



HM Government

Disclosure and Barring

Supporting Information Pack

Edition 2

Home Office

October 2012

INTRODUCTION

Thank you for attending this summer's Disclosure and Barring Road show events.

The Home Office ran twelve events during the summer of 2012 in conjunction with its partners, the Department for Education, Department of Health, Northern Ireland Executive and Access NI, the Criminal Records Bureau, the Independent Safeguarding Authority and the Association of Chief Police Officers (ACPO).

The primary aim was to communicate to key stakeholders, employers and voluntary organisations on the first phase of changes taking effect from 10th September on disclosure and barring. This new approach has now replaced the previous vetting and barring scheme, following Royal Assent of the Protection of Freedoms Act in May 2012.

The events, which also launched an information 'toolkit' comprising a PowerPoint presentation, leaflet on the 10th September changes and a first edition of this document, were positively received by the 2,000 attendees. This has since been added to by new guidance on Supervision produced by the Department for Education and a Factsheet from the Department of Health. Feedback was positive with over 78% of those that attended saying that they left with a clearer understanding of the 10th September changes. In addition, many attendees also requested email bulletins on future changes. These will be issued initially by the Home Office and from 2013, the new Disclosure and Barring Service (DBS).

Attendees were offered the opportunity to leave questions to confirm their understanding and this document is a collation of the most common themes highlighted through the questions submitted.

The majority of the questions relate to the change in regulated activity and how it now works. Links to the on-line toolkit, supervision guidance and factsheets are listed at the end of this document. The DBS will also be launching an online eligibility decision tree for prospective DBS applicants later this year.

In addition to regulated activity, some attendees also asked questions about future developments and new services, such as the Update Service. There will be separate communications on the details of this new service and how it will operate, after the Disclosure and Barring Service has been established in December this year. Consequently, there is no additional detail on such services in this document.

Government remains committed to protecting vulnerable groups including children, through focussed and effective safeguarding where employers, voluntary organisations and the state work alongside each other.

The responsibility for having safe and careful recruitment processes in place rests with employers including those supported by volunteers. Reference checking, interviewing, attitude and aptitude testing are important elements of that process. All of these are just as important as a criminal records check and/or barred list check.

You can get further information from the sources listed at the back of this document.

Please note that this advice is specifically tailored for England and Wales. Northern Ireland targeted advice is available via the DHSSPS/DOJ websites – www.dhsspsni.gov.uk/svg and www.dojni.gov.uk/accessni

Decisions about eligibility for criminal records or barred list checks are for individual organisations to make based on their knowledge about the specific role in question. If organisations are not sure about eligibility they may wish to seek independent legal advice.

This advice is current at the date of publication of this document (October 2012).

GENERAL

1. What if an organisation normally describes its work with children or adults differently from wording in the law?

In the first place it is for the organisation, and the Registered Body that countersigns an application, to decide if an individual post is within the wording in the law. The Government prefers not to comment on individual cases: full details might be needed to form a view, and it would take far too long to do that for all the thousands of posts that organisations create.

It should be straightforward for organisations to make reasonable decisions on whether their specific description fits within the general wording in the law - for example, that “coaching” of children is within “teaching, training or instructing”; or that “counselling” of children is within “advice or guidance mainly for children on physical, emotional or educational well-being”.

Where Government guidance does not define further any wording in the legislation, organisations can refer to common dictionary definitions to help them take such decisions. For example, a common definition of “supervision” is one worker (paid or unpaid) observing and directing the work of another (however, DfE have provided statutory guidance on supervision which can be found here: <http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring> .

Similarly, it should be straightforward for organisations to decide when work does not fit into any category of regulated activity. For example, some counsellors working with an adult have contact (in the presence of that adult) with the adult’s children. But just having contact with children is only regulated activity if it arises in regular work in a specified place, such as a school.

If an applicant disputes a decision in a particular case by complaining to the CRB, the CRB can ask to see more detail than is shown on the application form, or ask the Registered Body to re-consider. An applicant who disputes a decision could seek a civil law claim for damages against the organisation.

