

## Barring (Children's Barred List and Adult's Barred List)

Quick link: [DBS List of Autobar Offences in England & Wales](#) (Gov.uk website)

### Introduction

Prior to 2002, individuals guilty of certain offences and/or who posed substantial risk to children or vulnerable adults were barred from working with these groups and their details included in one or more lists established for this purpose:

- Protection of Vulnerable Adults (PoVA) list
- Protection of Children Act (PoCA) list
- List 99

In 2002, following the murders of schoolgirls Holly Wells and Jessica Chapman, and as a result of the Bichard Inquiry's recommendations which followed, the Safeguarding Vulnerable Groups Act (SVGA) 2006 was enacted. This legislation created the Independent Safeguarding Authority (ISA) as a single independent agency to vet and monitor all individuals in England, Wales and Northern Ireland who want to work or volunteer with vulnerable people as well as take over responsibility for the barred lists.

One earlier legislative provision (never commenced) was for all individuals who work with or apply to work with children or vulnerable adults would require ISA registration and employers who work with vulnerable people might only employ ISA-registered people. This registration has never been implemented and has since been repealed. Those who are considered unsuitable to work with children and/or vulnerable adults are however, still placed on one or both of the two barred lists:

- Children's Barred List
- Adults' Barred List

While it remains illegal for somebody who is on one of the Barred Lists to attempt to work or volunteer with that group, (and for any employer to appoint them knowing that they are so barred), in 2010 the new coalition government decided to review the entire disclosure and barring provisions contained in the SVGA (2006) and Part 5 of the Police Act.

This has led to the changes commenced in September 2012 based largely on recommendations contained in the two reports – "A Common Sense Approach" (Criminal records regime review by Sunita Mason) and the government's own "Vetting and Barring Scheme Remodelling Review". These changes affect the organisation and some of the policies, processes and procedures of both the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA). The functions of both these bodies have now been integrated and taken over by a new non-departmental public body from December 2012; the Disclosure and Barring Service (DBS).

Whilst there has been no change to existing legal prohibitions on persons recorded in either the children's or adults' barred lists applying for positions (employed or voluntary) involving 'regulated activity', the definitions of what constitutes 'regulated activity' have been revised; both in relation to working with children and adults. Further information and guidance on regulated activity can be found [here](#).

For anyone applying for positions involving regulated activity, barred list information will be included as part of the enhanced disclosure certificate (now known as an "enhanced check for regulated activity"). However, it is important to realise that even if a position now falls outside the revised definition of regulated activity, it may still be entitled to an enhanced check (now known as an "enhanced DBS check"). This is because the previous employment and voluntary roles which were subject to the Rehabilitation of Offenders Act (Exceptions Order) and the Police Act 1997 have not changed. Therefore employers and voluntary organisations are still entitled to request an enhanced DBS check for certain jobs, but are only entitled to request an enhanced check for regulated activity where the position meets the new definitions of regulated activity.

## Overview of changes

From September 2012:

- New definition of Regulated Activity
- Repeal of Controlled Activity
- Repeal of registration and continuous monitoring (an earlier proposal never commenced)
- Repeal of additional ("brown envelope") police information (other than under common law).
- Power to review a barring decision at any time in certain circumstances
- For automatic bars with representations cases, representations to be considered prior to making a barring decision
- New information sharing powers with prison and probation services, Police and professional bodies
- Apart from automatic bars without representations cases, bars limited to a person who is or has been or might in future be engaged in regulated activity
- Independent Monitor established to enable people to query content disclosed on their disclosure certificate
- No disclosure checks for anyone under the age of 16

