



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Working with children: Vetting and barring – Legislation and policy in England and Wales

Citation for published version:

Smith, C 2010, Working with children: Vetting and barring – Legislation and policy in England and Wales. The University of Edinburgh/NSPCC Child Protection Research Centre.

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher final version (usually the publisher pdf)

Publisher Rights Statement:

© Smith, C. (2010). Working with children: Vetting and barring – Legislation and policy in England and Wales. The University of Edinburgh/NSPCC Child Protection Research Centre.

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Working with Children: Vetting and Barring - Legislation and Policy in England and Wales

Connie Smith, Research & Policy Analyst

The University of Edinburgh/NSPCC Centre for UK-wide Learning in Child Protection (CLiCP) conducts research and analysis on child protection policy across the UK. One research strand is the protection of children in community settings. This includes analysis of the vetting arrangements to give employers access to criminal history information and the formal systems to bar unsuitable people from working with children. This paper outlines the main movements in vetting and barring for England and Wales, the current position and the developments in 2010.

It accompanies the CLiCP Briefing *Working with children: Vetting and Barring – Legislation and Policy in Scotland* (Smith, 2009).

Key Points

Systems in operation

- The purpose of vetting and barring systems is to prohibit unsuitable people from paid or unpaid work with children and young people.

Barring

- Since 2009 the system for prohibiting unsuitable people from working with children in England and Wales has been centred on the Independent Safeguarding Authority (ISA) Children's List.
- It is an offence for an individual on the ISA Children's List to work in a regulated activity with children or for an organisation to use them in such work.
- Individuals convicted of specified serious offences are automatically included on the Children's List.
- An organisation that withdraws permission for an individual to work in a regulated activity with children must refer the person to the Independent Safeguarding Authority Children's List.
- The ISA assesses these referrals and decides if the case warrants the individual being included on the Children's List.
- From 2012 criminal history information will be considered by the ISA as a potential basis for barring an individual.



Vetting

- Since 2002 the Criminal Records Bureau (CRB) has provided criminal history Disclosures to employers on individuals applying for posts with children.
- An employer can establish if an individual is on the ISA Children's List by obtaining an Enhanced Disclosure.
- Enhanced Disclosures also show all convictions, cautions, reprimands, warnings and relevant police intelligence held on a person.

System reform

- A new system requiring all those engaging in regulated activities with children to be registered with the ISA has been suspended pending a Government review.
- The proposed system would have made it an offence for someone who was not registered to work in a regulated activity on a frequent basis, i.e. on a weekly basis or more; or for four days or more a month or overnight.
- Employers would have been able to check ISA registration for staff and volunteers to verify they were not barred from working with children.

Vetting and Barring in England and Wales

Introduction

There are two formal methods available to organisations to prevent unsuitable individuals from working, in a paid or voluntary capacity, with children. The first is the arrangements for barring unsuitable people from posts with children. The second is providing employers with criminal history information of prospective staff for use in vetting their suitability. This paper covers the developments in England and Wales in vetting and barring systems. It describes those currently in operation and the significant changes to these over the past decade and developments latterly.

This paper is concerned with the formal, legislative based vetting and barring systems that apply to paid and unpaid work with children in organisations. Many of these provisions also apply to other roles such as foster carers and childminders and specific posts with responsibility for children e.g. Directors of Children's Trusts. These are noted where relevant but the focus of this paper is posts in organisations.

The paper describes the requirements of the vetting and barring provision although this is in the context that these are only one tool to prevent people known to be unsuitable from working with children. Government advice is they should be used as part of broader child protection and good recruitment practice (Department for Education and Skills et al., 2005).

There has been similar developments in vetting and barring with regard to posts that involve work with vulnerable adults. These are similar structures and processes as for children and since 2009 dealt with by the same agency. The briefing is concerned only with those relating to children and specifically describes the:

- previous barring arrangements under the Protection of Children Act 1999 and List 99
- current barring system under the Safeguarding Vulnerable Groups Act 2006
- vetting system in operation under the Police Act 1997
- proposed reforms to vetting due to be implemented in 2010 under the Safeguarding Vulnerable Groups Act 2006 but suspended pending a review by the Home Office.

Context

Systems to prevent unsuitable people working in posts with children have long existed. Vetting by employers using criminal record information can be traced back centuries almost to the origin of the systematic retention of criminal records (Thomas, 2002). More recently the Rehabilitation of Offenders Act 1974 gave certain ex-offenders rights not disclose spent convictions in job applications. But, posts with children were exempt and employers had the right to know all criminal records information of individuals for these positions. Similarly barring systems have a long history. In the education sector "List 99", in operation for decades, held the names of those prohibited from teaching posts (Department for Education and Skills, 2006).