2. If a worker is in regulated activity, must an organisation require an enhanced criminal records check with a barred list check on that worker?

At present, no law applying to regulated activity overall says that an organisation must require a criminal records check. From 2013-14, we will commence the overall duty that an organisation must check that any new entrant to regulated activity is not barred. Meanwhile:

- Some regulations require checks in specific sectors, e.g. DfE regulations require schools to do a criminal records check on new staff not coming directly from a similar job, and a barred check on all entrants; and DH regulations require providers registered with the CQC to operate an effective recruitment procedure including criminal records checks in some cases.
- Guidance for individual sectors outlines the cases where the Government recommends that an organisation should require a check.

3. What information and guidance will the Government publish?

The Department of Health and the Department of Education have issued factual notes about the new definition of regulated activity which apply across all sectors.

The Criminal Records Bureau provides guidance about eligibility for criminal records on their website and NHS Employers provide guidance to the NHS about safe recruitment, please see:

<http://www.homeoffice.gov.uk/agencies-public-bodies/crb/>

<http://www.nhsemployers.org/RecruitmentAndRetention/Pages/Recruitment-and-retention.aspx>

The Department of Health and the Department for Education have no plans to issue any additional sector specific guidance about regulated activity. Organisations should apply the generic guidance to their specific circumstances as it is impossible for Government to provide guidance on every scenario. For detailed information about regulated activity, please see:

<http://www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/>

<http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring>

WORKING WITH ADULTS

4. How can an organisation decide whether any worker (paid or unpaid) will be in regulated activity in relation to adults?

Follow the link <http://www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/> to find out more information about the new definition of regulated activity in relation to adults. If a worker undertakes regulated activity within the new definition, an organisation can request an enhanced criminal records check with barred list information

5. What are the types of work with adults which, before the scope of regulated activity was reduced on 10th September 2012, were regulated activity in relation to vulnerable adults, and for which an organisation can still require an enhanced criminal record check without a barred list check?

The types of work with adults are work that fits all of the following three factors referring to the Safeguarding Vulnerable Groups Act 2006 (SVGA) before it was amended by the Protection of Freedoms Act 2012:

- (1) adults with whom the person works are within the definition of vulnerable adults previously in section 59 of the SVGA; ***and***
- (2) the person provides any of the activities relating to adults previously in Part 2 of Schedule 4 to the SVGA; ***and***
- (3) the person undertakes the work regularly (as defined previously in Part 3 of Schedule 4 to the SVGA).

If the person fits *all* factors, an organisation can require an enhanced check.

Criminal records and barring list checks are only one part of safe recruitment. Organisations who work with any adults including those with learning disabilities or a mental health diagnosis should take responsibility for safe recruitment and ongoing management of staff and volunteers, including requesting criminal records checks if the applicant (or position) is eligible and the organisation deems these necessary based on each person's role and responsibilities.

6. Is counselling and psychotherapy a regulated activity?

Counselling in certain circumstances is a regulated activity. For information to help you decide if your counsellors, or any other members of staff, are providing regulated activity for adults or children, please see following links:

<http://www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/>

<http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring>

7. If an enduring power of attorney is given to a family member, is this regulated activity?

The Safeguarding Vulnerable Groups Act (2006) does not apply to activities in the course of family relationships. Therefore giving power of attorney to a family member falls outside regulated activity.

For detailed information about regulated activity for adults, including details about what is excluded, please see:

<http://www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/>

8. Assistance with money is a regulated activity – will this require family members supporting individuals with direct payments to be CRB checked?

No, the Safeguarding Vulnerable Groups Act 2006 does not apply to activities done in the course of a family relationship. This means that assisting a family member is not a regulated activity and barred list information can not be requested. However, family members may still be eligible for criminal records checks, although there is no legal requirement for a family member to have them.

