

**NHI Guidance for Providers & HR Managers**

**Determining the Vetting Requirements**  
**And**  
**Managing Vetting Procedures in Nursing Homes**

**October 2017**

**Legislation**

**Implications**

**Criteria**

**Examples**

**Vetting Policy**

**Joint Agreements**

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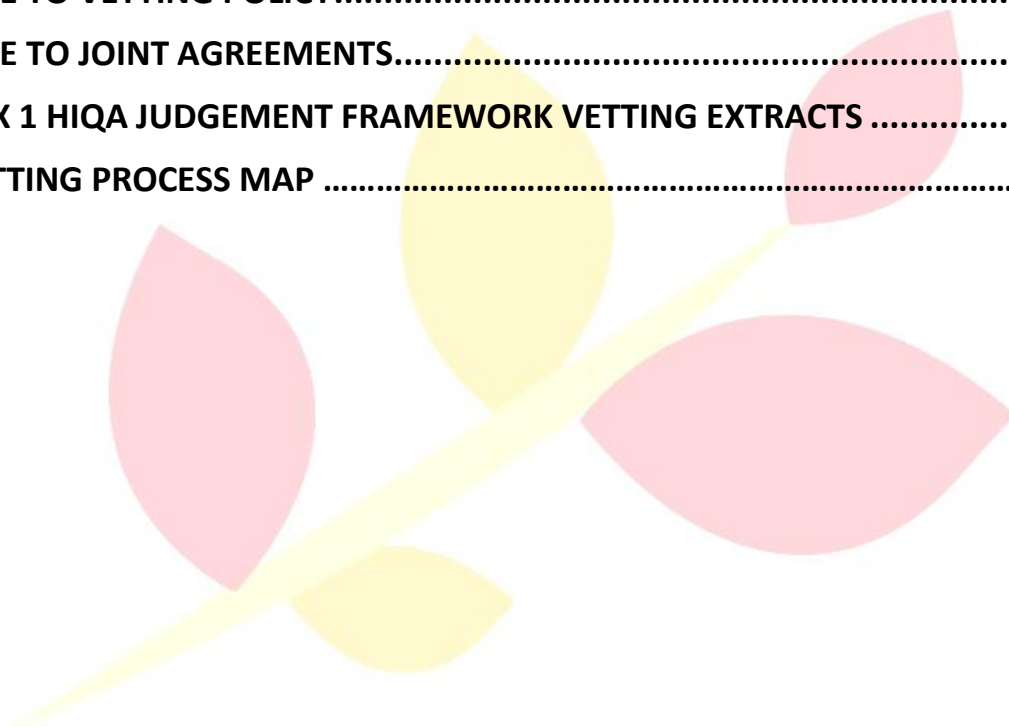
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## LEGISLATION:

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Nursing home providers should be aware of the following legislation which sets out Vetting requirements that impact nursing homes:

1. Health Act 2007 (Care and Welfare of Residents in Designated Centres For Older People) Regulations 2013 (as amended)
2. Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2015
3. National Vetting Bureau (Children And Vulnerable Persons) ACT 2012 to 2016

More detail on the Vetting requirements under these acts is set out below:

### **1. Health Act 2007 (Care and Welfare of Residents in Designated Centres For Older People) Regulations 2013 (as amended)**

#### **Key Points that are relevant to nursing home Vetting**

##### **Documents to be held on staff (relevant to Vetting)**

SCHEDULE 2 Regulations 14 and 15 - DOCUMENTS TO BE HELD IN RESPECT OF THE PERSON IN CHARGE AND FOR EACH MEMBER OF STAFF (where staff is defined in the regulations as “persons employed by the registered provider to work at a designated centre and includes persons placed in employment with the registered provider concerned by an employment agency used by that registered provider but does not include persons who provide professional services to the designated centre and to whom the registered provider pays fees for such services or a volunteer”)

1. Evidence of the person’s identity, including his or her full name, address, date of birth and a recent photograph;
2. ***A Vetting Disclosure in accordance with the National Vetting Bureau (Children and Vulnerable Persons) Act 2012;***

*Please note: there are other requirements for information that must be sought that are in addition to the Vetting information required and as outlined above.*

##### **Volunteers**

30. The person in charge shall ensure that people involved on a voluntary basis with the designated centre:

3. ***provide a Vetting Disclosure in accordance with the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.***

**Please see Relevant HIQA Standards and Judgement Framework Extracts in Appendix 1 and 2.**

##### **Protection**

8. (1) The registered provider shall take all reasonable measures to protect residents from abuse.

In this context “abuse” means mistreatment of any kind and includes the physical, financial or material, psychological, sexual or discriminatory mistreatment or neglect of a resident

**What is considered reasonable is not defined under the legislation so the general meaning applies:** Fair and sensible. Based on good sense. As much as is appropriate or fair; moderate. (OxfordDictionaries.com, Oxford University Press)

## Visits

11. (1) The registered provider shall make arrangements for a resident to receive visitors.

(2) The person in charge shall ensure that—

(a) in so far as is reasonably practicable, visits to a resident are not restricted, unless—

(i) such a visit would, in the opinion of the person in charge, pose a risk to the resident concerned or to another resident, or

(ii) the resident concerned has requested the restriction of visits.

(b) having regard to the number of residents and needs of each resident suitable communal facilities are available for a resident to receive a visitor, and, in so far as is practicable, a suitable private area, which is not the resident's room, is available to a resident to receive a visitor if required.

Under Schedule 4 of the Regulations, registered providers are required to keep a record of all visitors to the designated centre.

## **2. Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2015**

### **SCHEDULE 2 ADDITIONAL INFORMATION AND DOCUMENTS TO BE PROVIDED**

#### **Part A: Registration**

Information required in respect of a registered provider or intended registered provider where the registered provider or intended registered provider is a natural person, a partnership, a company or an unincorporated body.

And also

Information required in respect of the person in charge or proposed to be in charge and any other persons participating in or proposed to be participating in the management of a designated centre for older people:

*"2. A vetting disclosure in accordance with the National Vetting Bureau (Children and Vulnerable Persons) Act 2012."*

### **Health Act Implications for Vetting in Nursing Homes**

The Provider and all of his/her employees, including all volunteers engaged directly by the provider must have a Vetting Disclosure on file.

