

# The Vetting and Barring Scheme

Guidance, October 2009



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# Contents

<b>Section 1</b>	An overview of The Vetting and Barring Scheme	3
<b>Section 2</b>	The scope of The Vetting and Barring Scheme	7
<b>Section 3</b>	Barring arrangements	17
	Further information	22

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## Summary

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The Vetting and Barring Scheme aims to prevent unsuitable people from undertaking certain paid or volunteer work with children or vulnerable adults ('regulated activity'). It will do this by vetting all those who wish to work with vulnerable groups and barring those where the information shows they pose a risk of harm and (in due course) vetting those who wish to do certain other types of work ('controlled activity').

This section provides information for employers, voluntary organisations, employees and volunteers, and covers:

- key points
- the scope of the Scheme, and
- key dates.

**Note:** Employers and voluntary organisations are known as regulated activity providers (RAPs) for the purposes of the Scheme, and will be referred to as such throughout the document (see definition of RAPs on page 4). In the context of controlled activity, they are 'responsible persons'.

Parts of this guidance refer to requirements that HM Government and the Welsh Assembly Government plan to include in forthcoming regulations.

# Section I: An overview of The Vetting and Barring Scheme

## Key points

### From 12 October 2009:

- You must not knowingly employ in regulated activity (see below), or use as a volunteer, a barred person.
- If you employ people or use volunteers in regulated activity or controlled activity (see page 4), and subsequently dismiss or cease using them because you think they have harmed or pose a risk of harm to children or vulnerable adults, you must refer the case to the Independent Safeguarding Authority (ISA).
- If you yourself are barred from regulated activity with either children or vulnerable adults you must not work, or seek to work, in regulated activity with that group.
- The existing lists of people barred from working with children or vulnerable adults in England, Wales and Northern Ireland will be phased out and replaced by two new lists: the ISA Adults' Barred List and the ISA Children's Barred List.

- 1.1 The Vetting and Barring Scheme is one of the Government's key responses to the murders of Holly Wells and Jessica Chapman by Ian Huntley. The events in Soham focused public attention on the way in which people who work with children are vetted. The resulting Bichard Inquiry recommended a new scheme that would ensure that everyone working in regulated activity with children (defined as those under 18) or vulnerable adults is checked and registered.
- 1.2 After full consultation, the Bichard Inquiry led to the Safeguarding Vulnerable Groups Act (SVGA) 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order (SVGO) 2007, which provide for the establishment of the Scheme. The Scheme is now being developed by the UK Government in conjunction with the Welsh Assembly Government and the Northern Ireland Executive. The scheme begins in October 2009 with the implementation of the ISA's new barred lists, barring people from regulated activity. ISA registration will begin in July 2010 for people taking up new roles – paid or voluntary – and will be phased in for people already working with vulnerable groups up to 2015. A parallel scheme is being developed in Scotland.

- 1.3 The Scheme recognises the need for a single process to assess all individuals who wish to do certain work or volunteer with children and vulnerable adults. The ISA has been set up as part of this process across England, Wales and Northern Ireland. The ISA's role is to make decisions as to who should be barred from working with vulnerable groups. Decisions are legally binding, so a barred person cannot be hired for certain roles under any circumstances.

## The Scheme in context

While the Scheme will provide significant safeguards, it is important to remember that it is part of a wider framework of safe recruitment practices. In particular, it does not replace Criminal Records Bureau (CRB) or AccessNI disclosures, which will still be necessary for some positions, and nor does it remove the need for employers and voluntary organisations (RAPs) to develop and apply robust recruitment procedures, including checking identity, qualifications and references, and enquiring into career history.

## The scope of the Scheme

- 1.4 If you work or volunteer with children or vulnerable adults in England, Wales or Northern Ireland, in either regulated activity or controlled activity, or you employ people to do so, then the Scheme affects you. A separate Scheme will cover Scotland.

## Regulated activity

- 1.5 Regulated activity covers anyone working closely with children or vulnerable adults, either paid or unpaid, not part of a family or personal arrangement (see box on page 4), on a frequent or intensive basis (see box on page 7). It can include, but is not limited to, any of the following:
- Teaching, training or instruction, care or supervision of children or provided wholly or mainly to vulnerable adults.
  - Providing advice or guidance for children.
  - Providing advice, guidance or assistance wholly or mainly to vulnerable adults.
  - Any form of healthcare treatment or therapy provided to children or vulnerable adults.

- Driving a vehicle that is being used for the specific purpose of conveying children or vulnerable adults.
- Working in a specified place (see below and page 11).

1.6 See page 7 for more details on the definitions of frequent and intensive. Please note that Sir Roger Singleton, Chairman of the ISA and the Government's Chief Adviser on the Safety of Children, has been asked to check that the Government has drawn the line for 'frequent and intensive' in the right place. Sir Roger has been asked to report by early December 2009.

### What is a RAP?

A regulated activity provider is an organisation or individual that is responsible for the management or control of regulated activity, paid or unpaid, and makes arrangements for people to work in that activity. This will usually be an employer or a voluntary organisation.

However, an individual making private contracts with a self-employed worker (for example, a parent hiring a piano teacher or a babysitter) is not a RAP.

### Specified places

1.7 Regulated activity includes anyone who works or volunteers in the following settings on a frequent or intensive basis, and whose work brings them into contact with children or vulnerable adults:

- schools
- childcare premises (including nurseries)
- residential homes for children in care
- children's hospitals
- children's detention centres
- children's centres
- adult care homes, and
- in England and Wales, further education institutions that are wholly or mainly for the provision of full-time education for under-18s.

This may include catering, cleaning, administrative and maintenance workers or contractors, and their managers or supervisors.

People who work closely with children and vulnerable adults (in the activities described in paragraph 1.5 above) will be engaged in regulated activity in any setting, whether or not this is a specified place. However, only in specified places will other work which gives people the opportunity to have contact

with children or vulnerable adults be included as regulated activity. This may include catering, cleaning, administrative and maintenance workers or contractors, and their managers and supervisors.

