

24 January 2012

Vetting & Barring Scheme and Criminal Records Regime Review recommendations - Latest Update

Welcome to a new series of e-newsletters to help you keep informed on the progress of the Protection of Freedoms Bill, and in particular news on how the recommendations from the Vetting & Barring Scheme Review and Criminal Records Regime Review are to be implemented. We hope you will find these regular updates helpful to you in your current and future work. We'd also welcome hearing back from you on how useful you find the e-newsletters.

Background

The Safeguarding Vulnerable Groups Act 2006 sets out a framework for the scope and operation of the Vetting and Barring Scheme (VBS). Following the reviews into both the Vetting & Barring Scheme and the Criminal Records Regime (CRR), the subsequent report recommendations which require legislation are included in the Protection of Freedoms Bill (PoF).

These Bill provisions scale back the scheme, in particular, through the abolition of the registration and monitoring requirements, and the reduction in the range of posts to which barring arrangements apply.

1/ Protection of Freedoms Bill Provisions that relate to re-modelling the VBS.

The PoF Bill timetable so far:

Date	Stage
11 February	Introduction and publication of the PoF Bill in The House of Commons
1 March	House of Commons 2nd Reading
9 March	Committee of Selection meets to appoint members of Public Bill Committee
22 and 24 March	Public Bill Committee oral evidence sessions
29 March; 17 May	Public Bill Committee Day 3 and 10 - clause-by-clause consideration
10 and 11 October	Commons Report stage and 3rd Reading
12 October	Lords 1st Reading
8 November	Lords 2nd Reading
29 Nov 6,13,15 December 10,12 January 2012	Lords Committee Stage

The Bill provisions that relate to the Vetting and Barring Scheme (VBS) and the Criminal

Records Regime include (CRR):

- scrapping registration and continuous monitoring;
- scrapping controlled activities;
- reducing the scope of regulated activity (that is activity, which people on a barred list cannot do);
- making changes to the criminal records checking process, including the introduction of a new system for the continuous updating and portability of criminal record
- issuing certificates to the applicant only
- improving systems for resolving disputes and representations
- improving the relevancy test the police apply to intelligence and other information
- merging the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) to form a new single organisation called the Disclosure and Barring Service (DBS).

2/ The Disclosure and Barring Service (DBS)

The provisions in the Protection of Freedoms Bill also mean that the services of the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) will be merged and a single, new Non-Departmental Public Body (NDPB) created in place of the previous two organisations. The new organisation will provide a barring and criminal records disclosure service and will be called the Disclosure and Barring Service (DBS). The date that the new organisation will come into being as a non-Department Public Body (NDPB) is planned to be November 2012, and is subject to Parliamentary timetabling.

3/ What happens now? What does it mean?

We will keep you informed of developments and updated as the Protection of Freedoms Bill continues its passage through Parliament. For now it continues to be business as usual. Please see the separate sections below for further information on the:

- 1. Re-modelling the Vetting & Barring Scheme frequently asked questions**
- 2. Review of the Criminal Records Regime phase 2 recommendations**

Business as usual

It is business as usual at the CRB, AccessNI and the ISA. Their websites will be updated with any new information. These website addresses are as follows: For information relating to the current Disclosure process visit:

www.crb.homeoffice.gov.uk or www.accessni.gov.uk

You can also contact the CRB Customer Services team on 0870 90 90 811

**Independent Safeguarding Authority (ISA)
For information relating to referrals and barring decisions:**

<http://www.isa.homeoffice.gov.uk/>

Also note that both the contact centre number 0300 123 1111 and the email address info@vbs-info.org.uk is no longer in operation. All queries should be sent to the new email address which is:

HOSPPEnquiries@homeoffice.gsi.gov.uk

Continued Safeguarding Duties:

Safeguarding duties remain in place as introduced in October 2009 and continue to apply:

1. if your organisation works with children or vulnerable adults and you dismiss or remove a member of staff or a volunteer because they have harmed a child or vulnerable adult (or there is a risk of harm), or you would have done so if they had not left, you must tell the Independent Safeguarding Authority
2. a person who is barred by the ISA from working with children or vulnerable adults will be breaking the law if they work or volunteer, or try to work or volunteer with those groups
3. an organisation which knowingly employs someone who is barred to work with those groups will also be breaking the law

Stay informed

Over 66,000 employers, charities and voluntary groups have registered an interest in being updated on the remodelling of the Vetting & Barring Scheme and changes to the Criminal Records Regime. This newsletter is being circulated as an update to those individuals and organisations. This approach will be used to communicate further information.

