

Garda vetting is a background check completed by the National Vetting Bureau and is an important safeguard in protecting the safety and welfare of children and vulnerable adults. This guidance note sets out some data protection considerations for organisations carrying out Garda vetting and outlines some of the rights of individuals undergoing vetting. The Garda vetting procedure is set down in the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 ('the Acts') and is operated by The National Vetting Bureau ('NVB') of An Garda Síochána.

The Vetting Process

Under the Acts, anyone who works with or undertakes an activity, of which a necessary and regular part of it consists of having access to or contact with children or vulnerable adults, is required to be vetted.¹ This includes staff, volunteers and those on student placement working for a **relevant organisation**. A **relevant organisation** is an organisation that employs or permits a person to carry out work or activities, which mainly consist of them having access to, or contact with, children or vulnerable persons.²

For the purposes of the Acts, a **child** is someone under the age of 18 and a **vulnerable adult** is any person (other than a child) who is suffering from a mental illness or a dementia, or has an intellectual disability, or is suffering from a physical impairment or disability which results in that person needing assistance for daily living activities or restricts that person's ability to protect himself or herself from others.³

The NVB will only conduct vetting for **relevant organisations** that are registered with them for vetting purposes. Once registered, relevant organisations must appoint a **liaison person**. The liaison person makes vetting applications to the NVB and receives the vetting disclosures. For vetting to occur, individuals must complete a formal Garda Vetting Application Form and give written authorisation to An Garda Síochána to disclose to the registered organisation details of all prosecutions, successful or not, pending or completed and/or details of all convictions, recorded in the State or

¹ See Part 1 and Part 2 of Schedule 1 of The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 for a complete list of work or activities relating to Children or Vulnerable Persons that requires individuals to undergo Garda Vetting.

² For a full definition, see [Section 2](#) of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016.

³ For a full definition, see [Section 2](#) of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016.

elsewhere or “specified information” in respect of them held on record by An Garda Síochána.

E-Vetting

When a relevant organisation signs up for e-Vetting, an individual undergoing vetting is required to provide **proof of identity** to the relevant organisation which must then be validated before the completion of the online vetting application.

Information that may be disclosed as part of the vetting process

A vetting disclosure to a relevant organisation **will include details of a vetting subject’s criminal record (if any)**, which will include a record of any convictions, within or outside the state, for any criminal offence, as well as details of any ancillary or consequential orders made as a result of the conviction. The record will also include any pending criminal prosecutions against the person whether within or outside the state.

Convictions for certain minor offences in the District Court that are over seven years old, which are set out in [section 14A of the Acts](#), **will not be disclosed**. This does not apply to offences that are specified in [Schedule 3 of the Acts](#) and in [Schedule 1](#) of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.

A vetting disclosure can also include details of “**specified information**” which is information concerning a finding or allegation of harm received by the NVB from the Garda Síochána or a Scheduled Organisation pursuant to [section 19 of the Acts](#).⁴ The information must reasonably lead to a bona fide belief that the vetting subject poses a threat to children or vulnerable people.

If **specified information** is found, the vetting subject will be informed and told of the NVB’s intention to disclose the specified information. They will be given a summary of the relevant information and an opportunity to make a written submission in relation to the specified information. A determination will then be made as to whether the specified information will be disclosed. Upon making such a determination, there must be a bona-fide belief that the vetting subject poses a threat to children or vulnerable adults. The NVB must also be satisfied that the disclosure is reasonable, necessary and proportionate.⁵

Dispute Resolution

All relevant organisations participate in a dispute resolution procedure designed to address any instance in which a vetting subject disputes the details contained in the relevant Garda Vetting disclosure. The procedure may be activated by the vetting subject by indicating the basis of their dispute in writing to the liaison officer who

⁴ For a full definition see [Section 2](#) of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016.

⁵ Pursuant to section 18 of the Acts, a vetting subject can appeal the decision to disclose specified information.

received the Garda vetting disclosure. The liaison officer then resubmits the complete application file to the NVB for the conduct of further checks.

Age

If a candidate under the age of 18 requires vetting, (e.g. to enter a childcare course in college) permission from a parent or guardian is sought by An Garda Síochána prior to the individual undergoing vetting.

