



Victims & Survivors Service

VICTIMS SUPPORT PROGRAMME

Access NI Checks

G19/VSP

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1 Introduction

1.1 The vision of the Victims and Survivors Service (VSS) is ***to improve the health and wellbeing of victims and survivors***. One of the ways we can achieve this is by ensuring the delivery of quality services that meet their needs.

1.2 The VSS recognises its duty of care to safeguard and promote the welfare of adults who seek to engage in the delivery of services by all organisations funded under the Victims Support Programme (VSP). We therefore have both a moral and legal obligation to ensure that appropriate procedures are in place to provide effective responses to safeguard adults from actual, or potential, abuse, exploitation or harm.

1.3 In exercising this duty VSS requires funded organisations to check the criminal records of job applicants and employees. Criminal record information, also referred to as disclosure information, is obtained via AccessNI. AccessNI is a Criminal History Disclosure Service within the Department of Justice in Northern Ireland. AccessNI operates within Part V of the Police Act 1997 and issues three types of disclosure, Basic, Standard and Enhanced. The level of disclosure required will vary from one role to another and should be reviewed prior to undertaking recruitment for the vacancy in question, whether this is a paid position or voluntary role.

Before asking for an AccessNI disclosure, check the following:

- confirm the individual has the right to work in Northern Ireland
- the individual is informed as to why an AccessNI check is required, which check is required and how to apply for that check
- the individual is informed that a check for the Data Barring Service (DBS) barring lists is needed for posts in regulated activity and their consent to do the check is sought
- the individual is informed on how to get independent advice about the AccessNI application process (NIACRO can explain convictions on a disclosure certificate)
- allow the individual to explain if their check will reveal a criminal record
- only check the individuals who have been successful in taking up a position.

1.4 This guidance note has been developed to align with the Commission for Victims and Survivors (CVS) *Standards for Services provided to Victims and Survivors* (see <http://www.cvsni.org/what-we-do/policy-and-research/standards-for-services>).

1.5 Evidence of Access NI checks form part of VSS governance checks. Therefore, we may ask for evidence that Access NI checks have been carried out on all staff funded through by VSS.

2 Establishing the Level of Check Required

2.1 Funded organisations should pre-determine the level of check required for each post within its organisational structure based on the legislation and guidelines which follow. The level of check required should be reviewed periodically as the roles and responsibilities of a post change, and prior to the commencement of any recruitment process.

Basic checks

This check should be undertaken as a minimum. Where a basic AccessNI check is required the applicant can apply themselves online or the organisation can arrange and pay for the check through a responsible body. A basic check application costs £18.00.

Standard checks

The standard check is available for certain specified occupations, licences and entry into certain specified professions.

Where a standard AccessNI check is required the applicant requires a nidirect account to apply online and the application must be approved by the AccessNI-registered organisation. A standard check application costs £18.00.

Enhanced checks

An individual is eligible for an enhanced check when working in regulated activity or doing some other specific roles. This might be a legal requirement or a condition of employment. The role will usually involve working closely with children or vulnerable adults. An enhanced check for a regulated activity will include a check with the Disclosure and Barring Service (DBS). They keeps lists of people who are unsuitable for work with children and vulnerable adults. The enhanced check is also available for other specific positions (but without a check of the DBS barred lists), including those working with vulnerable people (but not in regulated activity).

Where an enhanced AccessNI check is required the applicant requires a nidirect account to apply online and the application must approved by the AccessNI-registered organisation. A standard check application costs £33.00.

Further guidance on the level of check required can be found at [Annex 1](#)

3 Volunteers

3.1 If the applicant is a volunteer in a role which needs a **standard** or **enhanced** check, AccessNI will provide the check free to a volunteer who:

“...gives their time in a position in a non-profit organisation, free of charge, doing something for the good of the community or a voluntary group, for which they may get travelling and other out-of-pocket expenses, and which is not for their own benefit or for the benefit of a close relative.”

3.2 AccessNI charges for a standard or enhanced checks if:

- you are volunteering directly for a statutory organisation
- you are volunteering for a non-profit organisation in a position which delivers statutory services under contract or in a specific project, where that organisation receives government funding to pay for volunteers' checks

3.3 A statutory organisation is an agency established by government. A not-for-profit organisation is a non-governmental body which does not distribute its surplus funds to owners or shareholder.

4 Regulated Activity

4.1 New definition of regulated activity

The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 sets out the activities and work which are 'regulated activity', which a person who has been barred by the Independent Safeguarding Authority (ISA) must not do. The scope of regulated activity has been scaled back to focus on work which involves close and unsupervised contact with vulnerable groups including children. The activities and work which are being taken out of regulated activity (old definition) will still be eligible for enhanced AccessNI checks (but they will no longer be eligible for barred list checks).

