

Department for
Education



**Vetting & Barring Scheme Remodelling Review –
Report and Recommendations**

February 2011

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Executive Summary

In its “Programme for Government”, the Coalition committed to reviewing the Vetting & Barring Scheme (VBS) to scale it back to common sense levels.

The VBS had been created to help safeguard children and vulnerable adults, following the Bichard Inquiry and was designed to check the records of those who wanted to work with vulnerable groups.

People who wished to work or volunteer with children or vulnerable adults would have had to undergo a process before starting work whereby they would have information held on them assessed. If they were assessed to pose a risk of harm to vulnerable groups then they would be barred from working or volunteering with these groups.

This concept of checking the suitability of those working with vulnerable people was not new, barring schemes having been in use since 1926. However, there was a perception and fear that the VBS went too far. It would have required 9.3 million people to register with, and be monitored by, the Scheme and shifted the responsibility for ensuring safe recruitment too much away from the employer and towards the state. It would also have had the counter-productive effect of deterring well-meaning adults from working with, and improving the lives of, children and vulnerable adults.

Many thought the VBS, while well intentioned, was a disproportionate response to the risk posed by a small minority of people who wished to commit harm to vulnerable people and in June 2010 Ministers announced that the planned implementation of the VBS was to be halted, pending a thorough review.

This report is the outcome of that review and draws on stakeholder consultation. It has concluded that employers have a critical role to play in ensuring safe recruiting practices but that this should be supported by a proportionate central barring scheme.

This will retain the best features of the VBS, but will not require registration or monitoring (meaning that there will no longer be an intrusive database containing the details of 9.3m people) and will only cover those who may have regular or close contact with vulnerable groups, defined as “regulated activity” in legislation.

However for those individuals who do not work in regulated activity but nevertheless work, paid or unpaid, with vulnerable people, their employers can, but will not be required to, obtain criminal records checks.

This is consistent with the Government’s drive towards restoring civil liberties and giving employers and voluntary organisations greater responsibility for making the decisions which govern how they work.

Whilst this review sets out the broad principles that will apply to the barring and disclosure regimes the full detail of the roles to be covered is still to be finalised.

For those entitled to a criminal records disclosure these should in future become portable through a system which allows for continuous updating.

This will create a more convenient and proportionate system for both employers and voluntary organisations and the people seeking to work or volunteer with children and vulnerable adults.

To administer this new vetting scheme, the Criminal Records Bureau and the Independent Safeguarding Authority will be merged and a single, new NDPB or agency created. The powers needed to put this new scheme in place will be contained in the Protection of Freedoms Bill.

Finally, this review concludes that the Government should raise awareness of safeguarding issues and the part that organisations, individuals and communities have to play in protecting children and vulnerable adults.

“Blanket” approaches such as the VBS have the potential to place the emphasis for safeguarding in the wrong place – on the State rather than on employers and individuals. That encourages risk aversion rather than responsible behaviour. It is the effective management of risk rather than aversion of risk which is most likely to protect vulnerable people.

This review seeks to redress the balance. People should not be viewed as suspect simply because they wish to work with children or vulnerable adults. Employers need to be empowered to be able to take proper responsibility for safeguarding. And everyone needs to be vigilant in order to keep children and vulnerable adults safe.

Summary of Recommendations

- a) A state body should continue to provide a barring function to help employers protect those at risk from people who seek to do them harm via work or volunteering roles.
- b) The Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) should be merged and a single Non-Departmental Public Body or Agency created to provide a barring and criminal records disclosure service.
- c) The new barring regime should cover only those who may have regular or close contact with vulnerable groups.
- d) Barring should continue to apply to both paid and unpaid roles.
- e) Automatic barring should apply for those serious offences which provide a clear and direct indication of risk.
- f) Registration should be scrapped – there should be no requirement for people to register with the scheme and there will be no ongoing monitoring.
- g) The information used by the state barring body (currently the ISA) to make a barring decision should be serious in nature.
- h) Criminal records disclosures should continue to be available to employers and voluntary bodies but should be revised to become portable through the introduction of a system which allows for continuous updating.
- i) The new regime should retain current arrangements for referrals to the state barring body (currently the ISA) by employers and certain regulatory bodies, in circumstances where individuals have demonstrated a risk of harm to children or vulnerable adults.
- j) The current appeals arrangements should be retained.
- k) The state barring body should be given a power to vary review periods in appropriate circumstances.
- l) Services relating to criminal records disclosure and barring provisions should be self-financing. We recommend the Government consults on raising the cost of the criminal records disclosure fee to cover the costs incurred.
- m) The new system will retain two offences; it will continue to be an offence for a barred person to work with vulnerable groups in regulated activity roles. It will also be an offence for an employer or voluntary

organisation knowingly to employ a barred person in a regulated activity role.

- n) Finally, the Government should raise awareness of safeguarding issues and should widely promote the part everyone has to play in ensuring proper safeguarding amongst employers, volunteer organisations, families and the wider community.

