

**The Arts Council**

**Sector Guide**

**Legislation**

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**Introduction**

This guide is designed to support arts sector organisations, groups and individual artists with their understanding and implementation of legislation when working with/providing services to children (under the age of 18 years) or adults (over the age of 18 years, who could be considered vulnerable and at risk of abuse).

The information contained in this guide gives a brief overview of relevant legislation, (it is not intended as legal opinion or advice, and the original legislation should be consulted as required).

## Legislation Underpins Child and Adult Safeguarding

Safeguarding is underpinned by a range of legislation. As safeguarding spans, a range of areas of our work with children and adults, there is legislation which governs each area.

## Why is it important to understand safeguarding legislation?

Legalisation sets out our obligations and duties when working with/providing services to children and adults (who could be considered vulnerable and at risk of abuse). It is important to understand what is required as an organisation, group or individual. Some legislation has associated guides which help us understand how the legislation can be implemented in our daily activity.

## UN Conventions

The UN Convention on the Rights of the Child(UNCRC) is an international treaty that recognises the human rights of children, (defined as persons up to the age of 18 years). It was adopted by the UN in 1989 and ratified by Ireland in 1992. It pledges to protect and promote children’s rights to survive and thrive, to learn and grow, to make their voices heard and to reach their full potential.

UN Convention on the Rights of Persons with Disabilitieswas adopted in 2006. Ireland signed the Convention in 2007 and further to its ratification in March 2018 it entered into force from the 19th April 2018.

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. It applies established human rights principles from the UN Declaration on Human Rights to the situation of people with disabilities. It covers civil and political rights to equal treatment and freedom from discrimination, and social and economic rights in areas like education, health care, employment, and transport. States which ratify the UN Convention commit themselves to delivering civil and political rights to people with disabilities, and to progressive realisation of social and economic rights.

## Legislation

The Childcare Act 1991 (and 2001) is the primary legislation regulating childcare policy in Ireland. Under the Child Care Act 1991 Act, as amended by the Child and Family Agency Act 2013, the Child and Family Agency has a statutory duty to promote the welfare of children who are not receiving adequate care and protection. Under the Act, the definition of a child is a person under 18 years of age who is not or has not been married. It establishes the principle that the welfare of the child is paramount.

Children First Act 2015places a number of statutory obligations on specific groups of professionals and on particular organisations providing services to children. Through the provision of the Act, it is intended to:

* Raise awareness of child abuse and neglect
* Provide for mandatory reporting for key professionals.
* Improve child safeguarding arrangements in organisations providing services to children.
* Provide for cooperation and information-sharing between agencies when Tusla, Child and Family Agency, is undertaking child protection assessments.

This legislation also contains a provision that removes the defence of reasonable chastisement in relation to corporal punishment as part of court proceedings.

The Protection for Persons Reporting Child Abuse Act, 1998 makes provision for the protection from civil liability of persons who have reported suspected child abuse ‘reasonably and in good faith’ to designated officers of the Child and Family Agency or to any member of An Garda Síochána.

This protection applies to organisations as well as to individuals. This means that even if a communicated suspicion of child abuse proves unfounded, a plaintiff who took an action would have to prove that the person who communicated the concern had not acted reasonably and in good faith in making the report.

Criminal Law (Sexual Offences) Act 2017 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.

Assisted Decision Making (Capacity) Act was signed into law on 31 December 2015 and was fully commenced on 26th April 2023. The Act provides for the reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future. The Act applies to everyone over 18 years of age.

National Vetting Bureau (Children and 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 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 Acts.

The Domestic Violence Act 2018 replaces the Domestic Violence Act 1996 and the Domestic Violence (Amendment) Act 2002 and improves legal protections available to victims of domestic violence. The Act introduces factors that the Court shall consider when deciding on an application for an order under the Domestic Violence Act. These factors include (but are not limited to); history of violence by the respondent towards the applicant or any dependent person (i.e. child), any conviction of the respondent for an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001 that involves loss to the applicant or child, increase in severity or frequency of violence towards the applicant or their children, exposure of children to violence inflicted by the respondent on the applicant or other child, any action of the respondent, not being a criminal offence, which puts the applicant or a dependent person in fear for his or her own safety or welfare.

