

These notes refer to the Safeguarding Vulnerable Groups Act 2006 (c.47) which received Royal Assent on 8 November 2006

SAFEGUARDING VULNERABLE GROUPS ACT 2006

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

3. The current system for vetting people who wish to work with children or vulnerable adults operates through employers obtaining criminal record certificates issued by the Criminal Records Bureau (“CRB disclosures”) for new job applicants. CRB disclosures give employers information about an individual’s criminal records history, which informs their assessments about the individual’s suitability to work with children or vulnerable adults.
4. There are also three separate lists of persons who are barred from working with children or, as the case may be, vulnerable adults. These lists operate under different legislation and with different criteria and procedures: List 99 (a list of those in respect of whom directions under section 142 of the Education Act 2002 have been made), the Protection of Children Act (POCA) List (maintained under the Protection of Children Act 1999) and the Protection of Vulnerable Adults (POVA) List (maintained under Part 7 of the Care Standards Act 2000). Disqualification orders made by a court (under Part 2 of the Criminal Justice and Court Services Act 2000) also bar individuals from working with children.
5. The Bichard Inquiry Report (June 2004), available from <http://media.education.gov.uk/assets/files/pdf/b/bichard%20inquiry%20report.pdf>, identified systemic failures in current vetting and barring systems. These included the following factors:
 - inconsistent decisions were being made by employers on the basis of CRB disclosure information
 - CRB disclosure information is only certain to be accurate on the day of issue
 - there are inconsistencies between List 99, the POCA list and POVA list
 - the current barring system is reactive to harmful behaviour rather than preventative
 - there are inconsistencies between police authorities in the disclosure of police information
6. This Act provides the legislative framework for a new vetting and barring scheme for people who work with children and vulnerable adults. A public consultation for the new scheme, *Making Safeguarding Everybody’s Business: A Post-Bichard Vetting Scheme* (Ref: 1485-2005DOC-EN), ran from 5 April – 5 July 2005. This consultation paper and a summary of the responses to it can be found at www.dfes.gov.uk/consultations.
7. The purpose of the new scheme is to minimise the risk of harm posed to children and vulnerable adults by those that might seek to harm them through their work (paid or unpaid) (whether they fall into the category of “regulated activity”, see paragraphs 41 to 47, or “controlled activity”, see paragraphs 98 to 103; see also the glossary in Annex A for further explanation). It seeks to do this by barring unsuitable individuals not just on

the basis of referrals but also at the earliest possible opportunity as part of a centralised vetting process that all those working closely with children and/or vulnerable adults will need to go through.

Overview

8. The Act provides that:

- There will be two barred lists – one for those who are barred from engaging in regulated activity with children (the “children’s barred list”), and one for those who are barred from engaging in regulated activity with vulnerable adults (the “adults’ barred list”).
- There will be an Independent Barring Board (“IBB”). The IBB will maintain the children’s barred list and adults’ barred list and will make decisions about whether an individual should be included in one or both barred lists.
- There will be a right of appeal to the Care Standards Tribunal, with the permission of the Tribunal, against inclusion in a barred list on a point of law or on a finding of fact made by the IBB.
- There will be four routes to inclusion on one or both of the barred lists (**see diagram at Annex D**).
- Automatic inclusion on one or both of the barred lists as a result of receiving a caution or conviction for specified offences, or other criteria which may be specified (such as orders, foreign orders or directions, and inclusion on a foreign barred list). There will be no right for the individual to make representations nor a right of appeal in these cases.
- Automatic inclusion on one or both of the barred lists as a result of receiving a caution or conviction for certain other specified offences or as a result of having met some certain other specified criteria. There will be a right to make representations and a right of appeal following inclusion.
- Specified behaviour (the term “relevant conduct” is used in the Act) that leads to consideration for inclusion on one or both of the barred lists. This includes, for example, conduct which harms a child in the case of the children’s barred list, or conduct which harms a vulnerable adult in the case of the adults’ barred list, or conduct involving child pornography for both lists.
- Risk of harm: where evidence suggests that an individual may present a risk of harm to children or vulnerable adults, this will lead to consideration for inclusion on the appropriate list.
- An individual who is included in the children’s barred list must not engage in regulated activity in relation to children. An individual who is included in the adults’ barred list must not engage in regulated activity in relation to vulnerable adults.
- Broadly, regulated activity will cover a range of specified activities that provide an opportunity for close contact with children or vulnerable adults, other activities in key settings such as schools and care homes which provide an opportunity for contact and key positions of responsibility such as the Children’s Commissioner and the Director of Adult Social Services.
- There are a series of criminal offences to:
 - a. prevent barred individuals from engaging in regulated activity in relation to children or vulnerable adults

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- b. ensure that people permitted to engage in regulated activity in relation to children or vulnerable adults with the permission of a “regulated activity provider” are subject to monitoring
 - c. ensure that relevant employers check an individual’s status in the scheme before permitting an individual to engage in regulated activity in relation to children or vulnerable adults
- To become subject to monitoring individuals will need to make an application to the Secretary of State, in the guise of the Criminal Records Bureau (CRB).
 - The Act also confers power on the Secretary of State to make regulations about controlled activity. This covers certain activity other than regulated activity. There is no current intention to prevent a barred individual from engaging in controlled activity. But in part the regulations will be used so as to require employers (and others with responsibility for managing controlled activity) to put in place appropriate safeguards to manage the risks posed by barred individuals.
 - Broadly, controlled activity covers support work in general health settings, further education settings and adult social care settings. It also covers work which gives a person the opportunity for access to sensitive records about children and vulnerable adults, including education and social services records.

How will the new scheme work?

9. These paragraphs provide a very brief overview of how the new scheme will work and will help to put into context the overview of the legislation given above. **They need to be read in conjunction with the diagram at annex B.**
10. Those who are closely working, or applying to work, with children or vulnerable adults will be required to make an application to the Secretary of State to be “subject to monitoring” (see the glossary at Annex A). This will cover everyone engaging in what the Act refers to as “regulated activity” with the permission of a “regulated activity provider”. (The intention is that employers engaging individuals in “controlled activity” will also in most cases need to ensure that they are subject to monitoring, although this requirement will be placed on employers through regulations). The Act allows for the phasing in of applications from existing members of the workforce.
11. The Secretary of State, using the Criminal Records Bureau (CRB), will then search the Police National Computer for cautions and convictions and make enquiries of local police forces to obtain other relevant information.
12. Where the Secretary of State’s enquiries reveal that a person satisfies one of the criteria that lead to automatic inclusion in a barred list, he will refer the matter to the IBB so that the person can be included in the relevant barred list. The Secretary of State will also pass details of relevant cautions and convictions together with all information received from local police forces to the IBB, which the IBB can then consider in relation to inclusion in a barred list. Where a person is included in a barred list, he ceases to be subject to monitoring (if he was previously) and is not able to engage in regulated activity. Except in the most serious cases, individuals will have the opportunity to make representations about why they should not be barred on the basis of this information.
13. At appropriate intervals, the Secretary of State must repeat the searches and enquiries referred to above. If new information comes to light about a person who is subject to monitoring, the Secretary of State will give the information to the IBB as outlined above. The IBB may also have cause to consider including a person in a barred list on the basis of referrals from employers, local authorities, professional bodies and supervisory authorities (**see diagram at annex C**). An employer may register to be notified if an employee ceases to be subject to monitoring. Where this is the case the employer will then be informed of this by the Secretary of State, in the guise of the CRB.