

Employment & Employee Benefit Group

# The National Vetting Bureau (Children and Vulnerable Persons) Act 2012

## **The National Vetting Bureau (Children and Vulnerable Persons) Act 2012**

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This article is relevant to any organisations or individuals who work with (or carry out voluntary activities with) children or vulnerable persons. It is anticipated some of the provisions of The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (the “Act”) will come into force in March 2013. The Act will introduce compulsory vetting of employees by organisations who work with children or vulnerable persons and sets out the procedures for organisations for making a vetting application to the Bureau.

### **Effect of the legislation**

At present, registered organisations who employ individuals or engage volunteers who have access to children or vulnerable people can submit requests to the Garda Central Vetting Unit on a voluntary basis. The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 introduces compulsory vetting of employees and volunteers for the first time in Ireland, establishes the procedures for vetting such employees and the sanctions for failing to properly vet employees.

### **Who is affected and how?**

Under the Act, organisations which permit or arrange for any person to undertake work with children or vulnerable persons shall not be permitted to employ or engage such persons unless the organisation has received a vetting disclosure from the Bureau. The legislation will apply to a wide range of organisations including commercial entities, voluntary bodies, sporting organisations and organisations in the health sector. The legislation does not apply to individuals who provide occasional assistance on a voluntary basis at community and sporting events.

It will be an offence for a person to fail to comply with the duty to properly vet individuals engaged to perform relevant work or activities relating to children, however it will be a defence for a person to show that he or she did not know, or could not have been expected to know that the work or activity in which the person was engaged constituted relevant work or activity under the legislation.

### **Requirements of relevant organisations**

Once the commencement order has been signed by the Minister any relevant organisations who are not already registered must apply to the Bureau to be registered. The organisation must also nominate a “liaison person” who will be responsible for co-ordinating the organisation’s vetting applications and that person themselves must be the subject of a vetting disclosure from the Bureau. The Bureau may refuse to register a person as a liaison person if it considers them to be unsuitable as a result of the vetting process.

The organisation will then be obliged to vet all of its future employees who work with children or vulnerable persons prior to commencing employment and will also have to retrospectively vet any current employees who have not previously been the subject of a vetting application.

### **The Vetting Application**

Following the receipt of an application for a vetting disclosure by a liaison person the Bureau will undertake an examination of its own database and Garda Síochána records to establish whether it holds any criminal records or any “specified information” relating to the applicant. Specified information is information acquired during an investigation or inquiry by the Garda Síochána or a specified organisation (including the HSE, the Teaching Council, the Medical Council and HIQA) that gives rise to a bona fide concern that a person may harm a child or vulnerable person.

Where the Bureau considers that it has ‘specified information’ concerning a vetting subject the matter will be referred to the Chief Bureau Officer for assessment as to whether the information should be disclosed. The Chief Bureau Officer will notify the vetting subject of the referral, provide a summary of the specified information, and inform him or her of their right to make written submissions in relation to the information.

The specified information can only be disclosed if the Chief Bureau Officer believes the specified information in question gives rise to a bona fide concern that the vetting subject may harm, attempt to harm a child or vulnerable person. The Chief Bureau Officer must also be satisfied that the disclosure is necessary, proportionate and reasonable in the circumstances in order to protect children or vulnerable persons. The vetting subject must be informed of the intention to disclose the information and informed that he or she may appeal the decision.

Where an employer receives a vetting disclosure containing details of criminal records or specified information it must provide a copy of the disclosure to the vetting subject. The organisation may then take the disclosed information into account when assessing the person’s suitability to work in that particular role.

### **Implications for employers**

Where employers are affected by this legislation they should make it clear to prospective job applicants that their application is subject to vetting by the National Vetting Bureau. The requirement to vet employees will continue on an on-going basis and there will be a requirement to vet employees again after a period of time which will be specified by the Minister for Justice in due course. Again employment contracts and staff handbooks should reflect the fact that an employee’s position may be subject to future vetting by their employer and that their continued employment may be affected by information disclosed as part of future vetting applications.

For further information please contact a member of our Employment & Employee Benefits Group.

*This note is intended to provide a general overview and guidance. It is given wholly without any liability or responsibility on the part of Eugene F. Collins and does not replace the necessity to obtain legal advice. ©Eugene F. Collins 2013*