

EMPLOYMENT MATTERS COMMITTEE

9 SEPTEMBER 2009

SAFEGUARDING CHILDREN AND VULNERABLE ADULTS EMPLOYMENT POLICIES

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Summary

This report details the Council's proposals to implement the revised Vetting and Barring arrangements following the establishment of the Independent Safeguarding Authority and asks the Committee to approve the proposals and to approve the policy and procedure on Criminal Records.

1. Budget and Policy Framework

1.1 The policies lie within the Council's policy and budget framework and the Committee's terms of reference. Therefore, this is a matter for the Employment Matters Committee.

2. Background

2.1 The Safeguarding Vulnerable Groups Act 2006 was passed as a result of the Bichard Inquiry arising from the Soham murders in 2002.

2.2 The Inquiry questioned the way employers recruit people to work with vulnerable groups, and particularly the way background checks are carried out. Recommendation 19 of the Inquiry Report highlighted the need for a single agency to vet all individuals who want to work or volunteer with children or vulnerable adults and to bar unsuitable people from doing so.

2.3 The Act was created in response to recommendation 19 and the Independent Safeguarding Authority (ISA) was set up to fulfil this role across England, Wales and Northern Ireland.

2.4 A new vetting and barring scheme is to be set up for people who work with children and vulnerable adults. Further information is available from the ISA website (www.isa.gov.org).

2.5 The Council needs to plan for the implementation of the new arrangements and the policy decisions required are set out in section 13 of this report.

3. Purpose

3.1 The purpose of this policy is to set out the Council's obligations under the new arrangements.

4. Vetting and Barring Scheme

4.1 The new Vetting and Barring Scheme, involving the Independent Safeguarding Authority (ISA), will have a major impact on the recruitment and monitoring practices of people working or volunteering with children. The aim of the vetting and barring scheme is to reduce the incidence of harm to children and vulnerable adults by helping to ensure that:

- employers benefit from an improved vetting service for those who work with children and/or vulnerable adults;
- those who are known to be unsuitable are barred from working with children and/or vulnerable adults at the earliest possible opportunity.

4.2 Changes to current vetting and barring processes

The new scheme will:

- replace the current List 99, the Protection of Children Act List (PoCA), The Protection of Vulnerable Adults list (PoVA) and Disqualification Orders regimes. The ISA will decide who is unsuitable to work or volunteer with vulnerable groups. It will base its decisions on pulling together information held by various agencies, government departments and the Criminal Records Bureau (CRB), be more comprehensive in coverage, with a wider workforce eligible for checks;
- enable a barring decision to be made on the basis of an individual's criminal record history, as well as following a referral from an employer or another body;
- enable employers to make secure, instant online checks of an applicant's status in relation to the scheme;
- update barring decisions as soon as any new information is made available and notify employers if an employee is deemed unsuitable.

4.3 Once the scheme is fully rolled out, it will be illegal to hire someone in a regulated activity that is not registered, and has therefore not been checked by, the ISA. The new scheme will cover employees and volunteers in the education, care and health industries, affecting some 11.3 million people.

5. Implementation

5.1 The scheme will be implemented in a staged process, beginning on 12 October 2009, although the bulk of the new systems required to support the scheme will be put in place in 2010.

5.2 Additional safeguards starting on 12 October 2009 are:

- **Reduction of red tape** – two barring lists (the Children’s Barred list and the Adult’s Barred list) will be administered by a single organisation, the ISA rather than the three lists currently maintained by two different Government Departments: PoCA, PoVA and List 99.
- **The introduction of barring from “regulated activities”** – people included on the new barred lists by the ISA will be barred from a much wider range of jobs and activities than before, particularly in areas of work with vulnerable adults such as the NHS.
- **A new duty to share information** – employers, social care and professional regulators will have to notify the ISA of relevant information so individuals who pose a threat to vulnerable groups can be identified and barred from working with those groups.
- **New criminal offence** – it will become a crime for a barred individual to seek or undertake work with vulnerable groups; and for employers to knowingly take them on.

5.3 From 26 July 2010:

- All new entrants to roles working regularly with vulnerable groups and those switching jobs to a new provider within these sectors, will be able to register with the ISA and be checked.
- Employers will be able to register an interest in an individual’s ISA registration status to be continuously informed of changes in an individual’s registration status.

5.4 From November 2010:

- Employers will be legally required to have completed their registration with the ISA
- Employers will be legally required to have checked all new starters’ (starting from 26 July 2010) registration status and to check all future starters before employment commences.
- The ISA have advised that this delay between July and November 2010 is so as not to disrupt normal recruitment over the traditionally busy summer period.

5.5 From January 2011:

- Existing employees and volunteers who have never previously had a CRB check must apply for ISA registration. For Medway Council, there are likely to be few, if any, existing employees working with children or vulnerable adults who do not have a current CRB

- Existing employees and volunteers with CRB checks will also need to apply for ISA registration, starting with staff whose CRB checks are the oldest.
- Registration will be phased in over a five-year period to help manage the operational and financial impact of the scheme.

6. Scope

- 6.1 This policy will apply to all prospective and existing employees, volunteers, certain taxi drivers, foster (children and shared living scheme for adults) and adoptive parents and childminders, including schools based employees/volunteers and relevant Council Members. Wherever prospective employees or existing employees are mentioned, the provisions also apply to volunteers, taxi drivers, foster and adoptive parents and childminders.
- 6.2 The Safeguarding Vulnerable Groups Act defines the scope of the Vetting and Barring Scheme (VBS). Full details are set out in the policy document attached at Appendix 1

7. Criminal Records Policy

- 7.1 This policy has been written to bring together the present arrangements for undertaking Criminal Records Bureau checks and is attached at Appendix 2

8. Risk Management

- 8.1 There is a statutory requirement to implement the new arrangements in order to comply with the Safeguarding Vulnerable Groups Act 2006. The risk of non-compliance with statutory requirements would leave the Council open to legal challenge and financial penalties

9 Consultation

- 9.1 This policy has been consulted upon via the following stakeholder groups:
- Trade unions
 - Service managers (those who have volunteered to consult on policy development)
 - Disabled Workers Forum
 - Black Workers Forum.
 - Medway Council legal services.
- 9.2 A number of suggested amendments were made by these groups and wherever possible, the suggestions were taken on board. The discussions with the trade unions were particularly positive and there is a real desire to work with the Council on this issue. The comments received from the Service Managers Consultation Group were very

helpful and there is clearly a keen interest from managers on this matter.

- 9.3 The trade unions hold a strong view that the Council should pay for the additional cost of registration with ISA.

10. Diversity Impact Assessment

- 10.1 A Diversity Impact Assessment (DIA) has been undertaken on the proposals and it has been found that it is not necessary to carry out a full impact assessment. The screening form is attached at appendix 4 to the report.

11. Financial implications

- 11.1 The cost of applying to register with the Vetting and Barring Scheme has been set at £64. This is comprised of a £28 fee to cover the ISA's costs and £36 to cover the CRB's costs as administrator of the applications.
- 11.2 The figures and forecasts for the first five years of the scheme's operation have been analysed and the £28 figure is based on cost-recovery for the scheme – that is, what it will cost to ensure the scheme is self-financed during that period.
- 11.3 The fee will be a one-off payment and is intended to cover the applicant for the duration of their career in regulated activity. Only those involved in unpaid voluntary activity will not have to pay the application fee.
- 11.4 A policy decision is required as to whether or not this will be funded by the Council or by the individual employee. At present, the Council pays the £36 for the CRB check for applicants for employment, fostering and adoption and for 3 yearly rechecks.
- 11.5 A breakdown of estimated costs is attached at Appendix 3. The CRB checks and rechecks already cost the Council £152,424 per year. If the Council pays for the additional costs of ISA registration for prospective employees, foster carers (children and adults), adoptive parents and existing employees the estimated costs would be:

26 July 2010 – 31 March 2011	=	£49,832 for the year
1 April 2011 – 31 March 2014	=	£118,552 per year
1 April 2014 onwards	=	£48,468 per year*

* Please note that this should be the maximum cost from April 2014 onwards as all the 3 yearly re-checks and the accompanying ISA registration will have been completed by then, so the only cost will be for new applicants, foster carers (children and adults) and adoptive parents and as time goes on, a number of these of these will already have registered with ISA.

- 11.6 It is an option to continue to pay for CRB checks but for individuals to pay for their own £28 one off ISA registration fee.
- 11.7 It is also an option for the Council to pay for the ISA registration fee but to reclaim the fee from the individual if they leave within a certain period of time, such as one year.
- 11.8 All Kent authorities were consulted to enquire whether or not their authority was likely to be funding this. Nine District Councils replied and all of those are going to fund it. Kent County Council have not yet decided as this was part of the Trade Union claim under local pay bargaining this year, which the County are still discussing with them.
- 11.9 If individuals were to be required to fund their own registration costs, there would be concern that some employees could not afford the fees, particularly those in lower paid posts and as it is a statutory requirement that they register and therefore a contractual requirement, it is considered that it is appropriate for the Council to fund these costs.