From December 2012

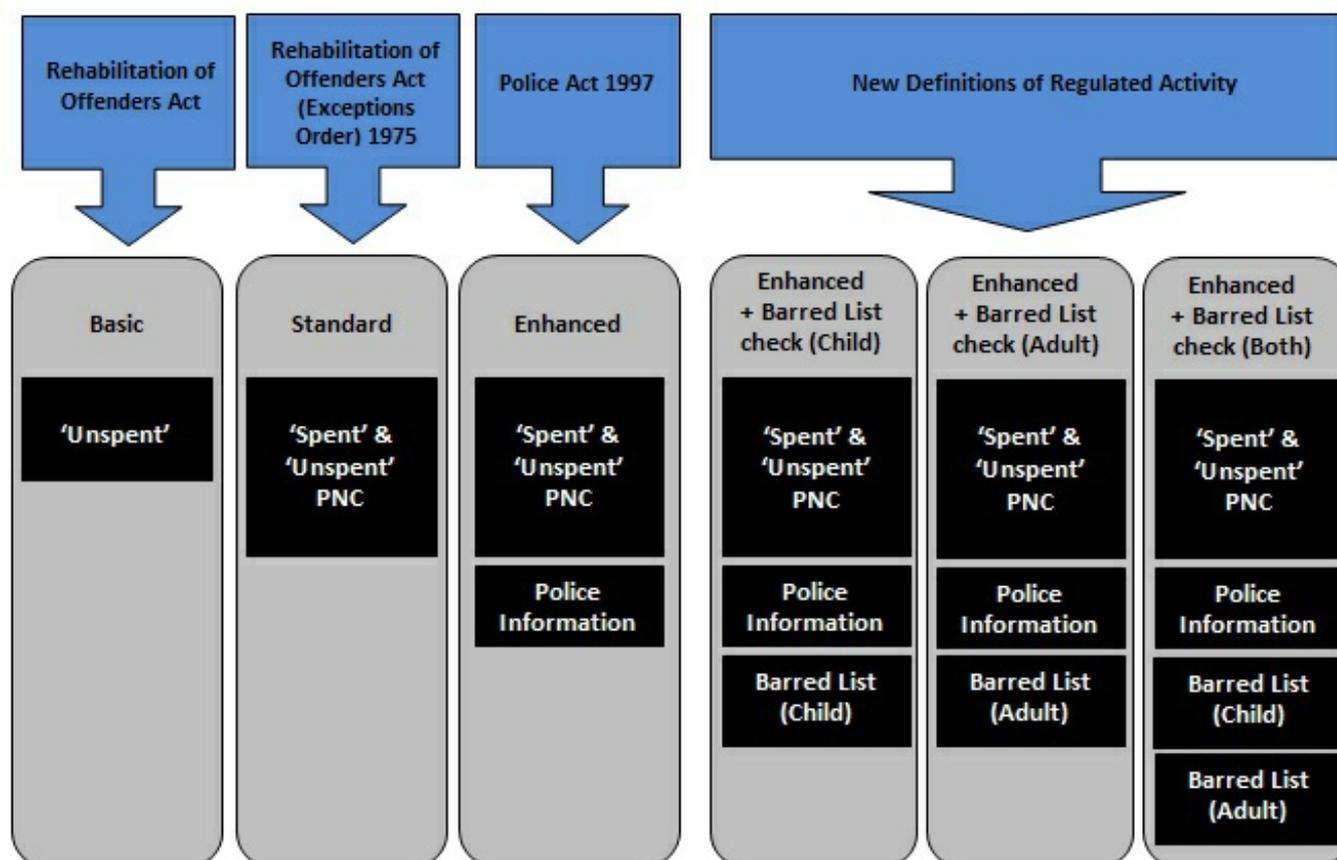
- Independent Safeguarding Authority (ISA) and Criminal Records Bureau (CRB) merged to form a new non-departmental public body; the Disclosure and Barring Service (DBS).

Please note: A number of changes to disclosure certificates are also taking place. These are covered elsewhere.

## Implications of changes

- An employer or volunteer manager is breaking the law if they knowingly employ someone in regulated activity with a group they are barred from (unchanged).
- A barred person is breaking the law if they seek, offer or engage in regulated activity with a group they are barred from (unchanged).
- Barred list information (child, adult or both) is now only included in an 'Enhanced check for regulated activity' if the position involves the new definitions of regulated activity.

