

Title: Impact Assessment on proposed changes to the Vetting & Barring Scheme Lead department or agency: Home Office Other departments or agencies: <ul style="list-style-type: none"> • Criminal Records Bureau (CRB) • Independent Safeguarding Authority (ISA) • Association of Chief Police Officers (ACPO) • Department for Education (DfE) • Department of Health (DoH) 	Impact Assessment (IA)
	IA No: HO0034
	Date: Jan 2011
	Stage: Final
	Source intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Vetting & Barring Scheme (VBS) has been criticised as being disproportionate, overly bureaucratic and working in contradiction to the UK's legal and democratic tradition of upholding civil liberties. In its Programme for Government, the Government committed itself to reviewing the VBS and the criminal records regime to scale them back to common sense levels and to ensure that the right balance was struck between preserving individuals' civil liberties and maintaining effective public protection arrangements. Government action is required to make this happen and there is scope within the Protection of Freedoms Bill to take this forward by amending the Safeguarding Vulnerable Groups Act 2006 (SVGA), which sets out the framework for the VBS.

What are the policy objectives and the intended effects?

The objective is to maintain effective protection arrangements for vulnerable groups, and to make the VBS more proportionate and efficient by: 1) retaining a central barring function, enabling a state authority to bar those considered unsuitable for work with children and vulnerable adults; and to maintain barred lists; 2) reducing the scale of the VBS by redefining the scope of "regulated activities" (the range of posts to which barring applies); 3) abolishing the concept of 'controlled activities' within the VBS; 4) removing the registration and monitoring requirements of the VBS; 5) continuing to make criminal records disclosures (including enhanced disclosures) available to employers for posts that may not be covered by redefined "regulated activities".

By pursuing this course of action it is anticipated that the VBS will strike the right balance between civil liberties and public protection.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1 – Do nothing

Option 2 – Make legislative changes to the SVGA 2006 in order to amend the VBS framework

Option 2 is the preferred option – see evidence base for further details.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed after 5 years

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Operational data on barring and disclosures will be available

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Lynne Featherstone

Date: 26th February 2011

Summary: Analysis and Evidence

Policy Option 2

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: unknown	High: unknown	Best Estimate: unknown

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Unknown		Unknown	Unknown
High	Unknown		Unknown	Unknown
Best	Unknown		Unknown	Unknown

Description and scale of key monetised costs by 'main affected groups'

There would be development costs for remodelling the Vetting and Barring Scheme to create the proposed arrangements and further work is required in this area. The new arrangements would rely partly on Criminal Records Disclosures being available for employers to fulfil their public protection duties through safe recruitment practice (See Impact Assessment on proposed changes to Part V of the Police Act 1997) as well as retaining the barring function of the ISA. The CRB Enhanced Disclosure costs £36 and the proposals would mean a small increase in this fee would be required per disclosure, to be agreed by HM Treasury, to cover the cost of the continued ISA barring role. This increase will be significantly less than the £28 monitoring fee and will be payable by a significantly smaller number of people than planned under previous provisions for the VBS. A longer term review of costs and fees is planned.

Other key non-monetised costs by 'main affected groups'

There are no other identified non-monetised costs as the proposals are expected to reduce regulatory impact on individuals and employers.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Unknown		Unknown	Unknown
High	Unknown		Unknown	Unknown
Best	Unknown		Unknown	Unknown

Description and scale of key monetised benefits by 'main affected groups'

Approximately 9.3m individuals would benefit through not having to pay a £64 registration fee, which included the CRB disclosure fee of £36 plus the previously planned monitoring fee of £28 under the planned VBS. Removal of the £28 monitoring fee gives an estimated total £260.4m per annum saving, as this part of the legislation is to be scrapped. Businesses would also benefit through reduced costs for managing the risks associated with their roles. Further work is required in this area once data is available to estimate the full extent of benefits.

Other key non-monetised benefits by 'main affected groups'

Individuals would no longer have to register and be monitored simply because they apply to work with vulnerable groups. A smaller number of people will fall within the new definition of "regulated activity" and fewer employers and individuals will therefore need to be subject to the duty to check barred status and to barring itself. Individuals not engaged in, or likely to engage in, "regulated activity" will no longer be subject to the barring arrangements. Employers would have greater control and responsibility over management of risks associated with their roles.

Key assumptions/sensitivities/risks

Discount rate (%)

Reputational risks should persons no longer subject to barring or in "regulated activities" be responsible for harm to children or vulnerable adults. Some employers/organisations will not welcome reduced coverage of scheme. Assumption that individuals and employers will take up criminal records updating arrangements (under proposed changes to Part V of the Police Act 1997) which will impact on requirements for barring checks.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Policy cost savings:	Net:	

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England & Wales				
From what date will the policy be implemented?	2012				
Which organisation(s) will enforce the policy?	CRB, ISA				
What is the annual change in enforcement cost (£m)?	Unknown				
Does enforcement comply with Hampton principles?	N/A				
Does implementation go beyond minimum EU requirements?	Yes				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: unknown		Benefits: unknown		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?					

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	Yes	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	N/A
Small firms Small Firms Impact Test guidance	No	N/A
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	N/A
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	N/A
Social impacts		
Health and well-being Health and Well-being Impact Test guidance		
Human rights Human Rights Impact Test guidance		
Justice Justice Impact Test guidance		
Rural proofing Rural Proofing Impact Test guidance		
Sustainability		
Sustainable Development Impact Test guidance		

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Implementation).

