

To: The Managerial Authorities of Recognised Primary, Secondary,
Community and Comprehensive Schools
and
The Chief Executives of Education and Training Boards

Statutory Requirements for the Retrospective Vetting of Teaching Staff, Non-Teaching Staff and Others.

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1. Purpose

1.1 The main purpose of this circular is to

- a) bring to the attention of school authorities their statutory obligations under section 21 of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 (the Vetting Act) in respect of the retrospective vetting of teaching staff, non-teaching staff and others who have not previously been Garda vetted and who undertake relevant work or activities with children or vulnerable persons

and

- b) to outline the practical arrangements in place in respect of such retrospective vetting.

2. Definitions

In this circular except where the context requires otherwise-

“**Bureau**” means the National Vetting Bureau of An Garda Síochána which since 29 April 2016 has been responsible for issuing statutory vetting disclosures in accordance with the Vetting Act.

“**child**” means a person under the age of 18 years.

“**ETB**” means an Education and Training Board.

“**GCVU**” means the national unit of An Garda Síochána known as the Garda Central Vetting Unit which was responsible for issuing vetting outcomes prior to the establishment of the Bureau.

“**GCVU vetting outcome**” means a statement that was issued by the GCVU prior to the 29 April 2016 containing details of convictions and/or prosecutions, successful or not, pending or completed, relating to a person.

“**non-teaching staff**” means employees of the school authority other than registered teachers.

“**registered teacher**” has the meaning assigned to it by the Teaching Council Acts 2001 to 2015.

“**relevant organisation**” has the meaning assigned to it in the Vetting Act and includes a person or organisation that employs, contracts, places or permits a person to undertake relevant work or activities relating to children or vulnerable persons.

“**relevant work or activities**” has the meaning assigned to it in the Vetting Act and includes any work or activity carried out by a person where a necessary and regular part of that work or activity consists mainly of the person having access to, or contact with, children or vulnerable persons in a recognised school or centre for education other than work or activity in relation to vulnerable persons in a centre for education where that work or activity is merely incidental to work or activities undertaken in relation to persons who are not vulnerable persons.

“**school authority**” means the relevant managerial authority for the school or centre for education concerned e.g. the relevant ETB in the case of ETB schools and board of management/manager or equivalent in the case of all other schools/centres for education.

“specified information” in relation to a person who is the subject of an application for a vetting disclosure means information other than criminal convictions held by An Garda Síochána that leads to a bona-fide belief that a person poses a threat to children or vulnerable persons.

“Teaching Council Vetting Letter” means the letter issued by the Teaching Council prior to 29 April 2016 to a registered teacher containing the information provided in the vetting outcome received by the Council from the GCVU in respect of that teacher.

“teaching staff” means employees of the school authority who are registered teachers.

“Vetting Act” means the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 as amended by the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 also known as the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016.

“vetting disclosure” means a disclosure made by the Bureau, after 29 April 2016, in respect of the person in accordance with section 14 of the Vetting Act and which includes particulars of the criminal record (if any) relating to that person and/or a statement of the specified information (if any) relating to that person. A criminal record includes a record of the person’s convictions for any criminal offences or a record of any prosecutions pending against the person for any criminal offence but does not contain details of certain minor convictions as set out in section 14A of the Vetting Act.

“vulnerable person” has the meaning assigned to it by the Vetting Act and means a person other than a child who is suffering from a disability, impairment or disorder which is of such a nature or degree as to restrict the capacity of the person to guard themselves against harm by another person or that results in the person requiring assistance with the activities of daily living.

