



HM Government

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# **Disclosure and Barring**

# **Supporting Information** **Pack**

Edition 1

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## **Disclosure and Barring Programme**

### **Supporting Information/Frequently Asked Questions and Answers**

#### **1. INTRODUCTION**

Thank you for attending this event.

The Protection of Freedoms Bill of May 2012 sets out a range of changes to disclosure and barring services. Not everything is changing but the first phase of changes will take effect on 10<sup>th</sup> September 2012.

This document has been produced by the Home Office in conjunction with the Department for Education, Department of Health, the Criminal Records Bureau, Independent Safeguarding Authority and Northern Ireland colleagues.

This is part of a toolkit comprising a leaflet and presentation to assist employers and voluntary organisations in understanding these changes. These are being made available to delegates attending a series of Road shows across England, Northern Ireland and Wales between June and July 2012 and will be updated regularly.

Further updates to this document will be made available via:

<http://www.homeoffice.gov.uk/disclosure-and-barring>

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## **2. Protection of Freedoms Act and Secondary Legislation**

### **Q1: Why did the Government decide to change the law?**

As part of the Coalition Agreement, the Government committed to reviewing the VBS and the criminal records regime, following serious concerns about the proportionality and bureaucracy of the VBS. The Safeguarding Vulnerable Groups Act 2006 ('SVGA') sets out the framework for the VBS, so in order to implement the recommendations in the reviews we needed to amend the SVGA. By changing the law through the Protection of Freedoms Act 2012 the Government is now able to merge the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) to form the Disclosure and Barring Service (DBS), launch the new Update Service in early 2013, scale back Regulated Activity (RA) and scrap registration, monitoring and controlled activity.

These arrangements are proportionate and balance the need to deliver effective safeguarding arrangements with protecting and respecting individuals' freedoms.

## **3. Timescales and Phasing of Protection of Freedoms Act Measures**

### **Q2: When will the changes take effect?**

A: The changes will be phased in from September 2012. There will be further changes from December 2012 extending to 2014.

### **Q3: When will the new definitions of regulated activity come into play?**

A: We are introducing the new definitions on 10 September 2012.

### **Q4: What level of check will I need under the new arrangements?**

A: This will depend on the nature of the employment and role.

### **Q5: Will I need a new check after 10 September 2012?**

A: It is not envisaged that checks issued prior to commencement of the new arrangements will need to be refreshed, but this will be a decision for employers under their rechecking policies. Many employers undertake rechecks under a cyclical process – this could still remain.

### **Q6: What are the differences between what happens now and what happens after 10 September 2012?**

A: The scope of RA will be reduced which will mean that some posts currently falling within the definition of RA will no longer be covered. However, it will still be possible to obtain an Enhanced check for roles that fall into this category, but these will not generally include barred list information.

Also, the power for the police to share 'additional' information only with employers will be removed. However, the police will still be able to use their common law powers to share such information directly in serious cases.

**Q7: What happens if I submit an application for an enhanced check with barred list information before 10 September for an activity that is coming out of regulated activity on that date?**

A: We will put in place transitional arrangements for this and any other necessary scenarios. We will provide details of those arrangements to registered and umbrella bodies nearer to the time.

#### **4. Reviews undertaken in informing new measures within the Act**

**Q9: Did the government ever roll out the Vetting and Barring Scheme?**

Not fully. The Vetting and Barring Scheme (VBS) would have required some nine million individuals to register with the Scheme. This would have been disproportionate and could have perpetuated the belief that everyone who wants to work with vulnerable groups poses a risk. The role of vetting and barring checks is to stop unsuitable people working in vital roles across, health, social care, education and in the voluntary and sporting sectors. No government-led scheme can ensure that abuse and neglect never occur. Barring checks are only one tool to help employers and voluntary organisations make sound and safer recruitment and employment decisions.

**Q10: On what basis were the changes contained within the new Act made?**

A: The Government commissioned a review of the VBS; additionally a two phased review into the Criminal Records Regime was completed by the Government's Independent Advisor for Criminality Information Management. The latter review involved interviews and consultation with numerous organisations including employers, regulated bodies and voluntary and community sector representatives. The outcome of these informed a number of measures now in the Protection of Freedoms Act which has amended the SVGA.

**Q11: Does the Safeguarding Vulnerable Groups Act still exist?**

A: Yes, but it has been amended by the Protection of Freedoms Act 2012 to give effect to the changes that the Coalition Government wanted made. The SVGA places duties on, or gives powers to, a range of bodies including employers, voluntary organisations and regulatory bodies. It is important that the legislation is clear so that all parties are clear about their responsibilities. This will mean that the system works effectively and unsuitable people are prevented from working with vulnerable groups including children.

**Q12: Will this new approach cause more work (and responsibility) for employers?**

A: Ultimately, responsibility for employees' and volunteers' conduct sits with the provider of the service in which they are engaged. It is for these individuals to make sure that they recruit, train and manage their workforce in such a way as to ensure they are providing high quality, safe services. This includes remaining vigilant and acting quickly when concerns about services and individuals are raised. Through the CRB and ISA and, in due course, the DBS, the Government is providing a service that will help employers and voluntary organisations do this. This includes sharing relevant information about a person's criminal record and taking independent expert decisions about those who should be barred from working with vulnerable groups including children.