WORKING WITH CHILDREN

9. What checks can or must an organisation do on a person in regulated activity in relation to children?

At present:

- an organisation can require an enhanced criminal records check with a barred check, on a person in regulated activity in relation to children;
- there is no general statutory duty that every organisation using a person for regulated activity must require a check on that person;
- there are regulations for some specific sectors, e.g. DfE regulations impose a statutory duty to do a barred check before letting new staff start in a school.

From 2013-14:

- the Government will commence an overall duty that any organisation must check a new entrant to regulated activity (paid or unpaid) is not barred.

10. How can an organisation decide whether any worker (paid or unpaid) will be in regulated activity in relation to children?

Follow the link www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring to find out more information about the new definition of regulated activity in relation to children. If a worker undertakes regulated activity within the new definition, an organisation can request an enhanced criminal records check with barred list information.

11. DfE regulations still require schools to pass Safer Recruitment Training. What plans are there to update this, including training of trainers?

The main points on safer recruitment training, and related matters, are below:

- DfE is considering the position of safer recruitment training in connection with the updating of guidance, as follows.
- The “Safeguarding Children and Safer Recruitment in Education” (SCSRE) guidance is being updated, and will go out to consultation in autumn 2012. Final guidance issued at spring 2013 could come into force that autumn.
- DfE has kept OFSTED fully briefed on the changes and is liaising with them on any consequent updates to published OFSTED documents.

12. What checks can or must an organisation do on a person in activity that was, before 10 September 2012, regulated activity in relation to children and now is no longer regulated activity?

An organisation can require an enhanced check without a barred check. We will consider how useful it might be for external partners generally, for the Govt to publish a summary list of broad categories of work that were previously in RA and are no longer, but for which organisations can still require an enhanced criminal records check.

SUPERVISION

13. Will there be any further information provided in relation to supervision?

The main points about supervision of such work are below:

- It is for the local organisation to decide in each case whether supervision is such that the supervised person is or is not in regulated activity
- To help an organisation decide when an activity is supervised or unsupervised, DfE has published guidance (www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring)
- For checks that an organisation can do, see regulated activity with children above.

Supervision of work which, if unsupervised, would be regulated activity, is defined in workplace safeguarding law, which states that such supervision must be:

- by a person who is in regulated activity;
- regular and day to day; and
- reasonable in all the circumstances to ensure the protection of children.

14. Can education employers still do barred list checks for regulated activity in relation to children using the service which the DfE provide through the Teacher's Pension Online website ?

The Teachers Pension Online barred list check for the education sector and the Adult First barred list check for the health and social care sectors continue for eligible persons. These services allow (where permitted) a check of the barred lists to allow a person to commence (with appropriate safeguards) in regulated activity prior to the issue of a criminal records check. In future, these services will be replaced with an online barred list check and notification service open to all regulated activity providers. The legislation does provide for a fee for the proposed new online barred list check service.

However, no decision has been made in relation to a fee for this proposed new service. Further information on the proposed barred list check and notification service will be available in 2013.

CHILDREN IN SCHOOLS / COLLEGES / FURTHER EDUCATION

15. Can you provide further information in relation to guidance for schools?

The main points on guidance for schools and related matters are below:

- Supervision guidance, and information about changes to regulated activity, are on the DfE website for schools and others (link above).
- DfE has kept OFSTED fully briefed on the changes and is liaising with them on any consequent updates to published OFSTED documents. It is for OFSTED (and Estyn in Wales) to decide what documents it makes available to schools.
- The "Safeguarding Children and Safer Recruitment in Education" (SCSRE) guidance is being updated, and will go out to consultation in autumn 2012. Final guidance issued at spring 2013 could come into force that autumn.
- DfE is considering the position of safer recruitment training in connection with the above updating of guidance.

TEACHING AND TRAINING ADULTS

16. What are the new rules in relation to checking of those teaching and training adults with learning disabilities?

Teaching and training adults is no longer a regulated activity unless it is in relation to personal care. Someone who teaches adults may be eligible for, but not legally required to have, an enhanced criminal records check without barred list information.