3. General

- 3.1 The primary focus of this circular is on section 21 of the Vetting Act which concerns the retrospective vetting of employees and other persons who have never previously been Garda vetted and who undertake relevant work or activities with children or vulnerable persons.
- 3.2 In accordance with section 21 of the Vetting Act, the Minister for Justice and Equality has prescribed that applications for retrospective vetting of employees and other persons who have not previously been Garda vetted and who undertake relevant work or activities with children or vulnerable persons must be made by 31 December 2017.
- 3.3 School authorities must therefore ensure that applications for the retrospective vetting of any employees and others undertaking relevant work or activities with children or vulnerable persons, and who have never previously been vetted, have been made before 31 December 2017. School authorities should be aware that failure, without reasonable excuse, to comply with the Act's retrospective vetting requirements is a criminal offence punishable by a fine of up to €10,000 or a prison term of up to 5 years or both.
- 3.4 It should be noted that a person for whom a GCVU vetting outcome or a Bureau disclosure has previously been received is not required to be vetted under the Vetting Act's retrospective vetting requirements. In the case of a registered teacher, where a school authority has already obtained a Teaching Council Vetting letter in respect of the teacher or has accessed a Bureau disclosure in respect of the teacher (via the Teaching Council's online electronic register of teachers), there is no requirement for that teacher to be vetted by the relevant school authority under the Vetting Act's retrospective vetting requirements.
- 3.5 This circular is not a legal interpretation of the Vetting Act. Nor is it exhaustive in setting out the Vetting Act's provisions or requirements. It is the responsibility of school authorities to read and familiarise themselves with the requirements of the Vetting Act.
- 3.6 It should be noted that Circular 0031/2016 and the existing statutory requirements under section 12 of the Vetting Act for Garda vetting prior to a school authority commencing the employment, contract, permission or placement of a person to undertake relevant work or activities continue to apply.
- 3.7 Separate to the requirements of the Vetting Act, school authorities must always be cognisant of their civil law duty of care to their pupils and the need for prudent practice from a child protection perspective. Information in relation to the assessment of vetting disclosures is set out in section 7 of this circular.

4. Retrospective vetting of registered teachers

- 4.1 Retrospective vetting of all registered teachers who have not been vetted to date will be conducted by the Teaching Council in the context of their annual renewal of registration. The Teaching Council intends to require all un-vetted registered teachers to undergo retrospective vetting by the end of December 2017. The Teaching Council has commenced

the retrospective vetting of such registered teachers and this will continue on an ongoing basis between now and the end of 2017, in accordance with a schedule determined by the Teaching Council for this purpose. Section 6 of this circular sets out the practical arrangements for retrospective vetting of registered teachers by the Teaching Council.

- 4.2 Where a retrospective vetting application in respect of a teacher has been made by the Teaching Council before 31 December 2017, the school authority is not obliged to require the teacher concerned to undergo retrospective vetting for the purposes of section 21 of the Vetting Act. To avoid duplication of vetting applications school authorities should not request their un-vetted registered teachers to apply for retrospective vetting but should await the Teaching Council's vetting of such teachers. **School authorities should however take the relevant steps outlined at sections 4.7 to 4.11 below.**
- 4.3 **Registered teachers who have been requested to undergo retrospective vetting by the Teaching Council should take the steps outlined at section 4.12 of this circular.**
- 4.4 School authorities and registered teachers should be aware that the Teaching Council Acts 2001 to 2015 include provision for the following:
- (a) the Teaching Council may seek a vetting disclosure in respect of a registered teacher for the purposes of renewing the registration of that teacher.
 - (b) the Teaching Council shall refuse to renew a person's registration where that person fails, without reasonable grounds, to comply with the Teaching Council's request to undergo vetting.
 - (c) where the Teaching Council has obtained a vetting disclosure in respect of a teacher for the purposes of renewal of his or her registration, the Teaching Council shall -
 - (i) consider, in accordance with the Teaching Council Acts 2001 to 2015, the information in that vetting disclosure for the purpose of satisfying itself that the teacher is a fit and proper person to have his or her registration renewed
 - (ii) refuse to renew the registration of the registered teacher where the Teaching Council, having considered that disclosure in accordance with the Teaching Council Acts 2001 to 2015, is not satisfied that he or she is a fit and proper person to have his or her registration renewed.
 - (d) where it is satisfied that it is in the public interest to do so, the Teaching Council may, having regard to the information contained in a vetting disclosure obtained by it for the purposes of registration renewal, apply to the High Court to have that teacher's registration suspended for such period as the High Court may determine. In such cases, the Teaching Council is required to inform the relevant school employer of the High Court's decision.
 - (e) where a person's registration is not renewed by the Teaching Council, that person cannot be employed in a publicly funded teaching position in any recognised school.