**Q13. In making these changes, was any specific research done into the abuse carried out by volunteers?**

A: As part of the review of the Vetting and Barring Scheme the ISA provided referral and barring data to the review team. This data helped to inform the risks posed by various sectors and groups including volunteers. This information was used in helping to draft the new definitions of regulated activity.

## **5: NEW CHANGE 1: INTRODUCING A NEW DEFINITION OF REGULATED ACTIVITY**

### **Children**

**Q14: Could you explain the two-tier system of Enhanced Checks (with and without a barred list check) and how they will work in practice?**

A: Those who will be working in Regulated Activity will be eligible for Enhanced checks with a barred list check, as those posts will be the ones offering unsupervised or regular or close contact with vulnerable groups including children. Those working in an activity which is being removed from Regulated Activity, for example in a supervised capacity with children, will still be able to obtain Enhanced Checks, but without a barred list check.

**Q15: Will you add sports venues to the list of establishments where work with any contact with children generally is Regulated Activity?**

A: No. There is a legal duty on parents to send their child to school, so parents rightly expect particular rules for schools. Where parents have a choice, as in whether to use a sports or leisure venue, it is right that they should make that choice and the Government should have less of a role. Sports venue employers should make appropriate and necessary robust pre employment checks.

**Q16: Are cleaners, caretakers etc working in schools still in Regulated Activity?**

A: Yes. All staff on school payrolls will remain in Regulated Activity.

**Q17: Why is the Government breaking so radically from the previous administration's scheme, for example when there was a wider requirement to check whether people were barred, which included supervised workers?**

A: Our approach is more proportionate. Under the last Government's proposals, there would still have been some instances where an unchecked individual could be left unsupervised with children. Examples were:

- infrequent activity, which if more frequent would have been classed as Regulated Activity;
- a series of specific exceptions, such as home hosting for school exchanges, taxi drivers or instruction of children in employment, such as work experience placement schemes generally provided for Year 10 students.

**Q18: The new definition of supervision could be clearer. What should an employer do if a volunteer working with scouts is supervised but then has to step into taking full control unsupervised, because of staffing shortages?**

A: These changes reinforce the need for employers to manage risks and undertake assessments quickly and rapidly. The Government wants to provide a proportionate and fair system that provides information where appropriate, but allows employers to make decisions on how they manage their own processes. Within this context, it is the employer's decision as to how they manage any perceived risks. Ultimately, it is the responsibility of employers to make final decisions about recruiting an individual, and what checks must be made (unless the individual is barred from particular roles) but it is right that the Government ensures a proportionate and sensible framework is in place for this to happen. Statutory guidance on supervision will be published soon.

**Q19: Can you clarify the position of volunteers in school?**

A: A volunteer in school will not be in regulated activity if they are supervised to the statutory level, but they will still be able to receive an Enhanced Check (without barred list check). If they are unsupervised, then they will be in Regulated Activity and will therefore be able to receive an Enhanced Check with barred list check. DfE is currently consulting on draft supervision guidance on their website and welcomes comments by 18<sup>th</sup> July.

**Q20: How do these changes apply to children under 3 years old?**

A: Care for small children such as changing, taking to the toilet etc., even if done once, is regarded as relevant personal care and is therefore in Regulated Activity.

**Q21: What about coach drivers who take children on residential trips?**

A: If the driving is arranged through the school it is Regulated Activity.

**Q22: Is a sixth form college in Regulated Activity?**

A: If the college is wholly or mainly for under 18 year olds then it is within Regulated Activity.

**Q23: Would contractors who are on site for a longer period of time require a check?**

A: If it is a temporary contract then the school would be entitled to do an Enhanced CRB check but not required to do so and would therefore not be entitled to request barred list information.

**6. Regulated Activity in relation to Children: scope**

Regulated activity is work that a barred person must not do. This note provides information on the scope of Regulated Activity in relation to children, defined in the Safeguarding Vulnerable Groups (SVG) Act 2006 as amended (in particular by section 64, Protection of Freedoms Act 2012). This note is about the law in England and Wales.

This note comprises (I) a short summary, and (II) a full description.

Regulated activity still excludes family arrangements; and personal, non-commercial arrangements.

**(I) Summary**

The new definition of regulated activity (i.e. work that a barred person must not do) in relation to children comprises, in summary:

(i) unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;

(ii) work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly: "regularly" is defined in detail on the following pages under items (a) to (f).

DfE is publishing statutory guidance about supervision of activity that would be regulated activity if unsupervised.

(iii) relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional;

(iv) registered childminding; and foster-carers.

A full detailed description of the above scope follows below.

**(II) Full description of scope**

**Part 1: Regulated Activity for children – Activities**

**Part 2: Regulated Activity for children – Establishments**

**Part 1: Regulated Activity in relation to children - Activities**

The activities in the left-hand column are regulated activity in relation to children, subject to:

- exceptions in the right-hand column;
- different provisions for “establishments” (specified places) in Part 2 below.

Do not read the left-hand column in isolation from the right-hand column or from Part 2.

