

# Changes to the Criminal Records Bureau (CRB), Independent Safeguarding Authority (ISA) and Disclosure and Barring Service (DBS)

## Frequently asked questions

### 1. Why has the disclosure and barring system changed?

Shortly after the Government came into power, it committed to scaling back the criminal records and barring system – to continue to protect people in vulnerable circumstances but to reduce some of the burden on employers by making the system more proportionate.

### 2. When did the changes come into effect?

The changes have been made in the Protection of Freedoms Act 2012 (PoFA) and the first parts of this new legislation came into effect on 10 September 2012.

In December 2012, the functions of the CRB (Criminal Records Bureau) and the ISA (Independent Safeguarding Authority) were merged and are now carried out by the DBS (Disclosure and Barring Service).

### 3. What difference will the DBS make to the service?

The services provided has not change, but they are now provided by one organisation rather than two. Contact details for the DBS are available from the [Home Office website](#).

### 4. How will changes from September affect providers regulated by CQC?

- Change to the definition of ‘regulated activity’: the system of disclosure and barring is based on ‘regulated activity’ and there is a change to the definition of ‘regulated activity’ in relation to safeguarding adults as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA). It is important to note that the term ‘regulated activity’ does not have the same meaning as it does in the

Health and Social Care Act 2008 (HSCA) and the new legislation does not make any changes to the scope of regulated activities that providers register for under the HSCA.

For disclosure and barring purposes, a regulated activity is one involving close work with vulnerable groups, including children, which a barred person must not do. The new disclosure and barring legislation redefines and reduces the scope of regulated activities.

To read the new list of regulated activities under the SVGA and find out more about the changes, please follow the links to the Department of Health and Department for Education websites:

<http://www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/>

<http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring>

- Abolition of 'controlled activity': the system of disclosure and barring also had a separate category of 'controlled activity', which was typically work not involving direct contact with people in vulnerable circumstances, for example, handling records. Controlled activity no longer exists, meaning that since September 2012, providers have not been entitled to check whether people in the controlled activity category are on the barred list. People in controlled activity roles may still be eligible for a DBS check, depending on their role.
- There is now a minimum age (16) at which someone can apply for a criminal record check.
- Registration and monitoring under the Vetting and Barring scheme has been abolished. Originally, it was intended that anyone wishing to work with children and vulnerable adults would have to register, and once registered, be continuously monitored. That scheme was never implemented, and has now been abolished altogether.
- The scheme has allowed police forces to provide certain sensitive 'additional information' about applicants (commonly known as 'brown envelope' material) separately from the enhanced DBS check. This information was issued to the counter-signatory body, **not** to the applicants themselves. Since 10 September, this provision no longer exists in the Police Act, although the police may choose to use common law powers to provide information directly to employers in cases where they believe this is necessary.
- There are changes to the types of information the police will be able to provide as part of the enhanced disclosure. Until recently, the police used their discretion in providing information held locally about a person. While this will still be possible, they will have to apply a more rigorous relevancy test before disclosing it.

- Currently applicants can challenge information disclosed on their own criminal records certificate that they believe to be inaccurate. Since September 2012, the Protection of Freedoms Act allows people other than the applicant to do that too.

## **5. Will there be any further changes in the future?**

Yes. There are plans to introduce a new Update Service early in 2013 that will reduce the number of applications individuals will have to make. The Update Service will allow a person (if they choose to subscribe to it, and pay any appropriate fee) to apply for a criminal records check only once and then, if they need a similar sort of check again, to use their existing certificate. The organisation employing them would, with the person's consent, be able to check online to see if the information was still up to date. The intention is to avoid so many repeat applications. The fee for the service has not yet been determined and more details will be provided in due course.

See the Home Office website for more information about the changes:  
<http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

## **6. How can providers ensure they safeguard people who use their services following the changes to the definition of people who require barring checks?**

Following the changes, employees whose work does not necessarily involve direct contact with people in vulnerable circumstances may no longer be eligible for barring checks. Examples are administrators, cleaners, chefs, catering staff, laundry assistants and caretakers.

As mentioned in Q5, providers registered with CQC need to have an effective recruitment procedure. However, criminal records and barring checks are only one aspect of ensuring effective and safe recruitment practices and should not be used in isolation. Other mechanisms, such as checking a person's employment history and any gaps, reviewing references, etc should also be undertaken by the employer to assure themselves as far as possible that all employees are of good character and are fit to work in their health or adult social care service.

