



Relate

Contents

Page No.

1. **Garda vetting**
3. **Spent convictions**
4. **Garda Síochána Ombudsman Commission**
6. **Garda Síochána Inspectorate**
6. **Policing Authority**
7. **New protections for victims of crime**

The journal of developments in social services, policy and legislation in Ireland

Garda vetting

The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 came into effect on 29 April 2016. The Acts mean that people working with children or vulnerable people must be vetted by the Garda Síochána National Vetting Bureau. Prior to this legislation, Garda vetting was carried out by the Garda Central Vetting Unit. Organisations requested to be registered with the Garda Central Vetting Unit and the Unit used its own policies and discretion in relation to registration. This meant that organisations not registered with the Unit could not request Garda vetting for their personnel. The commencement of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 means that certain organisations must register with the National Vetting Bureau and must have certain people in their organisation vetted.

Who must be vetted?

Under the Acts, anyone who performs "relevant work or activities" must be vetted. "Relevant work or activities" includes any activity which consists mainly of access to or contact with children or vulnerable people. A child is anyone under the age of 18, and a vulnerable person is generally someone who suffers from a mental or physical impairment or disability.

"Relevant organisations" must obtain Garda vetting before allowing anyone to perform "relevant work or activities", for example, staff, volunteers and those on student placements. A "relevant organisation" is a person, company or group which employs or permits any person to carry out relevant work or activities.

INSIDE: The National Vetting Bureau p2, Vetting process p2, Re-vetting p3, Retrospective vetting p3, Disputes and appeals p3, Data protection and spent convictions p4, Making a complaint to GSOC p4, Complaint resolution procedures p5, Penalties for making a false complaint p5, Recent changes under the 2015 Act p5, Functions of the Inspectorate p6, Functions of the Policing Authority p6, Policing Authority, GSOC and Garda Síochána Inspectorate p7

Some examples of relevant work or activities include:

- Childcare services
- Schools
- Hospitals and health services
- Residential services or accommodation for children or vulnerable people
- Treatment, therapy or counselling services for children or vulnerable people
- Provision of leisure, sporting or physical activities to children or vulnerable people

There are certain exceptions to this list such as where a private arrangement is made between the vulnerable individual (or a member of their family) and the person who will carry out the activity, for example, informal babysitting.

Non-Act vetting

The National Vetting Bureau also performs "non-Act" vetting. This type of vetting is not covered by the Acts but is required under other legislation. For example, the Bureau will vet people applying to work for certain bodies such as the Gardaí and the Courts Service. The process for non-Act vetting is the same as for vetting under the Acts, except that specified information (see below) is not disclosed in non-Act vetting.

The National Vetting Bureau

The National Vetting Bureau (formerly the Garda Central Vetting Unit) is the single point of contact in the Gardaí which has responsibility for conducting Garda vetting.

The National Vetting Bureau's primary functions include:

- Processing vetting applications received from registered organisations
- Making enquiries with the Gardaí to find out if the person they are vetting has any criminal record or specified information relating to them
- Making any additional enquiries that the Bureau considers necessary to confirm the identity of anyone being vetted
- Assessing "specified information" and deciding if this information should be disclosed under a vetting application. "Specified information" is information, other than criminal convictions, that leads to a genuine belief that a person poses a threat to children or vulnerable people.
- Making vetting information available to relevant organisations

Vetting process

Relevant organisations must register with the National Vetting Bureau. An organisation registered with the Garda Central Vetting Unit before the new Acts commenced automatically became a registered organisation. Only registered organisations can request Garda vetting for someone. Once registered, relevant organisations must appoint a "liaison person". The liaison person makes vetting applications to the Bureau and receives the results of vetting applications. The liaison person must also be vetted and be accepted by the Bureau as being suitable. Organisations must ensure the details of the liaison person, such as their address, are kept up-to-date with the Bureau.

