

To: **ELBs**
Youth Council for NI

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**DISCLOSURE AND BARRING ARRANGEMENTS:
VETTING REQUIREMENTS FOR THOSE WORKING OR PROVIDING A SERVICE IN
YOUTH ORGANISATIONS.**

The Protection of Freedoms Act 2012 introduced new disclosure and barring arrangements in relation to pre-employment vetting of those working with children and young people. This included the introduction of a new definition of “regulated activity” the term which defines voluntary or paid work with children - this is work which a barred person must not do.

The purpose of the attached Annex is to outline the impact of the new arrangements for youth organisations and the type of staff who continue to require pre-employment vetting **before** being allowed to take up a new post or provide services to youth organisations.

The Department wishes to reiterate that **pre-employment vetting remains a key preventative measure in denying an unsuitable individual access to children and young persons within youth organisations.** New members of staff should **not** be allowed to assume duties until the vetting process has been completed. The process for doing so, through AccessNI remains unchanged. An organisation which knowingly allows a barred person to work in regulated activity is breaking the law.

All youth organisations must make appropriate and necessary pre-employment vetting checks according to their organisation’s policy and with the practice outlined in the attached Annex and the DE guidance notes DE Circular 2012/19 and DE Circular 2013/01 to check that any new entrant to regulated activity is not barred. Regional and Headquarter

organisations need to ensure that they give consistent advice to their members when requested.

The Department asks that these arrangements form part of the conditions for continued registration and receipt of funding for the financial year 2014-15. I would therefore request that you issue this document to all youth organisations as part of the registration process. Youth organisations must have regard to the statutory guidance on supervision of activity with children which are in regulated activity when unsupervised (see Annex A, Section 6). Guidance can be seen at: <http://arcuk.org.uk/northernireland/files/2010/11/supervision-guidance-revised-sos-sept-2012.pdf>.

Further information regarding these arrangements can be obtained from the Child Protection Officer in your Education and Library Board or from Youthnet on 02890 331 880.

Yours sincerely,

Brenda Shearer

ANNEX A

1. Introduction

The Protection of Freedoms Act 2012 introduced new disclosure and barring arrangements in relation to pre-employment vetting of those working with children and young people. This included the:

- introduction of a new definition of “regulated activity with children” the term which defines voluntary or paid work with children - this is work which a barred person must not do; and
- repeal of controlled activity.

The Department has produced the following guidance notes: DE Circular 2012/19:

<http://www.deni.gov.uk/index/support-and-development-2/child-protection-safeguarding.htm>

and DE Circular 2013/01:

http://www.deni.gov.uk/disclosure_and_barring_arrangements_vetting_requirements_for_paid_staff_working_in_or_providing_a_service_for_schools.pdf which sets out the background to these changes and

provides guidance on the impact they will have on existing arrangements for schools. Both circulars contain information and guidance which is relevant to youth organisations and therefore should be read in conjunction with this Annex.

The purpose of this Annex is to outline the impact of the new arrangements for youth organisations and the type of staff who continue to require pre-employment vetting **before** being allowed to take up a new post or provide services to youth organisations. The Department wishes to reiterate that **pre-employment vetting remains a key preventative measure in denying an unsuitable individual access to children and young people within youth organisations.** New members of staff should **not** be allowed to assume duties until the vetting process has been completed.

Enhanced Disclosure Certificates (EDC) issued by AccessNI are valid for each recruitment process that an individual undertakes, they do not have a set lifespan and are only accurate on the date of issue. Depending on an individual’s circumstances and employment history, a new vetting check may not be required if their previous employment can be verified, there is no gap in their employment and they move to a new, but similar role or a new geographical location within the same youth organisation and a vetting check was in place for the most recent period of employment. In such circumstances, youth organisations

should obtain advice from their Regional or Head Quarter organisation as to the vetting requirements for these individuals. Past knowledge of individuals is **not** sufficient evidence of suitability for child protection and safeguarding purposes.

Responsibility for vetting rests **solely** with the youth organisation that recruits the new member of staff.

Note: All references to staff in this Annex include paid, unpaid and volunteer staff working in youth organisations. This Annex does not deem there to be a distinction between these groups when they are considered for the pre-employment vetting procedure to work in regulated activity.

