

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

The Vetting and Barring Scheme Guidance

March 2010



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Produced by COI on behalf of the Home Office

March 2010

Ref: HOVS0037/294440

ISBN: 978-1-84987-202-7

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Introduction

There can be nothing more important than ensuring that the most vulnerable members of society are properly safeguarded. That's why the Government is committed to strengthening safeguards for children and vulnerable adults, and has tried to ensure that lessons are learned from past tragic events.

Children need to be safe to achieve things in life and succeed into adulthood. In recent years the Government has introduced a number of initiatives to increase child safety, including, in England establishing the National Safeguarding Delivery Unit in 2009. In Wales the Assembly Government has established a new Safeguarding Children Forum and in Northern Ireland the Government has announced that a new Safeguarding Board, underpinned by legislation, will be established by 2011.

Vulnerable adults need protection too. The Government has therefore introduced a number of improvements and has announced the intention to introduce legislation to put local adult safeguarding boards on a statutory footing. Also, in Northern Ireland, a new adult safeguarding policy framework is being developed, supported by robust partnership arrangements.

The murders of Holly Wells and Jessica Chapman focused public attention on how people who work or volunteer with children are vetted. The subsequent Bichard Inquiry made recommendations about how vetting should be improved and how it should be supported by better information-sharing, which were accepted by the Government.

The new Vetting and Barring Scheme aims to protect children and vulnerable adults by ensuring that people who are judged to present a risk of harm are not allowed to work with them.

It does this by improving the way barring decisions are made. In the past, barring decisions have been taken by Ministers and civil servants. They are now made by an independent body of experts, the Independent Safeguarding Authority (ISA), and follow a clear and structured judgement process, which is about assessing the risk of future harm based on the information that is known about the individual.

But improving the barring process, important as it is, is not enough. A key point of the Bichard Inquiry recommendations was the importance of improving information-sharing. New information indicating that someone poses a risk of harm comes to the attention of the police all the time. But there is no reliable mechanism for automatically ensuring that such information is considered for barring and that employers are alerted.

The new scheme addresses this issue. It establishes a register of those whose records should be kept up to date because they work with children or vulnerable adults. But the register also confirms that relevant information – including any new relevant information that comes to light – will be considered by the ISA. Because the Scheme is continuously updated in this way, it provides a new facility for employers to be notified if an employee's registration status changes.

Importantly, the ISA will only consider a case where there is such relevant information. Most people have no criminal record, so for the vast majority of people registered with the Scheme, there will be no information for the ISA to consider.

An individual's Vetting and Barring Scheme registration will be fully portable, and any prospective or subsequent employer will be able to check an individual's registration status online, free of charge. Employers can also choose to be notified, free of charge, if an employee's registration status changes.

Even though registration is mandatory for most employees and volunteers working with children and vulnerable adults, there are some circumstances where the Scheme does not apply.

Activities carried out in the course of family or personal relationships are completely outside the remit of the Scheme.

These are also a number of specific exceptions which are set out in detail in Section 2 of the guidance. These include the exceptions that the Government agreed in response to the recommendations made by Sir Roger Singleton in *Drawing the Line*, his report on the Vetting and Barring Scheme which was published in December 2009.

This guidance has been developed for employers, employees, volunteers and volunteering organisations to provide important information about how the Scheme works and to help you to prepare for registration. It covers:

- the scope of the Scheme – what activity is and is not within its remit
- how the registration process will work
- how employees and volunteers, as well as employers and volunteering organisations, will be affected, and
- when all this will happen.

Our aim is for a system of safeguarding that is proportionate, balanced and effective and meets public concerns without being a burden. We are certain that the Vetting and Barring Scheme will be easy to operate and will offer much greater assurance that unsuitable people are prevented from working or volunteering with children or vulnerable adults than previously.

Summary

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 do such 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:

- the background to the Scheme
- 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 7). 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. It may therefore be subject to further amendment.

Section I: An overview of the Vetting and Barring Scheme

- 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 in England, Wales and Northern Ireland.
- 1.3 The new Scheme is designed to be both simpler and more comprehensive than previous arrangements. It recognises the need for a single process to assess all individuals who wish to do certain work or volunteer with children and vulnerable adults.
- 1.4 A new body, the Independent Safeguarding Authority (ISA), has been set up to make decisions as to who should be barred from working with vulnerable groups. Instead of several different lists of barred individuals, the ISA maintains a single list of people barred from working with children and a single list relating to vulnerable adults.
- 1.5 Anyone wanting to work or volunteer regularly with children or vulnerable adults will be required by law to become registered with the ISA, and employers will be legally required to check that new employees are registered.
- 1.6 Everyone who applies to register will be vetted in a similar way to existing Criminal Records Bureau (CRB) arrangements. The ISA will only consider a case where there is relevant information which suggests that they might pose a risk of harm to vulnerable groups. Trained staff at the ISA will review each case to decide if a bar is appropriate. The ISA will tell the individual why they are under investigation, and share all information it has received. Except in the most serious cases (where a bar is mandatory because a

person has been convicted of or cautioned in relation to a very serious offence), individuals will have the opportunity to put their side of the story. Decisions to bar are legally binding, so a barred person cannot be hired for certain roles under any circumstances.

Duties and responsibilities

The Vetting and Barring Scheme was launched on 12 October 2009 when some key safeguards and legal duties came into effect. Since that date:

- You must not knowingly employ in regulated activity (see page 6), or use as a volunteer, a barred person.
- If you employ people or use volunteers in regulated activity or controlled activity (see page 21), 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 ISA (see page 48).
- 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 old lists of people barred from working with children or vulnerable adults in England, Wales and Northern Ireland are being phased out and replaced by two new lists: the ISA Adults' Barred List and the ISA Children's Barred List.

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 immediately or in every case replace Criminal Records Bureau (CRB) or AccessNI disclosures, which will still be required or recommended for some positions, in particular at the time when a person becomes ISA registered to work for an organisation, and nor does it remove the need for RAPs (see box on page 7) to develop and apply robust recruitment procedures, including checking identity, qualifications and references, and enquiring into career history.

1.7 Registration will be free for volunteers; paid workers will be charged a fee of £64 (£58 in Northern Ireland). Registration status is portable to new positions, so people will only need to register once. However, when a person becomes registered their records will be continuously updated and their status will be reassessed against any relevant new information that becomes known about them.

1.8 The Scheme began in October 2009 with the implementation of the ISA's new barred lists. ISA registration begins in July 2010 for people taking up new roles – paid or voluntary – becoming mandatory in November 2010. It will be phased in for people already working with vulnerable groups up to 2015. A parallel scheme is being developed in Scotland.

The scope of the Scheme

1.9 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 parallel Scheme will cover Scotland.

Regulated activity

1.10 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 right), on a frequent, intensive or overnight basis. Frequent means once a week or more (except in health or personal care services where frequent means once a month or more); intensive means on four days or more in a single month (see box on page 13 and Annex B). Regulated activity can include, but is not limited to, any of the following:

- teaching, training or instruction, care or supervision of children
- teaching, training or instruction for vulnerable adults
- providing advice or guidance wholly or mainly for children, which relates to their physical, emotional or educational wellbeing
- providing advice, guidance or assistance wholly or mainly for vulnerable adults
- any form of treatment or therapy provided to children or vulnerable adults

- driving a vehicle that is being used only for the purpose of conveying children or vulnerable adults and their carers
- working in a specified place (see para 1.11 and page 17).

Self-employment and contracting

You can register with the Scheme if you are self-employed and work in a position covered by the Scheme. Even if you are not legally required to join the Scheme, you may find either that your customers ask you to register or that registering helps you provide reassurance to the people you work for and with. Contractors should be aware that although self-employed, they may have a RAP and may be required to register, depending on their particular circumstances.

1.11 In some specified settings, regulated activity includes anyone who works or volunteers on a frequent or intensive basis, and whose work gives them the opportunity for contact with children or vulnerable adults, regardless of the nature of the activity. For example, this may include catering, cleaning, administrative and maintenance staff if they work once a week or more or four days or more in a single month or overnight (see page 17 for full details and a list of specified settings).

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.

Controlled activity

1.12 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 appropriate safeguards. Note that this exception does not apply in every circumstance in Wales, where it is proposed that automatically barred¹ people cannot be employed in any controlled activity.

¹ This would occur on conviction/caution of a very serious offence.

Controlled activity will include:

- frequent or intensive activity (see box on page 13) 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, education or social services records.

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 arrangements with a self-employed worker (for example, a parent hiring a piano teacher or a babysitter) is not a RAP.

Umbrella bodies

An umbrella body is an organisation registered with the CRB (or AccessNI in Northern Ireland) that can process applications for disclosures or ISA registration on behalf of a variety of organisations/applicants. If you do not know who your umbrella body is, or have never previously needed to apply for disclosures, contact the CRB or AccessNI – see contact details on page 59.

Registered bodies

A registered body is an organisation registered with the CRB (or AccessNI in Northern Ireland) that can process applications for disclosures or ISA registration for its own staff.

- I.13 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.
- I.14 **Responsible persons** (see box on page 22) will be allowed to decide whether to employ in a controlled activity someone barred from undertaking regulated activity with children or vulnerable adults.

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- I.15 In advance of the full introduction of controlled activity arrangements (due in 2014), interim requirements have been put in place (see page 24 for full details). In England and Wales, responsible persons who do not know whether a new entrant into controlled activity is barred from regulated activity may ask the CRB to carry out a check of the barred lists on their behalf. Further details on how to apply for this interim service will be made available in April 2010. This arrangement will not apply in Northern Ireland where responsible persons may carry out an enhanced disclosure through AccessNI, a facility that has been available from 12 October 2009.
- I.16 Please note that the Government has announced a review of the continued need for controlled activity (see box on page 21).

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

The ISA registration process

A short guide for employees and volunteers

- 1.17 If you are an employee or volunteer, you must complete a form. These will be available from your RAP, if it is a registered body, or from an umbrella body (see box on page 7).
- 1.18 If you are a paid employee, there is a fee of £64 (£58 in Northern Ireland) for registration to work either with children or vulnerable adults or both. It is your responsibility to pay that fee, but some RAPs may be prepared to pay it on your behalf. If you are a volunteer in England and Wales, the fee is waived. In Northern Ireland, if you meet AccessNI's definition of a volunteer, as set out in AccessNI's guidance document, registration will also be free. If a volunteer was registered for no fee and subsequently moves into paid activity, the fee becomes payable at that stage.
- 1.19 **Note:** New employees/volunteers in regulated activity will be able to register from July 2010 to allow those due to start in November time to apply for mandatory registration. However, those already working in regulated activity may **not** register until April 2011 – applications received before then will not be accepted.
- 1.20 Once your correctly completed application has been received, the CRB will provide you with your 16-digit ISA registration number if you are not already barred. You are able to start in employment in regulated activity at this point. The CRB/AccessNI will continue to search police databases for information about you relevant to working or volunteering with children or vulnerable adults. It will also check whether previous employers or voluntary organisations have reported any serious concerns about you.

No relevant information found

- 1.21 If no relevant information is found on you and your RAP applied for a CRB/AccessNI disclosure with your application you will receive a copy of the disclosure that is sent to them. If they did not, you will nevertheless be sent a copy of the information that would have been in your copy of the disclosure.

Relevant information found

- 1.22 Where relevant information is found, it will be passed to the ISA for consideration. The ISA will look at information relating to both working or volunteering with children and vulnerable adults, even if your application relates to only one of those areas. If you are barred from working or volunteering with one of these groups, it will be a criminal offence for you to work or volunteer with that group in regulated activity.
- 1.23 In all but the most serious cases,² if the ISA is considering barring you or the ISA has automatically included you in a barred list, you will be given the opportunity to make representations and to express your own views on the information used to take the barring decision.
- 1.24 Again, in all but the most serious cases, if the ISA takes the decision to bar you or decides not to remove you from a barred list, there will be a right to seek an appeal to the Administrative Appeals Chamber of the Upper Tribunal and to the Court of Appeal on points of law or findings of fact. In Northern Ireland, appeals will be made to the Care Tribunal. For more information about the decision-making process used by the ISA, go to www.isa.homeoffice.gov.uk

Example: ISA registration

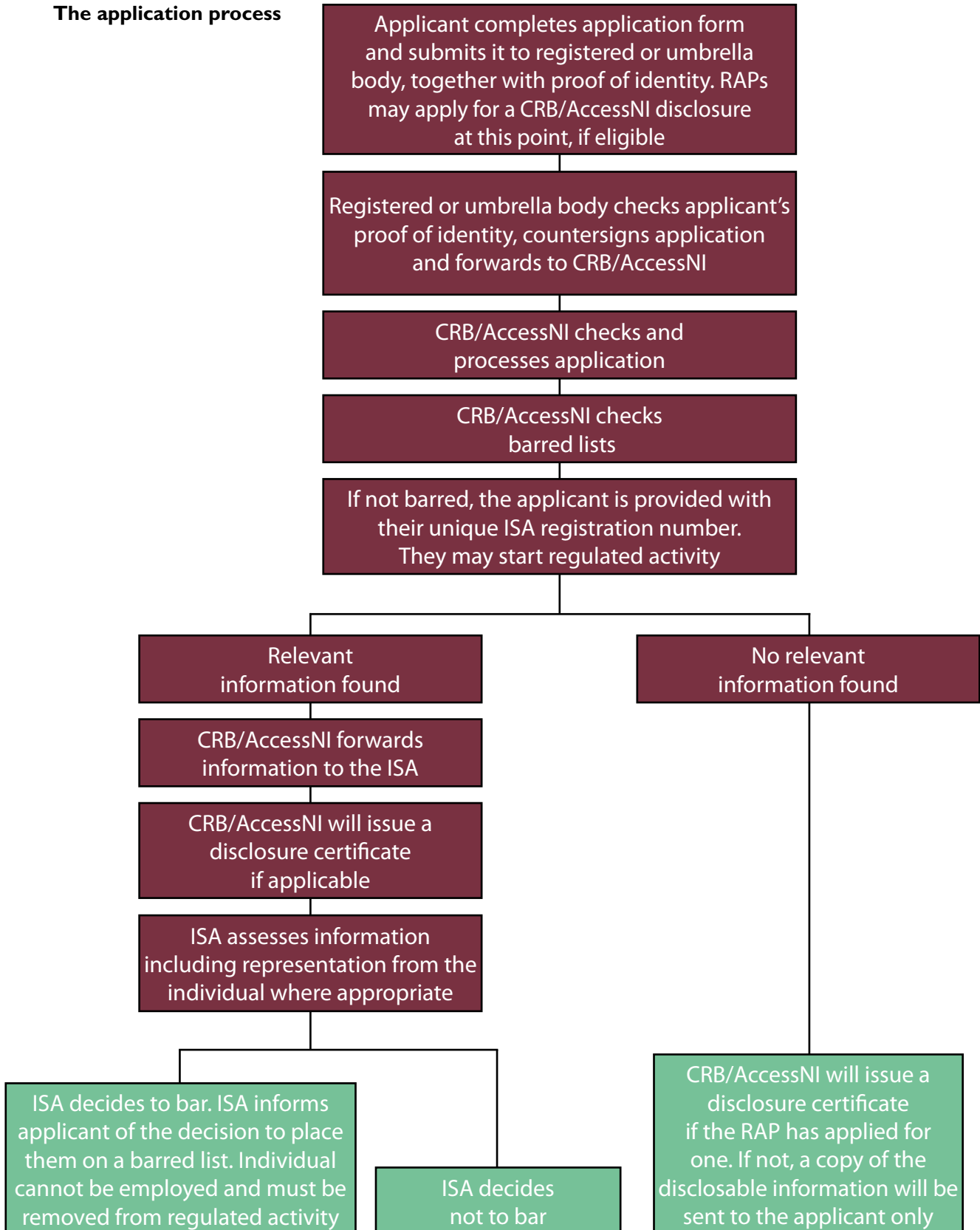
Mr S (38) has applied to join the Vetting and Barring Scheme. He wants to undertake work in youth clubs designed to divert male teenagers away from crime. Mr S has three previous convictions for violent offences and another six for other offences. The violent offences spanned a period of four years and occurred when Mr S was aged 19–23 years. The ISA would receive this information and make a decision, noting that:

- there were no offences against children or vulnerable adults
- Mr S has been conviction-free for 15 years, and
- he is seeking employment.

ISA will consider all these factors in deciding the case.

² Where the individual is automatically barred, without the right to make representations, because he or she has committed a very serious criminal offence (see Section 3).

The application process



- 1.25 If you are already registered and the ISA receives new information about you (for example, because you have committed an offence), your case may be reconsidered.
- 1.26 It is important to note that you may be ISA registered while the ISA is still considering barring you. Such consideration might take place at the time of application for ISA registration or at any time thereafter, if new information is received.

Example: new information

Mrs A volunteers with children in a charity and is registered with the Scheme. The ISA is sent information about her recent conviction for assaulting a child. The ISA considers the new information, along with the information it previously had, and decides to bar Mrs A after considering her representations. Mrs A and the charity are informed and Mrs A may no longer work or volunteer with children.

More information on the application process is available from CRB/AccessNI – see ‘Further information’ on page 59.

A short guide for RAPs

- 1.27 From November 2010, if you employ a new member of staff or volunteer to work with children or vulnerable adults, they must be ISA registered before they begin in their role.
- 1.28 From November 2010, it will be a criminal offence to employ or allow a new member of staff to volunteer or work with children or vulnerable adults if that person is not ISA registered. From 26 July 2010 you will be able to ensure that any new members of staff or volunteers are ISA registered before they start working or volunteering.

Penalties

From November 2010, it will be an offence for a RAP to hire a person, whether paid or a volunteer who is not registered in regulated activity, or for an individual to take up employment in regulated activity without being registered with the ISA. Penalties of up to £5,000 will apply for any breach of these rules. See pages 39 and 47 for more on registration offences and penalties.

CRB/AccessNI disclosures

ISA registration does not replace the role of CRB or AccessNI disclosures. If you previously had a duty to ask for a disclosure for the position you are filling, you must continue to do so. In some sectors, there are additional statutory duties to obtain disclosures.

There are two types of disclosure: a standard disclosure, which checks national and local police databases; and an enhanced disclosure, which checks these databases, provides additional information from local police, and will, if requested, also check whether an individual is on the relevant barred list and whether they are ISA registered.