In the right-hand column:

- “new” exceptions are those in the 2012 Act;
- “existing” exceptions are already in the 2006 Act as amended before the 2012 Act, or in secondary legislation under it.

Activity	Exceptions – not Regulated Activity
All of regulated activity.	Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the “peer exemption”.
In para 2(1) of Schedule 4:	
<p>(a) Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised. <i>Para 1(15).</i></p> <p><i>*Sources:</i>  <i>-once a week: guidance, March 2010, Annex B, page 70 para B.12;</i>  <i>-four or more days/ overnight: Schedule 4, para 10(1) as amended.</i></p>	<p>New:</p> <ul style="list-style-type: none"> <li>• Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3A)</i></li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.</li> <li>▪ Activity merely incidental to activity with adults.</li> </ul>

<p>(b) Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p> <ul style="list-style-type: none"> <li>▪ See rows (i) to (iii) below re types of care.</li> </ul> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3B)(b)</i>.</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> <li>▪ Activity merely incidental to activity with adults.</li> </ul>
<p>Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.</p>	
<p>(i) Relevant personal care. <i>Para 1(1B)</i>:</p> <p>(a) physical help in connection with eating or drinking, for reasons of illness or disability;</p> <p>(b) physical help for reasons of age, illness, or disability, in connection with:</p> <ul style="list-style-type: none"> <li>• (i) toileting (including re menstruation);</li> <li>• (ii-iii) washing, bathing, or dressing;</li> </ul> <p>(c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide;</p> <p>(e)-(f) other training or advice in relation to (a)-(b).</p>	
<p>(ii) Health care. <i>Para 1(1C)</i>:</p> <p>All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Health care not by, or directed or supervised by, a health care professional*. <i>Para 2(3B)(a)</i>.</li> </ul> <p>*Defined by reference to regulatory bodies. <i>Para 1(1C)</i>.</p>
<p>(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Legal advice. <i>Para 2(3C)</i>;</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> </ul>



<p>(a), (b) &amp; (c): Definition of “overnight”: In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. <i>Schedule 4, Para 10(2).</i></p>	
<p>Former category (d), treatment or therapy, is now replaced by “health care” provisions.</p>	
<p>(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p>	<p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity by a person who does not have access to the content of the matter, or contact with users.</li> </ul>
<p>(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period. *Prescribed by SI 2009-1548.</p>	
<ul style="list-style-type: none"> <li>▪ In para 1 of schedule 4:</li> </ul>	
<p>(3) Early years or later years childminding* with a requirement to register, or voluntary registration, under Childcare Act 2006.</p> <p>*That is: on domestic premises, for reward; as opposed to “childcare premises”, part 2 below.</p>	
<p>(5) Fostering* a child. *Defined at section 53.</p>	<p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Care arranged by family members and not for reward is not regulated activity. <i>Section 53(8).</i></li> <li>▪ Local Authority can foster child with barred person who is, or lives with, a relative of the child. <i>SI 2009-1797, Art 3(2).</i></li> </ul>
<p>(6) &amp; (9) to (13): Wales only:</p> <ul style="list-style-type: none"> <li>▪ child minding with requirement to register under Children Act 1989 including activities that require registration if child under eight;</li> <li>▪ functions of Children’s Commissioner for Wales and deputy;</li> <li>▪ inspection functions in relation to education, training, childcare and children’s health or social care.</li> </ul>	

(14) Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity:  
 at (a) to (f) above; or  
 in establishments in part 2 below;  
 and (9C) or (11) in Wales only.

**Part 2: Regulated Activity in relation to Children - Establishments**

An activity is regulated activity in relation to children if carried out (subject to the exceptions below):

- in one of the following establishments;
- frequently (once a week or more often), or on 4 or more days in a 30-day period;
- by the same person engaging in work for or in connection with the purposes of the establishment; and
- it gives the person the opportunity, in carrying out their work, to have contact with children.

Day to management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

Establishment	Exceptions – not Regulated Activity
Schedule 4, para 3(1):	
<p>(a) schools (all or mainly full-time, for children);</p> <p>(aa) pupil referral units (also known as Short Stay Schools) not falling within the above;</p> <p>(b) nursery schools;</p> <p>(d) institutions for the detention of children;</p> <p>(e) &amp; (f) children’s homes;</p> <p>(fa) children’s centres in England;</p> <p>(g) childcare premises (including nurseries).</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) &amp; (2B)(a)</i>;</li> <li>▪ Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1 (2B)(b)</i>.</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity;</li> <li>▪ childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;</li> <li>▪ for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.</li> </ul>

Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(15).</i>	
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Note:

Categories for office holders ("Positions" - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed.

*Department for Education, June 2012*

## **7. New Change 2: A New Definition of Regulated Activity: Adults**

### **Q24: How have the recommendations of the VBS review impacted on the SVGA?**

A: The main changes to adults' policy following the VBS review are the removal of the definition of a 'vulnerable adult' and the removal of the period condition for adults (that is, the requirement to engage in an activity a certain number of times before you are engaging in Regulated Activity) from the SVGA. Regulated activity is now defined in one place (Schedule 4 of the SVGA) and there are now six clearly defined categories in Regulated Activity. Briefly these are: those who provide healthcare; personal care; social work; assistance with cash, bills or shopping; assistance with the conduct of an adult's own affairs; and conveying adults who need it because of their age, illness or disability.

