- R. 11.17 The Commission recommends that** adult safeguarding legislation should provide that the relevant Minister may prescribe by regulations a standard notice to be provided upon execution of a warrant for access, which explains the nature of the warrant and process involved.
- R. 11.18 The Commission recommends that** when executing a warrant for access or exercising the summary power of access, the authorised officer or member of the Garda Síochána should insofar as practicable explain to the at-risk adult the nature and purpose of the powers they are authorised to exercise. However, any failure to give such an explanation should not invalidate the execution of a warrant or exercise of the summary power.
- R. 11.19 The Commission recommends that** a warrant for access and a summary power of access provided under adult safeguarding legislation should allow for the use of reasonable force, if necessary, by an authorised officer or member of the Garda Síochána to gain access to the place.
- R. 11.20 The Commission recommends that** adult safeguarding legislation should allow authorised officers and appropriately qualified health or social care professionals to conduct a private interview with, and a preliminary medical examination of, an at-risk adult in a place including a private dwelling.
- R. 11.21 The Commission recommends that** adult safeguarding legislation should require that, in advance of carrying out any interview or medical examination, an authorised officer or health or social care professional should explain to the at-

risk adult that they may refuse to answer any question or to be medically examined.

- R. 11.22 The Commission recommends that** adult safeguarding legislation should require that the powers of interview and medical examination cannot be exercised if the at-risk adult objects.
- R. 11.23 The Commission recommends that** when executing a warrant for access or exercising a summary power of access, a member of the Garda Síochána should be able to require individuals present to provide their name and address, and a record should be kept of these details.
- R. 11.24 The Commission recommends that** it should be an offence for a person, other than an at-risk adult, to obstruct or impede a member of the Garda Síochána or an authorised officer when they are executing a warrant for access or exercising the summary power of access.
- R. 11.25 The Commission recommends that** a member of the Garda Síochána should be able to arrest without warrant any person, other than an at-risk adult, who obstructs or impedes the member when they are executing a warrant for access or exercising the summary power of access.
- R. 11.26 The Commission recommends that** the offence of obstruction and associated power of arrest should not apply in relation to the at-risk adult whose assessment is intended using the power of access.
- R. 11.27 The Commission recommends that** in relation to any proceedings for a warrant for access, it should be an offence for a person, other than an at-risk adult, to publish, distribute or broadcast any information likely to identify the at-risk adult concerned, unless the court directs otherwise. (See the relevant section of the Commission’s Adult Safeguarding Bill 2024 regarding the anonymity of adults at risk of harm and others.)

## Chapter 12: Powers of Removal And Transfer

**R. 12.1 The Commission recommends that** adult safeguarding legislation should make provision for a removal and transfer order, which would permit the removal of a person who is reasonably believed to be an at-risk adult to a designated health or social care facility or other suitable place specified in the order to allow professionals to attempt:

- (a) an assessment of the health, safety and welfare of the at-risk adult, and
- (b) an assessment of whether any actions are needed in respect of the at-risk adult,

where this cannot be done in the place where the at-risk adult is currently located.

**R. 12.2 The Commission recommends that** a removal and transfer order should allow a member of the Garda Síochána, accompanied by an authorised officer of the Safeguarding Body where possible, together with appropriately qualified health or social care professionals and other persons as may be necessary, to:

- (a) enter the place where the at-risk adult is believed to be, including a relevant premises and a private dwelling;
- (b) remove the at-risk adult from the place; and
- (c) transfer the at-risk adult to a designated health or social care facility or other suitable place specified in the court's order.

**R. 12.3 The Commission recommends that** in order to apply for a removal and transfer order, an authorised officer of the Safeguarding Body or a member of the Garda Síochána must have a belief, based on reasonable grounds, that:

- (a) an at-risk adult is present in a particular place;
- (b) there is a serious and immediate risk to the health, safety or welfare of the at-risk adult;
- (c) actions may be required to safeguard the health, safety or welfare of the at-risk adult;
- (d) removal to a designated facility or other suitable place is necessary to attempt to assess the matters specified in subsections (b) and (c) as such assessment cannot be done in the place where the at-risk adult currently is located; and

- (e) the assessment of the matters specified in subsections (b) and (c) cannot be achieved using less intrusive means.

**R. 12.4 The Commission recommends that** when making an application to the District Court for a removal and transfer order, the applicant should be required to give evidence that there are reasonable grounds for believing each of the matters specified in the threshold.