However, since the late 1990's there have been unprecedented and rapid developments in both the vetting and barring systems, such that they now encompass paid and unpaid posts with children, young people and vulnerable adults in England and Wales.

Barring arrangements

Background: the Department of Health Consultancy Index

Until 2000 the Department of Health Consultancy Index had acted as a form of barring system for posts in health and social care. This Index held names of child care workers referred by an employer who considered them unsuitable to work with children. The Department of Health acted as broker between referring and potential new employers in the exchange of references. The Consultancy Index was not statutory, nor compulsory, contained no legal power to bar individuals from posts and there was no right of appeal against being on the Index (Utting et al., 1997).

The Protection of Children Act 1999

The Protection of Children Act 1999 established the first statutory system to identify and bar unsuitable individuals from child care posts and was in operation between 2000 and 2008. It replaced the Department of Health Consultancy Index. The system was centred on the Protection of Children Act (POCA) List that held the names of those barred from posts with children and was administered by the Department for Children, Schools and Families.

Organisations and Posts covered by the POCA Provisions

The actual posts covered by POCA were defined as Regulated Positions in Child Care organisations. Regulated positions were:

- Where "staff, whose normal duties involve carrying out work of any sort in establishments exclusively or mainly for children.
- Where normal duties include work on day care premises.
- Where normal duties include caring for, training, supervising or being in sole charge of children.
- Where normal duties involve unsupervised contact with children under arrangements made by a responsible person (for example a parent, guardian or primary carer).
- Where normal duties include caring for children under the age of 16 in the course of the children's employment.
- Where a substantial part of the normal duties include supervising or training children under the age of 16 in the course of the children's employment...
- Individuals who, by virtue of the authority and responsibility inherent in the posts they hold, might be expected to be positively suitable to work with children.
- Where normal duties include supervising or managing an individual in a regulated position" (Department for Education and Skills, 2005).

Child care organisations were defined as those "concerned with the provision of accommodation, social services or health care services to children or the supervision of children; [and] whose activities are regulated by or by virtue of any prescribed enactment" (Department for Education and Skills, 2005). These were primarily statutory public bodies. They were required to comply with the 1999 Act. Other organisations with regulated positions were encouraged to comply with the legislation but had no duty to do so. So the majority of voluntary childcare groups were not legally required to meet many aspects of the legislation. (Annex 1 contains further information on child care organisations and Annex 2 on regulated positions).

Barring individuals from Child Care Positions: the POCA List

The POCA List held names of individuals whose behaviour or actions were judged to make them unsuitable to work with children. By virtue of being on the POCA List an individual committed a criminal offence by attempting to, taking up or remaining in a regulated position in a child care organisation. It was a criminal offence for child care organisations to knowingly appoint an individual on the POCA List to a regulated position (Department for Education and Skills, 2005).

Agencies could check if potential personnel for regulated positions were on the POCA List through obtaining a criminal records check i.e. a Criminal Records Bureau Standard or Enhanced Disclosure (covered in the next section of this paper). In practice these checks, whilst available prior to POCA, became mandatory for child care organisations with regard to new appointments as a result of POCA.

There was no compulsion to check whether existing staff in regulated positions were on the POCA List. Organisations had a duty to remove a person from a regulated position where they become aware they were on the POCA List but there was no requirements for pro-active checking (Department for Education and Skills, 2005).

Reasons for Referrals to the POCA List

The POCA prescribed the circumstances in which there were to be referrals to the POCA List. Organisations were to refer individuals they had acted to remove from a regulated position because they harmed or endangered a child either at work or elsewhere. There was also to be referrals where the individual vacated the post before they could be dismissed or due to retirement, resignation, contract end or other reason. The intention of this was to prevent an individual or organisation evading the barring process by vacating a post.

The 1999 Act placed the onus on employers, employment agencies and inspection bodies to refer unsuitable people for consideration for inclusion on the POCA List. The referral criteria applied even where they had not committed, or been convicted of, a criminal offence. Child care organisations had a legal duty to refer individuals to the POCA List. It was an offence for them to fail to do so. All other organisations where there were regulated positions are encouraged to refer unsuitable people e.g. voluntary bodies.

In addition to service providers, employment agencies and businesses supplying staff to regulated positions in child care organisations, had a duty to refer to the POCA List. This they were to do where they would no longer supply the individual because they have harmed a child or put them at risk of harm. Agencies that inspect services for children, including the Inspector of Education, Children's Services and Skills (Ofsted), had powers to refer individuals to the POCA List. This was intended to apply where an employer was negligent or remiss in not referring an individual.

A further source for referrals to the POCA List were individuals named in a "relevant inquiry" i.e. public or other formal inquiry. The Inquiry was to refer any individual it found guilty of misconduct, whilst in a regulated position and unsuitable to work with children.

