Subject:
DISCLOSURE AND BARRING ARRANGEMENTS: CHANGES TO PRE-EMPLOYMENT VETTING CHECKS FOR VOLUNTEERS WORKING IN SCHOOLS FROM 10 SEPTEMBER 2012

GUIDANCE FOR SCHOOLS AND EMPLOYING AUTHORITIES ON CHANGES TO PRE-EMPLOYMENT CHECKING AND SAFER RECRUITMENT PRACTICES

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Target Audience:

- Principals and Boards of Governors of all grant-aided schools (including Voluntary Grammar, Integrated and Irish Medium Schools)
- Education and Library Boards
- Council for Catholic Maintained Schools
- Northern Ireland Council for Integrated Education
- Comhairle na Gaelscolaiochta
- Proprietors of Independent Schools
- Council for Curriculum, Examinations and Assessment
- Governing Bodies Association
- Recognised Teacher Unions

SUMMARY OF CONTENTS

Scaling back of Regulated Activity

From 10 September 2012 changes to the definition of "Regulated Activity" will result in volunteers working in schools no longer being viewed as in "Regulated Activity", providing a school can ensure reasonable supervision on a regular basis. In these circumstances it is no longer mandatory for a school to obtain an Enhanced Disclosure Certificate and it will be unlawful to check if a volunteer is on a barred list.

Governor Awareness:
Essential

Status of Contents:
Advice Guidance and Implementation

Related Documents:
DE circular 2006/06

Superseded Documents: N/A

Expiry Date: N/A

DENI Website:
http://www.deni.gov.uk

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Repeal of Controlled Activity

The Controlled Activity category will no longer exist after 10 September 2012. This category covered people such as members of Board of Governors, who might have had less contact with children than those who work within regulated activity. Consequently, from this date a school will no longer be able to check if members of Board of Governors are on a barred list, but can still obtain an Enhanced Disclosure Check.

Guidance

This guidance sets out how these changes will affect schools and employing authorities, outlines what vetting requirements remain unchanged for other staff in schools following this date and explains the background to the new Disclosure and Barring Arrangements.

Enquiries:

Schools should check with their employing authorities as to how their policies and procedures will alter as a result of the changes outlined in this circular.

DISCLOSURE AND BARRING ARRANGEMENTS
CHANGES TO PRE-EMPLOYMENT VETTING CHECKS
FOR
VOLUNTEERS WORKING IN SCHOOLS
FROM
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CONTENTS

Title	Paragraph
Changes to the vetting of school volunteers	1
New definition of Regulated Activity	2
Unsupervised volunteers	4
Supervised volunteers	5
Funding of checks for volunteers	6
Statutory supervision standard	7
Supervision by a person in Regulated Activity	10
Regular and day to day supervision	10
Reasonable supervision in the circumstances	11
Local assessment, judgement and decision	13
Applying to AccessNI	14
Controlled Activity: Board of Governors	15
Disclosure and Barring Arrangements and other staff	16
The role of the Education and Training Inspectorate	21
Review of Vetting and Barring Scheme	22
Recommendations of review	25
Phased changes	26
Key principles	29
Annex 1: Examples and Process	page 13

SECTION 1

Following a Government led review of vetting and barring arrangements a number of changes to the pre-employment vetting requirements in the education sector will come into effect from 10 September 2012 as part of new Disclosure and Barring Arrangements (DBA).

1. SCHOOL VOLUNTEERS

Under the new DBA the law regarding the vetting of school volunteers has changed. There will now be two types of volunteers working in schools:

- **Those who work unsupervised**

and

- **Those who work under supervision**

Whether a volunteer is supervised will determine if he/she is working in Regulated Activity or not, which will then decide if an Enhanced Disclosure Certificate (EDC) from AccessNI is required. It will be a matter for schools/organisations to determine whether the level of supervision meets the statutory standard (see paragraphs 7 -13 below)

2. NEW DEFINITION OF REGULATED ACTIVITY

An important difference for schools will be the changes the new DBA makes to the definition and scope of Regulated Activity with children.