12. Legal Implications

- 12.1 The Council has a statutory duty to safeguard both children and vulnerable adults. There is a statutory requirement to implement the new arrangements in order to comply with the Safeguarding Vulnerable Groups Act 2006. Non-compliance with statutory requirements would leave the Council open to criminal liability, legal challenge and financial penalties. The Council must ensure that relevant employment procedures on recruitment are compliant with the statutory requirements of the legislation. There are potential implications under the Human Rights Act 1998 and the Data protection Act 1998.
- 12.2 In cases where offences do not result in the individual being barred from the list, the Council must have regard to the Rehabilitation of Offenders Act 1974, to determine suitability of an individual, to work in line with the Act.

13. Recommendations

- 13.1 That the Employment Matters Committee agree to the implementation of the ISA Vetting and Barring Scheme and the Policy attached at Appendix 1.
- 13.2 That the Employment Matters Committee agree to the implementation of the CRB Policy and Procedure attached at Appendix 2.
- 13.3 That the Employment Matters Committee instructs officers to ascertain information on the national picture on whether or not authorities are funding the costs of ISA registration and report back to this Committee in due course.

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Background papers

Relevant Legislation referred to in the report

Advice received from relevant Government Departments



**INDEPENDENT SAFEGUARDING AUTHORITY
VETTING AND BARRING SCHEME
POLICY**

Draft: 13 August 09

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1. Introduction

- 1.1 The Safeguarding Vulnerable Groups Act 2006 was passed as a result of the Bichard Inquiry arising from the Soham murders in 2002, when the schoolgirls Jessica Chapman and Holly Wells were murdered by Ian Huntley (their school caretaker).
- 1.2 The Inquiry questioned the way employers recruit people to work with vulnerable groups, and particularly the way background checks are carried out. Recommendation 19 of the Inquiry Report highlighted the need for a single agency to vet all individuals who want to work or volunteer with children or vulnerable adults and to bar unsuitable people from doing so.
- 1.3 The Act was created in response to recommendation 19 and the Independent Safeguarding Authority (ISA) was set up to fulfil this role across England, Wales and Northern Ireland.
- 1.4 A new vetting and barring scheme is to be set up for people who work with children and vulnerable adults. Further information is available from the ISA website (www.isa.gov.org)

2. Scope

- 2.1 This policy will apply to all prospective and existing employees, relevant Council Members, School Governors, volunteers, certain taxi drivers (see below), foster and adoptive parents, including schools based employees/volunteers. Wherever prospective employees or existing employees are mentioned, the provisions also apply to relevant Council Members, School Governors, volunteers, taxi drivers, foster and adoptive parents.
- 2.2 Transport, including in taxis, will only be a regulated activity when it is transportation solely for children or vulnerable adults and people who are accompanying children or vulnerable adults, to and from regulated activity and it is organised by an organisation on behalf of the providers of the regulated activity.

3. Purpose

- 3.1 The purpose of this policy is to set out the Council's obligations under the new arrangements. It must be noted that the new arrangements do not absolve employers of their responsibility for safer recruitment and recruiting managers have a continuing responsibility to undertake all other checks, such as references, identity, etc.

4. The Council as a Commissioner

- 4.1 The Council commissions a large number of services for both child care and elder care from the independent sector and has a clear responsibility to ensure that those providers are adhering to the new requirements.

5. Vetting and Barring Scheme

5.1 The new Vetting and Barring Scheme (VBS), involving the Independent Safeguarding Authority (ISA), will have a major impact on the recruitment and monitoring practices of people working or volunteering with children and vulnerable adults. The aim of the vetting and barring scheme is to reduce the incidence of harm to children and vulnerable adults by helping to ensure that:

- employers benefit from an improved vetting service for those who work with children and/or vulnerable adults;
- those who are known to be unsuitable are barred from working with children and/or vulnerable adults at the earliest possible opportunity.

5.2 The Department of Health and the Department for Education and Skills (now the Department for Children, Families and Schools) jointly carried out a public consultation on the proposals for a new vetting and barring scheme from 5 April to 5 July 2005. The proposed model for vetting and barring was widely welcomed, with 88% of respondents either agreeing or strongly agreeing that the new scheme would have a positive impact on safeguards for children and vulnerable adults.

5.3 Changes to current vetting and barring processes

The new scheme will:

- replace the current List 99, the Protection of Children Act List (PoCA), The Protection of Vulnerable Adults list (PoVA) and Disqualification Orders regimes. The ISA will decide who is unsuitable to work or volunteer with vulnerable groups. It will base its decisions upon information collected from various agencies, government departments and the Criminal Records Bureau (CRB), be more comprehensive in coverage, with a wider workforce eligible for checks;
- enable a barring decision to be made on the basis of an individual's criminal record history, as well as following a referral from an employer or another body;
- enable organisations to make secure, instant online checks of an applicant's status in relation to the scheme;
- update barring decisions as soon as any new information is made available and notify organisations if an employee/other registered person is deemed unsuitable.

5.4 Once the scheme is fully rolled out, it will be illegal to hire someone in a regulated activity (see section 7 for details of regulated activities) that is not registered, and has therefore not been checked by, the ISA. The new scheme will cover employees, relevant Members, Carers, etc in the education, care and health industries, affecting some 11.3 million people.

5.5 This scheme is a mandatory addition to the existing safeguarding system and not a replacement. Neither does it replace the current Criminal Records Bureau Disclosure Scheme where the statutory requirements for CRB checks in certain sectors still remains.

6. Implementation

6.1 The scheme will be implemented in a staged process, as recommended by Sir Michael Bichard. Implementation of the scheme will begin on 12 October 2009, although the bulk of the new systems required to support the scheme will be put in place in 2010.

6.2 Additional safeguards starting on 12 October 2009 are:

- **Reduction of red tape** – two barring lists (the Children’s Barred list and the Adult’s Barred list) will be administered by a single organisation, the ISA rather than the three lists previously maintained by two different Government Departments: PoCA, PoVA and List 99.
- **The introduction of barring from “regulated activities”** – people included on the new barred lists by the ISA will be barred from a much wider range of jobs and activities than before, particularly in areas of work with vulnerable adults such as the NHS.
- **A new duty to share information** – employers, social care and professional regulators will have to notify the ISA of relevant information so individuals who pose a threat to vulnerable groups can be identified and barred from working with those groups.
- **New criminal offence** – it will become a crime for a barred individual to seek or undertake work with vulnerable groups; and for employers to knowingly take them on.

6.3 From 26 July 2010:

- All new entrants/appointments to roles working regularly with vulnerable groups and those switching jobs to a new provider within these sectors, will be able to register with the ISA and be checked. There will be a cost for registration (see Section 11 for details). A policy decision is required as to whether or not this will be funded by the Council or by the individual applicant. At present, the Council pays for the CRB check for applicants for employment, fostering and adoption and for 3 yearly checks. Members and School Governors are regarded as volunteers so there will be no charge.
- Employers will be able to register an interest in an individual’s ISA registration status to be continuously informed of changes in an individual’s registration status.

6.4 From November 2010:

- Employers will be legally required to have completed their registration with the ISA
- Employers will be legally required to have checked all new starters’ (starting from 26 July 2010) registration status and to check all future starters before employment commences.
- The ISA have advised that this delay between July and November 2010 is so as not to disrupt normal recruitment over the traditionally busy summer period.
- Each school will be a regulated activity provider so if a teacher or member of support staff moves to a new regulated activity provider, there is a fresh requirement to gain permission to engage in a regulated activity. Where this move

takes place after November 2010, they must gain their ISA registration before they start in the new school and the new school must check their ISA registration before they can start. This will be the position whatever the type of school, whether it is in the same local authority or a different local authority, or whether or not there is continuity of service. The key issue is that the fresh permission to engage in regulated activity triggers the need for ISA registration.

- When making an application for ISA registration, the school will get a CRB disclosure with the package. (It is possible to elect not to have this, but it is included in the fee of £64 whether or not it is required). **For example:** A teacher or a member of support staff moving schools after November 2010, will trigger the requirement for the individual to gain their ISA registration. Their ISA registration application will include a CRB disclosure. The individual will be ISA registered and the school will also get a new CRB disclosure.

6.5 From January 2011:

- Existing employees, relevant Members, School Governors etc. and volunteers who have never previously had a CRB check must apply for ISA registration.
- Existing employees, relevant Members, School Governors etc and volunteers with CRB checks will also need to apply for ISA registration, starting with individuals whose CRB checks are the oldest.
- Registration will be phased in over a five-year period to help manage the operational and financial impact of the scheme.