**R. 12.5 The Commission recommends that** the application for a removal and transfer order must be grounded upon an affidavit or information sworn by one of the following health or social care professionals:

- (a) a doctor;
- (b) a nurse;
- (c) a midwife;
- (d) a social worker;
- (e) an occupational therapist;
- (f) a speech and language therapist;
- (g) an emergency medical technician;
- (h) a paramedic or advanced paramedic; or
- (i) a psychologist.

Where an authorised officer of the Safeguarding Body is a health or social care professional as defined, it should be sufficient for their own evidence to ground the application.

**R. 12.6 The Commission recommends that** adult safeguarding legislation should provide the relevant Minister with the power to designate other professionals for the purposes of providing evidence to ground an application for a removal and transfer order.

**R. 12.7 The Commission recommends that** every application to court by a member of the Garda Síochána for a removal and transfer order must be notified in writing to the Safeguarding Body as soon as is practicable.

**R. 12.8 The Commission recommends that** adult safeguarding legislation should provide that an authorised officer of the Safeguarding Body or member of the Garda Síochána must:

- (a) make reasonable efforts to ascertain the views of the at-risk adult before making an application for a removal and transfer order; and

- (b) consider any such views in deciding whether to make an application for a removal and transfer order.

**R. 12.9 The Commission recommends that** the applicant should provide evidence to the District Court to demonstrate the reasonable efforts made to ascertain the views or wishes of the at-risk adult, and information regarding the use of any methods or supports such as speech and language therapists or independent advocacy services.

**R. 12.10 The Commission recommends that** adult safeguarding legislation should provide that, upon any application for a removal and transfer order where access to the at-risk adult has been obtained, the District Court must:

- (a) enquire as to whether reasonable efforts have been made to ascertain the views of the at-risk adult in relation to whom the order is sought, concerning the making of such order; and
- (b) in determining whether to grant any such order, have regard to any views expressed by the at-risk adult in relation to whom the order is sought, concerning the making of such order.

**R. 12.11 The Commission recommends that** a removal and transfer order may be sought and granted against the views or wishes of an at-risk adult whose protection is intended by the making of the order.

**R. 12.12 The Commission recommends that** if the removal and transfer order is sought in the context of apparent objection on the part of the at-risk adult, an authorised officer of the Safeguarding Body or member of the Garda Síochána must also have a reasonable belief that:

- (a) the apparent objection of the at-risk adult is not voluntary; or
- (b) the at-risk adult may lack 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.

**R. 12.13 The Commission recommends that** if the removal and transfer order is sought in the context of apparent objection on the part of the at-risk adult, in addition to the general threshold for the granting of a transfer and removal order, the judge of the District Court must be satisfied that there are reasonable grounds for believing that the apparent objection of the at-risk adult is not voluntary, or the at-risk adult may lack 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 for the purposes of an assessment.

**R. 12.14 The Commission recommends that** the threshold for granting a removal and transfer order should be that a judge of the District Court is satisfied that there



are reasonable grounds for believing that:

- (a) an adult at risk of harm is present in a particular place;
- (b) there is a serious and immediate risk to the health, safety or welfare of the at-risk adult;
- (c) actions may be required to safeguard the health, safety or welfare of the at-risk adult;
- (d) removal to a designated facility or other suitable place is necessary to attempt to assess the matters specified in subsections (b) and (c) as such assessment cannot be done in the place where the at-risk adult is currently located; and
- (e) the assessment of the matters specified in subsections (b) and (c) cannot be achieved using less intrusive means.

**R. 12.15 The Commission recommends that** where an application for a removal and transfer order is made and 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.

**R. 12.16 The Commission recommends that** adult safeguarding legislation should permit the relevant Minister to prescribe by regulations designated health or social care facilities to which an at-risk adult may be removed.

**R. 12.17 The Commission recommends that** in order to grant a removal and transfer order authorising removal of an at-risk adult to any place other than a designated health or social care facility, 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 such place is suitable for the purposes of assessing:

- (a) the health, safety or welfare of the at-risk adult; and
- (b) whether actions are required to safeguard the health, safety or welfare of the at-risk adult.

**R. 12.18 The Commission recommends that** adult safeguarding legislation should provide that, in the event that the next sitting of the District Court for the District Court area wherein the relevant place is located is not due to be held within three days of the intended application for a removal and transfer order, an application for an order may be made at a sitting of the District Court, which has been specially arranged, held within the said three days.

