Child Protection in Sport Unit Guidance on AccessNI Eligibility Criteria for those Working with Children

This guidance looks at the eligibility of a range of roles across the sporting sector working with children based on generic descriptions of the roles and their responsibilities. This guidance would apply whether the applicants are in paid or unpaid work.

Any changes to a role or the activities that an applicant carries out can affect the level of check that is available.

Employers, Sports Governing Bodies, clubs, local councils etc are recommended to undertake the highest level of Access NI check that a role is eligible for.

Importance of undertaking checks

Organisations have a duty of care to the children with whom they work or have contact. Part of fulfilling this duty means preventing unsuitable individuals from working with children.

In Northern Ireland, this is done by a system of disclosure checks combined with barring of individuals in certain circumstances. The Disclosure and Barring Service (DBS) receives information about people who have harmed children or have acted in a way that suggests they present a future risk to children. That information can be sent (and in certain circumstances must be sent, see Reporting concerns to Disclosure and Barring Service section for more detail) to the DBS by employers, regulatory bodies or statutory children's agencies. The DBS will decide if they should bar that person from working in close or unsupervised contact with children, known as 'regulated activity' It is against the law for a barred person to work or volunteer with children in regulated activity. Where you plan to employ someone in regulated activity, whether for paid work or as a volunteer, you should request an enhanced disclosure check from AccessNI, this will show if the individual is barred from working with children. If the disclosure certificate indicates that the individual is on the barred list, you must not employ that person in regulated activity and you will be breaking the law if you do

Eligibility

Requesting an Enhanced Disclosure with a Barred List check via Access NI is controlled by the legislation and government guidance.

As a general position, eligibility to apply for an Access NI and the type of check is not based on an applicant's job title but is established by looking at the activities and responsibilities carried out by each individual role. It's important to make sure that legislation allows an Access NI check to be submitted to make sure the applicant's data protection rights are not breached.

The organisation deciding whether the applicant is suitable for the role is also responsible for working out the level of check the role is eligible for (see Annexe A).

Applicants can't apply directly to Access NI for their own standard or enhanced check. That's because the legislation is framed in such a way that someone other than an applicant must be able to say that the disclosure check is being sought for the purpose of an exempted question (that is the role is exempt from the rehabilitation of offender's legislation) and/or for a prescribed purpose (that is, then position for which the check is sought is eligible for an enhanced check). In addition, there must be an organisation making the decision about whether the applicant is suitable for the role to process an application for these levels of check. Standard or enhanced checks require an organisation to risk assess any information arising from the disclosure check. The processing of Access NI check is normally administered by the Sports Governing Body or the NI Sports Forum can also act as an umbrella body for sports organisations who do not require many checks per year.

Where eligibility for a standard or enhanced check doesn't exist then a basic check can be requested – there are no restrictions on who can apply for this.

Applicants can apply for their own basic check via Access NI website. Basic checks provide details of unspent criminal convictions.

For safeguarding children all those in regulated activity should undertake an Enhanced Disclosure with a Barred List Check

Specific roles in the sporting sector

Below are some examples showing how eligibility can be applied to some roles in the sports sector. Legislation sets out what regulated activity with children is. To see more about what is meant by regulated activity, see Annexe A.

Coaches

Anyone employed to be a coach or instructor of children's sports whose duties include teaching, training or instructing children, or providing advice or guidance to children relating to their physical, emotional or educational well-being, is eligible for an enhanced check with a children's barred list check.

This is because they are performing regulated activity with children if the frequency or intensity conditions are met. Simple points to consider are is the activity:

- once a week or more
- at any time on four days or more in any period of 30 days, or
- at any time between 2am and 6am with the opportunity for face-to-face contact with children.

Important to note - while it is not possible to obtain an Enhanced AccessNI check where an individual undertakes regulated activity but does not meet the frequency or intensity conditions, a barred person is still barred from an activity that would be regulated activity but for the fact that it is not done regularly. This is their responsibility to not undertake these roles.

Referees, umpires and other officials

The role of sports official is not specifically mentioned in legislation as eligible for an AccessNI check which means that each role must be considered on an individual basis. This is because an official's responsibilities can vary between sports and clubs.

If an official's duties include teaching, training, instructing or being required to care for or supervise children, and they do this often enough to meet the frequency condition, they will be eligible for an enhanced check with a children's barred list check.

For example, a referee for a children's football team who instructs players on the correct way to undertake a goal kick or throw in would be instructing children and would be eligible for an enhanced check with a children's barred list check if the frequency condition is met. An official who is responsible for supervising children before or after a match, or during training, would be eligible for an enhanced check with children's barred list check if the frequency condition is met.

If they do not perform any of the activities mentioned above, then they should be asked to apply for a basic check before being deployed in sports activities in any leadership role.

Drivers

There may be eligibility in some situations for drivers who transport children to and from sporting activities or events. If someone drives a vehicle that is being used only for conveying children at the request of the organisation, including anyone supervising or caring for the children, to sporting activities or other arranged events then they will be eligible for an enhanced check with a children's barred list check if they are doing it often enough to meet the frequency condition.

