



Oifig an Stiúirthóra Náisiúnta, Acmhainní Daonna

Feidhmeannacht na Seirbhísí Sláinte  
Ospidéal Dr. Steevens'  
Baile Átha Cliath 8

Office of the National Director of Human Resources

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To: Each Member of the Directorate and Leadership Team  
Each Assistant National Director HR  
Each Hospital Group CEO  
Each Hospital Group Director of HR  
Each Chief Officer CHO  
Each CHO HR Manager  
Each CEO Section 38 Agencies  
Each HR Manager Section 38 Agencies  
Each Group Director of Nursing & Midwifery  
Each Group Director of Midwifery

From: Rosarii Mannion, National Director Human Resources

28<sup>th</sup> March, 2018

Re HR Circular 012/2018 re National Vetting Bureau Acts 2012-2016 – Garda Vetting of New Employees and Other Persons engaged in “Relevant Work” With Children or Vulnerable Adults

*This Circular supersedes HSE HR Circular 011/2007.*

Dear Colleagues,

## 1. Introduction

The purpose of this Circular is to set out the provisions in relation to garda vetting of new employees and other persons prior to their employment / engagement in the health service to carry out “relevant work and activities” as defined by Section 12 of the **National Vetting Bureau Acts 2012 to 2016**.<sup>1</sup> This refers to any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, children or vulnerable persons.

Garda vetting is conducted on behalf of registered organisations only and is not conducted for individual persons on a personal basis. The Act creates offences and penalties for organisations who fail to comply with its provisions.

## 2. Scope of the Act - Section 12

The **National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016** provides a statutory basis for the vetting of persons carrying out “relevant work with children or vulnerable persons” (**Appendix 1**). Section 12 of the Act, which came into effect on **29th April 2016**, stipulates that a relevant organisation shall not:

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<sup>1</sup> **HSE HR Circular 022/2017** sets out the provisions for garda vetting of **existing health** service employees engaged in “relevant work” with children and vulnerable persons within the meaning of **Section 21** of the **National Vetting Bureau Acts 2012 to 2016**. On foot of the **National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (Section 21) (Prescribed Period) (Amendment) Regulations 2017** the date of the deadline for submission of retrospective vetting applications was amended to the **30 April 2018**.

1. Employ (whether under a contract of employment or otherwise) any person to undertake relevant work or activities,
2. Enter into a contract of services with any person for the provision by that person of service which constitute relevant work,
3. Permit any person to undertake relevant work or activities on behalf of the organisation (whether or not for commercial or any other consideration),
4. Where the relevant organisation is a provider of any course of education, training or scheme, including an internship scheme, place or make arrangements for the placement of a person as part of such education, training or scheme if a necessary and regular part of such placement and regular part of such placement requires the participation by the person in relevant work or activities,

**unless the organisation receives a vetting disclosure from the National Vetting Bureau of the Garda Síochána in respect of that person.**

### **New Employees**

The National Vetting Bureau Act imposes a legal requirement on health service employers to ensure that all candidates for employment (whether permanent or fixed-term / temporary, fulltime or part-time) in positions which constitute “relevant work” must undergo garda vetting as a condition of their employment. Garda vetting is an integral part of the recruitment and selection process for positions which constitute “relevant work” and the onus is on management of the service to determine if a vetting disclosure will be required prior to initiating arrangements for the filling of the post. Applicants should not be given a definitive offer of employment nor permitted to commence employment until the vetting disclosure has been received from the National Vetting Bureau and a determination made by relevant management that the candidate is suitable for employment in that position.

The HSE is currently reviewing the arrangements for garda vetting of students who are required to undergo a placement in the health service as part of their third level course (e.g. students nurses, health and social care professionals, medical).

### **Non Employees**

There is also a legal requirement for health service employers to ensure that others persons who will be engaged to carry out relevant work or activities, to undergo garda vetting prior to engagement and a determination is made with regard to their suitability. Non employees would include:

- Independent contractors engaged on a contract for service such as training, consultancy, research, maintenance work or clinical / medical services.
- Agency workers – garda vetting should be confirmed prior to the worker commencing their assignment<sup>2</sup>.
- Volunteers
- Persons on work experience

A vetting disclosure from the National Vetting Bureau of the Garda Síochána is required in respect of any persons who will be engaged to carry out “relevant work or activities” by the organisation. The onus is on the management of the service to determine if the nature of work or activities comes within the scope of the legislation and ensure that the vetting disclosure has been received and assessed prior to making an offer of engagement.