- R. 12.19 The Commission recommends that** the validity period for a removal and transfer order should be three days.
- R. 12.20 The Commission recommends that** a removal and transfer order should be executed by a member of the Garda Síochána, who should be accompanied by an authorised officer of the Safeguarding Body, where possible.
- R. 12.21 The Commission recommends that** a member of the Garda Síochána may be accompanied by appropriately qualified health or social care professionals, members of an assisted admissions team, or any other persons that the member reasonably considers necessary or appropriate to execute the removal and transfer order, such as a trusted friend or family member of the at-risk adult.
- R. 12.22 The Commission recommends that** 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 currently located.
- R. 12.23 The Commission recommends that** 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 where reasonable efforts to secure the voluntary cooperation of the at-risk adult have failed.
- R. 12.24 The Commission recommends that** adult safeguarding legislation should require that a notice in plain English be provided to the at-risk adult whose removal and transfer is intended upon execution of a removal and transfer order, explaining the nature of the order being exercised and the process involved.
- R. 12.25 The Commission recommends that** adult safeguarding legislation should provide that the relevant Minister may prescribe by regulations a standard notice to be provided upon execution of a removal and transfer order, which explains the nature of the order and the power being exercised.
- R. 12.26 The Commission recommends that** when executing a removal and transfer order, the authorised officer or member of the Garda Síochána should 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, any failure to give such an explanation should not invalidate the order or the exercise of any power on foot of the order.

**R. 12.27 The Commission recommends that** if, once a removal and transfer order has been executed, the 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 appropriately qualified health or social care professionals, as appropriate, should support them in doing so, and the removal and transfer order should be considered discharged.

**R. 12.28 The Commission recommends that** if, once a removal and transfer order has been executed, the 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 appropriately qualified health or social care professionals, as appropriate, should be obliged to return the at-risk adult to the place from which they were removed or to a place of the at-risk adult's choosing, 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.

**R. 12.29 The Commission recommends that** if, once a removal and transfer order has been executed, it appears to the Safeguarding Body, members of the Garda Síochána or other professional that the at-risk adult may lack capacity to decide to remain in the designated health or social care facility or other suitable place, they must 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, in writing, the Director of the Decision Support Service. Such a view should not, however, be grounds for refusing the at-risk adult permission to leave the designated health or social care facility or other suitable place.

**R. 12.30 The Commission recommends that** a removal and transfer order should allow authorised officers and appropriately qualified health or social care professionals to conduct a private interview with, and a preliminary medical examination of, an at-risk adult in a designated health or social care facility or other suitable place specified by the court.

**R. 12.31 The Commission recommends that** adult safeguarding legislation should require that, in advance of carrying out any interview or medical examination, an authorised officer or health or social care professional should explain to the at-risk adult that they may refuse to answer any question or to be medically examined.

**R. 12.32 The Commission recommends that** adult safeguarding legislation should require that the powers of interview and medical examination cannot be exercised if the at-risk adult objects.

**R. 12.33 The Commission recommends that** it should be an offence for a person, other than an 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.

**R. 12.34 The Commission recommends that** a member of the Garda Síochána should be able to arrest without warrant any person, other than an at-risk adult, who obstructs or impedes the member when they are executing a removal and transfer order.

**R. 12.35 The Commission recommends that** the offence of obstruction and associated power of arrest should not apply in relation to the at-risk adult whose assessment is intended under the removal and transfer order.

**R. 12.36 The Commission recommends that** in relation to any proceedings for a removal and transfer order, it should be an offence for a person, other than an at-risk adult, to publish, distribute or broadcast any information likely to identify the at-risk adult, unless the court directs otherwise. (See the relevant section of the Commission’s Adult Safeguarding Bill 2024 regarding the anonymity of adults at risk of harm and others.)

**R. 12.37 The Commission recommends that** adult safeguarding legislation should not make provision for a summary power of removal and transfer.

**R. 12.38 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.

## Chapter 13: No-Contact Orders

**R. 13.1 The Commission recommends that** the Domestic Violence Act 2018 should be amended as follows:

(a) The category of relationships to which barring orders under the Domestic Violence Act 2018 apply should be expanded to include individuals of full age who cohabit with an “adult at risk of harm” (as defined in the Commission’s Adult Safeguarding Bill 2024) on:

(i) a non-contractual basis; and

(ii) a contractual basis where the contractual arrangement involves the individual of full age caring for the adult at risk of harm.

(b) The category of relationships to which safety orders under the Domestic Violence Act 2018 apply should be expanded to include individuals of full age who cohabit with an “adult at risk of harm” (as defined in the Commission’s Adult Safeguarding Bill 2024) on a contractual basis where

the contractual arrangement involves the individual of full age caring for the adult at risk of harm.