The vetting process can be done online using the e-vetting service on vetting.garda.ie. This service allows organisations to complete the process online and to track the progress of these requests until the disclosure is made. A paper application form is also available. If the person being vetted is under the age of 18, their parent or guardian must sign a consent form.

The organisation provides the person being vetted with a vetting invitation form. This must be completed and returned to the relevant organisation along with proof of identity. The organisation confirms the proof of identity and sends the person a vetting application form which must be completed and returned to the organisation. The organisation submits the application form to the Bureau which it processes and, once completed, forwards a vetting disclosure to the organisation.

When the Bureau receives a vetting application, it makes the necessary enquiries to establish the person's criminal record and record of specified information. Once these enquiries are complete, a vetting disclosure for the person is sent to the liaison person within the organisation.

When a person is vetted by the Bureau, their criminal record (if any) is disclosed only to the liaison person in the organisation. A vetting disclosure includes details of:

- Any convictions
- Any pending prosecutions
- A statement of specified information, or
- A statement that the person being vetted has no criminal record or specified information relating to them

A "criminal record" includes a person's criminal convictions in Ireland and abroad and any court orders made based on those convictions. It also includes a record of any pending criminal prosecutions in Ireland or abroad.

District Court convictions over seven years old for some minor offences will not be included in Garda vetting disclosures. These are known as spent convictions. This does not apply if the person has more than one conviction (unless the convictions arose out of the same incident). In some cases, a person with more than one conviction can still have their convictions spent, for example, for some motoring offences (see page 4). This provision does not apply to “excluded offences” listed in the Acts, for example, sexual offences or offences involving violence against another person. Such offences will be disclosed in a vetting disclosure.

Re-vetting

Garda vetting must be kept up-to-date. Someone who received a clear vetting disclosure may commit an offence after that disclosure. The new Acts provide for the re-vetting of employees where their original Garda vetting was some time ago. Regulations to be made by the Minister for Justice and Equality will set out how often people should be re-vetted. Until then, good practice suggests that re-vetting should be carried out every five years.

Retrospective vetting

Since the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 came into effect, people in relevant organisations who have not been Garda vetted must not perform relevant activities. These organisations which have people working for them who have not been vetted but who now must be vetted under the new Acts, should apply for vetting for these people immediately. The closing date for these retrospective vetting applications is 31 December 2017. Failure to obtain vetting where it is required is a criminal offence. The directors and secretary of the organisation are personally liable for prosecution for this offence.

Scheduled organisations (an organisation which is specified in Schedule 2 of the Acts) must notify the Bureau if they have *bone fide* concerns about a person following or during an investigation or inquiry conducted by the organisation. It must be reported to the Bureau if there is a concern that the person:

- May harm any child or vulnerable person
- May cause any child or vulnerable person to be harmed
- May put any child or vulnerable person at risk of harm
- May attempt to harm any child or vulnerable person, or
- May incite another person to harm any child or vulnerable person

Disputes and appeals

If someone wants to dispute the contents of their vetting disclosure, they can refer the issue to the Bureau. The person should outline their issue in writing and give this statement to the liaison person for their organisation. The liaison person then submits the dispute to the Bureau. The Bureau will make enquiries and conduct further checks. If the content is still disputed by the person, further validation procedures will be undertaken in order to resolve the matter at issue in the dispute. At the conclusion of the dispute resolution procedure, decisions in respect of the suitability of the vetting subject for a position within the organisation are solely the responsibility of the organisation concerned.

When the Bureau discovers specified information about a person being vetted, the Chief Bureau Officer assesses whether this information should be disclosed. The Bureau will write to the person with a summary of the specified information and ask them to make a written submission stating why it should not be disclosed. The specified information will be released to the organisation in cases where the Chief Bureau Officer reasonably believes that the information gives rise to a genuine concern and that the disclosure is necessary for the protection of children or vulnerable people. The Bureau will tell the person if it intends to disclose specified information and allows them 14 days to appeal the decision. An appeal may include an oral hearing before an appeals officer. An appeals officer can uphold or set aside the decision of the Chief Bureau Officer.