2. What is regulated activity?

Regulated activity for children under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended by the Protection of Freedoms Act 2012, includes:

- (i) unsupervised activities including: teaching, training, instructing, caring for or supervising children (except health or personal care which is regulated activity even if supervised), or
- (ii) providing advice/guidance on well-being, or driving a vehicle only for children; and
- (iii) work in a limited range of establishments (“specified places”) with opportunity for contact (not work by supervised volunteers). Note: Youth organisations are not considered to be “specified places”.

The full legal definition of regulated activity is set out in Schedule 2 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended by the Protection of Freedoms Act 2012

Regulated activity still excludes family arrangements and personal, non-commercial arrangements.

Work under (i),(ii) or (iii) is regulated activity **only if done regularly**. Regular means carried out by the same person frequently (once a week or more often), or on four or more days in a 30 day period or overnight. The exception to this is relevant personal care or health care which is regulated activity, even if done only once.

Whether a member of staff engaging in such activities is supervised or not will determine if they are working in regulated activity. Youth organisations must have regard to the statutory guidance on supervision of activity with children which are regulated activity when unsupervised (see section 6 and 7 below).

The factual note on regulated activity with children, available at www.dhsspsni.gov.uk/svg, provides a more comprehensive summary of regulated activity with children. Statutory guidance is also available on <http://arcuk.org.uk/northernireland/files/2010/11/supervision-guidance-revised-sos-sept-2012.pdf>.

Please note: Not all regulated activities are exempt when supervised – the exemption applies to teaching, training or instructing and caring or supervising, but there is **no exemption** for care that constitutes relevant personal care, health care, advice or guidance, moderating a public electronic interactive communication service, and driving a vehicle used only for conveying children and carers.

3. Unsupervised Staff

Any member of staff who is **not** supervised is still regarded as working in regulated activity and therefore an EDC with a check of the children's barred list from AccessNI **is** required for them.

Youth organisations must ensure that they apply to AccessNI for the appropriate pre-employment check, which includes a check of the barred lists. AccessNI guidance on how to complete an application form is available at www.dojni.gov.uk/accessni, or through the AccessNI Helpline on 0300 200 7888.

New members of staff should **not** be allowed to assume duties until the vetting process has been completed.

4. Supervised Staff

Where a member of staff teaching, training or instructing, caring for or supervising children is **supervised** to the standard set out in legislation then, under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended by the Protection of Freedoms Act 2012, they are **not** regarded as working in regulated activity and therefore an organisation is **not** required to obtain an EDC. However, the organisation is still entitled to obtain an EDC if it so wishes, but it is unlawful for the organisation to seek a barred list check in these circumstances. In this instance, youth organisations should ensure that they apply to AccessNI for the appropriate type of check, which would not include a check of the barred lists. AccessNI guidance is available at www.dojni.gov.uk/accessni, or through the AccessNI Helpline on 0300 200 7888.

Youth organisations must have regard to the statutory guidance on supervision of activity with children which is regulated activity when unsupervised (see sections 6 and 7 below). Note -It is acknowledged that only a limited number of posts within youth organisations will be supervised to the level required by the statutory guidance.

New members of staff should **not** be allowed to assume duties until the vetting process has been completed.

5. Outside the Scope of Regulated Activity

Those who are working outside the scope of regulated activity, but who have significant contact with children and young people (i.e. those who previously fell within the scope of the pre-September 2012 definition of Regulated activity), then the youth organisation should apply for an EDC, without a barred list check.

6. Supervision

We start with a presumption of trust and confidence in those who work with children, the good sense and judgement of their managers, that appropriate training is undertaken and that safeguarding policy that meets the minimum standards of good practice in 'Getting it Right' (published 2009, revised 2011, as endorsed by DHSSPS) are in place. Statutory guidance is also available on <http://arcuk.org.uk/northernireland/files/2010/11/supervision-guidance-revised-sos-sept-2012.pdf>. An organisation must give due regard to this guidance when it decides to supervise with the aim that the supervised work will not be regulated activity (when it would be, if it were not supervised). In such a case, the law makes three main points which states that supervision must be:

- **by a person who is in regulated activity;**
- **regular and day to day; and**
- **“reasonable” in all circumstances to ensure the protection of children.**

While the precise nature and level of supervision will vary from case to case, guidance on the main legal points above is as follows:

- Supervision **must** be carried out by a person in regulated activity themselves.
- Members of staff who are “reasonably” supervised while undertaking their duties are not regarded as being in regulated activity. The law is that **supervision** must be **regular and day to day**, which gives local managers the flexibility to determine what is “reasonable” for their circumstances.
- In law, an organisation does not have an entitlement to do a barred list check on a member of staff who, because they are supervised, is not in regulated activity.

