

SAVO Enterprises ISA & Criminal Records Bureau Disclosure Service Newsletter



SAVO Enterprises
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The long awaited results of the reviews of the Independent Safeguarding Authority's Vetting and Barring Scheme (VBS) and the Criminal Records Bureau Scheme (CRB) were announced on 11th February 2011.

It should be noted that the reports contain recommendations which may not become law once they have been debated in parliament. There is some cross over between the reports, hence them being published on the same day.

The legislation to change the VBS is contained in the Protection of Freedoms Bill. This is the first Bill which will have a mechanism to allow the public to make comments on it before it is debated in parliament. If you want to make comments on any aspect of the Bill go to <http://publicreadingstage.cabinetoffice.gov.uk/>

It should be noted that you will have to find the relevant part of the Bill for the section you wish to comment about but the menus should help you with this.

In total the two reports run for about 100 pages and I have attempted to produce a summary of them with comments on some of the recommendations.

Independent Safeguarding Authority's Vetting and Barring Scheme

This overall tone of this report is that the VBS as originally planned was too heavy handed in requiring 9.3 million people to register prior to being able to work with children and/or vulnerable adults in a regular basis.

The report aims to ensure that a barring scheme should remain in place but that there will no longer be a registration scheme and that only those people who have "regular or close contact with vulnerable groups" may be barred. A state controlled barring scheme has been in place in one form or other since 1926 and the view is that this has the benefit of a consistent approach which will help prevent the most unsuitable people working with children and/or vulnerable adults. At present about 200 people a month are barred from work with vulnerable people and it is not anticipated that this number will change significantly.

The report also suggests that some employers and volunteer involving organisations were planning to only rely on the VBS to say if a person had been barred rather than carrying out various pre employment checks such as taking up references and obtaining CRB Disclosures etc. The proposed arrangements will ensure that organisations working with children and/or vulnerable adults are responsible for their safe recruitment practices and do not just try to rely on an individual's VBS status.

The report contains 14 recommendations, the most important of which can be summarised as follows.

Merger

It is proposed that the Independent Safeguarding Authority and the Criminal Records Bureau be merged into a single organisation which deals with both barring arrangements and the CRB service.

Scope

The proposed new barring regime will cover approximately half as many people as would have been covered under the VBS as originally envisaged, i.e. around 4.5 million rather than 9.3 million. This reduction will be achieved by redefining “regulated activities” to mean that the only people covered by the new regime will be those “who may have regular or close contact with vulnerable groups”.

Redefinition of Regulated Activities

The report notes that the exact redefinition of “regulated activities” has yet to be agreed but it will probably cover roles such as nurses and teachers and will not include roles which have minimal access to vulnerable people.

Whilst this might appear to be a positive step and, for example, reduce barriers to occasional volunteering there is, in my view, a serious flaw in this proposal.

If a person who has been barred from working with children and/or vulnerable adults still wants to work with these groups there will be nothing to stop them applying for work with children and/or vulnerable adults provided the work is outside the newly defined “regulated activities”.

This will mean that a barred person will, to use the examples given in the report, be able to be “a receptionist at a paediatric clinic, Sunday School helper or volunteer touch judge at a children’s football match”. In these roles an organisation will still be allowed to apply for a CRB Disclosure which will give background on the individual’s offending behaviour but the Disclosure will not state whether the person has been barred from working with children and/or vulnerable adults.

Whilst, on most occasions, the conviction which led to the barring decision will be shown on the Disclosure there is the potential for the reason for the barring came about because of a referral from a professional body or a former employer which did not lead to a conviction. In this case the Sunday School etc. would not know the person had been barred nor would they know the background which led to the barring.

The report states that this change could increase safeguarding risks but states that “it will be up to employers to weigh up the risks involved”. I intend to comment on this situation using the new method described above.

Registration and Monitoring

The requirement for people wanting to work in “regulated activities” to register will be removed and the ongoing monitoring of those registered will not take place. This is the recommendation which has led to the newspaper headlines which have said that the VBS has been scrapped and whilst this is largely true, whether monitoring of individuals has really been removed needs to be seen in the context of the proposed changes to the portability and updating of CRB Disclosures which are described below.

It should also be noted that the ongoing monitoring was one aspect of the VBS that was welcomed by many organisations because it meant that if a person was barred whilst they were still employed or volunteering, those organisation(s) which the person was in contact with would be informed that the person had been barred. The new proposals will mean that if a person is barred whilst in post their organisation will not automatically discover that this has happened.

Controlled Activities

Under the VBS there was to be a second tier of jobs which had less intensive contact with vulnerable people than regulated activities and where a barred person could be employed under certain circumstances. It has been recognised that this caused unnecessary confusion to the process and so in future there will be no such definition.

