



*National Institute for
Health Research*

Research in the NHS – HR Good Practice Resource Pack

**The Research Passport:
Algorithm of Research Activity
and Pre-Engagement Checks**

INTERIM UPDATE - SEPTEMBER 2010

The Research Passport 'algorithm of research activity and pre-engagement checks' provides guidance on the pre-engagement check requirements for researchers undertaking their activities in the NHS. Following the revision of NHS Employers' Check Standards and the Government's announcement of the deferment of Independent Safeguarding Authority (ISA) registration on 15 June 2010, an interim update to the algorithm is being issued to take account of NHS Employers' current guidance.

The HR Good Practice Resource Pack has been updated to reflect [interim guidance given by NHS Employers](#). Users should refer to the guidance when appropriate and to any changes subsequently made as a result of the review of the Vetting and Barring Scheme.

Vetting and Barring Scheme (VBS) remodel & deferment of ISA registration

On 15 June 2010, the Government announced their intention to remodel the VBS back to proportionate, commonsense levels. Voluntary registration with the VBS for new employees and job-movers working or volunteering in regulated activity¹ with children and vulnerable adults was due to start on 26 July.

This registration has now been stopped. The scope of the remodelling process, to be co-ordinated by the Home Office in partnership with Department of Health and Department for Education, is currently being finalised.

The HR Good Practice Resource Pack was developed in line with the expectation that applications for ISA registration could be submitted from the 26 July 2010, therefore aspects of HR Good Practice Resource Pack that relate to ISA registration, are not applicable, at this time and updates to this information will not be issued until details of the scope of the remodelling process are announced by the Government.

¹ Regulated Activity is defined in Schedule 4 (Parts 1 & 2) of the [Safeguarding Vulnerable Groups Act 2006](#). It involves contact with children or vulnerable adults where because of their role, the person undertaking the activity may develop a relationship of trust with the child or vulnerable adult. 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'.

Interim arrangements for Controlled Activity²

When the HR Good Practice Resource Pack was refreshed in March 2010, it included a specific holding statement in relation to requirements for those undertaking *controlled activity* as defined by the Safeguarding Vulnerable Groups Act 2006. An amendment under the provision of the Police Act 1997 (Criminal Records) (Amendment) Regulations 2010 came into force from 1 April 2010, and allows a check against the barred list for controlled activity in wider healthcare settings (i.e. healthcare settings that are not specified places).

The amendment places a legal duty on employers to carry out a check against the barred lists to ensure that individuals being appointed into controlled activity in wider health care settings are not barred from working in regulated activity (known as a 'controlled activity check'). The process for this check is slightly different to an application for an enhanced CRB check. However, in light of the Government's announcement, processes have not been set in place with the CRB for employers to carry out a 'controlled activity check' on these individuals.

Full penalties have therefore not been imposed at this time and employers will not be committing a criminal offence if they do not check the barred lists for these positions. Not having an offence in the interim period keeps the regulations light-touch which is in keeping with their interim character, and with the Government's December 2009 commitment to review the continuing need for controlled activity in the Scheme and the Government's announcement to review and remodel the scheme on 15 June 2010. It will, however, be a criminal offence for employers to knowingly appoint individuals who are barred from regulated activity into controlled activity without putting appropriate safeguards in place i.e. where an individual has been removed from regulated activity or notification of barring is given through the pre-employment checking process (references etc).

The Government's announcement does not alter the elements of the VBS that were put in place on the 12 October 2009, therefore any form of work carried out for the purposes of a specified place, (e.g. a children's hospital), which meets the frequency criteria³ and which provides an opportunity for contact with children or vulnerable adults (e.g. including administrative, catering, cleaning, and maintenance work etc.) continues to be treated as regulated activity and requires an enhanced CRB check. Please see paragraph 2.27 - 2.29 of the Vetting and Barring Scheme Guidance for further information (http://www.isa.gov.org.uk/PDF/VBS_guidance_ed1_2010.pdf). However positions in specified places will be subject to review under the remodelling of the Scheme.

² Controlled activity is more limited than regulated activity and is fully defined in Section 21 and 22 of the [Safeguarding Vulnerable Groups Act 2006](#). The key difference is that it is *ancillary* to the provision of services (ie. roles which provide necessary support to the primary activities of the organisation such as administrative, catering, cleaning, maintenance etc.) In the context of health research it applies in the following areas:

- primary care
- hospital services
- domiciliary care

Controlled activity applies when a person has

- the opportunity to have any form of contact with a child or vulnerable adult or the opportunity to have access to health records or social services records

The contact with the child or vulnerable adult or with their health or social services records must be frequent (1 a month or more) or intensive (4 or more days in any 30 day period).