7. The scope of the Vetting and Barring Scheme

7.1 The Safeguarding Vulnerable Groups Act defines the scope of the Vetting and Barring Scheme (VBS). It provides that certain activities in relation to children and vulnerable adults are regulated. This is known as '**regulated activity**'.

7.2 **Regulated activity** is any activity, which involves contact with children or vulnerable adults. This could be paid or voluntary work. More information about regulated activities is set out in Appendix 1. A wider definition of regulated activity will be introduced from October 2009.

Such activities include:

- Any activity of a specified nature, which involves contact with children or vulnerable adults frequently, intensively and/or overnight.
- Any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively.
- Fostering and childcare.
- Any activity that involves people in certain defined positions of responsibility.

Organisation's duties and responsibilities

- It will be a criminal offence for an organisation to allow a barred person, or a person who is not yet registered with the ISA, to work in any regulated activity.
- It will be a criminal offence for an organisation to take on a person in a regulated activity if they fail to check that person's status.

Individual's duties and responsibilities

- A barred individual must not take part in any regulated activity.
- An individual taking part in a regulated activity must be registered with the ISA.
- It will be a criminal offence for a barred person to take part in a regulated activity.

7.3 The Act also provides that certain activities in relation to children and vulnerable adults are controlled. This is known as “**controlled activity**”. More information on controlled activities can be found in Appendix 1.

Controlled activities include:

- Frequent or intensive support work in general health settings, the NHS and further education settings.
- People working frequently for specified organisations (e.g. local authorities) with access to sensitive records about children and vulnerable adults.
- Support work in adult social care settings.

Organisation's duties and responsibilities

- It will be an offence for an organisation to take on an individual in a controlled activity if they fail to check that person's status.
- An organisation can permit a barred person to work in a controlled activity as long as safeguards are put in place.

7.4 **Definition of a child for the purposes of the Scheme**

A young person under the age of 18, except in employment settings, where the age limit is 16. So there are no requirements on those working with a 16 or 17 year old in employment settings.

7.5 **Definition of a vulnerable adult for the purposes of the Scheme**

The Safeguarding Vulnerable Groups Act 2006 defines a vulnerable adult in Section 59 as a person who has attained the age of 18 and:-

- They are in residential accommodation
- They are in sheltered housing
- They receive domiciliary care
- They receive any form of health care
- They are detained in lawful custody
- They are by virtue of an order of a court under supervision by a person exercising functions for the purposes of part 1 of the Criminal Justice and Court Services Act 2000 (c. 43)
- They receive a welfare service of a prescribed description
- They receive any service or participate in any activity provided specifically for persons who fall within subsection (9)

- Payments are made to them (or to another on their behalf) in pursuance of arrangements under section 57 of the Health and Social Care Act 2001 (c.15)
- They require assistance in the conduct of their own affairs

8. Making referrals to the ISA

8.1 It is vitally important for the success of the Vetting and Barring Scheme that information about individuals is shared by different organisations. The following organisations have a legal obligation to refer relevant information about an individual to the ISA:

- adult/child protection teams in local authorities;
- professional bodies and supervisory authorities named in the Act;
- employers and service providers of regulated and controlled activity; and
- personnel suppliers.

8.2 All other employers of those working with children and/or vulnerable adults may refer relevant information to the ISA. Parents and private employers should go to a statutory agency who can investigate and refer if necessary.

8.3 The ISA will inform professional and regulatory bodies when it bars someone so that their professional registration can also be reviewed.

9. Recruitment and approval of people working with children and vulnerable adults

9.1 Organisations and volunteer organisations who deal with children and vulnerable adults always need to check a person's ISA status before allowing them to undertake any duties. We cannot take their word for it and neither can we have them in post – even supervised – before we know the outcome of the check.

9.2 From November 2010, when we recruit/appoint someone new to work with children or vulnerable adults we will need to check their ISA status. This will determine whether or not we can use them (or take them on as volunteers), and may affect what activities they can undertake.

9.3 Only an ISA-registered person can undertake **regulated** activity – it is illegal to use an unregistered person and can result in imprisonment or a fine of up to £5000. An unregistered person means that a person has either not applied to register with the ISA or that they are on an ISA Barred List.

9.4 For **controlled** activity it is still mandatory to check the ISA status of an individual before we use them. However, we may be able to use a barred person provided certain safeguards are in place.

9.5 We will also need to carry out a Criminal Records Bureau (CRB) check on most individuals.

- 9.6 Prospective employees can apply for registration with the ISA via their prospective employer. Registered people will be given a personal ISA Registration Number will remain on the ISA database even if they change employers.
- 9.7 There will be no registration charge for volunteers (which includes relevant Members and School Governors).
- 9.8 Anyone applying for a position with children or vulnerable adults when they know they are barred by the ISA will be liable to a fine or could face imprisonment.

10. Existing employees, relevant Members, School Governors, Carers etc

- 10.1 We will also need to ensure that existing employees, relevant Council Members, School Governors, volunteers, taxi drivers, foster and adoptive parents, including schools based employees/volunteers are ISA-registered. First we should ask those who have not been previously checked by the Criminal Records Bureau (CRB) to apply for ISA registration. For Medway Council, there are likely to be few, if any, existing individuals working with children or vulnerable adults who do not have a current CRB check.
- 10.2 Next we should ask those who have been CRB checked to apply, beginning with individuals whose CRB checks are the oldest. The ISA will provide detailed guidance on the timing of this process as the ISA vetting service is phased in.
- 10.3 Existing individuals can apply for registration with the ISA via their organisation. A policy decision is required as to whether or not this will be funded by the Council or by the individual. The fee will be the same as for prospective employees /applicants.
- 10.4 At present, we recheck CRB disclosures every 3 years and there are no proposals to change this as information may come to light as a result of a CRB disclosure that is relevant to continued employment / appointment but may not have been deemed to be serious enough to warrant an individual being barred from working with vulnerable people.

11. Costs

- 11.1 The cost of applying to register with the Vetting and Barring Scheme has been set at £64. This is comprised of a £28 fee to cover the ISA's costs and £36 to cover the CRB's costs as administrator of the applications. The cost will be £64 even if a CRB check is not required at the same time.
- 11.2 The figures and forecasts for the first five years of the scheme's operation have been analysed and the £28 figure is based on cost-recovery for the scheme – that is, what it will cost to ensure the scheme is self-financed during that period.
- 11.3 The fee will be a one-off payment and is intended to cover the applicant for the duration of their career in regulated activity. Only those involved in unpaid voluntary activity will not have to pay the application fee.

11.4 A policy decision is required as to whether or not this will be funded by the Council or by the individual employee. At present, the Council pays the £36 for the CRB check for applicants for employment, fostering and adoption and for 3 yearly rechecks.

12. Registering with the ISA

12.1 It is the individual's responsibility to apply to register with the ISA. If they have not applied for registration we can't use them. It is our responsibility to check a potential individual or volunteer's status. If an applicant is not ISA-registered they have either not applied, may have de-registered themselves or are on an ISA Barred List. The Council will not be charged for checking someone's ISA status.

12.2 It is envisaged that registration will take 7 days. The individual will receive a card with a 7-digit registration number.

12.3 Once we have registered our interest in an individual as their employer / organisation, we will automatically be contacted should their status change – that is, if new information leads to an ISA decision to bar them. Multiple agencies can register an interest in individuals

12.4 When we check with ISA on an individual's registration using the 7-digit code provided, we will either be informed that the individual is registered to work with children/vulnerable Adults or that they are not registered to work with children/vulnerable Adults.

12.5 For self-employed people – such as childminders, they will need to apply for ISA registration in due course. Details of how and when they should apply will become available from the ISA in due course as the Vetting service is phased in.

12.6 Individuals under the age of 16 (employees or volunteers) will not be eligible to register with ISA.

13. Privacy

13.1 ISA registration does not mean that individuals' details are available to the general public. Only employers will be able to access the information – and only after the individuals give them their ISA Registration Number. Employers will only be able to check that individuals are in fact ISA-registered. Only ISA caseworkers and the police will have access to information that is held.

ISA FACTSHEET

Regulated and controlled activities

The Safeguarding Vulnerable Groups Act 2006 contains the legislation to create the new Independent Safeguarding Authority (ISA) and enact the Vetting and Barring Scheme. This factsheet explains the terms 'regulated' and 'controlled' activities used in the Act that will be introduced when the new ISA is phased in.

What is a 'regulated activity'?

- Any activity of a specified nature that involves contact with children or vulnerable adults frequently, intensively and/or overnight. (Such activities include teaching, training, care, supervision, advice, treatment and transportation.)
- Any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively. (Such places include schools and care homes.)
- Fostering and childcare.
- Any activity that involves people in certain defined positions of responsibility. (Such positions include school governor, director of children's services, director of adult services and trustee of certain charities.)
- 'Regulated activity' is when the activity is frequent (once a month or more) or 'intensive' (takes place on three or more days in a 30-day period).

