

An Rialálaí
Carthanas
Charities
Regulator

Safeguarding Guidance for Charitable Organisations working with Vulnerable Persons (Adults)

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LEGAL DISCLAIMER

This document is intended to provide general information in relation to applications for registration under section 39 of the Charities Act 2009. It is not, nor is it intended to be, a definitive statement on the laws, standards, policies and procedures applicable to the safeguarding of vulnerable persons (adults). Information contained in this document is taken from the HSE policies referred to on page 6. Where a charity's activities include working with vulnerable persons (adults), any queries relating to the areas of risk assessment, safety checks and safeguarding should be directed to the appropriate State agency. Organisations may wish to obtain their own independent legal advice when making decisions relating to any of the matters referred to in this document.

1

Introduction

Where the activities of a charitable organisation (“charity”) include working with vulnerable persons (adults), it is important that the charity has adequate risk assessment procedures, safety checks and safeguards in place that meet requirements under Irish law and national standards, policies and procedures.

While the Charities Regulator’s statutory remit does not extend to the safeguarding of vulnerable people, the issue of risk assessment procedures, safety checks and safeguarding nevertheless arises in the context of applications for registration in the Register of Charities and required standards of governance within registered charities.

Registration Requirements

Further to section 39 of the Charities Act 2009, the Charities Regulator has established a Register of Charities, which lists all registered charities and provides information on them including each charity’s trustees and the charitable purpose of each charity. The Register of Charities is publicly available and can be accessed through the Charities Regulator’s website: www.charitiesregulator.ie

A charity that intends to operate or carry on activities in the State is required to apply to the Charities Regulator for registration in the Register of Charities.

Section 39(5) of the Charities Act 2009 outlines what an application for registration on the Register of Charities must consist of, which includes a requirement that an application must –

*“specify the risk assessment procedures, safety checks and safeguards employed by the charitable organisation where its activities include working with vulnerable people (including the aged, children and young people, the sick, disabled and handicapped)”.*¹

Applicants for charitable status must provide these documents when submitting an application form. Applicants must ensure that the specific risk assessment procedures, safety checks and safeguards meet the applicable legal requirements and standards for both the planned and actual activities undertaken and are independently verified.

1 Paragraph (l) of section 39(5) of the Charities Act 2009

Required Standards of Governance

In November 2018, the Charities Regulator published the Charities Governance Code. The Charities Governance Code sets out 6 core principles and 32 standards with which all registered charities are expected to comply along with 17 additional standards for more complex charities.

Principle 4 of the Charities Governance Code, which relates to the principle that charity trustees must exercise control of their charity provides as follows:

“All charities, no matter what their complexity, must abide by all legal and regulatory requirements that are relevant to the work they do. The charity trustees are responsible for making sure this happens”.

The Core Standards, which fall under the principle of exercising control, provide that charities are required to do a number of things to apply the principle including the following:

- › “Find out the laws and regulatory requirements that are relevant to your charity and comply with them”², and
- › “Identify any risks your charity may face and how to manage these”.³

The additional standards, which fall under the principle of exercising control and apply to more complex charities, provide that such charities should do the following:

- › “Have written procedures to make sure that you comply with all relevant legal and regulatory requirements” (additional standard 4.7); and
- › “Consider adopting additional good practice standards that are relevant to the particular work that your charity does” (additional standard 4.9).

In summary, the Governance Code makes it clear that charities must abide by all legal and regulatory requirements and have written procedures in place for doing so. Charities must also identify risks and how to manage them, and adopt good practice standards. These requirements apply in all areas, including where a charity works with vulnerable people.

It is essential that where a charity’s activities include working with vulnerable people that its charity trustees and all those working and volunteering with the charity are cognisant of applicable safeguarding requirements, and have the necessary risk assessment procedures, safety checks and safeguards in place.

2 Core Standard 4.2

3 Core Standard 4.5

Charities Providing Services Overseas

For organisations intending to provide services to vulnerable people overseas, the Charities Regulator will, when considering an application for registration from such an organisation, consider the requirement to specify risk assessment procedures, safety checks and safeguards by reference to national laws and any national guidance, policies and procedures that apply in the Republic of Ireland. Charities must however ensure that they also comply with the requirements regarding the protection of vulnerable people in place in the country in which they are providing or will provide a service. Charities should seek independent advice if they are unsure in relation to their obligations.

Purpose of this Guidance Note

It is important to note that this guidance is for charities working with **vulnerable persons (adults)**. Reference to vulnerable adults includes the elderly, those who are sick, and those who are disabled. The Charities Regulator has produced separate guidance for charities whose activities including working with children, which is available on the website of the Charities Regulator.

The purpose of this guidance note is to provide a broad overview of safeguarding principles, key legislative requirements and relevant national guidance, policies and procedures relating to the protection of vulnerable persons (adults).