The decision of an appeals officer can be appealed to the High Court on a point of law and the decision of the High Court is final in such matters.

It is a criminal offence to make a false statement for the purposes of obtaining a vetting disclosure or to falsify or misuse a vetting disclosure. For example, it is an offence if the person being vetted lies on their vetting form or if the liaison person lies on a form to get someone a clear disclosure.

Spent convictions

The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 came into effect on 29 April 2016. Under this Act, a range of offences will become “spent” after seven years, where the person has only one conviction and the offence is not an “excluded offence” (see page 4). In some cases, a person with more than one conviction can still have their convictions spent, for example, for some motoring offences. This means that an adult convicted of an offence covered by the Act does not have to disclose the

conviction when seven years have elapsed from the date of that conviction (except in certain circumstances). Effectively, the conviction will disappear from a person's criminal record after seven years.

Convictions which may be regarded as spent after seven years are:

- One or more convictions in the District Court for motoring offences (except for convictions for dangerous driving which are limited to a single conviction)
- One or more convictions in the District Court for minor public order offences
- A single conviction (or more if committed simultaneously - other than a motoring or public order offence) in the District or Circuit Court which resulted in a term of imprisonment of 12 months or less (or a fine)

The person must have complied with the sentence and any orders imposed on them as a result of that conviction to qualify for spent convictions under the Act.

The Act does not apply to convictions for a sexual offence or offences which were tried in the Central Criminal Court. These are known as "excluded offences".

In general, people do not have to disclose spent convictions when supplying information on past convictions, for example, when seeking employment or completing a vetting application. They cannot be penalised or otherwise prejudiced for not disclosing a spent conviction.

Exceptions

Spent convictions must still be disclosed in certain circumstances, including:

- When applying to work for certain bodies, such as the Gardaí, the Courts Service, the Defence Forces and certain government departments
- When asked by a court of law and the court determines justice requires disclosure. However, the court can prevent any publication of such a disclosure.
- As part of any court proceedings involving guardianship, custody or general care of a child or vulnerable person
- When asked during an interview by a member of the Gardaí following an arrest
- When applying to enter or remain in the State or when applying for Irish citizenship
- When applying for insurance where a person's conviction relates to fraud or dishonesty regarding an insurance policy
- When asked in another country about prior convictions, or when asked in Ireland due to a foreign legal matter

- When applying for certain licenses, permits and authorisations, for example, taxi, truck, private security, firearms or banking licenses

Data protection and spent convictions

Under the Data Protection Act 1988, people have the right to access personal data held by the Gardaí about them. If someone requests a copy of their criminal record from the Gardaí, the record will be provided in two parts so that spent convictions are presented separately from any other convictions. This means that the person can provide a clean record if their convictions are spent.

The Data Protection Commission has recommended that employers should only ask a prospective employee if they have any "relevant criminal convictions". Since the commencement of the Act, spent convictions need not be disclosed unless one of the exceptions applies (see above).

However, some organisations must conduct Garda vetting as required by law (see page 2). A vetting applicant does not need to disclose spent convictions in their application form.

Garda Síochána Ombudsman Commission

The Garda Síochána Ombudsman Commission (GSOC) was established in 2007 under the Garda Síochána Act 2005. GSOC is an independent, statutory agency that deals with complaints from the general public about members of the Gardaí.

In 2015, just under 2,000 complaints were received by GSOC. Of these, 1,102 were admissible. A complaint may be inadmissible for a number of reasons, for example, it was not made within the timeframe allowed. Issues relating to abuse of authority and neglect of duty by members of the Gardaí were the most common complaints.

The main functions of GSOC are:

- To deal with complaints from the public concerning the conduct of Gardaí (including off-duty and former Gardaí)
- To conduct other investigations such as those referred to it by the Policing Authority (see page 6) or the Minister for Justice and Equality
- To examine practices, policies and procedures of the Gardaí to ensure there are not common practices that could lead to complaints or which have been deemed inappropriate by an independent review

Making a complaint to GSOC

You can complain to GSOC about the conduct of a Garda which is alleged to be misbehaviour. Misbehaviour is conduct which constitutes a criminal offence or a breach of discipline.