How does 'regulated activity' work?

- Anyone providing a regulated activity must be registered with the ISA.
- It will be a criminal offence, punishable by up to five years in prison, for a barred individual to take part in a regulated activity for any length of time.
- It will be a criminal offence for an employer to take on an individual in regulated activity if they fail to check that person's status.
- It will be a criminal offence for an employer to allow a barred individual, or an individual who is not yet registered with the ISA, to work for any length of time in any regulated activity.

What does this mean for domestic employees, e.g. private tutors and care workers?

- It will be an offence for a barred individual to take part in any regulated activity in domestic circumstances.
- Domestic employers do not have to check an individual they wish to employ – such as a

home tutor, nanny or carer – but the new scheme will give them the opportunity to check the status of an individual (with his/her consent) if they wish to do so.

What is a ‘controlled activity’?

- Frequent or intensive support work in general health settings, the NHS and further education. (Such work includes cleaners, caretakers, shop workers, catering staff, car park attendants and receptionists.)
- Individuals working for specified organizations (e.g. a local authority) who have frequent access to sensitive records about children and vulnerable adults.
- Support work in adult social care settings. (Such jobs include day centre cleaners and those with access to social care records.)
- 'Controlled activity' is when this type of activity is 'frequent' (once a month or more) or 'intensive' (takes place on three or more days in a 30-day period).

How does ‘controlled activity’ work?

- It will be a criminal offence for an employer to take on an individual in a controlled activity if they fail to check that individual’s status.
- An employer can permit a barred individual to work in a controlled activity **only if sufficient safeguards are put in place**.

In this factsheet the term ‘employers’ refers to both employers and managers of volunteers. The term ‘employees’ refers to both paid and unpaid (volunteer) work/activities.

	Bar applies (Duty on individual)	Individual must be checked (Duty on Employers)	Barred individual can be employed
Regulated activities Employment and volunteer settings	√	√	x
Regulated activities Domestic employment settings	√	x	x
Controlled activities Employers	x	√	√ with safeguards



CRIMINAL RECORDS

POLICY AND PROCEDURE

Draft: 13 August 09

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1. Introduction

- 1.1 The Council will take every precaution to ensure that any risks to children or vulnerable adults are minimised and will undertake rigorous checks on candidates applying to work with children or vulnerable adults. This document sets out Medway Council's policy and procedures in relation to individuals with criminal records or where the Criminal Records Bureau has provided any information, which may give cause for concern.
- 1.2 It is our intention not to discriminate unfairly against anyone on the basis of their criminal record whilst at the same time ensuring that the protection of children and vulnerable adults remains the highest priority. This document sets out the principles and procedures that will ensure that this balance is achieved. It includes guidance on the situations where criminal records will be checked, the way that information about criminal records will be handled, stored and destroyed to protect confidentiality, and the things that need to be taken into account when an employment/approval decision is made.
- 1.3 Throughout the policy employees are referred to, but the principles and procedures of this document should also be applied in areas of non employment where statute requires someone's criminal record to be checked to enable them to undertake a specific role or duty, such as foster carers, adoptive parents, taxi drivers, volunteers, contractors, external agency staff and privately employed drivers conveying children.
- 1.4 Where Human Resources (HR) and HR advisers are mentioned in this document, in non-employment areas the Assistant Directors will identify and ensure that relevant staff in their area are responsible for implementing and adhering to this policy and the procedures it contains. Head Teachers will be responsible for ensuring that relevant staff in their schools are responsible for implementing and adhering to this policy and the procedures it contains for their staff.
- 1.5 **Definition of Vulnerable Adult:** A vulnerable adult for the purposes of an Enhanced Disclosure is a person aged 18 or over who receives services of a type listed in paragraph i) below and in consequence of a condition of a type listed in paragraph ii) below, has a disability of a type listed at iii) below:
- i) The services are:
- a) accommodation and nursing or personal care in a care home,
 - b) personal care or support to live independently in his or her own home,
 - c) any services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body,
 - d) social care services, or
 - e) any services provided in an establishment catering for a person with learning difficulties.
- ii) The conditions are:
- a) a learning or physical disability,
 - b) a physical or mental illness, chronic or otherwise including an addiction to

alcohol or drugs, or
c) a reduction in physical or mental capacity.

iii) The disabilities are:

a) a dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions,
b) severe impairment in the ability to communicate with others, or
c) impairment in a person's ability to protect him or herself from assault, abuse or neglect.

1.6 **Definition of Child:** A person aged under 18

2. **Key Principles and Issues**

2.1 The overriding principle is the safeguarding of children and vulnerable people in our community.

2.2 All employers are responsible for verifying the safety, competence, integrity and skills of potential candidates before they are employed as a new member of staff. Once recruited, employers are responsible for ensuring that staff are well trained and well supported to deliver good quality care.

2.3 Recruitment and vetting practices have two vital functions in social care. These are:

- First and foremost, to protect children and adults by ensuring that the people who provide their care are suitable to do so and treat them with dignity and respect; and
- Secondly, to protect the rights of applicants to be considered equally for vacant posts.

2.4 As an organisation using the CRB Disclosure Service to help assess applicants' suitability for positions of trust, the Council complies with the CRB Code of Practice and undertakes to treat all applicants for positions fairly. It will not discriminate unfairly against any subject of the Disclosure on the basis of conviction or other information revealed.

2.5 The Council aims to promote equality of opportunity for all with the right mix of talent, skills and potential. We welcome applications from diverse candidates. We select all candidates for interview based on their skills, qualifications, and experience. Having a conviction will not necessarily bar someone from employment. This will depend on the circumstances and the background to the offence and the post applied for.

3. **Criminal records in context**

3.1 Dealing with the employment of people with a criminal record is a real issue for employers in terms of both safeguarding children and vulnerable adults and fair employment practices for people who are ex-offenders or have a police record which may cause concern.

- 3.2 It has been estimated that a fifth of the working population has a criminal record. Getting a job is an essential part of successful individual rehabilitation. Failure to get paid employment is a major reason for re-offending.
- 3.3 Evidence shows that of all things to put an employer off, a criminal offence is the worst. People with a criminal record are unsure about disclosing information when seeking employment. They know from experience that this will jeopardise their chances. They also know that not declaring records about unspent convictions will break the trust of an employer if it is found out at a later date. This is a dilemma that can only be addressed by encouraging disclosure and by fair employment practice.

4. What is a criminal record?

- 4.1 A criminal record arises from a conviction. There are also police records but these are not criminal convictions. They include cautions, reprimands and final warnings. Cautions (for adults) are based on the seriousness of offences. A caution is a warning about future conduct given by a senior police officer, usually in a police station, after a person has admitted an offence. It is used as an alternative to a charge and possible prosecution. Reprimands and final warnings (for offenders under 18 years old) are issued by the police as an alternative to putting a young person before the courts. Again, the person has to have admitted the offence.
- 4.2 For information on the Rehabilitation of Offenders Act 1974, the Police Act 1997 (which set up the CRB) and the Exceptions Order to the Rehabilitation of Offenders Act, please see Appendix A.

5. Criminal Records Bureau (CRB)

- 5.1 Part V of the Police Act 1997 included measures to enable all organisations in England and Wales to obtain criminal record information about prospective employees, other relevant people and volunteers from a centralised source. This centralised source is the CRB, an executive agency of the Home Office. The CRB draws on four primary sources of information in order to confirm the offence details of applicants; the Police National Computer, local police force records, records held by the Department of Health (DoH) and the Department for Children, Schools and Families (DCSF), which includes the PoCA and PoVA lists and List 99 (see Section 6 for more information).
- 5.2 The name of the service that the CRB provides is **Disclosure**. There are two levels of Disclosure. The CRB charges a fee for each Disclosure (at present the charges are £31 for a standard disclosure and £36 for an enhanced disclosure). There are no charges for checks on volunteers.
- 5.3 **Standard Disclosure** will contain information about both “spent” and “unspent” convictions as well as cautions, warnings and reprimands and concerns for positions that are exempted under the Rehabilitation of Offenders Act and for those applying for positions working with children whether the person is included on the DCSF list of those considered unfit to

work with children, known as List 99. Standard Disclosure may also be used for people entering legal or accountancy positions.

5.4 **Enhanced Disclosure** relates to particularly sensitive areas of work, for example that involving unsupervised contact with children, young people or vulnerable adults. As well as containing the same information as the Standard Disclosure, the Enhanced Disclosure may also contain any non-conviction information from local police records that is considered relevant (often referred to as 'soft' information).