Decisions to List

Individuals were not automatically included on the POCA List but each case was assessed and a decision made regarding barring. Until 2009 this was the direct responsibility of the Secretary of State for Children, Schools and Families.

Period of Barring and Appeals against Inclusion on the POCA List

There was no time limit given for inclusion on the POCA List but it was possible to appeal for removal after a minimum period had passed: ten years for adults; five years in the case of those under 18 at the time of Listing.

The 1999 Act established the right of appeal to the Care Standards Tribunal against inclusion on, or for removal from, the POCA List. Appeals on a point of law against inclusion could be made to the High Court, otherwise the Tribunal Decision was final. The POCA List was in operation from 2000, until the introduction of a reformed barring scheme in 2009 that superseded and replaced it.

List 99 and Barring from Education Posts

Under section 142 of the Education Act 2002 the Secretary of State had powers to “bar or restrict a person’s employment” from education posts and this was commonly referred to as List 99 (Department of Children Schools and Families, 2009). List 99 was the system used to prohibit unsuitable individuals from working in schools, colleges and local education services in tandem with the POCA List. The Department for Children, Schools and Families was also responsible for List 99.

Referrals to List 99 arose from reports by schools, local authorities or police. Where a case came to the Department’s attention it could be pro-actively pursued (Department for Education and Skills, 2006). This differed to the POCA List where the Department reacted to a specific referral.

Grounds for inclusion on List 99

There were four grounds under which the Secretary of State could make a direction to bar an individual from working in education settings.

- Misconduct; actions and behaviours that are not necessarily harmful to children but considered to make it inappropriate for them to continue in the education sector e.g. crimes of dishonesty.
- Unsuitable to work with children; circumstances where the individuals “present a risk to children even without there having been any misconduct” (Department for Education and Schools, 2006).
- Inclusion on the Protection of Children Act 1999 (POCA) List.
- On medical grounds; for example drug or alcohol addiction (Department of Children Schools and Families, 2009).

In short, List 99 covered those considered a risk to children and those not suitable to work in education services but not considered a danger to young people.

The Protection of Children 1999 Act amended aspects of List 99 to bring it in line with the POCA provisions. Consequently an individual on List 99 for any of the four grounds was barred from all posts in education. An individual on List 99 on the grounds of “unsuitability to work with children”, was barred from all work with children; education, social care and health posts. Those on List 99 for misconduct or health reasons were barred only from education posts but permitted to do other work with children (Department for Education and Skills, 2006). A criminal record check showed individuals on List 99 on the ground of unsuitable to work with children (Criminal Records Bureau, 2009b).

Appeals against Listing on List 99

Inclusion on List 99 was not time limited and permanent. In certain cases an individual could appeal to the Secretary of State for a review of their Listed status. Where an individual was “deemed unsuitable to work with children” there was no right of appeal to the Secretary of State but the Care Standards Tribunal had powers to review some cases (Department for Education and Schools, 2006).

POCA and List 99

Together the POCA List and List 99 were tools for excluding people from the children's workforce. These barring measures could be used where the individual had not committed a criminal offence but only for those in regulated positions with children.

Disqualification Orders

A third barring method, Disqualification Orders could be used to prohibit any person convicted of certain offences from working with children. It was issued by a Crown Court and could be to a person not currently working with children to prohibit them from so doing in the future (Department for Education and Skills, 2005).

Consideration of the POCA System

By 2009 the barring system had become more stringent with the introduction of the POCA List. It operated on a statutory basis. There were specified circumstances in which an individual was to be referred to the POCA List. Referring individuals to the POCA List became a legal duty for child care organisations.

System deficiencies also become apparent. Checking new staff and making a referral to POCA was optional for a host of organisations. Criticisms were levelled at the entirely reactive nature of the barring system in that it could only be triggered in response to an incident and not be used preventively. The lack of coherence between the systems in operation was also recognised, e.g. the offences leading to automatic inclusion on List 99 did not replicate exactly those for Disqualification Orders. Then came reform of the barring system. This was undertaken primarily to meet the requirements of the Bichard Inquiry on child protection procedure in Humberside Police and Cambridgeshire Constabulary but has also an opportunity to address previously identified weaknesses (Bichard, 2004).

Changes to the barring system were implemented in 2009 under the Safeguarding Vulnerable Groups Act 2006 (referred to as the SVG). The aim was to deliver a more comprehensive, consistent and integrated vetting and barring system. The main elements are outlined below.

The next phase – Safeguarding Vulnerable Groups Act 2006

Barring Arrangements from 2009

Under the SVG the general approach to barring remains similar to the POCA system where the key objectives continue to be to:

- Identify and prohibit unsuitable people from working with children and hold their name on a new "Children's List".
- Allow relevant personnel to be informed where an individual is on a barred List.
- Enable access to criminal history information for recruitment purposes.