Re-Vetting

Relevant organisations may request individuals to undergo **re-vetting** after a suitable period of time has passed. This is also foreseen in the Acts. Section 20 provides for the re-vetting of employees and volunteers of specified organisations after a certain period. However, this section has not yet been commenced and the time-period has yet to be set down in regulations.⁶

Re-vetting ensures that only suitably qualified persons undertake work or activities with children or vulnerable adults. It is also consistent with the data protection requirement that personal data is **accurate and kept up to date**, particularly in situations where new information come to light that points to a substantive and immediate risk to children or vulnerable adults.⁷

The processing of personal data contained in vetting disclosures

Relevant organisations must ensure they are processing the personal data contained in a vetting disclosure in accordance with data protection law, and in particular with data protection principles. Some of the most relevant provisions are set down below.

Lawful basis for processing personal data relating to vetting disclosures

Data controllers must identify a **lawful basis** under Article 6 GDPR for any processing of personal data they undertake in relation to the vetting process. Article 6(1)(c) provides that processing is lawful when "*necessary for compliance with a legal obligation to which the controller is subject*". (Controllers are required under the Acts to carryout Garda Vetting on individuals working with or undertaking an activity, of which a necessary and regular part of it consists of having access to or contact with children or vulnerable adults).

⁶ The DPC notes that an inter-departmental group has been established to look at a number of issues with respect to Garda vetting, including re-vetting. A key focus of the interdepartmental group will be the introduction of a mandatory system of re-vetting every three years if individuals are largely carrying out the same role. However, re-vetting may be required earlier than three years if an individual's role has substantially changed or if new information has come to light. See Department of Justice Press Release "Minister McEntee moves to reform vetting arrangements and legislation", 26 April 2021 available here <https://www.gov.ie/en/press-release/c935f-minister-mcentee-moves-to-reform-vetting-arrangements-and-legislation/>

⁷ Article 5(1)(d) GDPR

Where data controllers are processing special categories of personal data, they must also identify a lawful basis under Article 9 GDPR. For more information, see the DPC's [guidance note](#) on the legal basis for processing personal data.

Data controllers processing personal data contained in a vetting disclosure will also include **personal data relating to criminal convictions and offences**.⁸ This includes:

- ☑ Personal data relating to a criminal conviction or offence,
- ☑ Alleged offences/ unproven allegations; (including potentially specified information),
- ☑ Any proceedings in relation to an alleged offence,
- ☑ Information relating to the absence of convictions.

In such instances, data controllers can only process criminal offence data if the processing is either under the control of official authority or authorised by EU or member state law. Section 55(1)(b)(v) Data Protection Act 2018 provides that the processing of criminal offence data is permitted when authorised by the law of the State. This would include Garda Vetting as foreseen under the Acts.

[Section 55\(1\) Data Protection Act 2018](#) requires that the processing of personal data in respect of criminal convictions and offences is subject to “**suitable and specific measures**” being taken to safeguard the fundamental rights and freedoms of data subjects. [Section 36 Data Protection Act 2018](#) sets out some suitable and specific measures a data controller may take to safeguard the fundamental rights and freedoms of data subjects. This means that relevant organisations must take suitable and specific measures to safeguard the personal data of individuals undergoing vetting. Some relevant measures include:

- ☑ Limitations on access to the personal data undergoing processing within a workplace,
- ☑ Strict time limits for the erasure of personal data and mechanisms to ensure that such time limits are observed,
- ☑ Targeted training for those involved in the processing,
- ☑ The appointment of a Data Protection Officer where it is not mandatory under the GDPR,
- ☑ Logging mechanisms to permit the verification of whether and by whom the personal data have been consulted and/or erased.

With respect to any further processing, it is an offence for a relevant organisation to use or disclose information contained within a vetting disclosure in a manner that is not foreseen by the Acts.⁹

⁸ Article 10 GDPR

⁹ Section 16(3) the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016

The use of information received by relevant organisations

In accordance with the data protection principle of **purpose limitation** set down in Article 5(1)(b) GDPR, vetting disclosures may only be used for the purpose for which they were provided to an organisation and vetting disclosures **should not be shared** with any other organisation. The sole exception to this is where relevant organisations have a joint employment agreement in writing in accordance with Section 12(3A) of the Acts.

It is also noted that under the Acts, a relevant organisation must receive a vetting disclosure for every individual undertaking relevant work or activities on behalf of that organisation.¹⁰ As mentioned, it is also an offence for a relevant organisation to use or disclose information contained within a vetting disclosure in a manner that is not foreseen by the Acts.¹¹

Secure storage of vetting information

In accordance with the principle of **integrity and confidentiality** set down in Article 5(1)(f) GDPR, vetting disclosures must be held in a secure manner with access restricted to essential authorised personnel. This is particularly important given that the disclosures may contain special categories of personal data and/or personal data relating to criminal convictions and offences.