This guidance also identifies resources available from other agencies to ensure that safeguards are in place that adequately protect vulnerable persons (adults). This will assist organisations wishing to apply for registration in the Register of Charities and registered charities seeking to meet the standards set out in the Governance Code.

This guidance document does not constitute a definitive statement on the laws, standards, policies and procedures applicable to the safeguarding of vulnerable persons (adults). Where a charity's activities include working with vulnerable persons (adults), any queries relating to the areas of risk assessment, safety checks and safeguarding should be directed to the appropriate State agency. A list of contacts and available resources is provided at the end of this document.

Some of the text in this guidance has been taken from the;

- *HSE Safeguarding Vulnerable Persons at Risk of Abuse' – National Policy and Procedures' (2014, which will be referred to as the HSE National Policy and Procedures (2014)*
- *Final Draft HSE Safeguarding Adults Policy (2019).*

2

Safeguarding Principles – Vulnerable Persons (Adults)

The Health Service Executive's Social Care Division has published the *Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures (Incorporating Services for Elder Abuse and for Persons with a Disability)*. Whilst this policy is currently undergoing an update the new version has yet to be implemented and the 2014 policy remains in place.

The HSE National Policy and Procedures (2014) provides that the HSE, for the purpose of the policy and procedures, considers a vulnerable person to be an adult who may be restricted in capacity to guard himself / herself against harm or exploitation or to report such harm or exploitation.

The scope of the HSE National Policy and Procedures (2014)⁴ and who it applies to is clearly set out within that document. All charities with responsibility for the provision of health and social care services to vulnerable persons (adults), and who come within the scope of the HSE National Policy and Procedures (2014), should ensure that they comply.

As set out in the HSE National Policy and Procedures (2014), the following principles are critical to the safeguarding of vulnerable persons (adults) from abuse:

- > Human Rights
- > Person Centeredness
- > Advocacy
- > Confidentiality
- > Empowerment
- > Collaboration


4 Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures, Health Service Executive, 2014

The 11 fundamental safeguarding principles which are set out in the Final Draft HSE Adult Safeguarding Policy (2019)⁵ are that:

- 1.** Safeguarding is everyone's responsibility.
- 2.** Everyone must have a 'zero tolerance' approach to any form of abuse.
- 3.** The duty to report safeguarding concerns rests with the person who has the concern.
- 4.** There should be no delay in reporting a safeguarding concern.
- 5.** It is necessary to ensure the immediate safety of the adult at risk of abuse.
- 6.** There should be no delay in implementing a Safeguarding Protection Plan.
- 7.** Good collaborative working is central to safeguarding. All parties should share relevant information that is known to them within the rules of data protection and client confidentiality.
- 8.** Any information about an adult must be managed appropriately and shared/processed on the basis of "necessity" with the HSE/ HSE funded services and relevant statutory authorities.
- 9.** Safeguarding should be founded on an approach where the adult is at the heart of all decisions and actions.
- 10.** A health or social care professional already known to the adult at risk of abuse, or assigned to them, should be involved in the management of the concern, where possible and appropriate.
- 11.** Considerations of capacity and consent are central to adult safeguarding. The right of a person to make decisions and remain in control of their life must be respected.

The below points are referred to in the HSE Policy and Procedures (2014). Charities which come within the scope of the HSE Policy and Procedures (2014) should be familiar with these points.

- › Committed to the safeguarding of vulnerable persons (adults) from abuse.
- › All adults have the right to be safe and to live a life free from abuse.
- › All persons are entitled to this right, regardless of their circumstances.
- › It is the responsibility of all service providers, statutory and non-statutory, to ensure that, vulnerable persons (adults) are treated with respect and dignity, have their welfare promoted and receive support in an environment in which every effort is made to promote welfare and to prevent abuse.
- › All service providers must have a publicly declared 'No Tolerance' approach to any form of abuse and must promote a culture which supports this ethos.
- › All policies and procedures must promote welfare, reflect inclusion and transparency in the provision of services, and promote a culture of safeguarding.
- › Vulnerable persons (adults) have a right to be protected against abuse and to have any concerns regarding abusive experiences addressed. They have a right to be treated with respect and to feel safe.



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3

Core Requirements for Organisations Working with Vulnerable Persons (Adults)

The HSE National Policy and Procedures (2014) applies:

- › To all statutory and public funded non-statutory service providers (including for-profit organisations) with responsibility for the provision of health and social care services to vulnerable persons. It applies to all staff and volunteers.
- › Across all service settings, including domestic, alternative family placements, residential care, respite services, day care and independent living (associated support services such as transport are also included).
- › To all other relevant directly provided HSE services.
- › In situations where formal health or social care services are not in place but where concerns have been raised by, for example, neighbours, family members and members of the public in relation to the safeguarding of an individual and a health and/or social service response is required.