Organisations and Posts Covered by the SVG

The new barring arrangements are more comprehensive in coverage. No longer is there a distinction on the basis of the type of organisation. An organisation with posts covered by the SVG have a duty to comply with it. This significantly increases the number of posts and organisations brought within the ambit of the duties of the legislation compared to POCA.

Regulated activity relating to children

A new definition "regulated activity relating to children" specifies the posts covered by SVG. It covers "activities where the person engaging in that activity could develop a relationship of trust with the child" (Department for Children Schools and Families et al., 2007). Regulated activity covers posts providing services to children; including education, care, treatment and advice. It covers posts in establishments for children, i.e. schools, hospitals, residential homes and detention centres. It covers specific roles such as local authority directors of education and children's services. Posts managing or responsible for any of the above are also regulated activity. Registered childminders and foster carers also fall under the definition.

Controlled Activity

A second set of posts, termed "controlled activities", primarily support roles to regulated activities, are also covered by aspects of the 2006 Act. Controlled activities includes posts in FE colleges and NHS settings that support regulated activities but do not involve contact with children as a core element, i.e. cleaners, receptionists. Controlled activity also includes individuals in social services and health with access to sensitive information on children. (Annex 3 contains a fuller description of regulated and controlled activity relating to children.) Many provisions relating to controlled activity were not planned to be implemented in 2010 (although the duty to refer to the ISA Children's List is in force (see Section on Referring below).

The current position is that employers in England will be able to use a barred person in controlled activities although special provisions are required to be in place. Wales approach differs and they have decided to bar from controlled activity those on the Children's List because they were convicted for a serious offence (Singleton, 2009). The debate regarding a separate controlled activities category continues.

A New Barring Agency: The Independent Safeguarding Authority

Amongst some of the key changes under SVG, a new barred List, the Children's List has been established. The Independent Safeguarding Authority (ISA) has been established to deal with all barring matters for England, Wales and Northern Ireland a non-departmental public body under sponsorship of the Home Office. Referrals are made to the ISA that has responsibility for deciding if the individual should be included on the Children's List. Government Ministers have relinquished their direct role in decision-making on barring.

The Children's List

The Children's List single barring List that holds the names of all those prohibited from working in regulated activities with children since 2009. It includes both those considered unsuitable, because they have been convicted of particular criminal offences or barred as a result of a referral by an employer. The ISA Children's List replaces the POCA List, List 99 and Disqualification Orders. There is a process of transfer of names from these to the ISA Children's List as appropriate.

It is a criminal offence for a person on the Children's List to work in a regulated activity or attempt to do so. It is a serious offence to knowingly allow someone on the Children's List to work in regulated activity in a paid or voluntary capacity.

All those on the ISA Children's List must serve a minimum period after which they have the right to request a review of their inclusion on the List. This is one year for those under 18; five years for those aged 18-25 and ten years for those aged 25 and over. Removal is dependent on their situation having sufficiently changed since Listing. Where this is not the case or where the review is rejected, they remain on the Children's List

It is intended that there is no duplication of listing in the UK. Scotland has and will retain a separate barring process and Children's List. Appearing on either this or the ISA Lists will mean a bar from work with children in all jurisdictions of the UK. A decision taken not to bar an individual in one jurisdiction will be adhered to by the other.

Referring an individual to the Children's List

There are new criteria for referral to the barred Lists. Organisations must refer a person when:

- The individual was in a regulated or controlled activity relating to children and,
- the employer "withdrew permission" for them to be in such a post (including dismissal, retirement, leaving the post or moving to another post not with children),
- and the permission was withdrawn "because they think that the individual has:
 - engaged in relevant conduct;
 - satisfied the *Harm Test*; or
 - received a caution or conviction for a *relevant offence*" (Independent Safeguarding Authority, undated)

Relevant conduct is specified in the SVG. It covers where an individual;

- harmed or put a child at risk of harm
- used or possessed sexual material relating to children for sexual gratification
- used violent sexual material that the ISA would judge as inappropriate.

The Harm Test covers circumstances where the referrer believes an individual may harm a child based not on behaviour but attitudes or thinking (Annex 4 contains a fuller information).

Finally referrals can be made because the person has been convicted of a serious offence or is subject to a court order as specified by the SVG 2006 Act.

Employers, or those responsible for volunteers in a regulated activity, have a duty to refer when all criteria stated above are met. Employment Businesses and Agencies have a duty to refer an individual when they will no longer supply that person for a regulated activity because of relevant conduct, harm test or caution or conviction for relevant offence. The position is similar for education institutions. They have a duty to refer when they will not supply a student for placement in regulated activity because of relevant conduct, harm test or caution/conviction.