### Family and personal relationships

The Scheme does not apply to activities carried out in the course of family relationships or personal relationships. So, for example, it will not apply to you if you are looking after an elderly relative or a friend's child, or if you are watching the school play or football team. In addition, the Scheme will not apply when visiting a child in a children's ward or a vulnerable adult in a care home, as these do not count as activities being carried out 'for the establishment'.

### Controlled activity

1.8 The Scheme also covers a special category of work called 'controlled activity'. Employers will be able to employ someone barred from regulated activity to carry out controlled activity, provided they put in place specific safeguards. Note that this exception does not apply in every circumstance in Wales, where it is proposed that automatically barred people cannot be employed in any controlled activity, although people with a discretionary bar may be able to do so.

Controlled activity will include:

- frequent or intensive activity (see box on page 7) that is ancillary to healthcare in hospitals or primary care
- frequent or intensive ancillary activity in adult social care settings and further education settings, and
- people working for specified organisations with access to health or social services records.

In each case there must be an opportunity for contact with children or vulnerable adults, or the opportunity to have access to health or social services records for children or vulnerable adults, or educational records for children.

1.9 **Responsible persons** (see box on page 14) will be allowed to decide whether to employ in a controlled activity someone barred from undertaking regulated activity with children or vulnerable adults. After 31 July 2015, it will be a criminal offence to do so without carrying out a risk assessment and putting appropriate safeguards in place. Different arrangements may apply in Wales, subject to regulations being made.

- 1.10** From April 2010, responsible persons who do not know whether a new entrant or mover into controlled activity is barred from regulated activity will have to apply to the CRB for an enhanced disclosure with a barred list check on that individual – see page 15. In Northern Ireland, enhanced disclosure certificates will be available for those working in controlled activity from 12 October 2009.

For more detail on who is covered by the Scheme and what qualifies as regulated activity, see Section 2.

### The duty to refer

From 12 October 2009, if you remove someone you employ or for whom you are responsible, from regulated activity or controlled activity, or if they leave while under investigation for allegedly causing harm or posing a risk of harm, you are legally obliged to refer this information to the ISA. Failure to do so is an offence and will carry a significant penalty. Further guidance on how to make a referral to the ISA can be found on page 20, and full guidance on the referral process can be found on the ISA website ([www.isa.homeoffice.gov.uk](http://www.isa.homeoffice.gov.uk)).

## Key dates

### 12 October 2009

This is the Scheme's launch date, when the definitions of regulated activity and controlled activity come into operation. Additionally, the offence of working in regulated activity while barred comes into effect as does the offence of knowingly allowing someone to work in regulated activity while barred.

From this date, RAPs will be eligible to ask for enhanced disclosures with barred list checks on anyone they are taking on in regulated activity. In Northern Ireland this eligibility will also extend to controlled activity. However a RAP or responsible person is not required to ask for an enhanced disclosure if they have no reason to believe that an existing employee is barred.

The new duties on referrals will come into operation on 12 October 2009.

This means that RAPs that remove anyone from regulated activity will have a duty to refer information to the ISA in certain circumstances. A similar duty will apply to the responsible person (see definition on page 4) in relation to controlled activity. (Details of the duty to refer can be found in Section 3.)

### April 2010

In England and Wales, responsible persons who do not know whether a new entrant or mover into controlled activity is barred from regulated activity will have to apply to the CRB for an enhanced disclosure with a barred list check on that individual – see Section 2.

### 26 July 2010

You **may** apply for ISA registration from this date if you move into a new role, either paid or voluntary.

### 1 November 2010

This is the date on which the Scheme becomes mandatory for new workers or those moving position. If you move into regulated activity, paid or voluntary, with a new RAP, you **must** apply for ISA registration before starting in that role.

It will be a criminal offence to work in a regulated activity role without being ISA-registered.

RAPs will have a legal duty to check that potential new employees/volunteers are ISA-registered before allowing them to engage in regulated activity. RAPs that are registered bodies may facilitate ISA registration at recruitment stage, as part of their checks on potential new staff.

### 1 April 2011

This is the date from which people who are already working in regulated activity and have not moved into a new role with a new RAP may apply for ISA registration. This will happen in phases, usually organised by RAPs, and they will tell people when they should join.

### 1 January 2014

This is the date from which the Government will recommend that people working in controlled activity should apply for ISA registration.

### 31 July 2015

This is the final cut-off date by which everyone working in both regulated activity and controlled activity must be ISA-registered (except barred people in controlled activity, who cannot register).

If you are self-employed and already working in regulated activity, an umbrella body will be able to advise you on when to apply. A list of umbrella bodies is available from the CRB website at [www.crb.gov.uk](http://www.crb.gov.uk) or AccessNI at [www.accessni.gov.uk](http://www.accessni.gov.uk). Further guidance on registration and the application process will be made available in due course.



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## Summary

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The Vetting and Barring Scheme covers anyone who wants to work or volunteer with children or vulnerable adults in regulated or controlled activity on a frequent or intensive basis (see box opposite). In certain settings, such as schools and care homes, everyone who works or volunteers there frequently or intensively is carrying out regulated activity.

Barred people may be able to work in some ancillary roles in other settings, regarded as controlled activity.

This section provides more detailed information about the scope of the Scheme for employees, volunteers and regulated activity providers (RAPs), and provides information on:

- regulated activity
- specified activities
- specified positions
- specified settings and establishments
- the definition of vulnerable adults, and
- controlled activity.



# Section 2: The scope of The Vetting and Barring Scheme

- 2.1 The Vetting and Barring Scheme is being established to reduce the risk of harm to children and vulnerable adults (see page 12 for a definition). It will do this by identifying individuals whose information suggests are unsuitable to work with children and vulnerable adults, and barring them from gaining access to such people by working with them in a paid or unpaid capacity.
- 2.2 The Scheme will apply to England, Wales and Northern Ireland and is being developed in conjunction with the Welsh Assembly Government and the Northern Ireland Executive. Parallel arrangements are being developed in Scotland.
- 2.3 The Scheme will begin to operate from 12 October 2009, when the definitions of regulated and controlled activity come into operation, requirements in relation to barred individuals are introduced and requirements to refer to the ISA take effect. ISA registration begins in July 2010 for new workers, becoming mandatory from November 2010. Staff already working in regulated activity will begin to register from April 2011.