5.5 **Posts requiring Disclosure.**

The posts covered are those:

- Involving contact with children or vulnerable adults (this includes support workers, such as cleaners, receptionists, catering staff);
- Involving people in defined positions of responsibility, such as school governors, director of children and adults;
- With access to sensitive records on a database under Section 12 of the Children Act 2004 (e.g. systems such as RAISE)

Full details of the posts eligible for CRB disclosures are available on the CRB website, www.crb.gov.uk/guidance/rb_guidance/eligible_posts.aspx

5.6 **Overseas Workers**

The CRB will not reveal overseas convictions, only those that have been recorded in the UK. The CRB does however provide an overseas information service that provides customers with information on how to obtain this information. A Police check from the worker's country must be obtained and then on arrival in the UK a CRB check can be requested.

5.7 **Portability of Disclosures**

There is not a requirement to do a fresh CRB check when employees move with continuity of service. Continuity of service, including a break of no longer than 3 months, will apply in the following scenarios:

- An individual transferring within the same local authority;
- An individual transferring to a post in a different local authority;
- An individual transferring to a different type of school.

It is recommended that as good practice a new CRB check should be undertaken when new staff join Medway but it is not a requirement, apart from posts covered by the Care Standards Act (care workers, home carers, etc) where portability cannot be used as a new PoVA check is required by law when there is a change of employer. A PoVA check can only be obtained by undertaking a new CRB check. Employees moving from working with children to vulnerable adults or vice-versa require a new CRB check to ensure the appropriate barring list is checked.

External agency staff placed with us can use an existing check providing it was undertaken within the last 3 years.

6. **Protection of Children Act 1999, the Protection of Vulnerable Adults Scheme 2004 and List 99.**

- 6.1 Under this legislation, it is an offence for any organisation to offer employment that involves regular contact with young people under the age of 18 or vulnerable adults to anyone who has been convicted of certain specified offences, or are included on lists of people considered unsuitable for such work held by the Department for Children, Schools and Families and the Department of Health. The PoCA and PoVA lists are checked as part of the CRB enhanced disclosure. Any posts that need this clearance will need an Enhanced Disclosure, even if the person has never worked in the UK before.
- 6.2 **PoCA list checks.** There is a fast track system for PoCA list checks but at present it is only available to the NHS. Advice from the DCSF and the DoH is that staff working with children should not be allowed to commence work until there is a satisfactory CRB, unless it can be guaranteed they will have no unsupervised access to children. Medway Council has decided that if anyone is to start work in this area prior to the check being received, this must be authorised by the relevant Assistant Director.
- 6.3 **PoVA First checks.** Under the Care Standards Act staff working in a care position cannot start work until they have been checked against the PoVA list. PoVA checks are only available as part of a CRB Disclosure. Where we need to recruit a new member of staff quickly we can request a PoVA First check. This enables us to check prospective employees against the PoVA list without having to wait for the full Disclosure. PoVA First checks take about a week. The PoVA First check will either, confirm the applicant is NOT on the list and can start work, or advise that the full Disclosure is awaited.

A PoVA First application can only be processed by the CRB after it has received a correctly completed Disclosure application. From 6 April 2006 the CRB introduced a charge of £6 for PoVA First checks. (This is in addition to the fee for CRB disclosures). PoVA First checks for volunteers continue to be free. If consideration is being given to allowing a person to commence duty before the satisfactory CRB check is received, we must at least have the PoVA First check and authority from the Assistant Director that the person can start work. In order to ensure the safety of the vulnerable adults and comply with CSCI regulations, the worker must not be allowed to work unsupervised or unaccompanied until the CRB check has arrived.

Employers may not employ someone who is on the PoCA or PoVA list or has been convicted of a qualifying offence under the Disqualification from Caring for Children (England) Regulations 2002 in a children's home unless the regulator gives written consent

It is not possible to check the PoCA list in this way so full Disclosure has to be awaited before we know a person is listed.

6.4 **List 99 checks.** This contains details of persons considered unfit to work with children. The enhanced disclosure is undertaken for all school based staff, which checks List 99. If anyone is to start work prior to the disclosure being received then the Headteacher must ensure that stringent arrangements are in place that do not allow unsupervised access to children.

6.5 From 12 October 2009, the three current lists, PoCA, PoVA and List 99 will be replaced by two new Independent Safeguarding Authority lists, one for children and one for adults. The eligibility criteria for enhanced checks will expand to include more employment and voluntary positions, particularly in areas of work with vulnerable adults in NHS positions. Further guidance from the CRB is awaited on this point.

7. **Contractors, External Agency Staff and Work Experience**

7.1 As the contractor or external agency is the employer, it is their responsibility to ensure that disclosures are undertaken for all posts covered in this policy, when placing any of their staff to work within our services.

7.2 It is then the responsibility of the headteacher / manager of the service where the person is placed to see evidence from the contractor or external agency that a disclosure has been received and the person is clear to work with children or vulnerable adults. This evidence must be recorded by the manager / headteacher for inspection purposes.

7.3 When tendering for a contractor or agreeing to terms of business of an external agency, it must be a clear part of the approval process that the external organisation is prepared to CRB check the relevant staff and the procurement team will be responsible for ensuring these standards are met.

7.4 In some cases, contractors will be on sites where there are children and vulnerable people. If these contractors are likely to have direct contact with the children or vulnerable adults they must be CRB checked. This will not be necessary however, if they are on site when the children or vulnerable adults are not present or if they are working at such a distance that they will not have contact. If in any doubt, ensure that they are CRB checked.

7.5 CRB checks are not required for supervising work experience placements unless there is a one-to-one supervision issue i.e. if a surveyor takes a student out on site - if two surveyors take the student out that is fine. Similarly most times in an office there are plenty of other staff around the offices - if there were to be a one-to-one student ratio for any length of time then this again would need a CRB checked individual to supervise.

8. **How to decide whether disclosure is required.**

8.1 The Council will ask all applicants to disclose details of unspent convictions on their application form.

8.2 The Council will ask applicants for posts covered by the Exceptions Order to disclose all convictions, cautions, warnings, reprimands plus arrests not resulting in any formal police action, irrespective of whether "spent" or unspent" or the amount of time since the incident or alleged incident.

- 8.3 The Council will obtain a Disclosure from the CRB to check a candidate's criminal record or any other information that may cause concern where an assessment of the post has identified it as being in a job category recognised by the Exceptions Order to the Rehabilitation of Offenders Act 1974 and/or where the post meets the criteria set out in 5.5 above.
- 8.4 Although many applicants will not have their criminal records checked via the CRB because the post does not meet the criteria for CRB checking, lying on application forms is a dismissible offence. The Council operates a policy of trust, and hopes that the majority of applicants will be truthful regarding their convictions, knowing that Medway undertakes not to discriminate unfairly against any subject of the Disclosure on the basis of conviction or other information revealed.
- 8.5 Every 3 years anyone who is in a post where Disclosure is required will be required to undergo the process again. Rechecks are necessary because the Council will not automatically be informed by the CRB if someone who has been subject to Disclosure is convicted of an offence after the Disclosure has been given.
- 8.6 All school based staff are subject to an Enhanced Disclosure, even those in post prior to 2002.

9. Process For Requesting Disclosure.

Non Schools

- 9.1 If Disclosure from the CRB is required, this will be made clear in the advert and/or application pack.
- 9.2 When Disclosure is required the shortlisted candidates will be sent:
- The Disclosure form
 - Guidance notes on completing the Disclosure form
 - A copy of this policy
 - Information explaining which Level of Disclosure is being applied for. The existence of the CRB code of practice should also be highlighted to them, and details of how to obtain a copy given.
- 9.3 Any offer of employment for this/these post(s) will be subject to a satisfactory Enhanced/Standard Criminal Records Bureau Disclosure.
- 9.4 All offers of appointment should be made subject to receipt of a CRB check satisfactory to the authority. Any start date negotiated needs to take account of the fact of allowing time for the disclosure form to be processed and returned. The 'Offer of Appointment' Pro Forma will be returned to HR Services, attaching copies of proof of identity taken at interview. The Pro Forma must state the cost code for the charge of processing the successful candidates CRB form.
- 9.5 When the CRB form has been processed and returned, HR Services will contact the Recruiting Manager.