**R. 13.2 The Commission recommends that** the definition of “agency” in section 2 of the Domestic Violence Act 2018 should be amended to allow both the Child and Family Agency and the Safeguarding Body to make an application for an order in respect of an “adult at risk of harm” (as defined in the Commission’s Adult Safeguarding Bill 2024) under the Domestic Violence Act 2018.

**R. 13.3 The Commission recommends that** an adult safeguarding no-contact order should be provided for in adult safeguarding legislation. An adult safeguarding no-contact order would prohibit a non-intimate and non-cohabiting third party from engaging in one or more of the following behaviours:

- (a) following, watching, pestering or communicating (including by electronic means) with, or about, the at-risk adult for whose protection the order is made;
- (b) attending at, or in the vicinity of, or watching or besetting a place where the at-risk adult resides;
- (c) approaching or coming within a specified vicinity of the at-risk adult.

**R. 13.4 The Commission recommends that** adult safeguarding legislation should provide that an authorised officer of the Safeguarding Body must:

- (a) make reasonable efforts to ascertain the views of the at-risk adult before making an application for a no-contact order; and
- (b) have regard to any views expressed by the at-risk adult in determining whether to apply for a no-contact order.

**R. 13.5 The Commission recommends that** where an authorised officer of the Safeguarding Body is the applicant for a no-contact order, they should provide evidence to the District Court to demonstrate the reasonable efforts made to ascertain the wishes of the at-risk adult, and information regarding the use of any methods or supports such as speech and language therapists or independent advocacy services.

**R. 13.6 The Commission recommends that** adult safeguarding legislation should provide that, upon any application for a no-contact order, the District Court must:

- (a) where the at-risk adult is not the applicant, enquire as to whether reasonable efforts have been made to ascertain the views of the at-risk adult in relation to whom the order is sought; and
- (b) in determining whether to grant any such order, have regard to any views expressed by the at-risk adult.

- R. 13.7 The Commission recommends that** adult safeguarding legislation should provide that an adult safeguarding no-contact order cannot be sought or granted where the at-risk adult objects to the making of the order.
- R. 13.8 The Commission recommends that** adult safeguarding legislation should provide that upon any application for a no-contact order, the court shall have regard to the respective rights, title or interests in the property wherein the at-risk adult resides.
- R. 13.9 The Commission recommends that** an adult safeguarding no-contact order should neither affect rights, title or interests in the property wherein the at-risk adult resides nor disturb the existing property law mechanisms open to an individual with superior rights, title or interests in the property wherein the at-risk adult resides.
- R. 13.10 The Commission recommends that** the following persons should be permitted to make an application for an adult safeguarding no-contact order provided for in adult safeguarding legislation:
- (a) the at-risk adult whose protection is sought by the making of the order; and
  - (b) an authorised officer of the Safeguarding Body.
- R. 13.11 The Commission recommends that** in order to apply for an adult safeguarding no-contact order, 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.
- R. 13.12 The Commission recommends that** an application for an adult safeguarding no-contact order should be made on an *inter partes* basis.
- R. 13.13 The Commission recommends that** adult safeguarding legislation should provide that, in the event that the next sitting of the District Court for the District Court area wherein the at-risk adult resides is not due to be held within three days of the intended application for a no-contact order, an application for an order may be made at a sitting of the District Court, which has been specially arranged, held within the said three days.
- R. 13.14 The Commission recommends that** the threshold for granting an adult safeguarding no-contact order should be that the court is satisfied that there are reasonable grounds for believing that the health, safety or welfare of the at-risk adult requires it.
- R. 13.15 The Commission recommends that** a validity period of a maximum of two years (from the date of the making of the order) should apply to an adult safeguarding no-contact order applied for by, or on behalf of, an at-risk adult.