Referral Requirements

These will remain unchanged and organisations will be required to make referrals to the ISA, and its successor CRB/ISA, in circumstances where an individual has demonstrated a risk of harm to children or vulnerable adults.

Offences

The number of offences will be reduced and it will become a duty rather than a legal requirement to check an individual’s barred status before taking them on as an employee or volunteer. In addition it will not be an offence for an individual to undertake regulated activities if an organisation has not checked their barring status.

It will remain an offence for a barred person to work in a regulated activity and for an organisation to knowingly allow a barred person to work in a regulated activity.

The full report can be downloaded from <http://www.homeoffice.gov.uk/publications/crime/vbs-report>

Criminal Records Regime

The review of the criminal records regime in England and Wales is being carried out in two phases. The first phase concentrates on how employers “can access criminality information to help them take informed decisions on people’s suitability to undertake certain roles”, i.e. a review of the CRB system and the second phase will look at how “criminal records” are defined, managed, used and stored.

The purpose of this review was to look at whether the current arrangements struck the right balance between respecting civil liberties and protecting the public from unacceptable risk of harm. The review also looked at how systems could be made simpler and fairer and how appropriate it was to include intelligence information in CRB Disclosures.

The report on phase one “A Common Sense Approach” has been published has come up with ten recommendations. The following is a review of the most important recommendations.

Eligibility

The report expresses concern that the number of roles for which CRB checks are being sought is increasing each year and suggests that a clear definition of which roles are eligible for CRB checks be established. This definition would focus on those which have unsupervised or regular close contact with children and/or vulnerable adults.

In addition it is recommended that as children aged under 16 are unlikely to be left unsupervised in a position of authority with children and/or vulnerable adults and so should not be eligible for a CRB check.

These recommendations would appear sensible as if there is a clear definition of eligibility it will allow organisations to decide whether a person needs to be CRB checked. It should also clear up the confusion which often occurs if a school has people from another organisation on their site.

Portability

It is recommended that CRB checks should become portable (transferable) between jobs and roles working with the same type of vulnerable people. For example a school teacher could use their CRB for work with children obtained through their employment for a role as a scout leader. However it is not recommended that CRB checks undertaken for work with children should be portable to work with vulnerable adults and vice versa.

This recommendation will help to cut down on the number of occasions a person has multiple CRB checks for a range of different roles and if combined with an ongoing updating system as described in the next recommendation should make the system less onerous on organisations and individuals.

The report believes that over time a Disclosure Certificate would be held by a person as part of their identity documents such as a passport, driving licence etc. and would be produced as and when required.

Updating

At present the CRB Disclosure certificate is only a snapshot of the information available at the time the checks are carried out in order to produce the certificate. As a consequence many organisations will require new applications to be made regardless of whether an individual has previously received a CRB Disclosure so as to ensure that they receive up to date information.

Analysis of CRB applications in 2009/10 showed that over half of the 4.3 million applications related to people who had previously applied for a CRB check since the scheme started in 2002 and that 95% of those applications did not show any additional criminal records information to the original application.

The report recommends that the CRB introduces an online system which allows organisations to check if additional information exists to that on the applicant's last CRB Disclosure.

If this recommendation is introduced it will mean that an organisation will be able to ask to see a Disclosure certificate which has been issued for another job or role. The organisation will, for a fee, be able to check online if it is genuine and if there would be any additional information contained on a new Disclosure certificate.

If the online check indicated that there would be no new information then the organisation need not undertake another CRB check as they know the information on the Disclosure certificate is still up to date. However if the online check indicates that there is newer information available then the organisation would be able to request a new CRB check and a revised Disclosure certificate would be produced.

Some people might say that the monitoring which was envisaged under the VBS has been replaced by a CRB monitoring system which would be activated as and when an individual changed jobs or started volunteering in a different setting.

How the CRB Disclosure Certificate is Issued

At present the CRB issues two copies of the Disclosure certificate, one to the individual and one to the organisation requesting the check. The report states that this system has potential disadvantages.

One of these is seen as that an organisation might be tempted to make a recruitment decision based solely on the Disclosure certificate and not wait for other information such as references to arrive. I am not convinced by this as it is fairly unlikely that a Disclosure would arrive after a reference given that it takes on average four weeks for a Disclosure certificate to be produced.

The other disadvantages relate to the applicant not having the chance to challenge information which they believe is inaccurate, nor be aware of what police non conviction information might be on the Disclosure prior to the organisation seeing that information. These are fair comments as whilst these issues will affect very few people the consequences can be very serious.

The report recommends that in future the system be changed so that only one copy of Disclosure certificate would be produced and this would be sent to the applicant. It would then be the responsibility of the applicant to show an organisation they want to work for the Disclosure certificate and the organisation could check online whether the certificate is genuine.

