Making the Vetting and Barring Scheme work

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The Government announcement of 14th June 2010

The government have announced in the coalition agreement that they will review the criminal records and the vetting and barring regime and scale it back to common sense levels.

- the ISA registration stage of the Vetting and Barring Scheme has been halted to allow the new Government to conduct a remodelling of the scheme.
What we will cover

- Duties from 12th October 2009
- Look in detail at some of the terms used by the Vetting and Barring Scheme (VBS) and how they apply
- Look at the referral criteria and your duties to refer
- Look at how the VBS links to safeguarding

Aim: Delegates will have a clearer idea of new duties and which staff and volunteers are covered by the VBS

NB. This scheme covers England, Wales, and NI. Scotland have a separate system
VBS Changes from 12th October 2009

- ‘Regulated activity providers’ to make referrals to the ISA where an individual has harmed or risked harm to a child or vulnerable adult. Includes paid and unpaid employment.
- Duty to refer extends to local authorities, regulatory bodies (GCC, GMC, NMC etc) and CQC.
- Offence to *knowingly* employ a person barred by the ISA.
- Offence to work in regulated activity if barred.
ISA Adult First

- Is the replacement for POVA First
- Operates in the same way as POVA first
- Allows staff to start work before the CRB information arrives
What you need to do now

- Pre-employment checks as set out in existing regulations
- Including CRB at enhanced level
- For all staff who engage in regulated activity with vulnerable adults frequently, intensively or overnight
- Refer to the ISA when there has been harm or risk of harm
Do the new duties apply to me?

- Were you legally required to make POVA/POCA checks? Then Yes

Otherwise if
- Providing service to a child or VA, and
- There is a regulated activity provider, and
- Workers are engaged in regulated activity frequently, intensively or overnight

Then yes
Specified places

Regulated activity takes place in:

- Children’s hospitals
- Adult care homes (registered with CQC)
Specified positions

These people are in regulated activity by virtue of the position they hold:

- directors of adult social services
- councillors who are responsible for social services functions
- individuals carrying on or managing establishments or agencies registered under the Care Standards Act / Health & Social Care Act 2001
- trustees of charities for vulnerable adults
Vulnerable adult

- lives in residential accommodation
- lives in sheltered housing
- receives domiciliary care
- receives any form of health care
- is detained in lawful custody
- is on probation
- receives support, assistance or advice to help them live independently
- receives any service or participates in any activity provided specifically for because of age or disability,
- is an expectant/nursing mother in residential accommodation provided by the LA or NHS
- receives a direct payment
- requires assistance in the conduct of his own affairs.
Regulated activity

Includes:

- any form of training, teaching or instruction provided to children or wholly or mainly for vulnerable adults
- any form of care for or supervision of children or vulnerable adults
- advice or guidance for children, and advice, guidance or assistance wholly or mainly for vulnerable adults
- any form of treatment or therapy provided for a child or a vulnerable adult
- moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children or vulnerable adults;
- driving a vehicle which is being used for the purpose of conveying children or vulnerable adults
Frequently, intensively overnight

- Frequently – one day or more in each 30 day period where providing health care or personal care – otherwise once a week or more
- Intensively – 4 or more days in a 30 day period
- Overnight – 2am - 6am
Regulated activity provider (RAP)

Usually the employer or voluntary organisation

- Defined as an organisation or individual responsible for the management or control of regulated activity, paid or unpaid and makes arrangements for people to work in that activity
Residential accommodation

Includes:

- care homes registered under regulations made under the Care Standards Act (regulated and inspected by CQC)
- residential accommodation in connection with any care or nursing, or
- for a person who is or has been a pupil attending a residential special school.
Services or activities provided specifically because of particular needs because of age or disability

Could include:

Centre dedicated to provide advice for people with mental health problems

Toe nail cutting service for older people

Respite care service

Intermediate care service

Home repair service for older people, e.g. stay at home schemes
Requires assistance with conduct of their affairs

Has a specific meaning in the SVG Act and includes:
- a lasting power of attorney is created under the Mental Capacity Act 2005 or an application is made
- an enduring power of attorney is registered or an application is made
- an order has been made by the Court of Protection in relation to making of decisions on the person’s behalf, or an order has been applied for
- an independent mental capacity advocate is or is to be appointed
- independent advocacy services are or are to be provided.
- (Does not apply to a family or significant friend)
Direct payment