Prior to requesting any person to undergo garda vetting in accordance with Section 12, managers are required to establish whether the person will be engaged in relevant work or activities. The Act defines relevant work or activities as “*any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, children or vulnerable adults*”. This requires managers to give consideration to the nature of the work or activities which will be undertaken and the extent to which the person will have access to children or vulnerable persons.

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<sup>2</sup> Employment agencies with Service Level Agreements (SLAs) with the HSE are responsible for garda vetting of all workers assigned to the HSE who are engaged in relevant work.

All vetting applications include a section whereby the manager confirms that the applicant is engaged in relevant work. The Bureau have advised the HSE that vetting applications should only be submitted in respect of persons who will be engaged in relevant work or activities as defined by the National Vetting Bureau Act.

A checklist to assist managers to identify posts which come within the definition of “relevant work” is attached at **Appendix 2**.

### 3. Garda Vetting Process

The National Vetting Bureau will disclose convictions in accordance with the provisions of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.

**Section 38 agencies** are registered organisations with the Bureau and are responsible for the garda vetting and assessment of persons who are deemed to come within the scope of Section 12 of the Act prior to employment or engagement by the organisation.

Information on the HSE’s garda vetting procedure is available via the following link:

<http://ihbs.healthirl.net/Human-Resources/HBS-Garda-Vetting-Liason-Office/>

The fully completed Garda Vetting Request Form and the fully completed NVB 1 Form in respect of the individual for whom a vetting disclosure is required should be submitted to:

**Garda Vetting Liaison Office, Health Business Services, Aras Slainte Chluainín, Manorhamilton, Co Leitrim F92 AP57.**

### 4. Legal consequences of failure to comply with the Act

The penalties for a breach of section 12 and section 21 are outlined in section 27 of the Act:-

A person guilty of either offence shall be liable:

- (a) on summary conviction, to a class A fine (i.e. up to €5,000) or imprisonment for a term not exceeding 12 months or both; or
- (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

Section 28 of the Act provides as follows:

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

### 5. Duty to report individuals to An Garda Síochana

An Garda Síochana must be informed of any individual who (a) falsifies or alters a vetting disclosure (b) makes a false statement for the purposes of obtaining or enabling another person to obtain, a vetting disclosure, or (c) allows a vetting disclosure which relates to him /her to be used by another person in such a way as to give rise to the reasonable belief that the record relates to that other person. This is an offence as provided for by **Section 26** of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 to 2016. Health service employers are required to notify An Garda Síochana where this occurs in respect of an applicant for employment or other person in respect of whom a vetting disclosure is required.

### 6. Re-vetting

All sections of the National Vetting Bureau Act have come into operation, with the exception of **Section 20** which provides for the re-vetting of employees who were previously vetted for their current position

following the expiry of a specified period (to be prescribed by the Minister for Justice and Equality). The Department of Justice, Equality & Law Reform will issue separate Regulations to give effect to Section 20 in due course. Prior to the commencement of Section 20, there is no statutory requirement under the National Vetting Bureau Act for the re-vetting of employees pending the enactment of these Regulations.

Within the health service, re-vetting is a mandatory requirement by HIQA for certain staff who are employed in residential care centres for older persons and persons with disabilities. Those who are employed as 'Persons in Charge' and 'Persons Participating in the Management' of these centres are required to undergo garda vetting every 3 years. Please refer to the HSE SOP **The Management of Garda Disclosure required within HSE Designated Residential Services for Older Person and People with Disabilities (Appendix 3)**.

## 7. Persons who lived overseas

The National Vetting Bureau provides vetting disclosures in respect of this jurisdiction only. Persons who lived in other jurisdictions for any period of time are required to obtain police clearance from each previous country of residence.

In the case of persons who lived overseas there may be *exceptional circumstances* which prevent the persons from providing evidence of police clearance through no fault of their own. Where these exceptional circumstances arise persons will have to provide such evidence as may be required by the organisation and may be required to provide a sworn affidavit.

Please ensure that this Circular is brought to the attention of relevant managers in your organisation / area of responsibility and that they are informed of the statutory requirement to determine what positions / roles constitute relevant work or activities as defined by the Act and obtain a vetting disclosure from the Bureau in respect of any individual (prospective employees or other persons) before they are employed / engaged to carry out relevant work or activities. Following receipt of the vetting disclosure, it is the responsibility of relevant management within the organisation / area to assess the person's suitability for employment / engagement having regard to the information provided in the vetting disclosure.

## 8. Queries

Queries from individuals regarding the garda vetting process or this Circular should be addressed by local management or the local HR Department.