To establish if this is the case, you need to consider the following three factors referring to the Safeguarding Vulnerable Groups Act 2006 (SVGA) before it was amended by the PoFA:

- (1) Do the adults with whom the person works fall into the definition of vulnerable adults set out in section 59 of the SVGA (before it was amended by the PoFA)?
- (2) Does the person provide any of the regulated activities relating to adults set out in Part 2 of Schedule 4 to the SVGA (before it was amended by the PoFA)?
- (3) Does the person undertake the work regularly (the meaning of this is set out in Part 3 of Schedule 4 to the SVGA)? (Before it was amended by the PoFA)?

If the person meets *all* these requirements then you can request an enhanced check.

Criminal records and barring list checks are only one part of safe recruitment and we would expect organisations who work with any adults to take responsibility for the safe recruitment and ongoing management of their staff and volunteers, including requesting criminal records checks if they are eligible and deem these necessary based on each person's role and responsibilities.

HEALTHCARE

17. When will NHS Employers publish their employment check standards?

The revised standards were published on 31 August 2012:

<http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/Employment-Check-Standards.aspx>

18. What information has already been made available to the CQC regarding the changes to regulated activity?

The Department of Health is working closely with the CQC to ensure that the new Disclosure and Barring arrangements are well understood and revised guidance is issued as necessary. Providers registered with the CQC, under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, are required to operate an effective recruitment procedure.

Where they have the option to take up criminal records checks on either staff or volunteers, providers should undertake a risk assessment as to whether such a check is needed or not, and what action to take as a result of such a check. Providers should keep a record of this process as an audit trail of their decision making. The changes on the 10 September 2012 do not alter these arrangements.

19. Will CQC be issuing an updated version of their guidance on CRB checks and what are the timescales for this?

The CQC is revising its guidance on criminal records checks and barring, to take account of the changes. It will be published as soon as possible. In the meantime, the CQC will be publishing some Frequently Asked Questions, which intend to answer some of the queries about the forthcoming changes as well as some of the most common questions sent to CQC on this topic. The CQC will also signpost people to other helpful sources of information. The existing guidance has undergone some minor amendments to take account of technical changes to the CQC process, but a more comprehensive revised guidance will be published later this year to reflect the changes coming into force as a result of the Protection of Freedoms Act.

CONTROLLED ACTIVITY

20. If someone was covered by controlled activity, would they now be eligible for enhanced check without the barred check?

Controlled activity was repealed on 10th September 2012. For those positions that were covered by the definition of controlled activity, and where eligibility no longer exists under any other provision with the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, organisations can, if deemed appropriate, request a Basic certificate, currently available through Disclosure Scotland.

CRB PROCESSES, APPLICATION FORMS, FEES AND TYPES OF CHECK

21. Will application forms be changing?

There will be no changes to the form for the September 2012 changes. Full guidance and information on any changes to the application form etc resulting from the creation of the new DBS will be communicated to all Registered Bodies. The CRB is intending to keep any change to an absolute minimum to reduce the burden on customers.

Registered Bodies will continue to use the tick boxes on line '63' of the application form to indicate the level of check.

22. In what circumstances can checks be conducted for self-employed individuals?

Current legislation does not allow the self-employed or individuals to apply for a CRB check, as they cannot ask an exempted question of themselves. It is for the recruiting organisation asking the exempted question to assess an applicant's suitability.

However the following options are available:

- a self-employed person can apply for a CRB check by registering with an agency
- individuals are able to obtain a basic check from our colleagues at [Disclosure Scotland](#). This provides individuals with details of any 'unspent' convictions

An organisation can check a self employed person if it either:

- contracts with the self employed person for the delivery of a service;
- or
- endorses the self-employed person e.g. runs a professional registration scheme (examples are: taxi licensing; sport national governing body endorsement of sports coaches; or DfE's voluntary register for childcare of older children).