## Regulated activity

- 2.4 Regulated activity is the term used in the Safeguarding Vulnerable Groups Act (SVGA) 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order (SVGO) 2007 to cover activities where people are working or volunteering with children or vulnerable adults.
- 2.5 Regulated activity includes:
- specified activities (see full list on page 3) such as teaching, instructing, supervising, caring for or providing children/vulnerable adults with guidance or treatment
  - fostering and childcare
  - specified positions (see full list on page 9) such as school governor or director of children's or adult social services
  - all activity undertaken within specified settings (see list on page 11) 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, and

- roles that involve managing, 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

Work in any of the specified settings or specified activities listed in this section is regulated activity if it is done frequently (once a month or more) or intensively (on three days or more in a single 30-day period).

Sir Roger Singleton, Chairman of the ISA and the Government's Chief Adviser on the Safety of Children, has been asked to check that the Government has drawn the line for 'frequent and intensive' in the right place. Sir Roger has been asked to report by early December 2009.

## Specified activities

- 2.6 The Scheme covers the following activities, which involve contact with children and/or vulnerable adults. The examples given of each specified activity are intended to be illustrative, not exhaustive.
- 2.7 **Teaching, training or instruction, care or supervision of children or provided wholly or mainly to vulnerable adults.** This includes people such as children's sports coaches, Guide and Scout leaders, children's football referees, private tutors, teachers, probation officers, prison officers, care workers, speech therapists, youth workers and Sunday school teachers. It is important to note that activities which are open to the general public (such as hobby societies, etc) will not be regulated activity. For example, a bowling club open to the general public is not carrying out regulated activity – even when older or disabled people attend. But a bowling club set up specifically for people with learning difficulties is carrying out regulated activity.

- 2.8 **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.

### Example: sharing knowledge compared with teaching, training and instruction

A local history society runs a series of open-access evening talks and walks. Members attend these events for their own interest and amusement, and share their skills and knowledge with each other on an ad hoc basis. They are not teaching, training or instructing and are therefore not undertaking regulated activity.

- 2.9 **Advice or guidance for children, and advice, guidance or assistance for vulnerable adults.** For children, this means people whose role is wholly or mainly to provide advice or guidance to children that relates to their physical, emotional or educational wellbeing. Roles within this category include children's mentors, counsellors, children's careers advisers and, for example, people advising children who ring ChildLine.
- 2.10 In relation to vulnerable adults, this category covers any form of assistance, advice or guidance provided wholly or mainly to vulnerable adults. This will include advice given to patients in NHS or other healthcare settings. It would also include assistance targeted at vulnerable adults – for example, voluntary or other independent organisations that provide advice or support to older people or disabled people.
- 2.11 Individuals who visit vulnerable adults to offer such assistance will be engaged in regulated activity if the assistance is frequent.
- 2.12 Services that are aimed at the general public are not regulated activity.

### Example: volunteers working with adults in their homes

A volunteer with The Stroke Association provides assistance to people in their own homes. The volunteer helps the stroke sufferer to acquire new skills and reacquire lost skills so that the person can live independently in their own home. The person is a vulnerable adult because a service is being provided to help with particular needs they have because of their disability. The volunteer is providing care and assistance, as well as guidance and instruction, and is thus engaging in regulated activity.

- 2.13 **Any form of healthcare treatment or therapy provided to a child or vulnerable adult.** This includes people such as healthcare professionals, therapists, healthcare assistants in both hospitals and community settings, and St John Ambulance staff. It does not include first aid treatment where giving first aid is an ancillary role to a person's main occupation.
- 2.14 **Driving a vehicle solely for the purpose of conveying children or vulnerable adults.** This includes taxi drivers used by schools and care homes to transport children or vulnerable adults, and minibus/bus drivers taking children to or from Scout or Guide camp, or taking vulnerable adults on day trips from care homes. It also includes those employed to teach under-18s how to drive, ambulance drivers and those who drive vulnerable groups on a voluntary basis. It does not cover transport arrangements made between families and friends on a personal basis.
- 2.15 It also does not include bus drivers who drive public vehicles, which may or may not pick up children or vulnerable adults on the road, or taxis hailed/hired independently by children or vulnerable adults.



- 2.16 Moderating an online chatroom that is likely to be used wholly or mainly by children or vulnerable adults.** Chatroom moderators have a significant opportunity to abuse children or vulnerable adults either directly or indirectly, by knowingly permitting others to abuse them. The Scheme covers moderators who, for the purposes of protecting children or vulnerable adults:
- monitor the content of a service
  - control access to or use of the service, where they have access to content and contact with service users, and/or
  - have the power to remove content or stop it being added.
- 2.17** The Scheme will not cover IT staff where they do not contact chatroom users or see the content of messages.
- 2.18** However, the Scheme does cover individuals who, under the management of a responsible person, moderate chatrooms, bulletin boards or other similar services for the purposes of protecting children or vulnerable adults.
- 2.19 Host families/foreign exchange visits.** Regulated activity also includes host families and foreign exchange visits arranged by an agency, voluntary body or other third party, where the organiser has the power to terminate the placement. This will include situations where a school, language school or sports club arranges for children aged under 18 to stay with a host family.
- 2.20** It is not regulated activity if a parent arranges for their child to be looked after by a friend whom they know and trust, for no commercial consideration. It is not regulated activity if a parent arranges for their child to be looked after by a close relative, whether or not it is for reward.
- 2.21 CAFCASS and CAFCASS CYMRU.** The exercise of any function of an officer of the Children and Family Court Advisory Support Service (CAFCASS) or of a Welsh family proceedings officer (employed by CAFCASS CYMRU) is a regulated activity relating to children.
- 2.22 Inspections.** Individuals carrying out inspections on behalf of bodies such as the Care Quality Commission (CQC), Ofsted, Estyn, the Education and Training Inspectorate, the Care and Social Services Inspectorate Wales (CSSIW), the Healthcare Inspectorate Wales (HIW) and the Regulation and Quality Improvement Authority (RQIA) are also engaged in regulated activity, including when they inspect specified settings/establishments.