This does not apply to applicants who are driving children as part of a private arrangement, such as arrangements between parents.

Health care professionals in sports

There are many roles in the sporting sector that provide health care, such as physiotherapists, psychotherapists, first aid organisations, club doctors/nurses etc, where eligibility exists for these individuals to be asked to apply for an Enhanced AccessNI with a barred list check.

Anyone who is providing health care to children and is a regulated health care professional or working under the direction or supervision of a regulated health care professional, is carrying out regulated activity with children (see Annexe A for more information on this). It doesn't matter how often this health care is being provided for the eligibility criteria to be met. This means that an applicant providing health care to children can be asked to apply for an enhanced check with a children's barred list check.

To be working under the direction of a health care professional, the applicant would need to be receiving direct instructions from the health care professional about how to treat the client whilst the health care is being provided. Working under the supervision of a health care professional would require the applicant to have the health care professional with them at the point that they are providing the treatment to the client.

Health care provided by first aiders is only regulated activity if it is provided on behalf of an organisation set up for providing first aid e.g. St John Ambulance. This would not apply to applicants who volunteer to be first aiders alongside their primary role.

Sports volunteer therapists

If a sports club recruits anyone (paid or unpaid) who do not have a professional health qualification but whose role includes performing and providing sports massages for children's teams, or any individual child, the sports club should request an enhanced check with a children's barred list check, if they meet the frequency condition. This is because the applicant is performing work that is a form of supervision and care of children. These roles require clear boundaries about acceptable behaviour set by the sport as they are not formally regulated by a professional body.

If sports massage is being provided by a healthcare professional, then it would be regulated activity and eligible for an enhanced with a children's barred list check even if it is only done on one occasion.

Pool lifeguards

Pool lifeguards are eligible for AccessNI checks because, based on guidance from the Royal Life Saving Society in collaboration with National Society for the Prevention of Cruelty to Children (NSPCC), their duties mean that they are expected to supervise the users of a pool which will include children. This is regardless of whether the children are accompanied by an adult. Because of the expectation that supervision is part of their duties, if the frequency condition is met, lifeguards are eligible for an enhanced check with a children's barred list check, as they will be in regulated activity with children.

Running groups

Public or private running groups that include children may sometimes appoint a run leader to organise or supervise events held by the group. If there is no organisation providing the approval for the applicant to perform this role then they would not be able to apply for a standard or enhanced check, the run leader could only apply for a basic check.

If there is an organisation to decide the applicant is suitable to perform this role then there may be eligibility depending on what activities the run leader is performing and who they are doing this with.

If the run leader is responsible for a running group or event set up mainly for children, and is responsible for teaching, training or instruction, care or supervision of children during a run and the frequency condition is met then they would be in regulated activity with children and eligible for an enhanced with children's barred list check.

For running groups that are open to both children and adults see Children in Adults' Sports section below and CPSU web site briefing on Involving young people in mixed-aged sport or activity.

Overnight Stays

For some sporting activities, it may be necessary for teams or groups to stay overnight at certain venues or events.

When this is done with children's teams, the person with responsibility for supervising the children is doing so overnight with the opportunity for face-to-face contact with them. As there is opportunity for contact between 2am and 6am, the intensity condition is met even if this supervision happens on just one occasion.

This means that this person is eligible for an enhanced with a children's barred list check. This does not apply to applicants who are staying with children as part of a private arrangement or arrangements between parents. The supervision must be done on behalf of the sports club.

Children in adults' sports

For anyone carrying out one of the sports roles mentioned already for open aged sports teams, for example a coach of a hockey team that is open to adults as well as 16- and 17-year-olds, there may be eligibility at the same level of check that they could get for performing this role just with children. Eligibility in these situations will depend on how likely it is that children would be present at these teams or events.

If it is anticipated that children are likely to be part of an open aged sports team and there is a good chance of this happening, for instance if children have already been part of the team during the previous season or have registered to join the team, then the applicant performing any of the roles mentioned would be eligible for the same level of check as stated under that role.

Organisations in that position would have to determine who is eligible for a check. For example, it may be the captain or manager of a sports team, depending on circumstances.

If, however it is unlikely that children would be a part of these sports teams or events, for instance if no children have ever previously been on a team and none are expected to join, then people in these roles could only apply for a basic check. This is because a standard or enhanced check cannot be applied for just in case an applicant ends up doing an eligible type of work.

Managers and supervisors

If any person is employed to act as a supervisor whose duties include the day to day management or supervision of someone who is eligible for an enhanced check with a children's barred list check for being in regulated activity with children, then the person acting as the supervisor will also be eligible for the same level of check.

For example, if a lifeguard is employed and eligible for an enhanced check with a children's barred list check for being in regulated activity with children, then any person that is employed to manage that lifeguard on a day-to-day basis will also be eligible for an enhanced check with a children's barred list check.