Chapter 1: Introduction

The importance of keeping children and vulnerable adults safe is widely recognised. But how we should protect them and where responsibility should lie has prompted a good deal of debate. The Vetting & Barring Scheme (VBS) has been one of the most controversial topics in that debate.

Children and vulnerable adults need to be safe in a wide range of contexts – in their homes, at school, in care homes or hospitals, in parks and playgrounds or out on the streets. The way in which they are protected, or indeed protect themselves, in these different contexts varies and the responsibility for managing the relevant risks varies too.

Responsibility for protecting children and vulnerable adults sits with individuals, their families, the wider community, employers, service providers and regulators as well as Government and Parliament, where the overarching legislative framework is set for any national systems of public protection.

To keep children and vulnerable adults safe, everyone needs to be vigilant and to understand and carry out their responsibilities. However, these responsibilities need to be balanced with rights and freedoms. We want to build a trusting society which supports healthy relationships between vulnerable people and those who care for or work with them. The effective, proportionate protection of vulnerable groups must therefore be balanced with the need to avoid eroding civil liberties or creating unnecessary bureaucracy.

While well-intentioned, the Vetting & Barring Scheme, which was set up under the Safeguarding Vulnerable Groups Act 2006 (SVGA) following a report by Sir Michael (now Lord) Bichard, is considered by many to have gone too far.

In an attempt to be comprehensive, many believe that the VBS created a complex and cumbersome central bureaucracy which brought far too many people within its scope. It was believed by many to be confusing and expensive and to have encouraged risk-averse, rather than responsible, behaviour from employers by giving the impression that this central Scheme could manage all risk out of the system used for pre-employment checking.

Many also believed that the VBS was based on the assumption that people who wished to work, or undertake volunteering, with children and vulnerable adults posed a risk unless the VBS processes found otherwise.

Finally there was also confusion why two different public bodies – the Criminal Records Bureau and Independent Safeguarding Authority – were involved in pre-employment checking.

The VBS did have some merits though, and these were at the heart of Lord Bichard's original vision. There was clearly value in having a facility which alerted employers if a person became barred; and in having the ability to refer

to some central agency people suspected of causing harm. When fully implemented, the VBS would also have given employers the ability to make quick online checks of those who wanted to work with vulnerable groups; and would have allowed for a one-off registration process which improved the unpopular system of repeat criminal records checks. A proportionate system for safeguarding the vulnerable should look to retain these benefits.

Terms of Reference

In its “Programme for Government”, the Coalition Government committed to reviewing the VBS to scale it back to common sense levels. In June 2010 Ministers announced that the planned implementation of the VBS was to be halted, pending a thorough remodelling of the Scheme.

In October, the Home Secretary published the terms of reference for the remodelling review of the Scheme. In a Written Ministerial Statement she told Parliament:

“In order to meet the Coalition's commitment to scale back the vetting and barring regime to common sense levels, the review will:

- *Consider the fundamental principles and objectives behind the vetting & barring regime, including:*
- *Evaluating the scope of the scheme's coverage;*
- *The most appropriate function, role and structures of any relevant safeguarding bodies and appropriate governance arrangements;*
- *Recommending what, if any, scheme is needed now; taking into account how to raise awareness and understanding of risk and responsibility for safeguarding in society more generally.”*

How the review was conducted

Once the terms of reference were announced, a team of officials from the Home Office, Department for Education and Department of Health was brought together to examine the fundamental policies and principles which underlie pre-employment checking and the barring regime.

Gathering information from the organisations, agencies and other bodies involved in the vetting process, seeking the views of a wide variety of external stakeholders, a working group and a senior steering board shaped emerging themes into the recommendations which form the basis of this report.

The question of how to raise awareness and understanding of risk and responsibility for safeguarding is one of the most important aspects of the review of the VBS. Further work on raising awareness and the role of vetting procedures as part of safeguarding more widely is continuing. A separate report will be prepared for Ministers over the coming months as the relevant provisions in the Protection of Freedoms Bill are being taken through Parliament. The implementation of the recommendations in this review report, and their communication, will take account of this further work.

Links with the Review of the Criminal Records Regime

In parallel with this review of the VBS, a separate but aligned review of the broader criminal records regime was undertaken. Led by Mrs Sunita Mason, the Government's Independent Advisor on Criminality Information Management, the first phase of that review has focused on issues concerned with the extent and demands of pre-employment vetting systems and the role of the Criminal Records Bureau (CRB), in particular, what information it should be disclosing and to whom.

The report of the first phase of the criminal records review, which also carried out widespread consultations to inform its findings, has been published simultaneously with this report. Its recommendations complement the ones set out in this report as many of the criticisms of the VBS were more concerned with the criminal records regime.

As a second phase, the criminal records review will examine broader issues, such as the legal definition, storage and management of criminal records. The overall aim will be to inform Government decisions on the proportionate and effective use of criminal records in supporting public protection arrangements. This phase will be completed in early 2011.

Chapter 2: Background to the Vetting & Barring Scheme

The Vetting & Barring Scheme was one of the previous Government's key responses to the tragic murders of Holly Wells and Jessica Chapman by Ian Huntley. The events caused an understandable outcry and focused public attention on a number of issues, including the way in which people who work with children are vetted.