**7. From early next year I understand that employers, or prospective employers, will no longer receive their own copy of an applicant's DBS certificate, and certificates will be issued only to applicants.**

**How will CQC check that providers are compliant with the regulations regarding effective recruitment procedures if they can't photocopy a DBS certificate when an applicant shows it to them?**

The details of the proposed single certificate scheme are still to be confirmed and we advise people to check the Home Office website for further details, as and when information becomes available.

Under the Health and Social Care Act, the provider is required to maintain appropriate records in relation to the people employed. It would still be appropriate for the provider to ask to see a person's DBS check certificate and to keep a record of the relevant details, as part of undertaking effective recruitment procedures. These records are outlined in our existing guidance and include the following:

- The date of issue of the certificate.
- Name of the subject.
- Date of birth of the subject.
- Type of certificate requested.
- Whether the children's and/or adults barred list was checked and what the outcome was.
- The reference number of the certificate.
- The details of the employment decision taken by the provider.

The change to issuing a single certificate to the applicant only is likely to commence at the same time as the introduction of a new option called the online Update Service. The person applying for the DBS check will be able to choose to subscribe to a new online system, which will allow their employer to check the status of their criminal records check whenever they wish. Other benefits will include the DBS check becoming more portable for the individual, meaning they can use it for other employment. Again, the provider will not have paper copies of certificates to show to a CQC inspector. But they should be able to provide evidence of what records they are keeping, what checks they are carrying out on their employees' DBS check status, and what actions they are taking as a result of any changes in status.

## 8. Under the new legislation, do volunteers need DBS checks or barred list checks?

When considering whether you need to make a check on a volunteer, you should firstly consider if they are undertaking regulated activity (under the SVGA). See the following links to find out more information about the new definition of regulated activity:

<http://www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/>

<http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring>

If the volunteer undertakes regulated activity within the new definition, you can request an enhanced DBS check with barred list information. It is still an offence to knowingly engage a barred person in regulated activity.

If the volunteer does not undertake such regulated activity, they may still be eligible for enhanced DBS checks *without* barred list information. To establish if this is the case for those working with adults, you need to consider if the volunteer provides regulated activity as defined in the SVGA before it was amended by the PoFA.

- 1) Do the adults with whom the person works fall into the definition of vulnerable adults set out in section 59 of the SVGA (before it was amended by the PoFA)?
- 2) Does the person provide any of the regulated activities relating to adults set out in Part 2 of Schedule 4 to the SVGA (before it was amended by the PoFA)?
- 3) Does the person undertake the work regularly (the meaning of this is set out in Part 3 of Schedule 4 to the SVGA (before it was amended by the PoFA)?

If the person meets *all* these requirements, then you can request an enhanced check.

You are required to operate an effective recruitment procedure, and where you have the option to take up DBS checks on either staff or volunteers, you should carry out a risk assessment as to whether or not such a check is needed, and what action to take as a result of the check. You should keep a record of this process as an audit trail of your decision-making.

## 9. How will CQC deal with providers who have people on work experience aged under 16, as they no longer need a DBS check?

One of the changes to the legislation from 10 September is to introduce a minimum age for DBS checks. So, anyone who is under 16 years old will not be

able to apply for a DBS check. Umbrella bodies will not be able to countersign an application for anyone under 16.

Providers still have a duty under the HSCA to safeguard people who use their services so, as far as possible, we would expect you to undertake a risk assessment before taking on anyone under the age of 16 on work experience. The assessment should carefully consider what roles and tasks would be appropriate for them and what level of supervision may be required.

For the most up-to-date information, visit the Home Office and Department of Health websites:

<http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

<http://www.dh.gov.uk/health/tag/disclosure/>

## **10. What action should providers take if a disclosure or barring check for a potential staff member includes information related to criminal offences, court appearances and/or substance misuse?**

Having a criminal conviction does not in itself prevent a person from working in health or social care, although some serious convictions will automatically lead to a person's name being on one or more barred lists. If a criminal records check discloses a conviction or other relevant information, the employer has to decide whether the person is suitable to be employed in their service. When doing so, they need to risk assess their suitability, taking into account the nature of the information, how old and relevant it is, the role and activities the person would undertake and the characteristics and needs of the people using the service. Providers should make decisions in the context of their responsibility for the wellbeing of the people who use the service.