No.	Legislation or publication
1	Safeguarding Vulnerable Groups Act 2006
2	The Bichard Inquiry Report, 2004
3	Vetting & Barring Scheme Remodelling Review – Report & Recommendations (to be published)
4	CRB Annual Report 2009/10 http://www.crb.homeoffice.gov.uk/pdf/CRB%20Annual%20Report%202009%2010.pdf
5	ISA Annual report 2009/10 http://www.isa.gov.org.uk/PDF/ISA_annual_report_2010.pdf
6	'Drawing the Line' - A report on the Government's Vetting and Barring Scheme http://www.education.gov.uk/publications/standard/publicationdetail/page1/DCSF-01122-2009
7	SVG Act final Regulatory Impact Assessment 2006 http://webarchive.nationalarchives.gov.uk/tna/+http://www.dcsf.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

For the introduction of CRSC	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k
Annual recurring cost	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k
Total annual costs	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k
Transition benefits	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k
Annual recurring benefits	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k
Total annual benefits	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k	n/k

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Strategic Overview

Background

The Vetting & Barring Scheme (VBS) was one of the previous Government's key responses to the tragic murders of Holly Wells and Jessica Chapman by college caretaker Ian Huntley in 2002. It was introduced under the SVGA 2006 in line with recommendations made following the public inquiry led by Lord Bichard, which reported in 2004. The VBS was to apply to England, Wales and Northern Ireland. Separate and aligned arrangements were put in place in Scotland. For full details of the background to the VBS see annex 3.

Groups Affected

Those who wish to work with children or vulnerable adults and who would have previously been required to register with the VBS. Also the Independent Safeguarding Authority (ISA) and the Criminal Records Bureau (CRB).

Rationale

Despite the well-intentioned introduction of the scheme, and despite its merits, many perceive that it developed into a complex and cumbersome central bureaucracy, bringing far too many people within its scope. Additionally, the VBS was accused of being confusing, expensive and encouraging risk averse, rather than responsible, behaviour by employers by giving the impression that the scheme could manage all risk out of the system used for pre-employment checking. Finally, many also believed that the scheme was based on the assumption that people who wished to work, or undertake volunteering, with children and vulnerable adults posed a risk unless the VBS processes found otherwise, in contrast to the UK's legal and democratic tradition of being innocent until proven guilty. Consultations carried out during the VBS Remodelling review elicited further points and recommendations including:

*"We do not support the principle of the existing scheme that requires the pre-registration of all employees and volunteers without subsequent vetting since this cannot of itself provide any protection." **Unison***

*"There should be no duplication of regulatory mechanisms that would lead to over-regulation." **GMB, RCN, RCM, NUT, Unison, Unite and others (24 member union coalition)***

*"The core purpose of preventing unsuitable people from working with children and vulnerable people is fully supported by PACT. However employers should retain responsibility for recruiting and employment practices for making a check under ISA and/or CRB if required, the government should aid this process and streamline where possible." **PACT (national media trade association)***

*"The scheme must be proportional and avoid placing burdens on volunteers, employees or employers. The majority of individuals must be able to get clearance quickly and easily when starting a new post." **Child Protection in Sport Unit (12 member coalition group incl. The FA, The Scout Association, NSPCC and others)***

*"The scheme needs to be simple, easily applied and robust. It must not be burdensome, either in time, cost or administration on applicants and employers" **Wales Council for Voluntary Action***

*"Whilst patient safety is absolutely paramount to the review of the scheme, NHS Employers would fully support the proposals under the Coalition agreement to reduce the application of the scheme to common sense levels." **NHS Employers***

*"The system must avoid disincentives to safeguard for employers, employees and other relevant persons." **Treehouse (national autism charity)***

The Coalition Agreement published by the Government shortly after it came into power stated the Government's intention "to review the vetting & barring regime and scale it back to common sense levels". Terms of reference for the review were published on 22 October 2010 and are attached at annex 4.

Objectives

To restore public faith in the VBS by making it a more proportionate and less burdensome process, whilst contributing to effective public protection arrangements.

Options

There are two available options.

Option 1: The first is to maintain the status quo and do nothing. The VBS scheme has been partially implemented and could be fully implemented as originally planned.

Option 2: The second is to make targeted amendments to the way in which the scheme operates.

Barring The new scheme will retain barring, which is the process by which an agency of the state can prevent unsuitable people from working with particular groups, such as children or vulnerable adults. This will continue to be based on an assessment of risk, in those cases where individuals have been engaged in serious criminal behaviour or misconduct which demonstrates a risk of harm to these groups. It is proposed that barring decisions should continue to be made with key changes proposed in these areas:

- i) **Automatic barring.** This will continue to apply in cases where the most serious criminal offences demonstrate a clear risk to children or vulnerable adults, for example an offence of rape of a child. However, we propose that bars will only be applied to those seeking a criminal records disclosure for work in areas with children or vulnerable adults ("regulated activities"), rather than, as at present, to all persons committing such offences. An application for a check, which will be required in respect of the newly defined "regulated activities", will trigger referral to the ISA.
- ii) **Automatic barring "with representations".** This is a category of serious offences where an individual is placed on the barred lists, but is entitled to make representations to the ISA about the barring decision. Following the ruling in the judicial review of the barring regime brought by the Royal College of Nurses (RCN), we propose amending the provisions in this area to enable the individual to make representations prior to any barring decision, in line with the court judgement.
- iii) In both cases, autobar referrals to the ISA will only be triggered by serious offences or police intelligence in relation to serious criminal behaviour, not minor ones. The ISA will continue to have access to full criminal records information in such cases, in order to reach a barring decision. ISA figures show over 16,000 automatic bars have been applied by the ISA between January 2009, when it took over responsibility for decision making, and December 2010; i.e. the period in which this process has applied. As a result of limiting bars to applicants for checks, we would expect a very significant drop in this figure.