Please note the following changes to CRB/AccessNI disclosures, which came into effect on 12 October 2009:

- A standard disclosure will no longer reveal if the person being checked is on the lists of people barred from working with children or vulnerable adults. If you need this information, you must apply for an enhanced disclosure.
- RAPs will have the right to ask for an enhanced disclosure on anyone they are taking on in regulated activity. In Northern Ireland, this right also extends to controlled activity.
- RAPs will have the right to tick the box on the application form to ask for ‘suitability information’ to be included on the disclosure certificate, for the children’s or vulnerable adults’ workforces or both, as applicable. (If a RAP only provides regulated activity for one vulnerable group, it has no right to ask for suitability information in respect of the other vulnerable groups.)

See Annex A for a full definition of disclosures.

The Government has undertaken, in its response to Sir Roger Singleton’s report *Drawing the Line* (<http://publications.everychildmatters.gov.uk>) to review the statutory requirements for enhanced disclosures in the light of the Scheme. The review will begin early in 2010.

- 1.29 Different requirements apply to existing staff and volunteers. If you are a RAP, you will have until July 2015 to ensure that all staff or volunteers in post prior to November 2010 are ISA registered. They will be able to apply for registration from April 2011.
- 1.30 A phased approach to applications will minimise delay. Registered and umbrella bodies will be asked to commit to processing an agreed number of applications, and given guidance on prioritising applications.

- I.31 RAPs should consider how to prioritise applications with the registered body that submits your applications for disclosures.
- I.32 At the end of the application process, you and your registered body will be sent a letter³ confirming that the application has been successful and giving the employee's or volunteer's unique Scheme reference number.
- I.33 RAPs should note that, if an ISA application included an application for an enhanced disclosure, this disclosure may not come until a few weeks after ISA registration. In the meantime, where RAPs wish to, or are able to, start the individual in employment in advance of the enhanced disclosure coming through, they should put safeguards in place, such as supervision of new employees/volunteers whom they do not yet know.
- I.34 If an application for registration does not include an application for a disclosure, the applicant will nevertheless be sent a copy of the 'disclosable information'. This is the information that would appear on the applicant's copy of the disclosure, had a disclosure been requested.
- Online support for RAPs**
- I.35 You will be able to check an individual's status online. By carrying out the online status check, you will be fulfilling your legal responsibilities under the SVGA or the SVGO. You may still have legal responsibilities to make CRB/AccessNI checks. You will not need to pay to check whether an individual is ISA registered.
- I.36 You will also be able to register your interest in one or more individual employees or volunteers. You will then automatically be notified if that employee is barred in the future or tries to leave the Scheme. More than one RAP can register an interest in an individual.
- I.37 **It is important that** you retain a record (e.g. a printout) of having carried out the check and of having registered your interest in the individual(s), in case you need to prove that you carried out the check.

Key dates

12 October 2009

The definitions of regulated activity and controlled activity came into operation. The offences of working in regulated activity while barred and of knowingly allowing someone to work in regulated activity while barred came into effect.

From this date, RAPs became eligible to ask for enhanced disclosures with barred list checks on anyone

they are taking on in regulated activity. In Northern Ireland this eligibility also extends to controlled activity. However, there are no new duties for a RAP or responsible person to ask for an enhanced disclosure.

The new duties on referrals came into operation on 12 October 2009. This means that RAPs that remove anyone from regulated activity have a duty to refer information to the ISA in certain circumstances. A similar duty applies to the responsible person (see definition on page 22) in relation to controlled activity. (Details of the duty to refer can be found on page 48.)

April 2010

Interim requirements for controlled activity come into effect (see page 24).

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 registration with 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 new 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 were already working in regulated activity on 26 July 2010 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.

31 July 2015

This is the final cut-off date by which everyone working in regulated activity must be ISA registered.

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.homeoffice.gov.uk or AccessNI at www.accessni.gov.uk. Further guidance on registration and the application process will be made available in due course.

³ Initially only applicants for registration will be sent this letter. Registered bodies will be automatically provided with a copy as the Scheme is rolled out.

Summary

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, intensive or overnight 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, if they have the opportunity to have contact with children and vulnerable adults.

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 children or 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. It will do this by vetting all those who wish to work in regulated activity (see below) with these vulnerable groups and barring those where the information shows they pose a risk of harm.
- 2.2 The Scheme covers a broader range of activities than previous arrangements, including most jobs in the health sector. In some specified settings, such as children's hospitals and care homes, all jobs will be regarded as regulated activity provided there is the opportunity of contact with children and vulnerable adults.
- 2.3 Children are those under the age of 18.
- 2.4 Vulnerable adults can be people in care homes or sheltered housing, or elderly or disabled people receiving special care or anyone receiving medical treatment or therapy (see page 20 for a full definition).
- 2.5 The Scheme applies in England, Wales and Northern Ireland. A parallel scheme is being developed in Scotland.
- specified positions (see full list on page 17) such as school governor or director of children's or adult social services
 - all activity undertaken within specified settings (see list on page 17) 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.

Regulated activity

- 2.6 Regulated activity is the statutory term used to describe specific activities which involve working or volunteering with children or vulnerable adults and certain situations 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 (see box right), but does not include family or personal arrangements (see box on page 6).
- 2.7 Regulated activity includes:
- specified activities (see full list on page 14) such as teaching, instructing, supervising, caring for or providing children/vulnerable adults with guidance or treatment
 - fostering and childcare services

The frequency and intensiveness tests

Most work in any of the specified activities (see page 14) listed in this section 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. (See page 14 for examples and Annex B for statutory guidance.)

These limits were set in the Government's response to the December 2009 report by Sir Roger Singleton, Chairman of the ISA and the Government's Chief Adviser on the Safety of Children, into the boundaries of the Scheme. Sir Roger's report, *Drawing the Line*, is available at <http://publications.everychildmatters.gov.uk>.

Examples: the frequency test and intensiveness test

A parent has agreed to help out on a one-off basis at a Scout group session, without committing to being a regular helper. This is not regulated activity.

A person who is barred from working with children is asked if he can help out with coaching a children's football team on a one-off basis. If he did so, he would be committing a serious criminal offence. The one-off activity is not regulated activity for the purposes of ISA registration and checking, but the barring offence applies nonetheless. Note that this offence came into effect on 12 October 2009.

A parent is asked to help supervise children on a school day trip. They do not commit to helping out on future occasions. This is not regulated activity, because it does not meet the frequency test. If the parent did become a regular helper on a weekly or more frequent basis, the activity would be regulated activity.

An adult works for an organisation supervising groups of children at a leisure park on a frequent basis. The children may be different each time, but that does not affect the fact that this is regulated activity.

A builder works for a company that has a contract to maintain a swimming pool where children are regularly present. He visits the leisure centre frequently in connection with the work. Leisure centres are not specified places for the purposes of regulated activity, so the builder is not carrying out regulated activity.

Health and personal care services

A self-employed podiatrist visits a care home fortnightly by arrangement with the care home to cut the nails of all residents. She is providing healthcare more than once a month. She is required to register with the ISA and the care home must check that she is registered.

A voluntary organisation holds a tea dance for older people to help reduce isolation and increase social engagement. The older people are vulnerable adults in this context because the service is aimed specifically at older people with particular needs. Although the volunteers are providing care on a monthly basis, registration with the ISA is not required as the care is not personal or intimate.

A consultant geriatrician works for two days every month in a hospital outpatient clinic. The consultant will need to register with the ISA because she is providing healthcare where the frequency test is once a month or more.

Specified activities

- 2.8 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.
- 2.9 **Teaching, training or instruction, care or supervision of children or vulnerable adults provided frequently, intensively or overnight.** 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.

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.

- 2.10 Advice or guidance for children, and advice, guidance or assistance for vulnerable adults.** This refers to people whose role involves providing advice or guidance wholly or mainly to children on a frequent, intensive or overnight basis 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.
- 2.11** In relation to vulnerable adults, this category covers any form of assistance, advice or guidance provided for vulnerable adults on a frequent or intensive basis. This will include healthcare advice given to patients. 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 who are vulnerable adults.
- 2.12** An individual who is employed or is a volunteer for an organisation and visits vulnerable adults in their own homes to offer advice or guidance will be engaged in regulated activity if the assistance is frequent, intensive or provided overnight.
- 2.13** Services that are not specifically for vulnerable adults but which are aimed at the general public are not regulated activity.
- Example: volunteers working with adults in their homes**

A volunteer with a stroke club 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. Registration will be required if this is done frequently or intensively.
- 2.14 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.
- 2.15 Driving a vehicle frequently or intensively solely for the purpose of conveying children or vulnerable adults and their carers.** 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.
- 2.16** It 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 or their carers.
- 2.17 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 frequently or intensively:
- 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.
- 2.18** The Scheme will not cover IT staff where they do not contact chatroom users or see the content of messages.
- 2.19** 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.
- 2.20 Fostering a child/host families.** Most types of fostering is regulated activity irrespective of the frequency or number of days in any month that a child is fostered. This includes private fostering in specified circumstances. Host families caring for children from abroad are a form of private fostering falling within regulated activity. However, see page 27 on the specific exception from the requirement to register where the visit lasts less than 28 days, the host families are volunteers, and the child’s family have agreed the selection of the host family.

Example: host families

Pierre lives in France. Every summer, his family sends him to stay with friends in England for two weeks. There is no requirement for the English family to register, as Pierre's parents have selected them as the host family. However, if Pierre was placed by a third party (such as an English language school or a placement agency), with no selection or approval by his family, the English family would be required to register.

- 2.21 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 reward. 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.
- 2.22 **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.
- 2.23 **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.
- 2.24 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.
- 2.25 **Supervision.** Activity that regularly involves day-to-day management or supervision of a person carrying out the activities above is also regulated activity.
- 2.26 **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.

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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 settings and establishments

2.27 Regulated activity includes any form of work (paid or voluntary) carried out for the purposes of a setting or establishment specified in the SVGA/SVGO which is on a frequent or intensive basis (see box on page 13) and which provides an opportunity for contact with children or vulnerable adults. This may include catering, cleaning, administrative and maintenance staff if they work once a week or more or four days in a single month or overnight.

2.28 Specified settings are limited to:

- schools (educational institutions exclusively or mainly for the provision of full-time education to under-18s)
- pupil referral units⁴
- childcare premises (including nurseries)
- children's homes
- children's hospitals (hospitals exclusively or mainly for the reception and treatment of children)
- institutions exclusively or mainly for the detention of children
- children's centres in England, and
- adult care homes in England and Wales and residential care or nursing homes in Northern Ireland.

2.29 However, registration is only required if the frequent and intensive activity is in a single specified setting. Those who only go into different specified settings are not required to register. So, for example, maintenance contractors who visit different care homes, schools or children's hospitals will not meet the frequent or intensive tests if they visit several different such settings but do not work frequently in the same one (see paragraph 2.62).

Specified positions in ...

2.30 The following lists provide an overview of specified positions within the children's workforce and the vulnerable adults workforce.

the children's workforce

2.31 This includes:

- school governors (members, associate members, co-opted members, secretaries 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 (i.e. local councillors), 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
- the chief executive of a local authority that has any education functions or social services functions
- the director of social services of a local authority in Wales
- the chief education officer of a local authority 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. However, there will be no requirement for trustees to register with the Scheme simply because they are a charity trustee. Only those trustees who are engaged in regulated activity (by carrying out a specified activity or working in a specified setting on a frequent or intensive basis) must be ISA registered. Each charity will have the discretion to determine whether it is appropriate for those trustees who are not undertaking regulated activity to be asked to join the Scheme
- 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
- management committees of pupil referral units⁴
- individuals who are proprietors of independent schools and individuals who take part in the management of independent schools
- members of fostering and adoption panels

⁴ Also known as Short Stay Schools in England and Wales.

- individuals carrying on as or managing establishments or agencies regulated under the Care Standards Act
- anyone who operates, 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, members and chair of the board.

the children's workforce in Northern Ireland

2.32 This includes:

- school governors (members, co-opted members and secretaries of governing bodies of educational establishments which exclusively or mainly provide full-time education of children)
- members of a health and social services (HSS) body or an education and library board (ELB) in Northern Ireland (i.e. members of an HSS body/ELB, the executive of an HSS body/ELB, a committee or sub-committee of an HSS body/ELB, or an area committee or sub-committee that, in the case of an ELB, discharges any education function, or, in the case of an HSS body, any health or social services function)
- the director of social services of an HSS board in Northern Ireland
- the director of an HSS trust responsible for the delivery of personal social services in Northern Ireland
- the director for social care and children in the Health and Social Care Board
- chief executives and directors of health and social care trusts with responsibility for delivering personal social services
- members of ELBs, 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. However, there will be no requirement for trustees to register with the

Scheme simply because they are a charity trustee. Only those trustees who are engaged in regulated activity (by carrying out a specified activity or working in a specified setting on a frequent or intensive basis) must be ISA registered. Each charity will have the discretion to determine whether it is appropriate for trustees to be asked to join the Scheme

- management committees of pupil referral units⁵
- the proprietors of independent schools and individuals who take part in the management of independent schools
- members of fostering and adoption panels
- providers or individuals managing establishments or agencies regulated under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003
- 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, members and chair of the board.

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's employer must check that he is ISA registered to carry out regulated activity with children.

Nadia volunteers at least once a week in a school, helping children with their reading. The school's senior managers must check that she is ISA registered.

Riyaz volunteers at his local church Sunday school and at Scouts every week. He frequently teaches and supervises the children. The church and the head of the Scout group must both check that he is ISA registered.

Ahmed is a school governor in England. This counts as a key position of authority in relation to children. The headteacher (or, if he were in Northern Ireland, the relevant ELB or the Education and Skills Authority) must check that he is ISA registered.

Note: the requirement to register will take effect for different groups at different times. See Section 4 for more information for employees and volunteers and Section 5 for more information for RAPs.

⁵ Also known as Short Stay Schools in England and Wales.

the vulnerable adults workforce

2.33 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 which relate wholly or mainly to vulnerable adults
 - a member of an executive of a local authority that discharges any of that authority’s education or social services functions in relation to vulnerable adults, 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 social services functions in relation to vulnerable adults
- chief executives and directors of adult social services of local authorities in England, and directors of social services of local authorities in Wales
- individuals carrying on or managing establishments or agencies regulated under the Care Standards Act
- the 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. However, there will be no requirement for trustees to

register with the Scheme simply because they are a charity trustee. Only those trustees who are engaged in regulated activity (by carrying out a specified activity or working in a specified setting on a frequent or intensive basis) must be ISA registered. Each charity will have the discretion to determine whether it is appropriate for trustees to be asked to join the Scheme, and

- members and staff of the ISA, including the chief executive, members and chair of the board.

the vulnerable adults workforce in Northern Ireland

2.34 This includes:

- members of health and social care bodies
- the director for social care and children in the Health and Social Care Board
- chief executives and directors of health and social care trusts with responsibility for delivering social care services
- providers or individuals managing establishments regulated under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003
- trustees of charities for vulnerable adults, and
- members and staff of the ISA, including the chief executive, members and chair of the board.

Examples: the vulnerable adult workforce

Yolanda works part time in a care home as a care assistant, and has frequent contact with vulnerable adults. Under the Scheme, her RAP must check her registration.

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. Her volunteer manager must therefore check her registration.

Michaela works for a voluntary organisation and holds regular meetings offering advice and guidance to vulnerable adults with mental health conditions. She is undertaking regulated activity. Again, her volunteer manager must check her registration.

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Vulnerable adults: a definition

2.35 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 specified welfare service, namely 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
- is receiving direct payments from a local authority or health and social care trust in lieu of social care services, or
- requires assistance in the conduct of their own affairs.

The key terms in the above definition are explained below.

Residential accommodation

2.36 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

2.37 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 falls within neither of the categories 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.

2.38 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

2.39 Domiciliary care is care or specific types of 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.

Healthcare

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

Lawful custody

2.41 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

2.42 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
- a representative is being or has been appointed to receive payments of social security benefits on that person's behalf, or

People with physical or mental health conditions

2.43 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

2.44 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 engage in activities provided 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

2.45 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). Those in receipt of direct payments are vulnerable adults.

Controlled activity

Controlled activity under review

In response to Sir Roger Singleton's report *Drawing the Line*, published on 14 December 2009, the Government has agreed to review the continuing long-term need for controlled activity and associated legal requirements. This review will be launched early in 2010. However, the Government's response to Sir Roger's report made clear that interim arrangements would be introduced, with details to be made available in April 2010 (see page 24).

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What is controlled activity?

- 2.46 Controlled activity is work 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. Employers will be able to employ someone barred from regulated activity to carry out controlled activity, provided they put in place appropriate safeguards. Note that this exception does not apply in every circumstance in Wales, where it is proposed that automatically barred⁶ people cannot be employed in any 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 does controlled activity apply?

- 2.47 Controlled activity applies to:

- work which is frequent or intensive and provides the opportunity for contact (see box on page 13) with children or vulnerable adults in health, social care or further education settings, or
- work which is frequent and provides the opportunity to have access to education records (children only) or health or social services records (children and vulnerable adults) in specified bodies.

- 2.48 Frequent or intensive activity will generally be once a week or more, or more than four days in a single month.

Examples: controlled activity posts

Anne is a part-time receptionist in a hospital X-ray department. Her job is administrative, but she has the opportunity for frequent contact with children and vulnerable adults. This is a controlled activity post if she works at least once a week or four or more days in any month.

Matthew works full time in the office of an FE college. His job is administrative, but he has the opportunity for frequent contact with children. This is a controlled activity post.

Sanjay works full time as a hospital complaints manager. His job is administrative, but he has the opportunity for contact with vulnerable adults. This is a controlled activity post.

Katrina is a part-time cleaner in a hospital ward and works three days a week. She has contact with vulnerable adults. This is a controlled activity post.

Rama is a full time manager of a domiciliary care service. She works in the office, but has contact with vulnerable adults. This is a controlled activity post.

Alan works full time in a social services team and is responsible for updating records on adults who receive social services and direct payments. He does not have contact with vulnerable adults, but his post gives him the opportunity to access their records. This is a controlled activity post.

Hope works in the kitchen of a local hospital. Her duties involve preparing food for patients. Once a week, she also goes onto the wards to serve food to adult patients. She therefore has the opportunity for contact with vulnerable adults, and so this is a controlled activity post.