- R. 13.16 The Commission recommends that** the at-risk adult whose protection is intended by a no-contact order should be permitted by adult safeguarding legislation to make an application to discharge the order.
- R. 13.17 The Commission recommends that** the respondent to a no-contact order should be permitted by adult safeguarding legislation to make an application to discharge the order.
- R. 13.18 The Commission recommends that** where the Safeguarding Body has applied for a no-contact order, it should be permitted by adult safeguarding legislation to make an application to discharge the order.
- R. 13.19 The Commission recommends that** wilful non-compliance with the terms of a no-contact order should be a criminal offence capable of being tried summarily or on indictment.
- R. 13.20 The Commission recommends that,** as in family law, there should be no legal sanction imposed on an at-risk adult if they choose to engage with the person against whom an order is made.
- R. 13.21 The Commission recommends that** the legislation providing for an adult safeguarding no-contact order should provide that an appeal of a no-contact order shall, if the court that made the order or the court to which the appeal is brought so determines (but not otherwise), stay the operation of the order on such terms (if any) as may be imposed by the court making the determination.
- R. 13.22 The Commission recommends that** the legislation providing for an interim no-contact order or an emergency no-contact order should provide that an appeal of an interim no-contact order or an emergency no-contact order shall not stay the operation of the order.
- R. 13.23 The Commission recommends that** an interim adult safeguarding no-contact order should be provided for in adult safeguarding legislation to be available, on an *inter partes* or *ex parte* basis, where an application for a (“full”) adult safeguarding no-contact order has been made.
- R. 13.24 The Commission recommends that** the following should be permitted to make an application for an interim adult safeguarding no-contact order provided for in adult safeguarding legislation:
- (a) an at-risk adult whose protection is sought by the making of the order;  
and
  - (b) an authorised officer of the Safeguarding Body.
- R. 13.25 The Commission recommends that** in order to apply for an interim adult safeguarding no-contact order, an authorised officer of the Safeguarding Body

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.

- R. 13.26 The Commission recommends that** the threshold for granting an interim adult safeguarding no-contact order should be that a judge of the District Court is 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.
- R. 13.27 The Commission recommends that** an interim adult safeguarding no-contact order granted on an *inter partes* basis should be valid until the determination of the pending application for the adult safeguarding no-contact order.
- R. 13.28 The Commission recommends that** a validity period not exceeding 8 working days after the day it is issued should apply to an interim adult safeguarding no-contact order granted on an *ex parte* basis.
- R. 13.29 The Commission recommends that** an emergency adult safeguarding no-contact order should be provided for in adult safeguarding legislation to be available on an *ex parte* basis, without any requirement that an application for a “full” adult safeguarding no-contact order has been made.
- R. 13.30 The Commission recommends that** that the following should be permitted to make an application for an emergency adult safeguarding no-contact order provided for in adult safeguarding legislation:
- (a) an at-risk adult whose protection is sought by the making of the order; and
  - (b) an authorised officer of the Safeguarding Body.
- R. 13.31 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 by the making of the order.
- R. 13.32 The Commission recommends that** in order to apply for an emergency adult safeguarding no-contact order, an authorised officer of the Safeguarding Body 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:
- (a) to address or mitigate that risk; or
  - (b) to 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.
- R. 13.33 The Commission recommends that** if the emergency no-contact order is sought in the context of apparent objection on the part of the at-risk adult, an authorised officer of the Safeguarding Body must also have a reasonable belief



that that the apparent objection of the at-risk adult is not voluntary, or the at-risk adult may lack capacity to decide whether to continue to have contact with the intended respondent to the emergency no-contact order.

**R. 13.34 The Commission recommends that** the threshold for granting an emergency adult safeguarding no-contact order should be that the judge of the District Court is 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, and a no-contact order is required:

(a) to address or mitigate that risk, or

(b) to 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.

**R. 13.35 The Commission recommends that** if the emergency adult safeguarding no-contact order is sought in the context of apparent objection on the part of the at-risk adult, the judge of the District Court must also be satisfied that there are reasonable grounds for believing that the apparent objection of the at-risk adult is not voluntary, or the at-risk adult may lack capacity to decide whether to continue to have contact with the intended respondent to the emergency no-contact order.

**R. 13.36 The Commission recommends that** a validity period not exceeding 8 working days after the day it is issued should apply to an emergency no-contact order. There should be no possibility for renewal or extension of an emergency no-contact order.

**R. 13.37 The Commission recommends that** a provision in adult safeguarding legislation should oblige the Safeguarding Body to make an application for immediate revocation of the order where, following the making of an emergency no-contact order, the voluntariness of the at-risk adult's objection to the making of a no-contact order is confirmed, and the at-risk adult has, at the time concerned, capacity to object to the making of the order. Such an application must be brought as soon as is practicable.

**R. 13.38 The Commission recommends that** where an emergency no-contact order is made in circumstances wherein the at-risk adult is believed to lack capacity to consent to the making of a no-contact order, the Safeguarding Body must 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, in writing, the Director of the Decision Support Service.

**R. 13.39 The Commission recommends that** in relation to any proceedings for a no-contact order (including an interim or an emergency no-contact order), it should be an offence for a person, other than an at-risk adult, to publish, distribute or

broadcast any information likely to identify the at-risk adult concerned, unless the court directs otherwise. (See the relevant section of the Commission’s Adult Safeguarding Bill 2024 regarding the anonymity of adults at risk of harm and others.)