DEVOLVED ADMINISTRATIONS

23. How does the Protecting Vulnerable Groups scheme in Scotland relate to the DBS?

While the PVG scheme is separate to the arrangements operated by the DBS a person placed on the PVG barred list by Disclosure Scotland is also barred from regulated activity in England and Wales. The Safeguarding Vulnerable Groups Act 2006 (as amended) 2012 contains a provision which, once commenced, will require the DBS to include persons in the England and Wales barred list(s) if they are on the equivalent Scottish list(s). This will avoid duplicate listing (but a person on the PVG list will still be barred from regulated activity in England and Wales).

24. For roles that cover the whole of the UK (and are regulated activity) would it be appropriate for individuals to apply for an enhanced CRB (and barred list check) and a PVG certificate?

This will depend on the requirements of the employer and, for posts in Scotland, of the PVG. It would be usual to apply for checks in the jurisdiction in which the work is to be undertaken.

- 25. As regulations in Wales differ from those in England, will our officers and executives be eligible for checks through our English Head Office if they can reasonably be expected to engage in activities at our Welsh centres?**

The legal arrangements are the same in England and Wales and the scheme operates across both countries - the only difference is that there are a few aspects of regulated activity which are specific to Wales. So checks could be done through an English office for work to be carried out in Wales.

- 26. How do requirements differ between Disclosure Scotland, NI, Wales and England?**

There are specific leaflets (<http://www.homeoffice.gov.uk/publications/crime/disclosure-and-barring/>) for England/Wales and for Northern Ireland. Disclosure and barring are devolved matters in Scotland, so relevant material is produced by Disclosure Scotland.

Information for organisations about the PVG scheme in Scotland is at:
www.disclosurescotland.co.uk/guidance/infofororg/index.html .

FURTHER INFORMATION:

You can find further supporting information here:

1. Department of Health Factsheet: Regulated Activity – Adults – September 2012:
<http://www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity>
2. Department for Education: Factual Note on Regulated activity: Children and Supervision guidance:
<http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring>
3. Home Office leaflet: September 2012 What you need to Know:
<http://www.homeoffice.gov.uk/publications/crime/disclosure-and-barring>
4. Criminal Records Bureau
<http://www.homeoffice.gov.uk/agencies-public-bodies/crb/>
5. Recruitment and Retention: NHS Employers:
<http://www.nhsemployers.org/RECRUITMENTANDRETENTION/Pages/Recruitment-and-retention.aspx>
6. Independent Safeguarding Authority Home Page:
<http://www.isa.homeoffice.gov.uk/>
7. Code of Practice for Registered Bodies:
<http://www.homeoffice.gov.uk/agencies-public-bodies/crb/partners-reg-bodies/code-of-practice/>
8. Business Link: Criminal records checks page:
<http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1084418016&type=RESOURCES>
9. Home Office statutory guidance on police information:
<http://www.homeoffice.gov.uk/publications/crime/statutory-disclosure-guidance>
10. Department of Education Factual Note on children: June 2012
<http://media.education.gov.uk/assets/files/pdf/r/regulated%20activity%20children%20full%20information%20ewni%20final%202012-06-01.pdf>

ANNEX

NOTE ON OFFICE HOLDERS IN WALES

Regulated activity in relation to children:

Office Holders that remain in regulated activity in Wales – Factual Note

The policy of the Welsh Government is to keep in regulated activity in relation to children, some office holders in Wales. The Safeguarding Vulnerable Groups Act 2006, schedule 4, lists activities that are regulated activity in relation to children. In particular, paragraph 1(9) onwards lists functions that comprise, broadly, a range of inspectorates. All these functions now are only in Wales, after changes to the Act by the Protection of Freedoms Act 2012 (POFA).

http://www.legislation.gov.uk/ukpga/2012/9/pdfs/ukpga_20120009_en.pdf

For information, a list of the “Wales-only” functions is below. Paragraph numbering is that in the Act. Gaps in the numbering are where a provision has been repealed. Where it is not explicit that a section of an Act refers to Wales, that is clarified in [*italics*]. Organisations can generally obtain, through their legal adviser (from whichever commercial service they subscribe to) an updated version of the whole 2006 Act incorporating all the changes.