Marco is a full-time administrative assistant in the children's services department of a local authority. He is responsible for filing records that contain information about children who are looked after by the local authority. Marco has access to these records, so his is a controlled activity post.

Robert is the catering manager of a further education college and works full time. While his main responsibility is for the catering staff, his role brings him into contact with young learners. Robert is engaged in controlled activity.

Dave is the caretaker of a multi-site further education college. His duties include responsibility for maintenance and repair of the college infrastructure, including sports facilities and changing rooms. This brings him into contact with young learners, so his is a controlled activity post.

Mary is an administrative assistant in the children's department of a health and social care trust. She is responsible for filing records that contain information about children who are looked after by the trust. Mary has access to these records every day. This is a controlled activity post.

⁶ This would occur on conviction/caution of a very serious offence.

Examples: non-controlled activity posts

Jessica is an administrative assistant in the same department as Marco (opposite). Her responsibilities include taking minutes of meetings, answering telephone calls and typing up reports. Jessica does not have access to records about individual children. This is not a controlled activity post.

Laurence works full time in a hospital kitchen. He has no opportunity to have contact with children or vulnerable adults. This is not a controlled activity post.

Michael is an occasional volunteer for a Hospital Friends organisation. He volunteers less than once a week and his role involves working on the hospital premises. He has the opportunity for contact with vulnerable adults but only works occasionally. This is not a controlled activity post.

Lucy is a full-time ward assistant in a community hospital, handing out meals to vulnerable adults. Part of her role is to provide assistance to vulnerable adults who need help to eat. This is not a controlled activity post: it is a regulated activity post.

Beryl works at an FE college and teaches children and adults. This is not a controlled activity post: it is a regulated activity post.

Controlled activity in...

Health and social care

2.49 Controlled activity in health and social care is activity that is ancillary to or is carried out wholly or mainly in relation to the provision of specified types of services, and it applies only in the following areas:

- provision of primary care
- provision of hospital services
- provision of domiciliary care
- making arrangements in connection with an adult placement scheme
- provision of community care services
- making arrangements for direct payments
- making provision for social care services in Northern Ireland.

Domiciliary care

2.50 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

2.51 Any individual carrying out any form of work frequently or intensively in a further education institution where there is the opportunity to come into contact with children (see box on page 13) may be involved in controlled activity (but only if the work is not 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 frequently or intensively will be engaged in regulated activity, not controlled activity.

Direct payments

2.52 Any individuals involved in the making of direct payments under S57 of the Health and Social Care Act 2001 who have the opportunity to have any form of contact with direct payment recipients but do not undertake regulated activity (such as providing care) will be carrying out controlled activity. This will include 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.

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Access to specific types of records

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

- local authorities (in the course of their education or social services functions)
- CAFCASS or CAFCASS CYMRU
- the Qualifications and Curriculum Development Agency
- Ofsted
- Estyn
- CSSIW, and
- an establishment regulated under the Care Standards Act 2000.

In Northern Ireland, the bodies are:

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

2.54 An activity is controlled if it is carried out frequently for or on behalf of one of these organisations and it gives the person carrying out the activity the 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
- in Northern Ireland, records held by or on behalf of ELBs, health and social care trusts, or agencies or establishments required to register with RQIA in the exercise of any of their functions.

Controlled activity interim requirements

2.55 In advance of the full introduction of controlled activity (due in 2014), interim arrangements have been put in place as follows:

- From 12 October 2009, the duty to refer an employee to the ISA is the same as for regulated activity (see page 48).
- In England and Wales, responsible persons who do not know whether a new entrant into controlled activity is barred from regulated activity may ask the CRB to carry out a check of the barred lists on their behalf. Further details on how to apply for this interim service will be made available in April 2010. This arrangement will not apply in Northern Ireland where responsible persons may carry out an enhanced disclosure through AccessNI, a facility that has been available from 12 October 2009.

2.56 The Government will publish more detailed guidance on this requirement. Longer-term arrangements for controlled activity will depend on the outcome of the Government's review – see box on page 21.

Exceptions to the Vetting and Barring Scheme

2.57 The Scheme only affects adults who work with children or vulnerable adults in a defined set of activities or in a defined set of establishments or positions.

2.58 Interaction between adults and children or vulnerable adults in everyday life is outside the boundaries of the Scheme. This type of interaction includes, for example:

- adults serving customers of all ages in shops or restaurants, at events such as fêtes and festivals and in public spaces like museums and libraries
- adults whom children meet in the street, and
- adults visiting a school, children's centre or youth centre without working for it in a paid or voluntary capacity.

2.59 The Scheme also completely excludes family and personal arrangements.

Exceptions to regulated activity

2.60 Some activity is outside the scope of regulated activity, so none of the Scheme's requirements apply.

Children and young people in the workplace

- Teaching and training, care and supervision, advice and guidance and medical treatment provided as part of a 16- or 17-year-old's employment (which may be part of their learning or in a work experience situation) is not regulated activity. However, although this is not regulated activity, a specific entitlement exists for the employer to check ISA registration status if the activity is either carried out for the purposes of the Armed Forces or funded by the Learning and Skills Council (to be replaced by the Skills Funding Agency) or the Department for Employment and Learning in Northern Ireland.
- Teaching and training, care and supervision, advice and guidance and medical treatment provided as part of the employment of a child under the age of 16 (which may be part of their learning or in a work experience situation) is not regulated activity if carried out by a person for whom arrangements do not exist principally for that purpose. However, the employer's duty of care and risk assessment of work experience placements for safeguarding purposes apply. (Separate sector-specific guidance will cover this in more detail.)

Ancillary first aid

- First aid provided by an employee as an ancillary part of their job is not regulated activity.

Activity with children which is merely incidental to activity with adults

- Where teaching, training or instruction or care or supervision of children is merely incidental to the function of a role because the children are part of a mixed-age group and their involvement is incidental to the purposes of the activity, this is not regulated activity.
- To be considered 'incidental', the presence of a child or children must either be unforeseen or be dependent on the presence of the adult for whom the relevant activity is actually being provided. In other words, the activity should be designed and provided for adults, rather than children.

Examples: 'incidental' presence of children

A leisure centre sets up an aerobics class for young mothers. There is no childcare facility. Information provided about the class makes it clear that children can come along and, if they are able, join in. While the presence of children is not unforeseen, any teaching of them that may occur is subordinate to, and dependent on, the activity being provided to adults. If it were not for the mothers, the children would not be there, so this is not regulated activity.

An operatic society pitches its materials at adults and expects adults to be subscribers. If an adult attendee brings along a child, then the child's attendance is merely incidental to any teaching or instruction of the adults. However, if the children start to attend on a regular basis independently – in their own right – and come to take an active role in the society, then their attendance is not incidental to that of adults.

Activity with vulnerable adults which is wholly or mainly for them

- The 'merely incidental' rule does not apply to vulnerable adults. Here, the rule is simply that, for teaching, training and instruction to be regulated activity, it has to be provided wholly or mainly for vulnerable adults.

Example: vulnerable adults

Jodie is 22 and has learning difficulties. She lives in a home with two other adults with learning difficulties. All three are supported by local social and housing services. She regularly attends a dance class, which is open to anyone. The dance instructor is not engaged in regulated activity, because the dance class is open to all and the instruction is not being targeted wholly or mainly at people who are vulnerable adults.

Peer exemption

- Service users and family members are a valuable resource for service planning, commissioning and provider services. They act as personal experts and peer supporters by sharing knowledge and experiences, and they engage in teaching, coaching and mentoring people who are experiencing the same situation or condition. A member of a group assisting the group leader in providing regulated activity to that group is not engaged in regulated activity.

Fostering by a barred person where it is in the child's interest for the placement to continue

- Under some circumstances it may be in the best interest of a child to continue to be fostered by an individual who has been barred since the foster placement began, or for the child to be placed with a barred family member. If the local authority or health and social care trust considers that the welfare of the child is best satisfied by these arrangements and is the body who makes the arrangements, then it will not be regulated activity.

Examples of peer exemptions

William lives in a care home and likes to help when the tea trolley arrives in the afternoon. He fills teacups from the pot and hands them out to residents. He sits and helps one resident who cannot hold the cup by herself. Because he is one of the residents and is acting under the direction of the care worker, he is not engaged in regulated activity.

Frasier goes to a drop-in centre for people with mental health problems. His care package is aimed at helping him regain his independence and return to paid employment. While receiving care himself, he regularly helps other service users with their craft activities. Because he is also a service user this is done under the direction of a trainer, he is not engaged in regulated activity.

June is a service user and attends a club which is run by other service users, but the mental health trust supports it and a community mental health worker monitors the scheme. June is responsible for keeping the record of attendance and letting the mental health worker know if someone is not feeling well. She is not engaged in regulated activity.

General exemptions from the requirement for ISA registration

- 2.61 Some specific examples exist where, although the activity is regulated activity and some barring offences apply, there is no requirement for the individual to have ISA registration. These include:

Infrequent activity

- Activity which would otherwise be regulated activity but is not frequent, or does not meet the intensive or overnight conditions.⁷

Private arrangements

- Private arrangements, for example organised by parents employing a worker in regulated activity in a private capacity.

Sole traders

- Other circumstances where there is regulated activity but because a person is self-employed, there is no RAP.

Under-16s undertaking regulated activity

- Regulated activity undertaken by an under-16-year-old.

Activity provided to under-16s in the workplace

- Teaching, training and instruction, care and supervision, advice and guidance and medical treatment and therapy provided to an under-16 in the course of their employment is only regulated activity where it is carried out by an employee for whom arrangements exist principally for that purpose: for example, an employee whose specific job purpose includes looking after under-16 work experience students. There will be no requirement for such employees to be registered or for the employer to check registration status. The employer has discretion to decide which of its employees to check and will have agreed a risk assessment process with the work experience placement provider. (Separate sector-specific guidance will cover this in more detail.)
- An exception to the relaxation of the Scheme's requirements in respect of under-16s is the case of chaperones who accompany children who work in entertainment. Chaperones will be required to register with the ISA, and those who engage chaperones will be required to check their ISA registration.

⁷ The activity is regulated activity when a barred person considers doing it – even as a one-off – but is not regulated activity when any other person considers doing, or does, the activity.

Examples: children in the workplace

A 15-year-old girl has a Saturday job in a hairdressing salon. One member of staff is responsible for supervising and instructing her. That person is engaged in a regulated activity but does not have to be ISA registered. However, if that person was barred from working with children, he or she would be committing an offence. Where other employees give the girl advice on an ad hoc basis, and this is not part of their job description, they will not be engaged in regulated activity.

A 15-year-old boy has a paper round. If the owner of the newsagent or anyone employed by him is barred, they may not be responsible for instruction or supervision, as this would count as an offence.

Under-18s in higher education

- Teaching, training and instruction or care and supervision of under-18s in higher education. The exemption in relation to under-16s will only come into effect when the higher education institution has undertaken a risk assessment and put in place suitable arrangements in the light of the result of the risk assessment.

16–17-year-olds in mixed-age sport and leisure

- Teaching, training and instruction or care and supervision of 16–17-year-olds in mixed-age sport and leisure in a setting not specifically geared to that age group alone. This exemption applies unless the group becomes wholly or mainly composed of 16–17-year-olds.

Charity trustees

- Although it is an offence for a barred individual to act as a charity trustee for a children's or vulnerable adults' charity, there will be no requirement for trustees to register with the Scheme simply because they are a charity trustee. Only those trustees who are engaged in regulated activity (by carrying out a specified activity or working in a specified setting on a frequent or intensive basis) must be ISA registered. Each charity will have the discretion to determine whether it is appropriate for trustees to be asked to join the Scheme.

- 2.62 Following the publication of Sir Roger Singleton's report, *Drawing the Line* (December 2009), the Government agreed these further exceptions:

Work carried out in a number of specified settings

- Regulated activity where a worker or volunteer works with children or vulnerable adults in a number of 'specified settings' (such as schools), but works infrequently in each. Even if the totality of work carried out in the various settings is frequent or intensive, there is no requirement for registration.

Regulated activity by 16–18-year-olds as part of their studies

- Regulated activity undertaken by 16–18-year-olds as part of programmes arranged by an educational institution, up to the end of the academic year in which the individual has their 18th birthday.

Regulated activity carried out by visitors in relation to visiting vulnerable groups

- Regulated activity undertaken by visitors from outside England, Wales or Northern Ireland for up to three months with children or vulnerable adults also from outside England, Wales or Northern Ireland.

Host families for school exchanges

- Care and accommodation provided by adults (e.g. host parents) for under-18s on school-organised visits. The requirement for registration is lifted where the placement is for less than 28 days; the adults are volunteers; and the child's parents have agreed the selection of the adults who will provide accommodation and care for the child.

- 2.63 For all of the above, although there is no requirement for registration, the employer or organiser of the activity is entitled to check the ISA registration status of the worker or volunteer.

- 2.64 Also, although there is no requirement for ISA registration, it is an offence for a barred individual to undertake the activity.

Emergencies: exemption from the barring offence

- 2.65 There is one set of circumstances where a barred individual may carry out regulated activity. This is in an emergency, if there is no other individual available who could carry out the activity. So, for example, if a doctor were barred from working with children, he or she would still be able to administer emergency medical treatment to a child if no one else were available to do so.

Exemptions until 2013

Exemption from the requirement to register with the ISA until 2013

2.66 Certain regulated activity positions are exempt from the requirement to register with the ISA until 2013. This is because many of these services are new to the requirement for employment checks or registration schemes, particularly those run by voluntary organisations. In providing the exemption, the legislation is recognising that some organisations need more time than others to prepare for ISA registration.

2.67 These are posts carried out for the purposes of, or in connection with, the following:

- prison establishments, with the exception of prison officers' posts – the time limit to 2013 does not apply in this case
- a recreational, social, sporting or educational activity provided wholly or mainly for vulnerable adults
- a course of education or instruction which is provided wholly or mainly for vulnerable adults
- any person who is responsible for the maintenance or repair of housing for vulnerable adults, whether the service is provided by a housing manager or another person on the manager's behalf
- any person who provides support, assistance or advice, the purpose of which is to develop an individual's capacity to live independently in accommodation, or sustain their capacity to do so (these will include Supporting People and other similar services)
- any person who deals with payments because they have been appointed as, or applied for, a lasting or enduring power of attorney
- a person who has been appointed, or is to be appointed, by the Court of Protection or by the High Court in Northern Ireland under the Mental Health (Northern Ireland) Order 1986 to make decisions on behalf of another person
- a person who is appointed as an independent mental capacity advocate or an independent mental health advocate
- a representative who is, or is to be, appointed to receive social security benefits on behalf of another person.

Important. The exemptions only apply to the duty to be ISA registered and to check ISA registration status. They do not apply to the duty to make referrals to the ISA if a worker who is engaged in regulated activity is removed because they have harmed or there is a risk of harm to a child or vulnerable adult (see page 48). Nor do they allow a barred person to undertake regulated activity. They will be committing an offence by doing so.

Where the exemption does not apply

2.68 The exemption from the requirement to register does not apply to the following. This means that registration with the ISA can begin in July 2010 and will be a statutory requirement from November 2010 for the following:

- prison or prison custody officers: all prison officers, prison custody officers and staff in young offender institutions will be subject to the Scheme
- community care services provided by, or on behalf of, a local authority or health and social care trust, including recreational, sporting, social or educational activities provided as part of a community care package
- activities carried out by, or in, care homes registered under the Care Standards Act 2000 or Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003
- activities carried out by an agency required to register under the Care Standards Act 2000 or Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (these include domiciliary care agencies and nursing agencies)
- activities carried out by local authorities or health and social care trusts in the exercise of their social services or social care functions
- activities carried out by other persons on behalf of a local authority or health and social care trust in the exercise of their social services or social care functions
- activities carried out by an NHS body or by a person who provides healthcare for such a body
- activities carried out by persons who provide services that are similar to services which can, or must, be provided by strategic health authorities, NHS trusts, health and social care trusts, local health boards and primary care trusts.

Examples: how the exemptions apply

Scenario	Exempt or not?
A local leisure centre runs aquafit sessions and advertises its benefits for people with high blood pressure. However, the session is voluntary and people decide for themselves if they want to attend.	Although the session is intended to help people improve their health, as the session is open to the general public it is exempt from the Scheme.
Mustafa runs a programme of exercise in the public gym for people with weight problems. The scheme is funded by the primary care trust and GPs refer patients to it.	This activity is commissioned and carried out on behalf of an NHS body and it does not have a three-year exemption from registration with the Scheme. This activity is not exempt because the service users are receiving healthcare and therapy that can be provided for children or vulnerable adults.
Jim works as a care assistant at a day-care centre for people who have had a stroke. He enters a team of day-care attenders into the local short mat bowls tournament, which is open to the public.	The three-year exemption from registration with the Scheme does not apply because Jim is arranging a recreational activity on behalf of a local authority in connection with a community care service. Therefore the day-care attenders are participating in an activity that is specifically targeted at people with age-related needs or disabilities.
The village hall runs a snooker club. Members of the local Alzheimer's Society users group decide to go along.	The snooker club is open to the general public and is exempt from the Scheme altogether.
Ron is the maintenance man for a sheltered housing scheme and is engaged in regulated activity.	The three-year exemption from registration with the Scheme applies as Ron's work concerns the management of housing.

Summary

The Vetting and Barring Scheme was launched on 12 October 2009. The previous 'barred lists' were repealed and were replaced by two new lists: the Children's Barred List and the Adults' Barred List. These two new lists contain details of those individuals the Independent Safeguarding Authority (ISA) has decided it is appropriate to bar from working in regulated activity 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 happens to those on the old 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 was launched on 12 October 2009. The previous 'barred lists' in England and Wales⁸ and in Northern Ireland⁹ were repealed, subject to some transitional provisions, and were replaced by new lists: the Children's Barred List and the Adults' Barred List.
- 3.2 These two new lists contain details of those individuals the ISA has decided it is appropriate to bar from working in regulated activity with children or vulnerable adults and who are therefore prevented from working or volunteering with them. The lists are maintained by the ISA.

What happens to those on the old lists?