Local authorities and a range of professional regulatory bodies (termed Keepers of Registers) have duty to refer individuals to the ISA "when they think that an individual who is engaged or may engage in regulated or controlled activity has engaged in relevant conduct; satisfied the Harm Test; or received a caution or conviction for a relevant offence" (HM Government, 2010). Supervisory authorities and, inspection and auditing bodies have the same duties.

Process for decisions on barring

The ISA is responsible for the Children's List and receiving referrals, assessment, inclusion and removal decisions. There are two main routes for referrals once they have been received by the ISA; 1. Automatic Barring and 2. Consideration for Listing.

Automatic Barring

As the name suggests a referral that meets the grounds for automatic barring results in the person's name being added to the Children's List without further assessment. Within Automatic barring there are two sub-sets. The first is where individuals have been convicted of, or cautioned for a very serious offence against a child or another vulnerable person. In these cases they are automatically included on the Children's List and have no right make representation for removal. The second group is individuals convicted or cautioned for other specified serious offences. This results in automatic inclusion on the Children's List with a right to representation to the ISA against Listing.

Non-auto bar Listing

The other referrals, are assessed by the ISA and cover people referred other than for a specified serious offence e.g. by an organisation for "relevant conduct". There are five main stages in the consideration for Listing process:

Stage 1: Initial Assessment

Here the ISA establishes if the case falls under their responsibility and if it should proceed.

Stage 2: Information Gathering and Assessment

The ISA has no investigatory powers but can require organisations to provide information they hold. In this phase such information is used, in addition to any criminal convictions information or that associated with any previous referrals. If when this information is assessed it is judged that "on the balance of probabilities harm or risk of harm has occurred in relation to a child" the case moves to Stage 3 (Independent Safeguarding Authority, undated).

Stage 3: Structured Judgement Process

The structured judgement process is a risk assessment tool devised and used by the ISA "to determine where based on all relevant information there is a future risk of harm to children" (Independent Safeguarding Authority, undated). Where this is the case the ISA is "minded to bar" the case proceeds to stage 4. If not the case is closed.

Stage 4: Representations

At this stage the individual concerned is contacted and given the opportunity to respond to the details on the referral. Other relevant persons and organisations can be approached to provide further information. This case is considered with regard to any other information received and a final decision regarding barring is taken.

Stage 5: Barring Decisions

The individual is informed of the decision to bar and their right of appeal. They are included in the ISA Children's List and it becomes illegal for them to work in a regulated activity (Independent Safeguarding Authority, undated).

Appeals and removal from the Children's List

An individual is able to appeal against inclusion on the Children's List on the basis of an error of fact or law, not the ISA decision. For England and Wales the right to seek appeal is to the Administrative Appeal Chamber of the Upper Tribunal.

Organisations' responsibility to provide "Prescribed Information"

There is also a tightening of the requirement on agencies to provide information to the ISA. Essentially all organisations covered by the 2006 Act must provide information to the ISA on existing and former staff, members or students.

Developments in Barring

Over the past 15 years the barring system has become statutory and been extended to cover all organisations where there are regulated activities with children. It has become a unified system around a single Children's List. It is arguably a more streamlined system. But this has brought increasing complexity and detail.

Vetting arrangements: criminal history disclosures

Background: the Rehabilitation of Offenders Act 1974

The ability of employers to ask for and use criminal conviction information for vetting potential staff is well established. Since the Rehabilitation of Offenders Act 1974 employers have been able to ask applicants for paid child care positions to disclose all criminal convictions and check the accuracy of these with each relevant local police force.

Operationally difficulties with this arrangement were emerging and active consideration was being given to reform of the vetting system by the Government by the 1990s (Thomas, 2002). This was also driven in part by the findings of inquiries into the abuse of children in care in the 1980s and 1990s (Utting et al., 1997; Colton, 2002) where ineffective vetting and poor recruitment practice generally was one factor in leaving children vulnerable. It was events in Dunblane and the resulting inquiry that provided the final catalyst for action, in particular the expansion of the vetting system through Part V of the Police Act 1997.

The Police Act 1997 and the Criminal Records Bureau

Building on the 1974 Act, the Police Act 1997 extended access to criminal records information to a wider range of paid and unpaid positions with children. The Criminal Records Bureau (CRB) was established to provide employers in England and Wales with criminal history information and meet the increasing demand. This removed provision of criminal records information to employers from police responsibilities. This also enabled a charge to be levied for the provision of criminal record information although government covers the costs of CRB checks for volunteer posts (Thomas, 2002).

At the outset there were three levels of criminal records checks available; Basic, Standard and Enhanced. Basic Disclosures gave spent criminal conviction information only. Until 2009 Standard CRB Disclosures were available for posts exempt under the Rehabilitation of Offenders legislation including child care posts that did not meet the criteria for an Enhanced CRB Disclosure. A Standard CRB Disclosure showed criminal conviction information and if the individual was barred.