The Provider needs to take reasonable/appropriate measures to protect residents from abuse, which may include such measures as: getting assurances that people other than staff and volunteers are appropriately Vetted if they carry out *Relevant Work* on its behalf, or obtaining criminal record clearance from other jurisdictions where staff and volunteers may have resided.

The Provider must not restrict visits to a resident, organised/wanted by the resident, unless the person in charge believes the visitor poses a risk to that or any other resident.

### 3. NATIONAL VETTING BUREAU (CHILDREN AND VULNERABLE PERSONS) ACT 2012 to 2016

This title refers to the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and Part 3 of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 together. These acts were commenced on 29 April 2016 and provide for mandatory Vetting for any organisation who carries out work or activity, a **necessary and regular** part of which consists mainly of employees having access to children or vulnerable people. This includes nursing home providers which fall into the definition of a 'relevant organisation' under the legislation when procuring Relevant Work or activities. Some of the relevant extracts of the legislation are set out below. In the extracts below 'Bureau' and any use of the acronym NVB refers to 'the National Vetting Bureau' which was formally put in place on 29 April 2016 and maintains a database of relevant registers.

#### Requirement for Vetting:

12.— (1) A **relevant organisation** shall not—

- (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 which 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.

13. - (3) .....an Application for Vetting Disclosure in respect of a person who is self-employed shall be made by—

- (a) a relevant organisation that intends to enter into a contract for services of the person,
- (b) a relevant organisation referred to in paragraph (c) of the definition of relevant organisation, or
- (c) a relevant organisation referred to in paragraph (d) of the definition of relevant organisation.

Sections (b) and (c) above generally mean regulatory and representative bodies for that particular sector that the relevant organisation is involved in.

Section 12(3)(A) of the Act provides that two or more relevant organisations can enter into a joint written agreement in relation to the employment, contracting, permitting or placement of a person to undertake Relevant Work or activities thereby providing that only one of the organisations is required to conduct Vetting procedures in respect of that person.

### Exemptions:

3.— (1) This Act shall not apply to any of the following, namely:

- (a) any Relevant Work or activities undertaken in the course of a **family relationship**;
- (b) any Relevant Work or activities undertaken;
  - (i) in the course of a **personal relationship**, and
  - (ii) for no commercial consideration;
- (c) the giving of assistance by an individual—
  - (i) on an occasional basis, and
  - (ii) for no commercial consideration,
    - at a school, sports or community event or activity, other than where such assistance includes the coaching, mentoring, counselling, teaching or training of children or vulnerable persons.

Relevant Organisation 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**.

The legislation provides that “**private arrangement**” means an arrangement made by an individual for the provision by any person of Relevant Work or activities—

- (a) for, or for the benefit of, the individual, or
- (b) for, or for the benefit of, a child or vulnerable person who is a member of the individual’s family;

### Compliance with the Vetting Acts:

24.— (1) The Chief Bureau Officer may assign one or more members of staff to be compliance officers for the purposes of this Act.

Compliance officers have powers to enter premises and look at documents, records, etc and interview personnel in Relevant Organisations.

### Vetting Legislation Implications for Nursing Homes

It is an offence to permit a person to undertake *Relevant Work or activities* on behalf of the organisation unless a Vetting Disclosure is in place. Therefore, staff and volunteers of providers must have a Vetting Disclosure.

Where the provider contracts, arranges or organises people other than staff or volunteers to carry out work or activities on its behalf, it needs to assess if these work/activities consist of *Relevant Work* and if so to either obtain Vetting Disclosures directly for these people, or enter into a joint agreement with another Relevant Organisation.

Compliance with the Vetting Acts will be undertaken in Relevant Organisations by Compliance Officers of the NVB.

## CRITERIA – RELEVANT WORK

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Criteria for determining if a Vetting Disclosure is required under the Vetting legislation for people who are not staff or volunteers of the provider. This will depend on whether those persons will be carrying out Relevant Work or activities:

### Relevant Work or Activities

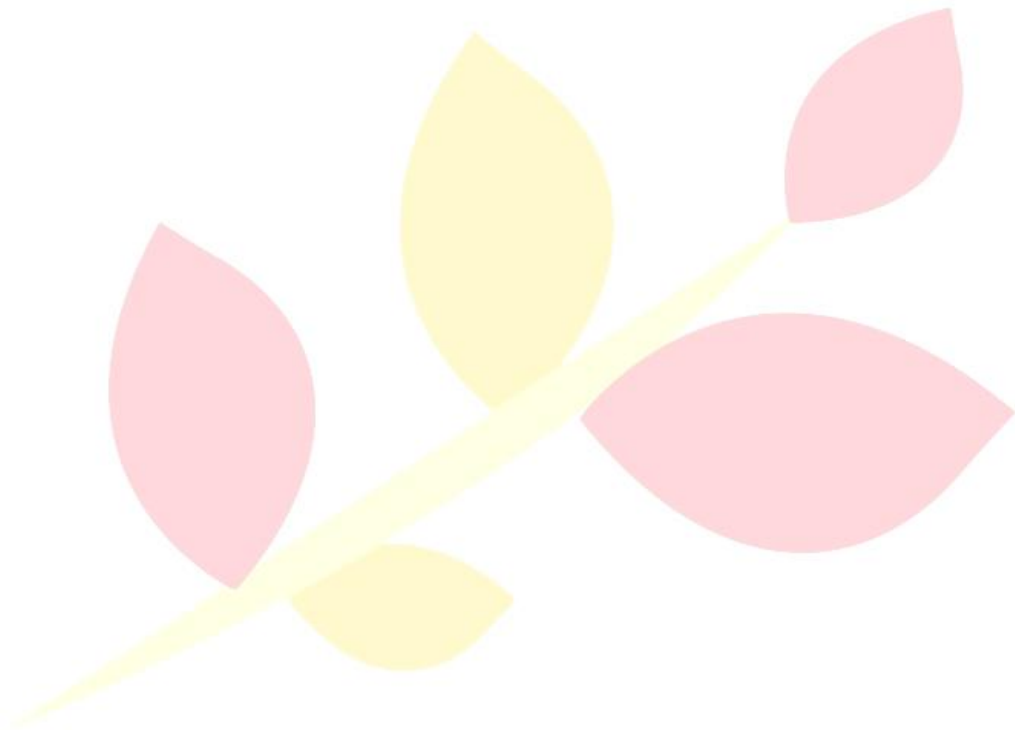
**Relevant Work or Activities (in relation to Providers) is defined under Vetting legislation as:**

1. 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, vulnerable persons in—  
(c) a designated centre within the meaning of section 2 of the Health Act 2007, in so far as it relates to an institution at which residential services are provided to vulnerable persons.

