

# Briefing on safeguarding changes

February 2011



The coalition government halted the Vetting and Barring Scheme in June 2010 and has now announced its plans to overhaul how organisations ensure their staff and volunteers are safe to work with vulnerable people. This briefing explains the key changes relevant to housing support and care from the Protection of Freedoms Bill and the two recent reviews into safeguarding.<sup>1</sup>

## 1. Key plans

The Protection of Freedoms Bill proposes:

- Fewer people will have to be vetted: only those working closely and regularly with children and vulnerable adults.
- CRB (Criminal Records Bureau) checks will become portable with continuous online updates.
- Employers will have greater responsibility to decide safer recruitment processes.
- Barring decisions will remain.
- It will still be an offence for a barred person to work in regulated activity and for an organisation knowingly to employ a barred person in a regulated activity.
- Volunteers will not be discouraged from their work because of unnecessary checks.

## 2. Existing setup

Before looking at the proposed changes, it's useful to recap the current system:

- CRB checks: housing support and care providers usually carry out enhanced CRB checks for applicants and many organisations repeat these every so many years, as encouraged by commissioners and the Quality Assessment Framework (QAF). This continues for now and remains a cornerstone for assessing somebody's suitability for particular roles.
- Employer duty to refer: employers must report to the Independent Safeguarding Authority (ISA) when they've sacked somebody or would have done so because of abuse or significant harm to a vulnerable person. This duty is still in place and remains under the plans.
- Offences: it is still an offence for a barred person to work in regulated activity and for an organisation knowingly to employ a barred person in a regulated activity.
- Barring decisions: these still rest with the ISA, which has a set process for assessing information, deciding on cases and for appeals. For now, anybody barred will continue to be so until the new system is introduced.
- Vetting and Barring Scheme: this was halted by the government last year before anybody started registering with the scheme. This is being abolished, so nobody will have to register with such a scheme now or in future.

## 3. Fewer people will have to be vetted

Looking at the proposals, the biggest change for housing support, is that staff, managers and volunteers will no longer need to register with the Vetting and Barring Scheme. The definition of 'regulated activity' is being changed, which will reduce the types of settings where extra vetting is needed.

The new definition of 'regulated activity' focuses on situations where staff or volunteers have regular or close contact with children or vulnerable adults. For our sector, this generally means services providing housing support because of somebody's age, illness or disability, or providing personal care. So included will be, for example, sheltered housing, mental health settings, alcohol or drug misuse services and those for people with learning or physical disabilities.

But many housing support services will not routinely have to carry out CRB checks or check for somebody's barred status, according to the plans (though the current QAF does encourage them). These include homelessness services, generic floating support, refuges (where staff do not supervise

children), those for young people (surprisingly not considered 'age'-related services), ex-offenders or Travellers. It also means that charity trustees and cleaners or maintenance staff with little contact with vulnerable people will not routinely have to be fully vetted if the plans go ahead.

#### **4. Portable CRB checks**

Enhanced CRB checks will still be available, for both regulated activity and other work with vulnerable groups. But they will become portable, so an applicant can use them for more than one position or when moving job. For a small annual fee, an employer will be able to immediately access up-to-date criminal record information online. In theory, this allows most people to need just one CRB check, only to be renewed if new criminal information comes to light. The full details of the plans, including the fee levels, haven't yet been set. And behind the scenes, the CRB and ISA will merge, to create a single body to oversee the process.

CRB certificates will in future be sent directly to the applicant, to allow for any errors to be corrected, within a target of 60 days for enhanced checks. It is also recommended that a full and digestible guide be developed to fully explain the criminal records and employment checking regime.

#### **5. Employers decide safer recruitment**

These plans set out a real shift in responsibility over safeguarding. Instead of the state deciding which people are allowed to work with children and vulnerable adults, it will be down to the employer. Organisations should still be able to ask for enhanced CRB disclosures but they must decide their own checks suitable for the level of risk involved. A care home may have more thorough checks for carers, for example, than cleaners. It will still be a duty to check a person's barred status if in regulated activity, which the CRB will reveal.

The new system will keep the current arrangements for referrals to the ISA (or its replacement). If an organisation sacks somebody, or would have done, because of a risk of harm to children or vulnerable adults, it must tell the ISA.

#### **6. Barring decisions remain**

The government will still retain a barring function, currently with the ISA, to decide which people should be barred from working with children or vulnerable adults. The current system already allows for people to make their case against most barring decisions, and this will stay the same. The appeal arrangements will also be unchanged, with appeals allowed for errors in fact or in law, as compliant with human rights.

A crucial difference in the plans is that the ISA (or replacement) will be allowed to review a barring decision at any time. This follows criticism from some organisations, including Sitra, that people may have been barred from certain positions even after they have turned their lives around. An example would be somebody convicted for drug offences in the past but now wishing to work as a support worker in drug treatment.

#### **7. Two offences remain**

The new system will keep two offences:

- it will continue to be an offence for a barred person to work with vulnerable groups in regulated activity; and
- it will still be an offence for an employer or voluntary organisation knowingly to employ a barred person in regulated activity.

## 8. Encouraging volunteers

The coalition government was concerned that the Vetting and Barring Scheme would have deterred well-meaning adults from working and volunteering with children and vulnerable adults. This is a big reason for removing the need to register with such a scheme. However, if volunteers are carrying out regulated activity unsupervised then the same vetting arrangements apply (eg duty on organisation to check barred status). On the other hand, if a volunteer is working in close contact with vulnerable groups but under supervision, then this will fall outside the scope of regulated activity.

## 9. Timescale

These changes are included in the Protection of Freedoms Bill, which is currently going through parliament. The government hopes it will become law by early 2012, creating the new barring regime and introducing continuous criminal records updates next year, with the new disclosure and vetting service beginning work in 2013.

While the government reviews set out the broad principles that will apply to the barring and disclosure regimes, full detail are still to be finalised. The reviews also cover wider issues, such as information sharing from the police and ditching the concept of 'controlled activity', which you can find in the full reports.

## 10. Sitra

Sitra is a national membership organisation committed to raising standards in the housing, care and support sector. We are a charity with over 25 years' experience of offering a range of affordable policy, training, consultancy, information, conference and capacity building services. We have some 650 member organisations, from both providers and commissioners and from the statutory, voluntary and private sectors.

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<sup>1</sup> Department for Education, Department of Health and Home Office (Feb 2011) *Vetting & Barring Scheme remodelling review: Report and recommendations*; Sunita Mason (Feb 2011) *A common sense approach: A review of the criminal records regime in England and Wales*; both available at <http://bit.ly/eGWm8T>