- R. 13.40 The Commission recommends that** the respondent to a no-contact order, interim no-contact order, or emergency no-contact order should be identified, unless doing so would identify the at-risk adult. (See the relevant section of the Commission’s Adult Safeguarding Bill 2024 regarding the anonymity of adults at risk of harm and others.)
- R. 13.41 The Commission recommends that** free legal aid should be extended to applications by at-risk adults for no-contact orders, interim no-contact orders and emergency no-contact orders.
- R. 13.42 The Commission recommends that** the Civil Legal Aid Regulations 1996 should be amended to state that no contribution shall be payable by an applicant where the subject matter of the application relates solely to proceedings in the District Court (or on appeal from the District Court to the Circuit Court) where the only remedy sought by the applicant in those proceedings is a no-contact order (including an interim no-contact order and emergency no-contact order).

## Chapter 14: Financial Abuse

- R. 14.1 The Commission recommends that** the 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 to prevent and address actual or suspected financial abuse of at-risk customers.
- R. 14.2 The Commission recommends that** regulated financial service providers, credit unions and post offices should be under a statutory obligation to ensure that relevant personnel receive regular adult safeguarding awareness training.
- R. 14.3 The Commission recommends that** the 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.
- R. 14.4 The Commission recommends that** 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 (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 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”.

**R. 14.5 The Commission recommends that** regulated financial service providers should be provided with a power in primary or secondary legislation 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.

**R. 14.6 The Commission recommends that** a statutory immunity should be introduced in primary or secondary legislation to clarify that no action shall lie against a regulated financial service provider or a branch manager, director, officer, employee, agent or other representative of a regulated financial service provider 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.

**R. 14.7 The Commission recommends that** the relevant provisions of the Social Welfare Consolidation Act 2005 and the Social Welfare (Consolidated Claims, Payments

and Control Provisions) Regulations 2007 (SI No 142 of 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 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.

**R. 14.8 The Commission recommends that** 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.

**R. 14.9 The Commission recommends that** 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 in order to allow for advance consideration of home support providers by potential service users and to provide financial certainty to potential service users.

**R. 14.10 The Commission recommends that** a standard in relation to 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

**R. 15.1 The Commission recommends that** adult safeguarding legislation should provide that it shall be a 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.

**R. 15.2 The Commission recommends that** 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.

**R. 15.3 The Commission recommends that** 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.

**R. 15.4 The Commission recommends that** 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.

**R. 15.5 The Commission recommends that** 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.

**R. 15.6 The Commission recommends that** 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.

**R. 15.7 The Commission recommends that** 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.

**R. 15.8 The Commission recommends that** 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 which should include, but should not be limited to, cooperating with other agencies to develop a safeguarding plan to safeguard the at-risk adult.

**R. 15.9 The Commission recommends that** an interdepartmental steering group should be established on a statutory basis to provide oversight of cooperation in the adult safeguarding context.

**R. 15.10 The Commission recommends that** statutory provisions for transitional care arrangements should be included in any future social care legislation that may be considered by the Government.

**R. 15.11 The Commission recommends that,** 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

- R. 16.1 The Commission recommends that** primary legislation 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.
- R. 16.2 The Commission recommends that** 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.
- R. 16.3 The Commission recommends that** until adequate provision is made for information sharing in the adult safeguarding context in primary legislation, regulations 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.
- R. 16.4 The Commission recommends that** 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

**R. 17.1 The Commission recommends that** adult safeguarding reviews should be introduced on a statutory basis to review serious incidents that reach a high threshold.

**R. 17.2 The Commission recommends that** the following principles should be followed when an adult safeguarding review is carried out:

- (1) 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;
- (2) 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;
- (3) Adult safeguarding reviews should apply to all serious incidents involving at-risk adults that meet set criteria, irrespective of the care setting;
- (4) Adult safeguarding reviews should be completed in a timely manner in order to disseminate learnings without delay;
- (5) There should be a shared learning culture, in which at-risk adults, their families, advocates, staff and service providers are all given the opportunity to engage meaningfully in the review process;
- (6) 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;
- (7) 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.

**R. 17.3 The Commission recommends that** provisions emphasising that the purpose of adult safeguarding reviews is not to attribute blame or liability should be included in its proposed Adult Safeguarding Bill 2024.

**R. 17.4 The Commission recommends that** an adult safeguarding review must be carried out when:

- (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 on behalf of one or more agencies, organisations or individuals responsible for the care and protection of at-risk adults.

