

STANDARD 1

CREATING AND MAINTAINING SAFE ENVIRONMENTS GUIDANCE FOR INDICATOR 1.1

1.1B Guidance on Vetting

1. The Catholic Church's standards and expectations

It is essential that those people who work in any capacity with children² and young people are, as far as possible, assessed to ensure that they do not present a risk to children. Standard 1 provides the required standard of practice in relation to recruitment and selection. It also provides a checklist for engaging proper procedures when taking on staff and volunteers who will be working with children.

One part of the recruitment process is to screen applicants against police criminal conviction and caution records. This screening process – called vetting – includes a check against relevant police-held conviction and non-conviction information, against UK lists of individuals who have been barred from working with children and/or vulnerable adults,³ and, in the Republic of Ireland, against An Garda Síochána records.

This document sets out the relevant legislation, and it provides guidance on who should be vetted and on the procedures that apply in both the Republic of Ireland and in Northern Ireland.

2. Vetting in the Republic of Ireland (ROI)

2.1 Legislative basis

In the ROI, vetting is carried out through the National Vetting Bureau under the National Vetting Bureau (Children and Vulnerable Adults) Act 2012. From the date of commencement of the legislation on 27 April 2016, it is a criminal offence to allow anyone to engage in ministry with children or vulnerable adults, without having them vetted first.

In addition, Section 26 of the Sex Offenders Act 2001 means that it is a criminal offence for some people who are guilty of certain criminal offences to fail to notify their employers of this fact before taking a job or performing a service. It is a requirement under this legislation for a prospective employee or volunteer to inform the employer of offences committed in Ireland and abroad.

Section 26 of the Sex Offenders Act 2001 makes it an offence for a person to:

- a. Apply to be employed to do relevant work;
- b. Enter into a contract of employment to do relevant work;
- c. Apply to another person to do relevant work on that other person's behalf (either paid or voluntary);
- d. Enter into a contract of services to do relevant work without, during the course of the application or before entering into the contract, informing the other person or party that they have been convicted of a sexual offence.

² A child is defined as anyone under eighteen years.

³ Any work or activity that 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 adults).

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The 2012 National Vetting Bureau Act (as amended in the Criminal Justice [Spent Convictions and Certain Disclosures] Act 2016) sets out circumstances that require vetting, defined 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 (and/or vulnerable adults).

Good childcare practice means that, as far as possible, management and supervision arrangements are such that substantial, unsupervised access to children is limited.

Under Schedule 1, Part 1, Paragraph 7, the Act also requires:

Vetting in respect of any work or activity as a minister or priest or any other person engaged in the advancement of religious beliefs, to children (and vulnerable adults) unless such work or activity is merely incidental to the advancement of religious beliefs to persons who are not children (or vulnerable adults).

In other words, anyone who has contact with children (and vulnerable adults) as part of their ministry must be vetted.

For other Church personnel who may come into contact but who do not work directly with children (or vulnerable adults) in the Church, vetting is not required.

2.2 The legislation provides relevant definitions

Harm, in relation to a person, means exploitation or abuse, whether physical, sexual or emotional;

Relevant organisation means a person (including a body corporate or an unincorporated body of persons).

So, for the purposes of the Act, the Catholic Church and all of its subdivisions is deemed to be a relevant organisation that:

- I. employs (whether under contract of employment or otherwise) any person to undertake relevant work or activities;
- II. enters into a contract for services with any person for the provision by that person of services that constitute relevant work or activities;
- III. permits any person (whether or not for commercial or any other consideration) to undertake relevant work or activities on the person's behalf;
- IV. is a provider of courses of education or training, including internship schemes, for persons and, as part of such education or training or scheme, places or makes arrangements for the placement of any person in work experience or activities where a necessary part of the placement involves participation in relevant work or activities, but does not include an individual who does any of the matters referred to in *subparagraphs (i) to (iv)* in the course of a private arrangement.

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Relevant work or activities relating to children⁴ means any work or activity that 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:

- an establishment that provides preschool services within the meaning of Part VII of the Child Care Act 1991;
- a school or centre of education, both within the meaning of the Education Act 1998;
- any hospital or healthcare centre that receives, treats or otherwise provides services to children;
- Any work or activity that consists of treatment, therapy or counselling provided to a child by a person in the course of that work or activity;
- Any work or activity that 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;
- Any work or activity that 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;
- Any work or activity that 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;
- Any work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs;
- Work as a driver of a public service vehicle, which is being used only for the purpose of conveying children.

Register of vetted persons: the chief bureau officer will establish and maintain a register of vetted persons who were or are the subject of applications for vetting disclosure, in accordance with the legislation.

The register of vetted persons shall contain the following information regarding each vetted person:

- a. his or her forename(s), surname and, where appropriate, maiden name;
- b. his or her mother's maiden name;
- c. his or her address;
- d. his or her previous addresses (if any);
- e. his or her date of birth, place of birth and nationality;

⁴ Please refer to the legislation for the complete list.