A breach of discipline includes:

- Discourtesy
- Neglect of duty
- Falsehood or prevarication
- Abuse of authority
- Corrupt or improper practice
- Misuse of money or property in the custody of the Gardaí
- Being drunk or affected by drugs
- Discreditable conduct

You can complain if you are directly affected by the conduct, or if you witnessed it. Someone else can complain on your behalf if you agree to that, or if you are unable to agree to it because of your age, or because of a physical or mental condition. You must make the complaint within 12 months of the conduct but GSOC may extend this time limit if there are good reasons.

The Garda Commissioner must refer to GSOC any matter that appears to show that the conduct of a Garda may have resulted in the death, or caused serious harm to a person.

GSOC can instigate an investigation itself if it appears that a Garda has committed an offence or behaved in a manner that would justify disciplinary proceedings. The Minister for Justice and Equality may also refer such a situation to GSOC.

Complaint resolution procedures

GSOC has a number of procedures for dealing with complaints depending on the type and nature of the complaint.

Informal resolution

Some complaints can be resolved informally, without the need for investigation. You and the Garda must agree to the complaint being dealt with in this way. You can request a formal investigation at any stage of this process.

GSOC has developed guidelines for the resolution of complaints through mediation or other informal means. If you decide to resolve your complaint by informal means, this will be undertaken by a GSOC case officer or by a Garda of supervisory rank. If it is decided to use mediation, GSOC will nominate a trained mediator. You can request a different mediator if you like.

If your case is resolved informally, the complaint is not recorded on the Garda's personnel file and statements made

during the course of the informal resolution or mediation process cannot be used in any civil or criminal proceedings, including disciplinary procedures.

Formal resolution

If the complaint is not suitable for informal resolution or the informal process fails, GSOC may apply their formal complaint procedures.

If the complaint relates to the death of, or serious harm to, a person as a result of Garda operations or while the person was in Garda custody or care, GSOC must immediately direct a designated officer to examine the complaint and make a recommendation about how it should be investigated.

GSOC may decide to refer your complaint to the Garda Commissioner for investigation by the Gardaí to see if there was a breach of discipline under the Garda disciplinary regulations.

GSOC may decide to supervise a Garda investigation of your complaint. In this case the Gardaí report on the progress of the investigation to GSOC, in accordance with agreed guidelines. GSOC can direct the Garda investigation, as it sees fit, and it can take over the investigation if it wants.

Complaints which have been investigated by one method may subsequently be investigated by another. If you are not satisfied with the outcome of the Garda investigation, you can ask GSOC to review your case.

If a complaint is upheld

If it is found that there was a breach of discipline under Garda disciplinary regulations, GSOC can recommend disciplinary proceedings to the Garda Commissioner. If it is felt that criminal proceedings should be considered, GSOC can send a file on the case to the Director of Public Prosecutions.

If there is not enough evidence to support either of these actions, the case may be dismissed. GSOC has no powers to impose penalties or sanctions itself.

Penalties for making a false complaint

It is an offence to provide false or misleading information in connection with a complaint or investigation and you are liable on conviction to a class C fine or imprisonment for up to six months, or both.

