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The Safeguarding Vulnerable Groups Act 2006

17 November 2009

This Act brought in a new vetting and barring scheme for people working with children and vulnerable adults. It includes volunteers. The first key milestone was on 12 October 2009. From that date:-

- Individuals who are on the barred lists are prevented from undertaking a much broader range of activities. They are barred from any activity which falls within the statutory definition of "Regulated Activity".
- New criminal offences are created. It is now a criminal offence for;
 - A barred individual to seek work, or undertake work with children or vulnerable adults
 - An employer to knowingly engage a barred person, whether as a paid employee or as a volunteer.
- The Independent Safeguarding Authority (ISA), the new agency created by the Act, will administer the two barring lists which are operational going forward. In place of the POVA, POCA and List 99 barring lists, there will simply be one list for those barred from working with children, and one for those barred from working with vulnerable adults.
- A new legal duty has been placed upon all employers whose business involves children or vulnerable adults to give full details to the ISA if someone within their business acts in a way that suggests they should not be working with children or vulnerable adults. Typically an employer will have dismissed this individual following an investigation, and it will need to pass on much of the information generated by that investigation to the ISA.

The next critical date is July 2010. Staff changing jobs or entering this job market will be able to (but not required to) register from that date. However, registration for those workers will become mandatory from November 2010 and from that date there will be tough penalties for those employers who fail in their responsibility to carry out the necessary checks or recruit people who are not ISA-registered. Employers who knowingly permit a barred individual to engage in regulated activity face a maximum penalty of up to six months in prison plus a fine.

It is expected that all employees and volunteers working in this sector, even those who do not move to a new employer, will be registered by 2015 and this process will start in 2011.

Improved scheme

There are currently 2 overlapping lists of people who are barred from working with children, and a third list relating to the social care of adults. This is a recipe for confusion. Furthermore the current CRB check is simply a snapshot; frozen in time. If the check is carried out on a Monday, and the individual is convicted of an offence on the Tuesday, the CRB check will not pick that up.

There will be one barring list relating to children, and another for vulnerable adults. Importantly, the new system will be able to react to new information, and so someone initially cleared to work with children or vulnerable adults can be subsequently barred.

The ISA will assess the information to hand about an individual including the results of the CRB check, and decide whether that person should be barred.

Types of activity

The Act identifies two types of activity - regulated activity or controlled activity.

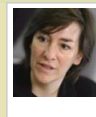
The precise definition of regulated activity is complex but it includes any position which involves providing education training, care, assistance, therapy and the provision of transport for children and vulnerable adults. It also includes any position that involves the management of people carrying out these functions.

Controlled activity tends not to involve direct contact with children or vulnerable adults, but may involve access to information about them.

The barring provisions provided for in the Act relate to regulated activity - if the ISA bars an individual they may not engage in regulated activity. They can still be involved in controlled activity, provided safeguards are in place.

Scheme operation

Under the new system, an individual who wishes to work with children or vulnerable adults will need to apply for a check. The application will require proof of identity and a fee. It is hoped that where there is no information on an



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individual (the position on 90% of applications) the results will come through within one week. Otherwise, the check will take longer.

CRB will gather information about the individual. Occasionally there will be information that needs to be passed to the ISA for consideration before deciding whether to include the applicant on the barred list. Even more occasionally the information shows an individual has convicted a specified offence which leads to an automatic ban.

A barred individual will have the right to make representations.

Whether the ISA decide an individual is barred or not barred both the individual and their employer are told.

Once a person applies for a check an ISA file is opened on them. Throughout their career, the ISA may receive information about that individual from a variety of sources such as the police, local authorities, employers, professional bodies or Inspectorates. Whenever such new information is received, the ISA will then consider whether it should lead to a decision to bar, with representations being sought when appropriate. It is hoped that as soon as there is evidence that an individual has behaved inappropriately towards children or vulnerable adults, that information will be passed to the ISA, who will give it due consideration and, where appropriate, bar the individual.

Notifications that someone has been barred are likely to come out of the blue. A children's home may receive a phone call from the ISA saying that a particular staff member has been barred, and the home will then need to take immediate action to remove that individual, as it is a criminal offence to allow that person to continue in regulated activity. It is likely that the individual will have to be dismissed summarily.

Online checks

Under the new scheme there is the ability to make online checks on an individual. This will tell you instantaneously whether an individual is barred, or is cleared to work. It will be similar to the current standard level CRB check. However for recruitment into almost every regulated activity role, the potential employer will need information equivalent to an enhanced CRB check, and this will only be available through an application, rather than online.

New criminal offence

The Act creates several criminal offences for non-compliance. Employers commit offences if they engage an individual in regulated activity that is either barred or not subject to monitoring. This offence is committed by both the organisation, and by any manager who is either complicit or reckless.

It is an offence for an individual to seek controlled activity if he has not been checked, and it is also an offence to engage such an individual.

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