

Appendix 1 - Legislation & Policy

Relevant Legislation

There are a number of key pieces of legislation that relate to child welfare and protection. Below is list of the legislation that is applicable in the area of Safeguarding and Child Protection:

Child Care Act 1991

This is the key piece of legislation which regulates child care policy in Ireland. Under this Act, Tusla has a statutory responsibility to promote the welfare of children who are not receiving adequate care and protection. If it is found that a child is not receiving adequate care and protection, Tusla has a duty to take appropriate action to promote the welfare of the child. This may include supporting families in need of assistance in providing care and protection to their children. The Child Care Act also sets out the statutory framework for taking children into care, if necessary.

Child Care Act 1991 - <http://www.irishstatutebook.ie/eli/1991/act/17/enacted/en/html>

Protections for Persons Reporting Child Abuse Act 1998

This Act protects you if you make a report of suspected child abuse to designated officers of Tusla, the Health Service Executive (HSE) or to members of the Gardaí as long as the report is made in good faith and is not malicious. Designated officers also include persons authorised by the Chief Executive Officer of Tusla to receive and acknowledge reports of mandated concerns about a child from mandated persons under the Children First Act 2015. This legal protection means that even if you report a case of suspected child abuse and it proves unfounded, a plaintiff who took an action would have to prove that you had not acted reasonably and in good faith in making the report. If you make a report in good faith and in the child's best interests, you may also be protected under common law by the defence of qualified privilege.

You can find the full list of persons in Tusla and the HSE who are designated officers under the 1998 Act, on the website of each agency (www.tusla.ie and www.hse.ie).

Protections for Persons Reporting Child Abuse Act 1998 –

<http://www.irishstatutebook.ie/eli/1998/act/49/enacted/en/html>

Criminal Justice Act 2006

Section 176 of this Act created an offence of reckless endangerment of children. This offence may be committed by a person who has authority or control over a child or abuser who intentionally or recklessly endangers a child by:

1. Causing or permitting the child to be placed or left in a situation that creates a substantial risk to the child of being a victim of serious harm or sexual abuse; or

2. Failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation.

Criminal Justice Act 2006 - <http://www.irishstatutebook.ie/eli/2006/act/26/enacted/en/html>

Criminal Justice (Withholding of Information on Offences Against Children & Vulnerable Persons) ACT 2012

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.

The provisions of the Withholding legislation are in addition to any reporting requirements under the Children First Act 2015.

Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 - <http://www.irishstatutebook.ie/eli/2012/act/24/enacted/en/html>

National Vetting Bureau (Children & Vulnerable Persons) Acts 2012–2016

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.

National Vetting Bureau (Children & Vulnerable Persons) Act 2012 – 2016

<http://www.irishstatutebook.ie/eli/2012/act/47/enacted/en/html>

Children First Act 2015

The Children First Act 2015 is an important addition to the child welfare and protection system as it will help to ensure that child protection concerns are brought to the attention of Tusla without delay.

The Act provides for mandatory reporting of child welfare and protection concerns by key professionals; comprehensive risk assessment and planning for a strong organisational culture of safeguarding in all services provided to children; a provision for a register of non-compliance; and the statutory underpinning of the existing Children First Interdepartmental Implementation Group which promotes and oversees cross- sectoral implementation and compliance with Children First.

Children First Act 2015 - <http://www.irishstatutebook.ie/eli/2015/act/36/enacted/en/pdf>

Criminal Law (Sexual Offences) Act 2017

This Act addresses the sexual exploitation of children and targets those who engage in this criminal activity. It creates offences relating to the obtaining or providing of children for the purposes of sexual exploitation. It also creates offences of the types of activity which may occur during the early stages of the predatory process prior to the actual exploitation of a child, for example, using modern technology to prey on children and making arrangements to meet with a child where the intention is to sexually exploit the child. The Act also recognises the existence of underage, consensual peer relationships where any sexual activity falls within strictly defined age limits and the relationship is not intimidatory or exploitative.

Criminal Law (Sexual Offences) Act 2017 -

<http://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/html>

Child protection in Northern Ireland Legislation, policy and guidance

The Northern Ireland Executive government is responsible for child protection in Northern Ireland. They set out policy, legislation and statutory guidance on how the child protection system should work.

The Safeguarding Board for Northern Ireland (SBNI) co-ordinates, and ensures the effectiveness of, work to protect and promote the welfare of children. The board includes representatives from health, social care, police, the probation board, youth justice, education, district councils and the NSPCC. The SBNI is responsible for developing policies and procedures to improve how different agencies work together.

Child protection in Northern Ireland Legislation, policy and guidance -

<https://learning.nspcc.org.uk/child-protection-system/northern-ireland/>

and also see -

Access NI Code of Practice (NI)

<https://www.nidirect.gov.uk/sites/default/files/publications/accessni-code-of-practice.pdf>

Children (NI) Order 1995 (NI) Children's Services Co-operation Act (Northern Ireland) 2015 (NI) -

http://www.legislation.gov.uk/nia/2015/10/pdfs/nia_20150010_en.pdf

Club Framework for Safeguarding Standards in Sport

<https://www.rowingireland.ie/wp-content/uploads/2014/09/Doc-1-ClubFrameworkForSafeguardingStandards-2014.pdf>

Co-operating to Safeguard Children and Young People 2017 Criminal Law Act (Northern Ireland) 1967 (NI)

https://www.safeguarding.ie/images/Pdfs/National_legislation-NI/co-operating-safeguard-children-young-people-NI.pdf

General Data Protection Regulation (EU) 2016/679 (GDPR)

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>

Part V of the Police Act 1997 (NI)

<http://www.legislation.gov.uk/ukpga/1997/50/part/V>

Protection of Freedoms Act 2012 (NI)

<https://www.legislation.gov.uk/ukdsi/2015/9780111128039/introduction>

Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979 (as amended 2013) (NI)

<https://www.legislation.gov.uk/nisr/2014/27/contents/made>

Safeguarding Board Act (Northern Ireland) 2011 (NI)

<https://www.legislation.gov.uk/nia/2011/7/contents>

Safeguarding Vulnerable Groups (NI) Order 2007 (NI)

<https://www.health-ni.gov.uk/articles/safeguarding-vulnerable-groups-disclosure-and-barring-service>

Sexual Offences (NI) Order 2008

<https://www.legislation.gov.uk/nisi/2008/1769/contents>

General Data Protection Regulation (GDPR)

As a regulation, does not generally require transposition into Irish law (regulations have ‘direct effect’), so organisations involved in data processing of any sort need to be aware the regulation addresses them directly in terms of the obligations it imposes. The GDPR emphasises transparency, security and accountability by data controllers and processors, while at the same time standardising and strengthening the right of European citizens to data privacy.

Raising awareness among organisations and the public of the new law will be a combined effort of the Data Protection Commission (DPC), the Government, practitioners, and industry and professional representative bodies. The DPC has been proactively undertaking a wide range of initiatives to build awareness of the GDPR, in particular providing guidance to help organisations prepare for the new law which is in force as of 25th May 2018.

General Data Protection Regulation (GDPR) - <https://www.dataprotection.ie>