



Northern Ireland
Executive

www.northernireland.gov.uk

Changes to disclosure and barring: What you need to know

What is the purpose of this leaflet?

This leaflet tells you about changes that the Northern Ireland Executive will be making to criminal records and barring arrangements **this September (2012)** and how they affect you.

Who is it aimed at?

This leaflet is for organisations (**employers, voluntary organisations** and **charities**) in Northern Ireland who engage individuals to work with vulnerable groups including children and have contact with Access Northern Ireland (AccessNI) and the Independent Safeguarding Authority (ISA). This is work that a barred person must not do (called ‘regulated activity’), or work for which the organisation may obtain a criminal record check.



What changes are we making, and why?

The Northern Ireland Executive is committed to protecting vulnerable groups including children. We want to see a focused and effective system, where harm or risk of harm is identified, acted upon effectively and ultimately prevented. We also want better sharing of responsibility for safeguarding between the state, on the one hand, and your organisations, on the other. Up until now we have over-emphasised protection by the state and not enough emphasis has been placed on the vital role you play.

Clear, well managed arrangements for safeguarding are important, whether in a large hospital, a school or a small local charity. This includes ensuring that all staff and volunteers are appropriately recruited, trained and managed. Vigilant, ongoing, day-to-day management is critical to ensure that unusual or concerning behaviour is picked up at the earliest opportunity. Safe, careful recruitment is crucially important. You are best placed to decide if someone is suitable for the role that you have and in doing so it is essential that you take all sensible steps to identify the right person – including taking up references and conducting face to face interviews. All of this is just as important as an AccessNI check.

In addition, the state has a key role to play by, for example, establishing a barring scheme, which prevents unsuitable individuals from working with vulnerable groups including children, and ensuring that organisations can access criminal record information on individuals, who work closely with vulnerable groups.

We are scaling back the criminal records and barring systems to more proportionate levels whilst ensuring that they continue to provide effective protection for those who need it. The changes to those systems are included in the **Protection of Freedoms Act 2012**, which recently received Royal Assent.

The changes in the Act have not come into effect yet – but some of them will come into effect on **10 September 2012**. **Until then, you should carry on as before**. This leaflet tells you more about the changes which will be happening on 10 September.

Not everything is changing. You will still, for example, have a duty to make referrals to the Independent Safeguarding Authority, and you must not knowingly engage a barred person in regulated activity.

So, at a glance...

Key changes in September 2012

- Scaling back of regulated activity.
- Repeal of controlled activity.
- Repeal of registration and continuous monitoring.

Not changing

- You must make appropriate referrals to the ISA.
- You must not engage in regulated activity someone whom you know has been barred by the ISA.
- Everybody within the pre-September definition of regulated activity will remain eligible for enhanced AccessNI checks, whether or not they fall within the post-September definition of regulated activity.

What is happening in September which affects my organisation?

1. New definition of regulated activity

The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 sets out the activities and work which are 'regulated activity', which a person who has been barred by the ISA must not do. We are scaling back regulated activity to focus on work which involves close and unsupervised contact with vulnerable groups including children. Currently, regulated activity covers over 9 million people across Northern Ireland, England and Wales. From September, it will cover closer to 5 million, with proportionate reductions in Northern Ireland. The activities and work which are being taken out of regulated activity will still be eligible for enhanced AccessNI checks (but they will no longer be eligible for barred list checks).

Regulated activity matters because:

- An organisation which knowingly allows a barred person to work in regulated activity will be breaking the law.
- If you dismiss or remove someone from regulated activity – or you would have done had they not already left – because they appeared to pose a risk to vulnerable groups including children, you are legally required to pass information about that to the ISA. It is a criminal offence not to do that. If you believe that an offence has been committed, you should pass the information to the police. For further information on the duty to refer to the ISA, please see www.isa.homeoffice.gov.uk

- From 10 September, if you consider that a role is within the new definition of regulated activity, then if you ask the individual to apply for an enhanced AccessNI check you should request the appropriate barred list check (for children, adults or both). Enhanced AccessNI checks for work within regulated activity will tell you (where requested) if the person is on one of the ISA's barred lists. They do not generally include that information for work outside regulated activity.