- 3.3 Secondary legislation required the ISA either to automatically include individuals from the old lists on the new lists or to look afresh at whether they should be included. The ISA has largely completed this work.
- 3.4 In many instances, depending on the nature of the existing bar, there is a legal right to make either limited or full representations. In some cases, there is no right to make representations: where individuals had been convicted of, or had 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 transfer the individual to the new barred lists.
- 3.6 Special transitional legislation provides that the old bar remains in force until the ISA has completed the process. Any check of the new barred lists, either by means of an enhanced disclosure or through the Teachers' Pension Online service, will automatically incorporate a check of this 'remnant' of the old barred lists.

The role of the ISA

- 3.7 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.
- 3.8 A team of caseworkers, who have undergone training in assessing risk of harm, 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

- 3.9 The circumstances in which an individual can be automatically included on either the Children's or the Adults' Barred List relate to where a person has been convicted of, or cautioned in relation to, a serious offence and fall into two categories.
- 3.10 For the most serious offences, the ISA is required by the SVGA and the SVGO to bar without providing the individual with an opportunity to make representations.
- 3.11 The second category relates to those offences that, although serious, allow the individual concerned to make representations as to why the bar should be removed. In these cases, the ISA is required to place the individual on the relevant list(s), but must request representations from the individual and consider them accordingly.
- 3.12 A full list of automatic bar offences is contained in Statutory Instruments¹⁰ available at www.opsi.gov.uk.

⁸ List 99, the Protection of Children's Act List (POCA) and the Protection of Vulnerable Adults List (POVA)

⁹ The Disqualification from Working with Children List, The Unsuitable Persons List and the Disqualification from Working with Vulnerable Adults List.

¹⁰ For England and Wales, SI 2009/37 and 2009/2610; for Northern Ireland, SR 2009/39 and 2009/306.

The ISA decision-making process

- 3.13 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

The right to seek appeal

- 3.14 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.

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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.

- 3.15 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.
- 3.16 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

- 3.17 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.
- 3.18 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

- 3.19 Engaging in regulated activity while barred is a serious offence. This offence became law on 12 October 2009. It replaces the former offences regarding work with children or vulnerable adults for those subject to the old barring arrangements.
- 3.20 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.
- 3.21 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.

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- 3.22 Anyone who has been 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.
- 3.23 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.
- 3.24 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

- 3.25 A person which knowingly allows someone to engage in regulated activity while barred is committing a serious offence. This offence became law on 12 October 2009. Employers should require those it engages 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 employers have no reason to believe workers or volunteers engaged by them before 12 October are barred, there is no requirement to seek new CRB/AccessNI disclosures on existing workers and volunteers to check the barred status as of 12 October 2009.
- 3.26 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.
- 3.27 If the ISA is in the process of including, or considering to include, on the new barred lists an individual who was barred under the old lists then the criminal offences existing prior to 12 October 2009 that prevent them from working with the relevant vulnerable group will continue to apply.

- 3.28 The employer 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.
- 3.29 As an employer, 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.
- 3.30 An employer charged with the offence may use the defence that it had to permit the individual to engage 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.
- 3.31 For the purposes of these offences, an offender 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.

Barring decisions and employment rights

Regulated activity

- 3.32 When the ISA notifies your RAP that it has barred you, the RAP must remove you from regulated activity straightaway, otherwise you will both be committing a criminal offence. In order to remove you from regulated activity, your RAP must either:
- dismiss you (after taking professional human resources or legal advice)
 - transfer you to other work (i.e. not involving regulated activity), or
 - place you on temporary paid suspension while deciding between a) and b).

Dismissal

- 3.33 The SVGA and the SVGO do not give a blanket authority to RAPs to dismiss an employee because of an ISA bar. However, under section 98(2)(d) of the Employment Rights Act 1996 or Article 130, paragraph 2(d) of the Employment Rights (Northern Ireland) Order 1996, the need to avoid contravening a duty or restriction imposed by an enactment is an acceptable reason for dismissal and one on which a RAP would be able to rely as a defence in unfair dismissal proceedings.
- 3.34 The government's view is that employment tribunals would regard such a dismissal as reasonable in the following circumstances:
- If the work setting is such that there will always be opportunities for access to the vulnerable group to which the bar applies, and the RAP would be committing a criminal offence in continuing to permit the individual to engage in regulated activity, dismissal on the same basis as if the employee had committed gross misconduct is the only available option. This will be the case for those forms of regulated activity that take place in specified settings, namely schools, children's centres, children's hospitals, detention centres for children, children's homes, registered childcare premises and adult care homes. Dismissal would be appropriate in these settings whether or not the conduct leading to the bar occurred in the workplace. Statutory minimum dismissal procedures would not apply, but prudent RAPs would invite the employee to discuss the situation before confirming the dismissal.
 - If the work is governed by a contract of employment which stipulates that the individual will be dismissed if barred, or which limits the individual's work to regulated activity, so that the RAP is under no obligation to redeploy that person. However, any such contractual condition would need to be reasonable in all the circumstances.
 - If the post is a specified position (see page 17 of this guidance). In this case, if a barred office holder fails to resign, they must be relieved of the post immediately the bar is communicated to them and their RAP. For some office holders, there is no RAP – for example school governors. The onus is on these office holders to resign their position immediately to avoid committing an offence.

3.35 In many cases, the RAP can dismiss the employee as soon as it becomes aware of the conduct that led to the bar (i.e. before receiving notification of the bar from the ISA). For example, this might occur where the individual's contract of employment states that the RAP can dismiss for:

- gross misconduct, and the conduct amounts to gross misconduct
- conviction of a criminal offence such as the offence in question, and/or
- where applicable, failure to notify the RAP of the conduct.

Transfer

3.36 In some employment settings, particularly some of those new to barring schemes, regulated activity may be a relatively small part of the RAP's overall activities, and redeployment may be a more feasible option than in other settings. If there is any possibility of redeployment, the RAP should consider this

rather than dismissing the individual outright. If a RAP does opt for dismissal, it should be prepared to demonstrate to an employment tribunal that fair procedures were followed. This will include showing that it looked for alternative employment within the organisation.

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 the duty to refer can be found on page 48, and full guidance on the referral process can be found on the ISA website (www.isa.homeoffice.gov.uk).

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Summary

Individual employees and volunteers have a responsibility to ensure that they are compliant with the Vetting and Barring Scheme. Individuals must ensure that they are registered with the Independent Safeguarding Authority (ISA) and are required to pay the application fee, although regulated activity providers (RAPs) may choose to pay this for them. The fee is waived for volunteers. Failure to comply with the Scheme will carry serious legal penalties.

This section explains what employees and volunteers must do – and when – to ensure that they are complying with the Scheme. It covers:

- who must apply for ISA registration
- recruitment to new posts
- borderline and special cases
- disputes relating to applications for ISA registration, and
- barring.

Section 4: How the Vetting and Barring Scheme will affect employees and volunteers

- 4.1 The Vetting and Barring Scheme will require anyone aged over 16 working in regulated activity (see page 13), paid or unpaid, with children or vulnerable adults to be ISA registered, subject to exceptions (see 'General exemptions from the requirement for ISA registration' on page 26).
- 4.2 Registration begins on 26 July 2010 for those starting new roles in regulated activity and becomes mandatory for anyone starting in a new role from 1 November 2010. For those already working in regulated activity, registration will be phased between April 2011 and July 2015.
- 4.3 Your regulated activity provider (RAP) will advise you when you need to register and should guide you through the registration process. You will only have to register once because ISA registration status is portable to any future role in regulated activity. Registration will be free for volunteers; paid workers will be charged a fee of £64 (£58 in Northern Ireland). However, your RAP may agree to pay this on your behalf.
- 4.4 If you are required to register, you should expect your RAP to check your registration status as part of the recruitment process. They will also continue to carry out usual employment checks, including CRB/ AccessNI disclosures (where applicable), checking qualifications and taking up references.
- 4.5 From 1 November 2010, it will be an offence to begin to engage in regulated activity without being ISA registered for the relevant vulnerable group, unless one of the exemptions applies.
- 4.6 If you are already carrying out regulated activity before 1 November 2010 and registration is required in your case, you will be committing an offence if you have not registered with the ISA by the time the phasing strategy is complete in 2015 (see page 53).
- 4.7 If you are barred from working with a vulnerable group, you cannot be ISA registered and must not engage in regulated activity with that vulnerable group. If you do, you will be committing a more serious offence.
- 4.8 If you are supplied by a personnel supplier, the requirement to check your registration status lies with the personnel supplier. The employer may still want to

satisfy themselves that you are registered and can do so by using the online service. If you are supplied to a RAP for more than three months, then it must check your registration at the end of the third month.

Who must apply for ISA registration?

- 4.9 Anyone carrying out regulated activity frequently or intensively must apply for ISA registration. Registration will happen in phases beginning with new starters in regulated activity.
- 4.10 The phasing strategy requires new starters in regulated activity starting work on or after 1 November 2010 and anyone moving to a new job in regulated activity with a new RAP on or after 1 November 2010 to register with the ISA before starting work in regulated activity. However, certain forms of regulated activity with vulnerable adults will be exempt from registration until 2013 (see page 28 for further details).
- 4.11 New starters will include anyone who starts work or volunteering on or after 1 November 2010 even if they do not expect to come into contact with vulnerable groups until a later date. For example, a nursing student who starts a course in January 2011 but will not start working with patients until March 2011 may register with the ISA in time to start the course in January.

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4.12 You will be able to register using the new application form at any time from 26 July 2010, but there will be no statutory requirement for anyone to register with the ISA before 1 November 2010. The availability of the registration process in advance of 1 November 2010 will allow those who start work in regulated activity on or around that date to do so without delay.

Continuous employment

4.13 The requirement to register from 1 November 2010 applies to new starters and those moving roles to a new RAP. It does not apply if you were already carrying out regulated activity immediately before 1 November 2010 and continue to carry out the same regulated activity after that date. This is known as continuous employment.

You will also be regarded as being in continuous employment if:

- you are carrying out periodic or seasonal activity with the same RAP and, while you may not have had contact with the vulnerable groups for up to a year, you expect to resume the activity on or after 26 July 2010 and have written confirmation of this
- you are a student on a training course for regulated activity work and your course started before 1 November 2010
- you move without a break between roles with the same RAP, for example you are a care worker employed by the local authority who transfers from one day-care centre to another. Your place of employment has changed, but you carry on in the same role working for the same RAP. However, in the case of schools in England and Wales, even where the same local authority is the employer, each school will be a separate RAP
- if you are a student on a training course which began before 1 November 2010, you will not have to be registered for any placement in regulated activity which you do as part of that course.

In all of these cases, you may not apply to be ISA registered before April 2011 and you should wait until the VBS is phased into your sector or workplace at some point between April 2011 and July 2015.

4.14 In Northern Ireland, continuous employment will be broken if an individual moves between employers. The employer for teaching and non-teaching staff in grant-aided schools, depending on management type and delegated budget status, may be the relevant education and library board or the board of governors.

Continuous updating

Whenever new relevant information (such as a conviction or caution) becomes known about an individual registered with the ISA, the information will be sent to the ISA. The ISA will consider the information, together with other information known on the individual, and decide whether it indicates that the individual poses a risk of harm. If so, the ISA will start its barring processes (see Section 3). If an employer has already checked on an employee's status and has subscribed for notification of any status change, that employer will automatically be notified, should that employee's registration status change.

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What to do when you are registered

Applicants for ISA registration across England, Wales and Northern Ireland will receive confirmation from the Criminal Records Bureau (CRB) that they are ISA registered, and a unique Scheme reference number. You should share this number with your RAP, so that they can use it to verify registration online. If you are engaged in paid regulated activity, you are liable to pay the application fee for registration. Your RAP may choose to pay the fee on your behalf. The fee is waived for those engaging in unpaid volunteering work. However, if you subsequently move into paid regulated activity, the fee will be payable at that stage before the new employer can confirm registration status.

Recruitment to new posts

- 4.15 If you are a new starter in regulated activity, you must to be registered before you begin work. Your RAP must also have checked your registration status; you must consent to the check and share your unique Scheme reference number with your RAP, so that they can carry out the check. In some sectors, an enhanced disclosure may also be needed, if other existing legislation requires it, or government guidance recommends it. In these cases, the individual's registration status will appear on the disclosure (as long as the registered body ticked the 'suitability information' box on the application form for the relevant workforce).
- 4.16 Depending on the sector, and whether you are being placed by a personnel supplier or working for a sub-contractor, you may be asked to consent in writing to an existing enhanced disclosure being shown to a prospective RAP. Alternatively, you may decide to show your own copy of an existing disclosure to a prospective RAP. If neither is possible, a new disclosure may be required. The Government has undertaken, in its response to Sir Roger Singleton's report *Drawing the Line* (<http://publications.everychildmatters.gov.uk>) to review the statutory requirements for CRB disclosures in the light of the Scheme. The review will begin in 2010.

Borderline and special cases

- 4.17 Some activity with vulnerable groups is not regulated activity, and people engaged in it will not need to be registered. In other cases, the requirement to be registered will be lifted, even though the activity itself counts as regulated activity. See 'Exceptions to regulated activity' on page 25 and 'General exemptions from the requirement for ISA registration' on page 26.
- 4.18 Where there is any doubt as to whether an activity is regulated activity, or whether an individual must be ISA registered (subject to the phasing strategy), the RAP should provide guidance.
- 4.19 If you think you may be engaged in regulated activity but your RAP disagrees, it should provide written confirmation that ISA registration is not needed.
- 4.20 Under-16s who want to start regulated activity after the VBS comes into effect should register in time for their 16th birthday to avoid committing an offence, except those engaging in regulated activity as part of their continuing education up to the age of 18 (see page 27).

Offences relating to regulated activity

Working in regulated activity while not ISA registered

- 4.21 Anyone engaging in regulated activity while not ISA registered will commit an offence unless they are covered by one of the exceptions to the Scheme (see page 24), subject to the following:
- Their activity requires them to be registered.
 - The offence applies from 1 November 2010.
 - Until 25 July 2015, the offence will only apply to new employees and job movers in regulated activity moving to a new RAP.
 - From 25 July 2015, when all the existing workforce should be ISA registered, the offence will apply to everyone working in regulated activity who is required to be registered.
- 4.22 The penalty for this offence is a fine of up to £5,000. Note that anyone working in regulated activity will be expected to be aware of the VBS and this guidance.

- 4.23 Where a conviction turns on whether the activity is regulated activity by virtue of the fact that it is carried out frequently, the amount of the fine may take account of the extent to which the person considered the guidance issued by the Government on frequency. This guidance is at Annex B.

Disputes relating to applications for ISA registration

- 4.24 If you disagree with any disclosures resulting from your application, you should raise the matter with the relevant disclosure body (CRB or AccessNI). The disclosure will be either an enhanced disclosure if your RAP applied for this or the more limited disclosable information if they did not.
- 4.25 In a very small minority of cases, the wrong information finds its way onto a disclosure. If this happens and the ISA informs you that it is considering your case, you will have the chance to challenge any wrong information before any decision about barring is made (see 'Barring' right). The CRB/AccessNI and the ISA have complaints procedures, and all are subject to investigation by the Parliamentary Commissioner for Administration, which can investigate maladministration and award compensation. As and when policing and justice is devolved in Northern Ireland, these arrangements will change and details will be published on the AccessNI website and reflected in future editions of this guidance.

Barring

- 4.26 If and when the ISA reaches the stage that it is 'minded to bar', it will seek representations from you and will inform anyone it knows you to be working for (either on a paid or a voluntary basis). It may be the case that the RAP that made the referral to the ISA has already dismissed you for the conduct that led to the referral. If not, you should bear in mind that, if you receive a letter from the ISA saying that it is minded to bar you subject to any representations you may wish to make, the ISA will inform the RAP at the same time. The RAP may then suspend you, move you to another position or provide additional supervision when you are in contact with the relevant vulnerable group. The RAP may also take action, depending on the employment contract, in respect of any failure by you to notify it of any relevant convictions.
- 4.27 You will then have eight weeks to make representations based on all the information the ISA has relied on in reaching this stage of the process. The representations may cover any mitigating circumstances and/or finding of fact by the ISA. If your conduct has been the subject of proceedings before your professional body, for example the Nursing and Midwifery Council, you may not make representations to the ISA about any findings made in the proceedings as to the facts of your case.

Barred people and frequency

Note that the frequency and intensiveness tests will be disregarded in the case of barred individuals – i.e. the bar will still apply, regardless of whether the activity is frequent or intensive.

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- 4.28 If you fail to make representations during the statutory period, the bar will be confirmed. However, if the ISA is unable to establish your whereabouts at the time it is seeking representations and proceeds to bar you, it may reactivate the representations process later, if it locates you.

Online status check

Your RAP can check your registration status online. You must consent to the check and give them your unique Scheme reference number to enable it. Your RAP may also register an interest (subscribe) in your registration status and receive updates if that status changes. Individuals will not automatically be informed when an online status check is carried out. To check who has 'registered an interest' or 'subscribed' to you, you need to carry out a 'subject access request' under the Data Protection Act 1998. If you consider that a RAP's interest in you is not justified, you can write to the CRB. The CRB will remove the subscription at an employee's request and notify the employer accordingly. If the employer disagrees, it must discuss the issue with the employee and, if appropriate, re-establish the subscription.

Summary

Regulated activity providers (RAPs) have a responsibility to ensure that anyone working or volunteering for them in regulated activity is compliant with the Vetting and Barring Scheme (VBS). RAPs must check that their workers and volunteers are registered with the Independent Safeguarding Authority (ISA) and not barred from working with children or vulnerable adults. Failure to comply with the VBS will carry legal penalties.

This section explains what RAPs must do – and when – to ensure that they comply with the Scheme.

It covers:

- key responsibilities
- ensuring compliance among existing employees or volunteers
- recruitment to new posts
- borderline and special cases
- applications for ISA registration
- offences relating to ISA registration
- barring, and
- referrals.