### **Q25: Some staff and volunteers go into adults' homes to cook their food and assist them to eat. Is this personal care?**

A: Physical assistance with eating or drinking, for example cutting up food and spoon feeding an adult who is unable to do so because of their age, illness or disability, would be in Regulated Activity. Teaching an adult to feed themselves, for example teaching someone to use adapted cutlery following a stroke, would also be in Regulated Activity. Food preparation that does not include physically assisting an adult, for example preparing and serving a meal, is not in Regulated Activity.

### **Q26: If the concept of vulnerability for adults is disappearing, where does this leave volunteer befrienders?**

If the befriender meets one of the six criteria for Regulated Activity in respect of adults such as, if money is involved (shopping, paying bills), then they will be in Regulated Activity.

### **Q27: Is the definition of Personal Care the same as that used by the CQC?**

A: No – the definition is taken from legislation but we are working with the CQC to harmonise the definitions being used.

### **Q28: Will there be guidance on social work, supported living etc?**

A: A factual note will be issued. This will be produced by Adult Social Care within the Department of Health and NHS Employers will be acting as consultants for this work.

### **Q29: Does the part about conveying adults apply to community transport schemes?**

A: If someone is transporting a person to receive healthcare etc then, at the point of providing that service, they will be in Regulated Activity.

## **8. Teaching adults**

**Q30: Do people teaching 'vulnerable adults' fall within Regulated Activity under the current arrangements (SVGA 2006)?**

A: Yes. Paragraph 7(1)(a) of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 currently provides that "any form of training, teaching or instruction provided wholly or mainly for vulnerable adults" is a Regulated Activity if it is carried out frequently by the same person or the period condition is satisfied.

**Q31: Will such activities remain in Regulated Activity under the changes in the Protection of Freedoms Act?**

A: No. This is because there will no longer be a definition of a vulnerable adult in the SVGA. The only teaching that falls within Regulated Activity from 10 September will be restricted to teaching related to relevant personal care. The new paragraph 7(3B)(a) of the Protection of Freedoms Act defines "relevant personal care" to mean physical assistance relating to specified activities (e.g. toileting, eating/drinking, hygiene). Paragraphs 7(3B)(b) and (c) define "relevant personal care" to include prompting or supervising the activities specified in paragraph 7(3B)(a), or providing "training, instruction, advice or guidance" in relation to paragraph 7(3B)(a) activities.

**Q32: Could you give an example where teaching adults is classed as in Regulated Activity now and where it would be in the future?**

A: Teaching IT skills to a class of adults with learning disabilities is in Regulated Activity now but won't be in future. Teaching someone with dementia to brush their teeth or teaching someone with a severe physical disability to eat will remain in Regulated Activity.

**Q33: After September, will there be fewer teaching staff (who teach adults) in Regulated Activity?**

A: The Government's intention is to scale back disclosure and barring services to common sense levels. The way we have approached this in relation to adults (not children, who will be dealt with differently) is to restrict Regulated Activity to those situations that pose the greatest risk of abuse. These higher risk situations will often involve one-to-one contact where a personal or intimate service is involved. Most teaching of adults takes place in formal settings and in groups and presents a lesser risks. It has therefore been removed from Regulated Activity.

**Q34: Many voluntary organisations use volunteers to drive wheelchair users to various places, often in closed vehicles which other people cannot see into. This places the wheelchair user in a very vulnerable position. Is it correct that we would not be able to do an enhanced check or a barring list check for the volunteers?**

A: We will draft regulations that will set out when transporting adults for reasons of age, illness or disability is a regulated activity. Our intention is that anyone (excluding friends, family and taxi drivers) who transports adults to, from or between places where that adult receives health care, personal care or social work will be included in regulated activity. Therefore the driver will be eligible for an enhanced criminal records check and there will be a duty to ensure that the person is not barred. We will also ensure that eligibility for enhanced criminal records checks (without barring information) remains as it is currently. This means that for those drivers for whom you are currently able to get enhanced checks, you will continue to be able to do so. However if the driver does not fall into regulated activity you will not be able to access barring information.

## **9. Regulated Activity: General**

### **Q35: Why have you included taxi drivers in Regulated Activity but not bus drivers?**

A. Taxi drivers are not generally included in Regulated Activity. However, Government has decided that:

- All taxi and private hire drivers should be entitled to enhanced criminal records checks; and
- Licensing authorities will additionally be entitled to check whether any applicant is barred from work with vulnerable groups including children.

### **Q36: What will the impact be as a result of the change to Regulated Activity (RA)?**

A. Clearly this will depend on the nature of the employment and services involved, but there will be an overall reduction in the roles that will fall under the new definition of Regulated Activity. When recruiting for new posts, employers will need to assess which ones fall within the new definition of Regulated Activity for vulnerable groups including children.