- Barring decisions made prior to September 2012 may now be reviewed at any time where a person does not meet the test for regulated activity (where the person has not, is not, and there is no indication they might on the future be working in regulated activity with vulnerable groups including children); or, where certain other statutory conditions are met. This is in addition to their existing right to seek a review after the minimum barring period.
- From September 2012, the following types of checks are available dependent upon satisfaction of existing eligibility criteria (ROA Exceptions Order and Police Act 1997) and (for inclusion of barring information) the new definitions of regulated activity (Child and Adult):



Key:

1. Blue arrowed boxes identify the eligibility criteria applied
2. Grey boxes indicate the level of check provided; standard, enhanced & enhanced plus barring
3. Black boxes include the source(s) of the information which will be disclosed

For more about the different levels of disclosure certificate, eligibility criteria, PNC and other police information, please see the [Disclosure & Barring Service section](#) of the Information Hub.

## The Barred Lists

There are two barred lists; the Children's barred list and the Adults' barred list. These lists were maintained by the Independent Safeguarding Authority (ISA), but this function has been taken over by the new Disclosure and Barring Service (DBS) since December 2012.

Inclusion in one or both barred lists results from information about relevant convictions or cautions and/or any other referral information which is assessed typically using a comprehensive risk assessment process (as outlined below) and the outcome suggests the person may pose a future risk of harm.

## Automatic Barring Offences and Automatic Inclusion offences

There have been legislative changes with respect to Automatic Barring offences and Automatic Inclusion

offences following a judicial review. The key differences between the two are explained below:

- **Automatic Barring Offences** – These are the most serious of offences and due to the severity of them, people cautioned or convicted of these offences are not able to make representations as to why they should not be included in a barred list.
- **Automatic Inclusion Offences** – Where an individual is cautioned or convicted for an automatic inclusion offence, they are invited to make representations before they are included in a barred list.

It is important to note that some offences may be classed as either, victim(s) involved or the victim's age.

The DBS originally published a factsheet which didn't make it clear which offences are regarded as 'automatic barring offences', and which offences are regarded as 'automatic inclusion offences'. Unlock brought this to the attention of the DBS, and they updated their factsheets as a result. These are available [here](#).

The option to make representations, where available, will be advised in a 'formal notification of barring' letter. Those wishing to make representations should be aware that there are time limitations (8 weeks) for doing so. More information on representations is below.

A person who accepts a caution or receives a conviction for a 'relevant offence' will (subject to consideration of representations where permitted) be automatically barred from working in regulated activity with children and/or vulnerable adults. The DBS considers cases for barring based on:

- Offences (convictions and cautions)
- Referral information – evidence of inappropriate behaviour likely to harm children or adults