Recent changes under the 2015 Act

The Garda Síochána (Amendment) Act 2015 amends the

Garda Síochána Act 2005 and other legislation. The main changes are:

- **Investigative powers:** GSOC investigating officers now have similar powers to Gardaí in relation to intercepting communications for the purposes of a criminal investigation and carrying out surveillance in connection with a criminal investigation into an arrestable offence
- **Referral to GSOC:** the Act allows the Minister for Justice and Equality to refer matters to GSOC for investigation even if the identity of the Garda involved is not known at the time of the investigation or where the investigation may also involve a person who is not a Garda
- **Garda Commissioner:** the Act brings the Garda Commissioner within the scope of GSOC investigations. It also provides that there is a statutory duty on the Garda Commissioner to ensure that information is provided to GSOC for the purposes of an investigation as soon as practicable.
- **Own initiative:** GSOC may carry out an examination, on its own initiative, of practices, policies or procedures of the Gardaí for the purpose of preventing or reducing complaints

Garda Síochána Inspectorate

The Garda Síochána Inspectorate was established in July 2006 under the Garda Síochána Act 2005. It deals with the overall policing performance of the Gardaí with regard to its operation and administration and it advises on best policing practice. More specifically, the Garda Inspectorate's role is to inspect the functions and operations of the Garda Síochána and to conduct research with a view to ensuring the resources available to the Garda Síochána are applied most appropriately and effectively with reference to the best standards of comparable police services.

Under Section 115 of the Garda Síochána Act 2005, the Inspectorate will consist of three members, including a Chief Inspector and at least one woman and one man appointed by the Government. The members will have served in the police service of another state or have obtained the relevant experience which in the opinion of the Government is suitable for the role of Inspector. A member or former member of the Gardaí is not eligible to apply for the position of Inspector.

Functions of the Inspectorate

The Garda Inspectorate is a statutory body used by the Minister for Justice and Equality and the Policing Authority

for specific review and recommendation functions only. It does not generally deal with members of the public and does not handle complaints or requests from members of the public. This is the role of GSOC.

The Garda Inspectorate carries out the following functions:

- Undertaking inspections or inquiries in relation to the operation and administration of the Gardaí. This is done on its own initiative or at the request of the Policing Authority or the Minister for Justice and Equality.
- Preparing and submitting reports on inspections or inquiries and, if required, reporting specifically on the operation of the Gardaí over a specified period, for example, during the implementation of a new policy or procedure
- Providing advice to the Policing Authority or the Minister for Justice and Equality with regard to best international policing practices as required

The Garda Inspectorate published its most recent report in November 2015. The Report makes 81 recommendations with the aim of ensuring the greatest proportion of Garda personnel are deployed to front-line policing services.

Policing Authority

The Policing Authority is an independent statutory body established on 1 January 2016 under the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015. The Authority's role is to monitor the performance of the policing services provided by the Garda Síochána as a whole, particularly in terms of ensuring that the resources invested are used to provide an effective, efficient police service.

The Policing Authority consists of nine people and must be made up of at least four men and four women. Serving members of the Gardaí and civilian staff of the Gardaí are not eligible to become members.

Functions of the Policing Authority

The Policing Authority is responsible for the following functions:

- Overseeing the performance of the Gardaí of its functions relating to policing services
- Making nominations to the office of Garda Commissioner and Deputy Garda Commissioner
- Appointing people to the ranks of Assistant Garda Commissioner, Chief Superintendent and Superintendent
- Removing or recommending the removal of officers who work in the above ranks

- Establishing a code of ethics regarding codes of conduct and practice for Gardaí
- Approving a strategy for the policing of the State and an annual policing plan on the arrangements for policing the State
- Issuing guidelines for the establishment and maintenance of a joint policing committee
- Monitoring and assessing the measures taken by the Gardaí in relation to recommendations made in a report of the Garda Inspectorate

The Authority may establish committees to assist and advise it in relation to the performance of its role. The Authority recently released its first draft code of ethics for members of the Gardaí. The code includes standards of conduct and practice for Gardaí. It also contains provisions to encourage the reporting of wrong-doing among members.

The Authority is also responsible for the appointment of the civilian staff of the Gardaí of grades that are equivalent to or above that of Chief Superintendent.

Policing Authority, GSOC and Garda Síochána Inspectorate

The Policing Authority, GSOC and the Garda Síochána Inspectorate together carry out a range of functions that aim to provide a better policing service. Their respective roles are complementary to each other.