Schools

- 9.6 The headteacher will need to ensure that the CRB application form has been completed correctly and is forwarded to the HR (Schools) Team. An authorised signatory based in that team signs the completed CRB form and forwards it to the CRB. Once the CRB check is completed the CRB Disclosure certificate is sent to the individual and HR services. HR services make the headteacher aware of any concerns, and advise the headteacher to request sight of the individual's copy of the form. A discussion can then take place about the appointment being confirmed or not.
10. **Should disclosed convictions/information prevent a candidate from being employed/approved?**
- 10.1 Applicants for all posts will be asked to disclose details of unspent convictions on the application form. Applicants for posts covered by the Exceptions Order will be asked to complete an additional information sheet which requests details of all convictions (spent and unspent), cautions, warnings, reprimands plus any arrests not resulting in any formal police action, irrespective of the amount of time since the incident or the alleged incident.
- 10.2 Recruiting Managers will not discriminate against applicants who have declared information in this way and shortlisting will be undertaken in accordance with the recruitment procedure.
- 10.3 If deemed appropriate, the declared information can be discussed with the candidate at interview and if that person proves to be the best match for the vacancy, then a preliminary decision can be taken whether to proceed to obtaining the CRB Disclosure. It will be necessary for the final decision to be delayed until the CRB disclosure is received.
- 10.4 Candidates who deliberately fail to disclose relevant information, which later comes to attention via the CRB Disclosure, will normally have any offer of employment withdrawn or if they have already begun working for the Council, their services would normally be terminated, depending upon the circumstances of the case.
- 10.5 Once the CRB disclosure is returned and before making any final decision relating to an applicant's record, an interview will be arranged with the applicant, and the recruiting manager. At this interview an open and measured discussion about the subject of any offences or other matter that might be relevant to the position will take place.
- 10.6 The suitability for employment of a person with a record will vary, depending on the nature of the job and the details and circumstances of any convictions. Deciding on the relevance of convictions to specific posts is a matter of judgment and great care must be taken to protect children and vulnerable adults.

- 10.7 An assessment of an applicant's skills, experience and conviction circumstances should be weighed against the risk assessment criteria for the job. It should be remembered that employing people on the basis of information provided in an application form and a short interview, irrespective of whether they have a criminal record or not, is never risk free. The recruiting manager will make a recommendation to the relevant Assistant Director who will take the decision with guidance from their Human Resources Adviser.
- 10.8 In the event of the HR Adviser and the Assistant Director not being able to agree whether a person should be employed, the relevant Director for posts working with children and for posts working with vulnerable adults will be consulted, and their decision will be final. Please see 10.13 for school based staff.
- 10.9 When making the decision about whether to employ a person the following points must be taken into account.
- The nature of the job – does the post involve one-to-one contact with children or other vulnerable groups as employees, customers and service users or have access to highly sensitive and confidential information about them?
 - Does the post involve any direct responsibility for finance or items of value?
 - Does the post involve direct contact with the public?
 - What level of supervision will the post holder receive?
 - Will the nature of the job present any opportunities for the post holder to re-offend in the place of work?
 - The seriousness of the offence and its relevance to the safety of employees, customers, clients and property.
 - The length of time since the offence occurred.
 - Any relevant information offered by the applicant about the circumstances that led to the offence being committed, for example the influence of domestic, mental health or financial difficulties.
 - Whether the offence was a one-off, or part of a history of offending.
 - Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely.
 - The country in which the offence was committed; some activities are offences in Scotland, and not England or Wales, and vice versa.
 - Whether the offence has since been decriminalized by Parliament.
 - The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.
 - The degree of honesty the applicant showed in disclosing the information prior to the formal Disclosure being received.
- 10.10 If it is decided not to recruit the person because of information disclosed, the individual will be informed and will have the right to make representations to the relevant Director if they so wish. The decision of the Director will be final.
- 10.11 Appendix D is a flowchart showing how to deal with Disclosed convictions.

- 10.12 The final decision for approval of foster carers, adoptive parents and other non-employees will rest with the relevant Assistant Director whose decision will be final.
- 10.13 The headteacher in a school has responsibility for staff appointments outside the Leadership group. The Head of HR (Schools) or their representative should be involved in any discussion about the appointment of individuals whose CRB disclosure raises concerns.

11. Responsibility For The Disclosure Process

- 11.1 The Council will ensure that all those in Medway Council who are involved in the recruitment/approval process have been suitably trained to ensure they fully understand this policy, know how to implement it and do not discriminate against ex-offenders. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.
- 11.2 Recruiting managers are responsible for ensuring they follow the parts of this policy that relate to their involvement. It is the responsibility of Lead and Counter Signatories to check and authorise Disclosure forms before they are sent to the CRB. It will also be their responsibility to follow and adhere to this policy. Failure to do this may result in disciplinary action.

12. Commencing Employment Before A Disclosure Is Received

- 12.1 Our policy is that a person covered by the requirement to have a satisfactory record must not commence employment until clearance is obtained.
- 12.2 It is recognised that in exceptional circumstances, people may commence employment prior to a Disclosure being received. Such a decision can only be authorised by the relevant Assistant Director who will require written assurance from the relevant manager that the person will not have any unsupervised contact with children or vulnerable adults until clearance is received and that an appropriate risk assessment has been undertaken and clearly documented, this written confirmation will be retained on the employee's personal file. In a school the headteacher is responsible for ensuring that appropriate safeguards are in place.
- 12.3 Under the Care Standards Act staff working in a care position cannot start work until they have been checked against the PoVA list. PoVA checks are only available as part of a CRB Disclosure. Where we need to recruit a new member of staff quickly because service users will be at risk if staffing levels are not maintained, we can request a PoVA First check. This enables us to check prospective employees against the PoVA list without having to wait for the full Disclosure. PoVA First checks take about a week. The PoVA First check will either, confirm the applicant is NOT on the list and can start work, or advise that the full Disclosure is awaited. It is not possible to check the PoCA list in this way so full Disclosure has to be awaited before we know a person is listed.

- 12.4 If a person is allowed to commence employment before clearance is received, the offer letter and subsequent contract of employment will state that the person's service will be terminated with notice if satisfactory clearance is not received. A Hearing must take place to consider the dismissal and there is a right of appeal against any decision to dismiss.

13. Future Changes - Vetting and Barring Scheme

- 13.1 In response to recommendation 19 of the Bichard Inquiry, the Government is introducing a new vetting and barring scheme for people who work with children and vulnerable adults. On 8 November 2006 the Safeguarding Vulnerable Groups Act received Royal Assent, laying the foundation for the new scheme.

The new Vetting and Barring Scheme will be phased in from autumn 2009. Whilst DCFS and DoH will continue to manage the policy behind the Vetting and Barring Scheme, the responsibility for taking barring decisions will lie with a new Independent Safeguarding Authority (ISA). The Criminal Records Bureau (CRB) will provide the administrative arm for the ISA. There will be a systematic information campaign to ensure that employers and others are familiar with the requirements of the new scheme before it comes into force. In the meantime, current vetting and barring systems will continue to operate and to be strengthened.

- 13.2 Please refer to the Council's separate policy on the Independent Safeguarding Authority and the Vetting and Barring Scheme.

Appendix A

Criminal records and the law

The Rehabilitation of Offenders Act 1974

Under the Rehabilitation of Offenders Act 1974 (ROA) any conviction for a criminal offence can be regarded as spent provided:

- the conviction did not carry a sentence excluded from the Act, such as a custodial sentence of over two and a half years
- no further convictions occurred within the rehabilitation period.

A conviction is not 'spent' until the rehabilitation period is complete. Once it is 'spent', the rehabilitated person does not have to reveal its existence in most circumstances and can answer 'no' to the question 'do you have a criminal record?' Certain occupations are excepted - these are listed in Rehabilitation of Offenders (Exceptions) Orders. Custodial sentences of over two and a half years are never considered spent.

It is an offence under this law for anyone who has access to criminal records to disclose information about spent convictions unless officially authorised. It is also a serious offence to obtain information about spent convictions by means of fraud, dishonesty or bribe.

Rehabilitation of Offenders Act 1974 was introduced to ensure that ex-offenders who have not re-offended for a period of time since the date of their conviction are not discriminated against when applying for jobs. For example, if someone has received a prison sentence of 6 months or less, after 7 years this conviction will become "spent". It would still be reported on a Standard or Enhanced Disclosure after 7 years however. Full details of the sentences which are subject to rehabilitation under the ROA and the number of years before the conviction becomes spent are contained on the next page.

Exceptions to the Rehabilitation of Offenders Act 1974 are set out in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and in later updates the most recent of which is the Rehabilitation of Offenders Act 1974 Exceptions 'Amendment' Order 2003.

The Police Act 1997

Part 5 of the Act:

- enabled access to criminal record checks
- applies in England, Wales and Scotland
- introduced three conviction disclosure categories, which have since been reduced to two (described below)
- supports protection of individuals afforded by the Rehabilitation of Offenders Act 1974 (ROA)

- requires employers to register with the CRB in order to be able to ask individuals to apply for a standard disclosure or an enhanced disclosure.

After a review, Home Office ministers decided to implement Part 5 and set up the CRB in March 2002 to administer criminal record checks. In Scotland, the SCRO performs the same function.

The Following List includes sentences which are subject to rehabilitation under the Rehabilitation of Offenders Act

Type of sentence imposed On adults aged 18 years and over at the time	Number of Years (from date of conviction) Before Conviction Becomes 'Spent'
Imprisonment or detention in a young offender institution (previously known as youth custody) between six months and two and a half years	10 years
Imprisonment or detention in a young offender institution (previously known as youth custody) for six months or less	7 years
A fine or any other sentence for which a different rehabilitation period is not provided (eg a compensation or community service order, or a probation order received on or after 3 rd February 1995)	5 years
An absolute discharge	6 months

Except an absolute discharge, all periods above are **halved** if the person convicted was **under 18** at the time. If you were under 18 and received a probation order on or after 3rd February 1995, the rehabilitation period is two and a half years or until the order expires – whichever is the longer.