Old and Minor Convictions

The report considers whether information about minor and/or old conviction and caution information should be included on Disclosure certificates as happens at present.

There are a number of conflicting viewpoints about whether any minor or old information should be included. Some people say that all information, however old or minor, is important for a potential employer to know whereas others say that only relevant recent and serious information should be included as all other information is irrelevant to a recruitment decision and so should not be included on a Disclosure certificate.

It is recognised that this is a complex area and the report recommends that the government should introduce a filtering system to remove minor and old conviction and caution information from Disclosure certificates.

I believe that there should be a filtering system as the current policy of including all conviction and caution information has led to details of minor and old information, which is irrelevant to a recruitment decision, being included on Disclosure certificates.

This system has led to embarrassment for applicants who might have had what could be described as 'youthful indiscretions' follow them around for the rest of their lives and being known about by their employers. There is also some evidence that the fear of an old and minor conviction appearing on a Disclosure certificate has prevented people from volunteering as they have wanted to keep that aspect of the past private from others in the organisation they want to volunteer with.

Local Police Information

An Enhanced Disclosure certificate can contain non conviction information which a local police force believes "might be relevant" to the post for which the certificate is being sought. This type of information is included on about 1 in 200 Enhanced Disclosure certificates.

The report states that the use of the word "might" in the CRB legislation can result in too tight a definition being used by a local police force because they have to err on the side of caution when deciding what information might be relevant.

The report recommends that the phrase "might be relevant" be replaced by "reasonably believes to be relevant" and a code of practice be developed by the police to ensure the same criteria are used by all police forces when deciding what non conviction information to include on an Enhanced Disclosure certificate.

The report also recommends that an Enhanced Disclosure certificate should not be delayed by the police for more than 60 days whilst deciding whether or not to include any non conviction information and that if at a later stage a police force decided that they should have included non conviction information that this be sent separately to the applicant and the organisation requesting the CRB check.

These recommendations would appear to be ones which should speed up the few applications which seem to get stuck with local police forces and also ensure that a consistent and more measured approach is taken to what non conviction information is included on an Enhanced Disclosure certificate.

Basic CRB Certificates

When the CRB was set up in 2002 it was envisaged that there would be three levels of CRB check available, Standard, Enhanced and Basic. The first two levels were introduced in 2002 but Basic checks have never been introduced.

The report recommends that Basic checks become available and these would only contain information on unspent convictions and would involve the applicant applying directly to the CRB and so would not require an organisation to request the check. The report believes that these will be widely obtained and used by individuals wanting to prove their honesty in roles which are not eligible for Standard or Enhanced checks such as shop work.

Improved Guidance

The report states that many people find it difficult to understand pre-employment CRB checking requirements as there is a lot of information and guidance available some of which is confusing and over complicated. As a result it is recommended that comprehensive and easily understood guidance is produced to explain criminal records checking requirements.

On the face of it this would seem to be a sensible recommendation but if the guidance issued by the CRB last summer about how to complete the new CRB forms were to be used as a model for revised guidance I don't think it would meet the 'easily understood' requirement.

The full report can be downloaded from <http://www.homeoffice.gov.uk/publications/crime/criminal-records-review-phase1/>

Increased CRB Charges

Hidden away in the midst of the VBS review are a couple of paragraphs which refer to the need to increase the cost of CRB applications. The reason for this would appear to be that the non introduction of the VBS has meant that the CRB has not received as much income as expected and so it needs to raise funds to ensure that it is self-financing.

It is not clear when the charges will be raised other than it will be sometime during the 2011/12 year and the level of increase is not indicated as a consultation process has to take before any changes can be made.

Timetable

The VBS report includes the following timetable:

February 2011	Introduction of the Protection of Freedoms Bill
November 2011	Royal Assent for the Bill
2012	Commencement of the relevant provisions in the Bill
2012	Creation of new barring regime
2012	Introduction of continuous criminal records updating
2013	New disclosure and vetting service begins work

Given the history of delays on the (non) introduction of the VBS I hope that this timetable is kept to but I will not be surprised if it slips somewhat.

Summary

In my view most if the recommendations in the two reports are a sensible approach to a review of the VBS and CRB systems but there are a few areas in which I feel that there could be improvements and I would suggest that as the government has set up a system to allow comment on Bills that anyone who does have comments uses this system to make those comments.

As and when any further information or consultations become available we will produce another update.

If you have any questions about these reports please contact me and I will be happy to discuss them.

Tom Bright - February 2011

Contact us if you have any questions

Many of you will have had contact with one or both of us and hopefully we are correct in our view that we are very happy to answer any questions regarding CRB or ISA matters!

We can be contacted at the SAVO offices and at least one of us is usually available to answer your questions during office hours.

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