- 2.23** This also includes the inspection of health establishments and local authority social service functions. The CQC, CSSIW, RQIA and HIW are also engaged in regulated activity if the inspection relates to social services, care, treatment or therapy provided to vulnerable adults by the establishment, agency, person or body.

**Supervision.** Activity that regularly involves day-to-day management or supervision of a person carrying out the activities above is also regulated activity.

### Barred persons in emergency situations

A barred person may carry out regulated activity in an emergency; that is, if it is necessary to prevent harm to a child or vulnerable adult and no one else is available. The activity must not continue once the emergency is over. A RAP may also permit a barred person to undertake regulated activity in an emergency. So a doctor who is barred from working with children, for example, may provide first aid to a child who is involved in an accident, if there is no one else available to do so.

## Specified positions

- 2.24** The following lists provide an overview of specified positions within the children's workforce (including in Northern Ireland) and the vulnerable adults workforce.

### The children's workforce

- 2.25** This includes:
- school governors (members, associate members and clerks of governing bodies of educational establishments which exclusively or mainly provide full-time education to under-18s)
  - members of relevant local government bodies, including:
    - a member of a local authority who discharges any of that authority's education or social services functions
    - a member of an executive of a local authority that discharges any of that authority's education or social services functions, or
    - a member of a committee or sub-committee (or an area committee or sub-committee) of a local authority that discharges any of that authority's education or social services functions

- chief executives and directors of children’s services of local authorities in England, and directors of social services or education of local authorities in Wales
- all charities that carry out work targeted at children are considered to be children’s charities and all trustees are engaging in regulated activity, and it will be an offence for a barred person to hold such a position
- lead directors of children and young people’s services in Wales
- the Children’s Commissioner or Deputy Children’s Commissioner for England, and the Children’s Commissioner or Deputy Children’s Commissioner for Wales
- members of the Youth Justice Board for England and Wales
- anyone who establishes or maintains a ContactPoint database or otherwise exercises functions in relation to the management or control of a ContactPoint database (England only)
- members of Local Safeguarding Children Boards
- members of CAF/CASS, including the chief executive (CAF/CASS, Health and Social Care body in Northern Ireland)
- a deputy appointed by the Court of Protection to make decisions on behalf of a child under section 16(2)(b) of the Mental Capacity Act 2005, and
- members and staff of the ISA, including the chief executive.

## The children’s workforce in Northern Ireland

2.26 This includes:

- school governors (members of governing bodies of educational establishments which exclusively or mainly provide full-time education of children)
- members of health and social care bodies
- the director for social care and children in the Health and Social Care Board
- directors of health and social care trusts with responsibility for delivering personal social services
- members of education and library boards (or, from January 2010, members of the Education and Skills Authority), including chief education officers



- all charities that carry out work targeted at children are considered to be children’s charities and all trustees are engaging in regulated activity, and it will be an offence for a barred person to hold such a position
- the Commissioner for Children and Young People for Northern Ireland
- controllers appointed in respect of a child under Article 101 of the Mental Health (Northern Ireland) Order 1986, and
- members and staff of the ISA, including the chief executive.

### Examples: the children's workforce

William applies for a job that involves both teaching classes of adults and giving weekly swimming lessons to children aged 5–16. William is engaging in regulated activity.

Nadia volunteers at least once a month in a school, helping children with their reading. Nadia is engaging in regulated activity.

Riyaz volunteers at his local church Sunday school and at Scouts every week. He frequently teaches and supervises the children. Riyaz is engaging in regulated activity.

Ahmed is a school governor. This counts as a key position of authority in relation to children. Ahmed is engaging in regulated activity.

### The vulnerable adults workforce

2.27 This includes:

- members of relevant local government bodies, including:
  - a member of a local authority who discharges any of that authority's education or social services functions
  - a member of an executive of a local authority that discharges any of that authority's education or social services functions, or
  - a member of a committee or sub-committee (or an area committee or sub-committee) of a local authority that discharges any of that authority's education or social services functions
- chief executives and directors of adult social services of local authorities in England, and directors of social services of local authorities in Wales
- Commissioner and Deputy Commissioner for Older People in Wales
- trustees of charities for vulnerable adults. All charities that carry out work targeted at vulnerable adults are considered to be vulnerable adult's charities and all trustees are engaging in regulated activity, and it will be an offence for a barred person to hold such a position, and
- members and staff of the ISA, including the chief executive.

### The vulnerable adults workforce in Northern Ireland

2.28 This includes:

- members of health and social care bodies
- the director for social care and children in the Health and Social Care Board
- directors of health and social care trusts with responsibility for delivering social care services
- trustees of charities for vulnerable adults, and
- members and staff of the ISA, including the chief executive.

### Examples: the vulnerable adults workforce

Yolanda works part time in a care home, and has frequent contact with vulnerable adults. Yolanda is carrying out regulated activity.

Dorothy is a volunteer for a charitable organisation that provides respite care for people with dementia. As a weekly volunteer who is providing care, she is engaging in regulated activity with vulnerable adults.

Michaela works for a voluntary organisation and holds regular meetings offering advice and guidance to vulnerable adults with mental health conditions. Michaela is engaging in regulated activity.

### Specified settings and establishments

- 2.29 Regulated activity will include any form of work (paid or voluntary) which people carry out for a setting or establishment specified in the SVGA and/or the SVGO which is on a frequent or intensive basis (see box on page 7) and which provides an opportunity for contact with children or vulnerable adults.
- 2.30 Specified settings are limited to:
- schools (educational institutions exclusively or mainly for the provision of full-time education to under-18s)
  - childcare premises (including nurseries)
  - residential homes for children in care
  - children's hospitals (hospitals exclusively or mainly for the reception and treatment of children)
  - children's detention centres (institutions exclusively or mainly for the detention of children)

- children’s centres (subject to Royal Assent of the Apprenticeships, Skills, Children and Learners Bill) in England and Wales, and
- adult care homes (residential care or nursing homes in Northern Ireland).