Section 5: How the Vetting and Barring Scheme will affect regulated activity providers

- 5.1 The Vetting and Barring Scheme will require RAPs to ensure that everyone working or volunteering for them in regulated activity is ISA registered and is not barred from working with children or vulnerable adults unless they fall within the exemptions from the requirement to register (see page 26).
- 5.2 Registration begins on 26 July 2010 for those starting new roles in regulated activity and becomes mandatory for anyone starting in a new role from 1 November 2010. For those already working in regulated activity, registration will be phased between April 2011 and July 2015.
- 5.3 As a RAP, you will be expected to manage the phasing strategy for your organisation (see page 53, Advice for regulated activity providers). You should be able to guide your employees/volunteers through the registration process and advise them when they need to register.
- 5.4 RAPs also have a legal duty to refer to the ISA any information about individuals who may pose a risk of harm to vulnerable groups, in particular if you remove someone from regulated activity or controlled activity for allegedly causing harm or posing a risk of harm (see page 48).
- 5.5 Individuals making private arrangements, such as parents employing a piano teacher for their child, are not RAPs. Consequently the duty to check does not apply in such arrangements. See Section 2 for more detail about what constitutes regulated activity where the requirement to register applies.
- 5.6 Separate guidance on how the VBS will apply to employment agencies and employment businesses will be made available.

Key responsibilities

- 5.7 From 1 November 2010, RAPs must not allow individuals over 16 to begin regulated activity unless they are ISA registered for the relevant vulnerable group or they fall under one of the exemptions from the requirement to register which are set out on page 26. RAPs should ensure that those already carrying out regulated activity become registered according to the phasing strategy for their sector. Phasing will begin in April 2011 – RAPs should not ask existing employees or volunteers to register before then.
- 5.8 Once the phasing strategy is complete, RAPs must be sure that all employees/volunteers engaging in regulated activity including existing employees/volunteers are ISA registered. You will commit an offence if you allow such individuals to engage in regulated activity without being ISA registered for the relevant vulnerable group.
- 5.9 It would therefore be sensible to maintain records of registration checks undertaken, and we strongly recommend that you subscribe to the Scheme for notification of any change in employees' or volunteers' status.
- 5.10 RAPs will commit a more serious offence if they knowingly permit a barred person to work in regulated activity, either as a one-off or for any length of time.

What is a RAP?

A RAP is a person responsible for the management or control of the regulated activity. A RAP may be an organisation or a responsible individual within that organisation. Certain organisations are RAPs, such as those arranging fostering. Certain licensing or governing bodies, such as the Football Association and other national sports governing bodies and the Driving Standards Agency (Driver and Vehicle Agency in Northern Ireland) will have the same powers as a RAP to check an individual's registration status, as will some specified regulatory bodies and inspectorates, although they are not RAPs themselves.

- 5.11 Checking registration status should form part of the recruitment process. It complements, and does not replace, good practice in recruitment procedures. Registration is not a seal of approval, only a confirmation that there is no known reason to bar an individual. The ISA will be continuously updated with any new relevant police information on that person and would, if it became minded to bar, alert anyone who has registered an interest in them.
- 5.12 RAPs are expected to facilitate applications for registration by successful applicants for regulated activity posts and by members of the existing workforce when the time comes for them to apply for registration. RAPs may choose to pay the registration fee on behalf of individual applicants, but do not have to do so.

Ensuring compliance among employees and volunteers

- 5.13 Subject to the exceptions (see 'Exceptions to the Vetting and Barring Scheme' on page 24), RAPs should require all employees and/or volunteers carrying out regulated activity to apply for registration in accordance with the phasing strategy, and should facilitate their application. The Scheme will be open to applications from 26 July 2010 for new members of the workforce or those changing jobs to work for a new RAP.
- 5.14 The phasing strategy will require new starters in regulated activity on or after 1 November 2010 and those moving into regulated activity roles within their existing organisations on or after that date to register with the Scheme before starting work. If you accept an applicant for a post which involves carrying out

regulated activity and the applicant is not registered, you should facilitate their application for registration. Posts may fall into one of two categories:

- Those for which an enhanced disclosure is also required (see paragraph 5.22). Applicants should apply for both checks at the same time, using the same application form.
- Those for which an enhanced disclosure is not required but where the RAP must satisfy himself that the applicant is registered. Best practice here is for the RAP to enable a recruit's application for registration by directing them towards a Criminal Records Bureau (CRB)/AccessNI registered or umbrella body that can make the application. See page 7 for more on umbrella bodies. Contact the CRB/AccessNI for more information (see 'Further information' on page 59).

- 5.15 New starters will include those beginning work on or after 1 November 2010 but who do not expect to make contact with vulnerable groups until a later date. For example, nursing students starting their course in January 2011 but not due to work with patients until March 2011 may register with the ISA in time to start their course in January.
- 5.16 Employees and volunteers will be able to register using the new application form at any time after 26 July 2010, but there will be no statutory requirement to register with the ISA before 1 November 2010. The availability of the registration process in advance of 1 November 2010 will allow those who start work in regulated activity on or around that date to do so without delay.

Continuous employment

- 5.17 The requirement to register from 1 November 2010 applies to new starters and those moving roles to a new RAP. It does not apply to employees and volunteers who are carrying out the same regulated activity on 1 November 2010 as immediately before that date (continuous employment).

Employees and volunteers will also be regarded as being in continuous employment if:

- they are carrying out periodic or seasonal activity and, while they may not have had contact with the vulnerable groups for up to a year, they expect to resume the activity on or after 26 July 2010 and have written confirmation of this
- they are a student on a training course for regulated activity work and the course started before 1 November 2010

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- they move without a break between roles with the same RAP, for example they are a care worker employed by the local authority who transfers from one day-care centre to another. The place of employment has changed, but they carry on in the same role working for the same RAP. However, in the case of schools in England and Wales, even where the same local authority is the employer, each school will be a separate RAP.

Such employees/volunteers may not be ISA registered before April 2011 and should wait until the VBS is phased into their sector at some point between 2011 and July 2015.

- 5.18 In Northern Ireland, continuous engagement will be broken if an individual moves between employers. The employer for teaching and non-teaching staff in grant-aided schools, depending on management type and delegated budget status, may be the relevant education and library board or the board of governors.

Employing people in a private capacity

There is no offence committed if a person decides not to register an employee with the Scheme where the worker is employed in a private capacity. For example, a person with a direct payment does not commit an offence if they decide not to use a registered person to provide such personal assistance. However, a person who is barred by the Scheme commits an offence if they apply for or do any work for a person receiving a direct payment where such work is regulated activity.

Recruitment to new posts

- 5.19 In many situations, you may allow an employee/volunteer to start work in regulated activity once you have checked their registration status online. In these cases, you must ask the individual to consent to the check and to share their VBS reference number with you to enable you to carry out the check. In other sectors, an enhanced disclosure may also be required, subject to existing regulations. A false declaration for the purposes of a fraudulent online status check will be an offence punishable by a fine of up to £5,000.
- 5.20 In some sectors, an enhanced disclosure is required or must have been applied for before the individual can start work. If you are awaiting an enhanced disclosure while a newly recruited individual who became ISA registered in order to start this post with you is in the workplace carrying out regulated activity, you should consider

whether good practice recommends supervision of the individual, pending the enhanced disclosure. It may also be good practice for the contract of employment to be provisional, pending the enhanced disclosure.

- 5.21 Depending on your sector and the circumstances, other existing legislation or government guidance may require you to see a fresh enhanced disclosure or have sight of an existing enhanced disclosure that has been obtained by a personnel supplier or a sub-contractor or another RAP. Both a new enhanced disclosure and sight of an employer's copy of an existing enhanced disclosure will be subject to the individual's written consent. An employee in regulated activity cannot refuse to be ISA registered. In addition, some posts require a disclosure by law and so failure to consent would mean that the individual could not take up that post.
- 5.22 The Government has undertaken, in its response to Sir Roger Singleton's report *Drawing the Line* (<http://publications.everychildmatters.gov.uk>) to review the statutory requirements for enhanced disclosures in the light of the Scheme. The review will begin in 2010.
- 5.23 You may wish to consider whether the Scheme can help you streamline your recruitment procedures, by, for example, carrying out the online status check at the shortlisting stage once the Scheme is fully operational. It would also be sensible for RAPs to incorporate consent to checking and the procedures to be followed in the event of 'minded to bar' and barring notifications in their recruitment literature and contracts of employment.

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Borderline and special cases

- 5.24 Some activity with vulnerable groups is not regulated activity, and people engaged in it will not need to be ISA registered. In other cases, the requirement to be ISA registered will be lifted, even though the activity itself counts as regulated activity (see 'Exceptions to regulated activity' on page 25).

Applications for ISA registration

- 5.25 As a RAP, you are responsible for ensuring that individual employees and/or volunteers carrying out regulated activity are registered in accordance with the phasing strategy. If you are recruiting someone who is not yet ISA registered to a regulated activity post, you should make sure that they apply for ISA registration in good time. If you would normally apply for a CRB/AccessNI disclosure on their behalf, you may wish to assist them to apply for ISA registration on the same form.
- 5.26 RAPs who are entitled to obtain an enhanced disclosure may seek one at the same time as the application for registration is being made. In such cases, the RAP should indicate that it requires a disclosure when completing the application form.
- 5.27 Likewise, when applying for an enhanced disclosure, a RAP can choose the 'suitability information' option on the application form in respect of the relevant workforce(s). Suitability information includes information about the applicant's registration status and whether they are on a barred list.
- 5.28 The individual is liable for the application fee in respect of paid regulated activity. RAPs may choose to pay this on their behalf. Please note: The fee is waived for those engaging in unpaid volunteering work. However, if the individual subsequently moves into paid regulated activity, the fee will be payable at that stage before the new employer can confirm registration status.
- 5.29 RAPs should note that, if an ISA application includes an application for an enhanced disclosure, this disclosure may not come until a few weeks after ISA registration is completed. In the meantime, RAPs would be advised to put safeguards in place.

Advice and guidance

RAPs are expected to give guidance to employees or volunteers as to whether they should be ISA registered and to facilitate applications for ISA registration.

- 5.30 For regulated activity in England and Wales, applications should be sent to the CRB through one of its registered bodies or umbrella bodies in England and Wales. In Northern Ireland, applications should be sent to AccessNI through one of its registered bodies or umbrella bodies. Scotland will have its own scheme. If in doubt, seek advice from the CRB/AccessNI. Applications sent to the wrong jurisdiction will be returned.
- 5.31 Under-16s wanting to start regulated activity after 1 November 2010 should register in time for their 16th birthday to avoid committing an offence, except those engaging in regulated activity as part of their continuing education up to the age of 18. If you are engaging young people to work with vulnerable groups, you should check their age and arrange ISA registration as necessary, in order to avoid inadvertently committing an offence.
- 5.32 Employees/volunteers will be sent confirmation of registration from the CRB along with a unique Scheme reference number. From November 2010, the registered body that submitted the application will receive a similar notification. As a RAP, you must ask for the individual's consent before using their unique Scheme reference number to check their status online in advance of any disclosure coming through. If you are a RAP other than the registered body that submitted the application, you must obtain the reference number from the individual in order to carry out the check. The disclosure will give detailed information, including information about any criminal background.

Parents as employers

Parents may employ self-employed individuals to carry out regulated activity other than through private arrangements – for example, sub-contracted from a RAP. In this case, the parent may seek confirmation from the RAP that the individual is ISA registered. In some cases, the individual may be able to certify that a national governing or licensing body has endorsed them: for example, the Football Association in the case of football coaches. Alternatively, the parents may ask to carry out an online status check themselves, but they cannot obtain an enhanced disclosure on an individual.

The self-employed individual does not have to be ISA registered, but will commit an offence if they seek to carry out such work while barred.

Disputes

If an individual disagrees with the content of a disclosure further to an application, they should raise the matter through their registered or umbrella body with CRB/AccessNI. While an individual is pursuing a dispute or complaint, your actions as a RAP should be guided by the extent to which you trust the individual, but you should not take it for granted that they will be cleared.

Offences relating to ISA registration

Allowing someone to work in regulated activity without being ISA registered

- 5.33 A RAP who permits someone to engage in regulated activity who is not ISA registered will commit an offence, subject to the following:
- The offence applies from 1 November 2010.
 - Until 25 July 2015, the offence will only apply to new employees and job movers in regulated activity.
 - From 25 July 2015, when all the existing workforce should be ISA registered, the offence will apply to everyone working in regulated activity.
- 5.34 The penalty for this offence is a fine of up to £5,000.
- 5.35 Where a conviction turns on whether the activity is regulated activity by virtue of the fact that it is carried out frequently, the amount of the fine may take account of the extent to which the RAP considered relevant guidance issued by the Government. See Annex B for further information.

Failure to check for ISA registration

- 5.36 Failure to make the appropriate check will be a criminal offence, punishable by a fine of up to £5,000.
- 5.37 The requirement to check does not apply in cases of continuous employment (see page 44) until July 2015.

- 5.38 Additionally, the requirement to check is subject to the following:

- The offence will not begin to apply until 1 November 2010.
- From that date until 25 July 2015, the offence will only apply in relation to new employees and job movers in regulated activity.
- From 25 July 2015, when all the existing workforce should be ISA registered, the offence will apply in relation to everyone working in regulated activity.

Allowing someone to work in regulated activity while barred

- 5.39 A RAP who knowingly allows someone to engage in regulated activity while barred will commit a more serious offence. This offence became law on 12 October 2009. RAPs should require those they permit to carry out regulated activity to tell them if they are barred, and should adjust contracts of employment to include this requirement, if necessary.
- 5.40 If people who are barred under the existing schemes have not yet been transferred to the new barred list(s), the criminal offences existing prior to 12 October 2009 that prevent them from working with the relevant vulnerable group will continue to apply.
- 5.41 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.
- 5.42 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.
- 5.43 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.
- 5.44 For the purposes of the RAP offences, the offender 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 or not ISA registered.

Barring

- 5.45 When it reaches the stage that it is 'minded to bar' an individual, the ISA will inform any organisations it knows to be linked to that person. By this stage, if it is the RAP that made the referral, it may already have dismissed the individual for the conduct in question. If not, at the point at which the ISA seeks representations from the individual, it will also notify any subscribing RAP or any other known interested party. The RAP might then suspend the individual, move the individual to another position or increase levels of supervision. The RAP may also take action, depending on the employment contract, in respect of any failure by the employee to notify it of any relevant convictions.
- 5.46 Once an individual is registered in accordance with the phasing strategy, RAPs will be able to subscribe for notification of any change in status. The Scheme will notify RAPs that a barred person in whom they have registered an interest (subscribed) is no longer registered. That will be the signal for the RAP to remove the individual from regulated activity.
- 5.47 Where an individual employee or volunteer decides to appeal against a bar, the bar will continue to apply while the appeal is in progress.
- 5.48 See Section 3 for more information on the employment implications of barring.

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The duty to refer information to the ISA

- 5.49 There is a duty on RAPs to refer individuals to the ISA for consideration for barring in relevant circumstances and to provide information to the ISA upon request. This duty, which came into effect in October 2009, also applies to personnel suppliers and to responsible persons in the case of controlled activity.
- 5.50 The duty to refer applies when a RAP has withdrawn permission for an individual to carry out regulated activity or controlled activity, or if the individual has left while under investigation, on the grounds either that they had caused harm or that they posed a risk of harm to a child or vulnerable adult.
- 5.51 **In particular**, 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 31). Failure to provide information to the ISA is a criminal offence and can result in a fine.
- 5.52 For personnel suppliers (employment agencies, businesses and, in some cases, educational institutions), the duty to refer individuals to the ISA arises in a wider range of circumstances, including: where the supplier ceases to supply an individual for regulated or controlled activity; or becomes aware that an individual supplied by them has been removed from regulated or controlled activity; or if before permission is withdrawn 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 educational institution, this condition is met when they cease to supply an individual for regulated or controlled activity; or determine that the individual should cease to follow a course at the institution; or the person ceases to engage in the activity or follow the course.
- 5.53 The ISA will take into account any findings of fact in disciplinary proceedings against the individual and RAPs and responsible persons should forward all relevant information relating to such proceedings to the ISA with the referral.

- 5.54 The circumstances in which the duties to refer arise are similar to those for RAPs and responsible persons, namely that the individual has harmed or poses a risk of harm to a child or vulnerable adult.
- 5.55 RAPs may also refer individuals if they are concerned about their conduct and think the ISA ought to be made aware of it. This will apply where, for example, a local allegation cannot be substantiated sufficiently for the duty to refer to be triggered. Note that RAPs should not make referrals on the basis of allegations they suspect to be unfounded or malicious.
- 5.56 When making a referral, RAPs should use the downloadable referral form (see 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.
- 5.57 The duty to provide information will override any obligation to withhold information on the 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.
- 5.58 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 co-ordinated referral.
- 5.59 For more information on when the duty to refer applies, visit the ISA website (www.isa.homeoffice.gov.uk).

The online status check

This is a service available to anybody who is entitled to check the ISA registration status of an employee or potential employee who will be engaged in certain categories of paid or voluntary work that will bring them into contact with children or vulnerable adults.

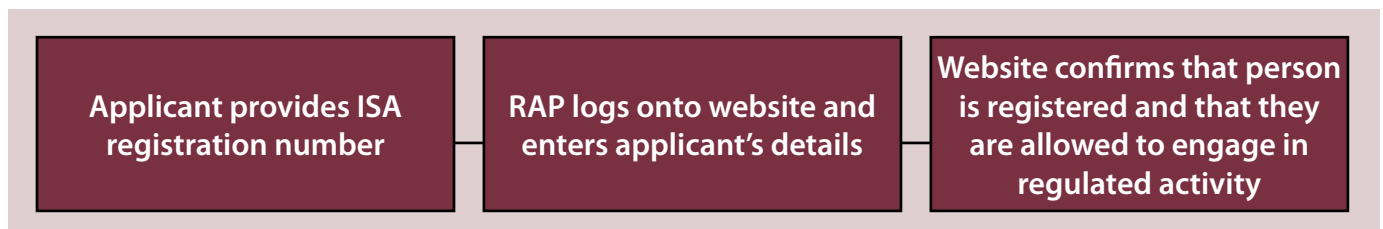
The service allows RAPs to check whether their employees or volunteers are registered with the ISA and therefore permitted by law to work or volunteer in regulated activity with children or vulnerable adults. It also allows them to register an interest (subscribe) in an individual's registration status and receive updates if that status changes.

There is also provision for two bulk facilities – 'bulk status check' and 'bulk status check and subscription' – for RAPs that need to monitor the status of many employees.

