

Changes to disclosure and barring: What you need to know

What is the purpose of this leaflet?

This leaflet tells you about important changes which the Government will be making to criminal records and barring arrangements **this September (2012)** and how they affect you.

Who is it aimed at?

This leaflet is for organisations (**employers, voluntary organisations and charities**) who engage people to work with vulnerable groups including children. This is work which a barred person must not do (called 'regulated activity'), or work for which the organisation may obtain a Criminal Records Bureau (CRB) check. This will often involve contact with the CRB and/or the Independent Safeguarding Authority (ISA).



What changes are we making, and why?

The UK Government is committed to protecting vulnerable groups including children. We want to see a focused and effective safeguarding system, where harm or risk of harm is identified, acted upon effectively and ultimately prevented. We also want a better sharing of responsibility for safeguarding between the state, on the one hand, and your organisations, on the other. We think that arrangements up until now over-emphasised protection by the state and did not sufficiently emphasise the vital role which you play.

Clear, well managed arrangements for safeguarding are important, whether in a large hospital, a school or a small local charity. This includes ensuring that all staff are appropriately recruited, trained and managed. Vigilant, ongoing, day-to-day management is crucial, in order that unusual or concerning behaviour is picked up at the earliest opportunity. Safe, careful recruitment makes an important contribution. You are best placed to decide if someone is suitable for the role that you have and in doing so it is crucial that you take all sensible steps to identify the right person – including undertaking reference checks and conducting face to face interviews. All of this is just as important as a CRB check.

The state has a key role to play in, for example, barring unsuitable individuals from working with vulnerable groups including children, and in ensuring that organisations can access criminal record information on individuals when the role justifies it.

We are scaling back the criminal records and barring systems to more proportionate levels whilst ensuring that they continue to provide effective protection for those who need it. The changes to those systems are included in the **Protection of Freedoms Act 2012**, which recently received Royal Assent. The changes in the Act have not come into effect yet – but some of them will come into effect on **10 September 2012**. **Until then, you should carry on as before.** This leaflet tells you more about the changes which will be happening on 10 September.

Not everything is changing. Your organisation will still, for example, have a duty to make referrals to the Independent Safeguarding Authority, and it still must not knowingly engage a barred person in regulated activity.

So, at a glance...

Major changes in September 2012

- New definition of regulated activity.
- Repeal of controlled activity.
- Repeal of registration and continuous monitoring.
- Repeal of additional information.
- Minimum age (16) at which someone can apply for a CRB check.
- More rigorous 'relevancy' test for when the police release information held locally on an enhanced CRB check.

Not changing

- You must make appropriate referrals to the ISA.
- You must not engage in regulated activity someone whom you know has been barred by the ISA.
- Everybody within the pre-September definition of regulated activity will remain eligible for enhanced CRB checks, whether or not they fall within the post-September definition of regulated activity.

This leaflet relates to **England and Wales**. A separate leaflet covers Northern Ireland.

What is happening in September which affects my organisation?

I. A new definition of regulated activity

The Safeguarding Vulnerable Groups Act 2006 sets out the activities and work which are 'regulated activity', which a person who has been barred by the ISA must not do. We are scaling back regulated activity to focus on work which involves close and unsupervised contact with vulnerable groups including children. The current definition of regulated activity would, over time, cover over 9 million people; in the new definition it will be closer to 5 million. The activities and work which are being taken out of regulated activity will still be eligible for enhanced CRB checks (but they will no longer be eligible for barred list checks).

Being clear about the definition of regulated activity matters because:

- An organisation which knowingly allows a barred person to work in regulated activity will be breaking the law;
- If you dismiss or remove someone from regulated activity (or you would have done had they not already left) because they harmed or posed a risk of harm to vulnerable groups including children, you are legally required to forward information about that person to the ISA. It is a criminal offence not to do so. If you believe that the person has committed a criminal offence, we also strongly advise you to pass the information to the police. For further information on the duty to refer to the ISA, please see www.isa.homeoffice.gov.uk
- From 10 September, if you consider that a role is within the new definition of regulated activity, then if you ask the individual to apply for an enhanced CRB check you should request the appropriate barred list check (for children, adults or both). Enhanced CRB checks for work within regulated activity will tell you (where requested) if the person is on one of the ISA's barred lists. They do not generally include that information for work outside regulated activity.

A summary of the new definition of regulated activity is given at the end of this leaflet.