³ For controlled activity, the frequency test is only met where the individual is carrying out that activity in the same setting. It does not include where the individual works in a number of specified places and carries out that activity infrequently.

NHS Employers have recently republished their Employment Check Standards which set out the legal and mandated pre-engagement checks for those working or volunteering within the NHS. Their republished Criminal Record Checks Standard⁴ requests that NHS organisations continue to carry out standard disclosures for those being appointed into controlled activities within general healthcare settings until the scope of the review and recommendations are known.

Individuals already working under a Research Passport whose research involves controlled activity are not affected at this time. Where required, and pending further announcements on the VBS remodel, these individuals will be brought into the Scheme when their existing Research Passport comes up for renewal.

NHS Employers' website provides the following FAQ which further clarifies requirements for controlled activity in the interim period:

"Q14. What level of CRB check should be requested for controlled activities?"

<http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/CriminalRecordChecks.aspx>

An amendment to the Police Act 1997 (Criminal Records) (Amendment) Regulations 2010, which came into force from 1 April 2010, extended the duty on employers to obtain a check against the barred lists to controlled activity in wider health care settings. The check (known as a 'controlled activity' check) was intended to allow employers to check that individuals being appointed into controlled activity were not barred from regulated activity. However, in light of the Government's announcement to review and remodel the Vetting & Barring Scheme (15 June 2010), processes have not yet been put in place with the CRB for employers to obtain such a check. Therefore full penalties have not been introduced and employers will not be committing a criminal offence if they do not check the barred lists for controlled activities in these settings.

Criminal offences will, however, apply if the employer knowingly appoints an individual who is barred from regulated activity into a controlled activity without appropriate safeguards being in place. To further clarify, the current CRB requirement for controlled activity is as follows:

- *those who are undertaking any form of controlled activity in a specified place should be considered the same as regulated activity and will require an enhanced CRB check*
- *those who are undertaking controlled activity in wider health care settings (i.e. not in a specified place) where they have contact with children and/or vulnerable adults will continue to require a standard CRB check*
- *positions which involve having access to the health records of children and/or vulnerable adults in wider health care settings are not currently covered under the terms of the Rehabilitation of Offenders Act (Exceptions) Order and therefore employers are not required to obtain a standard or enhanced CRB check".*

These requirements will be subject to the Government's review and further guidance will be provided on this webpage as soon as more information becomes available from the Home Office. Employers will be notified of any amendment to these requirements through the NHS Workforce Bulletin."

Researchers and their employers should ensure that where applicable new Research Passport applications are supported by an appropriate disclosure pending further announcements on the VBS remodel. Some frequently asked questions relating to the interim arrangements can be found on page 7.

⁴NHS Employers' Criminal Record Check Standard, July 2010.
<http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/CriminalRecordChecks.aspx>

Table 1 – RESEARCH PASSPORT ALGORITHM - INTERIM UPDATE

Shaded rows highlight the adjustments made to the Research Passport Scheme in response to the requirements of the VBS. Staff with an existing Research Passport can continue current arrangements until their Research Passport needs renewal, unless their research role changes significantly (e.g. they start to work with children where previously they only worked with adults). A Research Passport should be completed only when specific evidence of pre-engagement checks is required.

NB: The HR Good Practice Resource Pack has been updated to reflect [interim guidance given by NHS Employers](#). Users should refer to the guidance when appropriate and to any changes subsequently made as a result of the review of the Vetting and Barring Scheme.

Type of research activity researcher will be conducting	Criminal record check necessary? ^{5, 6}	Is this likely to be Regulated or Controlled activity, which is Subject to Monitoring? ⁷	LOA or HRC	Occupational Health Check Necessary?
Direct contact with adult patients/service users (i.e. vulnerable adults) and providing prevention, diagnosis or treatment	Yes, enhanced	Yes – Regulated Activity	HRC	Yes
Direct contact with children and providing prevention, diagnosis or treatment	Yes, enhanced	Yes – Regulated Activity	HRC	Yes
Direct contact with patients/service users (vulnerable adults or children) as part of the care team	Yes, enhanced	Yes – Regulated Activity	LOA	Yes
Direct or indirect contact in a specified place (e.g. children's hospital)	Yes, enhanced	Yes – Regulated Activity	HRC or LOA	Yes (if there is direct contact)
Indirect contact with patients/service users (vulnerable adults or children) and providing prevention, diagnosis or treatment (e.g. some types of telephone interviews)	Yes, enhanced	Yes – Regulated Activity	HRC	No
Direct contact with patients/service users (vulnerable adults or children) in wider healthcare settings but not providing prevention, diagnosis or treatment (e.g. focus groups)	Interim arrangements Yes, standard	Yes - Controlled Activity	LOA	Yes

⁵ Please refer to http://www.crb.homeoffice.gov.uk/guidance/rb_guidance/eligible_posts.aspx for guidance on specific activities which are eligible for an enhanced CRB check.

