

# Independent safeguarding authority and statement of Secretary of State for Education on scheme changes

This briefing is provided to APSE contacts in England, Scotland, Wales and Northern Ireland

## Key issues;

- On the 12 October 2009 improved safeguarding arrangements went live which established new requirements under the Safeguarding Vulnerable Groups Act 2006 (SVGA) which applies to England, Wales and Northern Ireland
- Similar measures are in place under the Protection of Vulnerable Groups (Scotland) Act 2007.
- Following the initial launch of the Independent Safeguarding Authority and measures under the Vetting and Barring Scheme concerns were raised as to the definition of "frequency" within the scheme
- A report commissioned by Ed Balls, Secretary of State for Education, from Sir Roger Singleton was asked to explore a number of issues including the definition of frequency of contact.
- Ed Balls made a statement accepting the recommendations of Sir Roger Singleton's report on the 14 December 2009
- This has wide implications for those front line services carrying out work in schools and other buildings such as catering, cleaning, leisure and building maintenance services.

## 1. Introduction

The Bichard Inquiry was established in the wake of the tragic murders of Holly Wells and Jessica Chapman by Ian Huntley, a school caretaker, who despite a catalogue of concerns about his behaviour, particularly towards young girls, was nevertheless able to secure a job in a position of trust in a school environment. The Vetting and Barring Scheme is one of the Government's key responses to the Bichard Inquiry and a major plank of the safeguarding strategy, aimed at protecting children and young people and vulnerable adults from harm. The events in Soham focused public attention on the way people who work with children are vetted. The Bichard Inquiry recommended a new scheme that would ensure that everyone working in 'regulated activity' with children or vulnerable adults is checked and registered.

## 2. About the Vetting and Barring (VBS) Scheme

From 12 October 2009, certain employers may face fines of up to £5,000 if they fail to refer an employee who harms or poses a risk of harm to children or vulnerable adults, under the new Vetting and Barring Scheme (VBS).

The service will extend to England, Wales and Northern Ireland, although arrangements for application and appeals may differ slightly in Northern Ireland.

A separate but aligned scheme is being set up in Scotland under the Protection of Vulnerable Groups (Scotland) Act 2007. Anyone included on a Barred List in Scotland will also be barred from working with children and vulnerable adults across the UK.

The VBS is being delivered by the Criminal Records Bureau (CRB) (Access Northern Ireland in Northern Ireland) and the Independent Safeguarding Authority (ISA). Its tighter regulations are at the heart of the Government's strategy for increased protection of vulnerable members of society.

After full consultation, the Bichard Inquiry led to the Safeguarding Vulnerable Groups Act 2006 (SVGA) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (SVGGO), which provide for the establishment of the Scheme. The Scheme has been developed by the UK Government in conjunction with the Welsh Assembly Government and the Northern Ireland Executive.

The ISA receives around 400-500 referrals per month from employers who have concerns that individuals who are or were in their employment could pose a risk to vulnerable groups. The Scheme is designed to offer 'a common sense, proportionate approach to safeguarding'.

## 3. Changes from 12 October 2009

Stricter controls now replace existing arrangements that determine who is unsuitable to work with children and vulnerable adults in England, Wales and Northern Ireland.

The scheme makes it a criminal offence for barred individuals to **work or apply to work** with children or vulnerable adults in a wide range of posts. Employers also face criminal sanctions for knowingly employing a barred individual across a wide range of work.

The additional jobs and voluntary positions that are now covered by the barring arrangements include most NHS jobs, Prison Service, education, childcare and moderators of internet chat rooms wholly or mainly for children.

Barred individuals seeking to undertake work with vulnerable groups may face a prison sentence or a fine. **Employers in regulated activity who knowingly employ barred individuals may face a prison sentence or a fine.** This is particularly a point for front line service providers to explore and to ensure that they do not inadvertently

breach the new regulations. It is not, contrary to popular opinion, simply an issue for social services, education or care related services.

The three former barred lists (POVA, POCA and List 99) are being replaced by two new barred lists, one for people prevented from working with children and one for those prevented from working with vulnerable adults. These will be administered by the ISA rather than several Government departments. Checks of these two lists can be made as part of an Enhanced CRB (Criminal Records Bureau) check.

Employers are now eligible to ask for enhanced disclosures with barred list checks on anyone they are taking on in regulated activity. In Northern Ireland this eligibility also extends to controlled activity. However employers are not required to ask for an enhanced disclosure if they have no reason to believe that an existing employee is barred, unless there is a mandatory requirement to do so (e.g. Ofsted registered childcare). See point 5 below which further explains regulated and controlled activities.