Regulation 21 of the Health and Social Care Act requires regulated providers to operate effective recruitment procedures in order to ensure, as far as possible, that their employees are of good character, have the right qualifications, skills and experience for the role, and are fit for that type of work. Criminal records checks are only one aspect of ensuring effective and safe recruitment practices and should not be used in isolation. You should also use other mechanisms, such as checking employment history and any gaps, reviewing references, etc, to assure yourself as far as possible that all employees are of good character and are fit to work in their health or adult social care service.

In some regulated services, for example, drug and alcohol services, experience of substance misuse may be beneficial for the role. Equally, previous experience of the justice system may be welcomed, rather than avoided, for some roles.

However, providers must not employ in regulated activity (as defined in the new legislation) someone who they know has been barred by the Independent

Safeguarding Authority (ISA)/Disclosure and Barring Service (DBS). It is an offence to do so.

**11. What action does CQC take if a disclosure and barring check on a person applying to be a registered manager includes information related to criminal offences, court appearances and/or substance misuse?**

CQC has a duty under Regulation 6 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 to ensure that people applying to be registered managers are fit to do so. We therefore have to satisfy ourselves of the fitness and character of an applicant as part of the registration assessment.

The result of the criminal records check for potential registered managers informs our registration assessment and is used, along with all the other evidence, to determine (a) whether more investigation and assessment is required and (b) to help us come to a view about whether registration should be agreed or refused.

For example:

P applies to register as the manager of a care home. His criminal records check includes a conviction for 'driving under the influence'. If the criminal records check was considered in isolation, then such an offence is unlikely to lead us to conclude that P is unfit. However in this case, the CQC Registration Assessor decides that, because of the conviction, they are going to ask for a reference from P's GP. The GP informs CQC that P has a long and active history of alcohol and drug misuse. So, our Assessor decides to ask for a reference from P's last employer. The last employer informs CQC that P left under a cloud, having been found asleep on duty. The employer suspected that P had been taking drugs on the premises, but couldn't prove it. So the Assessor decides to ask for a reference from the employer before that, who informs CQC that P left under a cloud when an amount of money went missing from a service user.

This information was put to P at the interview; he initially denied all of the above, but under close questioning, eventually conceded that he was lying. CQC refused P's registration on the grounds that he was not a person of good character.

**12. An air ambulance provider uses a bank of approx 100 NHS doctors and nurses for short trips of a day or two. All have disclosure and barring checks from NHS trusts. Does the air ambulance provider have to take another check?**

The employer has to undertake a risk assessment and decide whether to accept a previously issued criminal records check. They should undertake a risk assessment before making their decision and be able to justify that decision if we ask them about it during an inspection.

The portability section of the Business Link website describes some of the risks and limitations of portability, see [www.businesslink.gov.uk/crbportability](http://www.businesslink.gov.uk/crbportability).

**13. Two companies that own a number of care homes are merging. As a result all employees are being transferred under TUPE. Please can you advise whether existing CRBs should be renewed at the date of transfer?**

If staff are transferred over under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), the new employer should not be required to undertake new criminal records checks. This is because the person doing the job has not changed and neither has the job itself. All that has changed is the owner of the business. There may be an issue, of course, if the new employer wishes to restructure the organisation and move people to different posts that were not the reason for the original certificate, but on the face of it, no new criminal records checks would be required. The CRB share our view. It remains the employer's responsibility to be satisfied that the people they employ are as safe and appropriate for their role as possible, and organisations should establish their own rechecking policies based on their individual circumstances.

**14. Is there a prescribed time limit for a CRB check?**

There is no requirement for a service that directly employs its own staff to repeat criminal records checks within a set period. Further checks on staff will depend on the registered person judging that this is necessary or advisable after a certain period. When making their decision they should take into account the work they do, the potential scope for abuse, and the stability of the workforce.

**15. Do providers of personal care to adults have to check their staff against the children's barred list if there are children present in the person's home when they deliver the personal care?**

No. The provider does not have the legal ability to check the children's barred list information in this scenario. They can only check the children's barred list if they are providing regulated activity for children under the SVGA.

**16. Volunteers visit our care home to provide entertainment three or four times a year. Do they need to have criminal records checks? Are they entitled to be asked to undergo barred list checks?**

In this particular situation, it would not be necessary to undertake barred list checks for these volunteers as they are not engaging in regulated activity under

the SVGA. Entertainers would not fall within paragraph 12 of the ROA Exception Order and therefore there is no eligibility for any criminal records checks.

However, if the activity and role of the volunteers were to change and expand beyond just providing entertainment, the provider may reconsider whether or not they were eligible for any form of check and whether that would be appropriate.