⁶ Interim arrangements for controlled activity are based on NHS Employers' current guidance. It is likely that these requirements may be subject to change under the remodelling of the Scheme.

⁷ **NB MUST BE UNDERTAKEN FREQUENTLY (1 A MONTH OR MORE), INTENSIVELY (4 DAYS OR MORE IN ANY 30 DAY PERIOD) OR OVERNIGHT (2AM-6AM)**

Type of research activity researcher will be conducting	Criminal record check necessary? ^{5, 6}	Is this likely to be Regulated or Controlled activity, which is Subject to Monitoring? ⁷	LOA or HRC	Occupational Health Check Necessary?
Indirect contact with patients/service users in wider healthcare settings but not providing prevention, diagnosis or treatment (e.g. some telephone interviews)	Interim arrangements Yes, standard	Yes – controlled activity: access to identifiable health records or opportunity to have any form of contact with children or vulnerable adults	LOA	No
Access to identifiable patient data derived from health records, tissues or organs with likely impact on prevention, diagnosis or treatment	Interim arrangements No	Yes – controlled activity: access to identifiable health records or opportunity to have any form of contact with children or vulnerable adults	HRC	Yes only if working with tissues or organs in NHS labs
Access to identifiable patient data derived from health records, tissues or organs with no likely impact on prevention, diagnosis or treatment	Interim arrangements No	Yes – controlled activity: access to identifiable health records or opportunity to have any form of contact with children or vulnerable adults	LOA	Yes if working with tissues or organs
Access to anonymised patient data derived from health records, tissues or organs only (including by research staff analysing data)	No	No	LOA (only if records reviewed in NHS facilities),	Yes if working with tissues or organs
Working on NHS premises (e.g. laboratory) only (no access to identifiable data, not in a specified place)	No	No	LOA (if in NHS facilities)	Yes if working with tissues or organs
Direct contact with staff only (e.g. interviews) (No access to patients or patient data, not in a specified place)	No	No	LOA (if in NHS facilities)	No
Access to identifiable staff data only (Not in a specified place)	No	No	LOA (if in NHS facilities)	No
Access to anonymised staff data only (Not in a specified place)	No	No	LOA (if in NHS facilities)	No

⁵ Please refer to http://www.crb.homeoffice.gov.uk/guidance/rb_guidance/eligible_posts.aspx for guidance on specific activities which are eligible for an enhanced CRB check.

⁶ Interim arrangements for controlled activity are based on NHS Employers' current guidance. It is likely that these requirements may be subject to change under the remodelling of the Scheme.

⁷ **NB MUST BE UNDERTAKEN FREQUENTLY (1 A MONTH OR MORE), INTENSIVELY (4 DAYS OR MORE IN A 30 DAY PERIOD) OR OVERNIGHT (2AM-6AM).**

Frequently Asked Questions

How does the frequency test apply to controlled activity?

For controlled activity, the frequency test is only met where the individual is carrying out that activity in the same setting. It does not include where the individual works in a number of specified places and carries out that activity infrequently.

How do I complete section 5 of the Research Passport application form in the interim period?

Version 2.0 of the Research Passport form was designed, where required, to allow researcher's employers to confirm that the researcher's ISA registration had been activated. As a result of the Government's recent announcement to halt the ISA registration phase of the new Vetting and Barring Scheme, some sections of the form do not apply at this time. The table below includes some tips for completing the form during the interim period.

Area	Description	What should I do?
Row 3 of Question 8, Section 5.	Employers are requested to complete this row if the application is supported by an enhanced CRB disclosure issued on/after the 26 July 2010. Employers must confirm whether they have registered the individual with ISA for work with the relevant vulnerable group.	Employers should continue to complete Row 2 in this section confirming that the individual has been checked against the relevant barred list until further information on the launch of the ISA registration phase of the Vetting and Barring Scheme is communicated by the Government.
Section 6 - Instructions to applicants	Applicants are required to indicate that a supporting CRB certificate issued on/after 26 July 2010 confirms that ISA registration is in place for work with the relevant vulnerable group.	Applicants should continue to confirm, where applicable, that their CRB certificate confirms a check against the appropriate barred list, until further information on the launch of the ISA registration phase of the Vetting and Barring Scheme is communicated by the Government.

The NIHR Comprehensive Local Research Networks (CLRNs) are supporting the implementation of this guidance across HEIs and the NHS in England. If you have any questions, in the first instance, please contact the Lead RM&G Manager of your [local CLRN](#). Further information is also available from Jacqueline Mathews, NIHR Clinical Research Network Coordinating Centre at jacqueline.n.mathews@nih.ac.uk.