An individual will commit an offence if he/she offers work to, or knowingly employs a disqualified person in a regulated position and a disqualified individual will commit an offence if he/she applies for or accepts work in a regulated position. The full legal definition of regulated activity is set out in Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended.

4.2 Regulated activity with children

This is a role where you work unsupervised with children once a week or more or intensively (four days in a row or overnight). For example, you work in regulated activity if you:

- teach, train, instruct, care for or supervise children
- provide advice/guidance on well-being to children
- drive a vehicle only for children
- work in a school, children's home or childcare premises with the opportunity for contact with children
- provide personal care, e.g. washing, dressing or healthcare to children
- are a registered childminder or foster-carer

4.3 Regulated activity with adults

The activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time.

This applies to staff and volunteers.

A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, **is also in regulated activity**.

There is no requirement to have undertaken the activity a certain number of times before it becomes regulated.

You work in regulated activity with adults when you:

- give healthcare as a GP, pharmacist, nurse, dentist, surgeon or specialist
- give personal care such as dressing or washing
- provide social work
- help with general household work such as handling cash, shopping or paying bills
- help manage personal affairs such as legal papers
- bring an adult in a vehicle to receive personal care, healthcare or social care

An employer must:

- know if a position is regulated activity
- know the level of check required and when to search the barred lists

- not employ an individual or engage a volunteer in regulated activity who is on a barred list
- tell the DBS if the individual poses, or could pose, a risk to children or vulnerable adults

Additional guidance on how to determine if a role involves regulated activity is available at [Annex 2](#).

4.4 The pre-September 2012 definition of Regulated Activity

It is important to take note of this definition as this will determine if an employer can request an Enhanced Level Disclosure without a check of the DBS Barred Lists for working with Children or Adults but who is **not** working in regulated activity.

- Positions that fall within this category include
- working in the health or further education sector with access to personal records on children or adults
- applications or renewals for taxi licences
- where a domestic controlled drug licence issued by the Department of Health is required, or
- Anyone working in the pre-September 2012 definitions of regulated activity but not within the current definitions. This mainly applies to working with adults.

The pre-September 2012 definition of Regulated Activity is defined in Schedule 4 (Parts 1 & 2) of the Safeguarding Vulnerable Groups Act 2006 included anyone working closely with children or vulnerable adults because of their role, the person undertaking the activity may develop a relationship of trust with the child or vulnerable adult, either paid or unpaid, not part of a family or personal arrangement, it includes:

Activity of a specified nature – this includes advice, guidance, assistance, health or social care, supervision, or treatment or therapy;

OR

Any activity in a specified place – N.B specified place is clearly defined in the legislation. In the context of health research, examples of specified places, where any type of activity could qualify as regulated activity if there is the opportunity for contact with children or vulnerable adults; are children's hospitals, adult care home, or schools.

AND

INVOLVES Frequent contact (once a month or more), OR Intensive contact (4 days or more in any 30 day period)

OR

Overnight contact (between 2am – 6 am). Regulated activity also includes Fostering and 'Defined Office Holders'.

Why is this definition still important?

Under the changes that were introduced as part of the Protection of Freedoms Act 2012 the definition of Regulated Activity was changed, with a view to reducing the number of Barred List checks that employers would request. Under guidance provided at the time it was anticipated that there would be a reduction in requests for Barred List checks, from 9 million per year to 5 million per year. This guidance also confirmed that any role that was previously eligible for an Enhanced level Disclosure would remain eligible for an Enhanced level check, but only those meeting the new definition of Regulated Activity could have a Barred List check. This created a new level of check which was the *Enhanced Level check without a check of the Barred Lists*.

5 Rehabilitation of Offenders Legislation

It is important that funded organisations do not classify a post as requiring a standard or enhanced disclosure unless the position is exempt from the Rehabilitation of Offenders (NI) Order 1978. It is an offence to request sight of an individual's full criminal record if you have no legal basis to do so. Under this legislation the vast majority of offences become 'spent' after a rehabilitation period is completed and when no new and related offences occur. Working with children and vulnerable adults in regulated Activity, as defined by the Safeguarding Vulnerable Groups (NI) Order 2007, is regarded as exempt from the Rehabilitation of Offenders (NI) Order 1978.

6 Application Process

Each employee/applicant should be advised of the level of check required and given guidance on how to progress their application. Individuals can apply for a basic check independently via the nidirect.gov.uk website. Applications for standard and enhanced checks must be made via an AccessNI-registered organisation and individuals will be provided with the necessary application form and PIN number.

Checking an applicant's identity

Funded organisations must verify each applicant/employee's identity prior to a standard/enhanced check/re-check being undertaken. Full details of the forms of

identification required are shown on the PIN Notification and ID Validation Form provided to applicants.