## Vulnerable adults: a definition

2.31 A vulnerable adult is defined by the SVGA and the SVGO 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 lawful custody (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 welfare service defined as 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, or
- is receiving direct payments from a local authority or health and social care trust in lieu of social care services.

The key terms in the above definition are explained below.

### Residential accommodation

2.32 Residential accommodation is accommodation where any care or nursing is provided. It includes:

- care homes registered and inspected by the CQC in England, CSSIW in Wales and the Regulation and Quality Improvement Authority in Northern Ireland, and
- homes not registered with the CQC – for example, small care homes for groups of adults who need assistance or support but who do not need personal care.

### Residential special school

2.33 A residential special school is a school that provides residential accommodation for its pupils and is:

- a special school within the meaning of Section 337 of the Education Act 1996
- an independent school within the meaning of Section 463 of that Act
- an independent school which is neither of the above, but which, with the consent of the Secretary of State, provides places for children with special education needs, and/or
- an institution within the further education sector that provides accommodation for children.

2.34 In Northern Ireland, a residential special school is a school that provides residential accommodation for its pupils and is:

- a special school within the meaning of Article 3(5) of the Education (Northern Ireland) Order 1996
- an independent school that is approved by the Department of Education in accordance with Article 26 of that Order, or
- an institution of further education that provides accommodation for children.

### Domiciliary care

2.35 Domiciliary care is care or assistance of any description provided to a person where they are living. The assistance is provided because of their age, health or any disability. Domiciliary care does not have to be provided continuously. Assistance means any assistance provided to a person because of their age, health or disability.

### Healthcare

2.36 Healthcare includes treatment, therapy or palliative care of any description.

### Lawful custody

2.37 A person is detained in lawful custody if they are detained:

- in a prison
- in a remand centre
- in a young offender institution
- in a young offender centre in Northern Ireland
- in a secure training centre in England or Wales
- in an attendance centre in England or Wales, or
- in a removal centre or short-term holding facility.

Also if they are being escorted to or from such facilities.

## People who need assistance to conduct their affairs

2.38 People who need assistance to conduct their affairs are those for whom:

- a lasting power of attorney is created
- an application has been made to create a lasting power of attorney
- an enduring power of attorney has been registered
- an application has been made for registration of an enduring power of attorney
- an order has been made by the Court of Protection in relation to making decisions on that person's behalf
- an application has been made to the Court of Protection in relation to making decisions on that person's behalf
- an independent mental capacity advocate is being or has been appointed
- independent advocacy services are being or will be provided, or
- a representative is being or has been appointed to receive payments of social security benefits on that person's behalf.

## People with physical or mental health conditions

2.39 People with a physical or mental health condition are not vulnerable adults just because of their condition. They will be defined as vulnerable adults when they receive health, social care or other services, or activities specifically for people with those health conditions.



## Adults with learning difficulties and/or disabilities

2.40 People are not vulnerable adults just because of any learning difficulty or learning disability. They will be defined as vulnerable adults when they receive health, social care or other services, or activities specifically for those with learning difficulties and/or disabilities. For the purposes of this scheme, the following conditions are **not** treated as learning difficulties that lead to classification of the individual as a vulnerable adult:

- dyslexia
- dyscalculia
- dyspraxia
- Irlen Syndrome
- alexia
- auditory processing disorder, or
- dysgraphia.

## Direct payments

2.41 Local authorities in England and Wales, and health and social care trusts in Northern Ireland, make direct payments to individuals to purchase care or support for themselves (rather than receiving the authority's social care service).

## Controlled activity

2.42 Controlled activity is work arranged by a responsible person (see box on page 14) that does not constitute regulated activity but which 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 in a limited range of settings. It also includes the day-to-day management and supervision of staff carrying out controlled activity.

## What is a responsible person?

A responsible person is an individual who is responsible for the management or control of controlled activity, paid or unpaid, and makes arrangements for people to work in that activity. This will usually be an employer or equivalent in a voluntary organisation.

## Where controlled activity applies

2.43 Controlled activity applies where the employee or volunteer has:

- the opportunity for frequent or intensive contact with children or vulnerable adults in health, social care or further education settings, or
- the opportunity to have frequent access to education records (children only) or health or social services records (children and vulnerable adults) in specified bodies.

## Examples: controlled activity

Mr D is a caretaker in a further education college. He is not a member of the teaching staff but his job in the college brings him into contact with children on a frequent basis. Therefore, he is engaging in controlled activity.

Miss G is a caterer in a general hospital. Her role involves the daily preparation of meals and serving them to patients in the hospital. She does not provide treatment or help patients eat their meals. As she has frequent contact with patients, she is engaging in controlled activity.

Mrs F is an administrative assistant in the children's services department of a local authority (this would be a health and social care trust in Northern Ireland). She is responsible for filing records that contain information about children who are looked after by the body, and works with these records every day. She is carrying out controlled activity.

## Health and social care

2.44 Controlled activity is ancillary to the provision of services, and it applies only in the following areas of health and social care:

- Provision of primary care.
- Provision of hospital services.
- Provision of domiciliary care.

- Making arrangements for an adult placement scheme.
- Making provision for community care services.
- Making arrangements for direct payments.
- Making provision for social care services in Northern Ireland.

## Domiciliary care

2.45 Controlled activity in domiciliary care includes individuals who have contact with children or vulnerable adults frequently or on an intensive basis, but who do not directly provide the care to the individual in their own home. Such individuals will include those who are mainly concerned with the administration of the domiciliary care service.

## Further education

2.46 Any individual carrying out any form of work in a further education institution where there is the opportunity to come into contact with children frequently or intensively (see box on page 7) may be involved in controlled activity (where they are not involved in regulated activity). Controlled activity in a further education institution will include cleaners, administrative staff and anyone whose paid or voluntary work gives opportunities for contact with children but who is not engaged in regulated activity. For example, lecturers who are teaching under-18s will be engaged in regulated activity, not controlled activity.