Includes:

- payment made to a person as part of an individual budget in lieu of social services
- payment made to a suitable person on behalf of an adult who lacks capacity
A word about managers

- Managers of those who engage in regulated activity are themselves engaged in regulated activity.
- That means those that are involved in the day to day management or supervision of a person carrying out regulated activity.
Controlled activity

Ancillary to frontline services and in limited circumstances:

- primary care services (GPs, pharmacy, opticians, dentists, district nursing)
- hospital services
- provision of domiciliary care
- making arrangements in connection with an adult placement scheme
- provision of community care services
- making direct payments

Where there is an opportunities to have:
- contact with a vulnerable adult
- access to health or social services records

Consultation being carried out on controlled activity. Document available from www.education.gov.uk
Hot topic - CRB checks

CRB checks

- No changes made to the requirement for enhanced CRB checks
- CRB information is crucial to the employer decision about a person’s suitability for a job
- Verifying identity is part of CRB application
- Enhanced CRB will tell you if a person is barred
- ISA Adult First service provides quick check – a person can start work prior to CRB information coming through
Referrals to the ISA (for a RAP) from 12th October 2009

Two conditions, both must be met to trigger a referral to the ISA.

1. Withdraws permission for an individual to engage in regulated or controlled activity, or would have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not regulated or controlled activity

2. Because they think the individual has:
   - Engaged in relevant conduct or,
   - Satisfied the Harm Test or,
   - Received a caution or conviction for a relevant offence

If both conditions have been met, the information must be referred to the ISA.
Duties of the Local Authority and Professional Regulator

In all cases the trigger to make a referral to the ISA for the LA is when they think that an individual who is engaged, or may engage, in regulated or controlled activity has:

- engaged in relevant conduct
- satisfied the Harm Test
- received a caution or conviction for a relevant offence.

And
- The worker is engaged or may engage in regulated activity
And
- They believe the ISA may bar the worker
Relevant conduct (Harm)

- Broadly the term relevant conduct means that a person engaged in regulated activity has **engaged in action (or inaction)** which has actually **caused harm or risked harm** to a child or vulnerable adult.
- The types of harm include physical, psychological, emotional, sexual, verbal and neglect

**Action**
- While trying to assist a man to get in the bath, the care worker hit the vulnerable adult to make him comply with her instructions.

**Inaction**
- A patient lost 15 kilograms in weight while in hospital which lead to increased confusion causing her to fall and break her hip. An investigation concluded that the nurse had failed to ensure the lady received adequate fluid and diet or that her needs were appropriately assessed and as a result the lady was harmed.
The Harm Test

- Broadly the harm test means that the child or vulnerable adult has *not* been harmed but the behaviour of the worker indicates a serious risk that they *could* harm a child or vulnerable adult in the future.

- The risk of harm must apply *specifically* to one of the vulnerable groups

It is anticipated that this will be applied infrequently

Example

- A GP was receiving psychiatric and psychological help for an addiction, and during treatment he discloses that he has a sexual interest in children. The Psychologist was sufficiently concerned about this to report the concerns to the ISA.
Changes from 12\textsuperscript{th} October-
in a nut shell

- Illegal for employers/vol orgs to knowingly employ a person in regulated activity if they are on a barred list
- Existing CRB check requirements remain unchanged
- Employers have a duty to refer a person if they are removed from RA
What you should do

- Understand what RA is and how it applies to you
- Understand your responsibilities as a RAP
- Understand your duty to refer a person to the ISA
- Ensure it is clear who is responsible for making referrals in your organisation
- Ensure they accept the responsibility and understand their duties
- Update your recruitment and disciplinary policies and procedures and tell staff about your duties to make referrals
- Use the ISA referral guidance
- Use the ISA helpline
Links to safeguarding

- No Secrets – being updated will refer to the Vetting and Barring Scheme
- Will also look at procedures for investigation of safeguarding alerts
- Your help is needed to make procedures work
- Safeguarding alerts vs inspection for regulation breach
More information

- Referral guidance from ISA now available from www.isa-gov.org.uk
- www.direct.gov.uk/vetting
- www.businesslink.gov.uk
- Email to info@vbs-info.org.uk
- Telephone general enquiries 0300 123 1111
- Specific information about a referral, 01325 391328