This has changed and since 2009 only Enhanced Disclosure now show if the person is barred and are available for regulated activity relating to children (Criminal Records Bureau, 2009b). The Enhanced Disclosure contains:

- Convictions, Cautions, Reprimands and Warnings held on the Police National Computer for England and Wales.
- Most relevant convictions in Scotland.
- Where an individual is on the Children's List (and other recognised barred List in due course).
- Non-conviction information from police records such as allegations of criminal offences or police intelligence.

Process of Obtaining a CRB Enhanced Disclosure

Organisations can apply, with the consent of the individual concerned, to the CRB for Enhanced Disclosures for prospective personnel. This can be used for assessing suitability for posts with children. The CRB Disclosure is sent to the employer and the individual. The overwhelming majority of checks reveal nothing and the CRB Disclosure is returned blank.

Rights to Access CRB Disclosures

To be able to obtain CRB Disclosures organisations must comply with certain conditions; primarily to keep the information confidential and use only as prescribed (Criminal Records Bureau, 2009a). Those able to comply with the CRB Code of Practice can register with the CRB and access

Disclosures directly. Smaller and informal organisations not able to meet these standards can access CRB checks through an appropriate intermediary organisation.

Drivers for Reform

As with the barring system various weaknesses in the vetting process have been identified during its operation. CRB Disclosures will give current criminal history information but they are not updated. They can only be guaranteed accurate at issue; an employer is not informed of subsequent misdemeanours. On the other side an individual is required to have a new and separate CRB Disclosure for all further regulated positions, even when there are no changes to report. This has led to people having multiple CRB disclosures.

The employer can use information in a CRB Disclosure in their assessment of the individual for a post but criminal records information can require interpretation and knowledge of the terms used for offences. The CRB and infrastructure bodies provide some advice and guidance to organisations but ultimately it is the employer's responsibility to assess the information so can differ. There is also variability in practice between police forces in the release of non-conviction information (Department for Education and Skills et al., 2005).

Safeguarding vulnerable groups and the vetting system

Review of Proposed Reforms

The SVG Act 2006 also contained major reforms to the vetting system. This included compulsory registration scheme for those working with children. This was due to commence in July 2010. In June 2010 the new Home Secretary announced the suspension of the implementation of this scheme "to allow the government to review it and remodel it back to proportionate, common sense levels" (Home Office, 2010). The following section summaries the reforms that were due to be implemented but are on hold pending the review. Until that time the existing system remains in place.

Proposed Reforms to Vetting

Under the proposed new vetting scheme it would be a requirement for all those working in regulated activities with children to be registered with the ISA. This would be verification that an individual was not barred from working with children. Registration would also require the individual to consent to ongoing gathering and assessment of criminal records information by the CRB. Enhanced Disclosure checks were to continue to be available in addition to ISA Registration.

The Registration Scheme was due to be implemented from July 2010 to be rolled out to all regulated activity posts over the next five years (HM Government, 2010). It was calculated that 9 million people would be ISA registered under the fully operational scheme (with regard to both vulnerable adults and children).

Registration Process

Once fully operational it would be an offence for anyone over the age of 16 and not ISA registered to engage in regulated activity (unless there was an exception or exclusion for example with regard to young people in employment). It would be an offence for regulated activity providers, personnel suppliers and relevant institutions to engage someone not scheme registered in a regulated activity.

Organisations would become be required to check those individuals they use in regulated activity were ISA registered. Parents, or those with parental responsibility, were to gain the means to check registration of anyone they individually employ to care for, teach or treat their child.

Frequently and intensively

The exact posts covered by the scheme had already been subject to much debate and review. The final position prior to suspension was an individual would be required to be ISA registered when they performed a regulated activity frequently or intensively. Frequently was defined as contact with a child on a weekly basis or more. Intensively considered activity on 4 or more days a month or overnight (Singleton, 2009). Those involved in fostering, childminders and defined office holders would be required to be scheme members immaterial of frequency/intensity.

Registration Process

Application for scheme registration was to be through a CRB registered body or umbrella body in the same way as applications for a CRB disclosure are made with payment of a registration fee, which would be waived for those engaging in unpaid voluntary activity. This application to become registered would be the stimulus for the identification, collection and assessment of relevant information. An applicant found to be on the Children's List or equivalent would be denied scheme registration. Individuals not on the Children's List or Scottish equivalent, would become subject to monitoring and scheme registered. From this point, the process would involve ongoing monitoring of any relevant information that arose on the individual. All pertinent convictions, cautions or police information will be passed by the CRB for consideration as a basis for possible listing by the ISA. If that individual became barred, their registration would be revoked.