**R. 17.5 The Commission 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 valuable insights could be gained from an adult safeguarding review 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 adults at risk of harm, and
- (b) minimise the risk of harm to adults at risk of harm.

**R. 17.6 The Commission recommends that** the reviewing body may decide to pause, discontinue, or not undertake a mandatory or discretionary adult safeguarding review if:

- (a) the incident concerned is the subject of criminal proceedings;
- (b) the incident concerned is the subject of investigation by the Garda Síochána;
- (c) the incident concerned is or will be the subject of a review or investigation under any other enactment by another statutory body or officeholder under a statutory duty;
- (d) the incident concerned has already been resolved or substantially resolved, or
- (e) the reviewing body believes, based on reasonable grounds, that, due to the considerable length of time between the incident concerned occurring, and deciding whether to undertake an adult safeguarding review, it is not necessary or appropriate to undertake a review.

**R. 17.7 The Commission recommends that** the reviewing body shall ensure that any mandatory or discretionary adult safeguarding review undertaken does not interfere, or conflict, with the functions of any statutory bodies or office holders under a statutory duty.



**R. 17.8 The Commission recommends that** the reviewing body should have powers to:

- (a) require the production of information or documents;
- (b) inspect and take copies of, or extracts from, information or documents;
- (c) inspect the operation of any computer and any associated apparatus or material which is, or has been, in use in connection with the information or documents; and
- (d) interview in private relevant persons to enable it to carry out adult safeguarding reviews effectively.

**R. 17.9 The Commission recommends that** where a person does not produce information or documents upon request or does not consent to participate in an interview in private, the reviewing body should be able to apply for a court order directing the person to produce information or documents or to participate in an interview in private.

## Chapter 18: Regulation of Professionals and Occupational Groups

**R. 18.1 The Commission recommends that** 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.

**R. 18.2 The Commission recommends that** barred lists should not be established in Ireland.

**R. 18.3 The Commission recommends that** post-conviction prohibition orders should be introduced in primary legislation in Ireland 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.

**R. 18.4 The Commission recommends that** a system of mandatory re-vetting should be introduced 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

**R. 19.1 The Commission recommends that** the criminal offences it proposes in its Criminal Law (Adult Safeguarding) Bill 2024 should apply where a person commits an offence against a “relevant person” and that the term “relevant person” should be defined as follows:

“relevant person” means a person, other than a child, whose ability to guard himself or herself against violence, exploitation or abuse, whether physical, sexual or emotional, or 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.

**R. 19.2 The Commission recommends that** a broad abuse, neglect or ill-treatment offence should be enacted in the Criminal Law (Adult Safeguarding) Bill 2024, modelled on the cruelty offence set out in section 246 of the Children Act 2001.

**R. 19.3 The Commission recommends that** an offence of exposure of a relevant person to risk of serious harm or sexual abuse should be enacted in the Criminal Law (Adult Safeguarding) Bill 2024. It should be modelled on the offence set out in section 176 of the Criminal Justice Act 2006 in respect of children. However, the definition of “serious harm” should include injury which is of a psychological nature which has a significant impact.

**R. 19.4 The Commission recommends that** a new offence of coercive control of a relevant person should be enacted in the Criminal Law (Adult Safeguarding) Bill 2024, which would apply to a broader range of relationships than the offence in section 39 of the Domestic Violence Act 2018.

**R. 19.5 The Commission recommends that** the new offence of coercive control in the Criminal Law (Adult Safeguarding) Bill 2024 should apply to all persons in a familial, caring or cohabitating relationship with a relevant person.

**R. 19.6 The Commission recommends that** an offence of coercive exploitation of a relevant person should be enacted in the Criminal Law (Adult Safeguarding) Bill

2024.

**R. 19.7 The Commission recommends that** the offence of coercive exploitation should criminalise the actions of 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 any of the property (whether real or personal) or financial resources of that relevant person in order to gain a benefit or advantage, whether for themselves, or for any third party.

**R. 19.8 The Commission recommends that** for the purposes of the coercive exploitation offence, it is irrelevant whether there was any actual gain, benefit or advantage, and it will not be a defence to prove the acquiring of consent of or acquiescence by the relevant person.

**R. 19.9 The Commission recommends that** the legislation should specify a non-exhaustive list of behaviours that can be considered to be “controlling or coercive behaviour”, while leaving open the possibility that other actions may fall within the scope of the offence. This non-exhaustive list should include:

- (a) controlling the relevant person’s necessities of life, medication, interactions with others, access to information, or sleep;
- (b) use of violence, intimidation or threats, whether directed against a relevant person or any family member of a relevant person;
- (c) exercising undue influence over a relevant person; or
- (d) making, or threatening to make, changes to the personal or property rights of a relevant person.

