

# Inland Waterways Association of Ireland

*Cumann Uiscebhealaigh Intíre na h-Éireann*

## *Garda Vetting Policy*

**Version 1.2**

**February 2019**



## Draft Garda Vetting Policy

Inland Waterways Association of Ireland	Approval Date:
Responsibility for approval of policy	IWAI Executive
Responsibility for implementation	Vice President
Responsibility for ensuring review	President and Vice President

### Policy Statement

IWAI is committed to the protection and welfare of its members. As part of this commitment IWAI will comply with relevant legislation and recommended best practice in recruitment and selection procedures for volunteers, and will conduct Garda Vetting as part of this process.

### Purpose

The purpose of this document is to provide information and guidance on Garda Vetting procedures within IWAI.

### Scope

This policy applies to IWAI volunteers who will carry out “relevant work” with children and/or vulnerable adults as defined in the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 -2016 (See Appendix I) Responsibility for ensuring this policy is effectively implemented rests with the Garda Vetting Officer (GVO) within the organisation, IWAI Vice President . All other volunteers in IWAI are expected to facilitate and support the implementation of this policy.

### Glossary of Terms and Definitions

**National Vetting Bureau (NVB):** is the National Bureau of the Garda Síochána which conducts vetting of applicants engaged in relevant work to ascertain whether these applicants have a criminal record as defined below Garda Vetting: Garda Vetting is the process by which the National Vetting Bureau gives a statement on whether a person has had any convictions - pending or completed - recorded against their name (subject to the Spent Convictions Act of 2016 which allows for certain convictions to become “spent”). In certain circumstances specified information may be disclosed.

**Criminal record:** in relation to a person means

- a) A record of the persons convictions, whether within or outside the State, for any criminal offences together with any ancillary or consequential orders made pursuant to the convictions concerned
- b) A record of prosecutions pending against the person whether within or outside the state for any criminal offence
- c) Or both

**Specified Information:** Specified information in relation to a person who is subject of an application for vetting disclosure means information concerning a finding or allegation of harm to another person received by the Bureau from An Garda Síochána or a scheduled organisation pursuant to section 19 of the Act. (See Appendix 1)

It is information that is considered to give rise to a bona fide concern that the vetting subject may harm, attempt harm or put at risk a child or vulnerable person or both. If such information is going to be disclosed to a relevant organisation relating to one of their applicants, the Chief bureau officer must, in advance, notify the vetting subject of the intention to disclose the information

**Spent Convictions Act 2016:** This Act allows for certain convictions to become “spent” after a period of time has elapsed (7 years being the standard).

The following convictions will always be disclosed:

- Offences against the person (except minor public order offences)
- Sexual offences
- Convictions on indictment that go to circuit court or higher court.

See Appendix II for Spent Convictions Act 2016

**Vetting Disclosure :** Particulars of the criminal record (if any) relating to the person and a statement of specified information (if any) relating to the person which the Chief Bureau Officer has determined in accordance with Section 15 of the Act should be disclosed. or

State that there is no criminal record or specified (soft) information in relation to the person

**Child:** a person under the age of 18 years.

**Vulnerable Adult:** a person, other than a child who is suffering from a disorder of the mind, whether as a result of mental illness or dementia, has an intellectual disability, is suffering from a physical impairment, whether as a result of injury, illness or age, or

Has a physical disability, which is of such a nature or degree as to restrict the capacity of the person to guard himself or herself against harm by another person, or, that results in the person requiring assistance with the activities of daily living including dressing, eating, walking, washing and bathing.

**Registered Organisation:** A volunteer centre that has a vetting relationship with National Vetting Bureau of the Garda Síochána in the Act is referred to as a registered organisation. 1

**Relevant Organisation:** A body or organisation who will carry out “relevant work” with children and/or vulnerable adults as defined in the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 -2016 (See Appendix I)

**Liaison Person** is the person who is nominated to apply for and receive vetting disclosures on behalf of applicant organisations. The Liaison Person may be nominated to act for a consortium of organisations (e.g. Volunteer Centres.) or from a representative body for a group of organisations (e.g. NYCI). The IWAI Liaison Person is Volunteer Galway.

**Affiliates:** Are relevant organisations who are affiliated to a local volunteer centre for vetting purposes. All VCs keep an up to date list of affiliates officially with the NVB.

**Garda Vetting Officer:** The person in the Association who the Liaison Officer can work with in relation to vetting, namely the IWAI Vice President.

**Natural Justice:** There are essentially two sections to the Rules of Natural Justice; the first being derived from the Latin maxim "audi alteram partem" (let the other side be heard). This is the duty to allow persons affected by a decision to have a reasonable opportunity of presenting their case. The second part of the Rules of Natural Justice is derived from the Latin maxim "nema iudex in causa sua" (no one can be the judge in his own cause). This gives rise to a duty to act fairly, to listen to arguments, and to reach a decision in a manner that is untainted by bias. (NUI, Galway)

## **Principles**

Garda Vetting is just one of a number of elements that IWAI implements to ensure the protection and safety of the children and/or vulnerable adults in IWAI's care. Child protection training and health and safety procedures, etc. will be implemented along with Garda Vetting.