Registration and Subject to Monitoring

The system would have enabled employers to register their interest in an ISA registered individual. If the individual became barred or removed from the Children's List employers with a registered interest would be informed.

SVG: Recap of Reforms

The Safeguarding Vulnerable Groups Act 2006 would have introduced significant changes for organisations and individuals in services for children. Everyone working in a regulated activity with children would have a legal obligation to have a valid registration with the ISA. The proposed review will specify what now happens in practice.

Conclusion

Vetting and barring systems to protect children in the community are not new but there has been intensification in their use over the past decade. Barring has become statutory, and compulsory for an expanding range of organisations. There is a single unified barring system focused on a single Children's List and a new barring body, the ISA. Far more organisations have duties to ensure they do not have a barred person working with children than previously. They are required to refer people as a consequence of certain criminal conviction or referrals, behaviour or attitudes. A complex set of policy, legislation and agencies have been constructed in the process.

Vetting seemed to be moving in a similar direction. Criminal record checks for paid posts with children became accessible to a wider range of paid and unpaid posts. A new organisation, the CRB was established to meet the increased demand for vetting information and the intention that the system should be self-financing through charging users. However the "proportionality" of this system is under scrutiny and there are likely to be further changes potentially to the detail or indeed the overall direction of this programme.

Annex 1 Definition of a child care organisation

Definition of child care organisation:

“an organisation:

which is concerned with the provision of accommodation, social services or health care services to children or the supervision of children

whose activities are regulated by or by virtue of any prescribed enactment; and

which fulfils such other conditions as may be prescribed”

Conditions (a) and (b) must be met to fulfil the definition of child care organisation. The obligations of the legislation apply to statutory organisations and those under contract where the contracting authority is covered by the Act. Regulations also brought childminders under the provisions of the 1999 Act. It is clear that voluntary and community organisations operating independently do not have duties under the 1999 Act; although it is expected that they will adhere to its provisions with regard to referring and checking and preventing the engagement of staff on the POCA List.

(Department for Education and Skills, 2005)

Annex 2: Regulated Position

“(a) a position whose normal duties include work in an establishment listed below:

an institution which is exclusively or mainly for the detention of children,
a hospital which is exclusively or mainly for the reception and treatment of children,
a care home, residential care home, nursing home or private hospital which is exclusively or mainly for children,

an educational institution,

a children's home or voluntary home

a home provided under section 82(5) of the Children Act 1989 subsection (2)

(b) a position whose normal duties include work on day care premises,

(c) a position whose normal duties include caring for, training, supervising or being in sole charge of children,

(d) a position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person,

(e) a position whose normal duties include caring for children under the age of 16 in the course of children's employment,

(f) a position a substantial part of whose normal duties includes supervising or training children under the age of 16 in the course of the children's employment,

(g) one of the following positions:

member of a governing body of an educational institution,

member of a relevant local government body,

director of children's services and director of adult social services of a local authority in England,

director of social services of a local authority [in Wales],

chief education officer of a local education authority [in Wales],

charity trustee of a children's charity

member of the Youth Justice Board for England and Wales,

Children's Commission and deputy Commissioner appointed under Part 2 of the Children Act 2004

Children's Commissioner for Wales or deputy Commissioner for Wales,

member or chief executive, of the Children and Family Court Advisory and Support Service,

(h) a position whose normal duties include supervising or managing an individual in his work in a Regulated Position”

(Charity Commission, 2008)

Annex 3: Regulated and Controlled Activity Relating to Children

“Regulated activity is the statutory terms used to describe specific activities which involve working or volunteering with children or vulnerable adults and certain situation where individuals have the opportunity to have contact with children or vulnerable adults. It covers any such work, either paid or unpaid, which is carried out on a frequent, intensive or overnight basis..., but does not include family or personal arrangements.

Regulated activity includes:

- specified activities...such as teaching, instructing, supervising, caring for or providing children/vulnerable adults with guidance or treatment

- fostering and childcare services

- specified positions...such as school governor or director of children's or adult social services

- all activity undertaken within specified settings ...where there is the opportunity for contact with children or vulnerable adults. Activities include teaching, training and instruction, as well as catering, cleaning, administrative and maintenance workers or contractors

- roles that involve managing or supervising, on a regular basis, the day to day work of those carrying out specified activities or working in specified settings.

The frequency and intensiveness tests

Most work in any of the specified activities...is regulated activity if it is done frequently (once a week or more), intensively (on four days or more in a single month) or overnight. In health and personal care services, frequent is once a month or more. Work in any of the specified settings is regulated activity if it is done frequently or intensively. However, maintenance contractors who visit different care homes or children's hospitals will not meet the frequent or intensive tests if they visit several different care homes but do not work frequently in the same one...