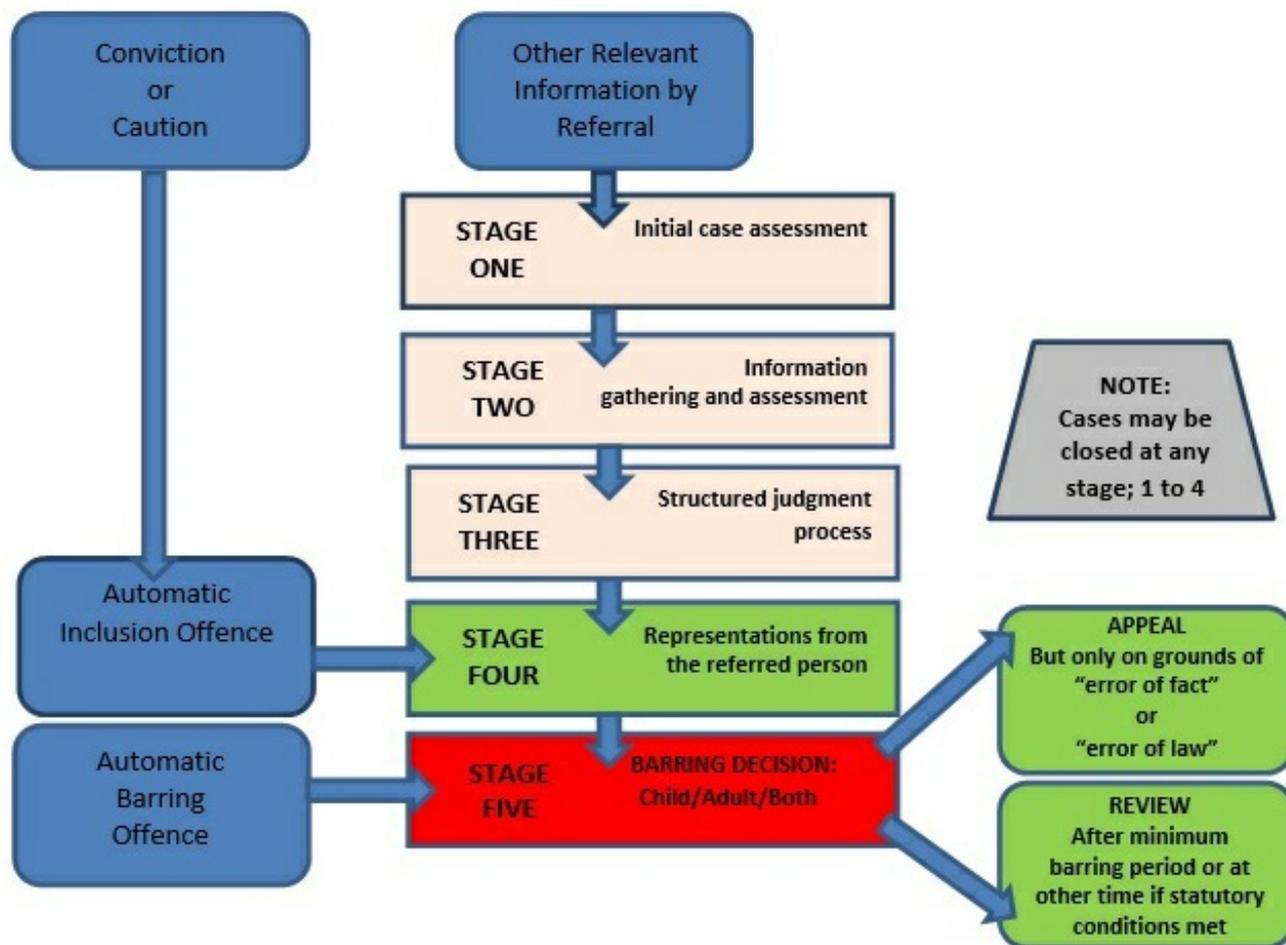
This information is collected from a variety of sources, including the police, employer referrals and regulators (holders of professional registers). Certain types of employers and organisations have a legal obligation to refer relevant information regarding an individual. These include any employer providing regulated activity and any suppliers of personnel for work or volunteer positions involving regulated activity. Similar referrals are optional for those employers working with vulnerable groups where regulated activities are not carried out.

With the exception of those persons having committed an offence leading to automatic barring without right to make representations, a person can only be included in the barred lists if they are, have been in the past, or are likely in future, to engage in regulated activity.

Barring decisions, once having been made, are still open to both review and/or appeal in a number of circumstances. More information about challenging barring decisions is available below.

## **Barring – The decision making process**

On receipt of relevant information, the process of deciding whether to include the individual's details on either or both barred lists follows a typical series of formal stages. The process can be terminated as a non-bar decision at anytime in stages 1 to 4, however, should there still be a perceived future risk of harm after assessment, the case progresses to the next stage, resulting in an inclusion in a barred list at stage 5. The diagram below illustrates the process followed in most cases:



A detailed factsheet on the decision making process is available [here](#).

## Notification of barring

When the DBS are advised of a relevant conviction, caution or other information indicating that you may pose some risk of harm to vulnerable groups including children, it will formally notify you of this in writing. There are two types of formal notification.

- **Notification of inclusion in a barred list** – This is where you have been convicted of an ‘Autobar’ offence. These are the most serious offences in which there are no opportunity to make representations for removal due to the seriousness of the offence.
- **Notification of ‘Minded to Bar’** – These are either automatic inclusion offences (where you have been cautioned or convicted of a ‘relevant offence’) or where the DBS has assessed information and is minded to include you in a barred list. In these cases, you will be invited to make representations as to why you should not be barred prior to any final barring decision being made.