Any RAP with a legitimate interest in an individual for employment purposes and who has that individual's consent can carry out the checks. The decision as to who should have responsibility for accessing the online service will lie with the RAP.

It is illegal to check on someone's registration status without a legitimate interest and without consent. Where an individual provides their unique Scheme reference number to their RAP, this will be taken as implying consent. Individuals should therefore keep their registration number secure and not give it to anyone unless they are happy for that person to check their registration status.

Online status checking and monitoring



Summary

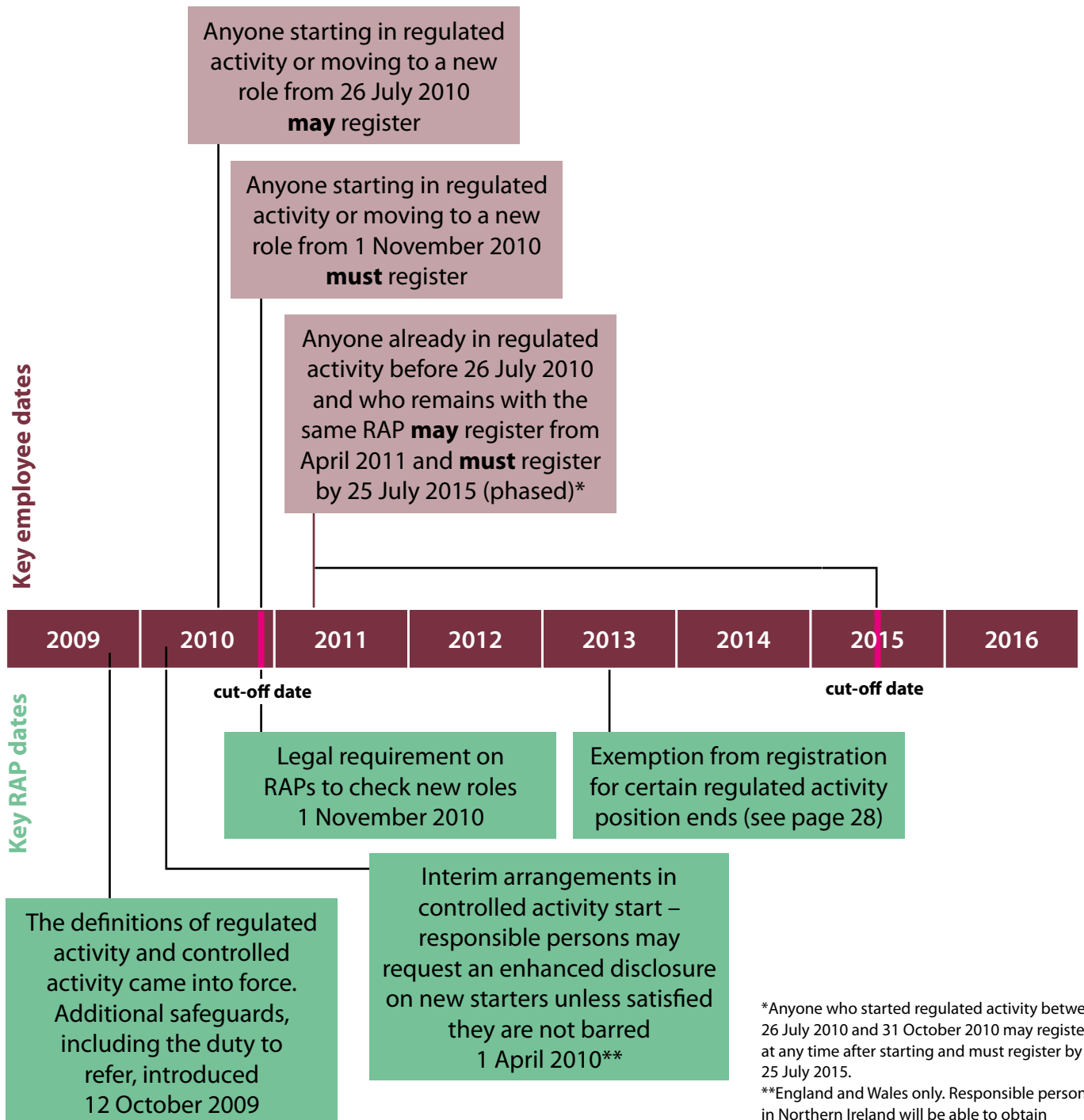
The Vetting and Barring Scheme came into effect in October 2009. From July 2010, anyone who is taking up a new role working with children or vulnerable adults in regulated activity, paid or voluntary, **may** register with the Independent Safeguarding Authority (ISA). New workers **must** register by November 2010, from which time all regulated activity providers (RAPs) will have a legal duty to check that workers or volunteers taking up new roles are ISA registered. All those who currently work with children and vulnerable adults must also register in phases up to 2015.

This section provides information on the roll-out and phasing of the Scheme, for both RAPs and employees/volunteers. It covers:

- employees and volunteers involved in regulated activity, and
- providers of regulated activity.

Section 6: Timescales

The Vetting and Barring Scheme: what's happening when



*Anyone who started regulated activity between 26 July 2010 and 31 October 2010 may register at any time after starting and must register by 25 July 2015.

**England and Wales only. Responsible persons in Northern Ireland will be able to obtain enhanced disclosures. This facility began on 12 October 2009.

Moving to a new role

- 6.1 From 26 July 2010, if you start a position in regulated activity with a new RAP, either paid or as a volunteer, you may register with the VBS.
- 6.2 From 1 November 2010, if you move to a new role with a new RAP that you know to be a regulated activity, either paid or as a volunteer, you **must** join the Scheme. You will be committing a criminal offence if you fail to do so before starting in your new role.

Examples: moving to a new role

Mr A is a healthcare assistant, but is changing jobs to become a school bus driver on 20 November 2010. He must join the Scheme before he can start his new job.

Mrs B is a teacher at a school in Bristol, but is moving to take up a new teaching job in Manchester in September 2010. She may choose to register before she starts her new job, but is advised not to do so, particularly if her new employer has already obtained a CRB disclosure on her using the pre-July 2010 CRB application form. If she does not join the Scheme now, she will have to join later before the requirement to join takes effect in 2015.

Examples: already in regulated activity

Mrs F was a volunteer with St John Ambulance prior to 1 November 2010, and she is continuing in the same role after this date. She must join the Scheme by 25 July 2015.

Already working in regulated activity

- 6.3 If you are already working or volunteering in regulated activity before November 2010 and are not moving to a new role, you will not need to join the Scheme immediately. You will be asked to join the Scheme at some point over the period from April 2011 until 25 July 2015. Your employer should advise you when you need to register.

Continuous employment

- 6.4 Continuous employment is a continuous period in which a person is deemed to be engaged in regulated activity. This is relevant to people such as students doing work placements and seasonal workers including foster carers, because, if their work is accepted as continuous employment, they will already be regarded as engaging in regulated activity and will not have to register with the ISA immediately if they return to regulated activity on or after 1 November 2010.
- 6.5 Only those who start in or move to a role with a new RAP in regulated activity on or after 1 November 2010 will have to register with the ISA before they begin to carry out the activity.
- 6.6 Some seasonal workers and foster carers who may have had a break or who are not doing regulated activity when the requirement comes into force in November will also be regarded as in continuous employment and will not need to join the Scheme as soon as they re-enter employment. They will be required to register by 2015.
- 6.7 Students who are starting or returning to training courses prior to 1 November 2010 that will require work placements in regulated activity will not need to register with the ISA. See the separate sector-specific guidance for higher education.

There is more information on continuous employment on page 38 (for employees) and pages 44–5 (for RAPs).

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Advice for regulated activity providers

Existing staff or volunteers

- 6.8 Where staff or volunteers are already involved in regulated activity, regulated activity providers (RAPs) must check that they are all ISA registered by 25 July 2015. These workers will apply to join the VBS gradually. This will ensure that systems are not overloaded and that applications can be processed quickly and efficiently.
- 6.9 RAPs must plan how to implement the Scheme to meet the main cut-off dates, according to the priorities set out below. It will be up to each RAP to manage this process for their organisation.
- 6.10 RAPs should speak to their registered body/umbrella body and agree when staff will be asked to apply. Registered bodies have been asked to help RAPs prioritise certain groups:
- Priority 1: those without an existing disclosure
 - Priority 2: those with an older disclosure
 - Priority 3: those with a recent disclosure.
- 6.11 In Northern Ireland, AccessNI is undertaking a process of engagement with its key registered bodies to put in place VBS phasing agreements.
- 6.12 As and when workers become ISA registered, a RAP should keep a record of their registered status, seek their consent to carry out the ISA online status check and register an interest in them, and obtain and keep a record of their unique Scheme reference number.

New school year 2010

Schools, local authorities, and education and library boards are advised that ISA registration is not required for appointments starting in September 2010.

Recruiting new staff or volunteers

- 6.13 From November 2010, anyone recruiting new staff or volunteers must ensure that they are ISA registered before letting them start work or volunteering. This will also apply to existing employees or volunteers taking up a new role in regulated activity with a new RAP. Anyone failing to do so will be committing a criminal offence.

Examples: recruiting new staff

A school is recruiting a number of new teachers to start work in September 2011. It must ensure that the new teachers are registered before they start work.

A private care home is recruiting new care assistants to start work in January 2012. The home must ensure that the staff are registered before they start work.

Providers of controlled activity

Enhanced disclosure for controlled activity

- 6.14 Employers who place individuals in controlled activity will be eligible to request an enhanced disclosure from 1 April 2010. In Northern Ireland, an employer is eligible to request an enhanced disclosure for those in controlled activity from 12 October 2009. See page 24 for information on interim arrangements for controlled activity in England and Wales.

Summary

This section explains the transitional arrangements in place during the launch of the Vetting and Barring Scheme from 12 October 2009.

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

- changes to disclosure eligibility from 12 October 2009
- changes to the application process from July 2010
- the introduction of the new Criminal Records Bureau/ AccessNI application form from July 2010
- the withdrawal of the current disclosure application form from July 2010
- applications still in progress in July 2010
- the change in services from 12 October 2009, and
- a summary of key dates.

Section 7:

Transitional arrangements

Changes to the disclosure application process

From 12 October 2009

- 7.1 The Vetting and Barring Scheme will be phased in for all applicants by 2015. The following arrangements will apply during this implementation period.

Criminal Records Bureau (CRB) applications

- 7.2
- The eligibility criteria for enhanced CRB checks is extended to include anyone working in regulated activity, as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA).
 - Applicants continue to apply for disclosures on the current disclosure application form.
 - Standard disclosures no longer reveal whether the person is on the lists of those barred from working with children and/or vulnerable adults. Applicants who want to see this (and are entitled to check) must apply for an enhanced CRB disclosure.
 - To check the 'Children's Barred List', place a cross in the relevant box on the form.
 - To check the 'Adults' Barred List', place a cross in the relevant box on the form.
 - A new equivalent quick check or 'ISA Adult First' replaces the POVAFirst check of the Protection of Vulnerable Adults list.
 - The TP Online check for education employers in England and Wales remains in place, but now provides a check of the ISA Children's Barred List rather than List 99.

AccessNI applications

- 7.3
- Similar arrangements apply to AccessNI disclosures in Northern Ireland. Standard disclosures no longer include information held about lists of those barred from working with vulnerable groups. This information will only be provided on an enhanced disclosure, for which the existing form should be used. Eligibility for enhanced disclosures has been extended to both regulated and controlled activity, as defined in the SVGO.

- To check the 'Children's Barred List', applicants should place a cross in the relevant box on the form.
- To check the 'Adults' Barred List', applicants should place a cross in the relevant box on the form.
- There was no equivalent to the POVAFirst check in Northern Ireland and the 'ISA Adult First' is not available from AccessNI.

From July 2010

- 7.4 The following arrangements will come into effect when ISA registration commences on 26 July 2010.
- Applicants must apply for disclosures and/or ISA registration on the new CRB application form.
 - Old disclosure application forms are no longer accepted by the CRB.
 - Applicants who are entitled to check if a person is ISA registered or barred in respect of either or both workforces can do so as part of an enhanced disclosure.
 - Applicants can check online and free of charge whether an individual is ISA registered for either or both workforces.
 - Applicants can 'register an interest' (or 'subscribe') online to receive updates on an individual's ISA registration status. Applicants will be able to subscribe to one or a number of individuals at the same time. This will be free of charge.
 - Exactly the same arrangements will apply in Northern Ireland. Those in Northern Ireland will apply to AccessNI for both disclosures and ISA registration, using the new AccessNI application form.

Introduction of the new disclosure application form from July 2010

In England and Wales

- 7.5 From July 2010, the CRB will introduce a new application form. Applicants will be able to use the same form to apply for:
- ISA registration only
 - ISA registration and enhanced disclosure
 - an enhanced disclosure only, or
 - a standard disclosure only.
- 7.6 A 'specimen copy' of the new CRB application form has been sent to all lead and counter signatories. An electronic guide for applicants and registered bodies is available from the CRB website (www.crb.homeoffice.gov.uk). This will give applicants the opportunity to familiarise themselves with the form.
- 7.7 At the same time, the CRB will be producing an online e-guide to assist both applicants and organisations through the application process and completion of the form.
- 7.8 The CRB will issue a stock of new application forms (the equivalent of three months' worth) to each registered body and umbrella body on 26 April 2010. From July 2010, additional stocks will be available by request in the usual manner.
- 7.9 The CRB will accept the new application form from 28 June 2010. It will return any new CRB application forms received before this date.
- 7.10 New application forms received by the CRB after 28 June 2010 will be accepted and manually checked for errors. Forms completed correctly will be held unprocessed until 26 July 2010. After this date, forms will be processed in order of the date on which they are received.
- 7.11 Applicants can make telephone applications on the new CRB application form after 26 July 2010. The application process will not change, and the registered or umbrella body will only be charged on receipt of the application.

In Northern Ireland

- 7.12 Similar arrangements will apply in Northern Ireland. AccessNI will introduce a new application form (this will be different from the CRB form) that will allow applicants to apply for:

- ISA registration only
- ISA registration and AccessNI enhanced disclosure
- AccessNI enhanced disclosure only, or
- AccessNI standard disclosure only.

- 7.13 A new and separate form will be available for those requesting basic disclosure.
- 7.14 This form will also be made available to all registered bodies in specimen form prior to July 2010, and the training DVD and supporting booklet will contain specific sections relevant to completing the application forms in Northern Ireland. Application forms will be available to download from the AccessNI website in May 2010.
- 7.15 Applications using the new form should be submitted no earlier than two weeks before 26 July 2010. Forms received earlier than this will be returned. No new forms will be processed until 26 July. At this point, they will be processed in 'date received' order.

The withdrawal of the current application form from July 2010

- 7.16 The current application form will not be accepted after 26 July 2010.
- 7.17 Any remaining stocks of the current application forms should be destroyed securely; the CRB will stop taking orders for current application forms on 12 July 2010.

What happens when?

At what point will the CRB reject the current disclosure application form?

The CRB will reject the current disclosure application form if it is received after 26 July 2010.

What is the cut-off date for making telephone applications?

The CRB will accept telephone applications up to 23 July 2010.

The telephone application channel reopens on 26 July 2010.

Any telephone applications made prior to 26 July 2010 but received by the CRB after this date will be returned unprocessed.

Northern Ireland

7.18 Similar arrangements will apply in Northern Ireland. The key differences are:

- The old application form will be withdrawn from the AccessNI website on Friday 9 July 2010.
- Old application forms will not be accepted from 12 July 2010.

Applications still in progress on 26 July 2010

In England and Wales

7.19 It is likely that on 26 July 2010, the CRB will have a number of applications still in progress. This section explains what will happen to these applications.

Enhanced CRB checks still in progress on 26 July 2010

7.20 Applications for enhanced CRB checks will continue to be processed. If the application form requested a barred list check, the CRB will carry out checks of the two new ISA barred lists. The certificate will reveal if the individual is ISA registered or barred from the relevant workforce(s).

In Northern Ireland

7.21 Any old application forms in the system after 26 July 2010 will continue to be processed as they would have been prior to 26 July. Every effort will be made to clear all outstanding applications before that time.

ISA Adult First and TP Online

7.22 POVAFirst closed on 12 October 2009. However, the service provided by POVAFirst will continue as ISA Adult First (in England and Wales only), so regulated activity providers can continue to check the barred lists.

7.23 TP Online (the List 99 checking service that is currently available to schools in England and Wales) will continue to be available to current applicants until 1 April 2011.

Key dates

12 October 2009

POCA, POVA and List 99 checks, and equivalent checks in Northern Ireland, no longer accepted as part of a standard disclosure. POVAFirst service continues as ISA Adult First in England and Wales, and TP Online continues as before.

26 January 2010

Specimen of the new CRB and AccessNI application forms available.

26 April 2010

Registered and umbrella bodies to receive an initial stock of new CRB application forms (equivalent to three months' supply).

May 2010

New AccessNI application forms available online.

28 June 2010

CRB starts to accept new CRB application forms. Forms manually checked for errors and returned if completed incorrectly.

Correctly completed forms are held unprocessed until 26 July 2010.

9 July 2010

AccessNI withdraws old application form from website.

12 July 2010

Orders for current CRB disclosure application forms no longer accepted.

AccessNI accepts new disclosure application forms but will not process them.

AccessNI will no longer accept old application forms.

21 July 2010

CRB telephone application channel closes.

26 July 2010

CRB and AccessNI start to process new applications made on the new CRB/AccessNI application forms and those accepted in the previous four weeks (two weeks for Northern Ireland) in order of date received.

Old disclosure application forms no longer accepted by the CRB.

CRB telephone application channel reopens.

**Further
information**

Annexes

Further information

For further information about the Vetting and Barring Scheme, visit Directgov (www.direct.gov.uk/vetting). Useful information may also be found at Businesslink (www.businesslink.gov.uk/vbs). Alternatively, you can call 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 00.