## Direct payments

2.47 Any individuals who have contact with direct payment recipients but do not undertake regulated activity (such as providing care) will be carrying out controlled activity. This will include most people working in local authority, health and social care trust or voluntary sector direct payment support services who have the opportunity for contact with vulnerable groups.

## Access to records

2.48 In relation to children, this will only apply to individuals engaged in activity for, or on behalf of, specific bodies:

- local authorities
- CAFCASS or CAFCASS CYMRU
- the Qualifications and Curriculum Development Agency
- Ofsted
- Estyn, and
- CSSIW.



In Northern Ireland, the bodies are:

- Education and Training Inspectorate
- Council for the Curriculum, Examinations and Assessment
- education and library boards, and
- health and social care bodies.

2.49 An activity is controlled if it provides frequent opportunity for access to the following records:

- Health or social services records relating to children or vulnerable adults.
- Education records relating to children.
- Connexions or Careers Wales records relating to children.
- Records of family proceedings held by CAFCASS/ CAFCASS CYMRU or, in Northern Ireland, records of family proceedings held for, or on behalf of, a health and social care body.
- Records that are obtained or held by a local authority as a result of the exercise of their functions.
- In Northern Ireland, records held by or on behalf of education and library boards, health and social care trusts, or agencies or establishments required to register with RQIA in the exercise of any of their functions.

## Controlled activity requirements

2.50 Some requirements in relation to people working in controlled activity will be different from those for regulated activity. This is because we want requirements to be proportionate. While every post in regulated activity involves a level of risk, we cannot generalise that every post in controlled activity will necessarily involve the same risk. Requirements in controlled activity will be as follows:

- From 12 October 2009, the requirement to refer an employee to the ISA is the same as for regulated activity (as described elsewhere in this guidance). In brief, the responsible person (for example the employer) must refer a person to the ISA where they think the person has caused harm or poses a risk of harm to vulnerable groups, and as a result the responsible person has stopped or considered stopping the person engaging in controlled activity. In Northern Ireland, it will be possible to obtain enhanced disclosure certificates from AccessNI for work in controlled activity from this date.

- From April 2010, in England and Wales, responsible persons who do not know whether a new entrant or mover into controlled activity is barred from regulated activity will have to apply to the CRB for an enhanced disclosure with a barred list check on that individual. The Government will publish more detailed guidance on this requirement, nearer to its April 2010 start date. For posts where previously (before the introduction of controlled activity) the responsible person had no entitlement to a disclosure, the above application to the CRB will result in:
  - an enhanced disclosure with a barred list check, if the person is barred from regulated activity, or
  - notification that the person is not barred from regulated activity.
- After July 2015 (see 'Key dates' in Section 1), a person in controlled activity will have to be either:
  - ISA-registered, if they are not barred from regulated activity, or
  - subject to safeguards, which the responsible person must put in place after doing a risk assessment.
- In good time before 2015 the Government will publish draft regulations and associated guidance on the above two requirements.
- The Government will, in good time, publicise its recommendations on dates, between January 2014 and July 2015, by when persons in controlled activity (who are not barred from regulated activity) should register with the ISA.





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## Summary

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The Vetting and Barring Scheme will start to be rolled out on 12 October 2009. From this date, the current 'barred lists' will be phased out and will be replaced by two new lists: the Children's Barred List and the Adults' Barred List. These two new lists will contain details of those individuals the Independent Safeguarding Authority (ISA) has decided it is appropriate to bar from working with children or vulnerable adults and who are therefore prevented from working or volunteering with them.

This section provides information for employees, volunteers and regulated activity providers (RAPs) and covers:

- what will happen to those on the current lists
- the role of the ISA
- automatic barring
- the ISA decision-making process
- the rights of appeal and review
- offences related to barred people, and
- the duty to refer information to the ISA.

# Section 3:

## Barring arrangements

- 3.1 The Vetting and Barring Scheme will start to be rolled out on 12 October 2009. From this date, the current 'barred lists' – List 99, the Protection of Children's Act List (POCA), the Protection of Vulnerable Adults List in England and Wales (POVA), and the Disqualification from Working with Children List, the Unsuitable Persons List and the Disqualification from Working with Vulnerable Adults List in Northern Ireland, as well as the current system of disqualification orders that is operated by the criminal justice system – will be phased out and will be replaced by two new lists: the Children's Barred List and the Adults' Barred List.
- 3.2 These two new lists will contain details of those individuals the ISA has decided it is appropriate to bar from working with children or vulnerable adults and who are therefore prevented from working or volunteering with them. The lists will be maintained by the ISA.

### What will happen to those on the current lists?

- 3.3 The ISA is in the process of reviewing all current barred lists. Secondary legislation requires the ISA either to automatically include currently barred individuals on the new lists or to look afresh at whether they should be included.
- 3.4 In many instances, depending on the nature of the existing bar, there will be a legal right to make either limited or full representations. In some cases, there will be no right to make representations: where individuals have been convicted of, or have accepted a caution for, one or more of a list of serious offences. (The list of offences is set out in secondary legislation.) Where individuals only have the right to make limited representations, these are limited to the wider scope of activities from which they will be barred under the new lists.
- 3.5 Where the ISA is required to consider a case afresh, it must invite full representations before deciding whether it is appropriate to bar the individual.

### The role of the ISA

- 3.6 The purpose of the ISA is to reduce the risk of harm to children and vulnerable adults from people who work with them. The ISA will do this by assessing information referred to them on the risk of harm posed by an individual working or applying to work in regulated activity, based on known information held about that individual.
- 3.7 A team of caseworkers, who have undergone training in assessing risk of harm, will decide on a case-by-case basis whether, on the information available to them, it is appropriate to bar an individual from working with children and/or vulnerable adults. The caseworkers are supported by a continuous training and support programme and by a board of public appointees with a range of experience and knowledge in the field of safeguarding.