*And in detail for certain professions/activities where Vetting is automatically required:*

2. Any work or activity which consists of treatment, therapy or counselling provided to a vulnerable person by a person in the course of that work or activity.
3. Any work or activity which consists of the care (including the provision of health and personal social services and essential domestic services) of vulnerable persons unless the care is merely incidental to the care of persons who are not vulnerable persons.
4. Any work or activity which consists of the provision of educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) to vulnerable persons 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 vulnerable persons.
5. Any work or activity which consists of the provision of advice, guidance or developmental services (including by means of electronic interactive communications) to vulnerable persons unless the provision of the advice, guidance or developmental service is merely incidental to the provision of those services to persons who are not vulnerable persons.
6. Work as a driver of a public service vehicle which is being used only for the purpose of conveying vulnerable persons.
7. Any work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs.
8. The provision by a person, whether or not for commercial or other consideration, of accommodation for a vulnerable person in his or her own home.
9. Any research work or activities (howsoever described) carried out in a university, institute of technology or other establishment at which third level education is provided where a necessary and regular part of the research work or activity involves contact with or access to vulnerable persons.
10. Any assessment of a person's suitability to act as a care representative under section 21 of the Nursing Homes Support Scheme Act 2009.

11. Any Application by a person to carry on or manage a designated centre both within the meaning of section 2 of the Health Act 2007.
12. Any work or activity which is carried on by a person, a necessary and regular part of which requires the person to have access to, or contact with, vulnerable persons pursuant to the following enactments:
  - a. Medical Practitioners Act 2007;
  - b. Nurses Act 1985;
  - c. Nurses and Midwives Act 2011;
  - d. Dentists Act 1985;
  - e. Health and Social Care Professionals Act 2005;
  - f. Pharmacy Act 2007;
  - g. Pre-Hospital Emergency Care Council (Establishment) Order 2000 ( S.I. No. 109 of 2000 );
  - h. Pre-Hospital Emergency Care Council (Establishment) Order 2000 (Amendment) Order 2004 ( S.I. No. 575 of 2004 ).





## Determining Criteria

Determining Criteria for the need to have a Vetting Disclosure (non-nursing home employees/volunteers):

1. Specific cases covered by clauses 2 to 12 above
2. Roles not covered by clauses 2 to 12 above determined by clause 1 above

### Looking at Clause 1 in detail:

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, vulnerable persons....

The following terms are not defined under Vetting legislation so providers will need to carry out their own assessment of how these terms apply to persons carrying our Relevant Work and activities. Examples of the general meanings applied to these terms are:

**Necessary:** Essential - not incidental

**Regular:** Occurs at uniform intervals or takes a pattern – not on a once-off, or very ad-hoc basis

**Mainly:** More than anything else

**Access:** The opportunity to approach

**Contact:** A meeting, communication, relationship with someone or touch

When considering each situation providers should consider whether the work/activity is NOT a **private arrangement** (made by an individual for themselves or a family member) or is NOT undertaken in the course of a **family or personal relationship** (for no commercial consideration)

**And**

Is covered in specific definition of Relevant Work in 2-12 above

**Or**

Is covered in general definition of Relevant Work in 1 above by meeting all three of the criteria below:

Whether contact/access with vulnerable persons is a **necessary/essential** part of carrying out the work or activity

**And**

Whether contact/access with vulnerable persons takes place more than once on a **regular**, patterned basis

**And**

Whether contact/access with vulnerable persons is the **main** (more than anything else) part of the work or activity

Based on the Criteria above some illustrative examples are given in the table below.

This table should not be considered legal advice and is for guidance purposes only.

Each Provider Must Determine the requirement for Vetting Disclosure.

## ILLUSTRATIVE EXAMPLES OF DETERMINING REQUIREMENT FOR VETTING

<p><b>Typical Illustrative Examples</b></p> <p>These examples should not be considered legal advice and are for illustration purposes only.</p> <p><b>Each Provider Must Determine the requirement for Vetting Disclosure.</b></p>	<p><b>Relevant Work/ Activity? Yes/No</b></p>	<p><b>Relationship/status of person to the nursing home</b></p>	<p><b>If Yes who is the organisation that needs to obtain the Disclosure? -</b></p>
<p><b>1.</b></p>	<p><b>Visitors/integration to/with the Nursing Home</b></p>		
<p>1.1. Family members, friends etc. visiting residents in the nursing home</p>	<p>No</p>	<p>Visitor. Nursing home has no involvement unless a concern arises.</p>	
<p>1.2. Members of the public attending coffee morning, fundraising event, awareness session etc.</p>	<p>No</p>	<p>Visitor. Nursing home has no involvement unless a concern arises.</p>	
<p>1.3. Members of the public who attend mass in nursing home 'chapel'</p>	<p>No</p>	<p>Visitor. Nursing home has no involvement unless a concern arises.</p>	
<p>1.4. Nuns or others who have accommodation on grounds and eat their meals in the same dining room as the residents</p>	<p>Yes</p>	<p>Nursing home provider is permitting regular access</p>	<p>The Nursing Home provider</p>
<p>1.5. People working in other activities or enterprises situated on the same campus, but without access to the residents</p>	<p>No</p>		