In certain circumstances, employers, local authorities, education and library boards, health and social care bodies and professional regulators have a legal duty to refer to the ISA, information about individuals who they believe have harmed or may pose a risk of harm to children or vulnerable adults.

It is intended that the VBS process has introduced genuine improvements to the safeguarding process together with duties to refer to ensure that people who pose a risk to children or vulnerable adults will now be taken out of the workplace. However this is a bold statement of intent since offences may take place on a first time basis by an employee who has been otherwise cleared by the scheme.

#### **4. Critical dates**

New employees and those changing jobs in regulated activity do not need to start applying for **ISA-registration until July 2010** and ISA-registration does not become mandatory for these workers until **November 2010**. All other staff will be phased into the scheme from **2011**.

#### **5. Definition of regulated and controlled activities**

**Regulated activity** includes:-

Any activity, which involves contact with children or vulnerable adults. This could be paid or voluntary work.

Such activities include:

- Any activity of a **specified nature** which involves contact with children or vulnerable adults within certain periods, or overnight.
- Any activity allowing contact with children or vulnerable adults that is **in a specified place** frequently or intensively.

- Fostering and childcare.
- Any activity that involves people in **certain defined positions** of responsibility.

The scheme also applies to '**controlled activity**' which is defined as:-

- Frequent or intensive support work in general
- Health settings, the NHS and further education (such work includes cleaners, caretakers, shop workers, catering staff, car park attendants and receptionists.)
- Individuals working for specified organisations (e.g. a local authority) who have frequent access to sensitive records about children and vulnerable adults.
- Support work in adult social care settings (Such jobs include day centre cleaners and those with access to social care records.)

'**Controlled activity**' is when this type of activity is frequent.

'Frequent' was defined as (once a month or more) or 'intensive' (takes place on three or more days in a 30-day period) however as a result of lobbying and serious concerns about the workability of such a move – for example a parent taking a local junior football team to a match or a volunteer who may from time to time visit a school – the Government has accepted a new definition of 'frequent' as suggested by Sir Roger Singletons report. This is therefore suggested to be redefined as:-

'The frequent contact test will be met if the work with children takes place once a week or more. The intensive contact test will be met if the work takes place on 4 days in one month or more or overnight.'

It will be a criminal offence for an employer to take on an individual in a controlled activity if they fail to check that individual's status. An employer can permit a barred individual to work in a controlled activity only if sufficient safeguards are put in place.

## **6. The Singleton Report**

As a result of concerns identified by a number of groups it was considered that the new Vetting and Barring Scheme created unnecessary barriers. The scheme did not appear to strike the right balance between safeguarding children and vulnerable adults from harm, as against the potential damage through loss of volunteers and inputs, into areas such as extracurricular activities - often run by parents. There were also concerns that the scheme would impact on arrangements entered into on a voluntary basis between parents to care for each other children and how far the state should regulate, or intervene, in the care arrangements of parents. Sir Roger Singleton therefore recommend the following areas to redraw the line on some of the original VBS proposals. On the 14 December 2009 the Secretary of State for Education, The Rt Hon. Ed Balls MP accepted the report and recommendations in full which will now be implemented.

Singleton's recommendations in summary are as follows:-

1. Mutually agreed and responsible arrangements made between parents and friends for the care of their children will not be affected by the Vetting and Barring Scheme (VBS).
2. Where organisations such as schools, clubs or groups make the decisions as to which adults should work with their children then the requirement to register will apply, subject to the frequent and intensive contact provisions.
3. The frequent contact test will be met if the work with children takes place once a week or more. The intensive contact test will be met if the work takes place on 4 days in one month or more or overnight.
4. Individuals who go into different schools or similar settings to work with different groups of children will not be required to register unless their contact with the same children is frequent or intensive.
5. The minimum age of registration for young people who engage in regulated activity as part of their continuing education will be reviewed.
6. Overseas visitors bringing their own groups of children to the UK e.g. to international camps or the Olympics, will have a three months exemption from the requirement to register.
7. Exchange visits lasting less than 28 days, where overseas parents accept the responsibility for the selection of the host family, will be regarded as private arrangements and will not require registration.
8. The Government will consider the position of some self-employed health care practitioners and whether a duty should be placed on them to register with the scheme.
9. The Government will review the continuing need for 'controlled activity'.
10. The Government will review both the statutory requirements and its advice in relation to the continuing need for CRB Disclosures for safeguarding purposes once the VBS is in place.