Queries from health service managers in relation to the application of this Circular and advice on the vetting process should be referred to the local Employee Relations / HR Department in the first instance.

Queries in respect of the HSE Garda Vetting procedure for applicants or completion of online evetting invitations should be referred to the Garda Vetting Liaison Office (Tel: 0719820422 Email: [nvdd@hse.ie](mailto:nvdd@hse.ie)).

Queries from HR Departments in relation to the contents of this Circular and the legislative provisions referenced in this Circular may be referred to Anna Killilea, HSE Corporate Employee Relations, 63/64 Adelaide Road, Dublin 2 Tel: 01-6626966 Email: [anna.killilea@hse.ie](mailto:anna.killilea@hse.ie)

Please also note that the National HR Help Desk is available to take queries on 1850 444 925 or [ask.hr@hse.ie](mailto:ask.hr@hse.ie).

Yours sincerely,



**Rosarii Mannion,**  
National Director of Human Resources.

**Extract from National Vetting Bureau acts 2012 to 2016**

**SCHEDULE 1**

**PART 1**

Relevant work or activities relating to children

1. Any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, children in—
  - (a) an establishment which provides pre-school services within the meaning of Part VII of the Child Care Act 1991,
  - (b) a school or centre of education, both within the meaning of the Education Act 1998,
  - (c) any hospital or health care centre which receives, treats or otherwise provides services to children,
  - (d) a designated centre within the meaning of section 2 of the Health Act 2007, in so far as it relates to an institution at which residential services are provided in accordance with the Child Care Act 1991,
  - (e) a special care unit provided and maintained in accordance with section 23K of the Child Care Act 1991,
  - (f) a children detention school within the meaning of section 3 of the Children Act 2001.
2. Any work or activity which consists of the provision of home tuition by a person pursuant to the Scheme administered and funded by the Department of Education and known as the Home Tuition Scheme.
3. Any work or activity which consists of treatment, therapy or counselling provided to a child by a person in the course of that work or activity.
4. Any work or activity which consists of care or supervision of children unless the care or supervision is merely incidental to the care or supervision of persons who are not children.
5. Any work or activity which consists of the provision of educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) to children unless the provision of educational, training, cultural, recreational, leisure, social or physical activities is merely incidental to the provision of educational, training, cultural, recreational, leisure, social or physical activities to persons who are not children.
6. Any work or activity which consists of the provision of advice, guidance, developmental, or counselling services, (including by means of electronic interactive communications) to children unless the provision of the advice, guidance, developmental or counselling service is merely incidental to the provision of those services to persons who are not children.
7. Any work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs.
8. Work as a driver of a public service vehicle which is being used only for the purpose of conveying children.
9. The provision by a person, whether or not for commercial or other consideration, of accommodation for a child in his or her own home.
10. Any research work or activities (howsoever described) carried out in a university, institute of technology or other establishment at which third level education is provided where a necessary and regular part of the research work or activity involves contact with or access to children.

11. Any application by a person to carry on or manage a designated centre within the meaning of section 2 of the Health Act 2007.

12. Any application by a person for a declaration of eligibility and suitability within the meaning of section 3 of the Adoption Act 2010.

13. Any assessment of a person's suitability to act as a foster carer by or under section 39 of the Child Care Act 1991.

14. Any assessment by or under section 41 of the Child Care Act 1991 of a person's suitability to act as a carer of a child in respect of whom he or she is a relative.

15. Any work or activity which is carried on by a person, a necessary and regular part of which requires the person to have access to, or contact with, children pursuant to the following enactments:

(a) Medical Practitioners Act 2007;

(b) Nurses Act 1985;

(c) Nurses and Midwives Act 2011;

(d) Dentists Act 1985;

(d) Health and Social Care Professionals Act 2005;

(e) Pharmacy Act 2007;

(f) Pre-Hospital Emergency Care Council Order 2000 (S.I.No. 109 of 2000);

(g) Pre-Hospital Emergency Care Council (Establishment) Order 2000 (Amendment) Order 2004 (S.I. No. 575 of 2004).