<b>2.</b>	<b>Providing Services Directly to Residents, Arranged by the Resident or Residents Family (not by nursing home)</b>			
2.1.	Residents own GP, or other medical/therapeutic provider, (S&LT, OT, Physio, chiropody etc.), specialist nurses, social workers etc., who residents/resident's family arrange and pay directly (where there is a charge), who visit the resident to deliver service to the resident in the nursing home	N/A	Visitor to a resident – a private arrangement. Nursing home has no involvement unless a concern arises.	N/A
2.2.	Advocacy services etc. providing service to individual residents in the nursing home, arranged directly by the resident/resident's family	N/A	Visitor to a resident – a private arrangement. Nursing home has no involvement unless a concern arises.	N/A
2.3.	Pastoral care/priests etc. attending individual residents in the nursing home, arranged directly by the resident/resident's family	N/A	Visitor to a resident – a private arrangement. Nursing home has no involvement unless a concern arises.	N/A
2.4.	Hair dressers, beauticians etc. who residents pay directly, who visit the resident to deliver service to the resident in the nursing home, arranged directly by the resident/resident's family	N/A	Visitor to a resident – a private arrangement. Nursing home has no involvement unless a concern arises.	N/A
2.5.	Personal Assistants or others who residents/residents' family pay directly, who visit the resident to deliver service to the resident in the nursing home, arranged directly by the resident/resident's family	N/A	Visitor to a resident – a private arrangement. Nursing home has no involvement unless a concern arises.	N/A

<p><b>Typical Illustrative Examples</b></p> <p>These examples should not be considered legal advice and are for illustration purposes only.</p> <p><b>Each Provider Must Determine the requirement for Vetting Disclosure.</b></p>	<p><b>Relevant Work/ Activity? Yes/No</b></p>	<p><b>Relationship/status of person to the nursing home</b></p>	<p><b>If Yes who is the organisation that needs to obtain the Disclosure? -</b></p>
<p><b>3.</b></p>	<p><b>Providing Services to Residents Organised by the Nursing Home (not provided by employees of provider)</b></p>		
<p>3.1. Performance of music, plays or other entertainment provided on a <u>NON-REGULAR</u> basis</p>	<p>No</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N/A</p>
<p>3.2. Performance of music, plays or other entertainment provided on a <u>REGULAR</u> basis</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>Nursing Home or Joint Agreement with other relevant organisation</p>
<p>3.3. Priests etc. providing mass etc. to all who wish to avail of same, organised by the nursing home based on resident's wishes on a <u>NON-REGULAR</u> basis</p>	<p>No</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N/A</p>
<p>3.4. Priests etc. providing mass etc. to all who wish to avail of same, organised by the nursing home based on resident's wishes on a <u>REGULAR</u> basis</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>Nursing Home or Joint Agreement with other relevant organisation</p>
<p>3.5. Hair dressers, beauticians etc. who nursing home organises who visit the resident to deliver service to the resident in the nursing home on a <u>NON-REGULAR</u> basis (unless any of the services could be considered treatment, therapy, health or personal social services)</p>	<p>No</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N/A</p>
<p>3.6. Hair dressers, beauticians etc. who nursing home organises who visit the resident to deliver service to the resident in the nursing home on a <u>REGULAR</u> basis</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>Nursing Home or Joint Agreement with other relevant organisation</p>
<p>3.7. Provision of advocacy services by advocacy organisations, who are invited to the nursing home on a <u>NON-REGULAR</u> basis by the nursing home so residents can make appointments with them</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>Nursing Home or Joint Agreement with other relevant organisation</p>
<p>3.8. Provision of advocacy services by advocacy organisations, who are invited to the nursing home on a <u>REGULAR</u> basis by the nursing home so residents can make appointments with them</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>Nursing Home or Joint Agreement with other relevant organisation</p>

<p><b>Typical Illustrative Examples</b></p> <p>These examples should not be considered legal advice and are for illustration purposes only.</p> <p><b>Each Provider Must Determine the requirement for Vetting Disclosure.</b></p>	<p><b>Relevant Work/ Activity? Yes/No</b></p>	<p><b>Relationship/status of person to the nursing home</b></p>	<p><b>If Yes who is the organisation that needs to obtain the Disclosure? -</b></p>
<p><b>4.</b></p>	<p><b>Students/Work Experience</b></p>		
<p>4.1. Transition year or other school work experience on a <u>NON-REGULAR</u> basis aged <u>under</u> 16yrs</p>	<p>No</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N/A</p>
<p>4.2. Transition year or other school work experience on a <u>REGULAR</u> basis aged <u>under</u> 16yrs</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N.B. Under 16's cannot be Vetted, it seems that currently u16 cannot work with vulnerable people on a regular basis</p>
<p>4.3. Transition year or other school/college work experience on a <u>NON-REGULAR</u> basis aged over 16yrs</p>	<p>No</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N/A</p>
<p>4.4. Transition year or other school/college work experience on a <u>REGULAR</u> basis aged over 16yrs</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>Nursing Home or Joint Agreement with other relevant organisation e.g. college</p>

<p><b>Typical Illustrative Examples</b></p> <p>These examples should not be considered legal advice and are for illustration purposes only.</p> <p><b>Each Provider Must Determine the requirement for Vetting Disclosure.</b></p>	<p><b>Relevant Work/ Activity? Yes/No</b></p>	<p><b>Relationship/status of person to the nursing home</b></p>	<p><b>If Yes who is the organisation that needs to obtain the Disclosure? -</b></p>
<p><b>5.</b></p>	<p><b>Providing Services to the Nursing Home</b></p>		
<p>5.1. Employees of the nursing home (any role)</p>	<p>Yes</p>	<p>Staff/Employee</p>	<p>The Nursing Home</p>
<p>5.2. Volunteers engaged by the nursing home directly</p>	<p>Yes</p>	<p>Volunteer/Contracted/Permitted</p>	<p>The Nursing Home</p>
<p>5.3. Volunteers on an occasional basis engaged by the nursing home directly</p>	<p>Yes</p>	<p>Volunteer/Contracted/Permitted</p>	<p>The Nursing Home</p>
<p>5.4. Agency staff working in the nursing home</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>Nursing Home or Joint Agreement with other relevant organisation e.g. Agency</p>
<p>5.5. Maintenance and servicing contractors (not nursing home employees) e.g. plumbing, electrical, alarm, fire, hoists, beds, oxygen, grass cutting, painting, window cleaning, cleaning, laundry collection services, H&amp;S services etc. on a <u>NON-REGULAR</u> basis, <u>MAINLY WITH ACCESS</u> to residents</p>	<p>No</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N/A</p>
<p>5.6. Maintenance and servicing contractors (not nursing home employees) e.g. plumbing, electrical, alarm, fire, hoists, beds, oxygen, grass cutting, painting, window cleaning, cleaning, laundry collection services, H&amp;S services etc. on a <u>REGULAR</u> basis, <u>MAINLY WITH ACCESS</u> to residents</p>	<p>Yes</p>	<p>Contracted/Permitted by the nursing home</p>	<p>Nursing Home or Joint Agreement with other relevant organisation</p>
<p>5.7. Maintenance and servicing contractors (not nursing home employees) e.g. plumbing, electrical, alarm, fire, hoists, beds, oxygen, grass cutting, painting, window cleaning, cleaning, laundry collection services, H&amp;S services etc. on a <u>NON-REGULAR</u> basis, <u>WITHOUT ACCESS</u> to residents</p>	<p>No</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N/A</p>
<p>5.8. Maintenance and servicing contractors (not nursing home employees) e.g. plumbing, electrical, alarm, fire, hoists, beds, oxygen, grass cutting, painting, window cleaning, cleaning, laundry collection services, H&amp;S services etc. on a <u>REGULAR</u> basis, <u>WITHOUT ACCESS</u> to residents</p>	<p>No</p>	<p>Contracted/Permitted by the nursing home</p>	<p>N/A</p>