The VBS was introduced under the Safeguarding Vulnerable Groups Act 2006 in line with the recommendations made following the public inquiry led by Lord Bichard, which reported in 2004. The VBS was to apply to England, Wales and Northern Ireland. Separate and aligned arrangements were put in place in Scotland.

The concept of checking the suitability of those who worked with vulnerable groups was not new. The VBS was designed to build on, and replace, the previous barring processes and was an attempt to establish a more consistent process for vetting individuals who wished to work or volunteer with children and vulnerable adults. These were:

- The Protection of Children Act (POCA) list;
- List 99 (information held under S142 of the Education Act);
- The Protection of Vulnerable Adults Act (POVA) list; and
- Court Disqualification Orders

Fuller details of these schemes are contained in the glossary at annex A.

Registration

The Vetting & Barring Scheme was based on one of Lord Bichard's key recommendations, which called for a scheme for the registration of those people who wished to work or volunteer in certain specified roles with children or vulnerable adults.

Those working very closely with children and vulnerable adults on a regular basis – known as “regulated activity” and including roles such as teachers, nurses and social workers – would have to apply to become registered with the Scheme, and hiring organisations would have to check that registration.

Individuals could not be registered if they were barred from working with children and vulnerable adults. Individuals could be barred in one of two ways:

- anyone convicted or cautioned for certain serious offences would be automatically barred from working with children and vulnerable adults, and so could not be registered; or
- where there was other information on an individual, a central authority (the Independent Safeguarding Authority or ISA) would consider whether to bar that individual, and would bar if the individual posed an ongoing risk to children or vulnerable adults.

An individual being registered was to mean four things:

- the person was not already barred when they applied to become registered, and they had no conviction or caution for an offence that would lead to an automatic bar;
- there would be a check to find out whether any other information was held on that individual. In the small minority of cases where such information existed, the ISA would consider whether it indicated that the person posed an ongoing risk of harm to vulnerable groups, and if so would bar the individual. They would then invite the individual to make representations as to why they should not be barred;
- so long as the individual remained registered, they would be monitored and the ISA would be informed of any new criminal information on that individual, and would consider it as above; and
- if the ISA proposed to bar or did bar the individual, it would alert any organisation that had (with the individual's consent) subscribed for updates on that individual.

Scope

Originally, 11 million individuals would have been required to register with the Scheme. Following a check of the Scheme's scope by Sir Roger Singleton in December 2009, this was reduced to a total of 9.3 million individuals.

Those in paid employment would have to pay a £64 one-off application fee; the fee would be waived for unpaid volunteers.

The Scheme would also have introduced a secondary type of activity (which could be either paid employment or volunteering), called "controlled activity", where individuals working in ancillary posts or who had access to sensitive information relating to children or vulnerable adults would also have had to be checked. This would have covered, for example, receptionists in outpatient clinics, catering staff and caretakers in further education colleges and hospital records clerks.

The Safeguarding Framework Currently in Place

Whilst the Home Secretary's announcement to Parliament in June 2010 led to a halting of the further development of the Vetting & Barring Scheme, it did not remove the framework of the Scheme and the new duties introduced in October 2009 remain in place, in order to ensure that there has been no diminution of safeguarding while this review was carried out. The provisions remaining in place include:

- it is an offence for a barred individual to work or volunteer with children or vulnerable adults, or to seek to do so;

- it is an offence for employers knowingly to employ barred individuals in roles with children and vulnerable adults; and
- employers are under a legal duty to refer individuals they believe to pose a risk of harm to the ISA.

Other elements of the SVGA which have already been put in place include:

- the establishment of the ISA and the introduction of independent decision making (previously Ministers had been accountable for all barring decisions);
- completion of decision making on inherited barred lists, where individuals barred under previous regimes had their cases reassessed and, where appropriate, were barred by the ISA.

Referrals

Since October 2009 employers have been required to make referrals to the ISA about individuals they believe to pose a risk of harm to vulnerable groups. If, following consideration of all held information, the ISA considers a bar to be appropriate, it invites representations from the individual, and will take these into account in reaching its final decision.

Chapter 3: Is a Barring Scheme necessary?

One of the key elements of this review has been to examine the fundamental principles behind the Vetting & Barring Scheme, in the overall context of wider responsibilities for safeguarding and to consider, in light of all the criticism that the Scheme has provoked, whether a central barring system is necessary at all.

This chapter looks at the advantages and disadvantages of a central barring system, taking into account the views of stakeholders who have contributed to this review.

Advantages of retaining a central barring regime

Barring schemes of some nature have been in place since 1926. The principle of there being a mechanism in place to prevent unsuitable people from working with vulnerable groups is therefore a long standing one. The current process results in, on average, approximately 200 people a month being barred from working with children, vulnerable adults or both.