Neither does the law place on the organisation a duty to require an EDC in these circumstances, but the organisation is entitled to attain one, if it chooses to do so.

7. Level of supervision

The precise nature and level of supervision will vary from case to case. The statutory duty means that organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of the children concerned. Supervision must be **consistent** and on **every occasion** when the regulated activity is taking place. Youth organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:

- ages of the children, including whether their ages differ widely;
- number of children that the individual is working with;
- whether or not other workers are helping to look after the children;
- the nature of the individual's work;
- how vulnerable the children are (the more vulnerable they are, the more an organisation might opt for workers to be in regulated activity);
- how many workers would be supervised by each supervising worker.

While the law does not place a statutory duty on the organisation to obtain an EDC for a staff member not engaging in regulated activity because supervision is in place, the youth organisation has the option of applying for an EDC without a check of the barred list if it chooses to do so.

Note: **The Department cannot determine what is regarded as adequate supervision** as situations and circumstances will vary from organisation to organisation. It will be a matter for the youth organisation to determine whether the level of supervision meets the statutory standard (see section 6)

New members of staff should not be allowed to assume duties until the vetting process has been completed.

Annex B outlines the steps to follow when deciding whether a new worker will be supervised to such a level that they are not in regulated activity.

8. Sports Coaches and Assistants

Sporting organisations such as the Irish Football Association, Gaelic Athletic Association and Irish Rugby Football Union often provide coaches to work in youth organisations. Youth organisations should only use appropriately vetted coaches in line with child protection and safeguarding policies. Whether coaching is regarded as regulated activity or not would depend on the level of supervision provided by the youth organisation. Further information on this is available from the Child Protection in Sport Unit of the NSPCC and can be found at: <https://thecpsu.org.uk/help-advice/>.

9. Visitors to Youth Organisations

Visitors to youth organisations to attend meetings or events (e.g. parents, those delivering goods or carrying out maintenance tasks) do not routinely need to be vetted before being allowed onto youth premises. However, such visitors should be managed by youth organisation staff and their access to areas and movement within the facility should be restricted as needs require. They should be (as required):

- met/directed by youth organisation staff/representatives;
- signed in and out of the organisation by staff;
- if appropriate, be given restricted access to only specific areas of the facility;
- where possible, they should be escorted around the premises by a member of staff;
- if left unattended, they should be clearly identified with visitor/contractor passes; their access to children and young people should be restricted to the purpose of their visit; and
- if delivering goods or carrying out building, maintenance or repair tasks their work area should be cordoned off from children and young people for health and safety reasons.

10. Youth Exchange Arrangements/Host Families

It is recommended that youth organisations should ensure that vetting checks are undertaken for members of local host families who will be responsible for caring for or supervising the exchange young person/people in the host home for the duration of the exchange arrangement. This would normally be the parent(s)/guardian(s) of the host young person.

Under disclosure and barring arrangements this caring/supervisory function qualifies as regulated activity and as such, vetted parent(s)/guardian(s) would be responsible for supervising other children in the household. Consequently, other children in the household do not need to be vetted, so long as they do not perform a caring/supervisory function during the visit. However, other adults in the household may need to be vetted, if they perform a caring/supervisory function during the exchange arrangement. Otherwise, vetted parent(s)/guardian(s) should ensure that all family members/visitors observe appropriate behaviours for the duration of the visit and that suitable privacy arrangements, for visiting children and young people are in place in the home.

Organisations arranging exchange trips for their young people with other families should ensure, as far as possible, that appropriate safeguarding measures are put in place in the host country, by the host facilitator. These may vary from country to country so close liaison between the “sending” and “receiving” youth organisation and/or facilitator in advance of and during the exchange is essential.