Retention of vetting information

In accordance with the principle of **storage limitation**,¹² **personal data must be destroyed when the purpose for which it was sought has expired**. Vetting disclosures and all accompanying information such as identity documentation submitted as part of the vetting application should be routinely deleted, such as one year after they are received,¹³ unless the relevant organisation has a compatible lawful purpose for retaining the information.¹⁴ In order to demonstrate compliance with the Acts and in case of future queries in relation to a vetting disclosure, the reference number and date of disclosure can be retained on file which can be checked with the NVB.

With regard to all unsuccessful employment applications, the vetting disclosure and all other personal data collected in the recruitment process should not be kept beyond the statutory period in which a claim arising from the recruitment process may be brought. Data controllers should include the retention periods for vetting applications or the criteria used to determine that period in their data protection notices.

¹⁰ Section 12 the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016

¹¹ Section 16(3) the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016

¹² Article 5(1)(e) GDPR

¹³ Data Protection Commissioner, Annual Report 2017 p. 39

¹⁴ See guidance note on Legal Bases for Processing Personal Data for more information on further processing, available here <https://www.dataprotection.ie/sites/default/files/uploads/2020-04/Guidance%20on%20Legal%20Bases.pdf>.

Data Protection Impact Assessment

Data controllers must carry out a **data protection impact assessment** ('DPIA') for any type of processing that is likely to be **high risk** to the rights and freedoms of individuals. Where a data controller is processing on a large-scale special categories data or personal data relating to criminal convictions and offences, a data protection impact assessment must be carried out.¹⁵ Even if a data controller is not processing these types of large-scale personal data, in certain instances it may still be advisable to conduct a DPIA when processing vetting disclosures. For more information, on when a DPIA is required, see our [guidance note](#).

Data subject rights

Under the Acts,¹⁶ the relevant organisation shall provide a copy of the vetting disclosure to the applicant where it contains criminal record information or specified information. The relevant organisation should provide this information to the applicant as soon as practicable.

Individuals also have a right to make a **subject access request** to receive a copy of their personal data from the relevant organisation. For more information, see our guidance on [Data Subject Access Requests](#). It should also be noted that pursuant to section 4 of the Data Protection Act 2018, it is an offence for an employer to require an employee or prospective employee to make an access request related to their employment (a forced subject access request).

Where processing takes place for law enforcement purposes (such as preventing or detecting crime) the GDPR does not apply, and instead the 'Law Enforcement Directive' ('LED') covers these situations, the rules for which are primarily found in Part 5 of the Data Protection Act 2018 (which implements the LED into Irish law). It should be noted that the Law Enforcement Directive only applies to An Garda Síochána, not the organisation seeking vetting.

If, following the receipt of a Garda Vetting disclosure, a data subject believes that some of the information captured therein is inaccurate, they have a **right to request the rectification of their personal data** under the LED, which applies to matters of fact.¹⁷ This request should be made to An Garda Síochána and not the NVB. For example, if there is an inaccuracy in the details of a criminal conviction, a data subject can ask that this is rectified. This is in addition to the dispute resolution and appeal procedures foreseen in the Garda Vetting process.

However, this **right is not absolute** and in instances whereby it is not possible to ascertain whether the data is accurate, or where the personal data is required as evidence in proceedings before a court or tribunal or in another form of official inquiry, the Gardaí are required to restrict the processing of the data and shall not rectify the

¹⁵ Article 35 (3)(b)

¹⁶ Section 16 the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016

¹⁷ Section 92 Data Protection Act 2018

data.¹⁸ The right may also be restricted where it is considered necessary and proportionate in order to:

- ☑ avoid obstructing an official or legal inquiry, investigation or procedure;
- ☑ avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- ☑ protect public security;
- ☑ protect national security; or
- ☑ protect the rights and freedoms of others.¹⁹

Further Information

For further information on the data protection obligations of employers when they are acting as data controllers, see the '[For Organisations](#)' section of the DPC website.

For further information on the data protection rights under the GDPR, see the '[For Individuals](#)' section of the DPC website.

For more general information about Garda Vetting, we suggest consulting the [website](#) of the National Vetting Bureau.

¹⁸ Section 92(9) Data Protection Act 2018

¹⁹ Section 94(2) Data Protection Act 2018