Reporting concerns to Disclosure and Barring Service (DBS)

If an organisation employs people, paid or unpaid, who are carrying out regulated activity (see Annexe A), if they remove someone from this activity (or would or may have if the person had not left or resigned or ended their arrangement with the club/sport) because of their behaviour, the organisation must inform the Disclosure and Barring Service (DBS) about this. This is called a duty to refer, and an organisation has a legal obligation to refer individuals to DBS if they believe a person has:

- Been cautioned or convicted of a relevant offence
- Engaged in relevant conduct in relation to children (i.e. an action or inaction (neglect) that has harmed a child or put them at risk of harm or
- Satisfied the "harm test" in relation to children i.e. there has been no relevant conduct but a risk of harm to a child still exists.

Failing to provide this information when there is a duty to do so is an offence under section 38 of the Safeguarding Vulnerable Groups (NI) Order 2007.

If you are uncertain about your duty to refer you should talk to your governing body or seek legal advice. More information about making referrals can be found on DBS website at: https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs

AccessNI registered body training sessions are for new signatories and signatories who haven't been to an AccessNI training session recently. For more information or to book a place at the training session, contact AccessNI: telephone 028 9052 6402

Annexe A

What is regulated activity - for those working with children and young people?

Working in a paid or voluntary capacity with children is regulated activity if:
(a) it is one of the activities listed; **and**
(b) is done "regularly", with the exception of health care and relevant personal care which is regulated activity even if carried out once; or
(c) it is carried out in a specified place.

(a) The activities include:
• teaching, training or instruction;
• care or supervision, including health care and relevant personal care;
• advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being;
• moderating a public electronic interactive communication service likely to be used wholly or mainly by children;
• driving a vehicle being used only for conveying children and carers or supervisors.

Day to day management or supervision on a regular basis of a person carrying out one of the activities listed above is also a regulated activity.

Activities that are excluded from the definition of regulated activity are:

• activity or participation of children that is merely incidental to what would normally be an adult activity;
• "supervised activity"- an individual who is under reasonable day to day supervision by another person engaging in regulated activity (see supervision guidance Annexe B); and
• activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the "peer exemption".

(**b) 'Regularly'** is defined as: carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*.

*Definition of "overnight" - In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children.

(c) Specified places: The Safeguarding Vulnerable Groups (NI) Order 2007 lists specified places, including schools and day care premises, where an activity with children is a regulated activity if it is carried out regularly by the same person in connection with the purposes of the place where it is carried out. This could include, for example, sports coaching in a school. The supervised exemption also applies in a specified place but only where the activity is carried out by a volunteer.

The above definitions cover the vast majority of roles that are likely to occur in the sports sector. A link to the factual note issued by the Department of Health in relation to all regulated activity in respect of children is below;

https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/regulated-activity-children.pdf

Annexe B

How to determine whether staff/volunteers are supervised or unsupervised?

When an organisation decides to supervise a person with the aim that the supervised work will not be regulated activity (when it would be, if not so supervised), in such a case, the law makes three main points:

1. There must be supervision by a person who is in regulated activity;
2. The supervision must be regular and day to day; and
3. The supervision must be "reasonable" in all the circumstances to ensure the protection of children.

How should the voluntary sector interpret the above guidance on what is supervised activity?

The organisation must have regard to the statutory guidance and may wish to consider the points below in relation to supervision issues in the voluntary sector. The introduction of the term supervision is intended to give local leaders the flexibility to determine what is reasonable and regular for their circumstances.

Umbrella/registered bodies need to ensure they are able to give advice to organisations/clubs when requested and to provide consistency in how those involved in their activity in certain roles are checked. While the precise nature and level of supervision will vary from case to case, guidance on the main legal points above is outlined as follows.

- Supervision of the individual is provided by a person in regulated activity in a more senior position than the individual. Peer to peer supervision does not mean the individual is in a formally supervised position.

- Supervision is regular and day to day, i.e. that supervision must take place "on a regular basis". This means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception rather than the rule. It must take place on an on-going basis, whether the worker has just started or has been doing the activity for some time. It must be consistent and on every occasion the individual is working/volunteering.

- Supervision must be reasonable in the circumstances for the purposes of child protection. Your organisation must consider if you can ensure a consistent level of supervision at all times to ensure that it would not impact on the safety of children in your care if a barred individual was in this "supervised" position.

Additional notes:

Organisations should consider whether:
the 'supervision' of workers is in addition to formal support and supervision processes – it should be;

- supervision is constant during all activities;
- the location of the activity can facilitate robust supervision of the worker (for example one senior coach responsible for 4 coaches in separate rooms in a sports centre/club would not constitute constant supervision therefore the 4 coaches would be in regulated activity);
- the level of supervision in place adequately protects children in the event of unforeseen or unexpected events;
- you are observing good safeguarding practice. This is essential, regardless of the information obtained through a pre- employment vetting check.

Organisations should ensure that they have a safeguarding children policy which meets the minimum standards of good practice in 'Keeping Children Safe- Our Duty to care Safeguarding Archives - Volunteer Now (as endorsed by Dept of Health) and are maintaining in the highest level of policy implementation.

The Department of Health was consulted during the development of the guidance set out above to ensure that it is both factually correct and in keeping with the steer of the statutory supervision guidance.

The statutory supervision guidance can be found at the link below;

https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/supervision-guidance-revised-sos-sept-2012.pdf

Updated 8/07/24