2. Repeal of controlled activity

The controlled activity category will no longer exist. This category covered people who might have less contact with vulnerable groups including children than people in regulated activity – for example, some people who deal with records. At the moment, you can check whether those people are barred; from September, you will not be able to do that (although people in those roles may still be eligible for a CRB check, depending on the role).

3. Repeal of registration and continuous monitoring

The original plan – in the Vetting and Barring Scheme – was that anyone who wanted to work with vulnerable groups including children would need to register with the scheme and to be continuously monitored for any new criminal record information. This never came into force and the Protection of Freedoms Act repeals it. We can now confirm that registration and monitoring will not be introduced.

4. Repeal of additional information

Under the Police Act 1997, police forces can provide certain sensitive 'additional information' about applicants only to organisations, not to the applicants themselves. This is sometimes also known as 'brown envelope' material and is issued separately to an enhanced CRB check. Whilst this provision will no longer exist in the Police Act, the police may choose to use common law powers to provide information directly to employers in cases where this is necessary, for example to prevent crime or harm to others.

5. Minimum age for CRB checks

Someone who is aged under 16 will no longer be able to apply for a CRB check. If you work for one of the CRB's registered or umbrella bodies, you will not be able to countersign an application for anyone aged under 16.

6. Police information held locally – more rigorous relevancy test and new right of review

Currently, the police provide information held locally on enhanced CRB certificates when they consider it to be relevant to the purpose for which the certificate was requested. This will continue, but the police will now apply a more rigorous test before deciding whether to disclose information. At the moment they include information if it 'might be relevant' and ought to be disclosed. From September, they will include it if they 'reasonably believe [it] to be relevant' and consider that it ought to be disclosed.

In addition, if any of that information is included on an enhanced CRB certificate and the applicant does not think that it should be, they will now be able to ask the Independent Monitor to review it, and the Independent Monitor can ask the CRB to issue a new certificate, either without that information or with amendments to it. Applicants should be encouraged to inform you when they request such a review and to update you about what happens with their certificate.

7. Challenges to information on CRB certificates

Currently, an applicant for a CRB check who believes that information disclosed on their certificate is inaccurate can apply to the CRB for a decision about whether it is accurate. The Protection of Freedoms Act will allow people other than the applicant to do that too. (In practice, this has often happened anyway).

Are any changes happening after September 2012?

Yes; there will be additional changes. We will provide more information on these closer to the time, but here is an overview of some of the key ones:

At the start of December 2012

The work of the CRB and of the ISA will be merged into a single, new Non-Departmental Public Body. This will be called the **Disclosure and Barring Service (DBS)**. The DBS will carry out the CRB's and ISA's functions, so this will not represent a change to the services which you receive – it just means that they will be provided by one organisation rather than two. Contact details for the DBS will be available in due course.

Early in 2013

We are currently working to develop and deliver a new **Update Service** with a proposed implementation date of **early 2013**. The Update Service will allow individuals (if they choose to subscribe to it, and pay a small fee) to apply for a criminal record check once and then, if they need a similar sort of check again, to reuse their existing certificate, with their organisation checking online to see if it is still up to date. This will avoid many unnecessary repeat applications. More information will be made available about this new service – in the mean-time, it is business as usual.

For further information:

Home Office: www.homeoffice.gov.uk/disclosure-and-barring

CRB: www.homeoffice.gov.uk/crb

ISA: www.isa.homeoffice.gov.uk/

Business Link: www.businesslink.gov.uk

DirectGov: www.direct.gov.uk

Or you can e-mail: HOSPPUEnquiries@homeoffice.gsi.gov.uk

Summary of the new definition of regulated activity

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012).

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

I. Regulated activity relating to children

The new definition of regulated activity relating to children comprises only:

- (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: for example, schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly. We are providing statutory guidance about supervision of activity which would be regulated activity if unsupervised.

- (iii) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
- (iv) Registered childminding; and foster-carers.

2. Regulated activity relating to adults

The new definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the new definition of regulated activity (and so will anyone who provides day to day management or supervision of those people). A broad outline of these categories is set out below. For more information please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.

(i) Providing health care

Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for further details about what is meant by health care and health care professionals.

(ii) Providing personal care

Anyone who:

- provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability;
- prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision; or

- trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

(iii) Providing social work

The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

(iv) Assistance with cash, bills and/or shopping

The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.

(v) Assistance in the conduct of a person's own affairs

Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for the further categories which are covered here.

(vi) Conveying

A person who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers.

Our thanks go to the following partners for their assistance:
Criminal Records Bureau, Independent Safeguarding Authority,
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