Under the new DBA the scope of Regulated Activity will include unsupervised activities including:

- Teaching
- Training
- Instructing
- Caring for or supervising children
- Providing advice/guidance on well-being
- Driving a vehicle only for children

and

- Regulated Activity is defined as unsupervised activity in a limited range of establishments (Specified Places), with the opportunity for contact with children, such as schools and childcare premises including pre-school establishments.

- In addition, in order to be regarded as Regulated Activity such unsupervised activity performed at such a specified place must be done regularly. Regularly means carried out by the same person frequently (once a week or more often), or on four or more days in a 30 day period (or in some cases, overnight)

- Regulated Activity still excludes family arrangements and personal non-commercial arrangements.

3. Activities that are no longer regarded as Regulated Activity under the new DBA include:

- Activities performed by volunteers that are supervised at a reasonable day to day level, and

- Occasional or temporary services such as maintenance or repairs.

4. VOLUNTEERS WHO WORK UNSUPERVISED

Volunteers who are not supervised are still regarded as working in Regulated Activity and therefore an EDC from AccessNI is still required. You must ensure that you apply to AccessNI for the appropriate check which includes a check of the barred lists. AccessNI guidance as to how to complete an application form is available at www.dojni.gov.uk/accessni. In addition, the AccessNI Helpline is available for advice on how to complete the application form: 0300 200 7888.

5. VOLUNTEERS WHO WORK UNDER SUPERVISION

If a volunteer is supervised then under the new DBA they are not regarded as working in Regulated Activity and therefore a school is not required to obtain an EDC. However, a school is still entitled to obtain an EDC if it so wishes but it will be unlawful for a school to seek a barred list check in these circumstances. You

must ensure that you apply to AccessNI for the appropriate type of check which would not include a check of the barred lists. AccessNI guidance is available at www.dojni.gov.uk/accessni. In addition, the AccessNI Helpline is available for advice on how to complete the application form: 0300 200 7888.

FUNDING OF CHECKS FOR VOLUNTEERS

6. DE will continue to fund the costs of EDCs for Volunteers. Employing authorities and schools will be notified in advance of any change to this policy.

SUPERVISION

7. We start with a presumption of trust and confidence in those who work with children and the good sense and judgement of their managers; that appropriate training is undertaken and that safeguarding practices and procedures are in place. This guidance applies when a school/organisation decides to supervise with the aim that the supervised work will not be Regulated Activity (when it would be, if not so supervised). In such a case, the law makes three main points:

- **there must be supervision by a person who is in Regulated Activity;**
- **the supervision must be regular and day to day; and**
- **the supervision must be "reasonable in all the circumstances to ensure the protection of children".**

A school/organisation must have regard to this guidance. While the precise nature and level of supervision will vary from case to case, guidance on the main legal points above is as follows.

8. Volunteers working in schools are no longer regarded as being in Regulated Activity, if they are reasonably supervised while undertaking their duties. The law is that supervision must be regular and day to day, which gives local managers the flexibility to determine what is reasonable for their circumstances. In law, a school/organisation does not have an entitlement to do a barred list check on a volunteer who, because they are supervised, is not in Regulated Activity.

Neither does the law place on the school/organisation a duty to require an EDC, but the school is entitled to, if it chooses to do so.

9. The precise nature and level of supervision will vary from case to case. The statutory duty means that organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of the children concerned.

10. Supervision by a person in Regulated Activity / regular and day to day: supervisors must be in Regulated Activity themselves. The duty that supervision must take place "on a regular basis" means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the volunteer has just started or has been doing the activity for some time.