Employers and other hiring organisations, including volunteering bodies, should have the lead responsibility for the safe recruitment and safe employment of individuals working with vulnerable groups, but a central barring system can support them in exercising these responsibilities in a number of ways. For example:

- Helping employers to ensure that those who are barred from working with the vulnerable because of the ongoing risk of harm they present are prevented from doing so. Under the current regime the barring body's decisions are legally the responsibility of a board which includes people with extensive experience and national reputations in the fields of risk assessment and management of abuse. They oversee the work of a group of caseworkers who have had specific training and validation.
- Giving employers or voluntary organisations an authoritative reassurance that the person they wish to place in a position of trust has not been barred from working with vulnerable groups. While no system can offer a complete guarantee of safety, a central system using trained and experienced staff provides reassurance about risk on the basis of information known by a central barring body.
- Reducing the bureaucratic burden on employers by not having to repeat the vetting process in respect of those who are barred.
- Ensuring that all relevant information is considered as part of the barring process. This goes wider than court convictions and cautions, better reflecting reports of behaviour – by the police, an employer or a professional body – which may cause concern but which have not resulted in a criminal record.

- Giving a parent or relative of a child or vulnerable adult reassurance that the school, youth club or care home they choose is required to check that prospective employees who will have the closest and most regular contact with their children or relatives are not barred.
- Allowing the person who wants to work with children and vulnerable adults to demonstrate, in a consistent and trusted way, that there is no known reason why they should not work with such groups.

The need to keep some form of central barring regime in place was also a strong theme of the stakeholder input into this review. Their concern was not whether a barring regime should exist, but about its scope and proportionality.

This can be highlighted in the following quotations:

“We believe that it is essential that we are able to provide reassurance to parents that volunteers are suitable for the roles they undertake.”

The Scout Association

“The NSPCC’s view is that some offences against children should always be grounds for barring.”

NSPCC

“Employers should not have discretion over appointments: a barred list makes clear those people who cannot legally work with children.”

The Children’s Commissioner for England

Disadvantages of retaining a central barring regime

Although there was very little criticism of a central barring scheme during the consultation which informed this review, two key criticisms of such a scheme have been cited over time:

- Too much reliance can be placed by employers or other organisations on “ticking the boxes”, for example by only checking barred status, rather than following the range of other checks and safeguards which should be in place. Employers and volunteer organisations need to ensure that other factors, such as proper references and effective training and supervision, are also in place to ensure adequate protection of vulnerable people. The existence of a central barring regime can give some employers or voluntary groups the impression that the state has sole responsibility for vetting their employers and volunteers.

- The requirement for wide ranging checks to be made in relation to millions of people is heavy-handed and erodes trust between employers, vulnerable groups and well-meaning individuals who wish to work with or volunteer with these groups. It was this point about erosion of trust which was prominent in the criticisms of the VBS which led to Sir Roger Singleton's review of Scheme scope in 2009.

Unless designed and communicated carefully, any system for pre-employment checking could be perceived as being disproportionate and overly bureaucratic; creating an intrusive regime that deters people from a genuine desire to work or volunteer with vulnerable groups.

For this reason, the proportionality of any scheme that requires employees to be 'checked' is a key issue. If we accept that there are a small minority of people who pose a risk of harm (such that they should be barred from working with vulnerable people), it is important to ensure they can be dealt with effectively both through the decision to bar (or not) and subsequent (employer) access to the barring information.

Conclusion

On balance, therefore, we recommend that there should be a barring system with the following characteristics - these are developed more fully in the following chapter:

- All relevant information will be assessed by the central body
- Only those who present a risk of harm whereby a bar is necessary and proportionate will be barred
- Where a person is not barred, the employment decision will sit solely with the employer

Key to any new system will be a recognition, that employers have a critical role to play in ensuring safe recruitment practices and it is arguable that the balance of responsibility for ensuring safe recruitment became too heavily skewed towards the state under the previous arrangements.

"Blanket" approaches such as the VBS have the potential to place the emphasis for safeguarding in the wrong place – on the State rather than on employers and individuals. That encourages risk aversion rather than responsible behaviour. And it is the effective management of risk rather than aversion of risk which is most likely to protect vulnerable people. That is why we need to redress the balance so that employers are empowered to be able to take proper responsibility for safeguarding with the assistance of a central barring body. After all, it is employers and voluntary groups who are best placed to assess particular risks in their workplace.

However, any scheme must be, and must be seen to be, proportionate, and it must be communicated carefully. This communication must make clear that the purpose of a barring regime is to help to prevent a small number of people who present a risk of harm from working with vulnerable groups, rather than to

cast doubt and suspicion upon the vast majority of employees and volunteers who do not present such a risk. The process by which employers access the 'barring information' should not deter the vast majority of suitable people from applying to these important areas of work.

Chapter 4: The design of a new scheme

Building on the recommendation in the previous chapter that there should be a central barring system, this chapter makes recommendations in relation to what a revised system might look like.

What the new scheme will look like

A more proportionate barring system will be used, retaining the most appropriate elements of the VBS but drawing scope back to common sense levels. This is consistent with the Government's drive towards restoring civil liberties and giving employers and voluntary organisations greater responsibility for making the decisions which govern how they work.

The most vulnerable in our society will continue to be protected, but the new scheme will only cover those who may have regular or close contact with children or vulnerable adults.

