

Legislation and Guidance

The following document outlines the legislation and good practice guidance for those operating in Republic of Ireland and those operating in the Northern Ireland

1 UN Convention on the Rights of the Child 1989 (UNCRC International Treaty)

These are some of the sections highlighting rights:

Section 2 Equality of all children;

Section 3 The Principle of Best Interest;

Section 6 Child's right to survival and Development;

Section 12 Child's right to express their views and for them to be respected.

Section 19 Protection from abuse and neglect

Legislation to be considered when promoting safeguarding in the Republic of Ireland

1) Child Care Act 1991

The Child Care Act 1991 focuses on the child and the promotion of the child's welfare. It raised the age of a child up to the age of 18 years, unless they are or have been married. It also places a statutory duty on Tusla to identify children who are not receiving adequate care and protection, to promote their welfare and to provide child care and family support services. The Act also places a statutory duty on the Gardaí to protect children and, under Section 12 of the Act, they can remove a child to a place of safety.

2) Protection for Persons Reporting Child Abuse Act 1998

This Act is designed to ensure that there are no barriers for persons wishing to report a concern about child abuse or welfare to Tusla or An Garda Síochána.

3) Criminal Justice Act 2006 – Reckless Endangerment

Section 176 of the Act creates an offence where a person who has authority or control over a child or over a person who has abused a child intentionally or recklessly endangers the child by causing or permitting the child to be placed or left in a situation which creates a substantial risk to the child of being a victim of serious harm or sexual abuse or failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation.

4) Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012

This Act establishes in Irish law an offence of withholding information from the Gardaí in relation to specified offences committed against a child or vulnerable person. The Act also provides for a number of defences against a charge of withholding information. As this piece of legislation is very complex in nature, we would recommend organisations get legal advice on the implications of it for their own organisation

5) Freedom of Information Act 2014 and Data Protection Acts 1988 & 2003

These Acts give rights to individuals to access their own records and to have inaccurate data rectified or erased. There are implications for anyone recording data to ensure that it is fairly collected, accurate, kept for lawful purposes and not disclosed inappropriately.

6) National Vetting Bureau Act 2012

This Act was enacted in December 2012, but has not yet been commenced (come into effect). The Act makes it mandatory for persons working with children or vulnerable adults to be vetted, whereas at present this is done on the basis of a voluntary code. It will also create offences and penalties for persons who fail to comply with its provisions.

7) Children First Act 2015

This Bill has not been passed into law and therefore currently has no legal status. It is designed to strengthen the safeguarding and protection of children by putting key elements of Children First: National Guidance for the Protection and Welfare of Children on a statutory footing.

Legislation to be considered when promoting safeguarding in the Northern Ireland

2 The Children (NI) Order 1995 (how NI responded to implementing part of the UNCRC 1989 treaty)

5 good practice principles of this legislation are:

Paramountcy;
Parental Responsibility;
Prevention;
Partnership;
Protection.

3 Co-operating to Safeguard Children and Young People (2016)

Provides child protection guidelines and outlines the roles and responsibilities of all agencies in Northern Ireland.

4 Criminal Law Act (NI) 1967

Legislation states that anyone with direct knowledge or information about an arrestable offence is required to inform the police within a reasonable time. An arrestable offence may include the non-disclosure of serious cases of child abuse

5 Data Protection Act 1998

The act is UK wide – It defines what personal data is and that it shall be processed fairly and lawfully. Gives individuals the right to know what information about them is held Provides framework for managing personal information

It is not a barrier to sharing information to safeguard children

Clubs need to review information held to consider:

- How long they need to keep information for;
- The purpose it is held;
- How it is stored and;
- How it will be destroyed.

6 Disability Discrimination Act

Currently in the UK the Disability Discrimination Act (1995)^[1], protects the rights of disabled people in the United Kingdom. The DDA has the following effect on the sporting context:

- It is unlawful for sports clubs to treat disabled people less favourably for a reason related to their disability
- Sports clubs are required to make 'reasonable adjustments' for disabled people such as providing extra help or making changes to the way in which they provide their services
- Sports clubs will also have to make 'reasonable adjustments' to the physical features of their premises in order to overcome physical barriers to access

It is a legal requirement for sports clubs to comply with their responsibilities under the DDA.

1 Disability Discrimination Act, 1995 (amended in 2005)

Legislation specific to sexual offences

7 Sexual Offences (NI) Order 2008

Brings NI in line with legislation in England and Wales Some offences created and increased tariffs for those who harm children Part 2 of legislation focuses on convicted individuals and their management Establishes the age of consent for NI as 16 to bring us in to line with the rest of the UK.