### Automatic barring

- 3.8 The circumstances in which an individual can be automatically included on either the Children's or the Adults' Barred List fall into two categories.
- 3.9 For certain very serious specified offences, the ISA will be required by the SVGA and the SVGO to bar without further assessment.
- 3.10 The second category relates to those offences that, although serious, will allow the individual concerned to make representations as to why the bar should be removed. In these cases, the ISA will be required to place the individual on the relevant list(s), but will request representations from the individual and consider them accordingly.
- 3.11 A full list of automatic bar offences is contained in Statutory Instrument 2009/37, available at [www.opsi.gov.uk](http://www.opsi.gov.uk). For Northern Ireland, this is contained in Statutory Rule 2009/39.

## The ISA decision making process

- 3.12 The purpose of the ISA's decision making process is to ensure that all barring decisions follow a standard process which affords a fair, rigorous, consistent, transparent and legitimate assessment of whether an individual should be prevented from working with children and/or vulnerable adults. For further information on the ISA's decision making process, please see the 'Guidance Notes for the Barring Decision Making Process' available on the ISA website at [www.isa.homeoffice.gov.uk](http://www.isa.homeoffice.gov.uk)

## The right to seek appeal

- 3.13 An individual included on either, or both, of the barred lists (other than those listed as a result of an auto-bar offence without the right to make representations) will have the right to seek an appeal in the Administrative Appeals Chamber of the Upper Tribunal or, where appropriate, the Care Tribunal in Northern Ireland, against a barring decision made by the ISA to include them on a list or not to remove them from a list.



An appeal can only be made with the permission of the tribunal on the grounds that the ISA has made an error on a point of law or finding of fact in relation to information used to form a decision.

- 3.14 Where the tribunal finds that the ISA has made a mistake on a point of law or finding of fact, it will direct the ISA to review the case. Where the tribunal directs the ISA to review the case, it may provide its finding of facts on which the ISA must base any new decision. The individual will be removed from the list until the ISA has made a new decision, unless the tribunal directs otherwise.
- 3.15 An individual in England and Wales may appeal on a point of law to the Court of Appeal against a decision of the tribunal. The Court of Appeal must first grant permission for any such appeal. An individual in Northern Ireland may appeal on a point of law to the High Court against a decision of the Care Tribunal.

## The right of review

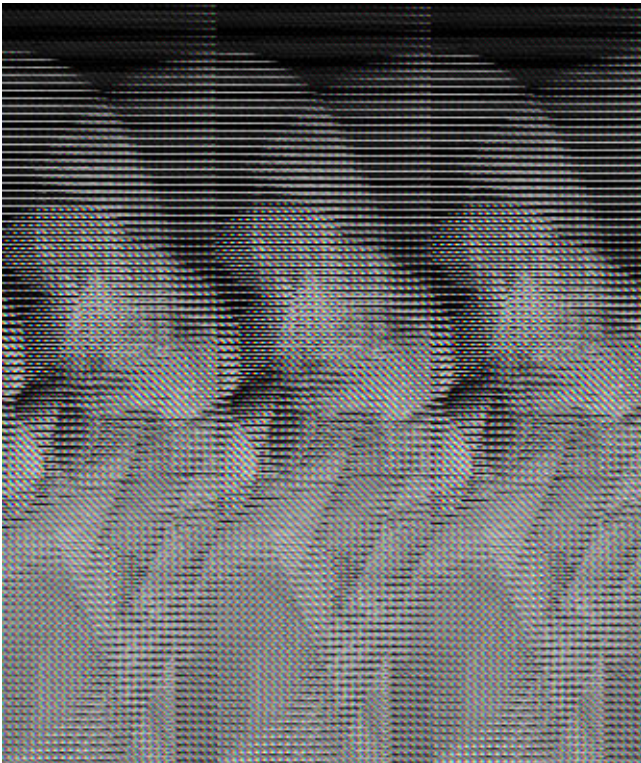
- 3.16 Each person included on either, or both, of the barred lists will have the right to apply to the ISA for a review of their case once a minimum period has elapsed. When considering whether to carry out a review, the ISA must first be satisfied that the individual's circumstances have changed in such a way as to warrant a review. A case will only be reviewed with permission from the ISA.
- 3.17 The minimum periods are:
- one year for individuals aged under 18 when barred
  - five years for individuals aged 18–24 when barred, and
  - 10 years for individuals aged 25 or over when barred.

These periods are different to take account of the likelihood that younger people may develop and change more quickly.

## Offences related to barred people

### Working in regulated activity while barred

- 3.18 Engaging in regulated activity while barred will be a serious offence. This offence will apply from 12 October 2009. It replaces the existing offences regarding work with children or vulnerable adults for those subject to current barring arrangements.
- 3.19 If you are barred under the new Scheme from working with children or vulnerable adults further to having been barred under List 99, POCA or POVA, or under the Disqualification from Working with Children/ Disqualification from Working with Vulnerable Adults Lists or the Unsuitable Persons List in Northern Ireland, or are subject to a disqualification order, you will be informed of your status under the new Scheme by the ISA.
- 3.20 If you are barred under the new Scheme from working in regulated activity with children, vulnerable adults or both, you should be aware that you will be committing an offence if you work in such regulated activity.



- 3.21 Anyone who is included in the ISA's barred lists after 12 October 2009 will commit the new offence if they engage, or seek or offer to engage, in the regulated activity from which they are barred. Engagement need not be frequent or intensive for the offence to be committed. Any level of engagement is sufficient.
- 3.22 If you are found guilty of this offence, you will be liable, on conviction in a crown court, to imprisonment for up to five years, or to a fine at a level decided by the court, or both. If the case is heard by a magistrates' court, you will be liable to imprisonment for up to six months, or to a fine of up to £5,000, or both; or the magistrates' court may commit the case to the crown court for sentencing.
- 3.23 If charged, you may use the defence that you had to engage in regulated activity, that no one else was available and that you only did what was necessary to prevent harm. This defence is intended to apply only in emergencies.