**Changing the definition of "frequency" within the scheme from once a month or more to once a week or more.** This covers regular repetitive activity; this may mean certain ad-hoc work such as a maintenance person visiting a school on a relatively infrequent basis may fall outside of the scheme.

**Making a parallel change to the "intensive" definition, from three or more days in a 30 day period, or overnight, to four or more days in a 30 day period, or overnight.** This covers the circumstances where there is contact over a short space of time which is not necessarily repeated. As above this may help provide some clarity of who would need to be checked where this is infrequent activity.

Raising the minimum age at which young people should be required to register from 16 to 18, will help those local authorities who may offer workplace career experience or training to young people - prior to the suggested amendments of Sir Roger Singleton this may in fact have acted as a barrier to young people and local authorities offering workplace placements with local schools and colleges or certain volunteering activities.

The Singleton report has also recommended a further review on whether there is a continuing need for the separate class of work with different requirements, defined in the Safeguarding Vulnerable Groups Act 2006 as "controlled activity". Controlled activity refers to certain tightly defined ancillary and support activities, mainly in FE colleges, NHS settings and Local Authorities. Far fewer people are potentially covered by "controlled activity" than by "regulated activity". The Government has now committed the Department of Health to lead on a further review in collaboration with the Department for Business, Innovation and Skills.

The changes recommended by Sir Roger will impact on the numbers of people who will have to register. Initial estimates by the Home Office indicate that 2 million fewer individuals would need to register with the Vetting and Barring Scheme. This suggests that the new figure of those who will have to register with the Scheme lies in the range of 9 to 9.5 million. The Government is working to produce more detailed estimates and will include them in a revised impact assessment to be published shortly.

Supporting materials available include: [Referral forms](#) and [Referral guidance](#) and [VBS Guidance](#) which covers the increased safeguards introduced from the 12<sup>th</sup> October 2009.

## **6. APSE comment**

The Vetting and Barring scheme is broadly welcomed as it is clearly recognised that previous arrangements were inadequate and the potential for predatory and abusive characters to have access to children, young people and vulnerable adults with relative ease, was an unacceptable situation. In that sense the VBS is to be welcomed but there are clearly some problems that still need to be addressed.

The recommendations of the Singleton report, and the acceptance of the recommendations, is a step in the right direction however there is still a lack of certainty about how the scheme will operate in practice when it is fully in force.

Questions remain over the schemes application in certain situations and there is no clear definition as to whom the scheme will apply or potentially apply. This is very much in the judgment of the employer in looking at the activities and duties of employees and the location of these activities in determining whether the scheme ought to apply.

There is also a cost of the scheme of £64 to cover both enhanced CRB disclosures and the cost of ISA registration. Given the volume of people that the scheme will apply to, estimated at around 9.5 million, this could represent a significant increase in cost to employers. It is unlikely that existing employees would be willing to pay for their own registration and checks and for new employees it could prove to be a barrier to recruitment. This will be of special significance in some hard to recruit posts.

APSE has received some anecdotal evidence that local councils have decided to fund the costs of the CRB checks and ISA registration or have sought a cost sharing arrangement with employees.

Regardless of the cost issue there are also important employment considerations, specifically in the case of existing employees who might be newly caught by the regulations and have not been previously vetted. The scheme will not provide blanket protection for employers who dismiss on the basis of a revelation that is found on the back of a CRB check. Statutory responsibilities, to safeguard employees and ensure a 'fair trial' principle, needs to be applied to any such circumstances. Indeed many employers may want to look at redeployment options to remove staff from regulated or controlled activity rather than move to dismissal dependent upon circumstances and the nature of the offence revealed by a CRB check.

It will be necessary for all services, in conjunction with corporate human resources or personnel departments, to review their processes and procedures in the light of the Singleton Report recommendations, with a view to ensuring fairness and consistency, in the application of the scheme, both in terms of ensuring compliance with the scheme and to provide a proportionate response with employees.

From a service delivery perspective it will be worthwhile front line service providers being ready to answer clients concerns, such as in schools and care home settings where services are provided, that may well be caught by the regulations. If service providers are able to demonstrate that they have considered and applied a policy on the VBS to their employees involved in service delivery, it will ensure trust and confidence in the service is maintained.

For details on APSE training in this area please click [here](#) and go to the section on the 'vetting and barring scheme.

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