It will allow employers access to criminal records checks about those they wish to employ and who will work with vulnerable groups.

Registration, and monitoring, will be scrapped. This means that there will no longer be an intrusive database containing the details of 9.3m people.

These proposals, along with the introduction of continuous updating of criminal record checks, will create a more convenient and proportionate system for both employers and voluntary organisations and the people seeking to work or volunteer with children and vulnerable adults.

In utilising a barring system that is proportionate; aligned with the Government's approach to civil liberties; and which is based on common sense principles, we have adopted the following assumptions which have been derived from our analysis and the input we received from stakeholders. The revised system should therefore:

- provide public protection but simplify the process from the public's perspective; reduce unnecessary bureaucracy and lessen the role and interference of the State.
- work on the basis that someone should not be viewed as suspect because they wish to work with children or other vulnerable groups.
- include volunteers where their contact with vulnerable groups is of the closest and most intensive kind, but at the same time, not act as a deterrent to volunteers coming forward to work with children and vulnerable adults.

- continue to make a criminal records ‘disclosure service’ available to those who are required or want (voluntarily) to check the backgrounds of those wishing to work with vulnerable people in both paid and unpaid work. This should also allow for portability, a key recommendation in the criminal records review.
- allow for representations to be made before barring decisions are taken in all cases except for those who have committed the most serious offences, where a bar is automatic.

With these assumptions in mind, we recommend that the revised system should have the following features:

a) A state body will continue to provide a barring function in order to protect those at most risk from those who may seek to do them harm. This is to guard against the very small minority of people who present a genuine and ongoing risk of harm to vulnerable groups.

b) This scheme will cover a smaller number of people than the 9.3m proposed under the VBS – only those who may have regular or close contact with vulnerable groups will be covered. These “regulated activity” roles will be redefined and will be the only ones covered by this new barring scheme. Bars will continue to apply to both paid and unpaid roles.

It is right that unsuitable individuals should not be working in posts which may involve regular or close contact with children or vulnerable adults - such as a nurse or teacher or someone else employed to work in a school. But the previous proposals covered a wider range of posts and roles, including many undertaken by volunteers, which could include minimal or limited access to vulnerable groups.

We have decided to re-define regulated activities as those which provide the highest levels of risk arising from the nature of the post and access to vulnerable people. This is informed by the knowledge that those who might cause harm often do so by developing relationships of trust with their victims.

We will therefore redefine activities subject to barring within the legislation. Under these proposals a bar would only apply to people in regulated activity specifically covered by the new system. For example, if somebody was barred from working as a school teacher – a role which provides regular or close contact with children – they would continue to be barred under these proposals.

However, and unlike the VBS, for those individuals who do not work in regulated activity but nevertheless work, paid or unpaid, with vulnerable people the bar would not apply – for example a receptionist at a paediatric clinic, Sunday School helper, or volunteer touchline judge at a children’s football match.

In these circumstances employers would still have the ability, but would not be required, to obtain criminal records checks on people who applied for these roles.

For these positions the revised and narrower scope of the system will mean even people barred from working in regulated activity roles e.g. as a teacher, will not be prevented by the state from applying to work in those jobs which fall outside the scope of regulated activity.

As a bar would only apply to individuals working with children and vulnerable adults in regulated activity roles employers will not be able to find out the barred status of people who are not working in regulated activity roles.

The following are examples of roles where the law would have required registration with the Vetting & Barring Scheme, but where the new arrangements will let organisations decide whether and how to check, as either the individual's role does not require them to interact with vulnerable groups for a sustained length of time, or they do so under supervision:

- Cleaner in an old people's care home
- Sunday school helper
- Medicines counter assistant
- Volunteer parent literacy helper
- Maintenance worker in a children's hospital

We are aware that removing barring arrangements from some activities could give rise to an increase in safeguarding risks. Some people who may previously have been barred, or may now be barred from the reduced and redefined range of regulated activities, may be able to gain posts in other areas where they are able to work less closely with children or vulnerable adults. It will be up to employers to weigh up the risks involved.

To ensure that the system is proportionate, only those activities which may involve regular or close work with children or vulnerable adults are those covered by the barring system. However employers would still be able to gain access to criminal records checks and could thus have information about an individual's offending behaviour which would help them to make an informed recruitment decision.

We propose to retain automatic barring in respect of serious information (including serious criminal offences and information from regulators and keepers of registers) which provides a clear and direct indication of risk.

We will also limit automatic bars to those people seeking to work in re-defined regulated activities. At the moment, automatic bars apply to anyone who has committed a relevant, serious offence, regardless of whether they are working with, or seeking to work with, vulnerable groups.

c) Registration will be scrapped – there will be no requirement for this more limited group of people to register with the system and there will be no monitoring of information.

Whilst barring unsuitable people from these more limited areas of work is clearly justified, the system as a whole needs to balance this against the rights of the vast majority of people working in such posts.

It is difficult to justify requiring millions of people to register with, and be monitored by, a centralised Government scheme, as the VBS would have required, “just in case” they do something wrong.