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

Delivery partners

AccessNI
www.accessni.gov.uk

Criminal Records Bureau
www.crb.homeoffice.gov.uk

The Independent Safeguarding Authority
www.isa.homeoffice.gov.uk

The Home Office
www.homeoffice.gov.uk

The Department for Children, Schools and Families
www.dcsf.gov.uk

The Department of Health
www.dh.gov.uk

The Department of Education (Northern Ireland)
www.deni.gov.uk

The Department of Health, Social Services and Public Safety (Northern Ireland)
www.dhsspsni.gov.uk

Welsh Assembly Government
www.wales.gov.uk

Annex A: Vetting and Barring Scheme definitions

Activity of a specified nature

A.1 This is a term that covers:

- teaching, training or instruction, care or supervision of children or provided for vulnerable adults. It will include people such as sports coaches, football referees, private tutors, teachers, childcare workers, youth workers, probation officers, prison officers and health and social care workers
- advice or guidance for children, and
- advice, guidance or assistance for vulnerable adults.

A.2 For children, this is limited to people whose role involves providing advice or guidance wholly or mainly to children that relates to the child's physical, emotional or educational wellbeing. It will include people such as children's mentors, children's careers advisers and people advising children who ring ChildLine.

A.3 For vulnerable adults, it covers any form of assistance, advice or guidance provided wholly or mainly for vulnerable adults. This will include advice given to patients by private and independent providers in the NHS (healthcare professionals in Northern Ireland) or other healthcare settings. It would also include assistance targeted at vulnerable adults – e.g. a voluntary organisation that helps people who are older and frail or disabled people with the weekly shop.

A.4 If services are targeted at the general public, and vulnerable adults or children may or may not use those services, the staff will not need to be ISA registered in order to provide advice or guidance. An example of this would be people offering advice on pensions or careers to members of the public who may or may not be children or vulnerable adults.

A.5 Other instances covered include:

- any form of treatment or therapy provided to a child or for vulnerable adults. This would include people such as regulated health professionals, therapists and healthcare assistants in both hospitals and community settings

- St John Ambulance
- driving a vehicle that is being used solely for the purpose of conveying children or vulnerable adults (this would include taxi drivers who are used by schools and care homes to transport children or vulnerable adults)
- minibus/bus drivers who take children to Scout or Guide camps or vulnerable adults on day trips from care homes
- driving instructors who teach children (young people aged under 18 years of age), and
- ambulance drivers and bus drivers who are volunteer parents (but not parents who make personal arrangements to take turns picking each other's children up from a club or school).

A.6 It does not include bus drivers who drive public service vehicles that may or may not pick up children or vulnerable adults on the bus route, or taxis hailed/hired by children or vulnerable adults independently.

A.7 Moderators of chat rooms that are likely to be used wholly or mainly by children or vulnerable adults are covered.

A.8 The above activities are regulated activity if carried out frequently or intensively.

A.9 Activity that involves, on a regular basis, the day-to-day management or supervision of a person carrying out the activities above is also regulated activity.

Appeal

A.10 An individual has the right to appeal to the Upper Tribunal. (In Northern Ireland, appeals will be heard by the Care Tribunal.) Appeals must be based on grounds that the Independent Safeguarding Authority (ISA) has made a mistake on a point of law or a finding of fact. Appeals will be in writing and require the permission of the Tribunal.

Application for review of barred status

- A.11 A newly barred person will first be able to request permission to seek a review at a set period after they have been barred (or convicted/cautioned for automatic barring offences): one year if they were aged under 18 when barred; five years if they were aged 18–24 when barred (or convicted/cautioned for automatic barring offences); 10 years if they were over 24 years of age when barred (or convicted/cautioned for automatic barring offences).

Appropriate verification

- A.12 'Appropriate verification' is the term used in the SVGA/SVGO to cover ways in which a provider of a regulated activity can fulfil the duty of checking that a person is ISA registered.
- A.13 The default position under the legislation is that any provider of a regulated activity is required to check that an employee or volunteer is ISA registered by carrying out an online status check, or by obtaining an enhanced CRB or AccessNI check. The minimum legal requirement is for the employer to carry out a check to verify that the individual is ISA registered, and to have made the check during the three months before the regulated activity starts.
- A.14 Once a person is ISA registered, an online status check will be available to providers of a regulated activity to verify their registration. A registered person may then be employed. It will be for the employer to decide whether an enhanced disclosure check should also be made **unless this is a legal requirement within their employment sector**.

Automatic barring with and without representation

- A.15 Certain extremely serious offences will result in automatic barring. These offences fall into two distinct categories:
- **Automatic barring with no right to make representations.** This covers the most serious offences against children and vulnerable adults, which indicate that an individual poses a risk of harm to children or vulnerable adults in every conceivable case. There is no opportunity for the individual to make representations to the ISA as to why they should not be barred.

- **Automatic barring with the right to make representations.** This covers other serious offences that indicate a very probable risk of harm to children or vulnerable adults, but not necessarily in every conceivable case. Therefore it is necessary to give individuals the opportunity to make written representations. However, the ISA will not remove a bar unless it is satisfied that the individual does not pose a risk of harm to children or vulnerable adults.

Care home for adults

- A.16 This is an establishment that provides accommodation, together with nursing or personal care, for people: who are or have been ill; who have or have had a mental disorder; who are disabled or infirm; or who are or have been dependent on alcohol or drugs.
- A.17 In Northern Ireland, accommodation and personal care are provided in residential care homes and nursing care is provided separately in nursing homes.

Cessation of registration

- A.18 Should an individual no longer wish to work or volunteer in a regulated activity, they may opt out of the Scheme by writing to the CRB. However, if that person decides at a later stage to re-enter regulated activity, they will be required to re-register, since, while they were out of the Scheme, the Scheme will not have been collecting information on them. The process will need to begin all over again.

Child

- A.19 Any person who has not attained the age of 18.

Continuous updating

- A.20 Whenever new information (such as a conviction, caution or referral from an employer) becomes known about an individual registered with the scheme, the information will be sent to the ISA.¹ The ISA will consider the information, together with other information known on the individual, and decide whether it indicates that the individual poses a risk of harm. If so, the ISA will start its barring processes (see Section 3). If an employer has already checked on an employee's status with the ISA and has subscribed for notification of any status change, that employer will automatically be notified, should that employee's status change.

¹ This is referred to in legislation as 'subject to monitoring'.

Controlled activity

- A.21 This covers frequent or intensive support work in primary care or hospital settings, the NHS (the Health Service in Northern Ireland) and further education college settings; work for specified organisations which provides an opportunity for frequent access to health, education or social services records about children and health and social services records about vulnerable adults; and support work in adult social care settings.

Direct payments

- A.22 Local authorities in England and Wales, and health and social care (HSC) trusts in Northern Ireland, make direct payments to individuals to purchase care or support for themselves (rather than receiving the authority's/HSC trust's social care service). People who receive direct payments will not be required to check the people they employ are registered. Local authorities and HSC trusts will be required to inform direct payment recipients of their entitlement to check whether the person applying to work with them is registered with the ISA.
- A.23 Anybody who is barred will commit an offence if they apply or do any work that is regulated activity for a person who receives a direct payment. This preserves the principle that direct payment recipients should be able to exercise choice and control in managing their support. The same arrangements will apply if direct payments are made to parents to arrange care for their children, or to 16- and 17-year-olds in their own right.

Disclosure (CRB/AccessNI check)

- A.24 The CRB provides organisations in England and Wales with access to criminal records and other relevant information. The results of the checks carried out by the CRB help organisations make decisions when recruiting people to work with children and vulnerable adults. AccessNI disclosures will contain details of Northern Ireland cautions and convictions.
- A.25 A CRB/AccessNI check can provide access to a range of different types of information, including:
- criminal conviction and caution information
 - reprimands and warnings
 - barring information (enhanced disclosures only), and
 - relevant non-conviction information held by police forces and other agencies.

Disclosures, enhanced and standard

- A.26 Standard disclosures check national and local police databases. Enhanced disclosures check those databases and provide additional relevant information from local police. Since 12 October 2009 only enhanced disclosures will reveal if the person being checked is on the lists of people barred from working with children or vulnerable adults, or is registered with the Scheme.

Education and library boards (ELBs) in Northern Ireland

- A.27 In Northern Ireland, during 2010 certain responsibilities in the education sector will transfer to the new Education and Skills Authority (ESA). In particular, ESA will take over the functions currently fulfilled by the five ELBs. It will also undertake some of the functions currently performed by the Department of Education.
- A.28 While acknowledging the formation of ESA in Northern Ireland, this guidance refers to existing structures (and existing positions within those structures), in order to reflect the terminology used in the primary legislation (the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007). When reading this guidance, any reference to specific positions or functions within an ELB should be regarded as a reference to the comparable position within ESA.

Enduring power of attorney (EPA)

- A.29 In Northern Ireland the authority given by someone (the donor) for another person to act on their behalf with regard to their property and financial affairs.
- A.30 In England and Wales, EPAs granted before 1 October 2007 will continue to be valid. They have been superseded by lasting powers of attorney: see page 64.

Health and social care reform in Northern Ireland

A.31 In Northern Ireland, some of the definitions contained in the primary legislation (the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007), pre-date health and social care reform under the Health and Social Care (Reform) Act (Northern Ireland) 2009. From this date the functions of the four Health and Social Services Boards, for example, transferred to either the Health and Social Care Board or the Public Health Agency. Where there was a need to keep strictly to legislative definitions in this guidance, this has been done. However, in other cases we make reference to new organisational titles. Translation from old to new structural titles is provided in the table below.

Health record

A.32 A health record is any record that consists of information relating to the physical or mental health condition of an individual and has been made by or on behalf of a health professional in connection with the care of that individual.

Independent Barring Board (IBB)

A.33 This is now called the Independent Safeguarding Authority (ISA).

Existing HSS structure/position	Reform structure/position
Health and Social Services Trust	Health and Social Care Trust
Health and Social Services bodies (as defined in the Health and Personal Social Services (Northern Ireland) Order 1972)	Health and Social Care bodies
Special Health and Services Agencies	Special Health and Social Care Agencies
Health and Social Services Councils	Patient and Client Council
Regulation and Quality Improvement Authority	Health and Social Care Regulation and Quality Improvement Authority (this body's operational title is the Regulation and Quality Improvement Authority or RQIA)
Director of social services of a Health and Social Services Board	Director of social care and children of the Health and Social Care Board
Director of a Health and Social Services Trust responsible for the delivery of personal social services	Director of a Health and Social Care Trust responsible for the delivery of social care

Independent Mental Capacity Advocate (IMCA) (England and Wales)

- A.34 When a person lacking capacity does not have personal support (from family or friends), an IMCA will be appointed if there is a major decision to be made about serious medical treatment or a long-term care move, in order to help assess what is in the person's best interests. An IMCA may also be appointed for care reviews about accommodation and for where an adult is subject to safeguarding procedures.

ISA barred lists

- A.35 The SVGA and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 contain legislation to create two new barred lists. These are:

- a list of people barred from working with children (replacing List 99, the Protection of Children Act (POCA) list, the Disqualification from Working with Children (DWC) list, the Unsuitable Persons list and disqualification orders), and
- a list of people barred from working with vulnerable adults (replacing the Protection of Vulnerable Adults (POVA) list and the Disqualification from Working with Vulnerable Adults (DWVA) list).

- A.36 These lists will allow the ISA to keep a record of individuals who will not be permitted to work in regulated activity with children and/or vulnerable adults.

ISA decision-making process

- A.37 This is a structured process to help ISA caseworkers take evidence-based and consistent barring decisions. Although it is structured, it is flexible and will still require a high level of judgement on the part of caseworkers.

ISA online status check

- A.38 Those entitled to check an individual's registration status will be able to do so online, free of charge. In most cases, they will also be able to seek an enhanced disclosure certificate (which will contain information on any criminal records) from the CRB or AccessNI. In some circumstances, certain employers will be required to obtain an enhanced disclosure certificate.

Keepers of registers

- A.39 These are the professional regulatory bodies, such as the General Medical Council for England and Wales, the General Teaching Councils, etc. These organisations receive referrals from professionals and the public, and conduct investigations into professional fitness to practise, culminating, where necessary, in public hearings.

Lasting power of attorney (LPA)

- A.40 A legal document whereby someone (the donor) appoints another person (an attorney) to make decisions about certain things for them in the future. There are two types of LPA:

- personal welfare LPAs, which can only be used when the donor lacks capacity to make relevant personal welfare or health decisions, and
- property and affairs LPAs, which can be used whether or not the person lacks capacity to make the decisions for themselves, unless they have specified otherwise in their LPA.

- A.41 This applies only to England and Wales. For the Northern Ireland equivalent, see paragraph A.29.

Merely incidental (activities)

- A.42 These are activities that relate to any form of teaching, training, instruction, care or supervision of children, where the fact that the individuals involved are children is 'merely incidental'. See 'Exceptions to regulated activity' on page 25.

Moderator of website

- A.43 The Scheme will cover the moderators of chat rooms that are likely to be used wholly or mainly by children or vulnerable adults.
- A.44 Moderators have a significant potential to abuse children or vulnerable adults directly, and also by knowingly permitting others to abuse them through the interactive service. The Scheme's coverage is limited to moderators who, for the purpose of protecting children or vulnerable adults, monitor the content of the service. It also includes moderators who, for the purpose of protecting children or vulnerable adults, remove content, prevent content being added or control access or use of the service.
- A.45 The majority of IT staff will not be covered, as they do not have the opportunity to contact the users or to see the content of messages.

A.46 The majority of collective blogs and mail groups will not be covered, except if an individual has been asked to moderate a public service for the purpose of protecting children or vulnerable adults and is managed by a responsible person. This could include the moderator of a local Scout webpage or a blog used wholly or mainly by children.

Overnight activity

A.47 This refers to a specified activity that is undertaken with the vulnerable group between 2am and 6am.

Personal relationships/family relationships

A.48 Activity carried out in the course of family relationships or in the course of personal relationships is not covered by the Vetting and Barring Scheme. A personal relationship is a relationship between friends where there is no commercial consideration.

Personal social services record

A.49 Records obtained or held by a health and social services (HSS) body in the exercise of its functions relating to personal social services.

Personnel supplier

A.50 A personnel supplier can be one of the following:

- An employment agency: defined as being in the business of providing services (whether through the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them. In broad terms, an employment agency introduces workers to client employers for direct employment by those employers. In practice, this means that an employment agency is an agency that introduces an individual to an employer and then, once the employer has taken on that individual, ceases to have any contractual relationship with the individual. Under the employment agency arrangement, the individual's contract is with the employer and not with the agency.
- An employment business: a business that engages workers under either a contract for services or a contract of employment, and supplies those workers to client hirers for temporary

assignments or contracts, where the workers will be under the hirers' supervision or control. This covers the hiring out of workers on a temporary basis. In practice, this means that an employment business will place an individual with an employer to work, but the individual's contractual arrangement remains with the employment business, and the employment business is responsible for paying them.

- An educational institution: an institution (including a training provider in the education sector) that supplies a student for the purpose of enabling them to obtain experience of engaging in regulated activity or controlled activity as part of their course, e.g. a trainee teacher gaining experience in a school or a medical student working with patients in a hospital.

A.51 Personnel suppliers must check the registration status of an individual they supply for work in regulated activity.

Referrals – duty

A.52 The Safeguarding Vulnerable Groups Act 2006/ Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 requires certain organisations to refer relevant information to the ISA. Other organisations or individuals may also pass relevant information to the ISA if they are concerned about the behaviour or conduct of an individual.

A.53 Organisations that must refer relevant information to the ISA are:

- local authorities, Health and Social Care bodies and ELBs
- professional registration bodies and supervisory authorities named in the SVGA and Safeguarding Vulnerable Groups (Northern Ireland) Order 2007
- employers and managers of volunteers in regulated and controlled activity, and
- personnel suppliers (e.g. employment agencies, employment businesses and educational institutions).

A.54 Organisations that may pass relevant information to the ISA include all other employers of people working with children and/or vulnerable adults, as well as parents/private employers. However, parents/private employers should refer relevant information to a statutory agency (e.g. the social services or the police), which will investigate the matter and pass the information to the ISA, if appropriate. Members of the public may also refer information to the ISA in this way.

A.55 Employers and service providers must pass information to the ISA whenever they withdraw permission for an individual to carry out regulated activity or controlled activity because they have harmed, or may harm, a child or vulnerable adult.

A.56 Local authorities and Health and Social Care bodies in Northern Ireland (in their social services capacities), professional bodies and supervisory authorities must refer information to the ISA if:

- an individual who is working closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult
- an individual who might, in the future, work closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult, or
- they think the ISA may consider it appropriate to bar the individual.

A.57 Relevant information should be referred to the ISA as soon as it becomes available.

A.58 Employers, regulatory bodies, local authorities, Health and Social Care bodies in Northern Ireland and supervisory authorities will have a duty to respond to requests from the ISA for information they already hold. They will not have to obtain it from other sources.

A.59 In Northern Ireland, an ELB will be required to refer to the ISA if it ascertains that information shared with a Health and Social Care body under child protection arrangements has not been provided to the ISA.

Registered body

A.60 A registered body is an organisation registered with the CRB or AccessNI. Its role is to:

- check and validate the information provided by the applicant on the application form
- establish the true identity of the applicant
- ensure that the application form is fully completed and the information it contains is accurate
- countersign applications to confirm that the organisation has an entitlement to access criminal records information, and
- comply with the CRB/AccessNI code of practice.

Regulated activity

A.61 This is defined as:

- any activity of a specified nature carried out frequently that involves contact with children or vulnerable adults
- any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively
- fostering and Ofsted/HSC trust-registered childminding
- the exercise of functions by people in certain specified positions of responsibility
- the exercise of any function of an officer of the Children and Family Court Advisory and Support Service (CAFCASS) or CAFCASS CYMRU (in Northern Ireland, the exercise of a function of a guardian *ad litem*)
- the exercise of a function of certain inspectorates, or
- activity that involves, on a regular basis, the day-to-day management or supervision of people carrying out activity of a specified nature or in a specified place, or inspection activity or functions of CAFCASS or CAFCASS CYMRU officers (in Northern Ireland, the exercise of a function of a guardian *ad litem*).

Responsible person

A.62 This is the person who is responsible for the management or control of a controlled activity, for example the manager or director of a hospital catering facility.

Social services record

- A.63 Records obtained or held by a local authority as a result of the exercise of functions listed in Schedule 1 of the Local Authority Social Services Act 1970. See also section 21(11) of the SVGA.

Specified place

- A.64 This term is used in connection with work with children or vulnerable adults in the following settings:

- schools, including nursery schools
- children's centres
- pupil referral units²
- childcare premises, including nurseries
- children's homes
- children's hospitals
- institutions for the detention of children, and
- adult care homes.