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- f. his or her passport number (if available);
- g. his or her personal identification number (if any);
- h. the date of application for vetting disclosure and the outcome of the application;
- i. the name and particulars of the relevant organisation making the application for vetting disclosure;
- j. the relevant work or activity to which the application relates;
- k. declaration of consent referred to in Section 13 (4) (e);
- l. particulars of the vetting disclosures made in respect of the vetted person;
- m. such other particulars as the bureau considers appropriate.

2.3 The Church as a relevant organisation cannot:

- a. employ (whether under contract of employment or otherwise) any person to undertake relevant work or activities;
- b. enter into a contract for services with any person for the provision by that person of services that constitute relevant work or activities;
- c. permit any person to undertake relevant work or activities on behalf of the organisation (whether or not for commercial or any other consideration);
- d. in a case 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 requires the participation by the person in relevant work or activities, unless the organisation receives a vetting disclosure from the bureau in respect of that person.

A person who performs any of the matters listed in paragraphs (a) to (d) above without a vetting disclosure from the bureau shall be guilty of an offence.

2.4 Reporting information to the National Vetting Bureau according to the Act (Section 2)

The Church is not defined as a scheduled organisation according to the Act (Section 2), and is therefore not required to report specified information to the National Vetting Bureau. However, information about a member of the Church may be reported to the bureau.

A scheduled organisation has a duty to notify the bureau in writing, where, following an investigation, inquiry or regulatory process, there is a bona fide concern that the person, may:

- a. harm any child or vulnerable person;
- b. cause any child or vulnerable person to be harmed;
- c. put any child or vulnerable person at risk of harm;

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- d. attempt to harm any child or vulnerable person;
- e. incite another person to harm any child or vulnerable person.

If any specified information furnished by a scheduled organisation to the bureau is incorrect or is otherwise inaccurate, the scheduled organisation will, as soon as may be, after becoming aware of its being incorrect or inaccurate, as the case may be, inform the bureau thereof.

2.5 Catholic Church requirements

The Church body is required to register with the National Vetting Bureau (if not previously registered with the Garda Vetting Unit) and appoint an **authorised liaison person**, who will be registered by the bureau. It will be the responsibility of the liaison person to ensure that vetting application forms are completed accurately and in full.

For any Church body not already registered, discussions should take place with the host diocese or with the Irish Missionary Union (IMU) to become affiliated under their liaison person, who may act as an 'umbrella body' for registration with the Garda Vetting Bureau.

The form that is completed by the applicant gives permission for a vetting disclosure to be obtained and shared with the relevant personnel within the Church body, in line with data protection legislation. The applicant must give their permission for information to be shared with named relevant people (i.e. the employer and the DLP). The application must identify the relevant work to which the application relates, and must be specific about access to children being a necessary and regular component of the role.

National Bureau vetting is one method of ensuring that those people about whom there are concerns of a relevant nature are not engaged to work with children. The vetting return must be assessed by the employing person (parish priest, chair of board of management, etc.) to ensure that risk is minimised. Personnel accessing vetting disclosures must also observe confidentiality and must be made aware of the consequences of a breach of confidentiality.

If the vetting disclosure contains information that might mean an applicant is unsuitable for the post, the employer must make a copy of the disclosure available to the applicant to establish first that the identity details are correct, and second, whether the information shared means that the application must not proceed.

If the applicant wishes to appeal the decision, the Church body must set up a review panel meeting (see Section 6 on appeals).

3. Vetting in Northern Ireland (pre-employment)

3.1 Legislative basis

The Police Act 1997 (Criminal Records) (Disclosure) is the legislation that allows for an enhanced criminal record check for those engaged in regulated activities with children and vulnerable adults.

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The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 sets out the activities and work that are 'regulated activities', which a person who has been barred by the Disclosure and Barring Service must not do.

Vetting is carried out in Northern Ireland if a paid member of staff or volunteer is to engage in a **regulated activity** (explained below). An enhanced check can disclose non-conviction information or 'soft intelligence' if the police consider it is relevant to the role. This could be an incident that did not go to court, or information about an ongoing police investigation.

An enhanced check also includes a barred list check for anyone applying to do paid or voluntary work that is a regulated activity. A barred list check involves checking whether the individual is part of barred lists of people who are prevented from doing certain types of work.

3.2 Definitions

A child is defined by the Safeguarding Vulnerable Groups Order (SVGO) as anyone who has not attained the age of eighteen years.

The full, legal definition of regulated activity is set out in Schedule 2 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended (in particular, by the Protection of Freedoms Act 2012).

Regulated activity excludes family arrangements, and personal, non-commercial arrangements.

Regulated activity relating to children

The amended definition of regulated activity comprises:

- I. Activities such as teaching, training, instructing, caring for or supervising children, or providing advice/guidance on well-being, or driving a vehicle only for children;
- II. Work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises, a children's hospital. Work under (I) or (II) is regulated activity only if done regularly.
- III. Relevant personal care, e.g. washing or dressing; or healthcare by, or supervised by, a professional;
- IV. Registered childminding and foster care.

3.3 Catholic Church requirements

In relation to the Church, those who work (paid or unpaid) in a regulated activity will require vetting. Legislation allows for the Church to carry out vetting checks for those who are in day-to-day line management of those in regulated activities, and who must also be vetted.

