

The Vetting and Barring Scheme

Guidance on Safeguarding arrangements during the Scheme review period

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Introduction

The Government, in its document “The Coalition: our programme for government” published in May, announced its intention to undertake a review of the scope of the Vetting and Barring Scheme. The introduction of individual registration has been suspended to allow the review to take place.

Whilst final requirements on individuals to register with the Scheme will depend on the outcome of the review, it is important to note that the requirements introduced by the first phase of the Vetting and Barring Scheme in October 2009 will remain in place.

These requirements are outlined in this document and relate to:

The definitions of ‘Regulated Activity’ and ‘Controlled Activity’ (which is itself subject to ongoing consultation)

The role of the Independent Safeguarding Authority in making barring decisions and maintaining the barred lists

The prohibition of certain persons from undertaking regulated activity, and from undertaking controlled activity without safeguards being in place

Duties and responsibilities

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

- You must not knowingly employ in regulated activity, or use as a volunteer, a barred person.
- If you employ people or use volunteers in regulated activity or controlled activity 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.
- 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.

Regulated activity

Regulated activity covers anyone working closely with children (any person under the age of 18) or vulnerable adults, either paid or unpaid 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. 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

These are described further as 'specified activities', below.

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. Additionally, certain posts are considered to be regulated activity, and these are listed below.

Exceptions to the Vetting and Barring Scheme

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. 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.

The Scheme also completely excludes family and personal arrangements.

Exceptions to regulated activity

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.

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.

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.

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.

Specified activities

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.

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.

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.

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.

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.

Services that are not specifically for vulnerable adults but which are aimed at the general public are not regulated activity.

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.

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.

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.

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.

The Scheme will not cover IT staff where they do not contact chatroom users or see the content of messages.

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.

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.

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.

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.

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.

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.

Supervision

Activity that regularly involves day-to-day management or supervision of a person carrying out the activities above is also regulated activity.

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.

Specified settings and establishments

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 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.

Specified settings are limited to:

- schools (educational institutions exclusively or mainly for the provision of full-time education to under-18s)

- children's homes
- childcare premises (including nurseries)
- pupil referral units
- 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.

Specified positions in the children's workforce

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

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 units
- individuals who are proprietors of independent schools and individuals who take part in the management of independent schools
- members of fostering and adoption panels
- 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 CAFCASS, including the chief executive (CAFCASS, 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

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.

Specified positions in the vulnerable adults workforce

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

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.

Controlled activity

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.

Controlled activity will include:

- frequent or intensive activity 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.

In advance of any introduction of controlled activity arrangements interim requirements have been put in place.

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. 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.

Further to the results of Sir Roger Singleton's check into the scope of Scheme in December 2009, the requirement for controlled activity has been put to public consultation. Further information about this can be found on the Department for Education website, www.education.gov.uk.

The Independent Safeguarding Authority and barring arrangements

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.

When the Vetting and Barring Scheme was launched on 12 October 2009, the previous 'barred lists' in England and Wales and in Northern Ireland were repealed, subject to some transitional provisions, and were replaced by new lists: the Children's Barred List and the Adults' Barred List.

For those on the old lists, 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.

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.

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.

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

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.

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

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.

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. 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.

A full list of automatic bar offences is contained in Statutory Instruments available at www.opsi.gov.uk.

The ISA decision-making process

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

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.

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.

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.

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

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.

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.

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. Full guidance on the referral process can be found on the ISA website (www.isa.homeoffice.gov.uk).

Offences related to barred people

Working in regulated activity while barred

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.

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.

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.

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.

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.

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

A person who 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.

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.

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.

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.

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.

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.

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.

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.

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 Education

www.education.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

Glossary

Vulnerable adults: a definition

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

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

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.

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

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

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

Lawful custody

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

People who need assistance to conduct their affairs are those for whom:

- an application has been made to create a lasting power of attorney
- a lasting power of attorney is created
- an enduring power of attorney has been registered
- 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 for registration of an enduring power of

- attorney
- 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.

People with physical or mental health conditions

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

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

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.

RAP (Regulated Activity Provider)

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.

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.

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.