

**Commencement of Statutory Requirements for Garda Vetting from 29 April 2016 and**

**Department of Education and Skills Circular 0031/2016.**

**FAQ for schools, centres for education, teachers and non-teaching personnel.**

This FAQ is intended as a guide to assist schools and centres for education and should be read in conjunction with [the National Vetting Bureau \(Children and Vulnerable Persons\) Act 2012](#) as amended by the [Criminal Justice \(Spent Convictions and Certain Disclosures Act\) 2016](#) referred to as the Vetting Act and Department [Circular 0031/2016](#).

<b>1. What are the main changes being introduced from 29 April 2016? .....</b>	<b>3</b>
<b>2. What is a vetting disclosure? .....</b>	<b>4</b>
<b>3. Is there a difference between a vetting disclosure issued by the Bureau (National Vetting Bureau) and a vetting outcome issued previously by the GCVU (the Garda Central Vetting Unit)? ..</b>	<b>4</b>
<b>4. Does a vetting disclosure from the Bureau have a life span?.....</b>	<b>4</b>
<b>5. Is there still a requirement for a Statutory Declaration and Form of Undertaking for teaching and non-teaching appointments? .....</b>	<b>5</b>
<b>6. Some of the staff in my school have been in posts since prior to 2006 and have not been vetted. Must they be vetted after 29 April 2016?.....</b>	<b>5</b>
<b>7. My school has an existing arrangement with the local GAA club for a coach to train the school gaelic team. Will the school now need to get a vetting disclosure from the Bureau for this coach?6</b>	<b>6</b>
<b>8. The school expects to employ, for the first time, a new substitute teacher on or after 29 April 2016. Is the school authority required under the Vetting Act to obtain a vetting disclosure from the Bureau before it can employ this new teacher?.....</b>	<b>7</b>
<b>9. What is the position regarding teachers who are added to the school's substitute list after 29 April 2016? Will obtaining the Teaching Council letter suffice or will the school need to obtain a vetting disclosure from the Bureau prior to employing such person?.....</b>	<b>7</b>

10. The school is employing a new cleaner in September 2016 who will be working after school when no children are present. Is there a requirement under the Act to have this person vetted prior to employing him or her?..... 7
11. My school has some building work planned which will be undertaken while the school is open. Is there a requirement that the builders working on site must be vetted? ..... 8
12. Is there a requirement to vet parents who help out with the annual cake sale? ..... 8

## 1. What are the main changes being introduced from 29 April 2016?

[Circular 0031/2016](#) contains ([at section 4](#)) the following ten key points to note in relation to the commencement from 29 April 2016 of statutory vetting -

1. From 29 April 2016, the Vetting Act will be commenced and will place statutory vetting obligations on school authorities.
2. The Vetting Act will put in place the National Vetting Bureau (the Bureau) which will replace the Garda Central Vetting Unit (GCVU) and will be responsible for issuing vetting disclosures under the Act's statutory vetting arrangements.
3. Statutory vetting will, in addition to a check for criminal records, include a check for any relevant "soft information". "Soft information" referred to as "specified information" in the Vetting Act, is 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.
4. From 29 April 2016, it will be a criminal offence, other than in certain limited circumstances, for a school authority to **commence** the employment of an employee without first obtaining a vetting disclosure from the Bureau in respect of that person. ([See section 5 of the circular](#)).
5. It will not be necessary under the Vetting Act to obtain a vetting disclosure from the Bureau prior to employing a teacher as a substitute **where** the school authority has prior to 29 April 2016 received a copy of the Teaching Council vetting letter in respect of that teacher. ([See section 5.3 of the circular](#)). However, in such cases, school authorities must take into account the wider duty of care considerations set out in [section 9 of the circular](#).
6. From 29 April 2016, it will be a criminal offence, other than in certain limited circumstances, for a school authority to contract, permit or place a person (e.g. contractor, volunteer, sports coach etc.) to undertake relevant work or activities with children or vulnerable persons, without first obtaining a vetting disclosure from the Bureau in respect of that person. (See [section 6.4 of the circular](#))
7. There is no immediate requirement to obtain vetting disclosures in respect of existing employees, volunteers, sports coaches etc. who undertake relevant work or activities in the school under contracts of employment or other arrangements that were in place prior to 29 April 2016. Such persons will however be required to be vetted in due course under the retrospective and re-vetting requirements of the Act (sections 21 and 20 of the Vetting Act respectively). The Department will issue further guidance in this regard.
8. The practice of the Teaching Council providing teachers with a vetting letter will be discontinued from 29 April 2016. From that date vetting disclosures received by the Teaching Council from the Bureau will, subject to the teacher's consent, be made available electronically to the relevant school authority. (See [section 8 of the circular](#))
9. In cases where no statutory vetting obligation exists (see [sections 5.3 and 6.4 of the circular](#)) or where the school authority has met its statutory obligation by receiving a vetting disclosure that has been issued by the Bureau in the past (i.e. not immediately prior to the person commencing the relevant work or activities in the school), a school authority must consider, having regard to its duty of care to its pupils, whether it should seek an up to date vetting disclosure in respect of the person. (See [section 9 of the circular](#))
10. Thorough recruitment procedures, including the checking of references and any gaps in career history, are an essential element of child protection practice. Statutory vetting should not take the place of good recruitment procedures but must be used as part of those procedures (see [section 9 of the circular](#)). As an additional safeguard the **Statutory Declaration and Form of Undertaking** must be completed and provided to the school authority prior to making a teaching or non-teaching appointment of any duration.