**R. 19.10 The Commission recommends that** the definition of benefit or advantage should include, but not be limited to, any form of financial benefit or advantage, including one, or more, of the following:

- (a) the taking, withholding, appropriation or use of money or assets owned by a relevant person;
- (b) the taking, withholding, appropriation, or use of property owned or occupied by a relevant person, including occupying or making use of any property owned or occupied by a relevant person, or any part of such property, or otherwise interfering with the relevant person’s enjoyment of such property;
- (c) the taking, withholding, appropriation or use of any benefits payable to a relevant person.

**R. 19.11 The Commission recommends that** the proposed offence should specify that undue influence involves a person exploiting a position of power in relation to a

relevant person so as to cause that relevant person to act, or to refrain from acting, in a manner detrimental to their own best interests and which confers, or is intended to confer, a benefit or advantage on themselves or a third party.

**R. 19.12 The Commission recommends that** where a person who is a care provider is found guilty of certain offences under the Criminal Law (Adult Safeguarding) Bill 2024, a court may make a publicity order.

**R. 19.13 The Commission recommends that**, in deciding whether to make a publicity order, the court should have regard to the following:

- (a) whether the publicity order is in the public interest;
- (b) whether the making of the publicity order risks the identification of the victim;
- (c) the potential effect of identification on the victim by the making of the publicity order;
- (d) the views of the victim on the making of the publicity order, where they can be ascertained.

**R. 19.14 The Commission recommends that** a publicity order should require the person convicted of the offence to publicise one or more of the following:

- (a) the fact that the person has been convicted of an offence,
- (b) the particulars of the offence concerned,
- (c) the amount of fine, or duration of any term of imprisonment, imposed by the court in respect of the offence.

**R. 19.15 The Commission recommends that** the court may specify the manner of publication, and a non-exhaustive list of forms of publication should be included in the Criminal Law (Adult Safeguarding) Bill 2024. This should include notification to the regulator where the care provider is an approved centre regulated by the Mental Health Commission or a service or designated centre regulated by HIQA. Where a service is publicly funded, the Minister and the body, organisation or group through which the funds are provided should also be notified.

**R. 19.16 The Commission recommends that**, in relation to any proceedings for an offence committed under the Criminal Law (Adult Safeguarding) Bill 2024, it should be an offence for a person, other than a relevant person, to publish, distribute or broadcast any information likely to identify the relevant person, unless the court otherwise directs.

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

- R. 20.1 The Commission recommends that** proposed adult safeguarding legislation should be cross-sectoral legislation that applies across all relevant sectors rather than specific legislation being introduced for individual sectors.
- R. 20.2 The Commission recommends that** one Department should be identified by Government as the appropriate Department to lead on the introduction, and implementation, of the proposed cross-sectoral adult safeguarding legislation.
- R. 20.3 The Commission recommends that** an interdepartmental implementation group should be established on a statutory basis in the proposed adult safeguarding legislation to provide oversight of the introduction and implementation of the proposed legislation.
- R. 20.4 The Commission recommends that** the inter-departmental implementation group should have the following functions in respect of adult safeguarding legislation:
- (a) promote compliance by departments with their obligations under the Act;
  - (b) monitor compliance by public service bodies with their obligations to cooperation under the Act;
  - (c) monitor the implementation by departments with any guidelines issued by the lead minister;
  - (d) provide support to relevant departments to assist them with preparing and publishing sectoral implementation plans (discussed further below);
  - (e) ensure consistency between departments in relation to sectoral implementation plans;
  - (f) report to the lead minister when requested on progress to implement the Act and any guidelines issued in accordance with the Act;
  - (g) provide information or advice and make proposals to the lead minister on matters related to the functions of the inter-departmental implementation group.
- R. 20.5 The Commission recommends that** the Government should designate the relevant Ministers who are required to prepare and publish a sectoral implementation plan under adult safeguarding legislation. This plan should

outline the measures taken or proposed to be taken by or on behalf of the Minister concerned to ensure that their department, any public service bodies under the aegis of their department and any organisation that provides a relevant service for and receives funding from the department comply with their obligations under the Act and any guidelines issued by the lead minister.

**R. 20.6 The Commission recommends that** the proposed civil adult safeguarding legislation should provide for the lead minister to introduce statutory guidance in the form of guidelines or codes of practice to provide practical guidance to any person or organisation in respect of the performance of their functions under the Act or on the application and interpretation of the legislation.



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).