Data Protection Act 2018 applies to the processing of personal data. It gives a right to every individual, irrespective of nationality or residence, to establish the existence of personal data, to have access to any such data relating to him or her, and to have inaccurate data rectified or erased. It requires data controllers to make sure that the data they keep are collected fairly, are accurate and up to date, are kept for lawful purposes and are not used or disclosed in any manner incompatible with those purposes. It also requires both data controllers and data processors to protect the data they keep and imposes on them a special duty of care in relation to the individuals about whom they keep such data.

Freedom of Information Acts 1997 and 2003 enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies.

The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 came into force on 1st August 2012. It is an offence to withhold information on certain offences against children and vulnerable persons from An Garda Síochána.

Protected Disclosures Act 2014 is defined in the Protected Disclosures Act 2014 as a disclosure of relevant information related to wrongdoing made by a worker in the manner specified under the Act.

The Protected Disclosures (Amendment) Bill 2022 passed both Houses of the Oireachtas. A commencement order is expected shortly.

The Equal Status Acts 2000-2018 prohibit discrimination in the provision of goods and services, accommodation, and education. They cover the nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community. The Acts prohibit discrimination subject to some exemptions, in access to and use of goods and service, including indirect discrimination and discrimination by association, sexual harassment and harassment, and victimisation. The Acts allow positive action to promote equality for disadvantaged persons or to cater for the special needs of persons.

The Charities Act 2009 provides for the regulation of charities in the Republic of Ireland. The Charities Act 2009 allowed for the establishment of a charity’s regulator for Ireland, known as the Charities Regulatory Authority. The Act sets out the structure of charitable organisations, charitable purpose, registration and reporting requirements, and penalties if an offence is committed under the Act.

The Charities Regulatory Authority provides a range of guidance documents that Arts organisations/groups who are also registered charities will find useful, including guidance to charity trustees and the Charities Governance code.

The Protected Disclosures Act 2014 provides for a framework of statutory protections for whistleblowers in Ireland. The Act has been substantially overhauled by the Protected Disclosures (Amendment) Act 2022, which was signed into law in July. The new legislation came into operation on 1 January 2023. The Act protects workers in the public, private and not-for-profit sectors from retaliation if they speak up about wrongdoing in their workplace. Workers can report wrongdoing internally to their employer or externally to a third party, such as a prescribed person. Persons who make protected disclosures (sometimes referred to as “whistleblowers”) are protected by this law, meaning they should not be treated unfairly because they have made a protected disclosure.

## National Policy, Standards and Guidance

The national policy and standards set out in this section are produced by the HSE (Heath Service Executive) and HIQA (Health Information and Quality Authority). These policy and standards apply to particular organisations/groups who supply health and social care services to children and adults.

Members of arts organisations/groups and individual artists may find the information contained in these documents useful if they are working with children or adults who may be in receipt of health and social care services or if artists are delivering services in health or social care settings.

The HSE Safeguarding Vulnerable Persons at Risk of Abuse Policy and Procedures (HSE, 2014) is the current policy for HSE / HSE funded services. It is a national policy and provides guidance for any organisation who may engage with adults.

The National Standards for the Protection and Welfare of Childrenhave been developed by the Health Information and Quality Authority (HIQA) to support continuous improvements in the care and protection of children in receipt of HSE child protection and welfare services. These outcome-based standards provide a framework for the development of child-centred services in Ireland that protect children and promote their welfare.

In 2019, the Health Information & Quality Authority with the Mental Health Commission published National Standards for Adult Safeguarding. These standards have been approved by the Minister for Health and places a responsibility on all residential services for older people and people with disabilities and all publicly funded health and social care services to implement these national standards. As these standards have been jointly developed and approved by the MHC, they should also be implemented by all mental health services.

Children First National Guidance for the Protection and Welfare of Children (2017) is the national guidance to help keep children safe and protected from harm. This is a best practice guide that explains how obligations under the Children First Act 2015 should be implemented in practice. The guidance document is intended to assist people in identifying and reporting child abuse and neglect and deal effectively with concerns. It emphasises that the needs of children and families must be at the centre of child protection and welfare services, and that the welfare of children is of paramount importance. It highlights the roles and responsibilities of Tusla, Child and Family Agency, An Garda Síochána and Mandated Persons under the Children First Act 2015 and provides information about how the statutory agencies respond to reports of concerns made about children.

Arts organisations, groups and individual artists should refer to this document to ensure they are clear about how to recognise and respond effectively to child safeguarding concerns.