## LIMITATIONS OF THE VETTING PROCESS

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The Vetting Disclosure provided by the NVB on foot of a Vetting Application is only one piece in the recruitment/screening jigsaw, but specifically is also limited in showing a full history of criminal records etc. as set out below:

- A Disclosure is based on the exact name and details as supplied on the Application (misspelled or incorrect identity information could lead to a clear Disclosure for a person other than the Vetting subject being issued to you when your Vetting subject has a criminal record).
- Specified Information being disclosed by the NVB is based on its relevance to the Role submitted to the NVB on the Invitation/Application, incorrect Roles being listed could lead to Specified Information not being deemed relevant for release.
- NVB Vetting only covers cases pending and convictions etc. in Ireland and Northern Ireland (if they provide an address there). Some convictions of Irish Citizens in other EU jurisdictions may be notified to Garda, but this is not always consistent.
- Where a non-Irish national lived outside of the island of Ireland no convictions they have received outside of Ireland will ever show on an NVB Vetting Disclosure.
- An NVB Vetting Disclosure for a non-Irish national who has never resided in Ireland has little or no value (but is a legal requirement).
- For people who have lived outside of the island of Ireland, criminal record clearance can only be obtained from the relevant jurisdiction concerned.
- Spent convictions in Ireland, (minor offences over 7 years old), will not show on NVB Disclosures (this was brought in by the Criminal Justice Spent Convictions and Certain Disclosures Act 2016)
- Orders under the Probation of Offenders Act 1907, will not show on a Disclosure - (a judge in the District Court may decide that the facts alleged against a person have been proven, but may decide not to convict that person, the charge may be dismissed or the person may be conditionally discharged).

# NHI GUIDE TO VETTING POLICY

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*The below sets out typical headers and contents that Members may consider including in their Garda Vetting Policy. This template is aimed at being a start point for Members to draft their own Vetting policy, either as a standalone document or as part of their recruitment and employment policies.*

*Sections/contents of which may also be desirable in Members' employee handbooks, contracts of employment and letters of offer.*

*It is up to each Member to consider what they should include or not in their own policy, handbooks, contracts and letters of offer and the contents and details of same.*

## **Introduction**

The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 and Regulations made under the Health Act 2007 requires mandatory Vetting of persons who wish to undertake certain work or activities relating to children or vulnerable persons or who provide certain services to children or vulnerable persons.

## **Relevant legislation**

Health Act 2007 (Care and Welfare of Residents in Designated Centres For Older People) Regulations 2013 place specific responsibilities on providers:

- Schedule 2 Regulations 14 and 15: Documents to be held in respect of each member of staff
- 8. (1): The registered provider shall take all reasonable measures to protect residents from abuse
- 30. (c): That the Person in Charge shall ensure that people involved on a voluntary basis with the designated centre provide a Vetting Disclosure in accordance with the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2015

National Vetting Bureau (Children and Vulnerable Persons) Act 2012

Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

## **Relevant Definitions:**

*List any definition that you want to here, e.g.:*

In this policy, any reference to NVB shall mean the National Vetting Bureau.

The words 'Specified Information' means any information disclosed in a Vetting Disclosure either by the NVB or a number of organisations specified in the legislation (such as the HSE) in respect of the person being Vetted which is of a nature which would give rise to a bona fide concern that the person may harm, or cause to be harmed, or put at risk of harm, or attempt to harm or incite another person to harm a child or vulnerable person.



## **Purpose of Vetting**

*List purpose here, e.g.:*

The Vetting process does not provide clearance for people, but provides information that may be relevant for an organisation in deciding the suitability of an individual to carry out a certain role working with or having access to vulnerable persons. Vetting is one of the measures to protect vulnerable persons and organisations against possible perpetrators of abuse by being a barrier to an individual who is unsuitable to work with vulnerable persons.

## **Categories of persons who may require to be Vetted**

*e.g.:*

- Employees (potential and existing)
- Registered Providers and Persons Involved in Management
- Volunteers working under the direct control of the provider (potential and existing)
- Contractors, Sub-Contractors and Casual/Occasional Volunteers (potential and existing)

*Make a list here of the types/roles of people who are engaged in, or interact with your nursing home and your assessment of if vetting is required, based on the legislation. The criteria relevant work and table of examples of requirements for vetting should be of help in considering the specific circumstances in your nursing home.*

## **Responsibilities with regard to Vetting**

The nursing home provider, as a Relevant Organisation, is responsible for ensuring they:

- Review all categories of persons engaged with their nursing home to determine whether they need to be Vetted (*see above*)
- Appoint NHI to act as Liaison Persons for processing Vetting Applications with the NVB on its behalf
- Appoint a person/s to act as 'Garda Vetting Officer' in line with NHI Vetting Service Terms of Use to work with NHI on the processing of Vetting Applications
- Comply with NHI Vetting Service Terms of Use
- Process all Applications through NVB and obtain Vetting Disclosures
- Check Vetting Disclosure details exactly match details obtained when validating identity
- Make decisions regarding an individual's suitability to carry out the work or activity

*Note: all Applications to the NVB are processed by the NHI Liaison Persons through the NVB on-line Application system, on receipt of consent and identification verification from an individual seeking to be Vetted via the nursing home. The requirements of the process are mandated by the legislation.*

## **Employees**

*List your requirements for Employees here, e.g.:*

All Employees have to be Vetted and Re-Vetted at set intervals/under certain circumstances. Non-compliance by an employee with this requirement could result in disciplinary action up to and including dismissal.