"Regulated activities". These are the range of activities or posts to which barring applies. The Secretaries of State for Health and Education have agreed to reduce significantly the range of activities and job roles which are included in this category; this in turn reduces the scope of the overall barring regime. For example, "regulated activities" will no longer include all posts in schools; work with children will be redefined as mainly unsupervised activities; and the definition of "health care" activities will be redrawn to rule out a large number of posts caught under the previous proposals. Bars will continue to apply both to paid employment and voluntary work. Safeguarding risks may arise here: for example, if posts are no longer to be included in the definition of "regulated activities", there is a risk that a barred person can undertake this work. The key will be to ensure that the definition covers those areas of work and access to children or vulnerable adults which are considered to provide the highest element of risk to those groups.

Controlled Activities The VBS would also have introduced a secondary type of activity (which could be either paid employment or volunteering), called “controlled activity”, where individuals working in ancillary posts or who had access to sensitive information relating to children or vulnerable adults would also have had to be checked. This would have covered, for example, receptionists in outpatient clinics, catering staff and caretakers in further education colleges and hospital records clerks. This was never implemented so the abolition of this aspect of the scheme has no costs attached.

Registration and monitoring. It is intended that there should be no registration or ongoing monitoring under the new scheme - in effect, no scheme membership. At present, employers are not allowed to employ applicants who have not undergone these checks. The proposals entail replacing this burden with a duty for employers (including volunteer organisations) to undertake a criminal records check on persons entering the newly defined “regulated activities”. This will inform the employer if the individual is barred from these areas of work, at the time of application, in addition to providing criminal records information. There is a risk in this approach, as the absence of monitoring means that any new offences by persons working in “regulated activities” will not be picked up immediately; but will only come to light if any new check is made by an employer - including an updated criminal records status check - see below. Compared to the 9.3 million people who were likely to be required to join the VBS under previous proposals, there will now be no requirement at all to register with the new scheme. A significantly smaller group of people will remain eligible for criminal records disclosures under the new definition of “regulated activities”, and the new scheme itself will only require an initial criminal records check on these individuals.

Criminal records disclosures. With no element of monitoring under the new scheme, it is important that employers remain able both to check on the barred status of individuals wishing to work in “regulated activities”, and obtain criminal records information. A single application for a CRB disclosure will show whether the individual is barred from “regulated activities”, in addition to any criminal records information. A duty to check will be introduced, as described above, which will require employers to check on individuals entering “regulated activities”. This will not be subject to any criminal sanction, which could potentially increase the risk of non-compliance by employers. However, the duty will place the responsibility for checks on employers, and it will continue to be an offence to knowingly employ a barred individual in “regulated activities”.

At the discretion of the individual, employers will also be able to check any updated criminal records information, including barred status, by means of continuous updating of disclosures, which is currently being developed and is provided for under the proposed changes to Part V of the Police Act 1997. This will enable the vast majority of people who have no change in their criminal records to only have to make one application to the new scheme, with future checks being available to employers via a simple electronic check. This will either indicate that no new information is available since the initial check, or recommend that employers obtain a further check. Where individuals sign up to this option, we expect it to lead to a 95% reduction in the need for repeat disclosures, as the on-line check will indicate that no new information is available.

For those working outside the new scope of “regulated activities”, but still involved in other posts with children or vulnerable adults (in effect, those posts and activities falling within the **current** definition of “regulated activities” but excluded from the **new** definition), we propose that current eligibility for criminal records checks (but not for barred list checks) should be maintained for employers.

Other elements of the scheme

It is proposed to maintain requirements for employer referrals to the ISA in cases where an individual’s behaviour in a “regulated activity” post gives rise to a safeguarding risk - for example, where an individual is dismissed for misconduct which has harmed a child, but no criminal conviction or caution has resulted. There are no proposals to change the appeals process, which was supported by the courts in the recent RCN judicial review case. Instead, it is proposed to introduce a power for the ISA to review cases of its own volition (for example, where new information comes to light). The ISA may choose to do this in a very small number of cases and no significant cost implications would be expected.

A power to exempt by regulation, areas of work which would otherwise be caught by the definition of “regulated activity”, is also proposed. This would include important areas in which other adequate vetting arrangements are in place, including, importantly, police and prison service activities. This would be a welcome reduction in bureaucracy for both services.

Proposals on a fees regime and the organisational changes needed to support the new scheme are currently being developed.

Risks

Option 1 – By adopting this approach, the scheme will continue to attract accusations of disproportionality and cumbersome bureaucracy. Public faith in the process will continue to diminish. It would not be acceptable to leave legislation in place with no intention of commencing it.

Option 2 – This will address concerns that stakeholders have raised through consultation, such as retention of a central barring function whilst removing the requirement for those affected by the VBS to register and be monitored. There may be an increased risk arising from removing monitoring. This is mitigated by arrangements enabling employers to verify barred status and obtain criminal records checks in respect of regulated activities.