### **Q37. Which roles fall into the redefined scope of RA?**

A. Information is provided on the accompanying leaflet.

### **Q38: If Office Holders are no longer included in RA, how does this affect the clergy?**

A: There is a specific list of office holders who this affects (e.g., school governors). It will be for the person who appoints a clergyman to a specific post to decide whether that post requires an enhanced check, depending on the nature of the duties involved. For example, a parish priest who teaches children unsupervised in a Sunday school will be within RA, whereas an Army Chaplain serving with the Armed Forces in Afghanistan will not be.

### **Q39: If an individual is eligible for an enhanced check how would the DBS know that the activity was no longer RA?**

A: It is the responsibility of the Registered Body to determine whether or not a position is Regulated Activity and therefore eligible for a check of one or both barred lists. (There are also a small number of specified positions which are not regulated Activity but are eligible for barred list checks; these are listed in Police Act Regulations).

When the form is completed, the Registered Body is responsible for indicating whether or not the position is eligible for barred list checks by indicating if one or both barred list checks are required.

### **Q40: A lot of small groups take their people from villages to the doctors, for example. Will they be included?**

A: If this falls into the description of conveying as set out by Dept of Health, then they would be in regulated activity.

### **Q41: It is stated that Office Holders in England will no longer be in RA, but is the situation different for Wales?**

A: The Welsh Government has decided to retain certain functions as Regulated Activity only in Wales. These functions will be published on relevant websites.

**Q42: Will trustees for charities still be in Regulated Activity?**

A: No. These posts will now fall outside of regulated activity however, the charity will still be able to carry out an Enhanced Check (without a barred list check) on these individuals.

**10. ISA Barring & Referral**

**Q43: Why aren't you going to show barred list information on CRB certificates relating to non- Regulated Activity?**

A: Barred list information will only be available for those in (the new definition of) Regulated Activity (with minor exceptions such as fostering and taxi drivers). Barring applies to Regulated Activity – it is not relevant for employers outside Regulated Activity to see barred list information.

All posts which were previously classified as Regulated Activity will remain eligible for enhanced CRB checks (but without barred lists checks). In most cases, the police will have the information which led the ISA to bar the person and so will be able to disclose it on an enhanced certificate if it is relevant. Where they do not, we are introducing a new power for the ISA to pass that information to the police so that they can consider whether it is relevant to be disclosed on a certificate. We strongly encourage employers who make referrals to the ISA and believe a criminal offence may have occurred, to pass such information to the police too.

**Q44: Will people already on the barred list stay barred?**

A: A person on a barred list will remain barred until such time as the bar may be removed following, where permitted, appeal or review. The Protection of Freedoms Act will introduce a new power for the ISA, in certain circumstances outlined in the legislation, to review a bar at any time. This includes circumstances where the minimum barring period pending review has not elapsed and may include people who do not fall within the new definition of regulated activity.

**Q45: Will employers still have a duty to refer cases to the ISA and, subsequently, the DBS when it is established?**

A: Yes, this duty remains and will continue to do so in the future. It is very important that employers and voluntary organisations make prompt referrals. Importantly it is a criminal offence for an employer not to refer to the ISA/DBS, where the criteria are met.

**Q46: Will everyone who commits the most serious offences still be barred?**

A: Yes. Those who commit the most serious offences will still be automatically barred from working in Regulated Activity wherever they work currently. Such offences are referred to as 'Automatic Barring Offences without Representations'.

However, it is not necessary or proportionate to bar an individual who has committed the next level of offences known as Autobar offences with representations, or who has been referred to the ISA for consideration of discretionary barring, and who has not worked or is not seeking to work in Regulated Activity.

**Q47: Aren't Enhanced CRB checks without barred list checks posing a risk?**

A: Barring does not apply to posts that fall outside of Regulated Activity, so barred list checks would not be relevant or proportionate. In most cases, the police will have the information which led the ISA to bar the person and so will be able to disclose it on an enhanced certificate if it is relevant. Where they do not, we are introducing a new power for the ISA to pass that information to the police so that they can consider whether it is relevant to be disclosed on a certificate. The employer then makes the decision about whether to employ the individual in the light of the information in front of him / her.

**Q48. If people are no longer in RA, can they ask for their barred status to be reviewed?**

A. Yes, it may be possible to have a barred status reviewed depending on the circumstances of the case.

**Q49: In future, will those making referrals to the ISA / DBS be notified of the outcome?**

A: Under legislation, the ISA can only advise on the outcome of a referral if the person can demonstrate a 'legitimate interest' in the person. For example, they employ the person. If they no longer employ the person then they could not demonstrate a legitimate interest in the person. The legal powers limiting ISA advice on the outcome of a referral to a person demonstrating a legitimate interest will continue after the September legislative changes. However, there are legislative changes planned for future commencement that will provide a service for employers to be notified if a person they employ is subsequently barred.

**Q50: Will barred individuals be picked up if they attempt to work in RA?**

A: It is an offence for a barred person to work, apply to work or offer to work in Regulated Activity with a group they are barred from. It is also an offence for an employer to knowingly engage a barred person in Regulated Activity with a group they are barred from. Under future legislative changes, employers will be legally required to check that a person is not barred prior to engaging them in Regulated Activity. In cases that involve people applying to work in Regulated Activity who were not previously barred for an automatic barring offence because they did not satisfy the barring test (i.e. they have never worked in regulated activity and there is no indication that they will in future), they would be picked up by DBS for consideration of a bar when an employer checked their barred status or applied for an enhanced disclosure with a barred list check. Any offences would also be included on an enhanced disclosure and where relevant, the person's barred status.