11. Reasonable supervision in the circumstances: within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Schools/organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:

- ages of the children, including whether their ages differ widely;
- number of children that the individual is working with;
- whether or not other workers are helping to look after the children;
- the nature of the individual's work (or, in a specified place such as a school, the individual's opportunity for contact with children);
- how vulnerable the children are (the more they are, the more an organisation might opt for workers to be in Regulated Activity);
- how many workers would be supervised by each supervising worker

12. While the law does not place a statutory duty on the school to require an EDC on a volunteer not engaging in Regulated Activity because supervision is in place, if, in their judgement, local school staff are concerned that an adequate level of supervision cannot be consistently maintained, then the school is entitled to apply for an EDC, without a barred list check.

LOCAL ASSESSMENT, JUDGEMENT AND DECISION

13. **DE cannot adjudicate or determine as to what is regarded as adequate supervision as situations and circumstances will vary from school to school. It is for local school staff to decide if the level of supervision they can provide meets the statutory standard and is sufficient, in their judgement, to provide reasonable assurance for the protection of children in their care.**

14. APPLYING TO ACCESSNI FOR VOLUNTEERS

It is extremely important that the Boxes H7 and H8 on the AccessNI Disclosure Application Form are completed correctly to take account of the changes to the definition of Regulated Activity. Guidance on how to complete Part H of the application form for volunteers can be found on the AccessNI website: www.dojni.gov.uk/accessni. In addition, the AccessNI Helpline is available for advice on how to complete the application form: 0300 200 7888 .

15. CONTROLLED ACTIVITY: MEMBERS OF BOARDS OF GOVERNORS

As a result of the repeal of Controlled Activity in the new DBA, members of Boards of Governors are no longer required to have an EDC as a condition of their appointment. From 10 September 2012, schools will no longer be able to check whether people working in Controlled Activity are barred. However, schools still have an option to request an EDC, without a barred list check.

SECTION 2

16. DISCLOSURE AND BARRING ARRANGEMENTS AND OTHER STAFF

Although the new DBA will change some aspects of the previous VBS, in particular the definition of Regulated Activity and the repeal of Controlled Activity, the DE wishes to emphasise to principals and employing authorities that **pre-employment vetting remains a key preventative measure in denying an unsuitable individual access to children and vulnerable adults through the education system.**

17. Schools should continue to ensure that newly appointed **paid** staff such as teachers and non-teaching staff including classroom assistants, office, catering, cleaning and caretaking staff are appropriately vetted according to the practice and procedures operated by the their employing authority and outlined in DE Circular 2006/06.

18. Schools are reminded that vetting is only one of a number of important elements in the recruitment process and should be considered together with other key aspects such as a candidate's application form, interview, references and knowledge of their employment history and experience.

19. Once appointed new staff should be appropriately trained and made aware of the school's child protection and safeguarding polices and procedures. Employing authorities can advise schools on child protection and safeguarding training issues.

20. Schools should also ensure that visitors to schools report their arrival and departure to reception staff or a nominated individual, that they are identified as visitors and are escorted around the school and appropriately supervised for the duration of their visit.

MONITORING OF VETTING REQUIREMENTS

21. ROLE OF EDUCATION AND TRAINING INSPECTORATE

In all inspections, the Education and Training Inspectorate evaluate schools' arrangements for child protection/safeguarding and compliance with DE guidelines. As part of that evaluation both the principal and the Chairperson of the Board of Governors are asked to give an assurance that both teaching and non-teaching staff, unsupervised volunteers, and extra curricular staff have been appropriately vetted.

SECTION 3

BACKGROUND TO THE NEW DISCLOSURE AND BARRING ARRANGEMENTS

22. REVIEW OF VETTING AND BARRING SCHEME

On taking office in May 2010, the Coalition Government stated its intention to scale back the previous VBS to more proportionate and "common sense" levels.

23. The Coalition Government believed that child protection policy had been developed in haste and in response to individual tragedies, with the well-intentioned, though misguided, belief that every risk could be mitigated and every loophole closed. This had led to public confusion, a fearful workforce and dysfunctional mistrust between children and adults. The coalition government took a different approach, based on a presumption of trust and confidence in those who work with children and the good sense and judgement of their managers.