- A.65 Picking a child up from school, watching the school play or the school football team, visiting a child in a children's ward or visiting a vulnerable adult in a care home are not included in the Scheme, as these activities are not forms of work being carried out for the establishment.

- A.66 The Scheme will include such people as catering, cleaning, administrative and maintenance workers or contractors working in specified places, depending on the frequency and/or intensity of their activity. Activity that involves, on a regular basis, the day-to-day management or supervision of a person carrying out such activities is also regulated activity.

Specified positions/office holders

- A.67 The Scheme covers individuals who, by virtue of the authority and responsibility inherent in the posts they hold, might be expected to be suitable to work with children or vulnerable adults. For a full list of positions, see pages 17–18.

Subscriptions

- A.68 Any employer or organisation that, for employment purposes, wishes to receive updates on the ISA registration or monitoring status of an individual can (with the consent of the individual) do so using the online service. When they register an interest in an individual, they will be 'subscribing' to that individual. This service is free of charge.

Supervisory authorities

- A.69 Supervisory authorities are inspectorates such as Ofsted, the Care Quality Commission, etc. In Wales, they include Estyn, Welsh Ministers through the Care and Social Services Inspectorate Wales and the Health Inspectorate Wales. In Northern Ireland, they are the Regulation and Quality Improvement Authority, the Education and Training Inspectorate and the Charity Commission for Northern Ireland. These organisations routinely conduct inspections and, where they receive complaints about a practitioner or organisation, they may commission a special investigation to consider whether the practitioner/organisation is complying with regulations or meeting professional standards.

Supporting People

- A.70 The Supporting People programme provides housing-related support to address problems that can often lead to hospitalisation, institutional care or homelessness.

Umbrella body

- A.71 This is a registered body that processes applications for other organisations, either in addition to its own requirements or as a specialist service provider.

Vetting and Barring Scheme (VBS) identification number

- A.72 A unique identification number allocated to every applicant who successfully joins the Vetting and Barring Scheme.

Vetting information and suitability information

- A.73 Vetting information is confirmation that an individual is ISA-registered (and therefore not barred due to a risk of harm) with regard to regulated activity involving children and/or vulnerable adults. Individuals who are eligible to receive vetting information can register an interest and be notified if the individual's ISA status changes (e.g. because they have been barred by the ISA or have voluntarily decided to remove themselves from the Scheme).

- A.74 Once the Vetting and Barring Scheme has been implemented, the enhanced disclosure will include suitability information, where appropriate, along with criminal conviction/caution information.

² Also known as Short Stay Schools in England and Wales.

A.75 Suitability information relating to children and/or vulnerable adults is:

- whether the applicant is barred from regulated activity related to children/vulnerable adults
- if barred, details as to the circumstances in which they became barred (it is intended that this will be a summary of the reasons for barring), and
- whether the applicant is ISA registered in relation to children/vulnerable adults.

Volunteer

A.76 A person who is engaged in any unpaid activity (except for travelling and other approved out-of-pocket expenses) that involves spending time in doing something that seeks to benefit a third party other than (or in addition to) a close relative.

A.77 In Northern Ireland a volunteer is regarded to be similar to that in England and Wales. However, they must be volunteering for a non-profit or non-statutory organisation to have eligibility for a free disclosure or free ISA registration.

Volunteer-involving organisation

A.78 This is an organisation that involves volunteers in its activities or in the delivery of its services. Volunteer-involving organisations can be public sector organisations, third sector organisations, voluntary organisations or private sector companies.

Vulnerable adult

A.79 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 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 specified welfare service, namely

- 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
- is receiving direct payments from a local authority or health and social care trust in lieu of social care services, and/or
- requires assistance in the conduct of their own affairs.

Annex B: Regulated activity: statutory guidance on frequency

Introduction

- B.1** This part of the guidance has the status of statutory guidance for the purposes of sections 8(14), 10(10), 11(10) and 19(9) of the Safeguarding Vulnerable Groups (SVG) Act (covering England and Wales) and Articles 12(14), 14(10), 15(10) and 23(9) of the SVG Order (covering Northern Ireland). This guidance sets out the circumstances in which the Secretary of State considers that a relevant activity is being carried out frequently. From 1 November 2010, if someone commits the offences of using a person who is not ISA registered for regulated activity within the meaning of paragraph 1(1) or (2) or 7(1) or (4) of Schedule 4 to the SVG Act or the equivalent provisions in Schedule 2 of the SVG Order, or of using a person for those forms of regulated activity without checking that they are ISA registered, the courts are required to consider the extent to which the offender had regard to this guidance when they are determining what is an appropriate sentence to pass.
- B.2** The activities in question comprise **specified activities** and activities in **specified places**. Section 2 of the guidance contains further details, but examples of specified activities are teaching, training, instruction, care or supervision of either children or vulnerable adults. Examples of specified places, where any type of activity could qualify as regulated activity if there is the opportunity for contact with children or vulnerable adults, are schools, regulated day care services for children, children's homes or care homes for vulnerable adults.
- B.3** Paragraphs 1(1) and (2) and 7(1) and (4) of Schedule 4 to the SVG Act and the equivalent provisions in Schedule 2 of the SVG Order stipulate that, in general,¹ activities are regulated activities if they are carried out frequently or if the period condition is satisfied. The period condition is satisfied if the person carrying out the activity does so intensively. The period condition was originally defined in Schedule 4 of the SVG Act and Schedule 2 of the SVG Order as overnight or at any time on more than two days in any 30-day period. Further to the Government's acceptance of the recommendations in Sir Roger Singleton's report *Drawing the Line*, it is intended that the definition in the Act and Order will be changed to overnight or at any time on more than three days in any 30-day period, i.e. on four days or more in a 30-day period.
- B.4** The term 'frequently' is not defined in the Act or Order. This guidance constitutes the Secretary of State's view (and that of Ministers in Northern Ireland), further to his acceptance of Sir Roger Singleton's recommendations, as to the circumstances in which an activity is carried out frequently.
- B.5** The principle behind the frequency test and the period condition is that a relevant activity should be regulated activity if it provides an opportunity for the person carrying out the activity to develop a relationship of trust with children or vulnerable adults. On the one hand it is true that abuse can be opportunistic and occur in one-off encounters. On the other hand abuse can be reduced by preventing those who are likely to cause abuse from entering the volunteer and paid workforce. It is important, however, that the regulatory burden on employers, voluntary providers and the individuals who carry out the activities is proportionate. The frequency test and the period condition are necessarily pragmatic and seek to establish an acceptable balance.

¹ Certain specified roles are regulated activity regardless of whether or not they are carried out frequently: see paragraph B.9.

The frequency test and barred individuals

- B.6** The frequency test and the period condition do not apply for the purposes of the criminal offence committed by a barred individual who seeks or offers to engage in regulated activity or engages in regulated activity. Nor do they apply for the purposes of the offence committed by a regulated activity provider or any other person who allows an individual whom he knows or has reason to believe is barred to carry out regulated activity. This means that barred people are prevented from engaging in regulated activity irrespective of how infrequently the activity is carried out. A barred person must not seek to engage in regulated activity even on a one-off basis.

The frequency test and the requirement to check an individual is ISA registered

- B.7** The requirements to check ISA registration and be ISA registered will be triggered when a relevant activity is either carried out frequently or the period condition is satisfied (unless the activity falls in one of the exceptions from the requirement to register with the Scheme, which are set out in Section 2 of the guidance). These requirements may be triggered when the person begins to carry out the activity, if the person knows in advance that the activity will be regulated activity; or, alternatively, if the person starts to carry out the activity not knowing that it will be regulated activity, the requirement will be triggered at the point when either the 'frequency' test or the period condition is satisfied.
- B.8** However, where an employment business is supplying the individual to a hirer to carry out a relevant activity they must first check that the individual is ISA registered even if they are supplying to the hirer as a one-off occasion.
- B.9** The frequency test and period condition do not apply to fostering or to childminding. The effect of this is that if an individual is providing care and/or accommodation to a child under 18 years old on behalf of a third party organisation, the organiser is required to make checks in advance on the individual providing the care / accommodation.
- B.10** The frequency test and period condition also do not apply to office holders such as school governors (see Section 2 for more details).

Circumstances in which an activity is carried out frequently

- B.11** This guidance is not definitive. It is for individuals carrying out an activity (that falls within paragraphs 1(1), 1(2), 7(1) or (4) of Schedule 4 to the SVG Act or equivalent positions in Schedule 2 to the SVG Order) and those providers permitting them to engage in that activity to determine whether an activity is sufficiently frequent to qualify as regulated activity, and thus trigger the requirement for the individual to register with the ISA and the requirement for the provider to check the individual's ISA registration. In cases where the provider thinks that the frequency test is not met, the provider should keep a record of the reasons why it was considered that the activity was not a regulated activity. The record should note that it took this guidance into account and should be updated to record periodic reviews of the decision if and when circumstances change. Such a document will carry some weight with the courts in the event of a prosecution for the offences relating to carrying out regulated activity while not ISA registered or not checking ISA registration.
- B.12** Further to the November 2007 Vetting and Barring Scheme policy consultation and the May 2008 Government report on the consultation (available at www.dcsf.gov.uk/consultations, and the Government's acceptance of Sir Roger Singleton's recommendations (available at <http://publications.everychildmatters.gov.uk>), the Government's view is that, in general, relevant activities that are carried out once a week or more frequently on an ongoing basis will satisfy the frequency requirement in relation to the definition of regulated activity.
- B.13** However, the frequency requirement is not the same in every case. There are some activities where contact is as infrequent as once a month where staff or volunteers should be registered with the Scheme, namely those who provide healthcare or social care directly to children or vulnerable adults. It is for providers to use their judgement as to whether the general frequency test should apply, or whether a more stringent test should be applied in those particular circumstances.

- B.14** Our view is that, in general, a regulated activity provider and a person carrying out the activity may establish that the activity is being carried out frequently once they have reached an understanding that the person will carry out or is carrying out the activity on a more or less weekly basis. This understanding might be reached:
- when the person starts carrying out the activity, if he or she and the activity provider have established an expectation that the activity will be repeated once a week or more
 - the fourth time the activity is carried out in a 30-day period (i.e. the period condition is met)
 - when the regulated activity provider realises that the person is carrying out the activity more or less weekly over a period of several weeks. It should be noted that if an activity would have been carried out on a weekly basis over a period of several weeks if the person carrying out the activity did not take occasional breaks from the activity, then the activity should be regarded as more or less weekly and the person required to register with the Scheme.
- B.15** In determining whether the frequency test is satisfied, employers and voluntary providers should also take account of the nature and substance of the activity taking place. As a rule of thumb it should be a reasonably substantial activity, providing the opportunity to build a relationship of trust, over time, with a member or members of the relevant vulnerable group.
- B.16** If an adult carrying out a regulated activity is himself or herself supervised, that is irrelevant. Such an episode still counts towards establishing whether or not the activity is frequent.
- B.17** In the case of the specified activities (see page 14), an activity is frequent if it is carried out frequently by an individual regardless of whether the members of the relevant vulnerable group change each time the activity is carried out. In addition it should be clearly understood by all concerned that the individual is actually carrying out the activity in question, such as teaching, training, instruction, care or supervision. Activities such as running a shop or stall, or just being in the presence of children or vulnerable adults, do not in themselves constitute any of the specified activities and should not therefore be counted against the frequency test or the period condition.
- B.18** In the case of activity in the specified settings and establishments (see page 17), where any work for the purposes of the establishment with the opportunity of contact with members of the relevant vulnerable group could constitute regulated activity, it is only such work in the same setting that requires registration if the period condition or the frequency test is met. This means that, for example, visiting speakers and maintenance contractors who might go to work in many different schools, but only infrequently return to the same school, are not required to register with the Scheme.
- ### Checking ISA registration status of infrequent workers
- B.19** The Safeguarding Vulnerable Groups Act and Safeguarding Vulnerable Groups Order give specific eligibility to regulated activity providers to check the ISA registration status of workers who would be working in regulated activity, except for the fact that it is infrequent. This allows employers and volunteer organisations to manage a pool of workers in a flexible way. For example, a bus company may supply buses and bus drivers to a local authority or education and library board for the school bus run and to transport vulnerable adults. The drivers of those services will have to be registered if the activity is frequent or meets the period condition. But the bus company may also provide bus drivers for mainstream bus routes and the company will want to be able to establish a pool of drivers across its services which it can manage flexibly, to cover sickness absence, for example. The ability to check infrequent workers means that the company can establish a pool of drivers who at short notice can be put onto the school bus run, without having to worry whether that is the fourth time that driver is being used in that way in that 30-day period, for example. This allows such an employer to manage its workforce flexibly without running the risk of committing offences.
- B.20** In the following case studies, which will apply from 1 November 2010, if an activity is regulated activity, then the person carrying out the regulated activity will be required to become ISA registered and the activity provider will be required to check the person's ISA registration status. However, the introduction of these requirements is subject to the phasing-in arrangements. These are described in Section 6 of the generic guidance.

Case studies

- B.21** A teacher has been accepted for a new post which will entail a move to a new school. This will clearly be regulated activity and the teacher must register with the ISA and the school or, in Northern Ireland, the employer, must check his/her registration before the teacher starts work.
- B.22** Two parents have agreed to help out at an athletics club meeting at which children are competing. One will run a tuck shop and the other will mark out a running track. Neither is carrying out regulated activity because they are not providing care, supervision, teaching, training or instruction. They may continue to carry out these activities at further events without the activities becoming regulated activity. However, if they begin to develop a role entailing supervision or instruction on a weekly basis by virtue of their knowledge of the organisation of the meetings, and this is acknowledged by them and the organisers, then they should consider registering with the ISA before the frequency test or the period condition are met.
- B.23** A firefighter goes to a different school every two weeks to instruct the children in fire prevention. This does not meet the frequency test and is not regulated activity. If the visits were weekly, the activity would still not require registration because the firefighter would not be returning to the same school on a weekly basis.
- B.24** A person who is barred from working with children is asked if he can help out with coaching a children's football team on a one-off basis. If he did so, he would be committing a criminal offence. This offence has been in place from 12 October 2009. For the purposes of the barring-related offences under the SVG Act and the SVG Order, the frequency test and the period condition are disregarded, but they apply in relation to the offences of not registering with the ISA and failure to check ISA registration.
- B.25** A parent is asked to help supervise children on a school trip, under the overall supervision of a teacher, without commitment to helping out on future occasions. This is not regulated activity because it does not meet the frequency test or the period condition. If the parent did become a regular helper, the activity would be regulated activity despite the fact that a teacher is in overall charge.
- B.26** A person provides care to vulnerable adults in their own homes, including help with bathing, dressing and feeding. Her work pattern is irregular and some weeks in a month she does not work at all. Because of the nature of the work (personal social care) and because she works once a month or more, she will need to register with the ISA.
- B.27** An adult works for an organisation supervising groups of children at a leisure park on a frequent basis. The children are different each time, but that does not affect the fact that this is regulated activity.
- B.28** A builder works for a company which has a contract to maintain school buildings in a local authority or an education and library board area. He frequently works in different schools in connection with the work. His work does not require registration because he does not work frequently or intensively in any one school.
- B.29** A builder works for a company which has a contract to maintain a swimming pool where children are regularly present. He visits the leisure centre frequently in connection with the work. Leisure centres are not specified places for the purposes of regulated activity, and as the builder is not providing care, supervision, teaching, training, instruction, advice or guidance, he is not in regulated activity. It is the role of supervisory staff at the leisure centre to ensure the safety of users.
- B.30** A number of adults help at a Sunday school on a rota basis. Each adult helps out once every three weeks. That is not frequent and so registration is not required. However, see paragraph B.19 above. Rotas of this nature sometimes have to be adjusted at short notice, to cover sickness absence and unexpected absences. The church is able to check the ISA registration status of these volunteers and in this way establish a pool of helpers who can be called on flexibly without running the risk of committing offences.
- B.31** A number of taxi drivers work for a taxi firm which is occasionally used to transport children to a special school. A driver who does not usually transport children, but may on occasion be required to, is only engaging in regulated activity if he is asked to do so four times in any 30-day period, or more or less weekly over a longer period. If a driver does transport children frequently, he must register with the ISA.

- B.32** Accompanied by her care worker, an older care home resident visits the hairdresser weekly. The hairdresser is not carrying out regulated activity because she is not caring for or supervising the resident. An adult is considered vulnerable only in circumstances where he or she is being provided with organised care, supervision, teaching, training, instruction, advice or guidance. However, the care worker is undertaking regulated activity as the worker is caring for and supervising the resident during the visit.
- B.33** A self-employed podiatrist visits a care home fortnightly by arrangement with the care home to cut the nails of all residents. Although this is less than once a week, because of the nature of the activity (healthcare), which is in a specified place, the care home must check the podiatrist is registered with the ISA.
- B.34** A male volunteer in a care home for people with learning disabilities assists with providing activities for three hours on Saturday afternoons. Although the volunteer is supervised by the activity leader, he is frequently caring for the residents during the afternoon and must register with the ISA.
- B.35** A lift engineer is contracted by a large care home company to carry out routine maintenance on the care home lifts. The lift engineer is working in care homes every day, but his pattern of work means that he does not visit the same care home more than once a week or more than four days in a 30-day period. He does not need to register with the ISA.
- B.36** An electrical company employs staff to check all electrical appliances in hospitals including children's hospitals. The staff of the electrical company have daily contact with patients, but their pattern of work means that they do not visit the same hospital more than once a week or more than four days in a 30-day period. They do not need to register with the ISA.
- B.37** A voluntary organisation holds a tea dance for older people to help reduce isolation and increase social engagement. The older people are vulnerable adults in this context because the service is aimed specifically at older people with particular needs. Although the volunteers are providing care on a monthly basis, registration with the ISA is not required as the care is not personal or intimate.
- B.38** A consultant geriatrician works for two days every month in a hospital outpatient clinic. She is providing healthcare more than once a month and so is required to register with the ISA.
- B.39** A volunteer with a local charity stands in for the main carer of a person with dementia in order to allow the carer to have time away from home. The volunteer does not see the same client every week but because the volunteer is providing care more than once a month, they are required to register with the ISA.