### Allowing someone to work in regulated activity while knowing that they are barred

- 3.24 A RAP who knowingly allows someone to engage in regulated activity while barred will commit a serious offence. This offence will apply from 12 October 2009. RAPs should require those they engage to carry out regulated activity to tell them if they are barred, and may wish to adjust contracts of employment to include this requirement, if necessary. However, if RAPs have no reason to believe existing volunteers are barred, there is no requirement to seek new CRB disclosures to check the barred status as of October 2009.
- 3.25 The offences with regard to knowingly allowing a barred individual to engage in regulated activity also apply to personnel suppliers, irrespective of whether they are employment agencies or businesses. It will be the responsibility of the personnel supplier to be confident that a person is not barred before supplying them to organisations where they will be undertaking any relevant duties.
- 3.26 If people who are barred under the existing schemes have not been informed of their status under the new Scheme by 12 October 2009, the criminal offences existing prior to 12 October 2009 that prevent them from working with the relevant vulnerable group will continue to apply.

- 3.27 The RAP will be committing the offence even if the barred person is not engaging in the activity frequently or intensively. Any level of engagement is sufficient.
- 3.28 As a RAP, if you are found guilty of this offence you will be liable, on conviction in a crown court, to imprisonment for up to five years, or to a fine at a level decided by the court, or both. If the case is heard by a magistrates' court, the penalty could be imprisonment for up to six months or a fine of up to £5,000, or both; or the magistrates' court may commit the case to the crown court for sentencing.
- 3.29 A RAP charged with the offence may use the defence that it had to engage the individual in regulated activity, that no one else was available and that the individual only did the minimum necessary to prevent harm. This defence is intended to apply in emergencies only.
- 3.30 For the purposes of the RAP offences, the offenders could be the body corporate, the directors of such a body, or the managers or manager directly responsible for hiring the individual who was barred.

## The duty to refer information to the ISA

- 3.31 From 12 October 2009, there will be a duty on RAPs (this also covers personnel suppliers and responsible persons in the case of controlled activity) to refer individuals to the ISA for consideration for barring in relevant circumstances and to provide information to the ISA upon request.
- 3.32 The duty to refer will apply in the following circumstances: when a RAP or employer in controlled activity (responsible person) has withdrawn permission for an individual to carry out regulated activity, or if the individual has left while under investigation and the RAP or responsible person thinks that the individual has harmed or poses a risk of harm to a child or vulnerable adult.

- 3.33 Specifically, the RAP or responsible person must refer the case to the ISA if they think that the individual:
- has committed an offence that would lead them to be automatically included on a barred list under the automatic barring provisions (see page 17)
  - engaged in relevant conduct, or
  - the harm test is satisfied.

More details can be found on the ISA website ([www.isa.homeoffice.gov.uk](http://www.isa.homeoffice.gov.uk))

- 3.34 Once a RAP or responsible person is satisfied that an individual has caused or poses a risk of harm and has ceased using the individual, or the individual voluntarily ceased work, in regulated or controlled activity, it must refer that individual to the ISA. Failure to provide information to the ISA is a criminal offence and can result in a fine.
- 3.35 For personnel suppliers (both employment agencies and businesses) the duty applies where the supplier ceases to supply an individual for regulated or controlled activity; or becomes aware an individual supplied by them has been removed from regulated or controlled activity; or if that individual resigns, retires, is made redundant or is transferred to a position which is not a regulated or controlled activity. If a personnel supplier is an education institution this condition is met when they cease to supply an individual for regulated or controlled activity; or determines the individual should cease to follow a course at the institution; or the person ceases to engage in the activity or follow the course.
- 3.36 The ISA relies on RAPs making findings in appropriate disciplinary procedures, so these should be pursued as far as possible and the information sent to the ISA with the referral.
- 3.37 A referral properly made on this basis, and any information provided by a RAP at the ISA's request, will be immune from any claim for damages by the individual who is the subject of the referral.

- 3.38 RAPs may also refer individuals if they are concerned about their conduct and think the ISA ought to be made aware of it. Note that RAPs should not make referrals on the basis of allegations they suspect to be unfounded or malicious.
- 3.39 When making a referral, RAPs should use the downloadable referral form (see [www.isa.homeoffice.gov.uk](http://www.isa.homeoffice.gov.uk)). The form asks for information about the individual's identity (to help the CRB locate any information about their criminal background), as well as information about the allegation. However, you will only need to provide information that you already have, not carry out investigations in order to establish new information to complete all the fields on the form.
- 3.40 The duty to provide information will override any local advice that information should be withheld on grounds of confidentiality. Failure without reasonable excuse to provide required information is an offence, and the magistrates' court may impose a fine of up to £5,000 on anyone convicted.
- 3.41 Before making a referral, it is good practice to consult local children's services or adult social services, as appropriate. They may be able to offer helpful advice or have additional information that can be passed on to the ISA in a parallel or coordinated referral.

## Further information

If you have any further questions about the Vetting and Barring Scheme, please contact our information line on 0300 123 1111.

If you have questions about disclosures, please contact the Criminal Records Bureau on 0870 90 90 811 or AccessNI on 028 90 25 91 68.

For specific questions about referrals (including ongoing POVA, POCA and List 99 cases), barring decisions and individual cases, please contact the Independent Safeguarding Authority on 01325 391328.

## Delivery partners

AccessNI  
[www.accessni.gov.uk](http://www.accessni.gov.uk)

Criminal Records Bureau  
[www.crb.gov.uk](http://www.crb.gov.uk)

Independent Safeguarding Authority  
[www.isa.homeoffice.gov.uk](http://www.isa.homeoffice.gov.uk)

Home Office  
[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

Department for Children, Schools and Families  
[www.dcsf.gov.uk](http://www.dcsf.gov.uk)

Department of Health  
[www.dh.gov.uk](http://www.dh.gov.uk)

Department of Education (Northern Ireland)  
[www.deni.gov.uk](http://www.deni.gov.uk)

Department of Health, Social Services and Public Safety  
(Northern Ireland)  
[www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)

Welsh Assembly Government  
[www.wales.gov.uk](http://www.wales.gov.uk)