**Q51: If an individual convicted of sexual offences within a family setting seeks to become an office holder in a sports club (i.e., committee member) should that individual be referred to the ISA if their offences are known or come to light?**

A: The ISA is required by law to consider all and any information sent to it from any source. This includes information sent to the ISA where the legal referral criteria are not met. If an employer wishes to make a referral to the ISA where the referral criteria are not met, they should do so in consideration of relevant employment and data protection laws. An employer may wish to seek their own legal advice in relation to these cases.

It is important to note that under changes to barring brought about under the Protection of Freedoms Act, ISA bars will in future be limited by law to a person who is, has been or may in future engage in regulated activity (i.e. working closely/ frequently with vulnerable groups including children). Without this connection to regulated activity, the ISA will not be able by law to bar a person. The only exception to the limit on bars is in relation to 'automatic barring without representations' cases, where the bar will apply to all people irrespective of whether they have worked in regulated activity.

**Q52: How will the ISA use their new powers to review cases?**

A: The ISA may at any time, review an individual's inclusion on a barred list. On any such review, the ISA may remove a person from the list if and only if, it is satisfied that in the light of information not available at the time of barring, or a change in the person's circumstances, or any error by the ISA, it is not appropriate for the person to be included in the barred list.

## **11. NEW CHANGE 3. REPEAL OF REGISTRATION & MONITORING & ADDITIONAL POLICE INFORMATION**

**Q53: Why are you stopping the facility which allows the police to send sensitive non-conviction information about an applicant to the employer only ('brown envelope')?**

A: The number of these cases is very small (around 200 per year) and the procedure is not used by all forces. This is a matter of transparency and principle. The Police Act 1997 currently allows for certain sensitive information to be made available to a potential employer without that information being disclosed to the applicant. This applies, for example, where disclosure to the applicant would be against the interests of preventing or detecting crime, perhaps because the applicant is the subject of an ongoing police investigation.

The Protection of Freedoms Act removes this provision as it does not allow the applicant to have sight of information about them which is being passed to a third party; it is also disproportionate in terms of their civil liberties.

In the future, the Police will still be able to share information as they do on other issues, using their common law powers. These are used to prevent crime and protect the public, and any relevant information can be passed to a potential employer in cases where the Police consider that to be justified and proportionate.

**Q54: How does the removal of the provisions allowing the police to share 'additional' information improve public protection?**

A. This improves the transparency and openness of the disclosure process, but does not affect public protection. The Police will still be able to share relevant information with prospective employers using their Common Law powers.

**Q55: How will the brown envelope provision work in practice?**

A: The system was not used consistently across all police forces and was only used in a very small numbers of cases. In order to make the disclosure process more open and transparent we are removing this provision so that the police can use their common law power to pass information directly to those who need to be aware of it.

**Q56: How can we be sure that the police are passing information which is relevant to the post applied for?**

A: The CRB does not make decisions about the information which goes onto a disclosure certificate. This decision is made by the police service, which has significant experience in assessing the relevance and reliability of local information. Changes to the relevancy test which is applied by the police, which are set out in the supporting material, will make this a more exacting test and enable a more consistent approach to be taken across all forces.

If you are concerned that a post involves contact with both adults and children it is always possible to see a disclosure covering both workforces. Additionally, as explained previously, it is open to employers to dispute information contained particularly where there may be possible omissions of relevant information.

**Q57: Will the statutory guidance to the police on relevancy be shared with practitioners?**

A: It is internal guidance for the police but it will be made publicly available as it is statutory guidance.



**Q58. Do people still have to register with the Scheme?**

A. No, the registration and monitoring aspects of the former Vetting & Barring Scheme were not introduced and are being removed.

**Q59: Will the Independent Monitor have any teeth?**

A: Yes. The Independent Monitor will be able to challenge and Chief Officers decision and can ask for a new certificate to be issued if they deem it appropriate. The process of appealing to the Independent Monitor will also be far simpler than using the Judicial Review route.

**12. NEW CHANGE 4: INTRODUCING MORE RIGOROUS RELEVANCY TESTS**

**Q60: How will the change in the relevancy test used by police for approved information impact on all information provided by the police compared with what we had previously?**

A: The current criteria under which a Chief Police Officer releases locally-held non-conviction information is just that the information “might be relevant” to the position applied for by the applicant. This will be tightened to “information which the chief officer reasonably believes to be relevant” to the position applied for. This makes the threshold for disclosing information more exacting and, therefore, more proportionate.

**13. NEW CHANGE 5: SUPERVISION AND STATUTORY GUIDANCE**

**Q61: I understand that the definition of supervision used in children’s services is being tightened; does that increase or decrease the number of people classed as being in Regulated Activity?**

A: Now that Parliament has passed the Protection of Freedoms Act, we shall prepare estimates that will be verifiable against actual figures. Key figures will be based on the number of people who apply for a new check, to work within the new definition of Regulated Activity.