As the definition of regulated activity has recently changed, it is current practice within the Church that those falling under the previous definition of regulated activity, who are not included in the new definition listed above, still require vetting. However, the vetting enhanced check will not include the barred list element.

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The bishops of Northern Ireland have established a Central Northern Dioceses Vetting Office, which processes all vetting applications to AccessNI. The vetting officer acts as the authorised signatory, and makes decisions about fitness for roles based on the returned disclosure.⁵ An application is completed by the local safeguarding representative and forwarded to the Central Northern Dioceses Vetting Office for processing. As the requirements in vetting have been amended, staff in the vetting office can provide advice and support in deciding which check is required for Church personnel.

For religious orders, consultation should take place with the Central Northern Dioceses Vetting Office around requirement to vet and the processing of applications.

3.4 How to apply for a vetting check

For a detailed guide and further information on how to apply for a vetting check, please contact the Northern Vetting Office by emailing vetting@soddc.org or calling 00442890492783.

4. Re-Vetting

It is recommended that applicants be re-vetted at least every three years.

5. Storage and retention of records

Application forms, references and any other records of vetting checks that have been carried out must be stored securely by the employer in a locked cabinet in the parish or diocesan or employer's office. There is no requirement to retain a copy of the identity check other than to confirm that one was carried out and to have a copy of the the source of the identity check (e.g. passport).

In ROI, the full National Vetting Bureau record must be retained for a period of twenty⁶ years after the end of the period of employment.

In Northern Ireland, the information contained in the vetting check should be stored for a period of three months and then destroyed by the authorised signatory. The only exclusion is if the applicant appeals the decision of the authorised signatory (see Section 6 on appeals, on the next page). In this instance the record should be retained for three months, following completion of the appeal process.

In Northern Ireland, a record of the check having been carried out should be retained for a period of twenty years after the end of the period of employment (this also applies to volunteers).

⁵ For appeals, see Section 6 on the next page.

⁶ Classified under the data commissioner's guidance on vetting as 'exceptional circumstances'.

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6. Appeals

It must be noted that any appeal can only be made in relation to the Church decision not to employ the candidate (paid or voluntary), on the grounds that they are not suitable to work with children. The Church has no role in reviewing the contents of the disclosure by the National Vetting Bureau or AccessNI. If there is a disagreement about the disclosure, the applicant must appeal directly to the National Vetting Bureau or AccessNI.

The employer will assess the information returned from AccessNI or the National Vetting Bureau and decide if there is any reason not to employ the applicant, from a criminal information perspective. The applicant will be informed that their application cannot proceed based on the information returned through the vetting process.

If the applicant wishes to appeal the Church decision, they should be informed in writing about the process of an appeal.

An appeals panel will be established by the Church authority to hear the appeal.

The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 states that the information contained in the vetting disclosure made to the organisation shall not be used or disclosed by the relevant organisation other than in accordance with the Act. Any breach of this requirement is an offence. Therefore, prior to engaging in any appeals process, legal advice should be sought.

An applicant in Northern Ireland will be told that the appeal process will require that information disclosed to AccessNI is shared with the panel members, and that any representations made by him/her may be shared with the statutory authorities. Any detail provided, for example to explain the background to a conviction, will be shared with AccessNI to ensure it is a realistic representation of the facts.

Representation from the applicant will be requested in writing to offer them the opportunity to explain any circumstances in relation to the information received that might further inform the appeals panel. The panel may permit an oral hearing if it is deemed necessary for the fair and just disposition of the appeal.

The role of the appeals panel is to decide if the original decision was unreasonable or irrational. In the first instance, the panel will communicate its view to the Church authority. The Church authority should take cognisance of the views of the appeals panel. The applicant will then be informed in writing of the final decision following a review by the Church authority, based on the advice of the appeals panel.

6.2 Constitution of panel

The Church authority will appoint an appeals panel. The following people should be considered as appropriate members of the panel:

- Chair of the safeguarding committee;
- Priest or religious;
- Lay person with child protection experience.

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Advice can be sought from the following: a representative from HR (if the Church body has one); a civil law solicitor; a canon lawyer; and/or an employment lawyer.

6.3 Role of panel

- To receive and hear requests for review of decisions not to appoint on the basis of information received through the vetting process:
 - To review the written information provided by the appellant, and to receive oral evidence, if deemed appropriate;
 - To review information provided by the Church authority.
- To make a judgement regarding whether the decision not to employ was reasonable:
 - Was the decision to refuse based on a potential risk to children?
 - Was the relevance of the specific role taken into consideration?
- To report its views to the Church authority for consideration.

6.4 Time frame

- An appeal must be lodged with the employer within twenty-eight days of being informed of the decision not to appoint. The appellant will be asked to provide written representation within fourteen days of receipt of correspondence requesting this. Failure to provide this information within the time frame suggested, or failure to seek an extension, will result in the matter being closed and the original decision standing.
- The appeals panel will aim to review all information within fourteen days of receipt of the same, and communicate its views in writing to the Church authority.