As set out in the HSE National Policy and Procedures (2014), HSE National Policy must be used in conjunction with the following as appropriate:

- › National Standards for Residential Services for Children and Adults with Disabilities, (Standard 3)
- › National Quality Standards for Residential Care Settings for Older People in Ireland, (Standard 8)
- › HSE Policies for Managing Allegations of Abuse against Staff Members
- › HSE National Consent Policy
- › Children First: National Guidance
- › Safety Incidence Management Policy

As set out above, all charities with responsibility for the provision of health and social care services to vulnerable persons (adults), and who come within the scope of the HSE National Policy and Procedures, should ensure that they comply.

A core governance responsibility is to ensure that safeguarding policies and procedures and associated practices are in place and appropriate to the services provided. Any service specific policy documents developed and implemented for the safeguarding of vulnerable persons must be reviewed against and follow the HSE national policy and procedures (2014). It will be the responsibility of each charity to ensure and demonstrate compliance.



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4

Risk Assessment

As set out in the HSE National Policy and Procedures (2014), each organisation must have an effective procedure for assessing and managing risks with regard to safeguarding. In assessing and managing risks, the aim is to minimise the likelihood of risk or its potential impacts while respecting an ambition that the individual is entitled to live a normalised life to the fullest extent possible. In safeguarding terms, the aim of risk assessment and management is to prevent abuse occurring, to reduce the likelihood of it occurring and to minimise the impacts of abuse by responding effectively if it does occur. An organisation should evaluate and put in place risk reducing measures in respect of all relevant activities and programmes. The HSE national policy and procedures (2014) outlines that in the management of risk, consideration should be given to the following:

- › The assessment and management of risk should promote independence, real choices and social inclusion of vulnerable persons (adults).
- › Risks change as circumstances change.
- › Risk can be minimised but not eliminated.
- › Identification of risk carries a duty to manage the identified risk.
- › Involvement with vulnerable persons (adults), their families, advocates and practitioners from a range of services and organisations helps to improve the quality of risk assessments and decision making.
- › Defensible decisions are those based on clear reasoning.
- › Risk taking can involve everybody working together to achieve desired outcomes.
- › Confidentiality is a right, but not an absolute right, and it may be breached in exceptional circumstances when people are deemed to be at risk of harm or it is in the greater public interest.
- › The standards of practice expected of staff and volunteers must be made clear by their team manager/supervisor.
- › Sensitivity should be shown to the experience of people affected by any risks that have been taken and where an event has occurred.

5

Safeguards & Safety Checks

Safeguarding Policy and Procedures

In line with the Charities Act 2009, for the purposes of registration, the application must specify safety checks employed by the charity. The Charities Regulator considers safety checks to include the policy and procedures for safeguarding vulnerable persons at risk of abuse, which should be consistent with the HSE National Policy and Procedures (2014) or any updated version of this HSE policy.

The development of a safeguarding policy and procedures reflects the commitment to promote the welfare of vulnerable persons (adults) at risk of abuse to live full and meaningful lives in safe and supportive environments and to respect the full expression of people's rights and responsibilities.

The safeguarding policy and procedures document should include at minimum;

- › Preventative approaches including a “No Tolerance” approach to any form of abuse
- › Responding to concerns or allegations of abuse of vulnerable persons (adults)
- › Reporting concerns or allegations of abuse of vulnerable persons (adults)
- › Recruiting and managing staff / volunteers
- › Safeguarding awareness and training

Garda Vetting of Staff/Volunteers

Statutory obligations on employers in relation to Garda vetting requirements for persons working with children and vulnerable persons are set out in the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016.

The National Vetting Bureau issues vetting disclosures to organisations employing people who work in a full-time, part-time, voluntary or student placement basis with children and/or vulnerable persons.

The Act includes a statutory definition of a vulnerable person, which is as follows:

“a person, other than a child, who-

- (a) Is suffering from a disorder of the mind, whether as a result of mental illness or dementia,***
- (b) Has an intellectual disability,***
- (c) Is suffering from a physical impairment, whether as a result of injury, illness or age,***
- (d) Or has a physical disability,***

Which is of such a nature or degree-

- (i) As to restrict the capacity of the person to guard himself or herself against harm by another person, or***
- (ii) That results in the person requiring assistance with the activities of daily living including dressing, eating, walking, washing and bathing”.***

If a charity is unsure about whether its staff should be Garda vetted it should contact the National Vetting Bureau.

The National Vetting Bureau does not decide on the suitability of any person to work with children and vulnerable persons. Rather, in response to a written request for vetting, the National Vetting Bureau releases a vetting disclosure which can contain details of convictions or pending prosecutions together with other specified information on the person to be vetted to the prospective recruiting organisation.

Decisions on suitability for recruitment rest at all times with the recruiting organisation and the results of vetting should form only one part of the recruitment decision.