Enforcement

In addition to the duty to check on barred status, criminal sanctions are maintained in respect of working in “regulated activities” whilst barred, and knowingly employing a barred person in “regulated activities”. The duty to check is expected to be subject to supervision by the various regulatory bodies working in the relevant sectors. Criminal offences will be subject to police investigation in the normal way.

Implementation

These amendments will form part of the Protection of Freedoms Bill which is due to receive Royal Assent around November 2011 and it is therefore envisaged that these measures would be implemented in 2012.

Appraisal (Costs and Benefits)

General assumptions and data

The previous government in 2006 commissioned KPMG to estimate the numbers of people who would fall within the remit of the VBS. This work used the Quarterly Labour Force Survey 2006 as the main source of data for estimating the paid Children and Vulnerable Adults workforce as it is the most tried and tested means of estimating workforce numbers and has a very large respondent base and high response rate (80-90%). As volunteering numbers are not included in this data set, volunteering analyses were based on household data from the Home Office Citizenship Survey 2005. These data-sets were then supplemented by data from NHS staff survey and the British Association of Adoption and Foster Families to give full coverage of the occupations that would need to register with the VBS once it was fully implemented. An update to this work was also carried out in 2008 to refresh the data and at that time the results of the analyses gave an estimate of 9.3m people as the total number of people expected to have to register with the VBS as engaged in “controlled” or “regulated” activities once it was fully implemented under the provision of the SVGA.

The abolition of controlled activities begins to address the imbalance in requiring 9.3m people to register with a scheme and consent to being monitored. Instead the new arrangements would mean employers checking criminality information for a significantly lower number of people rather than the state monitoring everyone in contact with or in positions with responsibilities for vulnerable people. This is based on the intention to limit the number of activities that fall within the new definition of “regulated activities”, and for whom an enhanced criminal records check will be required.

Where data is currently unavailable, it is stated in the relevant sections below that further work is required as data becomes available.

Option 1 would implement the SVGA and VBS as it stands.

Costs

This would introduce further implementation costs, by bringing into force compulsory registration and monitoring arrangements affecting approximately 9.3m people, as well as costing each individual in

controlled or regulated activity £64, equating to £595.2m in total burden for people working with vulnerable groups. Further work is required as data becomes available to cost alternative proposals and these figures are shown here to illustrate the magnitude of the regulatory burden for this option.

Further this would create a disproportionate response to public protection needs. It would also continue the perceived assumption that anyone that wants to or does work with children or vulnerable groups is guilty until proven innocent.

Benefits

The benefits for the SVGA and the VBS were set out in the Final Regulatory Impact Assessment 2006 for the Post-Bichard Vetting & Barring Scheme, which can be found at:

http://webarchive.nationalarchives.gov.uk/tna/+http://www.dcsf.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73

The benefits for introducing the new scheme were stated as including:

- Increased protection for children and vulnerable adults from abuse by those known to be unsuitable to work with them.
- More people working with children and vulnerable adults will be eligible for a CRB disclosure and consideration by the scheme [sic!].
- Decisions on whether to include an individual on the barred lists taken by experts
- Improved transparency - a comprehensive and consistent vetting service operating to a published set of clear criteria.
- Delivery of a step change in the vetting services for employers by notifying employers of any change in an employee's status.
- Parents and private employers will be able to carry out checks and hence be provided with reassurance that those working with their children are not known to be unsuitable.
- Delivery of a barring scheme which will support rather than delay effective recruitment procedures.

Option 2

Costs

There would be development costs for remodelling the Vetting and Barring Scheme to create the newly proposed arrangements and further work is required in this area as data becomes available. The new arrangements would rely partly on Criminal Records Disclosures being available for employers to fulfil their public protection duties through safe recruitment practice (See Impact Assessment for changes to Part V of the Police Act 1997) as well as retaining the barring function of the ISA.

In the short term, as it would take time to bring in the new legislation, and for changes to be implemented by both government and businesses, Government propose that all posts within the scope of the new arrangements would need a CRB Enhanced Disclosure. The CRB Enhanced Disclosure costs £36 and the proposals would mean that a small additional fee would be required per disclosure to cover the cost of work, subject to the agreement of HM Treasury. Although this small increase is intended to be substantially lower than the £28 fee for registration and monitoring with the VBS, it will be an additional cost to users of enhanced disclosures. Both this small cost increase and the numbers of people covered by the new arrangements requiring enhanced disclosures require further work as data becomes available.

Benefits

The key benefit from the proposals would be rebalancing public protection requirements with individuals' civil liberties. The current regime can be interpreted as assuming that every individual that applies to work with vulnerable groups presents a risk to that group.

Abolishing "controlled activities" and redefining "regulated activities" would result in a reduced number of posts falling within the scope of the new arrangements, making it a more proportionate response to public protection concerns. The ISA reported in its 2009/10 annual report that, as of March 2010, their barred lists included 19,111 and 21,419 people on the Vulnerable Adults List and the Children List respectively (note some people will be on both lists). That is a barred group of between 21.5k and 41k people presenting a direct risk that was to be managed by requiring every employee in regular contact with vulnerable groups to register and be subject to monitoring.

Individuals would no longer be required to pay £64 made up of £36 for an enhanced disclosure plus £28 to register with VBS. Employers recruiting the smaller group of people engaged in “regulated activities” would, however, be duty bound to use a CRB Enhanced Disclosure to manage the risks associated with those posts. There will be a small increase in the cost of this and more work is required in this area.