**Q62: What does “supervision” actually mean in practice?**

A. Supervision must be:

- \* regular
- \* day to day
- \* reasonable in all the circumstances for the purpose of protecting the children concerned
- \* carried out by someone who is engaging in regulated activity relating to children

The Government will be issuing statutory guidance about supervision.

**Q63: What advice and information will the Government provide to employers to help them to understand these changes?**

A: DfE are currently seeking feedback on draft statutory guidance on Supervision with a six week consultation process ending on **16<sup>th</sup> July 2012**. The document is available at: [www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring](http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring)

## **14. WHAT IS NOT CHANGING**

### **Q64: Will volunteers still have free certificates?**

A. As now, volunteers will not be required to pay for their CRB checks. The opportunity to opt into the new Update Service is voluntary. The level of the subscription fee has yet to be determined but it will certainly be cheaper than a new CRB check. The decision on whether volunteers will have to pay for this service is still under consideration and has therefore not yet been made.

### **Q65: Will the Adult First check still be available? What process will be in place for this?**

A: Yes, the Adult First service will remain until the new DBS barred list check service is in place in the future. This new service will enable a direct check of whether a person is barred.

### **Q66: What triggers the legal duty to make a referral to the ISA from an employer?**

A. A referral must be made to the ISA when an employer or volunteer manager:

1. withdraws permission for an individual to engage in Regulated Activity, or may have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not RA; and,

2. they think that the individual has:

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

Both conditions must be met to trigger a legal duty to make a referral to the ISA.

### **Q67: Can I make a referral to the ISA if the legal referral criteria are not met or if the person is not working in regulated activity?**

A: The ISA is required by law to consider all and any information sent to it from any source. This includes information sent to the ISA where the legal referral criteria are not met. If an employer wishes to make a referral to the ISA where the referral criteria are not met, they should do so in consideration of relevant employment and data protection laws. An employer may wish to seek their own legal advice in relation to these cases.

It is important to note that under changes to barring brought about under the Protection of Freedoms Act, ISA bars will in future be limited by law to a person who is, has been or may in future engage in regulated activity (i.e. working closely/ frequently with vulnerable groups including children). Without this connection to regulated activity, the ISA will not be able by law to bar a person. The only exception to the limit on bars is in relation to 'automatic barring without representations' cases, where the bar will apply to all people irrespective of whether they have worked in regulated activity.

### **Q68: Can the general public make referrals to the ISA?**

A: Although the ISA can accept a referral from any source, (i.e. this can be a member of the public, a regulated activity provider, the police, a regulatory or supervisory authority, or any other party), it does not have investigatory powers and therefore members of the public should initially direct any safeguarding concerns to the Police, their local authority or the person's employer. Following investigation and assessment of evidence, if appropriate, information would then be referred to the ISA for consideration. This helps to ensure that only genuine safeguarding concerns raised by members of the public are referred to the ISA.

**Q69: Should a referral be made to the ISA when an allegation is first made?**

A: A referral should not be made when an allegation is first made. An investigation and evidence gathering should be first undertaken in order to establish if the allegation has foundation. Without evidence or information for the ISA to consider, many allegations will be quickly closed down as there will be no foundation on which the ISA can proceed. A referral should be made when the employer has gathered information and evidence to support the allegation and decided that the criteria for making a referral to the ISA has been met.

**Q70. Will people start 'afresh' under the new arrangements?**

A. No. A person on a barred list will remain barred until such time as the bar may be removed following, where permitted, appeal or review.

**15. OTHER ISSUES**

**Creation of the Disclosure & Barring Service**

**Q71: What changes is the Government making to the ISA and CRB?**

A: One of the Review recommendations, now effected by the Protection of Freedoms Act, was to merge the Criminal Records Bureau and the Independent Safeguarding Authority into a single organisation. This will be called the Disclosure and Barring Service (DBS) and it will start its new operations on 3 December 2012. This new organisation will provide a joined up, seamless service to combine the criminal records and barring functions.

**Q72: Who do I contact if I want a criminal record check, or if I want to make a referral, before then?**

A: Until the creation of the DBS on 3 December, it is business as usual for the CRB and the ISA, so please carry on contacting them as you are now.

**Q73: As a Local Authority, what do we need to know about new information sharing powers with the ISA?**

A: The duty to refer prescribed information to the ISA if the referral criteria are met will be changed on 10 September to a power to provide any relevant information to the ISA if the referral criteria are met. This will allow greater discretion for local authority safeguarding teams on when to refer and what information to provide. It will also help to avoid duplication of information sent to the ISA by employers and by local authority safeguarding teams. However, local authority safeguarding teams will still be required to provide prescribed information to the ISA if requested to do so.

**Q74: Will Commissioners be required to adhere to these changes?**

It is recognised that some regulators and commissioners impose their own requirements separate from Government, although these cannot contradict the legislation. Government will therefore be working with these bodies to ensure extra requirements are not unnecessarily imposed on employers.

**Q75: Can people appeal against a barring decision?**

A: If a person is barred by the ISA they have the right to seek an appeal on the grounds of an "error of fact" or an "error of law". Appeals are dealt with by the Administrative Appeals Chamber of the Upper Tribunal or, where appropriate, the Care Tribunal in Northern Ireland.