An individual will not volunteer with children or vulnerable adults in IWAI until their Garda Vetting has been completed and the results conveyed to the organisation's GVO by the Liaison Person. It will be an offence to start a person in relevant work before Garda Vetting is completed.

Having a criminal record will not automatically exclude an individual from employment/volunteering unless they relate to the offences outline in Section 10 (see Appendix I). Decisions on whether to involve an individual with prior criminal convictions will take into account:

- the individuals abilities, skills , experiences and qualifications;
- the nature of the conviction and its relevance to the job;
- the length of time since the offence took place;
- the risk to the service users, employees and organisation;
- training which may have occurred since the time individual's offence

IWAI will employ a Natural Justice framework in dealing with any disclosures of convictions.

## **Vetting Applications Process**

All vetting applications for volunteer roles with IWAI shall initially be processed by the GVO before referral to the Liaison Person who is trained by the Garda Vetting Unit in the management of Vetting applications and disclosures. IWAI has appointed Volunteer Galway to act as Liaison Person on its behalf.

IWAI will nominate the Vice President to act as the GVO. The responsibilities of the GVO include:

- Assessing when Garda vetting is necessary for each volunteer role i.e. the role involves "relevant work" with children or vulnerable adults as specified in the National Vetting Bureau (Children and Vulnerable Persons Act) 2012 to 2016.
- Ensuring that candidates for volunteer roles are provided with the correct Garda vetting forms and that the forms are completed accurately and in full, prior to submitting them to the Liaison Officer
- Verifying the identity of the person submitting the vetting application by checking relevant ID (Please see appendix III)
- Ensuring all personal information in relation to vetting is kept confidentially and in compliance with GDPR legislation and best practice
- Ensuring organisational compliance with the Garda Vetting policy
- Making decisions on the suitability of candidates following the disclosure of convictions and or specified information via the Garda vetting process.
- If the individual being vetted is over the age of 16 and under the age of 18, they are required to have a completed parent / guardian consent form which must be submitted along with their vetting application form.

IWAI will not accept historical vetting information from volunteer candidates or from their previous employers / volunteer managers. Each new volunteer must be vetted via the IWAI vetting process, even if engaging an individual already vetted elsewhere. IWAI will require all of its existing volunteers to be re-vetted at regular intervals of three years.

### **Vetting Disclosures Process**

On return from the National Vetting Bureau the forms will be processed by the nominated Liaison Person who will inform IWAI GVO by letter of the results.

The Liaison Person will pass on a copy of the person's disclosure to the GVO for their consideration, and this document will be held confidentially within the organisation.

An offer of a position of voluntary role will be issued to the candidate in line with IWAI's other screening procedures if deemed suitable by the GVO.

Where serious convictions are disclosed, (for e.g. those itemised in 10.1 and 10.2 – see Appendix I) it is important to know that the applicant will be informed by the Garda Vetting Bureau that such convictions are being disclosed to the receiving any such information. When the disclosure is received by the organisation a letter to the person asking them to attend a meeting with the Vetting Officer should be sent. The purpose of this meeting is to allow the applicant to discuss the information returned by the Garda Vetting Bureau and to give them an opportunity to explain the circumstances surrounding the conviction.

A written record of this meeting will be kept and the time, date and duration of the meeting recorded. At this meeting, IWAI will ensure that:

- Everyone, no matter what their history, is given fair and equal treatment and the right to state their case. Cognisance is of Repeat Offending, Restorative Justice and Rehabilitation of Offenders.
- A disclosure of conviction will not automatically preclude the applicant from obtaining the position in question. Cognisance is taken of the applicant's self-disclosure or non-disclosure of a conviction at the time of the application and of their experience (work record etc.) and rehabilitation subsequent to any conviction disclosed.

Where multiple convictions are evident but may be as the result of a particular lifestyle, e.g., drug addiction, then the change in lifestyle must be taken into consideration.

Applicants who deny any convictions returned by the Vetting Bureau will be provided with details on how to write a letter of appeal to amend their records at the Vetting Bureau.

Applicants are informed that in the case of uncertainties their form will be returned to the Vetting Bureau seeking clarification.

The applicants name and date of birth are re-checked at the start of the meeting as mistakes may be made by the Vetting Bureau where names and addresses are similar.

IWAI will consider each Garda Vetting form returned with convictions individually and IWAI will always treat the applicant with respect, dignity and complete confidentiality.