Using the estimated total workforce figures of 9.3m no longer having to pay a registration fee would equate to £260.4m (9.3m times £28 for registration and monitoring) in fees not having to be paid. A small increase in the cost of disclosures would be necessary to implement the new arrangements, and it is intended for this increase to be significantly less than the £28 payable if the changes are not made and hence the bulk of this benefit would be deliverable as a result of these proposals. Further work is required in this area as data becomes available.

Further work is required, as data becomes available, to give accurate numbers for the number of individuals that would benefit from no longer falling within the new definitions of “regulated activities” and who would hence benefit from a full saving of £64 each. To illustrate, if the new definitions of “regulated activities” remove 4m people from the scope of the new arrangements, this would equate to a £256m (£64 times 4m) year on year saving. This is an illustrative example and further work is required in this area, as data becomes available, to accurately calculate the figures for this change.

Businesses that currently pay the VBS registration fee on behalf of applicants for posts would be expected to manage the risks associated with their roles by continuing to use Enhanced Disclosures for “regulated” posts. Hence they would continue to bear a cost although it would be reduced from £64 per individual to the cost of a CRB Enhanced Disclosure Certificate plus a small increase intended to be significantly less than the £28 payable if changes are not made. Further work is required in this area as data becomes available.

- The new arrangements would retain a barring function, ensuring that those deemed unsuitable for working with vulnerable groups are prevented from doing so. Barring decisions would continue to be made by experts. A facility for employers to check whether people applying for a “regulated activity” role were barred from doing so would also be maintained using the Criminal Records Disclosure service, allowing employers to manage employment risks through safe recruitment practices. The improved transparency already achieved through establishing the ISA will be retained to provide the comprehensive and consistent barring service operating to a published set of clear criteria.

The new arrangements would also mean that individuals not engaged, or likely to engage in, regulated activities would no longer be subject to barring arrangements, as is the case at present under the VBS.

This impact assessment will be updated when costs have been confirmed.

The duties and regulations being introduced through these proposals are offset by the duties and regulations being removed as part of the remodelling process for the VBS.

Monitoring & Evaluation

See Annex 1 which provides details of a Post Implementation Review plan.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their actual costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; To review existing policy</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] To ensure that the policy objective has been fully met and to consult with Ministers and stakeholders in terms of effectiveness</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] Scan of stakeholder views to be submitted to Ministers</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] To assess the outcome of the recommendations of the VBS Review against the changes introduced</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] That all policy objectives have been achieved as supported by stakeholder views</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review] Statistical information on barring and disclosures; stakeholder and customer research, consultative forums and stakeholder management forums</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] N/A</p>

Annex 2. Specific Impact Tests

Statutory Equality Duties

Equality Impact Assessment

Please see Annex 4. The review of the scheme does not adversely affect any equality strands. However before the review there were major concerns from equality groups on three issues:

- concerns from trans groups that Enhanced Disclosures reveal previous identities if crimes were committed under these identities. Effectively this “outs” transgender people
- concerns from LGB groups that people who were convicted in the past under anti-homosexuality laws, which have since been decriminalised, have to declare the convictions, and similarly the enhanced disclosure lists there convictions
- concerns from age and disability groups that the application forms and guidance documents put blind people and people with poorer sight at a disadvantage

Recommendations have been made to address these issues. The review of the scheme has not affected these issues and the recommendations remain in place.

Economic Impacts

Small Firms Impact Test

The amendments referred to above seek to retain a barring system whilst encouraging employers to take a more proactive role. It is arguable that the balance of responsibility in the VBS became too heavily skewed towards the state, whereas the employer and / or voluntary organisation are much more aware of the risks inherent in any particular situation. The VBS has been accused of encouraging a risk-averse culture, rather than one which promotes responsible risk management. These amendments seek to redress the balance so that employers at all levels are empowered to take greater responsibility for public protection. The amendments would apply to companies of all sizes that employ people in positions of trust classified as “regulated activities” and hence there would be no disproportionate impact on small firms.

Social Impacts

Human Rights

The proposals to redefine the scope of “regulated activities”, abolish the concept of “controlled activities” and remove the registration and monitoring requirements of the VBS would all reduce state intervention and promote the “Right to Respect for Private and Family Life” under Article 8 of the Human Rights Act 1998. The result of implementing these proposals would mean that fewer individuals fall under the scope of the remodelled scheme and those that do will no longer be required to register and undergo monitoring as part of the process.

Please also see the ECHR Memorandum of the Protection of Freedoms Bill

Justice

As these proposals are not creating new criminal offences or civil sanctions which have to be agreed by the Justice Secretary, there is no justice impact.

OIOO

The changes in these proposals would have a deregulatory effect of removing the need for individuals to register with and be monitored by government. For activities that remain within scope of the new arrangements, changes are made to continue protecting the public whilst

reducing regulatory costs to business through provision of continuously updated criminal records disclosures in changes proposed to Part V of the Police Act 1997.

Annex 3 – Background to the Vetting & Barring Scheme (VBS)

Vetting and Barring Scheme

The current vetting and barring regime was introduced under the Safeguarding Vulnerable Groups Act 2006. It followed the Soham tragedy, and the subsequent public inquiry led by Sir Michael (now Lord) Bichard, which reported in 2004.

The Vetting & Barring Scheme (VBS) was based on Bichard's key recommendation to establish a scheme for the registration of people working with children or vulnerable adults.