## **16. General Questions from Roadshows**

### **Q76: Was List 99 within the scope of Sunita's review?**

A: No – this was not within the terms of reference given to Mrs Mason, but was looked at as part of the VBS Review.

### **Q77: Is the employer allowed to dispute information on a certificate, especially when they know information exists that is not and should be included?**

A: Yes – new legislation is being introduced in September to enable parties other than applicants to be able to challenge information on an Enhanced certificate.

### **Q78: Will the CRB accept ineligible checks?**

A: No. One of the purposes of the Registered Body network is to ensure that an applicant is applying for the right type of check that they are entitled to. We are already communicating with Registered Bodies about these changes and what they will mean for them.

### **Q79: What are the consequences of submitting ineligible checks?**

A: The CRB (and in future the DBS) will be much more vigilant on checks that are being submitted. Whilst it is not an offence to submit ineligible checks, it is open to the CRB to remove a body's registered status if they continually do so. This power currently exists and will not change under new arrangements.

### **Q80: How will we indicate whether we are applying for an enhanced disclosure or an enhanced disclosure with barred list check?**

A: Barred list checks will normally only be available for posts in regulated activity. However, CRB will be providing full guidance on this issue once they have decided on the best way forward. This will not be in September as it relates to a later change but full and timely advice will be provided.

### **Q81: Will we receive an electronic copy of the presentation for training purposes?**

A: Yes – we will also issue a fully updated version of this document after the last Road show as part of the mini toolkit also comprising the Powerpoint presentation and leaflet on the September changes to all delegates that attended the series.

### **Q82: Will CRB be providing a Basic check?**

A: There is an intention to develop this in the future but there are no timescales for this.

### **Q83: Won't all these changes and different levels of checks just lead to greater confusion?**

A: No. The Government is, through events like the Road shows, posting information on Home Office, CRB, DfE, ISA and DH websites informing employers and organisations of the changes in September. The CRB is also developing an online 'Decision Tree' which will act as a checklist to help applicants apply for the right check. Information on other changes are being phased to avoid confusion.

**Q83: What support will you be giving to individuals making applications?**

A: The CRB is developing an online 'eligibility decision tree' to help employers and applicants make the right decisions on which checks to apply for. It is anticipated that this will be available by the end of the year.

**Q84: If an individual employs a personal assistant, can they apply for a CRB check?**

A: If the Personal Assistant is self employed, then it is not possible for the employer to get a CRB check. If they are registered through an agency, then that body may be able to get a check if they are registered with the CRB to do so.

**Q85: If someone has access to sensitive information can we check them?**

A: This falls under the term 'controlled activity' which will be repealed in September 2012. There will be no eligibility for a CRB check for such positions from September but you may apply for a basic check to Disclosure Scotland.

**Q86: Will a new school Governor starting in September need an enhanced disclosure?**

A: It depends whether their role involves going into classrooms or having contact with children as this would be classed a regulated activity. However, if they are only attending school meetings and not regularly interacting with children it would not be necessary. Schools will still be entitled to seek an enhanced disclosure but in most cases a Governor will not have to have one.

**Q87: Do Ministers / councillors who go into schools require a check against the barred list (e.g., a Lord Mayor who goes into classrooms three times a week)?**

A: Just because someone is an elected councillor they are not in regulated activity and there is no statutory requirement to check the barred list. The important issue is whether they have supervised or unsupervised access to children.

**Q88: Many organisations use home hosting for under 18's. Will disclosure checks be allowed (e.g., if the child is staying at home for a week)?**

A: Organisations can request enhanced checks for essentially short term fostering. If parents have approved the choice of adult and it is unpaid then there is no requirement to check the barred list but organisations can seek enhanced disclosures. If the host is paid and / or not approved by the parents then a barred list check must be made.

**Q89: Observers in a healthcare setting, such as students and researchers, currently do not need to get checked as they do not partake in activity. Will this remain under the new scheme?**

A: The new definition of regulated activity states that barred list checks are only required if the individual is providing direct healthcare.

**Q90: Can we have assurances that Ofsted inspectors are aware of the changes?**

A: Yes they are aware and the Department of Education have been working closely with them.

**Q91: Will the families of registered child minders be subject to barred list checks as they are now?**

A: Yes families of childminders, if the child is in their own home, will be required to have both disclosure and barred list checks.

**Q92: If school governors do not need to be checked on the barred list, what if they are registered sex offenders?**

A: That offence would appear on any disclosure and therefore if the school does a check it would be picked up. Disclosure and checks must sit closely with a thorough recruitment process which all works towards effective safeguarding. If there are concerns about an individual, employers should continue referring to the ISA / DBS.

**Q93: With volunteers is it prudent to ask for a self disclosure regarding barring?**

A: This is an option but volunteer managers must be mindful that people may not always tell the truth and therefore this should not be the only factor relied on. Also, they need to be aware that an enhanced disclosure would most likely contain the information that led to any barring decision so it would be picked up this way.

**Q94: My organisation currently does renewals every 5 years. Will this change?**

A: Review cycles for checks are carried out at the employer's discretion. There are no Government recommendations as to the frequency of re-checks as they only form one part of the recruitment and employment process.