## **2. What is a vetting disclosure?**

From 29 April 2016 vetting will be conducted by the National Vetting Bureau (the Bureau). The function of the Bureau will be to provide a vetting disclosure to a relevant organisation that has applied for vetting in respect of a person.

A vetting disclosure is a statement issued by the Bureau which sets out 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.

“**Specified information**” or “soft 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.

## **3. Is there a difference between a vetting disclosure issued by the Bureau (National Vetting Bureau) and a vetting outcome issued previously by the GCVU (the Garda Central Vetting Unit)?**

In addition to criminal records, a vetting disclosure issued by the Bureau may contain additional “specified information” or “soft information”. This is information other than criminal convictions that leads to a bona-fide belief that a person poses a threat to children or vulnerable persons.

From 29 April 2016, it will be a criminal offence, other than in certain limited circumstances, for a school authority to commence the employment of an employee without first obtaining a vetting disclosure from the Bureau in respect of that person.

Where such an obligation applies, a GCVU outcome (or a Teaching Council vetting letter) will not satisfy the requirement of section 12 to receive a disclosure from the Bureau.

## **4. Does a vetting disclosure from the Bureau have a life span?**

No. The Vetting Act 2012 does not specify that a vetting disclosure received by the school authority must be an up-to-date disclosure that issued immediately prior the employment/contract, permission/placement of a person to undertake relevant work or activities.

For example, a school proposes to appoint Teacher A to a teaching position from September 2018. Prior to the employment of the teacher, the Teaching Council makes available to the school authority

the most recent vetting disclosure in its possession in respect of Teacher A. The disclosure was issued by the Bureau in May 2016. The school has satisfied the statutory requirement under section 12 of the Vetting Act to receive a vetting disclosure from the Bureau prior to employment. However, the school will need to consider whether having regard to its civil law duty of care to its pupils it should seek an up to date disclosure in respect of that teacher. See [section 9](#) of the Circular.

#### **5. Is there still a requirement for a Statutory Declaration and Form of Undertaking for teaching and non-teaching appointments?**

Yes. The requirement for a Statutory Declaration and Form of Undertaking to be completed and provided to the school authority prior to making a teaching or non-teaching appointment of any duration still exists.

The updated version of the Statutory Declaration contained in the [Appendix to Circular 0031/2016](#) must be used where a declaration is being newly completed from 29 April 2016 onwards.

Declarations already completed using the old version of the declaration (as contained in [circular 0063/2010](#)) can still be provided to a school authority subject to meeting the requirement for the declaration having being made in the current or previous calendar year.

The new version of the Form of Undertaking must be used in the case of any appointment made from 29 April 2016. A new payroll appointment form incorporating the updated Form of Undertaking is applicable to teacher and SNA appointments being made from 29 April 2016.

#### **6. Some of the staff in my school have been in posts since prior to 2006 and have not been vetted. Must they be vetted after 29 April 2016?**

Not immediately. From 29 April 2016 the initial focus is on section 12 of the Vetting Act which concerns vetting of persons prior to the commencement of employments, contracts, permissions or placements of such persons to undertake relevant work or activities.

There is no immediate requirement to obtain vetting disclosures in respect of existing employees, volunteers, sports coaches etc. who have never been vetted to date and undertake relevant work or activities, under contracts of employment or existing arrangements that were in place prior to 29 April 2016.

However such persons will be required to be vetted in due course under the retrospective and re-vetting requirements of the Vetting Act (sections 21 and 20 of the Vetting Act respectively). A person for whom a GCVU vetting outcome has previously been received by the school authority is not required to be vetted under the Act's retrospective vetting requirements.

Regarding retrospective vetting school authorities will be required to ensure that applications for statutory vetting have been made in respect of all such persons by 31 December 2017.