24. The Coalition Government halted the full delivery of the VBS, commissioned an internal review into the scheme and also an independent review of the Criminal Records Regime (CRR). Full implementation of the VBS would have resulted in upwards of nine million people across the UK and some 600,000 people within the north of Ireland registering with the Independent Safeguarding Authority (ISA), as their work would have fallen within the definition of Regulated Activity, with children or vulnerable adults.

RECOMMENDATIONS OF THE REVIEW

25. The VBS and CRR reviews resulted in a number of recommendations which the Government has considered. Key recommendations made about the VBS and CRR included:

- The planned registration of some nine million people with the ISA should be scrapped – there should be no requirement for people to register with the scheme and there will be no ongoing monitoring;

- The barring regime should be scaled back to cover only those who may have regular or close unsupervised contact with vulnerable groups;

- Criminal records checks should be portable, and

- An online system should be established to allow employers to check if updated information is held on an applicant.

NEW DISCLOSURE AND BARRING ARRANGMENTS: PHASED CHANGES

26. Changes to the criminal records and barring arrangements resulting from these recommendations will be introduced through the Protection of Freedoms Act 2012, but will be phased in over time.

27. The introduction of an Online Criminal Records Status Check is not anticipated to be introduced in the north of Ireland until 2014, to allow an appropriate system to be developed.

28. However, new DBA will come into force on 10 September 2012, which will result in a number of important changes to the vetting arrangements and requirements currently in place under the existing VBS.

KEY PRINCIPLES

29. The new DBA is founded on a number of key principles:

- A proportionate balance between civil liberties and safeguarding vulnerable groups including children;
- Rebalancing the role of the employer and the state;
- Reinforcing disclosure and barring as one part of the wider recruitment and employment process;
- Reducing bureaucracy (e.g. through the introduction of portable certificates, making it efficient, quicker and less costly);
- Trusting employers to make rounded decisions about whom they employ, such as checking references and ongoing management, and

- The establishment of a new Disclosure and Barring Service by merging the functions of the Criminal Records Bureau and the ISA. AccessNI will still provide a disclosure service in the north of Ireland.

ANNEX 1

EXAMPLES AND PROCESS

EXAMPLES

A. Volunteers, in a specified place eg school

i. Mrs Moore, a new volunteer, helps children with reading at a local school for two mornings a week. Mrs Moore is generally based in the classroom, in sight of the teacher. Sometimes, Mrs Moore takes some of the children to a separate room to listen to their reading, where Mrs Moore is supervised by a paid classroom assistant, who is in that room for most of the time. The teacher and classroom assistant are both in Regulated Activity. The head teacher decides whether their supervision is such that Mrs Moore is not in Regulated Activity.

ii. Mr O'Brien, a new volunteer, assists the school PE teacher with the coaching of children at the school sports pitches. The children are divided into small groups, with assistant coaches such as Mr O'Brien assigned to each group. The PE teacher oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. The PE teacher is in Regulated Activity. The school decides whether the PE teacher's supervision is such that Mr O'Brien is not in Regulated Activity.

PROCESS

In each example, the school uses the following steps when deciding whether a new worker will be supervised to such a level that the new worker is not in Regulated Activity:

1. Consider whether the worker is doing work that, if unsupervised, would be Regulated Activity. If the worker is not, the remaining steps are unnecessary;

2. Consider whether the worker will be supervised by a person in Regulated Activity, bearing in mind paragraph 10 of this guidance;

3. Consider whether the supervision will be regular and day to day, bearing in mind paragraph 10 of this guidance;

4. Consider whether the supervision will be reasonable in all the circumstances to ensure the protection of children, bearing in mind the factors set out in paragraph 11 of this guidance and if it is a specified place such as a school.

5. Consider whether the supervised worker is a volunteer.

The flow chart below outlines the process and the factors that schools need to consider in respect of the supervision of volunteers.