## SCHEDULE 1 PART 2

### Relevant work or activities relating to vulnerable persons

1. Any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, vulnerable persons in—
  - (a) a school or centre of education, both within the meaning of the Education Act 1998, unless, in the case of a centre of education, the work or activity is merely incidental to work or activities undertaken in relation to persons who are not vulnerable persons,
  - (b) any hospital or care centre which receives, treats or otherwise which provides services to vulnerable persons,
  - (c) a designated centre within the meaning of section 2 of the Health Act 2007, in so far as it relates to an institution at which residential services are provided to vulnerable persons,
  - (d) an approved centre within the meaning of Part 5 of the Mental Health Act 2001,
  - (e) any organisation or facility which provides educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) for vulnerable persons,
  - (f) in any organisation or facility which provides welfare, advice, guidance, developmental, or counseling services for vulnerable persons.
2. Any work or activity which consists of treatment, therapy or counselling provided to a vulnerable person by a person in the course of that work or activity.
3. Any work or activity which consists of the care (including the provision of health and personal social services and essential domestic services) of vulnerable persons unless the care is merely incidental to the care of persons who are not vulnerable persons.
4. Any work or activity which consists of the provision of educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) to vulnerable persons unless the provision of educational, training, cultural, recreational, leisure, social or physical activities is merely incidental to the provision of educational, training, cultural, recreational, leisure, social or physical activities to persons who are not vulnerable persons.
5. Any work or activity which consists of the provision of advice, guidance, developmental, or counselling services, (including by means of electronic interactive communications) to vulnerable persons unless the provision of the advice, guidance, developmental or counselling service is merely incidental to the provision of those services to persons who are not vulnerable persons.
6. Work as a driver of a public service vehicle which is being used only for the purpose of conveying vulnerable persons.
7. Any work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs.
8. The provision by a person, whether or not for commercial or other consideration, of accommodation for a vulnerable person in his or her own home.

9. Any research work or activities (howsoever described) carried out in a university, institute of technology or other establishment at which third level education is provided where a necessary and regular part of the research work or activity involves contact with or access to vulnerable persons.
10. Any assessment of a person's suitability to act as a care representative under section 21 of the Nursing Homes Support Scheme Act 2009.
11. Any application by a person to carry on or manage a designated centre both within the meaning of section 2 of the Health Act 2007.
12. Any work or activity which is carried on by a person, a necessary and regular part of which requires the person to have access to, or contact with, vulnerable persons pursuant to the following enactments:
  - (a) Medical Practitioners Act 2007;
  - (b) Nurses Act 1985;
  - (c) Nurses and Midwives Act 2011;
  - (d) Dentists Act 1985;
  - (e) Health and Social Care Professionals Act 2005;
  - (f) Pharmacy Act 2007;
  - (g) Pre-Hospital Emergency Care Council (Establishment) Order 2000 (S.I. No. 109 of 2000);
  - (h) Pre-Hospital Emergency Care Council (Establishment) Order 2000 (Amendment) Order 2004 (S.I. No. 575 of 2004).



**Questionnaire to Establish if Role to be Assigned is Deemed as Relevant Work**

This questionnaire is designed to assist managers within the HSE establish if a direct employee or someone being considered for employment as a direct employee is/will be engaged in relevant work. If the answer to one or more of the questions below is yes then the Role to which the individual is assigned / will be assigned meets the criteria of relevant work and therefore they must be vetted

		No
1) Will the Role require the individual to be engaged in any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, children and or vulnerable persons in—		
(a) an establishment which provides pre-school services within the meaning of Part VII of the Child Care Act 1991,	<input type="checkbox"/>	<input type="checkbox"/>
or		
a school or centre of education, both within the meaning of the Education Act 1998, unless, in the case of a centre of education, the work or activity is merely incidental to work or activities undertaken in relation to persons who are not vulnerable persons,		
(b) a school or centre of education, both within the meaning of the Education Act 1998	<input type="checkbox"/>	<input type="checkbox"/>
(c) any hospital or health care centre which receives, treats or otherwise provides services to children and or vulnerable persons	<input type="checkbox"/>	<input type="checkbox"/>
(d) a designated centre within the meaning of section 2 of the Health Act 2007, in so far as it relates to an institution at which residential services are provided in accordance with the Child Care Act 1991 or at which residential services are provided to vulnerable persons	<input type="checkbox"/>	<input type="checkbox"/>
(e) a special care unit provided and maintained in accordance with section 23K of the Child Care Act 1991	<input type="checkbox"/>	<input type="checkbox"/>
(f) A children detention school within the meaning of section 3 of the Children Act 2001.	<input type="checkbox"/>	<input type="checkbox"/>
(g) An approved Centre within the meaning of Part 5 of the Mental Health Act 2001	<input type="checkbox"/>	<input type="checkbox"/>
(h) any organisation or facility which provides educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) for vulnerable persons	<input type="checkbox"/>	<input type="checkbox"/>
(i) In any organisation or facility which provides welfare, advice, guidance, developmental, or counselling services for vulnerable persons.	<input type="checkbox"/>	<input type="checkbox"/>
2) Will the Role require the individual to be engaged in any work or activity which consists of the provision of home tuition by a person pursuant to the Scheme administered and funded by the Department of Education and known as the Home Tuition Scheme.	<input type="checkbox"/>	<input type="checkbox"/>