Therefore if you know anyone else who would like to be kept updated, please forward this newsletter to them and ask that they complete their details using the following link: <http://www.isa.homeoffice.gov.uk/default.aspx?page=299> to receive information directly in the future.

4/ Questions and answers relating to the re-modelling of the VBS.

1. Why are you looking to scale the VBS back?

Under the previous arrangements proposed, some nine million individuals would have been required to register under the Vetting & Barring Scheme, as their work fell within the definitions of the prescribed work (i.e. regulated or controlled activities involving children or vulnerable adults).

The Government has conducted a review of these proposals and come to the view that they were not proportionate. The Bill therefore amends the Safeguarding Vulnerable Groups Act, which provides the framework for the vetting and barring scheme, to redefine the scope of the scheme (i.e. reduce the range of posts that fall within

'regulated activity' and scrap 'controlled activity' altogether) so that only essential posts (from a public protection perspective) will fall within its requirements. This significantly reduces the number of individuals affected by the scheme.

2. How will employers and other registered bodies understand who falls into regulated activity and who does not?

Appropriate and timely guidance about the remodelled scheme will be provided before any changes commence. We will continue to use Government websites to ensure that appropriate information is available to relevant audiences.

3. Will you issue guidance about safe recruitment practices, such as still being able to request criminal records checks even where barring information will not be available?

Yes. The Department for Education will update its sectoral guidance for education settings, "Safeguarding Children and Safer Recruitment in Education". The aim will be to provide advice that is as clear and brief as possible. This can also be used as best practice guidance for other settings in the children's sector.

4. Why are you changing the definition of regulated activity?

The Government considers that the scope of regulated activities under the SVGA was too wide and covered too many people. We wish to guard against discouraging genuine people who wish to volunteer for work with children.

It is for employers and organisations using volunteers to ensure safe recruitment, training and supervision, rather than relying wholly on state-regulation. Allowing people to work under supervision emphasises the shared nature of protection arrangements.

Barring arrangements

5. What are the changes being made?

We have redefined "regulated activity" (paid or voluntary work that involves contact with children or vulnerable adults) to ensure that only those who have close, regular or unsupervised contact will be covered by the new arrangements.

Controlled activity did not include the same level of close contact as regulated activity, this was an unnecessary burden on many individuals, so government has scrapped the notion of controlled activity altogether.

Those working in regulated activity will still be subject to the barring regime but we propose to abolish the requirement to register with the Scheme for continuous monitoring. Where a position involves access to children or vulnerable adults employers and voluntary bodies will still be able to request CRB checks, which will include relevant criminal record information

6. So what is happening to 'regulated activity'?

The definition of 'regulated activity' will be narrowed under these amendments, meaning the range of posts subject to barring decisions will be reduced. As we will also be scrapping the previous requirements for registration and continuous monitoring, the overall burden on those posts still within the scope of the new arrangements will be

greatly reduced and, we believe, more proportionate. A smaller (and more proportionate) group of roles will now be defined as regulated activities.

7. What is happening to 'controlled activity'?

The concept of 'controlled activity', where an individual had some contact with children and vulnerable adults, but not as intense, frequent or regular as that deemed a regulated activity, will be scrapped under these amendments. Previously, controlled activity would have covered posts like catering staff in further education colleges and hospital records clerks, for example. Employers would have had to check people applying for these posts but could have employed them if appropriate safeguards were put in place.

8. Will the new scheme apply to volunteers?

Yes. The refocused scheme will focus on the activity being carried out, rather than the employment status of the individual carrying it out.

Volunteers who are undertaking the newly defined regulated activity will still be able to obtain an enhanced criminal records disclosure and the organisation employing them will be required to check their barred status before the individual commences working in regulated activity. Some posts working with vulnerable groups, but which fall outside regulated activity, will remain eligible for enhanced CRB checks. This will help employers to make an informed decision about employing someone, either paid or unpaid.

9. Will volunteers now have to pay?

As now, volunteers will not be required to pay for criminal records checks. The opportunity to opt into the online checking service and pay a subscription fee is voluntary. The level of that subscription fee has yet to be determined but it will certainly be cheaper than a new CRB check. The decision on whether volunteers will have to pay for this service is still under consideration.