The Department will issue separate guidance in relation to the retrospective vetting requirements in respect of such persons and the practical arrangements in respect of same.

Section 20 of the Vetting Act which concerns the periodic re-vetting of employees, volunteers and others involved in working with children and vulnerable persons who have already been vetted is not being commenced by the Minister for Justice and Equality at this time. Further guidance will issue when re-vetting requirements are put in place.

**7. My school has an existing arrangement with the local GAA club for a coach to train the school Gaelic team. Will the school now need to get a vetting disclosure from the Bureau for this coach?**

There is no immediate requirement to have the coach vetted because he or she is undertaking relevant work or activities under an existing arrangement (i.e. in place prior to 29 April 2016) with the school.

From 29 April 2016 the initial focus is on section 12 of the Vetting Act which concerns vetting of persons prior to the commencement of employments, contracts, permissions or placements of such persons to undertake relevant work or activities.

There is no immediate requirement to obtain vetting disclosures in respect of existing employees, volunteers, sports coaches etc. who have never been vetted to date and undertake relevant work or activities, under contacts of employment or existing arrangements that were in place prior to 29 April 2016.

However such persons will be required to be vetted in due course under the retrospective and re-vetting requirements of the Vetting Act (sections 21 and 20 of the Vetting Act respectively). A person for whom a GCVU vetting outcome has previously been received by the school authority is not required to be vetted under the Act's retrospective vetting requirements.

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The Department will issue separate guidance in relation to the retrospective vetting requirements in respect of such persons and the practical arrangements in respect of same.

Section 20 of the Vetting Act which concerns the periodic re-vetting of employees, volunteers and others involved in working with children and vulnerable persons who have already been vetted is not being commenced by the Minister for Justice and Equality at this time. Further guidance will issue when re-vetting requirements are put in place.

**8. The school expects to employ, for the first time, a new substitute teacher on or after 29 April 2016. Is the school authority required under the Vetting Act to obtain a vetting disclosure from the Bureau before it can employ this new teacher?**

It depends on whether the school has, prior to 29 April 2016, received a copy of the Teaching Council Vetting letter in respect of the teacher in question.

If the teacher hasn't been employed by the school as a substitute previously **but** the school has, prior to 29 April 2016, received a copy of the Teaching Council vetting letter in respect of the teacher, there is no obligation under the Vetting Act to obtain a disclosure from the Bureau in respect of him or her prior to commencing the employment. The school should however consult [section 9 of circular 0031/2016](#) in relation to whether it would nonetheless be prudent to seek a disclosure notwithstanding that there is no statutory obligation to do so.

If the teacher hasn't been employed by the school as a substitute previously and the school has not, prior to 29 April 2016, received a copy of the Teaching Council vetting letter in respect of the teacher, then the school must not commence the employment of the person without first obtaining a disclosure from the Bureau in respect of him or her.

**9. What is the position regarding teachers who are added to the school's substitute list after 29 April 2016? Will obtaining the Teaching Council letter suffice or will the school need to obtain a vetting disclosure from the Bureau prior to employing such person?**

In the case of any teacher added to the substitute list from 29 April 2016 onwards, receiving the Teaching Council vetting letter after that date will not satisfy the requirements of section 12 of the Vetting Act. The school is required under section 12 of the Act to obtain a vetting disclosure from the Bureau in respect of such a person before employing him or her.

**10. The school is employing a new cleaner in September 2016 who will be working after school when no children are present. Is there a requirement under the Act to have this person vetted prior to employing him or her?**

The Vetting Act requires vetting where an organisation employs a person to undertake relevant work or activities in respect of children or vulnerable persons. **"Relevant work or activities"** in the context of a school or centre for education means 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. Therefore In the case of a cleaner working in the school when no children are present, no vetting obligation arises.

**11. My school has some building work planned which will be undertaken while the school is open. Is there a requirement that the builders working on site must be vetted?**

The Vetting Act requires vetting where an organisation employs, contracts or permits a person to undertake relevant work or activities in respect of children or vulnerable persons. **“Relevant work or activities”** in the context of a school or centre for education means 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. Builders working on site should not have access to or contact with pupils and therefore no vetting obligation would arise.

**12. Is there a requirement to vet parents who help out with the annual cake sale?**

The Vetting Act does not apply to unpaid volunteers (such as parents) who assist the school on an occasional basis provided such assistance does not involve the coaching, mentoring, counselling, teaching or training of children or vulnerable persons. A parent who helps on an occasional basis is therefore not subject to vetting as long as the parent is not involved in the coaching, mentoring, counselling, teaching or training of pupils.