- 4.5 School authorities and registered teachers should also note that under section 33B of the Teaching Council Acts 2001 to 2015 the Teaching Council may, where the relevant school employer is known to the Teaching Council, inform the employer of the information in a disclosure where the Teaching Council considers that the information in that disclosure is of such a nature as to give rise to a bona fide concern that the teacher may—
- harm any child or vulnerable person,
 - cause any child or vulnerable person to be harmed,
 - put any child or vulnerable person at risk of harm,
 - attempt to harm any child or vulnerable person, or
 - incite another person to harm any child or vulnerable person.
- 4.6 Where the Teaching Council, acting in accordance with section 33B of the Teaching Council Acts 2001 to 2015, informs a school authority of the information in a vetting disclosure, it is a matter for the school authority to determine, having due regard to the protection of children, any actions that it considers necessary in respect of the person’s employment in the school. In that regard, it will be a matter for the school authority to consider all the circumstances of the case, give due weight to all relevant factors, afford fair procedures to the individual concerned and have regard to relevant employment legislation and any relevant disciplinary procedures. School authorities should note that legal advice should always be sought in such a case.

Steps to be taken by school employers

- 4.7 School authorities should note that there is no retrospective vetting requirement in respect of a member of a school’s teaching staff where –
- the school authority has already obtained a vetting disclosure from the Bureau in respect of such teacher or
 - the school authority has already obtained the Teaching Council Vetting Letter in respect of such teacher.
- 4.8 Each school authority should now review its teaching staff records to identify which members of its teaching staff have already been vetted (whether such vetting was conducted by the GCVU or by the Bureau) and which teachers have not yet been Garda vetted. School authorities should draw up a list of registered teachers who have not been vetted to date by the Teaching Council and should request each teacher on the list to –
- (a) inform the school authority as soon as an application for vetting has been made by the Teaching Council in respect of him or her
- and**
- (b) provide the school authority with evidence that the vetting application has been submitted to the Bureau. This should be done by providing the school with a copy of the Bureau’s acknowledgement of the Teaching Council’s vetting application in respect of him or her. A copy of this acknowledgement should be retained for the school authority’s records.

- 4.9 On receipt of the evidence referred to in section 4.8(b) above, the teacher concerned can be removed from the list of teachers who have not previously been Garda vetted (i.e. the list referred to in section 4.8). As individual teachers may be requested to comply with the Teaching Council's retrospective vetting requirements at any time between now and the end of 2017, school authorities should liaise with the teachers concerned on a monthly basis to ensure that the list is kept up to date and accurate.
- 4.10 Further information, including Frequently Asked Questions (FAQs), in relation to the Teaching Council's arrangements for retrospective vetting of registered teachers is available on the Teaching Council's website. The Teaching Council will also, from time to time, publish updates in relation to its progress on retrospective vetting, including details in relation to the numbers vetted and yet to be vetted under its retrospective vetting arrangements. Schools should also keep up to date with the information in the Teaching Council's FAQs and updates via the Teaching Council's website [Teaching Council](#)
- 4.11 School authorities should be aware that there may be a very small number of un-vetted teachers in respect of whom a retrospective vetting application is not made by the Teaching Council before 31 December 2017. This may arise for example where a teacher does not respond to the Teaching Council's retrospective vetting request and/or where he or she does not intend to apply for renewal of his or her registration. It should be noted that where this occurs, the teacher's registration can continue up to his or her annual renewal date and in some cases this renewal date will be after 31 December 2017. It is anticipated that this will arise in very small number of cases. The Department will publish further guidance in relation to such cases in autumn 2017.