(Potential Employees will not be permitted to start employment until the relevant NVB Vetting Disclosure has been received and evaluated).

Employees who fail to disclose information, or who provide/d false information in their Applications or elsewhere, or where false information or omission has made their Vetting Disclosure invalid, may be suspended or removed from the roster with immediate effect and or have their employment terminated on the grounds of misrepresentation.

## **Potential Employees**

*List your requirements for potential Employees here, e.g.:*

Potential employees will not be permitted to start employment until a Vetting Disclosure has been received from the National Vetting Bureau (NVB) in relation to them and this has been evaluated. Therefore, as part of the pre-employment checking process candidates may be provided with the relevant Vetting Application form. Any offers of employment are strictly conditional on a satisfactory Vetting Disclosure being received in respect of the candidate. Candidates must disclose information on criminal records or any items that may appear on a Vetting Disclosure in advance of the Vetting Application being submitted to the NVB. Candidates who fail to disclose information, or who provide false information may not be employed with the organisation or may have their employment terminated on the grounds of misrepresentation.

The recruitment process may cease due to the nature of information disclosed to the organisation by the NVB in light of the organisation's duty of care towards residents.

## **Volunteers working under the direct control of the provider**

*List your requirements for Volunteers here, e.g.:*

All Volunteers regularly engaged under the direct control of a nursing home provider must be Vetted before commencing engagement. For casual/occasional volunteers see below.

## **Contractors, Sub-Contractors and Casual/Occasional Volunteers**

*List your requirements Contractors, Sub-Contractors and Casual/Occasional Volunteers here, e.g.:*

All contractors, sub-contractors and casual/occasional volunteers engaged in Relevant Work, as defined in the legislation, must be Vetted before commencing work, either directly or indirectly under the conditions of a written Joint Agreement with another organisation who is also required to Vet the individual (other Relevant Organisations). The nursing home provider's determination of roles that it considers to be Relevant Work shall be final. Joint Agreements with other Relevant Organisations must contain this same requirement.

## **Vetting children and young people under eighteen (employees, volunteers etc.)**

Any individual sixteen years of age or over who will be carrying out Relevant Work as defined under the legislation must undergo Vetting prior to taking up their position(s).

Any person under eighteen years of age completing a Vetting Application must obtain the consent of their parent/guardian.

*Note: it is not possible to Vet persons under 16 years of age. It is not clear at this time if under 16's on work placements from school etc. who could be considered to be carrying out Relevant Work, can be engaged by providers as they cannot be Vetted.*

## **Importance of the Role on Vetting Invitation**

The Role supplied on the Vetting Invitation form NVB1 is used by the NVB when assessing if any Specified Information held on the Applicant is relevant to the Role being applied for and if this information would be required to be disclosed in a Vetting Disclosure.

In cases where people change Roles it may be necessary to Re-Vet them for the new Role. Where people have multiple Roles it is necessary that all parts of the Role are captured.

Please see/seek up to date NHI advice on Roles at the time.

## **Evaluation/Risk Assessment of Individuals with Disclosures**

*Note: This is a potentially difficult area and principles of natural justice should be followed, including the right to appeal within the organisation. It is suggested Members outline the decision criteria and process taken on the suitability of candidates clearly, which may include roles of people such as HR, PIC and Registered Provider at various stages – e.g.:*

To evaluate the suitability of applicants (of all types) who have a Vetting Disclosure which shows a criminal history or Specified Information, a risk assessment will be completed and the outcome recorded. The risk assessment will consider the nature or severity of the offence(s). If it is determined that the offence or Specified Information could indicate a risk to vulnerable adults, the individual will not be employed or permitted to carry out the proposed work or activities. The nursing home provider's determination of the suitability of an individual shall be final.

Any assessment of suitability depends on the relevance of any conviction/Specified Information to the Relevant Work or activity to be carried out by the individual, the self-disclosure of such information, the seriousness of the offence/Specified Information, the timing of the offence and any possible pattern of offences. The integrity of the applicant with regard to self-disclosure or lack of disclosure on the initial application form is considered important. The information disclosed is used for only the specific purpose for which it was obtained as part of the Vetting process.

On receiving information that may potentially result in exclusion from taking up their position, any original documentation is checked to ensure it is correct and that the disclosed information refers to the applicant.

If the applicant has self-disclosed the information and this agrees with the Vetting Disclosure from the NVB a decision will be made depending on the type and nature of the offences or Specified Information disclosed.

If the applicant has not self-disclosed and information is received from the NVB this will be checked with the applicant.

All decisions are made on an individual basis. Consideration is given to the nature of the disclosed information received from the respective Vetting bodies and the initial self-disclosure, if any, by the individual. Decisions will only be made on disclosed information that is verified and confirmed, preferably in writing.

If a decision is required that is not clearly dealt with in this Vetting policy external advice maybe sought. In this case any identifying information on the disclosure will be removed. External advice may be sought from other regulatory bodies.

Where the individual is suitable, this is communicated to the individual by issuing a communication accepting suitability for the Relevant Work or activity.

Where the information disclosed by the NVB and/or self-disclosed by the applicant deems the individual to be unsuitable for the Relevant Work or activity they are informed of such preferably in person, however this is not always possible. In the case where an individual cannot be informed in person they will be requested to contact the nursing home provider as a matter of urgency. The applicant is allowed the opportunity to withdraw from seeking any role or position.

You may wish to list certain types of convictions/prosecutions or Specified Information that will generally disqualify the Individual from carrying out the Relevant Work or activity or you may wish this to be entirely at the discretion of the appropriate people in the organisation. Typical examples of offences that a provider may decide will automatically disqualify an individual:

- Any offence of a sexual nature
- Any offence against a vulnerable person or of elder abuse
- An offence that causes gross bodily harm
- Any offence of murder or manslaughter
- Any pattern of theft
- Offences involving Drugs or Controlled Substances that may be concerning in connection with medication stored in the nursing home
- A series of continuous offending that might cause concern for the well-being of vulnerable persons
- Any charge brought by the Director of Public Prosecutions (for Ireland and Northern Ireland) concerning elder abuse

Note: The above list is provided as an example only and is for each provider to carry out their own risk assessment in relation to any information disclosed by the NVB or the individual.