It is stressed that vetting is only one of a number of measures that can help safeguard young people taking part in youth exchanges, which can include:

- young people on an exchange having a daily opportunity to contact their parents/home;
- young people on an exchange should be given a telephone number through which they have 24/7 access to the supervising youth organisation;
- young people on an exchange should be visited by an exchange organiser at the home where they are staying in the presence of the host family;
- young people on an exchange visit should meet together with the supervising organiser(s) during the visit on more than one occasion if possible;
- the youth organisation should meet parents, hosting young people in their homes, in advance of the visit to outline do's and don'ts, what is expected, responsibilities, appropriate behaviour, possible religious/cultural differences, lines of communication, visits etc. Written guidance can be provided; and
- parents, not youth organisations, are responsible for their households, including the suitability of visitors who may visit their homes during the youth exchange. Such visitors are not required to be vetted, so parents must be responsible for their visitors' behaviour while in their home.

Further guidance on youth exchange child protection is available at:

http://www.ycni.org/downloads/euro_international/Guidelines_Good_Practice.pdf

11. Retention and recording of vetting checks

AccessNI's Code of Practice advises employers not to retain EDCs or record any disclosure information contained within them for longer than is required for the purpose they were sought. In general, this should be no later than **6 months** after the date on which recruitment or other relevant decisions have been taken or after the date on which any dispute has been resolved. This period should only be exceeded in very exceptional circumstances which justify retention for a longer period.

- **DE recommends that for each member of staff, youth organisations should keep a note of:**
 - the date an EDC application is sent to AccessNI;
 - the date the EDC is received from AccessNI; and
 - the EDC reference number,

In the event of the youth organisation being asked for evidence that a member of staff has been appropriately vetted, the organisation can use the record of the date and EDC reference number to confirm when a vetting check was obtained.

12. Child Protection Arrangements

Vetting is only one of a number of important elements in the recruitment process and should be considered together with other key aspects such as a candidate's application form, interview, references and knowledge of their employment history and experience. **New members of staff should not be allowed to assume duties until the vetting process has been completed.**

Once appointed, new members of staff should be appropriately trained and made aware of the organisation's child protection and safeguarding policies and procedures.

Further information regarding child protection and safeguarding training issues can be obtained from the Child Protection Officer in your Education and Library Board, the Youth Council for Northern Ireland (Tel: 02890 643 882) or from Youthnet (Tel: 02890 331 880).

13. Useful links and contacts:

Youthnet, the voluntary youth network for Northern Ireland, has published “information about changes to vetting arrangements in Northern Ireland for those working with children and young people – for individual clubs/organisations” which is available on the following link: <http://www.youthnetni.org.uk/Access-NI-Checks-8004.html>.

14. Guidance on vetting non-UK nationals from outside NI is available from AccessNI.

**Access NI
PO Box 1085
Belfast
BT5 9BD**

15. Other Useful links and Contacts

Department of Health, Social Services and Public Safety: www.dhsspsni.gov.uk/svg

Home Office: www.homeoffice.gov.uk

NI Direct: Information on regulated activity with vulnerable groups

<http://www.nidirect.gov.uk/regulated-activity-with-vulnerable-groups>

AccessNI: www.nidirect.gov.uk/accessni

AccessNI: criminal record checks (employment section): <http://www.nidirect.gov.uk/accessni-individuals.htm>

AccessNI (contacts details): <http://www.nidirect.gov.uk/access-ni.htm?source=accessni-contact-us-button>

ANNEX B

PROCESS FOR DETERMINING SUPERVISION

Organisations should have regard to the following steps when deciding whether a new member of staff will be **supervised** to such a level that they are not in regulated activity:

1. Consider whether the member of staff is doing work that, if unsupervised, would be regulated activity. If not, the remaining steps are unnecessary;
2. Consider whether the member of staff will be supervised by a person in regulated activity;
3. Consider whether the supervision will be regular and day to day; bearing in mind Section 6 of Annex A.
4. Consider whether the supervision will be reasonable in all the circumstances to ensure the protection of children, bearing in mind Section 6 of Annex A.

The flow chart below outlines the process and the factors that organisations need to consider in respect of the supervision of members of staff to such a level that they are not in regulated activity.

Note: Responsibility for vetting rests **solely** with the youth organisation that recruits the new member of staff. **The Department cannot determine what is regarded as adequate supervision** as situations and circumstances will vary from organisation to organisation. It will be a matter for the youth organisation to determine whether the level of supervision meets the statutory standard (see section 6).