A summary of information about the new definition of regulated activity is given at the end of this leaflet.

2. Repeal of controlled activity

The controlled activity category will no longer exist from September 2012. This category covered people, who might have had less contact with vulnerable groups including children, than people within regulated activity – for example, some people who deal with records. At the moment, you can check whether those people working in controlled activity are barred; after September, you will not be able to do that.

3. Repeal of registration and continuous monitoring

The original plan – in the Vetting and Barring Scheme – was that anyone who wanted to work with vulnerable groups including children would need to register with the Scheme and to be continuously monitored for any new criminal records information. This never came into force and we can now confirm that registration and monitoring will not be introduced. The Protection of Freedoms Act repeals those parts of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 which provided for registration and monitoring.

Are any changes happening after September 2012?

Yes; there will be additional changes. We will provide more information on these closer to the time, but here is an overview:

December 2012

The work of the CRB and ISA will be merged into a single, new Non-Departmental Public Body. This will be called the **Disclosure and Barring Service (DBS)**. The DBS will carry out the ISA's current functions in Northern Ireland and AccessNI will continue to provide a disclosure service for Northern Ireland.

During 2013/14

AccessNI is currently working to develop and deliver a new **Portable Disclosure Service** to be introduced during the 2013/14 financial year. The new service will allow individuals to apply for a criminal record certificate only once and then, if they need a similar sort of check again, to reuse their existing certificate, with their employer checking online to see if it is still up to date. This will avoid many unnecessary repeat applications. More information will be made available about this new service – in the mean time, it's business as usual. The Portable Disclosure Service will be available in England and Wales before it is available in Northern Ireland – probably during early 2013. Legislation to make the planned changes to the criminal records system, including the introduction of the new Service, will be brought through the Northern Ireland Assembly.

For further information:

AccessNI: www.dojni.gov.uk/accessni

ISA: www.isa.homeoffice.gov.uk

Northern Ireland Executive: www.nidirect.gov.uk

Business Link: www.businesslink.gov.uk

Summary of changes to regulated activity

The full, legal definition of regulated activity is set out in Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended (in particular, by the Protection of Freedoms Act 2012).

Regulated activity still excludes family arrangements, and personal, non-commercial arrangements.

1. Regulated activity relating to children

The amended definition of regulated activity comprises only:

- (i) Unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice/guidance on well-being, or driving a vehicle only for children;
- (ii) Work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises, a children's hospital **but** not work by supervised volunteers in those places;

Work under (i) or (ii) is regulated activity only if done regularly. We will be providing statutory guidance about supervision to accompany the new definition of regulated activity.

- (iii) Relevant personal care, e.g. washing or dressing; or health care by, or supervised by, a professional;
- (iv) Registered childminding; and foster-care.

2. Regulated activity relating to adults

The new definition of regulated activity for adults no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities that, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities/services required by the adult; and not on the setting in which the activity/service is received, or the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the new definition of regulated activity (and so will anyone who provides day to day management or supervision of those people). A broad outline of these categories is set out below. For more information please see the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended by the Protection of Freedoms Act 2012.

(i) Providing Health Care

Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional. Please see the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended by the Protection of Freedoms Act 2012, for further details about what is meant by health care and health care professionals.

(ii) Providing Personal Care

Anyone who:

- provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability;

- prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision; or
- trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

(iii) Providing social work

The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

(iv) Assistance with general household matters

The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.

(v) Assistance in the conduct of a person's own affairs

Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney. Please see the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended by the Protection of Freedoms Act 2012, for the further categories which are covered here.

(vi) Conveying

Anyone who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will include Patient Transport Service drivers and assistants, hospital porters and Emergency Care Assistants and Ambulance Technicians.

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