### **Periods of Residence in other Jurisdiction's**

*To comply with duty of care and protection from abuse something like the following could be included:*

Any individual who has been resident in jurisdictions outside of Ireland, for more than one year, since their 16<sup>th</sup> birthday, must provide a police or criminal record check from each of such jurisdictions.

## **Record keeping and storage**

*List record keeping and storage processes here, e.g.:*

Vetting Disclosures are used for the purpose for which they were provided in accordance with the consent of the individual and the organisations' legal obligations and shall not be further processed or disclosed to other parties unless required by law.

All data is kept in accordance with data protection legislation by the Garda Vetting Officer/HR and the nursing home provider.

Vetting is carried out online. The Invitation, Vetting Disclosure, identity validation documents and any associated documents are kept for the validity of the vetting undertaken, (i.e. Re-Vetting period or until a set period after employment ceases, as per the provider's Data Protection/Retention Policy).

The Application, Vetting Disclosure document, decision process and outcome is stored securely and only accessed in line with legislation and best practice for sensitive personal information as per the provider's Data Protection Policy.

*List your retention time here*

Once a decision is made regarding the suitability of a person following a Vetting Disclosure, the outcome is recorded as accepted or withdrawn. The status 'Vetting Withdrawn' relates to an individual who has been deemed ineligible to carry out the particular work or activity or where an individual has withdrawn their request for vetting. As this person cannot be engaged by the provider there is no longer any purpose in the provider holding a Vetting Invitation, Vetting Disclosure, identity validation documents and any associated documents and these should be destroyed in accordance with the provider's Data Protection/Retention Policy. These policies may provide a period for the personal data to be retained in the event of a claim by the individual regarding the vetting/selection process.

## **Re-Vetting:**

*List your requirements for Re-Vetting here, e.g.:*

All Employees / Volunteers and Contractors / Sub Contractors must be routinely Re-Vetted every [Insert period determined by provider here] or at an interval determined by the relevant Minister of State, whichever is the shorter. Should such a resulting Vetting Disclosure contain details of a criminal record or Specified Information an assessment into the suitability of the person to continue to be engaged by the organisation will be made as above. Joint Agreements with other Relevant Organisations must contain this same requirement.

Should a person's Vetting/Conviction status change in the intervening period the relevant line manager or HR Department or registered provider must be notified immediately. This may lead to a requirement for re-Vetting. Failure to notify in a timely manner could result in disciplinary action or termination of the relationship.

Should a concern arise about the Vetting status or other information that has come to the attention of the organisation, about any person, that may raise a concern about their suitability to be engaged by the organisation, the organisation may require that that the person is vetted again immediately, rather than waiting for the routine re-Vetting period to occur. Should such a resulting Vetting Disclosure contain a criminal record or Specified Information an assessment into the suitability of the person to continue to be engaged by the organisation will be made as above. While such a re-Vetting etc. is taking place, the person may be suspended or removed from the roster. Joint Agreements with other Relevant Organisations must contain this same requirement.

Should a person's Vetting Disclosure be lost or mislaid by the provider the person must undertake Re-Vetting to allow the provider to comply with their legal obligations. Should such a resulting Vetting Disclosure contain a criminal record or Specified Information an assessment into the suitability of the person to continue to be engaged by the organisation will be made as above.

In relation to employees, vetting is linked to the Role being vetted for, where a staff member changes their role to one not covered by the Role on the Vetting Application they must be vetted again for their new role before commencing same. Joint Agreements with other Relevant Organisations must contain this same requirement.

### **Duty of Notification of Change to Criminal Record (Case pending or Conviction) or Specified Information Status**

*List your requirements of notification here, e.g.:*

Should a person's status above change after vetting has been carried out, the relevant line manager, HR Department or registered provider must be notified immediately. This may lead to a requirement for re-Vetting. During any re-Vetting and or evaluation/assessment of the circumstances, it may be necessary for the person to be suspended/removed from the roster.

Failure to notify in a timely manner could result in disciplinary action or termination of the relationship.

### **Disputes of the Contents of Disclosures**

*List your policy re disputes here, e.g.:*

Any individual disputing a Vetting Disclosure will need to follow the procedures in place with the NVB via NHI.

The individual will not be permitted to take up the position or if an existing employee/volunteer/contractor etc. continue to carry out the Relevant Work or activity while any Vetting Disclosure that would deem them unsuitable to do so is under dispute.

Where a Vetting Disclosure lists criminal record(s) or Specified Information the person who has been Vetted shall be advised of their right to appeal to the NVB via the NHI Liaison Person, should they dispute the contents of their Vetting Disclosure.

# NHI GUIDE TO JOINT AGREEMENTS

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## **Purpose of joint agreements**

Section 12 of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 allows for 2 or more Relevant Organisations to agree that the other Relevant Organisation who is party to the agreement receives a Vetting Disclosure in respect of the employee/volunteer/Relevant Worker.

The Joint Agreement must be in writing. The role being vetted for needs to be the same.

Joint agreements may be standalone documents or part of a broader service agreement contract. The Relevant Organisation relying on the other Relevant Organisation for vetting will want to ensure that the other organisation only provides vetted personnel to them, follows similar ways of treating staff with disclosed criminal records or Specified Information, re-Vetting etc. and the other Relevant Organisation assumes responsibility for any liability arising under the vetting legislation or in respect of other legal liabilities so far as this is possible.

## **Who is a Joint Agreement likely to be made with?**

Any other Relevant Organisation providing personnel who carry out “Relevant Work” in the nursing home examples include:

- Agencies supplying staff and any outsourced facilities
- Universities / I.T.s / Schools supplying volunteers or students on placements
- Local Dioceses, Presbytery etc. supplying priests
- GP practices and others providing medical and health services
- Volunteer agencies
- Other nursing home employers with whom you may share staff
- Contractors & Sub-Contractors providing services on site

## **What should you consider including?**

Generally, you will want the other Relevant Organisation to meet or exceed the requirements of your own vetting policy, e.g.:

- That the agreement is made to comply with the requirements of Section 12 of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016
- That all personnel provided will have a valid Vetting Disclosure received from the NVB and meet all criteria of the Joint Agreement and the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016
- That common approach/criteria for Risk Assessment/evaluation of personnel with Disclosure of Criminal Record or Specified Information is taken (take your requirements from your vetting policy here)
- That a common approach to re-Vetting, including decision to be taken on foot of concerns raised about an individual is taken (use your requirements from your vetting policy)
- That a common approach to personnel being required to report changes in criminal record, case pending or specified information status and follow up of same is taken (use your requirements from your vetting policy)
- Criminal record in other countries of residence having been obtained (use your requirements from your vetting policy)

- Any liability arising under the National Vetting Bureau Acts rests with the other Relevant Organisation
- That the parties will co-operate with each other in a timely fashion in the event of any regulatory or other investigations that relate to the vetting procedure

You may wish to add clauses around references, employment history, qualifications and professional registrations, indemnities and appropriate training etc. as required.