Those registered would have no relevant information held on them which suggested they should be stopped from working with vulnerable groups. In development, the focus of the scheme moved primarily to a barring regime, intended to prevent those who presented a risk of harm from working with vulnerable groups.

The Scheme built on, and replaced the previous barring processes, which were:

➤ **Protection of Children Act list (POCA)**

Under the Protection of Children Act 1999, regulated child care organisations in England and Wales - those providing accommodation, social and health care - had to refer people to the DCSF (now Department for Education) when they had dismissed or disciplined them for misconduct involving harm or the risk of harm to a child. They also had to check all new employees working in regulated positions.

➤ **List 99 (formally Information held under Section 142 of the Education Act)**

This list, introduced in 1926, barred people from working in schools, further education settings and council-run educational settings in England and Wales on the grounds of misconduct, unsuitability to work with children, inclusion on the POCA list or on medical grounds. New employees had to be checked against the list. Referrals were made to List 99 from a range of sources including schools, the police and councils.

➤ **Protection of Vulnerable Adults list (POVA)**

The Protection of Vulnerable Adults (POVA) scheme, as set out in the Care Standards Act 2000, was a system that banned people from working in care positions with vulnerable adults if they had harmed a vulnerable adult, or placed a vulnerable adult at risk of harm.

Care home, domiciliary care and adult placement employers had to check care staff against the POVA list. They also had to refer people to the Department of Health who had harmed a vulnerable adult or put them at risk of harm.

Under these schemes, barring decisions were taken by or on behalf of Ministers, on the advice of officials.

➤ **Court Disqualification Orders**

Part 2 of the Criminal Justice and Court Services Act 2000 introduced a requirement for Courts to impose an Order disqualifying a person from working with children (in a regulated position) when specific criteria were met. The definition of regulated position, which covered a wider range of posts across the children's workforce, was contained in the Act. For an Order to be imposed, the person had to be over 18, have committed a specified offence against/relating to a child and receive a qualifying sentence. In such cases the judge was required to issue the Order unless he was satisfied that the person would not

commit a further offence against a child. Where the person was under 18, a Disqualification Order would only be imposed where the judge was satisfied that the person was likely to commit a further offence against a child. In addition, the judge has discretionary powers to impose an Order where the qualifying criteria were not met.

The legislation also introduced a minimum period before which the Disqualification Order could be reviewed – 10 years for those aged 18 or over and 5 years for those under 18.

Any person knowingly working, seeking or applying for work with children in a regulated position whilst disqualified committed a criminal offence and any employer, knowingly employing them in a regulated position, also committed an offence.

The requirement for a Court to impose a Disqualification Order (with a few exceptions) was repealed in Commencement Order Number 6 of the SVGA and replaced by inclusion on the ISA children's list.

The Vetting & Barring Scheme (the current scheme)

Barring under the current scheme

The key aim of barring, under both the VBS and previous schemes, is to prevent people who present a risk of harm to children or vulnerable adults, from gaining access to them through employment.

The VBS applies equally to volunteers and organisations using volunteers, as it does to paid employees and employers. Under this scheme, the Independent Safeguarding Authority (ISA) was established to take barring decisions independently of Ministers. This followed the 'List 99' crisis in January 2006.

The scheme provides for two barred lists, which are maintained by the ISA:

- one relating to working with children; and
- One to working with vulnerable adults.

A person may be placed on one or both of the barred lists in one of two ways:

- Automatic Barring - arising from criminal offences. This falls into two categories, either "with representations" or without - the latter for the most serious offences (convictions or cautions) which clearly demonstrate an ongoing risk of harm to children or vulnerable adults; or
- Discretionary barring - under which the ISA considers the full range of information available, including any representations on behalf of the individual, before reaching a considered barring decision.

The length of time before a Bar can be reviewed depends on the age of the individual when the Bar is applied. The three periods are:

- | | |
|--|------------|
| 1) If the individual is aged under 18: | One year |
| 2) If the individual is aged 18-25: | Five years |
| 3) If the individual is over 25: | Ten years |

VBS Registration and Monitoring

Schemes prior to the VBS did not involve any element of registration.

Under the VBS, people working with, or seeking to work with, vulnerable groups must register with the scheme. On application for registration, any criminal records information or relevant information from employers is referred to the Independent Safeguarding Authority for consideration by the Criminal Records Bureau.

The ISA, as an independent decision making body, uses this information to make a legally binding decision as to whether the individual poses a risk to vulnerable groups and if so, should be barred from working with them. Projections suggest that more than 90% of those applying for registration would have no relevant information held on them. These individuals would not be assessed by the ISA.

If an individual is barred from working with children or vulnerable adults – defined as “regulated activity” under the Safeguarding Vulnerable Groups Act – they cannot be registered with the scheme.

Registration with the scheme facilitates ongoing ‘monitoring’ of those working with children or vulnerable adults. ‘Monitoring’ involves the collation of any new material (such as convictions, police cautions or referrals from employers and professional regulators like the General Medical Council) in relation to people registered with the Scheme. Where any new relevant information arises, it is sent to the ISA to consider whether a bar is necessary. The person may be barred based on such information, but is normally entitled to make representations to the ISA concerning the barring decision (except in the case of “automatic bars without representations”).