In the past, there were sentences that could be imposed **only on young people**. The rehabilitation periods for sentences like this are as follows:

Type of sentence imposed On young people aged under 18 years at the time	Number of Years (from date of conviction) Before Conviction Becomes 'Spent'
Borstal	7 years
Detention Centre	3 years
An order for custody in a Remand Home or an Approved School order	1 year after the order expires

Some sentences like this carry **variable rehabilitation periods**.

Type of sentence imposed On young people aged under 18 years at the time	Number of Years (from date of conviction) Before Conviction Becomes 'Spent'
A probation order received before 3 rd February 1995, a conditional discharge or a bind over	1 year, or until the order expires (whichever is longer)
A care order or supervision order	1 year, or until the order expires (whichever is longer)
An Attendance Centre order	1 year after the order expires
A Hospital Order (with or without a restriction order)	5 years, or two and a half years after the order expires (whichever is longer)

In Scotland, supervision requirements made by Children's Hearing have the same rehabilitation periods as care or supervision orders.

Rehabilitation periods for people from the armed services are the same as civilians, except for specific service offences as follows:

Type of sentence imposed On young people aged under 18 years at the time	Number of Years (from date of conviction) Before Conviction Becomes 'Spent'
A sentence for cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service	10 years
A sentence of dismissal from Her Majesty's service	7 years
A custodial order under the relevant schedules and sections of the Army, Air Force and Naval Discipline Acts – where the maximum period of detention specified in the order is more than six months	7 years
A sentence of detention in respect of a conviction in service disciplinary proceedings	5 years
A custodial order under the relevant Schedules and sections of the Army, Air Force and Naval Disciplines Acts – where the maximum period of detention specified in the order is six months or less	3 years

The periods are **halved** if the offender was **under 18** at the time.

Appendix B

Storage, Handling, Use, Retention And Disposal Of Disclosure Information

To adhere to the CRB's code of practice and the Data Protection Act, the following will be ensured;

Storage and Access: Disclosure information is never kept on an employee's personnel file. A separate file(s) is kept in a secure, lockable non-portable storage container with access strictly limited to the relevant members of the HR Division.

Handling: In accordance with section 124 of the Police Act 1997 Disclosure information will only be viewed by members of HR and members of the recruitment panel of the post in question (with supervision from an HR Adviser/Manager). A record of all those who have viewed each Disclosure will be kept at the beginning of the file storing the Disclosure. The Council recognises that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

Usage: Disclosure information is only to be used for the specific purpose for which it was requested, for which the applicant's full consent has been given, and in abidance of the conditions set out in this policy.

Retention: The Council will generally not keep Disclosure information for more than 6 months after it's receipt. However, for posts in services subject to CSCI inspections, the information will be kept for 12 months or more to enable the Inspectors to check a selection at the next inspection.

Disposal: Once the retention period has elapsed, the Council will ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. confidential waste bin). The Council will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a disclosure. However, notwithstanding the above, a record will be kept of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken. This information should be kept in the secure manner as detailed above.

Appendix C

Summary of Key Terms

Criminal Records Bureau (CRB) disclosure

A CRB disclosure indicates the suitability of an individual to work, or have access to, children and vulnerable adults by showing what information is held about that individual. The potential employer must make an informed choice about whether to allow the individual in question to work in the service, or have access to those who use it, based on the information contained in the disclosure.

Standard CRB disclosure

A CRB disclosure will contain information from the Police National Computer, which holds details of all convictions, cautions, reprimands and warnings issued. Where the application form has been marked to indicate relevance, the disclosure will also contain information held on the following further sources:

- Protection of Children Act List.
- Protection of Vulnerable Adults List.
- List 99.

Enhanced CRB disclosure

An enhanced CRB disclosure should be obtained for individuals who are involved in regularly caring for, supervising, training or being in sole charge of people in their role. Registered persons must make an assessment when employing staff on what level of CRB disclosure they require. Enhanced disclosures contain the same information as standard disclosures but with the addition of local police force information considered relevant by Chief Police Officer(s).

Protection of Vulnerable Adults (PoVA) List

Managed by the DCSF on behalf of the DoH, this is a list of people banned from working with vulnerable adults.

List 99

Managed by the DCSF, this is a list of people banned from working with children.

PoVAFirst check

A PoVAFirst check allows the registered persons to check that a person is not on the PoVA list as soon as possible and before the full disclosure is received. There are some cases where a PoVAFirst check cannot be returned and the registered person will need to await the full disclosure. This does not necessarily mean that the applicant is on the list; it could, for example, mean that the applicant has the same name (eg John Smith) as someone who is on the list and the CRB need to confirm the applicant is not that person.

Protection of Children Act (PoCA) List

Managed by the DCSF, this is a list of people banned from working with children. As part of the CRB disclosure, this list is checked to ensure that the candidate has not previously been banned from working with children.

Sex Offenders Register

Maintained by Public Protection Section of Kent Police in Medway to whom enquiries and concerns should be addressed. The management of people who pose a risk to children, including sex offenders is looked after by MAPPA which is hosted by the Kent Probation Board.

Details of offenders are added to the Children's Services RAISE database and can be accessed by the Child Protection Team. Information held on RAISE should be used as a guide only as the data may be incomplete and all enquiries should be made directly to the Public Protection Team.

Employee references

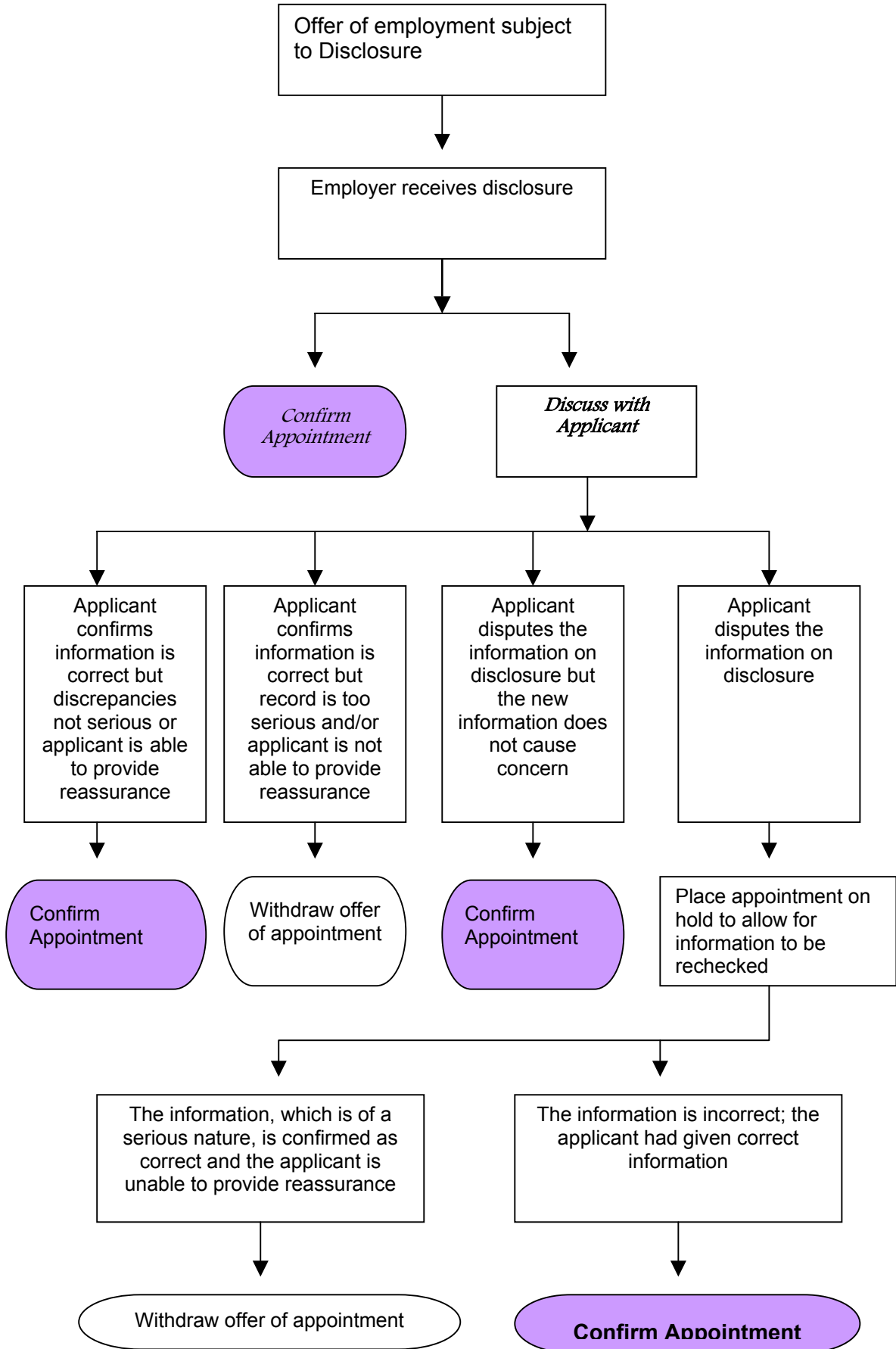
Employers need to request two written references before employing a new member of staff. This is to verify the competence of a candidate in his or her previous roles and to assess the suitability of the candidate for the role applied for.