Applicants are also advised that the AccessNI disclosure certificate will be returned directly to them and if it displays any disclosure information such as criminal convictions it should be forwarded to the individual responsible for recording this information with the organisation along with a personal Statement of Disclosure (see below). If the certificate does not contain any disclosure information the required details should be recorded and the original certificate returned to the applicant/employee.

7 Umbrella Body

An umbrella body is an AccessNI-registered organisation. They're authorised by AccessNI to process individuals' information. They send standard and enhanced criminal record checks to AccessNI for employers and organisations. If you are not currently an AccessNI-registered organisation you will be required to use an umbrella body to make and manage standard and enhanced checks on your behalf, such as **Volunteer Now**, and there is sometimes a small admin fee which may apply.

Services offered by umbrella bodies include:

- processing, submitting & receiving AccessNI checks on an employer's behalf
- identity checking by reviewing an applicant's passport or driving licence and proof of address
- tracking an application
- explaining legislation such as the Rehabilitation of Offenders Order
- explaining criminal convictions

When completing the required form applicants will be asked to give permission for the umbrella body to collect, hold and use their personal information.

8 Disclosure of Criminal Convictions

In the event that an application results in the disclosure of an unspent criminal offence, funded organisations should consider the information stated on the AccessNI disclosure certificate and the risks this may pose when deciding to proceed with the application.

In the case of an existing employee who has notified you of a new/pending Criminal Conviction funded organisations should consider the information and the impact this

may have of the individual continuing to carry out their duties. Where information is disclosed on a disclosure certificate for an existing employee who has failed to comply with their duty to notify you of this change or where the nature of the disclosure is such that the individual cannot continue within their current role disciplinary action, including suspension and/or dismissal may be appropriate.

When the results of an AccessNI check reveal unspent convictions funded organisations should carry out a Risk Assessment and offer the candidate an opportunity to provide a statement of disclosure regarding the conviction(s). A statement of disclosure is an opportunity for the applicant to outline any special circumstances which he/she feels should be considered before any decision to appoint/not appoint is made. The statement of disclosure provided by the applicant is a very important part of the decision making process and all applicants with criminal convictions are encouraged to provide one. Further advice regarding statements of disclosure can be obtained by contacting the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) website.

9 Retention of Information

Information received by funded organisations regarding criminal records should be returned to the employee/applicant when it has been verified/when a final recruitment decision is taken. A copy of the certificate should not be retained by funded organisations, instead the outcome, reference number and date that the decision has been made on any check processed should be recorded on the applicant's record.

10 Applications from Outside the UK

AccessNI is unable to obtain overseas criminal records or other relevant information as part of the Disclosure service. A person who has recently moved to the UK may not appear on any of the records searched by AccessNI. Many countries, including most European Union (EU) countries, allow their citizens to obtain certificates of good conduct or extracts from their criminal records; funded organisations should consider if it is appropriate to request this from a candidate who has recently moved to the UK. Funded organisations may also wish to contact the country's representative in the United Kingdom. Contact details for those countries that have a representative in the United Kingdom can be found on the Foreign and Commonwealth Office website www.fco.gov.uk or by telephoning 020 7008 1500.

11 Reusing Disclosure Certificates

AccessNI disclosure certificates are only accurate on the issue date. Disclosure certificates should be used immediately. With a dated certificate, there's a risk that the applicant's criminal record has changed.

Funded organisations should not accept dated checks or transfer disclosure certificates to later roles or jobs. However, in the event that an existing employee transfers to another role within the organisation which requires the same level of check to be undertaken existing checks can be used and funded organisations should continue to review in line with the provisions below.

12 Updating Checks

In order to ensure the continued duty of care to clients funded organisations should undertake a review of AccessNI checks completed more than three years ago. These employees/volunteers should be asked to make an application to repeat the AccessNI check at the appropriate level.

Other circumstances when funded organisations should undertake a repeat check may include the following:

- There has been a break in service of 12 weeks or more;
- An employee leaves the service and subsequently returns;
- The organisation have been notified by the employee/volunteer of a new conviction; and
- An existing employee/volunteer has been successfully promoted into a new role where a different level of check is required.

13 Employee/Volunteer Responsibilities

Each employee/volunteer is responsible for notifying their funded organisation for any change/pending change to their Criminal record.