Steps to be taken by registered teachers

- 4.12 A registered teacher who has been requested by the Teaching Council to undergo retrospective vetting for the purposes of his or her annual renewal of registration is requested to –
- (a) inform his or her school employer as soon as an application for vetting has been made by the Teaching Council in respect of him or her
- and**
- (b) provide the school employer with evidence that the vetting application has been submitted to the Bureau. This should be done by providing the school authority with a copy of the Bureau's acknowledgement of the Teaching Council's vetting application in respect of him or her.
- 4.13 It is important that registered teachers take the above steps so as to ensure that the school authority does not also have to request the teacher to undergo retrospective vetting for the purposes of section 21 of the Vetting Act.
- 4.14 Registered teachers should be aware that under the Teaching Council Acts 2001 to 2015, the Teaching Council shall refuse to renew a person's registration where that person fails,

without reasonable grounds, to comply with the Teaching Council's request to undergo retrospective vetting. It is important therefore that registered teachers ensure that they respond fully and promptly when requested by the Teaching Council to undergo retrospective vetting for the purposes of their annual renewal of registration. In that regard teachers should be aware that the Teaching Council may contact individual teachers at any time between now and the end of 2017. It is the responsibility of individual teachers to ensure that they comply with the relevant requirements, including any retrospective vetting requirements, relating to renewal of their registration. Under section 30 of the Teaching Council Acts 2001 to 2015 persons employed as teachers in recognised schools must be registered with the Teaching Council, other than in certain prescribed limited circumstances, in order to be paid from public monies by the Department of Education and Skills or an ETB. Registered teachers should refer to the Teaching Council website [Teaching Council](#) for information about the retrospective vetting process. In addition registered teachers are also advised to read sections 4.4 to 4.6 of this circular.

5. Retrospective vetting of non-teaching staff and non-employees.

- 5.1 School authorities should note that under the Vetting Act there is no retrospective vetting requirement in respect of a member of a school's non-teaching staff or a non-employee who is employed or contracted by the school to undertake relevant work or activities with children or vulnerable persons or who is permitted to undertake such work on behalf of the school where –
- the school authority has already obtained a vetting disclosure from the Bureau in respect of the person concerned or
 - the school authority has previously obtained a GCVU outcome in respect of the person concerned.
- 5.2 In order to identify persons who are required to be retrospectively vetted, each school authority should now review its non-teaching staff records and other relevant records in respect of –
- (a) all non-teaching staff who undertake relevant work or activities,
 - (b) all persons who are contracted by the school to undertake relevant work or activities, **and**
 - (c) all persons who are permitted by the school to undertake relevant work or activities on the school's behalf

to identify those who have already been vetted and those have not yet been Garda vetted.

- 5.3 School authorities should draw up a list of those persons (identified as per 5.2 above above) who have not been vetted to date and who therefore must be retrospectively vetted. In drawing up this list, school authorities should take account of the information in section 5.5 of this circular and should also note that, in accordance with section 3 of the Vetting Act, there are no retrospective or other vetting requirements under the Vetting Act in respect

of persons who assist a school on an occasional and unpaid basis provided such assistance does not involve the coaching, mentoring, counselling, teaching or training of children or vulnerable persons.

- 5.4 School authorities must ensure that an application for retrospective vetting is made in respect of each person on the list referred to in section 5.3 before 31 December 2017. Where the vetting application has been submitted to the Bureau by the relevant diocesan office, management body or ETB as appropriate, the person's name may be removed from the list referred to in section 5.3 above. Section 6.5 of this circular sets out the practical arrangements for retrospective vetting of non-teaching staff and non-employees.

Retrospective vetting where two or more relevant organisations are involved

- 5.5 Where the school and another relevant organisation are jointly involved in the employment, contract or permission of a person to undertake relevant work or activities, the school authority should note that section 21 of the Vetting Act does not oblige the school authority to make a retrospective vetting application in respect of such a person, where –
- the school authority or that other relevant organisation has obtained a vetting disclosure from the Bureau in respect of the person concerned or
 - the school authority or that other relevant organisation has previously obtained a GCVU outcome in respect of the person concerned.

6. Practical arrangements for retrospective vetting

Registered Teachers

- 6.1 As outlined in section 4.1 of this circular the Teaching Council is undertaking retrospective vetting of registered teachers who have not been vetted to date in the context of their annual renewal of registration. The Teaching Council is undertaking this retrospective vetting on an ongoing basis between now and the end of 2017 in accordance with a schedule determined by the Teaching Council for this purpose. When vetting disclosures are received by the Teaching Council in this capacity, they will be placed on the Teaching Council's electronic register and can, with the consent of the teacher concerned, be made available in the normal way to any school employer, where required.
- 6.2 It is important to note that, in addition to undertaking retrospective vetting on its own behalf for registration purposes, the Teaching Council will also continue its existing conduit role for school employers where a vetting disclosure is required by a registered teacher (including a teacher who has not previously been vetted and has not yet been requested to undergo retrospective vetting for renewal of registration) for the purposes of circular 0031/2016 e.g. where a registered teacher requires a Bureau disclosure for a new employment.