IWAI recognises that there are three potential outcomes of the review meeting:

- In line with this policy and taking all things into consideration including interview, current history and references, the applicant may be offered the position.
- The applicants Garda Vetting form is returned to the National Vetting Bureau for further clarification. In which case a second review meeting may be held.
- The applicant is deemed unsuitable for the position on offer by nature of their history of offences.

- In each case a written explanation of the outcome will be sent to the applicant by letter. A record of this letter, including date sent must be kept. A record of any replies received and any follow-up must also be kept.

### **Confidentiality and Data Protection**

All information in the vetting process will be held in a manner consistent with the IWAI confidentiality policy. IWAI also complies fully with good practice regarding the secure storage, handling and use of the National Vetting Bureau disclosures and personal vetting information as per Data Protection Policy and legal obligations under GDPR Legislation.

### **Circumstances for the Withdrawal of the offer to Volunteer**

IWAI considers the following as reasonable grounds to withdraw an offer or opportunity of volunteer role to an individual:

- The individual has been charged with, or convicted of a sexual offence;
- The individual has been charged with, or has a conviction for, an offence that relates to the ill treatment of a child, or a vulnerable adult;
- The individual has been charged with, or has a conviction for, the ownership, production or distribution of child pornography.

IWAI considers the following list of offences to be relevant, and each case will be considered in a case-by-case basis:

- Offences against the person, e.g. assault, harassment, coercion;
- Breaches in trust, e.g. fraud, theft, larceny;
- Offences against property e.g. arson, armed robbery;
- Domestic Violence;
- Offences against the state

IWAI is conscious of not initiating policies that prohibit needlessly against rehabilitated individuals. Such cases will be objectively determined on a case-by-case basis in accordance with the criteria outlines in 5.3.

**Self-Declaration Statement:** Vetting subjects will be asked to complete a **self-declaration statement** agreeing to inform IWAI of any changes re convictions/prosecutions pending post vetting.

## **Appendix 1 to Garda Vetting Policy**

Excerpt from Schedule 1, Part 1 and Part 2 from the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 to 2016

### **Relevant work or activities relating to children**

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, children in -

(a) an establishment which provides pre-school services within the meaning of Part VII of the Child Care Act 1991,

(b) a school or centre of education, both within the meaning of the Education Act 1998,

(c) any hospital or health care centre which receives, treats or otherwise provides services to children,

(d) 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 in accordance with the Child Care Act 1991,

(e) a special care unit provided and maintained in accordance with section 23K of the Child Care Act 1991,

(f) a children detention school within the meaning of section 3 of the Children Act 2001.

2. Any work or activity which consists of the provision of home tuition by a person pursuant to the Scheme administered and funded by the Department of Education and known as the Home Tuition Scheme.

3. Any work or activity which consists of treatment, therapy or counselling provided to a child by a person in the course of that work or activity.

4. Any work or activity which consists of care or supervision of children unless the care or supervision is merely incidental to the care or supervision of persons who are not children.

5. 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 children 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 children.

6. Any work or activity which consists of the provision of advice, guidance, developmental, or counselling services, (including by means of electronic interactive communications) to children unless the provision of the advice, guidance, developmental or counselling service is merely incidental to the provision of those services to persons who are not children.

7. Any work or activity as a minister or priest or any other person engaged in the advancement of any religious beliefs.

8. Work as a driver of a public service vehicle which is being used only for the purpose of conveying children.

9. The provision by a person, whether or not for commercial or other consideration, of accommodation for a child in his or her own home.

10. 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 children.

11. Any application by a person to carry on or manage a designated centre within the meaning of section 2 of the Health Act 2007.
12. Any application by a person for a declaration of eligibility and suitability within the meaning of section 3 of the Adoption Act 2010.
13. Any assessment of a person's suitability to act as a foster carer by or under section 39 of the Child Care Act 1991.
14. Any assessment by or under section 41 of the Child Care Act 1991 of a person's suitability to act as a carer of a child in respect of whom he or she is a relative.
15. 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, children 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 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).



## **PART 2**

### Relevant work or activities relating to vulnerable persons

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:
  - (a) a school or centre of education, both within the meaning of the Education Act 1998, unless, in the case of a centre of education, the work or activity is merely incidental to work or activities undertaken in relation to persons who are not vulnerable persons,
  - (b) any hospital or care centre which receives, treats or otherwise which provides services to vulnerable persons,
  - (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,
  - (d) an approved centre within the meaning of Part 5 of the Mental Health Act 2001,
  - (e) any organisation or facility which provides educational, training, cultural, recreational, leisure, social or physical activities (whether or not for commercial or any other consideration) for vulnerable persons,
  - (f) in any organisation or facility which provides welfare, advice, guidance, developmental, or counselling services for vulnerable persons.
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, developmental, or counselling services, (including by means of electronic interactive communications) to vulnerable persons unless the provision of the advice, guidance, developmental or counselling 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 10 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).