It is also wrong to discourage people from working or volunteering in this area because of such a disproportionate approach to safeguarding. This would impinge unduly on the vast majority of people working or volunteering with children and vulnerable adults who have no criminal records information recorded against them and do not wish to go through the burden and bureaucracy of registration.

It also relies on maintaining records on a large proportion of the population in a way we consider to be disproportionate to the aims and protections of a remodelled barring regime which is based on common sense principles.

We therefore recommend that registration with a central barring regime is scrapped. This is more proportionate; complies with the onus on common sense spelled out in the terms of reference for this review; and is consistent with the Government’s broader approach to civil liberties.

We consider it far more proportionate to undertake checks, and provide bars where necessary, only in respect of individuals likely to present a risk of harm, and to apply bars only to the reduced range of regulated activities. Instead we propose that criminal records checks will be available so that, using a proper risk assessment framework, employers can make an informed decision about the checking regime they wish to have in place. For most people, a simple criminal records check when they first enter these areas of work will be the result, with no compulsory Government monitoring to follow.

We also intend to abandon the previous concept of “controlled activity” which was burdensome, confusing and unnecessary.

d) Additionally, and to help guarantee a proportionate system, it is proposed that where a criminal records check is required for a person working in regulated activities, only serious criminality information will trigger a referral to the ISA. Minor matters will not be referred.

e) Criminal records information will, however, continue to be available to those who employ people who work with vulnerable groups but not in regulated activity.

For those not covered by the newly defined regulated activity but still working with vulnerable groups an employer would have the discretion to ask a person to apply for an enhanced criminal records disclosure, but they would be unable to check a person's barred status and a bar would not be applicable to these roles.

f) Criminal record disclosures should be portable through the introduction of a system which allows for continuous updating.

To give employers the opportunity to customise their own safe recruitment policies and practices we propose to develop and introduce the concept of updated criminal records disclosures as a premium service at an extra cost available to organisations using individuals in both regulated activity and other vulnerable group roles.

This service would save employers and voluntary bodies the burden of undertaking repeated criminal records checks as:

- Checks on whether any new information is available, following a previous criminal records check would be given online in real time;
- New disclosures would only be needed if information had changed;
- An annual subscription fee would finance the operation of the system without the need for any other Government funding.

Other elements of the new scheme

Referrals

The new system will retain the current arrangements for referrals to the state body (currently the ISA) by employers and certain regulatory bodies, in circumstances where individuals have demonstrated a risk of harm to children or vulnerable adults.

Appeals

The court ruling in the recent judicial review of certain elements of the scheme brought by the Royal College of Nurses upheld the current appeal arrangements, by which appeals may be made on the basis of errors in fact or in law, as compliant with human rights considerations. We do not therefore propose changing the appeals arrangements at present.

Offences

The SVGA created a number of offences which, in the view of the Government are disproportionate and likely to contribute to risk averse behaviour. Instead of an offence for not carrying out checks, employers and voluntary organisations will instead be given a duty to check whether new recruits are barred before employing them.

We believe responsibility for checking should lie with hiring organisations, and the law should not deter individuals from coming forward to work or volunteer with vulnerable groups. So we will repeal the offence which would have applied to individuals if they had undertaken work with vulnerable groups without ensuring they themselves have been checked.

The new system will retain two offences; it will continue to be an offence for a barred person to work with vulnerable groups in regulated activity. It will also be an offence for an employer or voluntary organisation knowingly to employ a barred person in regulated activity.

Review periods

There has been some criticism that the periods during which barred individuals are unable to request a review of the barring decisions are unduly inflexible. We will therefore introduce a power for the state body (currently the ISA) to vary these periods in appropriate circumstances.

Fees

It is Government policy that services such as those relating to criminal records disclosure and the barring provisions should be self-financing from application fees. As set out in chapter five, the fee structure will therefore be reviewed shortly on this basis.

Finally, the Government should raise awareness of safeguarding issues and should widely promote the part everyone has to play in ensuring proper safeguarding amongst employers, volunteer organisations, families and the wider community.

Chapter 5: Transition to a new scheme

This chapter sets out how we will move from the existing arrangements to the re-defined system which is recommended in this review.

This chapter also contains an implementation timetable.

Continuous Updating

A key advantage of this new system will be the ability for people to benefit from a continuously updated criminal records disclosure service. This will mean that people who move jobs frequently (supply teachers, locum doctors for example) will not need to apply for, or pay for, numerous repeat criminal records checks. Rather, for a small annual subscription fee, any new employer will be able to immediately access up-to-date criminal record information, on-line in real time.

Calls for greater “portability” of criminal record checks were a feature of the feedback which was contained on the Deputy Prime Minister’s “Your Freedom” website, were received from numerous stakeholders during the review process and have been a longstanding criticism of the current scheme. Some of the comments received were:

“The issue of portability of this scheme is critical to reduce the currently onerous system.”

Southern Health & Social Care Trust

“We welcome the recognition of the need for a portable safeguarding check. This portability of a safeguarding check between different institutions and different roles is vital.”

Incorporated Society of Musicians

“The Government’s commitment to portability of CRB checks is welcome.”