6

Resource List – Vulnerable Persons (Adults)

<https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/>

The Health Service Executive (HSE) provide guidance and resources for organisations providing services to vulnerable persons, which are available on their website (www.hse.ie).

Publications, Support Documents, Sample Templates and Forms

- › Final Draft HSE Adult Safeguarding Policy 2019 (due for implementation)
- › HSE Safeguarding Vulnerable Persons at Risk of Abuse’ – National Policy and Procedures’ 2014
- › A Frequently Asked Questions (FAQ) document about the policy
- › Safeguarding Vulnerable Persons Procedure Flow chart.pdf (size 245.5 KB)
- › Safeguarding Easy Read Leaflet for Service Users
- › Safeguarding Vulnerable Persons Community Referral Forms
- › Access Elder Abuse Resources
- › Information for Families on Safeguarding Policy
- › Self-Neglect guidance

The Health Information and Quality Authority (HIQA) and the Mental Health Commission (MHC) have jointly developed National Standards for Adult Safeguarding (published December 2019). The can be accessed on www.hiqa.ie and www.mhcirl.ie.

Safeguarding Ireland is a not-for-profit organisation that was formed with the support of the Health Service Executive (HSE) and the Irish Government. It provides significant information and resources at www.safeguardingireland.org.

Information and resources are also available on the Department of Health website www.health.gov.ie

Legislation information is available on www.gov.ie

Appendix - Relevant Legislation for Organisations Working with Vulnerable Persons (Adults)

There are several key pieces of legislation that relate to vulnerable person welfare and protection. Table 2 below gives a brief overview of relevant legislation. It is not intended as legal opinion or advice and, if in doubt, you should consult the original legislation.

Table 2

<p>National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016</p>	<p>Under these Acts, it is compulsory for employers to obtain vetting disclosures in relation to anyone who is carrying out relevant work with children or vulnerable adults. The Acts create offences and penalties for persons who fail to comply with their provisions. Statutory obligations on employers in relation to Garda vetting requirements for persons working with children and vulnerable adults are set out in the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016. Schedule 1 Part 2 sets out the relevant work or activities relating to vulnerable persons.</p>
<p>Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012.</p>	<p>Under this Act, it is a criminal offence to withhold information about a serious offence, including a sexual offence, against a person under 18 years or a vulnerable person. The offence arises where a person knows or believes that a specified offence has been committed against a child or vulnerable person and he or she has information which would help arrest, prosecute or convict another person for that offence, but fails without reasonable excuse to disclose that information, as soon as it is practicable to do so, to a member of An Garda Síochána.</p>

<p>The Health Act 2007</p>	<p>The Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults with Disabilities) Regulation 2013 is a significant development in the safeguarding of children and adults who use residential services. These regulations came into operation on November 1st, 2013. Within these regulations specific reference is made to protection. Part 2, 8 (1) of the regulations state that “the registered provider shall protect residents from all forms of abuse.” Part 8 – Notification of Incidents 31(1) states that “The person in charge shall give the chief inspector notice in writing within 3 working days of the following adverse incidents occurring in designated centres: This includes (31 (1) (f)) any allegation, suspected or confirmed, of abuse of any resident.”</p> <p>The Health Act, 2007 (Care and the Welfare of Residents in Designated Centres for Older People) Regulations 2009 (as amended) Article 6 (1) and (2) sets out the arrangements to be put in place by the registered provider and the person in charge in relation to protecting residents from all forms of abuse, including ensuring that there are policies and procedures in place for the prevention, protection and response to abuse and recording any incidents and taking appropriate action where a resident is harmed or suffers abuse.</p>
<p>Assisted Decision Making (Capacity) Act 2015 (Not currently commenced in Full)</p>	<p>This Assisted Decision Making (Capacity) Act (2015) enables due regard to the person’s capacity to keep themselves safe and to the appropriate application of consent. The Assisted Decision-Making (Capacity) Act 2015 governs the law in relation to adults who are experiencing difficulties with decision making – and it changes the definition of ‘capacity’. While capacity was previously assessed on a ‘status’ basis, now it should be assessed on a ‘functional’ basis. The Act creates a new system to support people to make decisions and repeals the Ward of Court System.</p>

**Proposed Adult
Safeguarding Bill
2017**

In March 2017, the Adult Safeguarding Bill was introduced in the Seanad and the general principles of the Bill were debated. It received cross party support and was passed to committee stage and in October 2017 it was discussed at the Joint Health Committee.

The main provisions under this Bill include:

- › Definitions- “adult at risk” unable to protect him or herself from harm
- › Establishment of a National Adult Safeguarding Authority
- › Powers of investigation by the Authority
- › Right of entry and inspection by authorised person
- › Reporting Obligations
- › Right to access an independent advocate.

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