Abolition of registration and monitoring requirements

10. What are the specific changes being made?

Those engaged in roles which fall within the scope of the new arrangements will not be required to register and there will be no continuous monitoring arrangements.

11. What types of post will not now fall under Regulated Activity that would have been covered by the previous scheme?

Examples of people who will no longer fall within regulated activity include supervised volunteers and external contract workers such as plumbers, electricians or window cleaners, and receptionists working in care homes.

12. Will similar changes be made in Scotland and Northern Ireland?

Justice and criminal records matters are devolved functions and Scotland and Northern Ireland have separate arrangements. Nonetheless, it is important that arrangements across the UK are all in step and there are no gaps in public protection terms. With the agreement of the Northern Ireland Assembly, the Bill makes parallel amendments to the vetting and barring scheme in Northern Ireland so that it continues to be aligned with

that in England and Wales. Scotland is maintaining its own Protection of Vulnerable Groups (PVG) scheme.

5/ The Review of the Criminal Records Regime - Phase two

Introduction

In parallel with the review of the VBS, a separate but aligned review of the broader criminal records regime was undertaken. This was led by Mrs Sunita Mason, the Government's Independent Advisor on Criminality Information Management.

The first phase of the review focused on issues concerned with the extent and demands of pre-employment vetting systems and the role of the Criminal Records Bureau (CRB), in particular, what information it should be disclosing and to whom. Phase two focused on the broader criminal records regime.

Phase two of this review has also been published and a summary of Mrs Mason's recommendations are set out below:

Summary of Sunita Mason's criminal records regime review recommendations:

I recommend that an individual's 'criminal record' should be defined as all their convictions, cautions, reprimands or warnings which are recorded in central police records (recommendation 1).

I recommend that the Government conduct an immediate review of which offences are recorded in national police records.(recommendation 2).

I recommend that the Police National Computer should continue to be the central repository for criminal records for the foreseeable future (recommendation 3). Linked to recommendation 3.

I recommend that the Government should begin work immediately on developing and analysing alternative options for sharing and managing criminal records in the longer term (recommendation 4).

I recommend that Ministers and their Northern Ireland counterparts should reach agreement urgently on how to fund delivery of the PSNI -PNC criminal records and fingerprint connection (recommendation 5).

I recommend that the Government and the police service should move towards a more integrated approach to the administration of criminal records. I further recommend that the scope to expand the role of the DBS over time to provide the customer-facing aspects of a range of disclosure services should be explored. (recommendation 6).

I recommend that:

(i) Access to criminal records via the Police National Computer should only be granted where it is necessary for public protection or criminal justice purposes. (ii) All such access should be agreed by the Police Information Access Panel (PIAP), based on appropriate business cases and supply agreements.

(iii) All existing supply arrangements should be reviewed within the next 12 months to check they conform to the standards set by PIAP (recommendation 7).

I recommend that the systems for individuals to access, challenge and correct their own criminal records should be maintained and better publicised (recommendation 8).

I recommend that the comprehensive and easily understood guidance which I advocated in my phase 1 report should extend to broader aspects of the criminal records system, such as definition, retention and access (recommendation 9).

I recommend that Ministers commission further work to review and update the cross-Government strategy for improving the international exchange of criminal records. This should include consideration of the following elements:

(i) ensuring the transfer of fingerprint records with criminal records as often as possible (particularly with EU Countries);

(ii) ensuring greater levels of notification of criminal offences committed by British citizens outside the EU;

(iii) looking at whether more can be done to prevent the entry of foreign nationals who have committed serious offences abroad and who present a serious risk to public protection;

(iv) seeking agreements to allow the CRB to obtain criminal records from a person's country of nationality where the applicant and employer request this as part of the CRB disclosure process and where adequate safeguards can be put in place;

(v) developing a coherent and consistent cross-government policy setting out the circumstances in which foreign governments should be told about the convictions of their nationals and ensuring that all UK agencies adhere to it.

(vi) allowing British residents to obtain a standard CRB certificate when applying for a post abroad that would be excepted from the ROA if it was in the UK, and to a check of the barred list where it would have amounted to regulated activity; and

(vii) ensuring that existing and developing initiatives in this area are adequately resourced (recommendation 10).

The Terms of Reference for both reviews, the formal Government response to both phases, along with the full Criminal Records Regime reports can be downloaded using the following link:

<http://www.homeoffice.gov.uk/publications/crime/criminal-records-review-phase1/>

<http://www.homeoffice.gov.uk/publications/crime/criminal-records-review-phase2/>