- 6.3 The Teaching Council has, in accordance with sections 8 and 13 of the Vetting Act, informed the Bureau that in its role as a conduit for schools and ETBs, the Teaching Council represents all recognised schools and each of the Education and Training Boards (ETBs).
- 6.4 Where the Teaching Council is applying for vetting in its conduit role, it is doing so on behalf of all recognised schools or ETBs. Any such school or ETB that may wish to subsequently employ the teacher in question may, with the consent of the teacher concerned, access the disclosure in question via the Teaching Council's electronic register.

Non-teaching staff and non-employees.

- 6.5 In the case of persons other than registered teachers, the relevant diocesan office or school management body will act as a conduit for schools for the purposes of the retrospective vetting of such persons and in the case of ETB schools the relevant ETB is the relevant organisation for such purposes.
- 6.6 It is important to note that, in addition to acting as a conduit for retrospective vetting for the purposes of section 21 of the Vetting Act, the relevant diocesan offices, management bodies or ETBs as appropriate will also continue in their existing conduit role for school authorities where a vetting disclosure is required in respect of non-teaching staff or non-employees for the purposes of circular 0031/2016 e.g. where required in respect of a new employment, contract, permission or placement.

Use and disclosure of information in a vetting disclosure

- 6.7 Section 16 of the Vetting Act provides that it is a criminal offence for a relevant organisation (including a school authority) to use or disclose information that is contained in a vetting disclosure other than in accordance with the Vetting Act or as otherwise authorised by law.
- 6.8 Confidentiality is also absolutely essential in the processing of vetting applications. It is vital to ensure that the appropriate security arrangements are in place at all stages of the vetting process to protect the security, confidentiality and integrity of all personal data of applicants. All data must be managed within the statutory provisions of the Data Protection Acts.

7. Assessment of retrospective vetting disclosures

- 7.1 Where a school authority obtains a retrospective vetting disclosure, it may, in accordance with section 16 of the Vetting Act, consider and take into account the information in that vetting disclosure to assess the suitability of the person concerned to undertake relevant work or activities.
- 7.2 Where a disclosure contains criminal records or specified information, a key issue for a school authority is to determine whether that information would render a person unsuitable to undertake relevant work or activities with children or vulnerable persons. It

should be borne in mind by the school authority that the fact that a person has a conviction does not automatically render that person unsuitable to work with children or vulnerable persons. The primary criterion in assessing the significance of the information in the disclosure is its relevance to child protection. An objective and balanced approach is critical in this regard.

- 7.3 It is a matter for the school authority to make the judgement as to the person's suitability and to take any actions it considers necessary in relation to the person's continued work in the school. In that regard, it will be a matter for the school authority to consider all the circumstances of the case, give due weight to all relevant factors, afford fair procedures to the individual concerned and have regard to relevant employment legislation and any relevant disciplinary procedures. School authorities should note that legal advice should always be sought in such cases.

8. Frequently Asked Questions

- 8.1 The Department has published on its website an FAQ document to assist school authorities in relation to any queries that they may have regarding this circular. This will be updated as required.
- 8.2 In the case of non-teaching staff and non-employees, queries in relation to individual applications for vetting should be raised in the first instance with the relevant registered organisation i.e., the relevant diocesan office, management body or ETB.
- 8.3 Queries from registered teachers in relation to the retrospective vetting requirements of the Teaching Council should be raised with the Teaching Council.
- 8.4 General queries in relation to this circular should be e-mailed to the Department at:

schoolgovernance@education.gov.ie

9. Dissemination

- 9.1 A copy of this circular should be provided to members of the board of management and the staff of each school. A copy should also be provided to the parents association. This circular may be accessed on the Department of Education and Skills website at www.education.ie. An Irish version of this circular is also available on the Department's website.

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