3) Will the Role require the individual to be any work or activity which consists of treatment, therapy or counselling provided to a child or vulnerable person by a person in the course of that work or activity.	<input type="checkbox"/>	<input type="checkbox"/>
4) Will the Role require the individual to be engaged in any work or activity which consists of care or supervision of children unless the care or supervision is merely incidental to the care or supervision of persons who are not children?	<input type="checkbox"/>	<input type="checkbox"/>
5) Will the role require any work or activity which consists of the care (including the provision of health and personal social services and essential domestic services) of vulnerable persons unless the care is merely incidental to the care of persons who are not vulnerable persons	<input type="checkbox"/>	<input type="checkbox"/>
6) Will the Role require the individual to be engaged in any work or activity which consists of the provision of educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) to children / Vulnerable persons unless the provision of educational, training, cultural, recreational, leisure, social or physical activities is merely incidental to the provision of educational, training, cultural, recreational, leisure, social or physical activities to persons who are not children or vulnerable persons.	<input type="checkbox"/>	<input type="checkbox"/>
7) Will the Role require the individual to be engaged in any work or activity which consists of the provision of advice, guidance, developmental, or counselling services, (including by means of electronic interactive communications) to children/vulnerable persons unless the provision of the advice, guidance, developmental or counselling service is merely incidental to the provision of those services to persons who are not children/vulnerable persons.	<input type="checkbox"/>	<input type="checkbox"/>
8) Will the Role require the individual to be engaged in any work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs	<input type="checkbox"/>	<input type="checkbox"/>
9) Will the Role require the individual to be engaged in any work as a driver of a public service vehicle which is being used only for the purpose of conveying children/ Vulnerable persons.	<input type="checkbox"/>	<input type="checkbox"/>
10) Will the Role require the individual to be engaged in the provision by a person, whether or not for commercial or other consideration, of accommodation for a child / vulnerable person in his or her own home.	<input type="checkbox"/>	<input type="checkbox"/>
11) Will the role require any research work or activities (howsoever described) carried out in a university, institute of technology or other establishment at which third level education is provided where a necessary and regular part of the research work or activity involves contact with or access to children / vulnerable persons	<input type="checkbox"/>	<input type="checkbox"/>
12) Will the Role require the individual to application by a person to carry on or manage a designated centre within the meaning of section 2 of the Health Act 2007.	<input type="checkbox"/>	<input type="checkbox"/>
13) Will the Role require the individual to make any application by a person to carry on or manage a designated centre within the meaning of section 2 of the Health Act 2007.	<input type="checkbox"/>	<input type="checkbox"/>
14) Will the Role require any application by a person for a declaration of eligibility and suitability within the meaning of section 3 of the Adoption Act 2010.	<input type="checkbox"/>	<input type="checkbox"/>
15) Will the role require any assessment of a person's suitability to act as a foster carer by or under section 39 of the Child Care Act 1991	<input type="checkbox"/>	<input type="checkbox"/>
16) Will the role require any assessment by or under section 41 of the Child Care Act 1991 of a person's suitability to act as a carer of a child in respect of whom he or she is a relative.	<input type="checkbox"/>	<input type="checkbox"/>
17) Will the role require assessment of a person's suitability to act as a care representative under section 21 of the Nursing Homes Support Scheme Act	<input type="checkbox"/>	<input type="checkbox"/>

2009		
<p>18) Will the role require any work or activity which is carried on by a person, a necessary and regular part of which requires the person to have access to, or contact with, children and or vulnerable persons pursuant to the following enactments:</p> <p>(h) Medical Practitioners Act 2007;</p> <p>(i) Nurses Act 1985;</p> <p>(j) Nurses and Midwives Act 2011;</p> <p>(d) Dentists Act 1985;</p> <p>(k) Health and Social Care Professionals Act 2005;</p> <p>(l) Pharmacy Act 2007;</p> <p>(m) Pre-Hospital Emergency Care Council Order 2000 (S.I.No. 109 of 2000);</p> <p>(n) Pre-Hospital Emergency Care Council (Establishment) Order 2000 (Amendment) Order 2004 (S.I. No. 575 of 2004).</p>	<input type="checkbox"/>	<input type="checkbox"/>