The advantage of monitoring is that it enables new information which may be relevant to an assessment of ‘risk of harm’ in the workplace to be considered rapidly by the ISA; and any barred individuals can be quickly removed. In addition there are a number of other ‘advantages’;

- Registration is a ‘one off’ process that does not need to be repeated
- Registration is portable, in that registration with the scheme may be checked by employers without individuals having to complete any extra paperwork; and
- Employers are updated if someone becomes barred

The ‘disadvantage’ of this process is that over nine million people are estimated to work in the areas defined under the current scheme and all would be registered - including the vast majority (90% +) who have no ‘adverse’ information recorded about them.

Under the scheme it is an offence to:

- work or seek to work in “regulated” activities whilst barred;
- work or seek to work in “regulated activities” without being registered (“Subject to monitoring”);
- for employers, to knowingly employ a barred person in “regulated activities”; and
- For employers to employ someone in “regulated activities” without checking that they are registered with the scheme.

Should a person become barred whilst working, it follows that they cannot continue to work with children or vulnerable adults.

Annex 4



HOME OFFICE FULL EQUALITY IMPACT ASSESSMENT TEMPLATE

Directorate	Civil Liberties and Public Protection Directorate
Unit	Safeguarding & Public Protection Unit
Date	January 2011

Name of Policy/Guidance/Operational activity

Proposed changes to the Vetting & Barring Scheme (through the Protection of Freedoms Bill)

What are the aims, objectives & projected outcomes?

To make the Vetting & Barring Scheme (VBS) process more proportionate and effective through retention of a central barring function (enabling a state authority to bar those considered unsuitable for work with children and vulnerable adults). Significantly scaling back the scope of the VBS by redefining “regulated activities” (the range of posts to which barring applies), abolition of controlled activities, removing the registration and monitoring elements of the VBS and continuing to make criminal records disclosures available to employers for posts that may not be covered by redefined “regulated activities”.

1 SCOPE OF THE EIA

1.1 Scope of the EIA work

The prime beneficiaries of these proposals would be those applying for the VBS process. The removal of the requirement for registration would save them money. Employers (and potential employers) would also benefit from these proposals.

1.2 Will there be a procurement exercise?

No

2 COLLECTING DATA

2.1 What relevant quantitative and qualitative data do you have?

This may include national research, surveys or reports, or research done by colleagues in similar areas of work. Please list any evidence in the boxes below (complaints, satisfaction surveys, focus groups, questionnaires, meetings, email, research interviews etc) of communities or groups having different needs, experiences or attitudes in relation to this policy/guidance/operational area.

Race	The aim is to make the VBS process fairer to those undergoing it, regardless of race, age, disability, sexual orientation or gender, and as such there are no anticipated adverse impacts on equalities groups. It may be argued that certain minority groups are more liable to have criminal records than others and so are more likely to be affected by these proposals, but a counter argument would be that they are unlikely to be <u>adversely</u> affected. However, there is no available data to support or negate this argument. Legitimate discrimination in employment decisions in respect of criminal behaviour is justified by public protection arrangements where proportionate; and in part governed by law under the Rehabilitation of Offenders Act 1974.
Religion/ belief & non belief	As above
Disability	See section 2.3
Gender	As above
Gender Identity	See section 2.3
Sexual Orientation	See section 2.3
Age	As above
Welfare of Children [UKBA ONLY]	Not applicable
Socio- economic	Registration for the VBS has been accused of being a tax on low paid workers, and the view has been expressed that those who will not have support from employers are likely to be those who are on the minimum wage and least able to pay the registration fee. The removal of the requirement to register for the scheme would therefore counter this argument.
Human Rights	The proposals to redefine the scope of “regulated activities”, abolish the concept of “controlled activities” and remove the registration and monitoring requirements of the VBS would all reduce state intervention and promote the “Right to Respect for Private and Family Life” under Article 8 of the Human Rights Act 1998. The result of implementing these proposals would mean that fewer individuals fall under the scope of the remodelled scheme and those that do will no longer be required to register and undergo monitoring as part of the process.

2.2 What are the overall trends/patterns in this data?

The proposed changes seek to address criticisms of the VBS which have labelled it overly bureaucratic, complex and cumbersome, whilst endeavouring to maintain an effective scheme which aids public protection. For specific measurers, see above under “aims, objectives & projected outcomes”.

2.3 Please list the specific equality issues and data gaps that may need to be addressed through consultation and/or further research?

For example, you may need to ensure qualitative data groups include stakeholders with respect to this policy/guidance/activity.

NB. Include any recommendations in your action plan.

1) The review of the scheme does not adversely affect any equality strands. However before the review there were concerns from trans groups that Enhanced Disclosures reveal previous identities if crimes were committed under these identities. Effectively this “outs” transgender people. A recommendation has been made to address these issues. The review of the scheme has not affected these issues and the recommendation remains in place.

Recommendation

Ensure that when an applicant has made use of the transgender application process, the previous identity and gender history is not revealed on the enhanced disclosure.

CRB is exploring the possibility of issuing criminal record histories without names or gender identity. This will involve IT 'system' changes, meanwhile, CRB will consider the possibility of using the manual Disclosure process to issue Disclosures without previous names or gender details

2) The review of the scheme does not adversely affect any equality strands. However before the review there were concerns from LGB groups that people who were convicted in the past under anti-homosexuality laws, which have since been decriminalised, have to declare the convictions making them seem to have a criminal record, and also “outing” them. Similarly the enhanced disclosure lists these convictions. A recommendation has been made to address these issues. The review of the scheme has not affected these issues and the recommendation remains in place

Recommendation

The requirement to declare decriminalised convictions when applying for an enhanced disclosure should be removed, and if there are no further convictions the applicant may state they have no criminal record. Any decriminalised convictions held on the police database will not be revealed on an enhanced disclosure.