In SVG Act 2006 (as amended by POFA), schedule 4, paragraph 1:

- (9) The exercise of a function of the Children’s Commissioner for Wales or deputy Children’s Commissioner for Wales.
- (9A) The exercise of a function so far as the function--
 - (a) relates to any of the matters mentioned in sub-paragraph (9B),
 - (b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children, and
 - (c) is not a function which falls within sub-paragraph (9C).
- (9B) The matters in this sub-paragraph are -
 - (b) the exercise of a power under section 41 or 42 of the Children and Families (Wales) Measure 2010 (powers of inspection etc on entry onto childminding or day care premises in Wales or premises on which childminding or day care is suspected to be taking place);
 - (c) any step taken in relation to Wales for the purposes of section 87(3) of the Children Act 1989 (welfare of children in boarding schools and colleges);
 - (d) an inspection in Wales under section 87(6) of that Act (inspection of boarding school or college);

- (e) any step taken in relation to Wales by a person appointed under section 87A(1) of that Act (appointment as an inspector of boarding schools and colleges)--
 - (i) for the purposes of an agreement made in accordance with section 87A(2) of that Act, or
 - (ii) in order to comply with any requirement imposed on the person under section 87B of that Act;
 - (f) an inspection under section 18C [*ie re Wales*] of the Education Act 1994 (inspection of teacher training);
 - (g) an inspection under section 38 of the Education Act 1997 (inspection of local education authorities in Wales);
 - (h) an inspection in Wales under section 31 of the Care Standards Act 2000 (inspections of establishments and agencies or the inspection of premises suspected as being used as an establishment or agency) of a residential family centre, a fostering agency, a voluntary adoption agency or an adoption support agency (each of which has the meaning given in section 4 of that Act);
 - (i) an inspection under Part 4 of the Learning and Skills Act 2000 (inspection of education and training within the remit of Her Majesty's Chief Inspector of Education and Training in Wales);
 - (j) a review or investigation under section 94 of the Health and Social Care (Community Health and Standards) Act 2003 (review or investigation of the discharge of social services functions by local authorities in Wales);
 - (k) a review or investigation under section 94 of that Act as applied by section 30 of the Children Act 2004 (review or investigation of the functions of children's services authorities in Wales);
 - (l) an inspection under section 28 of the Education Act 2005 (duty of Her Majesty's Chief Inspector of Education and Training in Wales to arrange regular inspections of certain schools);
 - (m) an inspection under section 50 [*ie re Wales*] of that Act (inspection of religious education);
 - (n) an inspection in Wales under section 51 of that Act (power of local education authorities to inspect maintained school for specific purpose);
 - (o) an inspection under section 55 of that Act (inspection of careers services in Wales).
- (9C) The exercise of a function to which sub-paragraph (10) applies so far as the function -
- (a) relates to the inspection of an establishment mentioned in paragraph 3(1), and
 - (b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children.

- (10) This sub-paragraph applies to a function of -
- (b) HM Chief Inspector of Education and Training in Wales;
 - (c) a body approved in pursuance of section 163(1)(b) of the Education Act 2002 (c 32) to inspect a registered independent school in Wales;
 - (g) the Welsh Ministers.
- (11) The exercise of a function of the Welsh Ministers so far as the function -
- (a) relates to the inspection of an establishment, agency or body falling within sub-paragraph (12), and
 - (b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children.
- (12) An establishment, agency or body falls within this sub-paragraph if it is -
- (a) an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000 (c 14),
 - (b) an agency in relation to which such a requirement arises, or
 - (c) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003 (c 43),
- and it provides any form of treatment or therapy for children.
- (13) In sub-paragraph (12)(c) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).

October 2012