Child Protection in Sport Unit

We agree that there is a need to work towards the abolition of multiple CRB clearances for individuals and to ensure that the “portability” of a CRB disclosure form becomes the norm.”

Ofsted

The change to continuous updating will take place during 2012 and will require primary legislation.

Existing Bars

The introduction of a new barring regime which only considers information of the most serious nature will also necessitate the creation of a mechanism for reassessment, by application, where individuals believe that they were barred on the basis of information that is no longer relevant. This is analogous to the situation in which those on previous barred lists were considered for transfer to the ISA barred lists.

Bars which are already in place will apply to the newly defined regulated activities. It follows that barred individuals will be able to seek employment in areas previously subject to barring but outside the new system, that is outside those areas where they may have regular or close contact with children or vulnerable adults.

Cost

This review proposes that existing barring arrangements should be left in place whilst legislation is passed to put the new system in place. This retains the current levels of public protection whilst the new system is developed.

However, this creates a financial pressure as, if registration for the Vetting & Barring Scheme had not been halted in June, then the Government would already be receiving fee income which would cover the ongoing operational costs of the CRB and the ISA.

So that we can cover operational costs until the new system is introduced, without placing a general burden on the taxpayer, our proposal is to increase the cost of a CRB enhanced disclosure until this new service is established.

Increasing the disclosure fee requires consultation and we propose to undertake that so that a new fee can be implemented during the 2011/2012 financial year.

Organisational Changes

The terms of reference for this review required us to consider: *“the most appropriate function, role and structures of any relevant safeguarding bodies and appropriate governance arrangements”*.

The current situation is that the Criminal Records Bureau are responsible for the disclosure of criminal records and the Independent Safeguarding Authority for the barring function.

Both of these functions will be retained when the changes set out in this review are implemented, but economies can be made if we move to a situation where we have one body responsible for this form of pre-employment checking, rather than two.

On commencement of the relevant parts of the Protection of Freedoms Bill, therefore, the Criminal Records Bureau and the Independent Safeguarding Authority will merge. In essence, this will combine the criminal records disclosure responsibilities of the CRB, including continuous updating from 2012, with an independent barring function which is currently the responsibility of the ISA.

Legislation

As a result of this review, the following provisions will be included in the Protection of Freedoms Bill:

- Repealing the provisions for registration (including updating of information) with the scheme under section 24 of the Safeguarding Vulnerable Groups Act 2006;
- Maintaining the barring provisions, but with more limited scope; by redefining “regulated activity” under the Act;
- Restricting bars to those working, or seeking to work, in regulated activity, whether in paid employment or as a volunteer;
- Providing a duty for employers to check on barred status for those working in regulated activity;
- Repealing the category of “controlled activities”;
- Repealing offences in relation to a duty to register with the VBS under the Safeguarding Vulnerable Groups Act 2006.

Implementation timetable

This is the timetable for implementing the recommendations in this review:

Feb 2011: Introduction of the Protection of Freedoms Bill

Nov 2011: Royal Assent for the Bill, subject to the will of Parliament

2012: Commencement of the relevant provisions in the Bill

2012: Creation of new barring regime

2012: Introduction of continuous criminal records updating

2013: New disclosure and vetting service begins work

Annex A: Glossary of key terms & definitions

Glossary of Common Terms

Barring

Automatic barring

Where a person has serious criminal offences recorded against them, which demonstrate a risk of harm to children or vulnerable adults, the law requires the ISA to place them automatically on the barred lists. For the most serious offences, such as a child rape conviction, where there can be no doubt that such a risk arises, the individual is barred and is not entitled to make representations against the decision - these are “autobars without representations”.

A second category of offences is ‘automatic barring with representations’. In these cases, the offences are still serious but may cover a wider range of behaviour which might demonstrate varying degrees of risk. Here the individual is still placed on the barred lists but may make representations to the ISA setting out reasons, or mitigating circumstances surrounding the offence, as to why they should not be barred. An example includes child neglect, which may cover a wide range of behaviour.

Following a recent judicial review brought by the Royal College of Nurses, the “autobar with representations” element of the scheme has been found by the courts not to be compatible with human rights obligations, to the extent that a person is barred before having any opportunity to make representations against the decision. This decision has been accepted by Ministers and it follows that this process must be changed in any new scheme.

Automatic bars currently apply to any individual who has committed a relevant offence, whether or not they engage, or intend to engage, in regulated activity.

Discretionary barring

Individuals may also be barred at the discretion of the ISA, based either on criminality information, or information received for example from employers and professional regulators or a combination of both. Any criminality information available from police central records (criminal convictions, cautions, reprimands or final warnings) is considered together with any local police information considered relevant.

Where information is received from employers, a check on criminal records is also made and all information is taken into account by the ISA in reaching its barring decision.

Continuous monitoring

Whenever new information (such as a conviction, caution or referral from an employer) becomes known about an individual registered with the scheme, the information will be sent to the Independent Safeguarding Authority (ISA).

The ISA will consider the information, together with other information known on the individual, and decide whether it indicates that the individual poses a risk of harm. If so, the ISA will start its barring processes.