The Government has commitment to, in effect, deleting historical convictions for consensual gay sex with over-16s (under s.12 and 13 of the Sexual Offences Act 1956) from police records upon application, so they no longer show up on a criminal record certificate.

3) The review of the scheme does not adversely affect any equality strands. However before the review there were concerns from age groups that the application forms and guidance documents put blind people and people with dyslexia or poorer sight at a disadvantage. A recommendation has been made to address these issues. The review of the scheme has not affected these issues and the recommendations remains in place

Recommendation

The application form and guidance documents should be redesigned to take account of people with poorer sight. Consideration should be given to supporting blind applicants, for example with an online form.

3 INVOLVING AND CONSULTING STAKEHOLDERS

In this section, describe the data you have gathered through stakeholder involvement and engagement.

3.1 Internal consultation and involvement: e.g. with Other Government Departments, Staff (including support groups), Agencies & NDPBs

This work stems from a thorough review of the VBS in consultation with two other Government Departments, namely the Department for Education and the Department of Health. Following announcement of the Terms of Reference for this review in October 2010, information was gathered from the organisations, agencies and other bodies involved in the vetting process, engaging with representatives of the UK's devolved administrations and seeking the views of a wide variety of external stakeholders, a working group and a senior steering board which shaped emerging themes into recommendations for the review.

3.2 External consultation and involvement: strand specific organisations e.g. charities, local community groups, third sector

See above at 3.1

4 ASSESSING IMPACT

In this section please record your assessment and analysis of the evidence. This is a key element of the EIA process as it explains how you reached your conclusions, decided on priorities, identified actions and any necessary mitigation.

4.1 Assessment of the impact

These proposed amendments seek to counter criticism of the VBS whilst maintaining an effective process for the protection of the public, in particular children and vulnerable adults.

The alternative option was to do nothing, which would not have fulfilled the aim of the Government, as stated in the Coalition Agreement, to review the VBS and scale it back to "common sense levels".

5 REPORT, ACTION PLANNING AND SIGN OFF

5.1 EIA Report

Equality Impact Assessment Report

TITLE

Proposed changes to the Vetting & Barring Scheme (VBS) (through the Protection of Freedoms Bill)

BACKGROUND

The Vetting & Barring Scheme (VBS) was one of the previous Government's key responses to the tragic murders of Holly Wells and Jessica Chapman by college caretaker Ian Huntley in 2002. It was introduced under the Safeguarding Vulnerable Groups Act 2006 (SVGA) in line with recommendations made following the public inquiry led by Lord Bichard, which reported in 2004. The VBS was to apply to England, Wales and Northern Ireland. Separate and aligned arrangements were put in place in Scotland. For full details of the background to the VBS see annex 1 (Annex 3 within this Impact Assessment).

However, following criticism of the scheme, the Government committed itself to reviewing the VBS in its Programme for Government, in order to bring it back to common sense levels and to ensure that the

right balance was struck between preserving individuals' civil liberties and maintaining effective public protection.

SCOPING THE EIA

The prime beneficiaries of these proposals will be those subjected to the VBS process. However, vulnerable groups will benefit from the retention of a barring function (and the availability of criminal records disclosures for employers for posts that may fall outside of any redefined “regulated activities”) so that those deemed unsuitable for employment with these groups are prevented from doing so. The removal of the requirement to register with the scheme will also remove an unnecessary financial burden on those applying for it.

The abolition of controlled activities will also reduce the scope of the VBS so that less people will be affected by its introduction.

INVOLVING AND CONSULTING STAKEHOLDERS

This work stems from a thorough review of the VBS in consultation with two other Government Departments, namely the Department for Education and the Department of Health. Following announcement of the Terms of Reference for this review in October 2010, information was gathered from the organisations, agencies and other bodies involved in the vetting process, engaging with representatives of the UK’s devolved administrations and seeking the views of a wide variety of external stakeholders, a working group and a senior steering board which shaped emerging themes into recommendations for the review.

ASSESSING IMPACT

These proposed amendments seek to counter criticism of the VBS whilst maintaining an effective process for the protection of the public, in particular children and vulnerable adults.

The alternative option was to do nothing, which would not have fulfilled the aim of the Government, as stated in the Coalition Agreement, to review the VBS and scale it back to “common sense levels”.

5.2 Sign-off

Date of completion of EIA	10-2-11
Compiled by	S. Blackley, SPPU
SCS sign-off	Tyson Hepple, Director CLPPU
<i>I have read the Equality Impact Assessment and I am satisfied that all available evidence has been accurately assessed for its impact on equality strands. Mitigations, where appropriate, have been identified and actioned accordingly.</i>	
Date of publication of EIA Report	
Review date	

Annex 5: Terms of Reference for VBS Review

Vetting & Barring Scheme Remodelling: Terms of Reference

In order to meet the Coalition's commitment to scale back the vetting and barring regime to common sense levels, the review will:

- Consider the fundamental principles and objectives behind the vetting & barring regime, including;
- Evaluating the scope of the scheme's coverage;
- The most appropriate function, role and structures of any relevant safeguarding bodies and appropriate governance arrangements;
- Recommending what, if any, scheme is needed now; taking into account how to raise awareness and understanding of risk and responsibility for safeguarding in society more generally.