Offences under Vetting legislation are criminal offences so it will not be possible for the Joint Agreement to fully indemnify the provider in respect of any criminal convictions under the Vetting Acts that could arise as a result of failure of to comply with the legislation in respect of any person engaged by them via a 3<sup>rd</sup> party through a Joint Agreement.

However Relevant Organisations should consider including clauses that deal with matters such as the following:

- Which party will liable for any other damage that may be recovered by other parties on foot of appropriate vetting not having been carried out by a Relevant Organisation e.g. loss of goodwill, personal injury claims, negligence claims. These matters should be dealt with through appropriate indemnities and will be a matter for negotiation;
- That the parties will co-operate with each other in a timely fashion in the event of any regulatory or other investigations that relate to the vetting procedure;
- That the other Relevant Organisation will assist the Relevant Organisation in any threatened or actual litigation concerning it or any member of its group where the other Relevant Organisation has possession or knowledge of any facts or other matters which the Relevant Organisation considers is relevant to such legal proceedings. This could include assistance such as giving statements/affidavits, meetings with their legal and other professional advisors and attending any legal hearing.

*Note: The above suggested are matters that could be contained in a Joint Agreement are for guidance purposes only and do not constitute legal advice. Members should always seek appropriate legal advice when entering into any contract with a third party.*



## APPENDIX 1 HIQA JUDGEMENT FRAMEWORK VETTING EXTRACTS

(EFFECTIVE 15<sup>th</sup> JANUARY 2015)

Outcome 18 Extracts	Critical components demonstrating compliance	Substantially compliant	Moderate non-compliance	Major non-compliance
All staff and volunteers are supervised on an appropriate basis, and recruited, selected and Vetted in accordance with best recruitment practice.	<p>There are effective recruitment procedures that include checking and recording all required information.</p> <p>The requirements of Schedule 2 of the regulations have been met.</p>	<p>There are written policies and procedures.</p> <p>However some minor gaps in documentation or practice can be seen.</p>	<p>There are written policies and procedures relating to the recruitment, selection and vetting of staff.</p> <p>However, not all documents required under Schedule 2 of the Regulations are contained in the personnel files.</p>	<p>There are no written policies and procedures relating to the recruitment, selection and Vetting of staff</p> <p>Residents are at risk due to the lack of appropriate vetting of the suitability of staff members to work directly with residents</p> <p>Recruitment procedures do not ensure that the requirements of Schedule 2 of the regulations are met</p>

SCHEDULE 2 Regulations 14 and 15 - DOCUMENTS TO BE HELD IN RESPECT OF THE PERSON IN CHARGE AND FOR EACH MEMBER OF STAFF (where staff is defined in the regulations as “persons employed by the registered provider to work at a designated centre and includes persons placed in employment with the registered provider concerned by an employment agency used by that registered provider but does not include persons who provide professional services to the designated centre and to whom the registered provider pays fees for such services or a volunteer”)

1. Evidence of the person’s identity, including his or her full name, address, date of birth and a recent photograph;
2. **A Vetting Disclosure in accordance with the National Vetting Bureau (Children and Vulnerable Persons) Act 2012;** (Note the Data Protection Commissioner had issued [guidance](#) in relation to data protection matters that arise when Vetting individuals)

*Please note: there are other requirements for information that must be sought that are in addition to the Vetting information required.*



1.

**•NVB1 Invitation/Consent Form Completed By Appliant And Nursing Home**

- Applicant completes the paper NVB1 form and ticks and signs that they have given their consent, ensure all information is completed, boxes ticked and clearly LEGIBLE, *any misspelled, incomplete, incorrect or misleading information could result in an invalid Disclosure being recieved by the nursing home*
- Nursing home validates the applicant's identity and checks this matches the NVB 1 details, and signs the NVB 1 to confirm same
- Under 16 cannot be vetted. 16-18 year old must have NVB3 parent consent form completed. The NVB3 must have the PARENT's email address (NOT the applicant's)

2.

**•Nursing Home Sends NVB1 Details To NHI And Makes Payment Arrangements**

- NHI checks details and payment status, invitations with incorrect or unclear details are returned to nursing home
- Where payment arrangements have not been made invitations/disclosures may be delayed until payment received

3.

**•Invitation Inputted Into Garda Vetting E-Vetting System by NHI**

- Invitation details as supplied are entered on to the E-Vetting Portal

4.

**•E-Vetting System Sends Full Application Link To Applicant's Email Within 24hrs**

- Nursing home should advise applicants to expect link and supply them with NVB completion guide
- Link is valid for 30 days only, after which a new invitation will need to be made to proceed

5.

**•Applicant Completes Full Vetting Application Form Online**

- Applicant completes all addresses from birth along with the to and from dates, separately and clicks 'add address' on each one to enter them onto the list. It is critical that all years from birth to present are covered. If it is a Northern Irish address, the postcode MUST be completed.

6.

**•Completed Online Application Reviewed by NHI**

- If the form is not completed correctly NHI will have to cancel the form and resend the link to the applicant giving the reason why it was rejected
- (return to step 4 )

7.

**•NVB Carries Out Its Checks And Issues A Vetting Disclosure to NHI**

8.

**•NHI Makes Vetting Disclosures Available To Nursing Home**

- Nursing home checks all Vetting Disclosure details against identity validation details to ensure the Vetting Disclosure is valid for that person
- Vetting Disclosure becomes unavailable on E-Vetting Portal after 30 days and NHI can no longer access a Vetting Disclosure that has been mislaid after this time.