Registered childminders and foster carers are engaging in regulated activity and will be subject to all the requirements of the Scheme, regardless of how frequently they engage in registered childminding activities or fostering”.

(HM Government, 2010)

Controlled Activity relating to children

“Controlled activity is work in a very limited range of organisations or settings which is arranged by a responsible persons, which does not constitute regulated activity but provides opportunities for contact with children or vulnerable adults, or opportunities to access education records (for children only) or health or social services records about children or vulnerable adults. It also includes day to day management and supervision of staff carrying out controlled activity.

Controlled activity covers:

- “frequent or intensive activity that is ancillary to health care in hospitals or primary care, and provides opportunity for contact with children or vulnerable adults...

- frequent or intensive ancillary support activity in further education settings, which provides opportunity for contact with children; and

- frequent work for specified organisations, principally Local Authorities/health and education bodies in Northern Ireland and agents working on their behalf, that provides access to education records (in relation to children) or health or social services records (in relation to children and vulnerable adults).” (Department for Children Schools and Families, 2010)

Annex 4: SVG Referral Criteria

Relevant Conduct

This is described in the Explanatory notes to the SVG Act 2006 as:

- “harms, attempts to harm, puts a risk of harm or incites another to harm a child...
- Involves child pornography or inappropriate conduct involving violent pornography; or
- Is of an inappropriate sexual nature involving a child or vulnerable adult”

Harm Test

“The Harm Test is defined in the 2006 Act, Schedule 3 and section 5 and 11 and the 2007 Order Schedule 1 paragraph 5 and 11 and is satisfied if the relevant person believes that an individual may:

- harm a child or vulnerable adult;
- cause a child or vulnerable adult to be harmed;
- put a child or vulnerable adult at risk of harm;
- attempt to harm a child or vulnerable adult; or
- incite another to harm a child or vulnerable adult.

Relevant Offence

A relevant offence for the purposes of referrals to ISA is an automatic inclusion offence as set out in the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provision) Regulations (Northern Ireland) 2009. (Independent Safeguarding Authority, undated)

References

- Bichard, S. M. (2004) *The Bichard Inquiry Report*, House of Commons, London
- Charity Commission (2008) *Application of Registration: Guidance Notes*, Charity Commission, Liverpool.
- Colton, M., (2002) Factors Associated with Abuse in Residential Child Care Institutions, *Children & Society*, 16, 1, 33-44.
- Criminal Records Bureau (2009a) *Code of Practice for Registered Persons and other recipients of Disclosure Information*, London:
- Criminal Records Bureau (2009b) *Levels of CRB Check, Vol. 2009 CRB*, pp. Guidance.
- Department for Children Schools and Families (2010) *Public consultation on continuing need for a controlled activity category in the Vetting and Barring Scheme*, London: Department for Children Schools and Families
- Department for Children Schools and Families, Home Office and Department of Health (2007) *Safeguarding Vulnerable Groups Act 2006: ISA Scheme Consultation document*, London: Department for Children, Schools and Families; Home Office; Department of Health
- Department for Education and Schools (2006) *Review of the List 99 decision making process and policy documents Accompanying document to Statement by the Secretary of State 19 January 2006*, London: Department of Education and Schools
- Department for Education and Skills (2005) *The Protection of Children Act 1999: A Practical Guide to the Act for all Organisations Working with Children* London: Department for Education and Skills
- Department for Education and Skills (2006) *Review of the List 99 decision making process and policy implications*, Department for Education and Skills
- Department for Education and Skills and Department of Health (2005) *Making safeguarding everybody's business: a post-Bichard vetting scheme: a consultation*, London: Department for Education and Skills
- Department of Children Schools and Families (2009) *Child Protection: Procedures for Barring or Restricting People Working with Children in Education - currently known as List 99*, London: Department of Children, Schools and Families
- HM Government (2010) *The Vetting and Barring Scheme Guidance*, London: HM Government
- Home Office (2010) *Vetting Scheme Halted*, Home Office, London.
- Independent Safeguarding Authority (undated) *ISA Decision-Making Process*, Independent Safeguarding Authority
- Singleton, R. (2009) *Drawing the Line. A report on the Government's Vetting and Barring Scheme*, Chief Adviser on the Safety of Children, London.
- Thomas, T., (2002) Employment Screening and the Criminal Records Bureau, *Industrial Law Journal*, 31, 1, 55-70.
- Utting, S. W., Baines, C., Stuart, M., Rowlands, J. and Vialva, R. (1997) *People Like Us: The report of the Review of the Safeguards for Children Living Away from Home*, London: Department of Health, Welsh Office

The University of Edinburgh/NSPCC Centre for UK-wide Learning in Child Protection (CLiCP)

The University of Edinburgh, Moray House School of Education, Paterson's Land,
Holyrood Road, Edinburgh, EH8 8AQ