

Garda Vetting is a procedure through which An Garda is asked, with a person's permission, to confirm whether or not that individual has been convicted of a crime. Employers use the procedure to ensure that individuals convicted of abuse or other crimes are not employed or offered other positions of responsibility for work with children, young people or vulnerable adults.

To ensure compliance with the Health Act 2007 (Care and Welfare) Regulations 2009 and National Quality Standards for Residential Care Settings for Older People in Ireland (the Standards), the registered provider must not employ a person to become a member of staff until they have undergone Garda vetting.

The requirement is for both existing staff and those that are entering into the employment of the facility for the first time.

Garda Vetting is facilitated by Nursing Homes Ireland at a fee of €10 for members and €25 for non-members.

Some common issues arise in the fulfilment of this obligation, specifically in relation to the following topics:

- Recruitment Policy
- Retrospective Vetting – necessity for disclosure
- Policy in relation to offenders
- The Vetting Process
- Data Protection

Retrospective Vetting

The requirement for Garda Vetting is one which has been imposed on organisations by a third party. It is a regulatory requirement and, therefore, for continued employment every employee must subject themselves to Garda Vetting, it is a supplementary term and condition of their contract of employment.

Should current employees object to vetting it may affect their continued employment with the organisation.

Each member of staff should complete the Garda Vetting form using the guidelines prescribed by Nursing Homes Ireland. It is advised that prior to vetting each staff member is given an opportunity to disclose any information which they feel may be reported during the vetting process.

Policy in relation to offenders

Where the Vetting reports offences for a particular staff member it does not necessarily warrant either disciplinary action or summary dismissal. The nature of the offence, the age of the offence and prior disclosure should all be considered. The employment record of the employee, their tenure of service and nature of employment are also relevant factors.

Where an offence, regardless of its nature, is reported that has not previously been disclosed by the employee there may be disciplinary issues surrounding fidelity as every contract of employment contains an implied duty of fidelity.

While a requirement exists under the current legislation for employees to undergo vetting, no specific guidance is provided in relation to the handling of employees that currently have offences on record. In the Republic of Ireland there is no expungement of sentences, so offences reported by the Central Vetting Unit will be for the entirety of the individuals life.

It is up to each Employer to decide the type of offence that will require further action and the process for dealing with such a situation. In all circumstances where disciplinary action is necessary the organisation should follow the Labour Court Code of Practice or speak to an SFA representative for procedural advice.

Recruitment Policy

The new regulations mean that every organisation should build Garda Vetting into its recruitment process as a condition of offer. The extent to which an offence will exclude a candidate is defined by each organisation. Criminal conviction is not one of the nine grounds under the Equality Act and therefore the legislation does not prevent an organisation from excluding a candidate from employment if they have previously committed an offence.

A blanket ban in a situation like this is inadvisable and it is suggested that the organisation take into account the relevance and timeframe of the offence.

The time frame for vetting currently is approx 8-12 weeks, during this time the organisation may wish to have the person in employment. Where this is the case there should be a provision for increased supervision along with the option for summary dismissal if report returned is unsatisfactory.

The Vetting Process

Nursing Homes Ireland is the only Organisation that can facilitate Vetting for Nursing Home staff.

Data Protection

In all cases the information both collected and returned during the vetting process is highly sensitive and the employer should be aware of the requirements that apply when collecting, processing and storing sensitive information. The Data Protection Acts, 1988 and 2003 legislate this area.

This legislation is far reaching however the fundamental element for the purpose of this guide is in relation to the duties of the data controller. For the purposes of the Acts a data controller is a person who, either alone or with others, controls the contents and the use of personal data. The duties of this person are as follows:

1. The data must be *obtained and processed fairly*.

2. The data should be *accurate and up to date*.
3. The data shall be *kept only for one or more specified and lawful purpose*.
4. The data shall *not be used or disclosed in any manner incompatible with those purposes*.
5. The data shall be *adequate, relevant and not excessive in relation to that purpose/purposes*.
6. The data *must not be kept for longer than is necessary*.
7. *Appropriate security measures* must be taken against unauthorised access to, or alteration, disclosure or destruction of, the data and against its accidental loss or destruction.

Whilst every care was taken in the preparation of the information contained in this guide, no liability is accepted for error or omission. The SFA and NHI staff are always available to give detailed advice relating to any issue you may have.

Disclaimer

The attached document is an original response that has been received by Independent Nursing Homes Ireland Ltd. (NHI) from An Garda Siochana, Central Vetting Unit in response to a request raised by you.

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