Controlled activity

This covers frequent or intensive support work in primary care or hospital settings, the NHS (the Health Service in Northern Ireland) and further education college settings; work for specified organisations which provides an opportunity for frequent access to health, education or social services records about children and health and social services records about vulnerable adults; and support work in adult social care settings.

CRB check

The CRB provides organisations in England and Wales with access to criminal records and other relevant information. The results of the checks carried out by the CRB help organisations make decisions when recruiting people to work with children and vulnerable adults. A CRB check can provide access to a range of different types of information, including:

- criminal conviction and caution information
- reprimands and warnings
- barring information (enhanced checks only), and
- relevant non-conviction information held by police forces and other agencies (enhanced checks only).

CRB check, enhanced and standard

Standard CRB certificates check national and local police databases. Enhanced certificates check those databases and provide additional relevant information from local police. Since 12 October 2009 only enhanced certificates reveal if the person being checked is on the lists of people barred from working with children or vulnerable adults.

Court imposed disqualification order

A bar from working with children imposed by a court as part of the lawful disposal of a case. Superseded by ISA bars.

ISA barred lists

The Safeguarding Vulnerable Groups Act 2006 contains legislation to create two barred lists. These are:

- A list of people barred from working with children (replacing List 99, the Protection of Children Act (POCA) list, the Disqualification from Working with Children (DWCL) list);

And

- A list of people barred from working with vulnerable adults (replacing the Protection of Vulnerable Adults (POVA) list. These lists allow the ISA to keep a record of individuals who will not be permitted to work in regulated activity with children and/or vulnerable adults.

ISA decision-making process

This is a structured process to help ISA caseworkers take evidence-based and consistent barring decisions. Although it is structured, it is flexible and requires a high level of judgement on the part of caseworkers.

Keepers of registers

These are the professional regulatory bodies, such as the General Medical Council for England and Wales, the General Teaching Councils, etc. These organisations receive referrals from professionals and the public, and conduct investigations into professional fitness to practise, culminating, where necessary, in public hearings.

Referrals – duty

The Safeguarding Vulnerable Groups Act 2006 requires certain organisations to refer relevant information to the ISA. Other organisations or individuals may also pass relevant information to the ISA if they are concerned about the behaviour or conduct of an individual. Organisations that must refer relevant information to the ISA are:

- Local authorities, Health and Social Care bodies
- Professional registration bodies and supervisory authorities named in the Safeguarding Vulnerable Groups Act 2006
- Employers and managers of volunteers in regulated and controlled activity, and
- Personnel suppliers (e.g. employment agencies, employment businesses and educational institutions).

Registered body

A registered body is an organisation registered with the CRB. Its role is to:

- Check and validate the information provided by the applicant on the application form
- Establish the true identity of the applicant
- Ensure that the application form is fully completed and the information it contains is accurate
- Countersign applications to confirm that the organisation has an entitlement to access criminal records information, and
- Comply with the CRB code of practice.

Regulated activity

This is defined as:

- Any activity of a specified nature carried out frequently that involves contact with children or vulnerable adults
- Any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively
- Fostering and Ofsted registered childminding
- The exercise of functions by people in certain specified positions of responsibility

- The exercise of any function of an officer of the Children and Family Court Advisory and Support Service (CAFCASS) or CAFCASS CYMRU.
- The exercise of a function of certain inspectorates, or activity that involves, on a regular basis, the day-to-day management or supervision of people carrying out activity of a specified nature or in a specified place, or inspection activity or functions of CAFCASS or CAFCASS CYMRU officers.

Supervisory authorities

Supervisory authorities are inspectorates such as Ofsted, the Care Quality Commission, etc. In Wales, they include Estyn, Welsh Ministers through the Care and Social Services Inspectorate Wales and the Health Inspectorate Wales. These organisations routinely conduct inspections and, where they receive complaints about a practitioner or organisation, they may commission a special investigation to consider whether the practitioner/organisation is complying with regulations or meeting professional standards.

Volunteer

A person who is engaged in any unpaid activity (except for travelling and other approved out-of-pocket expenses) that involves spending time in doing something that seeks to benefit a third party other than (or in addition to) a close relative.

Vulnerable adult

A vulnerable adult is defined by the Safeguarding Vulnerable Groups Act as a person who is aged 18 years or over and who:

- is living in residential accommodation, such as a care home or a residential special school
- is living in sheltered housing
- is receiving domiciliary care in their own home
- is receiving any form of healthcare
- is detained in a prison, remand centre, young offender institution, secure training centre or attendance centre, or under the powers of the Immigration and Asylum Act 1999
- is under the supervision of the probation services
- is receiving a specified welfare service, namely the provision of support, assistance or advice by any person, the purpose of which is to develop an individual's capacity to live independently in accommodation or support their capacity to do so
- is receiving a service or participating in an activity for people who have particular needs because of their age or who have any form of disability
- is an expectant or nursing mother living in residential care
- is receiving direct payments from a local authority or health and social care trust in lieu of social care services, and/or
- requires assistance in the conduct of their own affairs.