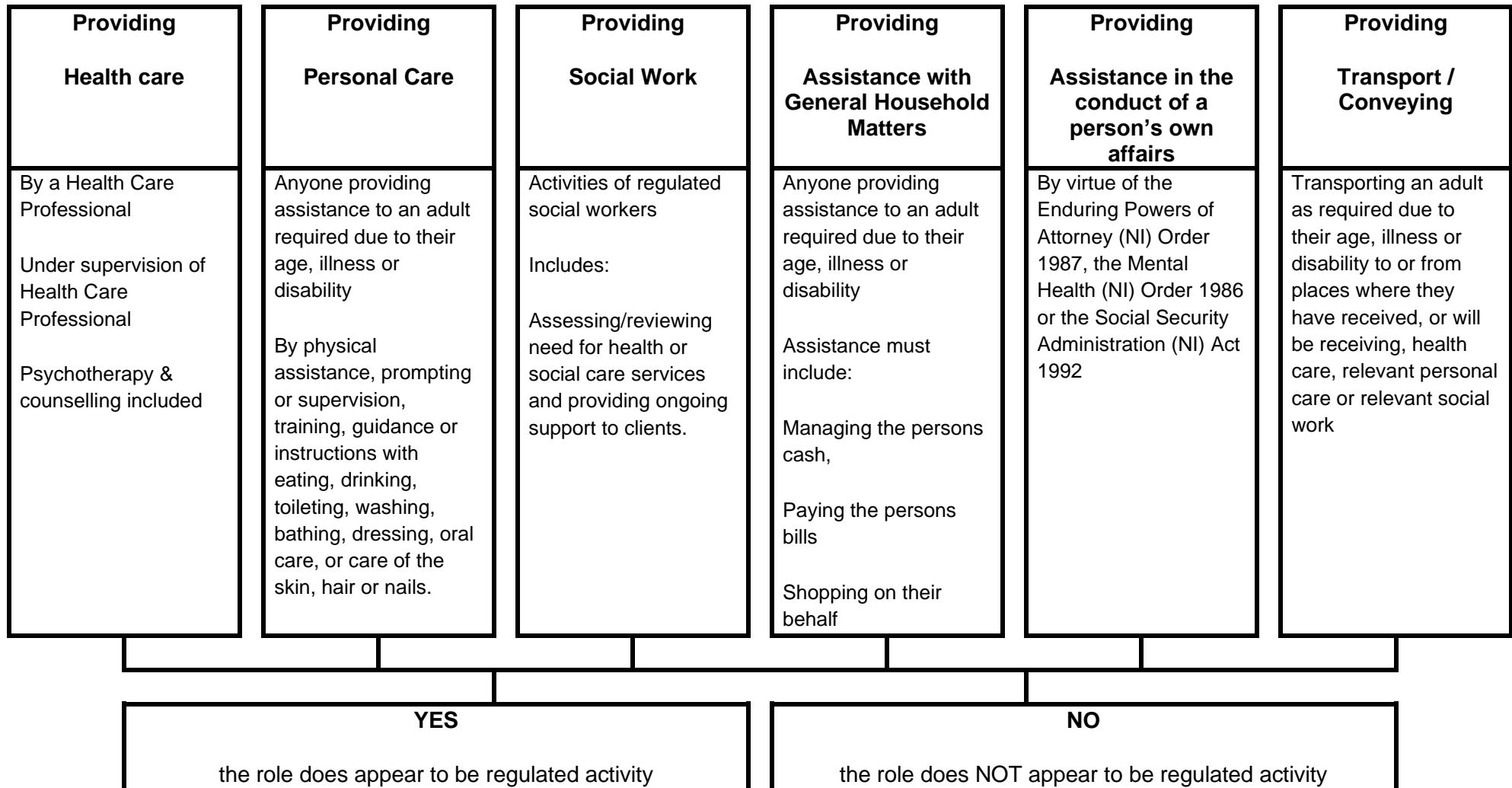
Employees/volunteers are also responsible for providing the original documentation required in a timely manner each time a review/update is required.

ANNEX 1: Level of AccessNI Check Required?

Type of check	Purpose	How to apply	Information disclosed
Basic	For general employment purposes, all posts in airports after the security search, civil service and other public bodies, bus and taxi operator licences etc.	Directly to AccessNI or through an employer or their representative or a licence provider.	Unspent convictions
Standard	Security Industry Authority licences or entry into certain specified professional occupations e.g. lawyers, Accountants	Through SIA, an employer or their representative.	Spent and unspent convictions, cautions and informed warnings
Enhanced <u>with</u> a barred list check	<p>Regulated Activity</p> <p>Working or volunteering with children or vulnerable adults,</p> <p>This will include a check of the DBS barred lists (those not permitted to work with children and vulnerable adults).</p>	Through an employer or their representative.	As Standard, plus relevant police information and where appropriate a “barred list” check
Enhanced <u>without</u> a barred list check	<p>Non Regulated Activity</p> <p>those working with vulnerable people (but not in Regulated Activity)</p>	Through an employer or their representative.	As Standard, plus relevant police information

ANNEX 2: Regulated Activity?

Does the role involve any of the following activities?



Adapted from Volunteering England, Disclosure and Barring Checks & Volunteer Now, Disclosure and Barring in Northern Ireland