8 The Sexual Offences Act 2003

This legislation means that people who have been cautioned or convicted for sexual offences on or after 1 September 1997, or who have been released from prison on or after that date, having been convicted for sexual offences must notify the police of certain details including name(s), address(es), date of birth, National Insurance Number etc. This process is sometimes referred to as 'signing the sex offender's register' and offenders are required to notify for periods which are determined by the sentence handed down by the Courts.

9 The Criminal Justice (NI) Order 2008

This legislation has created public protection sentences within an overall new sentencing framework for Northern Ireland, which removes the right to automatic 50% remission for prisoners who receive a custodial sentence. Arguably the most significant of the public protection sentences is the new Indeterminate Sentence, which will effectively mean that the offenders who receive this sentence will have to satisfy new Parole Commissioners that their risk of causing serious harm has been reduced before they are released from prison to return to the community. The legislation also places the Public Protection Arrangements on a statutory footing and provides for the Courts to order the use of electronic tagging for offenders.

Legislation and organisations in relation to criminal record checks

10 Rehabilitation of Offenders (Exceptions) Order (NI) 1979.

Ordinarily, due to the Rehabilitation of Offenders (Northern Ireland) Order 1978, an employer is entitled only to request an individual's unspent record. However, exceptions are made under this legislation which lists the circumstances in which an employer may apply for a full criminal record disclosure.

11 Police Act (Introduced what is known as Part 5 of the Police Act 1996) This was not initially implemented in Northern Ireland, but the Northern Ireland Office enacted this piece of the legislation. It enables the PSNI to disclose what is termed 'soft intelligence', i.e. non-conviction information, when they deem it appropriate. This coincided with the establishment of Access NI, the equivalent to the Disclosure and Barring Service (DBS) in England and Wales.

12 AccessNI

This organisation was established by a joint programme between the Northern Ireland Office, the Department of Health, Social Services and Public Safety, the Department of Education and the Police Service of Northern Ireland. It provides organisations registered with them with a central means of checking the suitability of an individual seeking work with children by providing a means for accessing any information which might have a bearing on an individual's suitability. Its role is to complement each agency's own safeguarding measures and all agencies entrusted with the care or training of children need to have robust recruitment and staff/volunteer selection procedures. www.nidirect.gov.uk/accessni-criminal-record-checks

13 Safeguarding Vulnerable Groups (NI) Order 2007

Organisations have a legal duty to refer information to the Disclosure and Barring Service (DBS) formally the Independent Safeguarding Authority (ISA) in certain circumstances. In all cases there are two conditions, both must be met to trigger a referral to the DBS by a regulated activity provider i.e. a sports club/governing body working with young people or vulnerable adults. A referral must be made to the DBS when a club /organisation: a. withdraws permission for an individual to engage in regulated activity, or would have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not regulated activity; because b. they think that the individual has:

- engaged in relevant conduct;
- satisfied the Harm Test; or
- received a caution or conviction for a relevant offence.

If both conditions have been met the information must be referred to the DBS. The referral should be made to the DBS when the regulated activity provider has gathered sufficient evidence as part of their investigations to support their reasons for withdrawing permission to engage in regulated activity and in following good practice, consulted with their Health and Social Care Trust.

14 Protection of Freedoms Act 2012

From September 2012, there have been some changes to safeguarding arrangements in relation to vetting in England, Wales and Northern Ireland, arising from the Protection of Freedoms Act 2012, which amends the Safeguarding Vulnerable Groups (NI) Order. This includes a new and



more limited definition of regulated activity. This new definition is intended to reduce the number and scope of positions which are eligible for a criminal record check with **Barred List** information. In November 2015 a new portable disclosure service was introduced in Northern Ireland to allow individuals to apply for a criminal record certificate once, and then use this certificate when applying for similar subsequent posts (paid or unpaid). This was introduced in England and Wales in June 2013. In summary there are three significant changes that organisations need to understand in relation to checking individuals that have contact with children and vulnerable adults in their environments. These changes are:

1. Regulated Activity and which individuals must be checked legally in the future.
2. Single Disclosures i.e. Disclosures being sent to individuals only.
3. Continuous Updating and Portability arrangements.

Guidance to promote safeguarding on an All-Ireland basis

Our Duty to Care (ROI 2002 And NI 2011)

This guidance promotes Safeguarding as everyone's business Provides guidelines for the establishment of best practice 3 important objectives:

- Child safety is paramount;
- Creating the right atmosphere for rewarding and enjoyable experiences;
- Increasing peace of mind for all.

Code of Ethics and Good Practice for Children's Sport (revised 2006)

Guidance produced by Sport Ireland and SportNI to advise sporting organisations on best practice when working with young people, broken down into 5 sections