Employee employment records

Registered persons are responsible for verifying the information that candidates provide on application forms about their employment, including training/ qualifications, history and any gaps in employment.

Appendix D

Flowchart for Dealing with Disclosures



APPENDIX 3

Area	Estimated Number	Cost (V&B = £64)	Cost (CRB = £36)	Additional cost	Who pays for CRBs now?
LEA Governors	N/A			£0	No costs as volunteers
In house agency	176	£11,264	£6,336	£4,928	Council
Corporate HR	565	£36,160	£20,340	£15,820	Council
Schools HR	900	£57,600	£32,400	£25,200	Council
Members	2	£0	£0	£0	No cost - regarded as volunteers
Transport	N/A			£0	N/A as applicants pay
Licensing	N/A	£0	£0	£0	N/A as applicants pay
Adoption	50	£3,200	£1,800	£1,400	Council
Fostering (Children & Adults)	40	£2,560	£1,440	£1,120	Council
Total Cost		£110,784	£62,316	£48,468	

Area	Estimated Number	Cost (V&B = £64)	Cost (CRB = £36)	Additional cost	Who pays for CRBs now?
LEA Governors	N/A			£0	No costs as volunteers
Corporate HR	555	£35,520	£19,980	£15,540	Council
Schools HR	1758	£112,512	£63,288	£49,224	Council
Members	20	£0	£0	£0	No cost - regarded as volunteers
Transport	N/A			£0	N/A as applicants pay
Licensing	N/A			£0	N/A as applicants pay
Adoption	50	£3,200	£1,800	£1,400	Council
Fostering (Children & Adults)	140	£8,960	£5,040	£3,920	Council
Total Cost		£160,192	£90,108	£70,084	

Diversity Impact Assessment: Screening Form

Directorate Business Support Department	Name of Policy Vetting and Barring Scheme Policy	
Officer responsible for assessment Paula Charker, Head of HR Services	Date of assessment 17 August 2009	New or existing? Existing
Defining what is being assessed		
1. Briefly describe the purpose and objectives	To implement the revised Vetting and Barring arrangements following the establishment of the Independent Safeguarding Authority and to agree a revised CRB Policy.	
2. Who is intended to benefit, and in what way?	It is intended that children and vulnerable adults will benefit. There will be a single agency to vet all individuals who want to work or volunteer to work with children and vulnerable adults and to bar unsuitable people from doing so. Medway Council will benefit from an improved vetting service.	
3. What outcomes are wanted?	A satisfactory and effective implementation of the policy throughout the council.	
4. What factors/forces could contribute to or detract from the outcomes?	Contribute - Thorough communication of the new policy to the relevant departments; - Clear process for implementation for staff managing the new system; - Clear understanding of the new system by potential employees and existing employees; - Training of those involved in all stages of the process. - Additional registrations costs to be paid by Medway Council.	Detract - Failure to communicate the policy effectively could lead to misunderstanding and potential harm to children and vulnerable adults; - Failure to manage the process correctly could lead to potential harm to children and vulnerable adults; - non-compliance with the statutory requirements would leave the council open to legal challenge and financial penalties.
5. Who are the main stakeholders?	All prospective and existing employees, relevant Council Members, School Governors, volunteers, some taxi drivers, foster and adoptive parents, including schools based employees/volunteers.	
6. Who implements this and who is responsible?	HR Services implements this policy, the lead officer is Tricia Palmer, Assistant Director, Organisational Services.	

Diversity Impact Assessment: Screening Form

Assessing impact	
7. Are there concerns that there <u>could</u> be a differential impact due to <i>ethnicity/ racial groups</i>?	
	No
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development) - Disabled Workers Forum - Black Workers Forum - Medway Council legal services. <p>A number of suggested amendments were made and taken on board wherever possible.</p>
8. Are there concerns that there <u>could</u> be a differential impact due to <i>disability</i>?	
	No
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development) - Disabled Workers Forum - Black Workers Forum - Medway Council legal services. <p>A number of suggested amendments were made and taken on board wherever possible.</p>
9. Are there concerns that there <u>could</u> be a differential impact due to <i>gender</i>?	
	<p>Yes</p> <p>This is dependant on whether Members agree to fund the ISA registration fee.. If the Council does not pay this could have a disproportionate and detrimental impact on the lower-paid and part-time workers, most of whom are women, eg school cleaners, careworkers etc. The fee is the same amount irrespective of what occupation the employee undertakes.</p> <p>It may also influence whether or not an individual chooses to work in the public sector if this costs more that working in jobs where registration is not required. This could then have an impact on the support and services provided/available to vulnerable groups if people choose not to apply</p>
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development) - Disabled Workers Forum - Black Workers Forum - Medway Council legal services. <p>A number of suggested amendments were made and taken on board wherever possible.</p>
10. Are there concerns there <u>could</u> be a differential impact due to <i>sexual orientation</i>?	
	No
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development)

Diversity Impact Assessment: Screening Form

	<ul style="list-style-type: none"> - Disabled Workers Forum - Black Workers Forum - Medway Council legal services. <p>A number of suggested amendments were made and taken on board wherever possible.</p>
11. Are there concerns there <u>could</u> be a have a differential impact due to <i>religion/belief</i>?	
	NO
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development) - Disabled Workers Forum - Black Workers Forum - Medway Council legal services. <p>A number of suggested amendments were made and taken on board wherever possible.</p>
12. Are there concerns there <u>could</u> be a differential impact due to <i>age</i>?	YES
	NO
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development) - Disabled Workers Forum - Black Workers Forum - Medway Council legal services. <p>A number of suggested amendments were made and taken on board wherever possible.</p>
13. Are there concerns that there <u>could</u> be a differential impact due to <i>being trans-gendered or transsexual</i>?	
	NO
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development) - Disabled Workers Forum - Black Workers Forum - Medway Council legal services. <p>A number of suggested amendments were made and taken on board wherever possible.</p>
14. Are there any <i>other groups</i> that would find it difficult to access/make use of the policy, or who might experience unfavourable treatment (eg people with caring responsibilities or dependants, those with an offending past, or people living in rural areas)?	
	No
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development) - Disabled Workers Forum - Black Workers Forum - Medway Council legal services.

Diversity Impact Assessment: Screening Form

	A number of suggested amendments were made and taken on board wherever possible.	
15. Are there concerns there <u>could</u> be a differential impact due to <i>multiple discriminations</i> (eg disability <u>and</u> age)?		
	NO	
What evidence exists for this?	<p>The policy has been consulted upon with:</p> <ul style="list-style-type: none"> - Trade unions - Service managers (those who have volunteered to consult on policy development) - Disabled Workers Forum - Black Workers Forum - Medway Council legal services. <p>A number of suggested amendments were made and taken on board wherever possible.</p>	

Conclusions & recommendation		
16. Could the differential impacts identified in questions 7-15 amount to there being the potential for adverse impact?		See box nine for details.
	YES	
17. Can the adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or another reason?		
	NO	

Diversity Impact Assessment: Screening Form

Recommendation to proceed to a full impact assessment?		
No	This policy complies with the requirements of the legislation and there is evidence to show this is the case.	
NO, BUT ...	What is required to ensure this complies with the requirements of the legislation? (see DIA Guidance Notes)	Implementation of the new arrangements must follow the guidelines as prescribed by the Independent Safeguarding Authority.
YES	Give details of key person responsible and target date for carrying out full impact assessment (see DIA Guidance Notes)	N/A

Action plan to make minor modifications		
Outcome	Actions (with date of completion)	Officer responsible
Staff involved in reviewing the policy		Paula Charker, Head of HR Services

Planning ahead: Reminders for the next review		
Date of next review	2011	
Areas to check at next review (eg new census information, new legislation due)	Check whether any particular groups have experienced: <ul style="list-style-type: none"> • difficulties in accessing or making use of the policy; • the application of the policy has been fair and consistent across the council. 	
Is there <i>another</i> group (eg new communities) that is relevant and ought to be considered next time?	Check that the policy continues to be accessible and fairly applied to existing and potential members of the Council's workforce, including any additional demographic groups.	
Signed (completing officer/service manager)	Date	
Signed (service manager/Assistant Director)	Date	

Related documents