The Policing Authority does not have an inspection role. Inspection is only performed by the Garda Inspectorate. The Authority can ask the Inspectorate to carry out an inspection or inquiry on a particular matter. It is expected that the Authority will monitor and assess the response of the Garda Síochána to recommendations made by the Inspectorate. In this way the Authority acts as an oversight body, separate from the inspectorate body.

The Policing Authority does not deal with complaints against individual members of the Garda Síochána. This is the role of GSOC. However, its role does include the monitoring of complaints received by GSOC but only with a view to identifying trends and addressing issues of concern.

The Garda Síochána Inspectorate carries out inspections and research in relation to particular aspects of the operation and administration of the Garda Síochána, as requested to do so by the Minister or the Authority. The Inspectorate can also undertake inspections on its own initiative. Following an inspection, the Inspectorate will report on and provide advice to the Minister or the Authority with regard to its findings and best policing practice as required.

New protections for victims of crime

The EU Victims' Rights Directive came into force on 16 November 2015. The Directive strengthens the protections for victims of crime particularly where they may be at risk of retaliation for making a complaint. The Directive will be incorporated into Irish law in the near future by the Criminal Justice (Victims of Crime) Bill 2015. However, until that legislation is commenced, the Directive itself has direct effect in Ireland which means that it is law in Ireland since 16 November 2015.

Aims of the new legislation

The primary aim of this legislation is to formalise the rights of victims of crime in terms of the information they are entitled to, decisions about whether to prosecute, and other matters which may be of ongoing concern to victims.

The legislation includes the following main provisions:

- On their first contact with authorities, victims of crime must receive information about victim support services and the procedures for making criminal complaints
- Victims should be given the contact details for communication with law enforcement about their case; protection measures available; provision of legal assistance if required; and their rights for making a complaint against the policing authorities themselves
- Victims have a right to receive information regarding any decision to prosecute in their case (and the reasons for that decision) as well as the time and place of any trial in the matter. Victims must also be informed of the subsequent release or escape of the offender(s).
- Where a decision is made not to prosecute an alleged offence, the victim has a right to have that decision reviewed
- Victims must be provided with any translation services they require throughout the process
- Where an offender is going to engage with restorative justice services, there must be measures to safeguard the victim at all times. (Restorative justice refers to programmes where the victim agrees to discuss the crime with the offender. These discussions are facilitated by a third party practitioner.)
- Confidential victim support services will be provided free of charge to victims and their families in accordance with their needs. The victim support services must now provide a minimum standard of support. These standards are set out in the Directive.
- Victims have a right to be heard during the trial of the matter

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

Head office t 0761 07 9000
Ground Floor f 01 605 9099
George's Quay House e info@ciboard.ie
43 Townsend Street w citizensinformationboard.ie
Dublin 2
D02 VK65

- Victims will have the right to legal aid, the right to have property returned, reimbursement of expenses incurred when participating in criminal proceedings, and the right to a decision on receiving compensation from the offender
- Victims must be given all reasonable protection from victimisation, intimidation and retaliation. This includes avoiding contact between offender and victim in court and during the investigation process.
- Certain victims will be entitled to specific protections based on their characteristics, the nature of the crime and the circumstances of the crime, for example, cases of sexual violence, exploitation, hate crimes and terrorism. Child victims are presumed to have specific protection needs.

These newly introduced rights of the victim will not impact on the rights of an accused to due process and natural justice. Article 6 of the European Convention of Human Rights provides for the accused's right to a fair trial. This is also enshrined in the Irish Constitution under Article 38 and Article 40.

The information in *Relate* is intended as a general guide only and is not a legal interpretation

Relate email subscription

If you would like to receive *Relate* by email you can subscribe by sending an email with the subject line SUBSCRIBE to relate@ciboard.ie



Citizens Information

LOG ON

citizensinformation.ie

CALL

0761 07 4000 Mon to Fri, 9am to 8pm

DROP IN

260 locations nationwide